TITLE: FEDERAL REGISTER.

REEL NO: 5 of 11

VOLUME: 50 Issues: 170-177
Pages: 35,533-37,342

DATE: September 3 - 12, 1985

PUBLICATION NO: 2575

NOTES: The paper and ink used in the original material affect the quality of the micro-edition. This reproduction is made from the best copy available.

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL, ANN ARBOR, MICHIGAN

VOL
50

ISS
70

SE
3

985

UMI

9-3-85
Vol. 50 No. 170

Federal Register

Tuesday
September 3, 1985

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
170

SE
3

985

UMI

9-3-85
Vol. 50 No. 170
Pages 35533-35766

Federal Register

Tuesday
September 3, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Banks, Banking
Fiscal Service

Endangered and Threatened Species
Fish and Wildlife Service

Food Additives
Food and Drug Administration

Freight Forwarders
Interstate Commerce Commission

Government Procurement
General Services Administration

Government Publications
Federal Register, Administrative Committee

Imports
Agricultural Marketing Service

Income Taxes
Internal Revenue Service

Marine Safety
Coast Guard

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Medicare
Health Care Financing Administration

Motor Vehicle Safety
National Highway Traffic Safety Administration

Navigation (Water)
Engineers Corps

Quarantine
Animal and Plant Health Inspection Service

Radio Broadcasting
Federal Communications Commission

Railroad Retirement
Railroad Retirement Board

Railroad Safety
Federal Railroad Administration

Reporting and Recordkeeping Requirements
Internal Revenue Service

Trade Practices
Federal Trade Commission

Water Resources
Engineers Corps

Contents

Federal Register
Vol. 50, No. 170
Tuesday, September 3, 1985

Agricultural Marketing Service
PROPOSED RULES
35564 Raisins, imported; comment period reopened

Agricultural Stabilization and Conservation Service
RULES
Warehouse regulations:
35535 Federally licensed grain warehouses; inspection fees; correction

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Rural Electrification Administration.
NOTICES
Import quotas and fees:
35588 Sugar; qucta system review

Animal and Plant Health Inspection Service
RULES
Plant quarantine, foreign:
35533 Unshu oranges from Japan; interim
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
35564 Tuberculosis in cattle; State designations

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
35589 Arizona
35589 California
35589 Delaware

Coast Guard
RULES
Ports and waterways safety:
35555 Santa Cruz Island, CA; safety zone
Regattas and marine parades:
35554 Air Show and Boat Parade
35552 Burlington Triathlon
35553 Fort Smith United Way Great Raft Race IX

Commerce Department
See National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
35590 Chicago Board of Trade; European currency unit futures

Defense Department
See Engineers Corps.

Economic Regulatory Administration
NOTICES
Consent orders:
35593 Marathon Petroleum Co.; correction
35592 Oxy Petroleum, Inc.

Education Department
NOTICES
Meetings:
35591 Bilingual Education National Advisory and Coordinating Council
35591 Education Intergovernmental Advisory Council

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission.

Engineers Corps
RULES
35555 Water resource development projects; public use rules and regulations
PROPOSED RULES
Navigation regulations:
35573 San Clemente, CA; restricted area

Environmental Protection Agency
RULES
Air quality planning purposes; designation of areas:
35561 Virginia
PROPOSED RULES
Water pollution control:
35574 State underground injection control programs; technical seminar
NOTICES
35596 Agency information collection activities under OMB review
Meetings:
35597 Construction Grants Program Management Advisory Group
35597 Interagency Toxic Substances Data Committee; cancellation
Toxic and hazardous substances control:
35597 Confidential information and data transfer to contractors
Water pollution; discharge of pollutants (NPDES):
35598 Alaska OCS operations

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
35535 Aviation security; coordination and training; correction
NOTICES
Grants, availability, etc.:
35630 Visual glideslope indicators; proposed funding policy; correction

Federal Communications Commission
RULES
Radio stations; table of assignments:
35562 Alabama
PROPOSED RULES
Radio stations; table of assignments:
35574 Arkansas
35575, 35576 California (2 documents):

35578 Hawaii
35580 Michigan
35581 Mississippi
35579 Missouri
NOTICES
35598 Agency information collection activities under OMB review
Hearings, etc.:
35598 St. Clement's Episcopal Parish School Inc. et al.

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
35593 Arkoma Production Co. et al.
35593 Dawson Operating Co. Inc.
35594 Tenneco Oil Co. et al.
35595 Tennigasco Corp. et al.
35594 Valero Interstate Transmission Co.

Federal Home Loan Bank Board
NOTICES
35599 Federal home loan bank services; fee schedules

Federal Maritime Commission
NOTICES
35605 Agreements filed, etc.

Federal Railroad Administration
PROPOSED RULES
35643 Railroad power brakes; special safety inquiries
35640 Railroad power brakes and drawbars; telemetry device to readout brake pipe pressure
35636 Rear end marking device—passenger, commuter and freight trains; personnel selection flexibility, etc.

Federal Register, Administrative Committee
RULES
35533 Publication pricing and subscription rates

Federal Reserve System
NOTICES
35605 Agency information collection activities under OMB review
Bank holding company applications, etc:
35606 First Indiana Bancorp, et al.
Electronic fund transfers:
35606 Large-dollar wire transfer systems; risk reduction; policy statement; sender net debit cap review interpretation

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
35565 Columbia Enterprises, Inc., et al.
NOTICES
35632 Meetings; Sunshine Act

Fiscal Service
RULES
35547 Collection and deposit of payments to Federal agencies; receipts management and cash management improvements fund operation

Fish and Wildlife Service
RULES
Hunting:
35563 Open areas list; correction
Migratory bird hunting:
35762 Seasons, limits, and shooting hours; establishment, etc.; request for comments
PROPOSED RULES
Endangered and threatened species:
35584 Peter's Mountain mallow

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
35535 Central Soya Co., Inc.; sponsor address change
35535, 35536 Tylosin (2 documents)
Food additives:
35535 Polymers and polyetherimide resin; correction
PROPOSED RULES
Food additives:
35571 Classification of food substances as generally recognized as safe (GRAS); eligibility; extension of time
NOTICES
Meetings:
35608 Advisory committees, panels, etc.
35609 Small business participation

General Services Administration
PROPOSED RULES
Acquisition regulations (GSAR):
35582 Termination for convenience of Government and termination liabilities; draft availability

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration.
NOTICES
Organization, functions, and authority delegations:
35608 Departmental Grant Appeals Board
35607, 35608 Social Security Administration (3 documents)

Health Care Financing Administration
RULES
Medicare:
35646 In patient hospital services, prospective payments (Diagnosis Related Groups)
NOTICES
Medicare:
35609 Home health agency cost per visit; schedule of limits

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Income taxes:
35536 Mortgage credit certificates; information reporting and policy statement requirements; temporary
35540 Mortgage subsidy bonds; tax-exempt status of interest; reporting and recordkeeping requirements
PROPOSED RULES
Income taxes:
35572 Mortgage credit certificates; information reporting; and policy statement requirements; cross-reference

Interstate Commerce Commission
RULES
Freight forwarders:
35563 ICC field office locations
Rail carriers:
35562 Coal rate guidelines, nationwide; policy statement
NOTICES
Railroad services abandonment:
35612 Burlington Northern Railroad Co.

Labor Department
See Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Classification of public lands:
35610 Nevada; correction

Mine Safety and Health Administration
NOTICES
Safety standard modification petitions, etc.:
35612 Bartley & Bartley Coal Co.
35612 BethEnergy Mines Inc.
35613 Consolidation Coal Co.
35613 Eastern Associated Coal Corp.
35613 Franklin Consolidated Mines, Inc.
35614 Hydrocarbon Resources Co.
35614 Jet Coal Co., Inc.
35614 Jim Walter Resources, Inc.
35615 McLayne Resources, Inc.
35615 Oneida Coal Co., Inc.
35615 Plateau Mining Co.
35616 Shannon Coal Co., Inc.
35616 Tennessee Consolidated Coal Co.
35616 Vojo Coals Inc.

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards
35583 Lamps, reflective devices, and associated equipment; bulb filament test requirement withdrawn

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
35563 Atlantic swordfish; correction
NOTICES
Coastal zone management programs and estuarine sanctuaries; State programs:
35590 Alabama
Permits:
35590 Marine mammals

National Park Service
NOTICES
Historic Places National Register; pending nominations:
35610 Alabama et al.

National Technical Information Service
NOTICES
Patent licenses, exclusive:
35590 Calcol, Inc.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
35626 Pacific Gas & Electric Co.
35626 Union Electric Co.
35625 Regulatory guides; issuance, availability, and withdrawal

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
35629 Mainstem Passage Advisory Committee

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
35617 First National Bank of Chicago et al.
35623 Gibson Products Co., Inc., et al.

Postal Rate Commission
NOTICES
35629 Costing methods study; United Parcel Service petition filed; inquiry

Postal Service
NOTICES
35632 Meetings; Sunshine Act

Prospective Payment Assessment Commission
NOTICES
35630 Meetings

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
35568 Retirement annuities; court decree or court-approved property settlements

Rural Electrification Administration
NOTICES
Environmental statements; availability:
35589 Fergus Electric Cooperative, Inc.

Securities and Exchange Commission
NOTICES
Application, etc.:
35630 Castle & Cooke, Inc.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
35573 Subsidence control; surface structure and facilities protection; hearing

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.
NOTICES
Aviation proceedings; hearings, etc.:
35631 Cross Country Aviation Service, Inc.

Treasury Department
See Fiscal Service; Internal Revenue Service.

Separate Parts in This Issue

Part II
35636 Department of Transportation, Federal Railroad Administration

Part III
35646 Department of Health and Human Services, Health Care Financing Administration

Part IV
35762 Department of the Interior, Fish and Wildlife Service

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
3.....35533

7 CFR
319.....35533
736.....35535
Proposed Rules:
999.....35564

9 CFR
Proposed Rules:
77.....35564

14 CFR
108.....35535

16 CFR
Proposed Rules:
13.....35565

20 CFR
Proposed Rules:
295.....35568

21 CFR
177.....35535
510.....35535
558 (2 documents).....35535, 35536
Proposed Rules:
170.....35571

26 CFR
1 (2 documents).....35536, 35540
6a.....35540
602 (2 documents).....35536, 35540
Proposed Rules:
1.....35572
602.....35572

30 CFR
Proposed Rules:
617.....35573

31 CFR
206.....35547

33 CFR
100 (3 documents).....35552–35554
165.....35555
Proposed Rules:
207.....35573

36 CFR
327.....35555

40 CFR
81.....35561
Proposed Rules:
147.....35574

42 CFR
505.....35646
512.....35646

47 CFR
73.....35562
Proposed Rules:
73 (7 documents).....35574–35581

48 CFR
Proposed Rules:
549.....35582
552.....35582

49 CFR
Ch. X.....35562
1085.....35563

Proposed Rules:
218.....35638
221.....35636
232 (2 documents).....35640, 35643
571.....35583

50 CFR
20.....35762
32.....35563
33.....35563
630.....35563
Proposed Rules:
17.....35584

VOL
50

ISS
170

SE
3

985

UMI

Rules and Regulations

Federal Register
Vol. 50, No. 170
Tuesday, September 3, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 3

Price Increases for the Code of Federal Regulations and the Weekly Compilation of Presidential Documents

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces price increases for annual Subscriptions to the paper edition of the Code of Federal Regulations (CFR) and to the Weekly Compilation of Presidential Documents. These increases are necessary to recover production and distribution costs to the Government.

EFFECTIVE DATES: Code of Federal Regulations prices, § 3.4(b)(4)—Jan. 1, 1986.

Weekly Compilation of Presidential Documents prices, § 3.4(b)(7)—October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Frances D. McDonald, (202) 523–4534.

SUPPLEMENTARY INFORMATION: The ACFR which establishes prices for Federal Register publications has determined that the annual subscription for the 50 Titles of the CFR in paper edition will be $595 beginning with the 1986 edition. The annual subscription of the Weekly Compilation of Presidential Documents will be $64. These increases are necessary to recover production and distribution costs to the Government.

This is not a major rule under E.O. 12291. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to these changes because they do not constitute a rule as defined by the Act nor do they necessitate a notice of proposed rulemaking.

List of Subjects in 1 CFR Part 3

Government publications, Federal Register publications, Subscription rates.

For the reasons set out in the preamble and under the authority given the Administrative Committee of the Federal Register by 44 U.S.C. 1506, Part 3 of Chapter I of Title 1 of the Code of Federal Regulations is amended as follows:

PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

2. Section 3.4 is amended by revising paragraphs (b)(4) and (7) to read as follows:

§ 3.4 Subscriptions and Availability of Federal Register Publications.

* * * * *

(b) * * *

(4) *Code of Federal Regulations.* A complete set will be furnished by mail to subscribers for $595 per year for the bound, paper edition, or for $185 per year for the microfiche edition. Subscription fees are payable in advance to the Superintendent of Documents. Individual copies of the Code volumes are sold by the Superintendent of Documents at prices determined by the Superintendent under the general direction of the Administrative Committee. The price of an individual volume in microfiche is $3.75.

* * * * *

(7) *Weekly Compilation of Presidential Documents*—(i) *Nonpriority mailing.* Issues will be furnished by mail to subscribers for $64 in advance to the Superintendent of Documents, Government Printing Office.

(ii) *First-class mailing.* Issues will be furnished to subscribers by first-class mail for $105 per year payable in advance to the Superintendent of Documents, Government Printing Office. Individual issues may be obtained for $1.75 per copy from the Superintendent of Documents, Government Printing Office.

* * * * *

Approved:
Frank G. Burke,
Acting Chairman.
Ralph Kennickell,
Member.
Ralph Tarr,
Member.
Edwin Meese III,
Attorney General.
Frank G. Burke,
Acting Archivist of the United States.

[FR Doc. 85–21047 Filed 8–29–85; 3:21 pm]
BILLING CODE 1505–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85–354]

Unshu Oranges From Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: Prior to the effective date of this document, the citrus fruit regulations prohibited Unshu oranges from being imported from Japan into the United States unless, among other things, (1) the Unshu oranges were imported by the United States Department of Agriculture for experimental or scientific purposes under certain conditions; (2) the Unshu oranges met certain stringent safeguards concerning growing, packing, inspection, treatment, labeling, and certification; and were imported into Alaska, Hawaii, Oregon, or Washington at certain ports and were destined to places in these States or to places in Idaho or Montana; or (3) the Unshu oranges were imported from Japan into Alaska for consumption there. This document removes the provisions referred to in item (3). Consequently, Unshu oranges are now prohibited from being imported from Japan into Alaska unless, among other things, they meet the provisions referred to above in item (2) or are imported by the United States Department of Agriculture for experimental or scientific purposes. This action is necessary to help prevent the dissemination of citrus canker in the United States.

DATES: Effective date of the interim rule: September 3, 1985. Written comments concerning this interim rule must be received on or before November 4, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-354. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8248.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Because of the possibility that citrus canker could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments requiring will be published in the **Federal Register** as soon as possible.

Background

The importation of Unshu oranges, *Citrus reticulata* Blanco var. *Unshu* (this is a kind of tangerine and is also known as satsuma), from Japan into the United States is regulated under the citrus fruit regulations (7 CFR 319.28) and the fruits and vegetables regulations (7 CFR 319.56 *et seq.*). This document amends the citrus fruit regulations concerning the importation of Unshu oranges from Japan into Alaska. This document does not affect the fruits and vegetables regulations which prohibit the importation of Unshu oranges into the United States unless also imported in accordance with permit and other requirements.

The citrus fruit regulations were established for the purpose of preventing the introduction of citrus canker into the United States. Citrus canker is a disease which affects citrus. It is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse 1915) Dye 1976. The disease in Japan infects the twigs, leaves, and fruit of a wide spectrum of commercial and noncommercial *Citrus* species.

Prior to the effective date of this document, the citrus fruit regulations prohibited Unshu oranges from being imported from Japan into the United States unless, among other things, (1) the Unshu oranges were imported by the United States Department of Agriculture for experimental or scientific purposes under certain conditions; (2) the Unshu oranges met certain stringent safeguards concerning growing, packing, inspection, treatment, labeling, and certification; and were imported into Alaska, Hawaii, Oregon, or Washington at certain ports and were destined to places in these States or to places in Idaho or Montana; or (3) the Unshu oranges were imported from Japan into Alaska for consumption there. This document removes the provisions referred to in item (3). Consequently, under the citrus fruit regulations, Unshu oranges are now prohibited from being imported from Japan into Alaska unless, among other things, they meet the provisions referred to above in item (2) or are imported by the United States Department of Agriculture for experimental or scientific purposes. This action is necessary to help prevent the dissemination of citrus canker in the United States.

Based on experience, it appears that all Unshu oranges that have been imported from Japan into Alaska during the past several years have been imported in accordance with the provisions of item (3) and have not been imported in compliance with the more stringent provisions referred to above in item (2). There is a small but significant risk that these Unshu oranges imported into Alaska could be infected or contaminated with citrus canker. Further, the provisions referred to in item (3) were established based on the assumption that the oranges would be consumed only in Alaska and would never be taken from Alaska to other parts of the United States where they could possibly cause an infestation of citrus canker. However, based on inspections, the Department has recently become aware of a number of movements of Unshu oranges from Alaska to other places in the United States. Further, there is a risk that some of the Unshu oranges imported from Japan into Alaska could be taken to other parts of the United States without being detected.

Under these circumstances, this document, on an emergency basis, removes the provisions referred to in item (3) above. Consequently, Unshu oranges are now prohibited from being imported from Japan into Alaska unless, among other things, they meet the provisions referred to in item (2) above, or are imported by the United States Department of Agriculture for experimental or scientific purposes.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of less than $100,000,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The importation of Unshu oranges from Japan into Alaska represents an insignificant portion of all tangerines imported into the United States.

Under the circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities in the import or domestic tangerine market.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983 40 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

List of Subjects in 7 CFR Part 319

Agricultural Commodities, Citrus Canker, Imports, Plant diseases, Plant pests, Plant (Agriculture), Quarantine, Transportation.

PART 319—[AMENDED]

Under the circumstances referred to above Subpart—Citrus Fruit (7 CFR 319.28) is amended as follows:

1. The authority citation for 7 CFR Part 319 is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.28 [Amended]

2. In § 319.28, paragraph (h) is removed.

Done in Washington, D.C., this 27th day of August 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–20909 Filed 8–30–85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 736

[Amdt. No. 1]

Grain Warehouses; Inspection Fees

Correction

In FR Doc. 85–20235 beginning on page 34075 in the issue of Friday, August 23, 1985, on page 34076, second column, in the Annual Fee Table, the last entry in the first column should read, "10,000,001+".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 24719; Amdt. No. 108–3]

Aviation Security; Coordination and Training

Correction

In FR Doc. 85–16867, beginning on page 28892, in the issue of Tuesday, July 16, 1985, make the following correction: On page 28894, §108.27, first line, "Administration" should read "Administrator".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 83F–0248]

Indirect Food Additives; Polymers; Polyetherimide Resin; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the food additive regulations to provide for the safe use of polyetherimide resin for use in contact with food (50 FR 31350; August 2, 1985). This document corrects the section number to place it in the proper subpart.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–18350 appearing in the Federal Register of August 2, 1985, the following changes are made on page 31351 in the left column:

1. Amendment No. 2 is corrected to read "2. By adding to Subpart B new § 177.1595 to read as follows:"

2. "§ 177.2425 *Polyetherimide resin.*" is corrected to read "§ 177.1595 *Polyetherimide resin.*"

Dated: August 22, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–20895 Filed 8–30–85; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the current mailing address of Central Soya Co., Inc.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., P.O. Box 1400, Fort Wayne, IN 46801–1400, has advised FDA of its new mailing address. The agency is amending the files and the animal drug regulations to reflect the revised address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Central Soya Co., Inc." and in paragraph (c)(2) in the entry "012286" by revising the sponsor's address to read "P.O. Box 1400, Fort Wayne, IN 46801–1400."

Dated: August 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–20899 Filed 8–30–85; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for I.M.S., Inc., providing for the manufacture of 5- and 10-gram-per-pound tylosin premixes, in addition to currently approved 20- and 40-gram-per-pound tylosin premixes, to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: I.M.S., Inc., 13619 Industrial Rd., Omaha, NE 68137, is the sponsor of a supplement to NADA 127–195 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of a new 5-gram-per-pound tylosin 85–516 premix to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in swine, and use in beef cattle and chickens. I.M.S. had previously received approval for 20- and 40-gram-per-pound tylosin premixes used to make complete swine, beef cattle, and chicken feeds. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(77) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(77) To 050639: 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: August 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–20898 Filed 8–30–85; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for MAC–PAGE, Inc., providing for the manufacture of 5- and 20-gram-per-pound tylosin premixes, in addition to its currently approved 10- and 40-gram-per-pound tylosin premixes, used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: MAC–PAGE, Inc., 1600 South Wilson Ave., Dunn, NC 28334, is the sponsor of supplemental NADA 131–957 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of 5- and 20-gram-per-pound tylosin premixes to subsequently make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The firm currently holds approval for manufacturing 10- and 40-gram-per-pound tylosin premixes. The supplemental NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(79) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(79) To 047427: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: August 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–20900 Filed 8–30–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8048]

Income Tax; Information Reporting for Mortgage Credit Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that relate to mortgage credit certificates. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations affect all holders and issuers of mortgage credit certificates. In addition, the text contained in the temporary regulations set forth in this

document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: These regulations are effective September 3, 1985 and are applicable to mortgage credit certificates issued after September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to mortgage credit certificates under section 25 of the Internal Revenue Code of 1954 as amended by section 612 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 905). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 25 authorizes States and political subdivisions ("issuers") to issue mortgage credit certificates ("MCCs") in lieu of qualified mortgage bonds. MCCs entitle qualifying individuals to a credit against the individuals' Federal income tax. The amount of the credit is determined by multiplying the certificate credit rate by the amount of interest paid or accrued by the taxpayer during the taxpayer's taxable year on the certified indebtedness amount. In order for an individual to claim the credit provided by section 25, the MCC must be a "qualified mortgate credit certificate" issued pursuant to a "qualified mortgage credit certificate program". The requirements of section 103A(j), including the State certification requirement, the policy statement requirement, and the information reporting requirement, must be met in order for a program to be a qualified mortgage credit certificate program.

On May 8, 1985, temporary and proposed regulations with respect to MCCs were published in the Federal Register (50 FR 19344; 50 FR 19383). Those regulations reserved § 1.25–4T(e), relating to the information reporting requirement, and § 1.25–4T(f), relating to the policy statement requirement. The Service received numerous written comments responding to a notice of proposed rulemaking published in the Federal Register on December 12, 1984 (49 FR 48323), with respect to the reporting and policy statement requirements as they apply to qualified mortgage bonds and qualified veterans' mortgage bonds, and a public hearing was held on April 30, 1985. After consideration of all comments regarding those proposed regulations, temporary and proposed regulations relating to the information reporting and policy statement requirements applicable to mortgage credit certificates are being provided. The proposed regulations are published elsewhere in this issue.

Section 1.25–4T (e) contains the information reporting requirements applicable to issuers of mortgage credit certificates. This requirement must be satisfied for a program to be a qualified mortgage credit certificate program. In order to satisfy the information reporting requirement, an issuer must submit a report concerning the holders of certificates issued during the relevant reporting period. The information required to be submitted is to be presented in tabular form. Section 1.25–4T(e)(1)(i) requires the submission of information concerning the number of mortgage credit certificates categorized according to the income of the holders and the acquisition cost of the residences; this information is to be further categorized according to whether the holders had no present ownership interest in their principal residences at any time during the 3-year period ending on the date the MCC is executed (*i.e.*, satisfy the 3-year requirement) and whether the residences are located in targeted areas. In addition, information concerning the fees charged to the holders must be submitted. Section 1.25–4T(e)(1)(ii) requires the submission of information concerning the volume of MCCs (*i.e.*, the total of the certified indebtedness amount of the certificates issued and the sum of the products of the certified indebtedness amount and the certificate credit rate for each certificate) according to the income of the holders and the acquisition cost of the residences; this information is also to be categorized according to whether the holders satisfy the 3-year requirement and whether the residences are located in targeted areas. With respect to home improvement and rehabilitation loans, § 1.25–4T(e)(1)(iii) requires the submission of information concerning the number and volume of such loans categorized according to whether the residences are located in targeted areas.

Section 1.25–4T(f) contains the policy statement requirement. In order for a program to be a qualified mortgage credit certificate program, the applicable elected representative of the governmental unit which is the issuer (or on whose behalf the certificates were issued) must have published (after a public hearing following reasonable public notice) a policy statement by the last day of the year preceding the year in which the election not to issue qualified mortgage bonds was made, and the representative must have submitted a copy of the policy statement to the Commissioner. The provisions concerning the policy statement that must be submitted by issuers of MCCs are identical to those applicable to issuers of qualified mortgage bonds. See § 1.103A–2(l).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by the OMB under control number 1545–0922.

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

List of Subjects

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set out in the preamble, Part 1 and Part 602 of Title 26

of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.25–4T also issued under 26 U.S.C. 25(g). * * *

Par. 2. The text of paragraphs (e) and (f) of § 1.25–4T is added to read as follows:

§ 1.25–4T Qualified mortgage credit certificate program.

* * * * *

(e) *Information reporting requirement*—(1) *Reports.* With respect to mortgage credit certificates issued after September 30, 1985, a program meets the requirements of this paragraph only if the issuer submits a report containing the information concerning the holders of certificates issued during the preceding reporting period required by this paragraph. The report must be filed for each reporting period in which certificates (other than transferred certificates) are issued under the program. The issuer is not responsible for false information provided by a holder if the issuer did not know or have reason to know that the information was false. The report must be filed on the form prescribed by the Internal Revenue Service. If no form is prescribed, or if the form prescribed is not readily available, the issuer may use its own form provided that such form is in the format set forth in this paragraph and contains the information required by this paragraph. The report must be titled "Mortgage Credit Certificate Information Report" and must include the name, address, and TIN of the issuer, the reporting period for which the information is provided, and the following tables containing information concerning the holders of certificates issued during the reporting period for which the report is filed:

(i) A table titled "Number of Mortgage Credit Certificates by Income and Acquisition Cost" showing the number of mortgage credit certificates issued (other than those issued in connection with qualified home improvement and rehabilitation loans) according to the annualized gross income of the holders (categorized in the following intervals of income: $0–$9,999; $10,000–$19,999; $20,000–$29,999; $30,000–$39,999; $40,000–$49,999; $50,000–$74,999; and $75,000 or more) and according to the acquisition cost of the residences acquired in connection with the mortgage credit certificates (categorized in the following intervals of acquisition cost: $0–$19,999; $20,000–$39,999; $40,000–$59,999; $60,000–$79,999; $80,000–$99,999; $100,000–$119,999; $120,000–$149,999; $150,000–$199,999; and $200,000 or more). For each interval of income and acquisition cost the table must also be categorized according to—

(A) The aggregate amount of fees charged to holders to cover any administrative costs incurred by the issuer in issuing mortgage credit certificates, and

(B) The number of holders that—

(*1*) Did not have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage credit certificate is executed (*i.e.*, satisfied the 3-year requirement) and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage credit certificate is executed (*i.e.*, did not satisfy the 3-year requirement) and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

(ii) A table titled "Volume of Mortgage Credit Certificates by Income and Acquisition Cost" containing data on—

(A) The total of the certified indebtedness amounts of the certificates issued (other than those issued in connection with qualified home improvement and rehabilitation loans);

(B) The sum of the products of the certified indebtedness amount and the certificate credit rate for each certificate (other than those issued in connection with qualified home improvement and rehabilitation loans) according to annualized gross income (categorized in the same intervals of income as the preceding table) and according to the acquisition cost of the residences acquired in connection with mortgage credit certificates (categorized in the same intervals of acquisition cost as the preceding table); and

(C) For each interval of income and acquisition cost, the information described in paragraph (e)(1)(ii) (A) and (B) categorized according to the holders that—

(*1*) Satisfied the 3-year requirement and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did not satisfy the 3-year requirement and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

(iii) A table titled "Mortgage Credit Certificates for Qualified Home Improvement and Rehabilitation Loans" showing the number of mortgage credit certificates issued in connection with qualified home improvement loans and qualified rehabilitation loans, the total of the certified indebtedness amount with respect to such certificates, and the sum of the products of the certified indebtedness amount and the certificate credit rate for each certificate; the information contained in the table must also be categorized according to whether the residences with respect to which the certificates were provided are located in targeted areas.

(2) *Format.* If no form is prescribed by the Internal Revenue Service, or if the prescribed form is not readily available, the issuer must submit the report in the format specified in this paragraph (e)(2). The specified format of the report is the following:

Mortgage Credit Certificate Information Report

Name of issuer:
Address of issuer:
TIN of issuer:
Reporting period:

NUMBER OF MORTGAGE CREDIT CERTIFICATES BY INCOME AND ACQUISITION COST

3-year requirement: Annualized gross monthly income of borrowers	Satisfied		Not satisfied		Totals fees
	Nontargeted area	Targeted area	Nontargeted area	Targeted area	
$0 to $9,999					
$10,000 to $19,999					
$20,000 to $29,999					
$30,000 to $39,999					
$40,000 to $49,999					
$50,000 to $74,999					
$75,000 or more					
Total					
Acquisition Cost					
0 to $19,999					
$20,000 to $39,999					
$40,000 to $59,999					
$60,000 to $79,999					
$80,000 to $99,999					
$100,000 to $119,999					
$120,000 to $149,999					
$150,000 to $199,999					
$200,000 or more					
Total					

VOLUME OF MORTGAGE CREDIT CERTIFICATES BY INCOME AND ACQUISITION COST

Annualized gross monthly income of holders	Holders satisfying the 3-year requirement				3-year requirement not satisfied				Totals	
	Nontargeted area		Targeted area		Nontargeted area		Targeted area			
	Total of the certified indebtedness amounts	Sum of products of certified indebtedness amounts and credit rates	Total of the certified indebtedness amounts	Sum of products of certified indebtedness amounts and credit rates	Total of the certified indebtedness amounts	Sum of products of certified indebtedness amounts and credit rates	Total of the certified indebtedness amounts	Sum of products of certified indebtedness amounts and credit rates	Total of the certified indebtedness amounts	Total sum of products of certified indebtedness amounts and credit rates
$0 to $9,999										
$10,000 to $19,999										
$20,000 to $29,999										
$30,000 to $39,999										
$40,000 to $49,999										
$50,000 to $74,999										
$75,000 to more										
Total										
Acquisition Cost										
$0 to $19,999										
$20,000 to $39,999										
$40,000 to $59,999										
$60,000 to $79,999										
$80,000 to $99,999										
$100,000 to $119,999										
$120,000 to $149,999										
$150,000 to $199,999										
$200,000 or more										
Total										

MORTGAGE CREDIT CERTIFICATES FOR QUALIFIED HOME IMPROVEMENT AND REHABILITATION LOANS

	Nontargeted area	Targeted area	Totals
Home Improvement Loans			
Number of mortgage credit certificates			
Total of the certified indebtedness amounts			
Product of certified indebtedness amounts and credit rates			
Rehabilitation Loans			
Number of mortgage credit certificates			
Total of the certified indebtedness amounts			
Product of certified indebtedness amounts and credit rates			

(3) *Definitions and special rules.* (i) For purposes of this paragraph the term "annualized gross income" means the borrower's gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay, any additional income from investments, pensions, Veterans' Administration (VA) compensation, part-time employment, bonuses, dividends, interest, current overtime pay, net rental income, etc., and other income (such as alimony and child support, if the borrower chooses to disclose such income). Information with respect to gross monthly income may be obtained from available loan documents, *e.g.*, the sum of lines 23D and 23E on the Application for VA or FmHA Home Loan Guaranty or for HUD/FHA Insured Mortgage (VA Form 26–1802a, HUD 92900, Jan. 1982), or the total line from the Gross Monthly Income section of FHLMC Residential Loan Application form (FHLMC 65 Rev. 8/78).

(ii) For purposes of this paragraph, the term "reporting period" means each one year period beginning July 1 and ending June 30, except that issuers need not provide data with respect to the period prior to October 1, 1985.

(iii) For purposes of this paragraph, verification of information concerning a holder's gross monthly income by utilizing other available information concerning the holder's income (*e.g.*, Federal income tax returns) is not required. In determining whether the holder of a mortgage credit certificate acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the holder.

(4) *Time for filing.* The report required by this paragraph shall be filed not later than the 15th day of the second calendar month after the close of the reporting period. The Commissioner may grant an extension of time for the filing of a report required by this paragraph if there is reasonable cause for the failure to file such report in a timely fashion. The report may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date the report is filed. The report need not be amended to reflect information learned subsequent to the date of filing, or to reflect changed circumstances with respect to any holder.

(5) *Place for filing.* The report required by this paragraph is to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(f) *Policy statement.* A program established pursuant to an election under paragraph (c) made after 1984 meets the requirements of this paragraph only if the applicable elected

representative of the governmental unit—

(1) Which is the issuer, or

(2) On whose behalf the certificates were issued,

has published (after a public hearing following reasonable public notice) a policy statement described in § 1.103A–2(1) by the last day of the year preceding the year in which the election under paragraph (c) is made, and a copy of such report has been submitted to the Commissioner on or before such last day. See § 1.103A–2(1) for further definitions and requirements.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.25–4T . . . . . 1545–0922".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: August 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–20969 Filed 8–29–85; 10:53 am]

BILLING CODE 4830–01–M

---

26 CFR Parts 1, 6a, and 602

[T.D. 8049]

Income Tax; Information Reporting for Mortgage Subsidy Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that relate to the tax exempt status of mortgage subsidy bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations affect all purchasers, beneficiaries, and governmental issuers of tax exempt mortgage subsidy bonds.

DATES: These regulations are effective with respect to mortgage subsidy bonds issued after December 31, 1984, except that the regulations relating to qualified veterans' mortgage bonds (§ 1.103A–2(k)(5)(iv)) are effective for obligations issued after July 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1984, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103A(j) (3), (4), and (5) of the Internal Revenue Code of 1954 (49 FR 48323). The amendments were, in part, proposed to conform the regulations to section 611(b) of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 901). A public hearing was held on April 30, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. In addition, the regulations adopted by this Treasury decision supersede the temporary regulations under section 103A(j) (3), (4), and (5). Acccordingly, those portions of the Temporary Regulations under Title II of the Omnibus Reconciliation Act of 1980 relating to the changes made by section 611(b) of the Tax Reform Act are removed and replaced with a cross-reference to the rules adopted by this Treasury decision.

Explanation of Provisions

Section 103(a) provides that gross income does not include interest on the obligations of a State or political subdivision thereof. Section 103A provides that any mortgage subsidy bond shall be treated as an obligation not described in section 103(a). However, qualified mortgage bonds and qualified veterans' mortgage bonds are not treated as mortgage subsidy bonds. Section 611 of the Tax Reform Act added several requirements to the definition of qualified mortgage bond and qualified veterans' mortgage bond.

Public Comments

Many commentators objected to the extent of the information required to be reported with respect to each beneficiary of the proceeds of an issue (*i.e.*, each recipient of a mortgage loan provided with the proceeds of an issue). In response to these comments, the regulations have been revised to require the reporting of significantly less information. In addition, the regulations adopt the suggestion that information be reported on an aggregate basis, rather than with respect to each recipient of a mortgage loan. It is believed that information collected with respect to each recipient of a mortgage loan may be useful to the government in assessing the mortgage bond and mortgage credit certificate programs. Nevertheless, due to practical considerations, including the requirement of section 611(d)(7) of the Tax Reform Act of 1984, that the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, submit a report concerning these programs to Congress by January 1, 1987, it has been decided to require the reporting of data on an aggregate basis.

As revised, the regulations require information reporting with respect to the number of loans and aggregate principal amount of the loans categorized according to (1) the borrowers' income, (2) the acquisition cost of the residences acquired, (3) whether the borrowers have satisfied the 3-year requirement, and (4) whether the residences are located in targeted areas. With respect to qualified home improvement and rehabilitation loans, the only information required to be reported is the number and aggregate loan amount of such loans and whether the loans are with respect to residences located in targeted areas. Similar information is to be collected with respect to mortgage credit certificates. See § 1.25–4T(e). This information is being collected in response to section 611(d)(7) of the Tax Reform Act of 1984 which requires that the Secretary of the Treasury submit a report to Congress by January 1, 1987, regarding the performance of issuers of qualified mortgage bonds and mortgage credit certificates relative to the intent of Congress described in section 103A(j)(5).

Some commentators objected to the extent of information required to be reported with respect to qualified veterans' mortgage bonds on the grounds that such information is not relevant to qualified veterans' mortgage bonds because such bonds are not subject to all of the statutory requirements imposed on qualified mortgage bonds. Although information concerning income, acquisition cost, and the 3-year requirement is not relevant to any statutory requirement imposed on qualified veterans' mortgage bonds, the collection of such information pursuant to section 103A(j)(3)(A) is relevant to an evaluation of the qualified veterans' mortgage bond program. Accordingly, the final regulations require information reporting on qualified veterans' mortgage bonds with respect to the

number of loans and the aggregate principal amounts of the loans categorized according to (1) the borrowers' income, (2) the acquisition cost of the residences acquired, and (3) whether the borrowers have satisfied the 3-year requirement.

Several commentators stated that the regulations should be amended to make clear that the information required to be reported is information as of the date such information is required to be submitted and is not affected by later events. Similarly, it was suggested that the State certification requirement of section 103A(j)(4) should not require officials to certify as to matters that could change in the future. These suggestions have been adopted.

Commentators suggested that the information reporting requirement should apply only to mortgages provided with the original proceeds of an issue. This suggestion has been adopted. Thus, for example, reporting would not be necessary with respect to assumptions of mortgage loans.

Many commentators objected to the requirement that information be submitted on magnetic media. Accordingly, the regulations as revised do not require reporting on magnetic media.

A number of commentators stated that the regulations did not define the term "beneficiary" and that the regulations implied that it was necessary to file more than one report where, for example, a husband and a wife jointly obtain a mortgage. In addition, commentators stated that only the income of the borrower, and not the income of all the members of the borrower's family, is the relevant information for purposes of section 103A. Accordingly, the regulations have been revised to require reporting with respect to the "borrowers" of the original proceeds.

In response to public comments, the regulations no longer require data on borrower income to be collected under the definition used for purposes of section 8 of the Housing Act of 1937, as amended. Instead, annualized gross monthly income, as reported by borrowers on standard loan documents, is to be reported. In addition, issuers are not required to check the accuracy of information collected by examining borrowers' tax returns. Similarly, in determining whether a borrower acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the borrower.

Commentators indicated that issuers should not be responsible for submitting false information provided to them by mortgagors. This suggestion has been adopted.

A number of commentators stated that the regulations require excessive and redundant information to be included in the policy statement as described in section 103A(j)(5). In response to these comments, the regulations have been revised to make clear that the provisions describing the information to be included in the policy statement are intended merely as examples of the types of information that an issuer may include in its policy statement; thus, there is no requirement that all such information be provided. In addition, in response to comments, the definitions of "low", "moderate", and "median" income for purposes of providing information in the policy statement have been revised.

Several commentators stated that there is no statutory requirement that issuers indicate in the policy statement their "goals" with respect to housing, development, and low-income housing assistance. Accordingly, the regulations as revised do not require issuers to indicate their goals with respect to these matters.

The proposed regulations provided that issuers that did not issue qualified mortgage bonds in a particular year and did not reasonably expect to issue qualified mortgage bonds in the following year would not be precluded from issuing qualified mortgage bonds in the following year if a policy statement is filed prior to the date of issue. In response to public comments, the final regulations provide that this provision will apply if the issuer did not reasonably expect to issue qualified mortgage bonds during the following year, regardless of whether it issued bonds in the current year.

Commentators stated that the requirement that the notice of hearing summarize the policy statement is unnecessary and adds to the expense of providing such notice. In response to this comment, the regulations have been revised to require only that the notice contain a statement that the hearing will involve the issuer's policies with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates.

In response to public comments, the periods covered by the reports relating to the use of proceeds and the periods for assessing compliance with the statements of policy have been modified. In general, as modified, these periods end each year on June 30.

With respect to the State certification requirement, commentators stated that the rule permitting an issuer, after a 30 day waiting period, to self-certify that an issue satisfies the requirements of section 103A(g) requires too long a period of time to elapse before the issuer may execute this certification. In response to this comment, this rule has been modified so as to permit the issuer to execute this certification after 15 days.

In response to public comments, the regulations have been revised to make clear that the State certifications must be executed on or before the date of issue.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when that notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0720.

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR Parts 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investment in United States property interests.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set out in the preamble, Part 1, Part 6a, and Part 602 of Title 26 of the Code of Federal Regulations are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 1.103A–2 (k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5). * * *

Par. 2. New § 1.103A–2 is added immediately following § 1.103(n)–7T to read as follows:

§ 1.103A–2 Qualified mortgage bond.

(a)–(j) [Reserved]

(k) *Information reporting requirement*—(1) *In general.* An issue meets the requirements of this paragraph only if the issuer in good faith attempted to meet the information reporting requirements of this paragraph. Except as otherwise provided in paragraph (k)(5)(iv) of this section, the requirements of this paragraph apply to qualified veterans' mortgage bonds issued after July 18, 1984, and to qualified mortgage bonds issued after December 31, 1984.

(2) *Information required.* (i) The issuer must, based on information and reasonable expectations determined as of the date of issue, submit on Form 8038 the information required therein; the issuer need not however, include the information required by Form 8038 that is relevant only to obligations described in section 103(l)(1) and the regulations thereunder. The information that must be submitted includes—

(A) The name, address, and employer identification number of the issuer,

(B) The date of issue,

(C) The face amount of each obligation which is part of the issue,

(D) The total purchase price of the issue,

(E) The amount allocated to a reasonably required reserve or replacement fund,

(F) The amount of lendable proceeds,

(G) The stated interest rate of each maturity,

(H) The term of each maturity,

(I) In the case of an issue of qualified mortgage bonds, whether the issuer has elected under § 6a.103A–2(i)(4)(v) to pay arbitrage to the United States,

(J) In the case of an issue of qualified mortgage bonds, the issuer's market limitation as of the date of issue (as defined in § 6a.103A–2(g)), the amount of qualified mortgage bonds that the issuer has elected not to issue under section 25(c)(2) and the regulations thereunder, and the aggregate amount of qualified mortgage bonds issued to date by the issuer during the calendar year, and

(K) In the case of an issue of qualified veterans' mortgage bonds, the issuer's State veterans limit (as defined in section 103A(o)(3)(B) and the regulations thereunder) and the aggregate amount of qualified veterans' mortgage bonds issued to date by the issuer during the calendar year and prior to the date of issue of the issue for which the Form 8038 is being submitted.

(ii) With respect to issues issued after December 31, 1984, the issuer must submit a report containing information on the borrowers of the original proceeds of such issues. The report must be filed for each reporting period in which the original proceeds of any of such issues are used to provide mortgages. The issuer is not responsible for false information provided by a borrower if the issuer did not know or have reason to know that the information was false. The report must be filed on the form prescribed by the Internal Revenue Service. If no form is prescribed, or if the form prescribed is not readily available, the issuer may use its own form provided that such form is in the format set forth in paragraph (k)(3) of this section and contains the information required by this paragraph (k)(2)(ii). The report must be titled "Qualified Mortgage Bond Information Report" or "Qualified Veterans' Mortgage Bond Information Report", and must include the name, address, and TIN of the issuer, the reporting period for which the information is provided, and the following tables containing information concerning the borrowers of the original proceeds of the issues subject to the requirements of this paragraph (k)(2)(ii) with respect to mortgages provided during the reporting period for which the report is filed:

(A) A table titled "Number of Mortgage Loans by Income and Acquisition Cost" showing the number of mortgage loans (other than those issued in connection with qualified home improvement and rehabilitation loans) made during the reporting period according to the annualized gross income of the borrowers (categorized in the following intervals of income: $0–$9,999; $10,000–$19,999; $20,000–$29,999; $30,000–$39,999; $40,000–$49,999; $50,000–$74,999; and $75,000 or more) and according to the acquisition cost of each residence being financed (categorized in the following intervals of acquisition cost: $0–$19,999; $20,000–$39,999; $40,000–$59,999; $60,000–$79,999; $80,000–$99,999; $100,000–$119,999; $120,000–$149,999; $150,000–$199,999; and $200,000 or more). For each interval of income and acquisition cost the table must also be categorized according to the number of borrowers that—

(*1*) Did not have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (*i.e.*, satisfied the 3-year requirement) and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (*i.e.*, did not satisfy the 3-year requirement) and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

With respect to issues of qualified veterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the number of borrowers that satisfied the 3-year requirement and the number of borrowers that failed to satisfy the 3-year requirement.

(B) A table titled "Volume of Mortgage Loans by Income and Acquisition Cost" showing the total principal amount of the mortgage loans (other than qualified home improvement and rehabilitation loans) provided during the reporting period according to annualized gross income (categorized in the same intervals of income as the preceding table) and according to the acquisition cost of the residences acquired (categorized in the same acquisition cost intervals as the preceding table). For each interval of income and acquisition cost the table must also be categorized according to the total principal amount of the mortgage loans of borrowers that—

(*1*) Satisfied the 3-year requirement and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did not satisfy the 3-year requirement and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

With respect to issues of qualified verterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the total principal amount of the mortgage loans of borrowers that satisified the 3-year requirement and the total principal amount of the mortgage loans of borrowers that did not satisfy the 3-year requirement.

(C) For issues other than qualified veterans' mortgage bonds, a table titled "Mortgage Subsidy Bonds for Qualified Home Improvement and Rehabilitation Loans" showing the number of borrowers obtaining qualified home improvement loans and qualified rehabilitation loans and the total of the principal amounts of such loans; the information contained in the table must also be categorized according to whether the residences with respect to which the loans were provided are located in targeted areas.

(3) *Format.* (i) With respect to the report required by paragraph (k)(2)(ii) of this section, if no form is prescribed by the Internal Revenue Service, or if the prescribed form is not readily available, the issuer must submit the report in the format specified in this paragraph (k)(3).

(ii) With respect to issues of qualified mortgage bonds, the format of the report specified in this paragraph (k)(3) is the following:

Qualified Mortgage Bond Information Report

Name of issuer:
Address of issuer:
TIN of issuer:
Reporting period:

NUMBER OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

3-year requirement: Annualized gross monthly income of borrowers	Satisfied		Not Satisfied		Totals
	Nontargeted area	Targeted area	Nontargeted area	Targeted area	
$0 to $9,999					
$10,000 to $19,999					
$20,000 to $29,999					
$30,000 to $39,999					
$40,000 to $49,999					
$50,000 to $74,999					
$75,000 or more					
Total					
Acquisition Cost					
$0 to $19,999					
$20,000 to $39,999					
$40,000 to $59,999					
$60,000 to $79,999					
$80,000 to $99,999					
$100,000 to $119,999					
$120,000 to $149,999					
$150,000 to $199,999					
$200,000 or more					
Total					

VOLUME OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

3-year requirement: Annualized gross monthly income of borrowers	Satisfied		Not Satisfied		Totals
	Nontargeted area	Targeted area	Nontargeted area	Targeted area	
$0 to $9,999					
$10,000 to $19,999					
$20,000 to $29,999					
$30,000 to $39,999					
$40,000 to $49,999					
$50,000 to $74,999					
$75,000 or more					
Total					
Acquisition Cost					
$0 to $19,999					
$20,000 to $39,999					
$40,000 to $59,999					
$60,000 to $79,999					
$80,000 to $99,999					
$100,000 to $119,999					
$120,000 to $149,999					
$150,000 to $199,999					
$200,000 or more					
Total					

MORTGAGE SUBSIDY BONDS FOR QUALIFIED HOME IMPROVEMENT AND REHABILITATION LOANS

	Nontargeted area	Targeted area	Totals
Number of qualified home improvement loans			
Volume of qualified home improvement loans			
Number of qualified rehabilitation loans			
Volume of qualified rehabilitation loans			

(iii) The format of the report specified in this paragraph (k)(3) for qualified veterans' mortgage bonds is the following:

Qualified Veterans' Mortgage Bond Information Report

Name of issuer:
Address of issuer:
TIN of issuer:
Reporting period:

NUMBER OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

3-year requirement: annualized gross monthly income of borrowers	Satisfied	Not satisfied	Totals
$0 to $9,999			
$10,000 to $19,999			
$20,000 to $29,999			
$30,000 to $39,999			
$40,000 to $49,999			
$50,000 to $74,999			
$75,000 or more			
Total			
Acquisition Cost			
$0 to $19,999			
$20,000 to $39,999			
$40,000 to $59,999			
$60,000 to $79,999			
$80,000 to $99,999			
$100,000 to $119,999			
$120,000 to $149,999			
$150,000 to $199,999			
$200,000 or more			
Total			

VOLUME OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

3-year requirement: annualized gross monthly income of borrowers	Satisfied	Not satisfied	Totals
$0 to $9,999			
$10,000 to $19,999			
$20,000 to $29,999			
$30,000 to $39,999			
$40,000 to $49,999			
$50,000 to $74,999			
$75,000 or more			
Total			
Acquisition Cost			
$0 to $19,999			
$20,000 to $39,999			
$40,000 to $59,999			
$60,000 to $79,999			
$80,000 to $99,999			
$100,000 to $119,999			
$120,000 to $149,999			
$150,000 to $199,999			
$200,000 or more			
Total			

(4) *Definitions and special rules.* (i) For purposes of this paragraph the term "annualized gross income" means the borrower's gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay, any additional income from investments, pensions, Veterans Administration (VA) compensation, part-time employment, bonuses, dividends, interest, current overtime pay, net rental income, etc., and other income (such as alimony and child support, if the borrower has chosen to disclose such income). Information with respect to gross monthly income may be obtained from available loan documents, *e.g.*, the sum

of lines 23D and 23E on the Application for VA or FmHA Home Loan Guaranty or for HUD/FHA Insured Mortgage (VA Form 26–1802a, HUD 92900, Jan. 1982), or the total line from the Gross Monthly Income section of FHLMC Residential Loan Application form (FHLMC 65 Rev. 8/78). With respect to obligations issued prior to October 1, 1985, issuers may submit data based on annualized gross income or, instead, based on the adjusted income (as defined in § 1.167(k)–3(b)(3)) of the mortgagor's family for the previous calendar year. If data is submitted based on adjusted income, the issuer must note this fact in the report.

(ii) For purposes of this paragraph, the term "reporting period" means the following periods:

(A) The period beginning January 1, 1985, and ending on September 30, 1985,

(B) The period beginning on October 1, 1985, and ending on June 30, 1986, and

(C) After June 30, 1986, each 1-year period beginning July 1 and ending June 30.

(iii) See the regulations under section 103(l) for the definitions of the terms "date of issue", "maturity", and "term of issue".

(iv) For purposes of this paragraph, verification of information concernig a borrower's gross monthly income with other available information concerning the borrower's income (*e.g.*, Federal income tax returns) is not required. In determining whether a borrower acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the borrower.

(5) *Time for filing.* (i) The report required by paragraph (k)(2)(i) of this section shall be filed not later than the 15th day of the second calendar month after the close of the calendar quarter in which the obligation is issued. The statement may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The statement need not be amended to report information learned subsequent to the date of issue or to reflect changed circumstances with respect to the issuer.

(ii) The report required by paragraph (k)(2)(ii) of this section (relating to use of proceeds) shall be filed not later than the 15th day of the second calendar month after the close of the reporting period, except that the report for the reporting period ending September 30, 1985, is due not later than February 15, 1986. The report may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date the report is filed. The report need not be amended to reflect information learned subsequent to the date the report is filed or to reflect changed circumstances with respect to any borrower.

(iii) The Commissioner may grant an extension of time for the filing of a report required by paragraph (k)(2) (i) or (ii) of this section if there is reasonable cause for the failure to file such report in a timely fashion.

(iv) An issue of qualified veterans' mortgage bonds issued after July 18, 1984, and prior to January 1, 1985, will be treated as satisfying the information reporting requirement of this paragraph if a Form 8038 with respect to the issue is properly filed not later than February 15, 1985; the report described in paragraph (k)(2)(ii) of this section need not be filed with respect to such issues.

(6) *Place for filing.* The reports required by paragraph (k)(2) (i) and (ii) of this section are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(l) *Policy statement*—(1) *In general.* (i) For obligations issued after December 31, 1984, an issue meets the requirements of this paragraph only if the applicable elected representative of the governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) of this section by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Commissioner on or before such last day. The Commissioner may grant an extension of time for publishing and filing the report if there is reasonable cause for the failure to publish or file such report in a timely fashion. The requirements of this paragraph will be treated as met if the issuer in good faith attempted to meet the policy statement requirements of this paragraph.

(ii) With respect to reports required by paragraph (l)(1)(i) of this section to be published and submitted to the Commissioner not later than December 31, 1984, the Commissioner has determined that there is reasonable cause for the failure to publish or file such reports in a timely fashion; such a report will be considered published and filed in a timely fashion if, not later than March 11, 1985, the report is published (after a public hearing following reasonable public notice) and a copy is submitted to the Commissioner. In addition, any report submitted not later than December 31, 1984, with respect to which an issuer in good faith attempted to satisfy the requirements of section 103A(j)(5) shall be treated as substantially satisfying the requirements of this paragraph. For example, with respect to a report submitted not later than December 31, 1984, an issuer shall not be treated as failing to satisfy the requirements of section 103A(j)(5) based on the fact that (A) the notice of public hearing failed to state the manner in which affected residents may obtain copies of the proposed report prior to the hearing, or (B) the proposed report was not available prior to or at the public hearing.

(2) *Definitions and special rules.* (i) In the case of an issuer that issues qualified mortgage bonds on behalf of one or more governmental units, a single report may be filed provided that such report is signed (A) by the applicable elected representative of each governmental unit on whose behalf obligations have been issued during any preceding calendar year or (B) by the Governor of the State in which the issuer is located.

(ii) See notice 103(k)(2)(E) and the regulations thereunder for the definition of the term "applicable elected representative".

(iii) In the case of qualified mortgage bonds issued by, or on behalf of, a governmental unit that did not reasonably expect during the preceding calendar year to issue (or have issued on its behalf by any other issuer) qualified mortgage bonds during the current calendar year, the requirements of this paragraph will be treated as met if the applicable governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) of this section prior to the issuance of any qualified mortgage bonds and a copy of such report has been submitted to the Commissioner prior to such issuance.

(iv) For purposes of this paragraph a report will be considered to be "published" when the applicable elected representative of the governmental unit has made copies of the report available for distribution to the public. Reasonable public notice of the manner in which copies of the report may be obtained must be provided; such notice may be included as part of the public notice required by paragraph (l)(4) of this section.

(3) *Report.* (i) A report is described in this paragraph (l)(3) if it contains the issuer's name, TIN, and the title "Policy Report Under Section 103A" stated on

the cover page of the report and if it includes—

(A) A statement of the policies of the issuer with respect to housing, development, and low-income housing assistance which such issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and

(B) An assessment of the compliance of such issuer during the 1-year period preceding the date of the report with—

(*1*) The statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of the issuer, and

(*2*) The intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

(ii) For example, a report described in this paragraph (l)(3) may (but is not required to) contain—

(A) A specific statement of the policies with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, including, for example, a statement as to—

(*1*) With respect to housing policies, (*i*) whether the proceeds will be used to provide financing for the acquisition of residences, to provide qualified home improvement loans, or to provide qualified rehabilitation loans; (*ii*) whether all or a portion of the proceeds will be targeted to new, existing, or any other particular class or type of housing; (*iii*) how the existence of a need or absence of a need for such targeting has been determined; (*iv*) the method by which the proceeds will be targeted; (*v*) any other pertinent information relating to the issuer's housing policies; and (*vi*) how the housing policies relate to the issuer's development and low-income housing assistance policies;

(*2*) With respect to development policies, (*i*) whether all or a portion of the proceeds will be targeted to specific areas (including targeted areas as described in § 6a.103A–2(b)(3)); (*ii*) a description of the areas to which the proceeds will be targeted; (*iii*) the reasons for selecting such areas; (*iv*) whether proceeds targeted to each area are to be used to finance redevelopment of existing housing or new construction; (*v*) any other pertinent information relating to the issuer's development policies; and (*vi*) how the development policies relate to the issuer's low-income housing assistance policies; and

(*3*) With respect to low-income housing assistance policies, (*i*) whether all or a portion of the proceeds will be targeted to low-income (*i.e.*, 80 percent of median income), moderate-income (*i.e.*, 100 percent of median income), or any other class of borrowers; (*ii*) the method by which the proceeds will be targeted to such borrowers; and (*iii*) any other pertinent information relating to the issuer's low-income housing assistance policies;

(B) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report with the statement of housing, development, and low-income housing assistance policies with respect to qualified mortgage bonds and mortgage credit certificates that were set forth in the report, if any, published in the preceding year with respect to such governmental unit, including, for example, a statement as to whether the governmental unit or issuing authority successfully implemented its policies and, if not, an analysis of the reasons for such failure; and

(C) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report with the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families, including, for example, a description of (*1*) the method used by the governmental unit or issuing authority to distribute proceeds, (*2*) whether and how that method enabled the governmental unit or issuing authority to assist lower income families before higher income families, and (*3*) any income levels that have been defined and used by the governmental unit or issuing authority in connection with distribution of the proceeds (no specific definition of lower income and higher income is imposed on governmental units or issuing authorities).

(*iii*) For purposes of the assessments of compliance required by paragraph (l)(3)(i)(B) of this section to be included in the report, the "date of the report" means June 30. For purposes of the report required to be filed prior to January 1, 1986, an issuer need not perform these assessments of compliance with respect to any period prior to January 1, 1985.

(iv) An issuer that fails to establish policies with respect to the criteria provided in paragraph (l)(3)(i) of this section will not be treated as failing to satisfy the requirements of this paragraph. Thus, for example, an issuer may state in its report that none of the proceeds of the issue will be targeted to specific areas. Similarly, an issuer that fails to successfully implement its policies will not be treated as failing to satisfy the requirements of this paragraph.

(4) *Public hearing.* The public hearing required by paragraph (l)(1) of this section means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the report that the applicable representative proposes to publish to satisfy the requirements of this paragraph (l). A public hearing held prior to January 1, 1985, will not fail to satisfy the requirements of this paragraph (l)(4) merely because the proposed policy statement was not available prior to the public hearing. In general, a governmental unit may select its own procedure for the hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, it may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing so request in writing at least 24 hours before the hearing or that they limit their oral remarks to 10 minutes. For purposes of this public hearing requirement, it is not necessary that the applicable elected representative who will publish the report be present at the hearing, that a report on the hearing be submitted to that official, or that State administrative procedural requirements for public hearings in general be observed. However, compliance with such State procedural requirements (except those at variance with a specific requirement set forth in this paragraph) will generally assure that the hearing satisfies the requirements of this paragraph. The hearing may be conducted by any individual appointed or employed to perform such function by the governmental unit, its agencies, or by the issuer. Thus, for example, for a report to be issued by an issuing authority that acts on behalf of a county, the hearing may be conducted by the issuing authority, the county, or an appointee or employee of either.

(5) *Reasonable public notice.* (i) The reasonable public notice required by paragraph (l)(1) of this section means

published notice which is reasonably designed to inform residents of the geographical area within the jurisdiction of the governmental unit that will publish the report. The notice must state the time and place for the hearing and contain the information required by paragraph (l)(5)(ii) of this section. Notice is presumed reasonable if published no fewer than 14 days before the hearing. Notice is presumed reasonably designed to inform affected residents only if published in one or more newspapers of general circulation available to residents of that locality or if announced by radio or televison broadcast to those residents.

(ii) The notice of hearing described in this paragraph (l) (5) must state—

(A) The time and place for the hearing,

(B) Any applicable limitations regarding participation in the hearing,

(C) With respect to any notice of hearing published after December 31, 1984, the manner in which affected residents may obtain copies of the proposed report prior to the hearing, and

(D) With respect to any notice of hearing published after December 31, 1984, that the hearing will involve the issuer's policies with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates.

(6) *Procedure for public hearings of multiple jurisdiction issuers.* In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units ("multiple jurisdiction issuer"), each governmental unit on whose behalf the issuer reasonably expects to issue qualified mortgage bonds during the succeeding calendar year must hole a public hearing following reasonable public notice prior to the publication of the report required by this paragraph. A multiple jurisdiction issuer may hold a combined hearing as long as the combined hearing is a joint undertaking that provides all residents of the participating governmental units (*i.e.*, each governmental unit on whose behalf qualified mortgage bonds were issued by the authority and each governmental unit on whose behalf the authority reasonably expects to issue qualified mortgage bonds during the succeeding calendar year) a reasonable opportunity to be heard. The location of any combined hearing is presumed to provide a reasonable opportunity for all affected residents to be heard if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(7) *Place for filing.* The report is to be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(m) *State certification requirements*—(1) *In general.* An issue meets the requirements of this paragraph only if the issuer in good faith attempted to meet the State certification requirements of this paragraph. The requirements of this paragraph apply to obligations issued after December 31, 1984.

(2) *Certification.* (i) An issue satisfied the requirements of section 103A (j) (4) and this paragraph (m)(2) only if the State official designated by law (or, if there is no State official, the Governor) certifies on or before the later of the date of issue or October 3, 1985, following a request for such certification by the issuer, that, as of the date the certification is executed, the issue meets the requirements of section 103A(g) and the regulations thereunder (relating to volume limitation). In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city. To the extent consistent with State and local law, the Governor (or the chief executive officer of any constitutional home rule city) may delegate the responsibility to execute the certification required by this paragraph.

(ii) The certifying official need not perform an independent investigation in order to determine whether the issue meets the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds previously issued by an issuer during a calendar year, the certifying official may rely on copies of the reports submitted, to date, by the issuer pursuant to section 103A(j)(3) for other issues of qualified mortgage bonds issued during that year and copies of any elections previously made pursuant to section 25(c)(2) not to issue qualified mortgage bonds, together with an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that the issuer has not, to date during the calendar year, issued any other qualified mortgage bonds, the amount, if any, of the issuer's market limitation that it has, to date during the calendar year, surrendered to other issuing authorities, and that it has not, to date during the calendar year, made any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that, as of the date the certification is executed, the issue will not exceed the issuer's market limitation for the year, the official may certify that the issue meets the requirements of section 103A(g).

(3) *Special rule.* If 15 days elapse after the issuer files a proper request for the certification described in paragraph (m)(2) of this section and the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) and § 6a.103A–2(g) or, in the alternative, a statement that the issue does not meet such requirements, the issuer may, instead, submit an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that—

(i) The issue meets the requirements of section 103(A)(g) and § 6a.103A–2(g),

(ii) At least 15 days before the execution of the affidavit the issuer filed a proper request for the certification described in paragraph (m)(2) of this section, and

(iii) The State official designated by law (or, if there is no State official, the Governor) has not provided the certification described in paragraph (m)(2) of this section.

In the case of obligations issued prior to October 4, 1985 the preceding sentence shall be applied by substituting "30 days" for "15 days". For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (m)(2)(ii) of this section.

(4) *Filing.* The certification (or affidavit) required by this paragraph shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. The certification (or affidavit) shall be submitted with the Form 8038 required to be filed by section 103A(j)(3) and paragraph (k) of this § 1.103A–2. The Commissioner may grant an extension of time for filing the certification (or affidavit) if there is a reasonable cause for the failure to file such statement in a timely fashion.

(5) *Effect of certification.* The fact that an issuer obtains the certification (or affidavit) described in this paragraph does not ensure that the requirements of paragraph (g) of § 6a.103A–2 are met. Obligations that do not meet the requirements of paragraph (g) of § 6a.103A–2 are not described in section 103 (a).

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Par. 3. The authority for Part 6a continues to read in part:

Authority: 26 U.S.C. 7805. * * * sec. 6a.103A–2(k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5). * * *

Par. 4. Section 6a103A–2 is amended by revising paragraphs (k), (l), and (m). These revised provisions read as follows:

§ 6a.103A–2 Qualified mortgage bond.

* * * * *

(k) *Information reporting requirement.* See § 1.103A–2(k) for rules relating to section 103A(j)(3).

(l) *Policy statement.* See § 1.103A–2(l) for rules relating to section 103A(j)(5).

(m) *State certification.* See § 1.103A–2(m) for rules relating to section 103A(j)(4).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.103A–2 . . . . 1545–0720".

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: August 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–20978 Filed 8–29–85; 10:54 am]

BILLING CODE 4830–01–M

Fiscal Service

31 CFR Part 206

Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Fiscal Service publishes this final rule to implement section 2652 of the Deficit Reduction Act of 1984, which gives the Secretary of the Treasury the authority to:

(1) Prescribe the methods by which an agency will collect and deposit monies to the Treasury;

(2) Prescribe the time within which an agency collecting monies must deposit such monies to Treasury;

(3) Assess charges for noncompliance in the amount determined to be the cost to the general fund of such noncompliance;

(4) Credit any charges imposed into the Cash Management Improvements Fund;

(5) Authorize use of any monies in the Fund for the payment of expenses incurred in developing and carrying out improved methods of collection and deposit.

This rule prescribes the policies and guidelines for promoting effective cash management through improved billing, collection, and deposit that result in improved availability of funds.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerard M. McNiff, Program Initiatives Branch, Financial Management Service, Washington, DC (202/634–5783).

SUPPLEMENTARY INFORMATION: The Financial Management Service published a Notice of Proposed Rulemaking on pages 12333–12336 of the **Federal Register** of March 28, 1985. Public comment was invited for a 60-day period which ended May 28, 1985.

Discussion of Public Comments

Twelve written comments were received, eleven from federal agencies and one from a trade association. The Financial Management Service ("Service") considered whether suggested changes to the proposed rule would (1) be consistent with the intent of Congress to ensure governmentwide cash management improvements, (2) ensure equitable treatment for all agencies, and/or (3) clarify Treasury requirements and agency responsibilities.

Discussion of the comments received are grouped below by section of the Notice of Proposed Rulemaking.

1. Scope and Application

Four commenters felt that clarification was required to explain whether all deposits were covered by the regulation. One commenter felt that voluntary donations received by an agency should be exempted from the scope of the regulation, while another felt that the text was inconsistent with the Supplementary Information, and should include donations within the scope. The Service has concluded that, from a cash management perspective, there is no logical reason to exclude donations from this regulation, and therefore rejects the suggestion to exempt donations.

One commenter felt the scope should include all deposits, specifically those received in foreign countries and international territories. The Service agrees and has clarified the rule accordingly. In addition, the scope encompasses fines and other civil penalties owed to the government.

One commenter felt that section 3720 is intended to encompass only monies placed in *Treasury's general fund*, as opposed to any monies deposited to a special, trust, or revolving fund, etc. This assumption is made because the legislation states that charges against an agency for failing to practice good cash management will be based on the cost of noncompliance to "the general fund." Furthermore, the commenter states, if section 3720 did apply, "a deposit into a revolving or trust fund that is not in compliance with Treasury's requirements would cause no loss of interest (actual or imputed) to the general fund and should not result in any penalty." This argument was rejected for several reasons. First, section 3720 states that an agency must provide for timely deposit of money *in accordance with section 3302.* Since section 3302 does not distinguish between deposits to distinct types of funds, no such distinction is applicable to section 3720. It is our opinion, which is supported by our legal counsel, that the Congressional intent was not to distinguish between deposits to the general fund as opposed to deposits to a trust fund, etc. Second, the argument that failure to comply with Treasury requirements will not cause a loss to the general fund is rejected. The intent of the legislation is to reduce the national deficit through improved governmentwide processing of collections and deposits. Therefore, failure to make a timely deposit into *any* fund will result in a cost to the government as a whole.

One comment was made about the portion of § 206.1 which stated that an agency is prohibited from entering into contractual agreements affecting collections without prior approval of Treasury. The commenter suggested the wording be clarified that Treasury has authority to approve collection systems, not terms of any acquisition or sales contract. The Service agrees with this suggestion, and has clarified the wording accordingly.

2. Definitions

There were three commenters who specifically addressed the "same day deposit" and "next day deposit" definitions. One commenter suggested changing the financial institution cutoff time in the example from 1 p.m. to 2 p.m. to be consistent with cutoff time guidelines found in Volume V, TFM Chapter 2020.19, while another commenter suggested deleting the words ". . . to be deposited . . ." from each definition. Both suggestions are accepted.

One commenter felt the next day definition should specify "next day for which both the agency and financial

institution are open for business". The Service assumes that both the same and next day definitions use the word "day" to mean a day that both the agency and the financial institution are open for business. Therefore, no change to the regulatory text is required. Another commenter felt that the current definitions imply that if an agency receives deposits after the financial institution cutoff time but deposits them the next business day, they would be considered "next day" deposits. The commenter felt that money received after the financial institution cutoff time should be counted as being received the following business day. The Service made next day deposit an acceptable timeframe to accommodate deposits received late in the day. Therefore, there is no need to change the language of the rule. One commenter felt the Treasury Financial Manual (TFM) definition should include reference to Part 5 of Volume 1 of the TFM. Although other volumes, parts and chapters of the TFM may contain cash management provisions, I TFM 6-8000 is the primary source of cash management guidance, and is the only necessary reference. This suggestion is therefore rejected.

3. Billing Policy and Procedures

One commenter questioned inclusion of specific billing timeframes within the regulation, feeling that this would allow Treasury to assess charges because of untimely billings, and therefore went beyond the "language of the law". This argument is rejected because the Service believes that the billing process is an integral part of collections, and therefore is covered under the legislation.

One agency commented that billing on a 5 day cycle would not be cost-effective given the type of collections involved for that particular agency, and therefore felt the requirement should be changed to a monthly billing cycle. A change to the basic requirement is rejected; the regulation already provides for billings later than the 5 day timeframe if an agency can demonstrate cost effectiveness.

Two commenters questioned when the 5 day billing timeframe begins. The text has been clarified on that point. In addition, an agency should be aware that the billing requirements apply to issuance of whatever initial notice is sent to impose a fine, charge, etc. Since an agency may spend weeks or months conducting an investigation to determine if a fine or charge should be imposed under its regulatory authority, the 5 day timeframe governs the period from: When an agency determines that, based on investigation, a fine should be imposed; to: Transmitting notification of the fine, etc., to the individual or organization being charged (transmitting of "the bill"). Determination of amounts to be charged can be considered part of the investigation phase.

Two commenters felt that the requirement for bills to include terms and dates of payment was inappropriate because terms are sometimes established by contract, etc. The regulatory requirement governs *inclusion* of payment terms on bills, but does not preclude an agency from negotiating such terms as appropriate.

4. Collection Mechanisms

Several commenters disagreed with language indicating that agency receipt of collections was "less desirable" than electronic funds transfer systems. The language has been clarified to more accurately reflect the Service's long term goal of moving toward improved electronic funds transfer (EFT) systems when cost-effective. The Service recognizes that an EFT system will not always be the most desirable way to process collections given characteristics of the cash flow and/or costs or limits of current EFT systems.

Several comments were received concerning the statements that "selection of the best collection mechanism is a joint responsibility of the agencies and the Service", and ". . . the Service is empowered to prescribe the use of a specific collection mechanism for mandatory use . . .". Some commenters perceived these as contradictory statements; in fact they are not. The Service, from a policy standpoint, ultimately intends to "institutionalize" cash management within each agency. In order to accomplish this, an agency must take an active role in discovering and recommending possible improvements. The Service therefore expects an agency to consider all internal factors in recommending an improvement; the Service will act as a "consultant" in this case. However, from a legal standpoint, the Service clearly has the authority to mandate use of a particular mechanism, and will exercise this authority if an agency refuses to voluntarily participate in the process of identifying areas for improvement. The language has therefore not been changed.

One commenter raised the same issue as discussed under the "Scope and Application" section related to the Service approval of contractual agreements. The language has been changed to clarify that the Service will not be approving terms of sale, but rather method of payment, i.e., collection system to be used.

One commenter felt that the NPRM implied an agency would be forced to bear excessive costs related to feasibility studies and implementation costs. The language has been modified to reflect joint Service-agency responsibility for costs as appropriate.

5. Collection and Deposit Procedures

Several commenters were confused about the intent of restricting mailing of deposits to Federal Reserve Banks. The language has been modified to make clear that mailing of deposits to *any* depositary should be done only when no other method of deposit is available. This section was not meant to discourage deposits to Federal Reserve Banks, as opposed to other financial institutions.

Several commenters were concerned about the ability to comply with the same day deposit requirement. One commenter felt the requirement was unreasonable because "receipt" is considered to be first receipt by an agency, not the "custodian" (i.e., individual responsible for actually making the deposit). Another commenter felt that there would be circumstances where an agency would be unable to meet the same day requirement during peak workload periods. Both of these suggestions are rejected for several reasons. If an agency is going to process collections, the Service expects the agency to meet the same processing times as could be achieved by lockbox processing. The Service recognizes in all requirements that there will be exceptions within an agency, because of unusual workload peaks, or for an agency as a whole, if it has unusual circumstances which make compliance impracticable. These instances are accommodated by the rule, but do not justify changing the rule.

Another agency felt that its deposit arrangements were an exception to the rule because its collections are turned over to a larger agency, which in turn actually makes the deposit and maintains accounting records. The commenter felt there would be a danger that it would be penalized for failure of the larger depositing agency to achieve same or next day deposit. Again, the Service is not convinced that the agency cannot take action to ensure compliance and clarify responsibility in any cases of noncompliance. An agency should understand that the fact that current procedures do not comply with this regulation does not mean that an agency should be exempted from a requirement, or the regulation changed. The requirements are not written to be easy to comply with; they are designed to

result in procedures to be followed when cost-effective to improve cash management. It is presumed that if current procedures do not meet these requirements, an agency will investigate and make all changes practical to ensure compliance. The Service will assist an agency on a consultant basis in suggesting cost effective alternatives to existing procedures.

6. Cash Management Planning and Review

Several commenters questioned the need for submission of an annual cash management plan. This requirement has been deleted from the final rule. An agency will be required to perform a cash management review to identify opportunities for improvement, and to report on these items. Subsequent annual reporting will only be required if there is a new cash flow or a substantial change to an existing cash flow.

Several commenters also suggested that agency reporting on initiative implementation and related savings should be unnecessary because collections are deposited with the Treasury. In the long term, Treasury's goal is to monitor cash management activities through Treasury information systems. At the present time, however, information is not available in a manner which makes this feasible.

7. Charges

Almost all commenters felt that there should be provisions to allow for agency appeal of charges. A formal appeal process had been drafted by the governmentwide task force. This provision was deleted by senior Service management prior to publication of the NPRM. The reason for deletion of the formal appeal process was a desire to avoid the traditional bureaucratic approach of excessive structure and formality. There is a basic assumption that Treasury management will exercise its authority in a responsible and reasonable manner, and that a formal appeal process is not a true substitute for the ability to recognize the larger picture and exercise good judgment. However, we also recognize the agency concern that there is an assurance of formal review of charges if necessary. Consequently, an appeal process has been included in the final rule. Commenter suggested numerous variations on composition of the appeals board. The task force also discussed a variety of options. The board will be composed of two Treasury officials and one agency official because legal counsel felt that the absence of a Treasury majority on the board would have resulted in an improper delegation of Treasury's legal authority to assess charges. Given the fact that the law does not require an appeal process, and that any charges will be assessed only after all other means of negotiation have failed, we feel that the appeal procedures should adequately address any remaining agency concerns. It should also be noted that although the cash managment review and identification of opportunities apply to both collections and payments, the authority to assess charges for noncompliance applies only to billings, collections, and deposits.

One commenter felt that Treasury should calculate the net cost to Treasury of noncompliance in instances where an agency earns interest from Treasury on agency deposits. Treasury will consider all applicable circumstances in calculating charges. However, as discussed under the scope and application section, the Service interprets the legislation to govern costs to the government as a whole, not necessarily net costs to the Treasury Department because of our present policy of giving an agency same day availability.

In any event, no change to the regulation is required, since an agency can appeal the calculation of the charge, if necessary.

Additional language has also been added to this section to clarify accounting procedures related to payment of charges.

8. Operation of and Payments From the Cash Management Improvements Fund

One commenter requested clarification of the possible use of monies in the fund. The language in the regulation is taken directly from the legislation, and applies only to collection and deposit systems, not payment systems. We interpret "personal services" to mean "personnel" services, which may include salaries or contracts.

Several commenters requested clarification of now to apply for payments from the Fund and who would authorize such payments. Clarifying language has been added to the final rule.

Section 206.9(a) provides that a charge will be levied on funds available for the "administration or operation" of programs to which the collections relate. The words "administration or operation" parallel language in various appropriations Acts; it is not the intent of the rule to charge funds available to an agency for substantive program expenditures.

Special Analyses

The Financial Management Service has determined that this final rule is not a major rule for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

It has been certified that the rulemaking effected herein will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 206

Banks, Banking.

Carole Jones Dineen,

Fiscal Assistant Secretary.

For the reasons set out in the preamble, a new Part 206 to 31 CFR Chapter II, is added to read as follows:

PART 206—MANAGEMENT OF FEDERAL AGENCY RECEIPTS AND OPERATION OF THE CASH MANAGEMENT IMPROVEMENTS FUND

Sec.

206.1 Scope and application.
206.2 Definitions.
206.3 Billing policy and procedures.
206.4 Collection mechanisms.
206.5 Collection and deposit procedures.
206.6 Cash management planning and review.
206.7 Notice of deficiency.
206.8 Appeals.
206.9 Charges.
206.10 Operation of and payments from the Cash Management Improvements Fund.

Authority: 31 U.S.C. 321, 3301, 3302, and 3720.

§ 206.1 Scope and Application.

This regulation applies to all government departments and agencies in the Executive Branch (except Tennessee Valley Authority) and all monies collected by these departments and agencies. This regulation does not apply to interagency transfers. Policies and guidelines are prescribed for promoting effective cash management through improved billing, collection, and deposit that result in improved availability of funds. Authority to implement this regulation has been delegated within Treasury to the Commissioner of the Financial Management Service, hereinafter referred to as "the Service." The Service maintains the final authority as granted under the Deficit Reduction Act of 1984 to specify use of a particular method or mechanism of collection and deposit by an agency and to recover costs that result from noncompliance. An agency is prohibited under this regulation from entering into new contractual agreements or renewal of existing

contracts for agency collection systems without the prior approval of the Service, as described in the Treasury Financial Manual, Volume I, Chapter 6–8000 (I TFM 6–8000).

§ 206.2 Definitions.

For the purpose of this regulation, the following definitions apply:

(a) "Agency" means: Any department, instrumentality, office, commission, board, service, government corporation, or other establishment in the Executive Branch, except the Tennessee Valley Authority.

(b) "Billing" means: Any of a variety of means by which the Government places a demand for payment against an entity that is indebted to the Government. The term encompasses invoices, notices, initial demand letters, and other forms of notification.

(c) "Collect" means: The process of effecting a collection.

(d) "Collection" means: The transfer of monies from a source outside the Federal Government to an agency or to a financial institution acting as an agent of the Government.

(e) "Collection Mechanism" means: Any one of a number of tools or systems by which monies are transferred to the Government from a source outside the Government.

(f) "Cutoff time" means: A time predesignated by a financial institution beyond which transactions presented or actions requested will be considered the next banking day's business.

(g) "Deposit" means: As a noun, money that is being or has been presented for credit to the U.S. Treasury. Deposits can be made by an agency or directly by the remitter. All such transfers are effected through a Federal Reserve Bank or other financial institution. As a verb, the act of presenting monies for credit to the U.S. Treasury by an official of an agency.

(h) "Depositary" means: A bank or other financial institution which has been authorized by the U.S. Treasury to receive monies for credit to the U.S. Treasury.

(i) "Fund" means: The Cash Management Improvement Fund.

(j) "Monies" (or "receipts") means: Currency, negotiable instruments, and/or demand deposits owed to or collected by an agency.

(k) "Next Day Deposit" means: A deposit made before the cutoff time on the day following the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 3 pm on *Monday*, and transmits the deposits to the depositary by 2 pm on *Tuesday* (the depositary's next cutoff time) then next-day deposit requirements are met.

(l) "Same Day Deposit" means: A deposit made before the cutoff time on the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 10 am on *Monday* and transmits the deposits by 2 pm on *Monday* (the depositary's cutoff time) then same-day deposit has been achieved.

(m) "Service" means: The Financial Management Service (formerly the Bureau of Government Financial Operations), Department of the Treasury.

(n) "Treasury Financial Manual" (TFM) means: Manual issued by the Service containing procedures to be observed by all government departments and agencies in relation to central accounting, financial reporting, and other governmentwide fiscal responsibilities of the Department of the Treasury. Volume I, Chapter 6–8000 ("I TFM 6–8000") of the Manual contains cash management procedures to be followed pertaining to these regulations.

§ 206.3 Billing Policy and Procedures.

The billing process is considered an integral part of an effective cash management program. In those situations where bills are required and the failure to bill would affect the cash flow, bills will be prepared and transmitted within 5 business days after goods have been shipped or released, services have been rendered, or payment is otherwise due. An agency may prepare and transmit bills later than the 5 day timeframe if it can demonstrate that it is cost effective to do so. In addition, the bill must include the terms and dates of payments, and late payment provisions, if applicable. Terms and dates of payments will be consistent with industry practices. I TFM 6–8000 describes detailed billing policies, procedures, and industry standards.

§ 206.4 Collection Mechanisms.

(a) An agency's collection processes shall include procedures which provide for prompt and continuing action to collect monies owed to or received by that agency. I TFM 6–8000 prescribes guidelines to be followed in developing and implementing such procedures. Any such system must expedite credit and availability of these monies to the U.S. Treasury. Collections are made through a number of alternative collection mechanisms. The most fundamental form of collection mechanism requires the remitter to deliver monies to the offices of the agency responsible for the collection. Electronic funds transfer systems expedite credit and availability of funds into the banking system, thereby bypassing agency handling of monies. Treasury therefore endorses movement toward electronic funds transfer systems when they are determined to be cost-effective.

(b) In proposing an appropriate collection mechanism, an agency will attempt to minimize total costs to the Government, including known or estimated agency personnel costs, costs of procurement, equipment and system implementation and maintenance costs, and interest costs. A feasibility study, including a cost-benefit analysis, will normally be conducted by an agency and the Service prior to any decision on implementation of a certain mechanism. Improvements to the existing system will be addressed as one option. Interest savings should be measured against the existing deposit system. Future year cash flows will be considered especially if significant increases or decreases are projected. Seasonality (peak periods of collection) and the nature of the collection items (e.g., cash, check, money order) also must be considered. Interest savings will be addressed by source; e.g., elimination or reduction of mail, processing, and availability float.

(c) Selection of the best collection mechanism is a joint responsibility of an agency and the Service. An agency has the primary responsibility for conducting cash management reviews; documenting their collection systems; gathering volume and dollar data relative to the operation of the systems; taking the initiative to improve the mechanism for effecting their collections; and funding any implementation and operational costs above those normally funded by Treasury. The Service's primary role is as consultant, facilitator, and regulator and it will conduct periodic reviews of agencies; cash management programs in furtherance of that role. The Service is also the required approval authority when an agency desires to convert from one collection mechanism to another. The Service's approval must also be obtained prior to an agency entering into new contractual agreements or renewing existing contracts for agency collection systems.

(d) In view of the significant cash management savings that can accrue as a result of converting from one collection mechanism to another, the Service is empowered by the Deficit Reduction Act of 1984 to prescribe the use of a specific collection mechanism for mandatory use in a designated portion of an agency's collection system. In so doing, the Service shall give

consideration to all applicable factors, including but not limited to agency program requirements, an agency's costs of implementation, recurring operational costs, and other management improvements.

§ 206.5 Collection and Deposit Procedures.

(a) Prompt collection and deposit of monies are imperative to good cash management. This regulation prescribes the following timeframe requirements:

(1) An agency will achieve same day deposit of monies. Where same day deppsit is not cost-effective or is impracticable, next day deposit of monies must be achieved.

(2) Deposits will be made at a time of the day prior to the depositary's specified cutoff time, but as late as possible in order to maximize daily deposit amounts.

(3) When cost-beneficial to the Government, an agency may make multiple deposits.

(b) Exceptions to the above policies are as follows:

(1) Collections of less than $1,000 may be accumulated and deposited when the total reaches $1,000. When an agency can fully cost-justify retaining collections in excess of $1,000, it may retain them. However, in no case will deposits be made less frequently than weekly.

(2) The mailing of deposits to depositaries (including Federal Reserve Banks or financial institutions) may be used, if approved by the Service, when all other methods of deposit cannot be cost-justified or no other method of deposit is available. In these cases, the deposit timeframe requirements apply to timely mailing of deposits.

(c) An agency will use expeditious procedures and processes in its receipt processing. Priority will be given to procedures which will expedite availability of funds to the Treasury. Automation will be used when it is cost beneficial to the Government. The current and future projection of volume of receipts will be given full consideration in all upgrades to systems.

§ 206.6 Cash Management Planning and Review.

(a) The primary responsibility to implement an effective cash management program rests with an agency. As part of its overall responsibility, an agency must constantly seek methods to bring about cash management savings and periodically perform cash management reviews to identify areas needing improvement.

(b) As part of its cash management review process, an agency is expected to document cash flows in order to provide an overview of its cash activities and to identify areas that will yield savings after cash management initiatives are implemented.

(c) An agency's initial and subsequent cash management reviews will provide the basis for identification of improvements and preparation of cash flow reports for submission to the Services as prescribed by I TFM 6–8000. That Chapter provides requirements for an agency in performing periodic cash managment reviews, identifying improvements, and preparing cash flow reports. The schedule for submission of information will be published in a TFM bulletin. In addition, periodic reports must be submitted by an agency to the Service on progress made in implementing cash management initiatives and associated savings.

(d) The Service will periodically review an agency's cash management program to ensure that adequate progress is being made to improve overall cash management at an agency. As part of its oversight authority, the Service may visit an agency and review all or specific cash management activities of an agency. An agency will be notified in advance of the Service's review and will be required to provide the Service with documentation of the agency cash management review within the timeframes and format required by I TFM 6–8000.

§ 206.7 Notice of Deficiency.

The Service will monitor agency cash management performance. Part of the monitoring process will include discussion and/or correspondence between the Service and an agency in which improved methods of cash management will be suggested and discussed. An agency will be given a full opportunity to concur or not concur and to recommend alternative solutions and implementation schedules. Following establishment of mechanism improvements and implementation end dates, an agency will be committed to completing these initiatives as scheduled. In cases where an agency fails to meet a scheduled implementation date within their control, the Commissioner, Financial Management Service, will send a formal Notice of Deficiency to an agency's designated cash management official. A separate notice will be sent for each initiative. The Notice of Deficiency will include at a minimum the nature of the deficiency, the amount of the proposed charge, the method of calculation, the right to file an appeal, and the date the charge will be imposed in the absence of an appeal.

§ 206.8 Appeals.

(a) An agency which chooses to file an appeal must submit the appeal in writing to the Commissioner, Financial Management Service, within 45 calendar days of the date of the Notice of Deficiency. In the event of an appeal, the charge imposed under the Notice of Deficiency will be deferred pending the results of the appeal. If an appeal is not submitted (i.e., received by the Commissioner, Financial Management Service) within 45 calendar days, the amount indicated in the Notice of Deficiency will be charged per § 206.9.

(b) The appeal shall contain the elements and follow the submission procedures specified in I TFM 6–8000. The appeal will include the background leading to the Notice of Deficiency, the basis of the appeal, and the action requested by an agency. An agency should state its disagreements with the Notice of Deficiency which may include cost/benefit factors, the amount of the charge, and other items.

(c) An agency must state what action it requests in its appeal. An agency may request that the Notice of Deficiency be completely overturned for cost/benefit or other considerations. Alternatively, an agency may request a reduced charge, deferral of the charge, an alternative solution to cash management improvement, or a combination of these actions.

(d) *Appeals Board.* The appeals board shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, Financial Management Service, and the Assistant Commissioner, Federal Finance, Financial Management Service. The temporary board member will be a cash management official from a federal agency other than the agency appealing the Notice of Deficiency. The board will be convened on an as-needed basis; the order of agency assignment to the board will be published by Treasury. The Commissioner, Assistant Commissioner, and the designated agency cash management official may delegate their responsibility to a staff subordinate having sufficient experience in cash management matters. The Assistant Commissioner's designee may be from any area other than that which issued the Notice of Deficiency.

(e) *Appeal Review Process.* The appeals board will review the Notice of Deficiency, any additional information submitted by the Service, and the written appeal from an agency. Based

on this review, the board may decide additional investigation is required. The board may request an agency and/or the Service to meet with the board as part of the review process.

(f) *Appeal Finding.* A written majority decision shall be rendered by the appeals board within 30 calendar days of receipt of the appeal. The board may extend this period for an additional 30 calendar days if required. The decision of the board whether to uphold the Notice of Deficiency, to overturn the Notice of Deficiency, or to mandate some other action will be stated in the finding. Other action mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or a combination of these actions. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the finding. The effective date of the charge may be retroactive to the date indicated in the Notice of Deficiency.

(g) Any terms related to charge deferral will be stated; the Service and an agency will be required to submit evidence of compliance to such terms at a future specified date. At this future time, the appeals board will review the evidence of compliance. Based on this evidence, the board will decide whether to impose a charge.

§ 206.9 Charges.

(a) Within 30 calendar days of the effective date of the charge or the appeals decision, an agency must submit appropriate accounting information to the Assistant Commissioner, Federal Finance, Financial Management Service. The charge will be calculated following procedures outlined in I TFM 6–8000, and will be assessed for each month that noncompliance continues. An agency will absorb the charge from within funds available for the administration or operation of the program(s) to which the collections relate.

(b) If an agency does not voluntarily pay the charge assessed under § 206.9(a), the Financial Management Service will debit the appropriate account automatically. By failing to voluntarily pay the charge as required by the Deficit Reduction Act of 1984, an agency shall be deemed to authorize the automatic debit to its account.

(c) The Commissioner, Financial Management Service will formally terminate the charge when the Commissioner has determined that an agency has complied. In addition, on an annual basis, the Commissioner will review an agency's performance and calculation of the charge, and will notify an agency in writing of any changes to the amount being charged.

§ 206.10 Operation of and Payments from the Cash Management Improvements Fund.

(a) The Cash Management Improvements Fund will be operated as a revolving fund by the Financial Management Service. Charges assessed under § 206.9 will be deposited into the Fund. The Financial Management Service will also disburse any payments from the Fund based on projects selected by a project selection and approval committee.

(b) *Committee Composition.* The committee shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, Financial Management Service, and the Assistant Commissioner, Federal Finance, Financial Management Service. The temporary committee member will be a cash management official from a federal agency other than an agency being considered for funds. Decisions of the project selection and approval committee cannot be appealed. An agency will be notified of any available amounts in the Fund, and requirements to apply for such monies, through a TFM bulletin.

(c) As provided by 31 U.S.C. 3720, sums in the Fund shall be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(d) In addition to all reports required by law and regulation, the Treasury will prepare and publish a full report on receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

[FR Doc. 85–20941 Filed 8–30–85; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85–53]

Special Local Regulations; Burlington Triathlon, Lake Champlain, Vermont

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the swimming segment of the Burlington Triathlon. This event is sponsored by the Ski Rack Company of Burlington, VT. The event will be held on September 15, 1985 in Lake Champlain off North Beach just north of the City of Burlington, Vermont. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation becomes effective on September 15, 1985 from 8:30 a.m. to 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolshy (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. A determination was not made until 12 August 1985 that this marine event required a special local regulation and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Thrid Coast Guard District Legal Office.

Discussion of Regulations

The Burlington Triathlon is a sporting contest, one segment of which involves a swimming event in Lake Chaplain. The contest is sponsored by the Ski Rack Company in Burlington, Vermont. The swimming portion of the triathlon will take place in Lake Champlain starting and finishing at the North Beach area located north of the City of Burlington between 8:30 a.m. and 11:00 a.m. on September 15, 1985. The swimming event is to be held on a triangular (isosceles) course whose apex is located in Lake Champlain, 1700 feet south of the North Beach bath house. Approximately 500 swimmers are expected to participate in this event. The sponsor is providing between four and six vessels, some with life guards aboard, in conjunction with Coast Guard and local authorities to patrol this event. Spectator craft will be required to remain 50 yards away from any point along the swimming course. In order to provide for the safety of life and property of both participants and spectators, the Coast Guard will restrict vessel movement in the regulated area.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–320 to read as follows:

§ 100.35–320 Burlington Triathlon, Burlington, Vermont

(a) *Regulated Area:* Lake Champlain, off North Beach, located just north of Burlington, VT, within 50 yards of the swimming course which starts directly in front of the North Beach Bath House and extends south southeast 175 degrees True for a distance of 1700 feet to a point at Latitude 44 degrees 29 minutes 14 seconds North; Longitude 73 degrees 14 minutes 22 seconds West. Thence north northeast 035 degrees True returning to the beach.

(b) *Effective Period:* This regulation will be effective from 8:30 a.m. to 11:00 a.m. on September 15, 1985.

(c) *Special Local Regulations:* (1) The regulated area will be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the marine event patrol are considered spectators. Spectator vessels must not enter the area within 50 yards of the swimming course.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(4) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of the vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: August 23, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85–20965 Filed 8–30–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 100

[CGD2 85–45]

Special Local Regulations; Fort Smith United Way Great Raft Race IX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 308.5 to 301.0, Arkansas River. "Fort Smith United Way Great Raft Race IX", an approved marine event, will be held on September 14, 1985, at Fort Smith, Arkansas. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective between the hours of 8:30 a.m. to 5:00 p.m. on September 14, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, Telephone: (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Arkansas River between miles 308.5 and 301.0 during "FORT SMITH UNITED WAY GREAT RAFT RACE IX", September 14, 1985. This event will consist of non-powered, home made rafts, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until May 17, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new temporary § 100.35–0245 is added, to read as follows:

§ 100.35–0245 Arkansas River, mile 308.5 through 301.0.

(a) *Regulated Area:* The area between Mile 308.5 and 301.0 Arkansas River is designated the regatta area, and will be closed to commercial and recreational navigation or mooring between the hours of 8:30 a.m. and 5:00 p.m. on September 14, 1985. All times listed are local time.

(b) *Special Local Regulations:* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessls in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard

Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0245 will be effective from 8:30 a.m. on September 14, and terminate at 5:00 p.m. on September 14, 1985 (local time).

Dated: August 21, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 85–20966 Filed 8–30–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 100

[CGD2 85–46]

Special Local Regulations; Air Show and Boat Parade; Indiana

AGENCY: Indiana Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 602.0 to 603.0, Ohio River. The "Air Show and Boat Parade", an approved marine event, will be held on September 7 and 8, 1985, at Jeffersonville, Indiana. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 3:30 p.m. on September 7, and terminate at 5:00 p.m. on September 8, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B. J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, Telephone: (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 602.0 and 603.0 during the "AIR SHOW AND BOAT PARADE", September 7 and 8, 1985. This event will consist of sky diving shows, aerobatic shows and a boat parade, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until May 14, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effectie date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R. E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new temporary § 100.35–0246 is added, to read as follows:

§ 100.35–0246, Ohio River, mile 602.0 through 603.0.

(a) *Regulated Area:* The area between Mile 602.0 and 603.0 Ohio River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 3:30 p.m. on September 7, and 5:00 p.m. on September 8, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion

from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels haivng particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0246 will be effective from 3:30 p.m. on September 7, and terminate at 5:00 p.m. on September 8, 1985. (local time).

Dated: August 21, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 85–20967 Filed 8–30–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[COTP LA/LB–85–06]

Safety Zone, Santa Cruz Island

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A safety zone is being established in the territorial waters south of Santa Cruz Island. Tests of submerged and semisubmerged vessels will be conducted during a three month period. There will also be placement of fixed underwater sound systems making transit, anchoring or fishing hazardous. Limiting access to this area will serve to protect vessels and sensitive underwater gear. This regulation is exempt from certain provisions of 5 U.S.C. 553 because it involves a foreign or military affairs function of the United States.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jeff Parks, U.S. Coast Guard, U.S. Coast Guard Operations Division, Eleventh Coast Guard District, Long Beach, California.

Supplementary Information

On 1 August 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (50 FR 31198). Interested persons were requested to submit comments and 3 comments were received.

Drafting Information

The drafters of these regulations are Lieutenant Commander Jeff Parks, Project Officer, Eleventh Coast Guard District Operations Division, project officer and Lieutenant Joseph R. McFaul, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

On 31 July 1985 a meeting was held at the Pacific Missile Test Center, Point Mugu California, between U.S. Navy Representatives and representatives of commercial user groups. Several fishermen stated that they would be losing money if denied access to shallow waters to set crab and lobster traps. Several users also stated that waters South of Santa Cruz Island serve as a natural lee during rough weather. Navy representatives promised to notify the Coast Guard when waters enclosed by the safety zone can be safely used by mariners and fishermen.

Additionally, the three written commenters expressed concern that the regulations would prevent access to fishing areas during the peak fishing season. One commenter suggested that permission to enter the zone be granted whenever testing would not be hazardous. This suggestion will be adopted. A hot-line will be established so that adverse effects on potential users will be minimized. Callers will be able to call the hot-line to determine if the zone can be entered. Adjustments to the zone may be made, as testing permits, to accommodate fishing seasons. These will be published in the Local Notice to Mariners and announced on the hot-line. The zone remains in effect at all times from September 3, 1985 to November 30, 1985, unless permission to enter the zone is granted by means of the hot-line or the Local Notice to Mariners.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 604–6, and 160.5.

2. Section 165.T1176 is added to read as follows:

§ 165.T1176 Santa Cruz Island.

(a) A safety zone is established to include all waters enclosed within lines drawn from the following points: Beginning from a point on land located approximately at Latitude 33–57.9 N, Longitude 119–42.6 W, then due south to a point on the territorial sea located approximately at Latitude 33–54.9 N, Longitude 119–42.6 W, then following the limit of the territorial sea in an easterly direction to a point approximately located at Latitude 33–56.8 N, Longitude 119–34.5 W, then due north to a point on land located approximately at Latitude 33–59.8 N, Longitude 119–34.5 W, then returning along the shore to the beginning point.

(b) No person may swim, skin dive or scuba dive in the waters within the safety zone.

(c) No vessel may navigate, transit, fish, anchor or drift in the waters within the safety zone.

(d) Any vessel within the zone shall follow the directions of the patrolling Coast Guard cutter.

(e) This regulation is effective on September 3, 1985 and remains continuously in force until November 30, 1985.

Dated: August 28, 1985.

A.B. Beran,

Commodore, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–20968 Filed 8–30–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

36 CFR Part 327

Public Use of Water Resource Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This final rulemaking supersedes the regulation dated May 1979. The regulation is designed to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbances. This is accomplished by setting minimum standards of conduct for persons using the public lands and establishing penalties that may be imposed for failure to obey the regulation.

These rules and regulations apply to water resource development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resource projects

which are under the administrative jurisdiction of the Chief of Engineers, including the Central and Southern Florida flood control project as authorized by the Flood Control Act of 1968.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Darrell E. Lewis, Chief, Natural Resources Management Branch, U.S. Army Corps of Engineers, HQUSACE, ATTN: DAEN-CWO-R, Washington, D.C. 20314-1000.

SUPPLEMENTARY INFORMATION:

Amendments

The amendments to Part 327 are necessary to clarify and strengthen selected regulations for more effective management and to enhance public enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or relocated to a different section. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely. They are not listed individually.

Section 327.1 concerning the statement of policy has been enlarged to contain former § 327.23 Outgranted Lands and § 327.24 Indian Lands. Paragraph (g) is added to this section instead of being listed in individual sections throughout the regulation. Paragraph (h) has been expanded to include the use of vessels and aircraft, in addition to vehicles.

Section 327.2 concerning vehicles has been expanded to address the removal of illegally parked vehicles and to allow exhaust muffler noise limits to be determined as defined by state and local laws.

Section 327.3 concerning vessels has been expanded to better define vessels and allow for means of identification of vessels by requiring the display of appropriate U.S. Coast Guard or state registration whenever they are operated on project waters. Safety equipment should conform to state safety laws in addition to U.S. Coast Guard requirements. Exhaust muffler noise limits may be determined by state and local laws.

Section 327.4 concerning aircraft has been restructured in order to better define aircraft.

Section 327.5 concerning swimming has been expanded to require that an international diving flag be displayed during underwater activities.

Section 327.8 concerning hunting, fishing, and trapping has been expanded to indicate that all Federal, state, and local laws governing these activities are applicable on project lands.

Section 327.9 concerning sanitation has been expanded to include all references to sanitation previously contained in other sections.

Section 327.10 concerning fires has been expanded to require fuels be stored in containers designed for such purposes and has restricted the throwing or dropping of lighted smoking materials.

Section 327.11 concerning the control of animals has been expanded to prohibit a person from allowing animals to impede or restrict the otherwise full and free use by the public of the project lands.

Section 327.12 concerning restrictions has been expanded to include disruptive behavior and to define noise production devices and excessive noise levels.

Section 327.15 concerning the abandonment of personal property has been expanded to assist in the control of encroachments.

Section 327.24 concerning interference with Government employees has been revised to incorporate the provisions of Sections 1114 and 111 of Title 18 USC for certain Corps of Engineers employees, as allowed by Pub. L. 96-63.

Section 327.26 concerning state and local laws has been added to properly address the role of state and local law enforcement agencies on lands managed by the Corps of Engineers.

The U.S. Army Corps of Engineers has determined that this document is not a major rule under Executive Order 12291. It has been determined under the criteria of the Regulatory Flexibility Act that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 327

Penalties, Recreation and recreation areas, Water resources.

Accordingly, 36 CFR Part 327 is revised to read as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.

327.0 Applicability.
327.1 Policy.
327.2 Vehicles.
327.3 Vessels.
327.4 Aircraft.
327.5 Swimming.
327.6 Picnicking.
327.7 Camping.
327.8 Hunting, fishing and trapping.
327.9 Sanitation.
327.10 Fires.
327.11 Control of animals.
327.12 Restrictions.
327.13 Explosives, firearms, other weapons and fireworks.
327.14 Public property.
327.15 Abandonment and impoundment of personal property.
327.16 Lost and found articles.
327.17 Advertisement.
327.18 Commercial activities.
327.19 Permits.
327.20 Unauthorized structures.
327.21 Special events.
327.22 Unauthorized occupation.
327.23 Recreation use fees.
327.24 Interference with Government employees.
327.25 Violations of rules and regulations.
327.26 State and local laws.

Authority: Sec. 4, Act of December 22, 1944, 58 Stat. 889, as amended (16 U.S.C. 460d); sec. 210 of Pub. L. 90-483, 82 Stat. 746; and Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 460l-6a)

§ 327.0 Applicability.

The regulations covered in this Part 327 shall be applicable to water resource development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resource development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, State and local laws and regulations remain in full force and effect where applicable to those water resource development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.

(c) The term "project" or "water resource development project" refers to the water areas of any water resource development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resource development project.

(d) All water resource development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or

concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this Part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Engineer by lease, license or other written agreement.

(f) The regulations in this Part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resource development projects administered by the Chief of Engineers, to the extent that the regulations in this Part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this Part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this Part 327, the owner of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25, Violation of Rules and Regulations.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles and trailers, campers, bicycles or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Engineer. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier is prohibited.

(d) Vehicles shall be operated only in accorance with posted regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.

(f) At developed recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, jetskis and any other such equipment capable of navigation on water, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph (§ 327.3(b)) shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.

(d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any property or person (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

(e) All vessels, when in use, shall have safety equipment, including personal floatation devices, on board in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG–290; 46 CFR Parts 25, 30; 33 CFR Part 175) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are *not* to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any property or person (including the user and/or operator of the towing vessel).

(h) All vessels when not in actual use shall be removed from project lands and water unless securely moored or stored at designated areas approved by the District Engineer. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L 92–75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Engineer, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by State and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultralight aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Engineer is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Engineer or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project

waters or project lands in a careless, negligent or reckless manner so as to endanger any person or property.

(d) Nothing in this section (§ 327.4) bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person, material or equipment by parachute, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, herein called seaplanes, at the risk of the owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Engineer (pursuant to Part 328 of Title 36) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with marine rules of the road for power boats or vessels and § 327.3 Vessels.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing that (i) the mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and (ii) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Engineer following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision approved by the District Engineer are available.

§ 327.5 Swimming.

(a) Swimming, diving, snorkling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and other areas so designated by the District Engineer. Diving or jumping from bridges or other structures which cross project waters is prohibited.

(b) An international diving flag must be displayed during underwater activities.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Engineer.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Engineer.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Engineer.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Engineer is prohibited.

§ 327.8 Hunting, fishing, and trapping.

Hunting, fishing, and trapping are permitted except in areas where prohibited by the District Engineer. All Federal, state and local laws governing these activities apply on project lands and waters, as regulated by authorized enforcement officials.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Engineer.

(c) The spilling, pumping or other discharge of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resource development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Engineer.

(b) Fires shall be confined to those areas designated by the District Engineer, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic or treated wood products is prohibited.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas unless penned, caged, on a leash under 6 feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. All animals and pets are prohibited in swimming beaches. Animals and pets, except properly trained animals assisting the handicapped (such as seeing-eye dogs), are prohibited in sanitary facilities or other areas so designated by the District Engineer. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal, in sanitary facilities, of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas except in areas designated by the District Engineer.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Engineer.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Engineer, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

§ 327.12 Restrictions.

(a) The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Engineer may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Engineer. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any audio or other noise producing device including, but not limited to, radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

§ 327.13 Explosives, firearms, other weapons and fireworks.

The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind, including fireworks, is prohibited unless: (a) In the possession of a Federal, state or local law enforcement officer; (b) being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites; (c) being used at authorized shooting ranges; or (d) written permission has been received from the District Engineer.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, and vegetative growth, is prohibited except when in accordance with written pemission of the District Engineer.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Engineer.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Engineer, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) The District Engineer shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of $25 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Engineer. The net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.

(c) Personal property placed on Federal lands or waters adjacent to a private residence and/or developments of any private nature for more than 24 hours without permssion of the District Engineer shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to issue a citation as provided for in § 327.25.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Resource Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Engineer. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

The engaging in or solicitation of business without the express written permission of the District Engineer is prohibited.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this Part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Engineer under the authority of this regulation. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Resource Manager's office.

(c) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resource development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR Parts 320–330).

(d) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind in waters of water resource development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under Section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR Parts 320–330). Certification may be required pursuant to section 401 of the Clean Water Act (33 U.S.C. 1341).

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs or landscape features) of any kind under, upon, in or over the project lands or waters is prohibited unless a permit, lease, license or other appropriate written agreement has been issued by the District Engineer. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license or other written agreement is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Engineer.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Engineer. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Engineer has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require rembval of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this Part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining same as a full- or part-time residence without the written permission of the District Engineer is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpsose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Engineer.

§ 327.23 Recreation use fees.

(a) In accordance with 16 USC 4601, the Corps of Engineers is required to collect special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) All use fees shall be fair and equitable and will be based on the following criteria (as contained in the Land and Water Conservation Fund Act of 1965, Pub. L. 88–578, as amended):

(1) The direct and indirect amount of Federal expenditure.

(2) The benefit to the recipient.

(3) The public policy or interest served.

(4) The comparable recreation fees charged by other Federal and non-Federal public agencies and the private sector within the service area of the management unit at which the fee is charged.

(5) The economic and administrative feasibility of fee collection.

(6) The extent of regular maintenance required.

(7) Other pertinent factors.

Based upon the above criteria, it shall be the policy of the Chief of Engineers to publish in the **Federal Register**, as a general notice document, the established range of fees for specialized sites, facilities, equipment or services whenever such fees are adjusted.

(c) Where such fees are charged, the District Engineer shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 U.S.C. 4601-6a), is prohibited and is punishable by a fine of not more than $100.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utlilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas.

(e) At each Corps lake or reservoir where camping is permitted, the District Engineer will provide at least one primitive campground, containing designated campsites, sanitary facilities and vehicular access, where no fees will be charged.

§ 327.24 Interference with government employees.

(a) It is a Federal crime pursuant to the provisions of sections 1114 and 111 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with any civilian official or employee of the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other identification upon request of the Federal employee, when that employee is authorized by the District Engineer to issue citations in the performance of the employees official duties.

§ 327.25 Violation of rules and regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than $500 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Engineer shall have the authority to issue a citation for violation of these regulations, requiring the

appearance of any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located. (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 1114 or section 111 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided in Federal or state law, as the case may be.

§ 327.26 State and local laws.

Except as otherwise provided herein or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

(a) Operation and use of motor vehicles, vessels, and aircraft;

(b) Hunting, fishing and trapping;

(c) Use of firearms or other weapons;

(d) Civil disobedience and criminal acts; and,

(e) Littering, sanitation and pollution.

These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

Dated: August 21, 1985.

Approved:

Paul W. Taylor

Colonel, Corps of Engineers Executive Director, Engineer Staff (Chief of Staff).

[FR Doc. 85-20946 Filed 8-30-85; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA Docket No. 107-VA-6; A-3-FRC-2889-8]

Air Quality Planning Purposes; Approval of Section 107 Designation for the Commonwealth of Virginia With Respect to Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces EPA's approval of an air quality designation change for Fairfax County in Virginia, from "Does not meet primary standards" to "Cannot be classified or better than national standards," for the primary and secondary National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). This revision is based on eight consecutive calendar quarters of air quality data submitted by Virginia demonstrating attainment. EPA is approving this redesignation request because it meets the necessary requirements of section 107 of the Clean Air Act and conforms to current EPA policy.

EFFECTIVE DATE: October 3, 1985.

ADDRESSES: Copies of the revision and accompanying documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM11)

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: James Watson

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, 215/597-1325, or Cynthia H. Stahl, 215/597-9337, at the EPA Region III address above. The commercial and FTS phone numbers are the same.

SUPPLEMENTARY INFORMATION: On November 20, 1984, the Commonwealth of Virginia State Air Pollution Control Board submitted a request to redesignate three municipalities in the Northern Virginia portion of the National Capital Interstate AQCR as attainment areas for carbon monoxide (CO) under section 107 of the Clean Air Act. These municipalities are Alexandria City, Arlington County, and Fairfax County. However, recent data shows violations of the 8-hour CO standard in Alexandria City and Arlington County. Therefore, on March 18, 1985, Virginia requested that EPA only consider Fairfax County for redesignation. EPA proposed approval of the Fairfax County redesignation on April 17, 1985 (50 FR 15187). No comments were received by EPA.

This redesignation changes the carbon monoxide classification from "Does not meet primary standards" to "Cannot be classified or better than national standards" under 40 CFR 81.347 for Fairfax County. All other air quality designations for carbon monoxide remain unchanged.

There are four monitoring stations in Fairfax County: Two inside the Beltway and two outside the Beltway. The air quality data from January 1980 through December 1984 submitted by the Commonwealth show that none of the monitoring stations in this county recorded violations of the National Ambient Air Quality Standards (NAAQS) for CO. EPA has examined the air quality data collected from the monitoring sites on which this redesignation request is based and has determined that the data were collected in accordance with all EPA requirements. Accordingly, EPA is approving the Commonwealth's request for redesignation of Fairfax County with respect to CO. EPA has approved the CO contol strategy applicable to Fairfax County as part of the federally enforceable Virgina SIP. See 49 FR 3083 (1984). However, because this same control strategy is also designed to provide for attainment of the NAAQS for ozone, and because Fairfax County remains a nonattainment area for ozone, this redesignation does not change any current requirements of Virginia's approved SIP.

On April 17, 1985, EPA published a proposed rulemaking notice (50 FR 15187) in which the Agency proposed approving the redesignation. EPA did not receive any comments regarding the proposed redesignation for Fairfax County as a result of the **Federal Register** Notice.

Conclusion

The Administrator's decision to approve this section 107 redesignation for Fairfax County is based on a determination that it meets the requirements of section 107 of the Clean Air Act and current EPA policy pertaining to redesignation requests.

Procedural Information

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within the 60 days following September 3, 1985. Under section 307(b)(2) of the Act, the requirements which are the subject of today's Notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, Intergovernmental relations.

Dated: August 23, 1985.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.347 the entry for Fairfax County in the attainment status designation table for carbon monoxide is revised to read as follows:

§ 81.347 Virginia.

VIRGINIA–CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Fairfax County—Areas of high traffic density.		X.

[FR Doc. 85–20822 Filed 8–30–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–717; RM–4711]

FM Broadcast Station in Linden, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 296A to Linden, Alabama, as that community's second local FM broadcast service, in response to a petition filed by Larry G. Fuss, Sr.

EFFECTIVE DATE: October 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Linden, Alabama); MM Docket No. 84–717, RM–4711.

Adopted: August 13, 1985.
Released: August 28, 1985.
By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 49 FR 30757, published August 1, 1984, issued in response to a petition filed by Larry G. Fuss, Sr. ("petitioner") proposing the allotment of Channel 296A to Linden, Alabama as that community's second local FM broadcast service. Supporting comments were filed by petitioner in which he reiterated his intention to apply for the channel.

2. We believe the public interest would be served by allotting Channel 296A to Linden, Alabama, since it could provide a second local FM service to the community for the expression of diverse viewpoints and programming.

3. As indicated in the *Notice*, Channel 296A can be allotted to Linden in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is located approximately 8 kilometers (5 miles) southwest of the community to avoid short spacing to FM Station WKXX (Channel 295), Birmingham, Alabama.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective October 4, 1985, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Linden, Alabama	275A, 296A

5. The filing window period for filing applications on channel 296A will open on October 7, 1985 and close on November 4, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20883 Filed 8–30–85; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 347 (Sub-1)]

Coal Rate Guidelines, Nationwide

AGENCY: Interstate Commerce Commission.

ACTION: Statement of General Policy.

SUMMARY: The Interstate Commerce Commission has announced the policies by which it will be guided in determining the reasonableness of rail captive coal rates investigated under 49 U.S.C. 10707 or challenged under 49 U.S.C. 10701a. A captive coal shipper should not be required to pay more than is necessary for the rail carrier(s) involved to earn adequate revenues. Nor should it pay more than is necessary for efficient service. A captive coal shipper should not bear the costs of any facilities or services from which it derives no benefit. Responsibility for payment for facilities or services which are shared (to its benefit) by other shippers should be apportioned according to the demand elasticities of the various shippers. Thus railroads would be given incentives to ensure that competitive traffic contributes as much as possible toward these costs. Finally, changes in coal rates should not be so precipitous as to cause severe economic dislocations. The Commission refers to these policies as "Constrained Market Pricing."

EFFECTIVE DATE: The policy statement will be effective on October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Leslie J. Selzer (202) 275–7627.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write TS Info System, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10701a, 10704, 10707, and 11701.

Decided: August 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor commented with a separate expression. Commissioner Simmons commented with a separate expression. Commissioner Lamboley concurred with a

separate expression. Commissioner Strenio concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-20963 Filed 8-30-85; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1085

ICC Field Office Locations; Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendments to final rules.

SUMMARY: Part 1085 of Title 49 contains a list of ICC Field Office locations and telephone numbers that has become out of date since its publication in 1974. The purpose of this notice is to update that list.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Fristoe, (202) 275-7844.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1085

Freight forwarders; Moving of household goods.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1085—[AMENDED]

1. The authority citation for 49 CFR Part 1085 continues to read as follows:

Authority: 49 U.S.C. 1010.

§ 1085.1 [Amended]

2. The list now entitled "Interstate Commerce Commission Field Office Locations and Telephone Numbers" that follows § 1085.1 is revised to read as follows:

INTERSTATE COMMERCE COMMISSION CONTACT OFFICES

Address and telephone number	States served
Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114, (617) 223-2372.	CT, ME, MA, NH, NJ, NY, RI, VT.
Interstate Commerce Commission, Gateway Building, 3535 Market Street, Room 16400, Philadelphia, PA 19104, (215) 596-4040.	DE, DC, MD, OH, PA, VA, WV.
Interstate Commerce Commission, 1776 Peachtree Street, NW., Room 300, Atlanta, GA 30309, (404) 881-2167.	AL, FL, GA, KY, MS, NC, SC, TN.
Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn St., Room 1304, Chicago, IL 60604, (312) 353-6204.	IL, IN, MI, MN, ND, SD, WI.
Interstate Commerce Commission, 411 West Seventh Street, Suite 500, Forth Worth, TX 76102, (817) 334-3961.	AR, IA, KS, LA, MO, NE, OK, TX.
Interstate Commerce Commission, 211 Main Street, Suite 500, San Francisco, CA 94105, (415) 974-7125.	AK, AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY.

James H. Bayne,

Secretary.

[FR Doc. 85-20961 Filed 8-30-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Twenty National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting and/or Sport Fishing

Correction

In FR Doc. 85-20271 beginning on page 34478 in the issue of Monday, August 26, 1985, make the following correction:

On page 34481, first column, third complete paragraph, first line, "Fewer" should have read "Few".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 50581-5127]

Atlantic Swordfish Fishery

Correction

In FR Doc. 85-20142 beginning on page 33952 in the issue of Thursday, August 22, 1985, make the following corrections:

§ 630.2 [Corrected]

On page 33957, second column, in § 630.2, in the definition for *"Western North Atlantic swordfish stock"*, make the following corrections in the ninth through twelfth lines: "5' 00 N."; should read "5° 00' N."; "40' 00' W." should read "40° 00' W."; "36' 00 N." should read "36° 00' N."; "42' 00' W." should read "42° 00' W."; "59' 00' N." should read "59° 00' N."; "44' 00' W." should read "44° 00' W."

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 50, No. 170
Tuesday, September 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

Specialty Crops; Import Regulations; Reopening of the Time for Receipt of Written Comments on Proposed Changes in Raisin Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of reopening the time period for filing written comments on a proposal to change grade requirements for imported Thompson Seedless and Monukka raisins, and to include grade requirements for Golden Seedless raisins in the import regulations. The reopening of the comment period will give interested persons additional time to analyze and submit written comments on the proposal.

DATES: The additional time for comments ends September 27, 1985.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed changes during the extended period. Comments should be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of the issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: Pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) a notice of proposed rulemaking was published in the July 15, 1985, issue of the **Federal Register** (50 FR 28585), regarding changes in the import regulations for Specialty Crops (7 CFR Part 999). The proposal pertains to grade requirements for imported Thompson Seedless and Monukka raisins, and includes grade requirements for Golden Seedles raisins in the import regulation. The raisin import regulation (7 CFR 999.300) is effective pursuant to the requirements of section 8e of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674). That section requires the Secretary of Agriculture to issue, after reasonable notice, grade requirements on imported raisins which are the same as, or comparable to, those applied to domestic raisins under the marketing agreement and Order No. 989, both as amended (50 FR 1830). The marketing agreement and order regulate the handling of raisins produced from grapes grown in California and are also effective under the same act.

The Association of Food Industries has requested that the comment period be reopened because it had insufficient time after it received notice of the proposals to analyze and submit written comments on them. Therefore, the period for receipt of written data, views, or arguments is reopened. Written comments must be received by September 27, 1985.

List of Subjects in 7 CFR Part 999

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, and Filberts/Hazelnuts.

1. The authority citation for 7 CFR Part 999 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 28, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–20908 Filed 8–30–85; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 85–021]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle because of tuberculosis. It is proposed to raise the designation of Arizona, Delaware, Indiana, Kansas, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, and the Virgin Islands of the United States from modified accredited areas to accredited-free States. It has been determined that these jurisdictions meet the criteria for designation as accredited-free States. It also proposed to lower the designation of North Carolina from an accredited-free State to a modified accredited area. It has been determined that North Carolina no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited area.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATE: Written comments must be received on or before November 4, 1985.

ADDRESSES: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85–021. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of

cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Sections 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of cattle not known to be affected with or exposed to tuberculosis:

Section 77.7 Movement from accredited-free States and modified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

Section 77.8 Movement from nonmodified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

Arizona, Delaware, Indiana, Kansas, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, and the Virgin Islands of the United States, among other States, are designated under § 77.5 of the regulations as modified accredited areas. The Deputy Administrator has determined that these jurisdictions meet the criteria for designation as accredited-free States. Therefore, it is proposed to amend the regulations by adding these jurisdictions to the list of accredited-free States in § 77.4.

Also, North Carolina is included in the list of jurisdictions designated in § 77.4 of the regulations as accredited-free States. The Deputy Administrator has determined that North Carolina no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as a modified accredited area. Therefore, it is proposed to amend the regulations to designate North Carolina as a modified accredited area.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this proposed rule if adopted, would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use a breeding stock, or for feeding. It has been determined that the adoption of the proposed rule would not cause a significant effect on marketing patterns and would not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 wich requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 77

Animal Diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, it is proposed to amend 9 CFR Part 77 as follows:

1. The authority citation for Part 77 would be revised to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) would be revised to read as follows:

§ 77.4 Accredited-free States.

* * * * *

(b) The following States are hereby designated accredited-free States: Arizona, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming, and the Virgin Islands of the United States.

Done at Washington, D.C., this 27th day of August 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-20948 Filed 8-30-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9177]

Columbia Enterprises, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

agreement, accepted subject to final Commission approval, would require a Tulsa, Okla., producer and distributor of carbon black, a component in the manufacture of natural and synthetic rubber, among other things, to obtain Federal Trade Commission approval before acquiring substantial assets or stock in its competitors' production facilities. Such approval would be needed if the total acquisitions over a five year period would increase the respondent's yearly carbon black production capacity by 130 million pounds or more.

DATE: Comments must be received on or before November 4, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L-502, Edward F. Glynn, Jr., Washington, D.C. 20580. (202) 634-6608.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Rubber carbon black, Trade practices.

United States of America Before Federal Trade Commission

In the Matter of Columbian Enterprises, Inc. et al.

[Docket No. 9177]

Agreement Containing Consent Order

The agreement herein, by and between the corporation Columbian Enterprises, Inc. by its duly authorized officer, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondent Columbian Enterprises, Inc. is a corporation organized and existing under the laws of the State of New York with its corporate headquarters at 425 Park Avenue, New York, New York 10002.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission (the "Commission") charging it with violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect any may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this order the following definitions shall apply:

"Rubber carbon black" means furnace-process and thermal-process carbon black used for the manufacture of rubber.

"Columbian" means Columbian Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"Rubber carbon black production capacity" means the practical annual productive capacity in the United States of rubber carbon black of any production units, including both units currently in operation and existing units that could be put into operation with or without time delay or additional investment. The term shall not include units dedicated to the manufacture of carbon black for industrial end uses. The term shall include reactor vessels, including associated nozzles and reaction chambers, and associated baghouses and dryers, but shall not include other equipment.

I

It Is Ordered, That for a period of five (5) years from either (a) the date this Order becomes final or (b) February 15, 1985, whichever is earlier, Columbian shall not acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States rubber carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of

business, if as a result of such acquisition Columbian would cumulatively increase its United States rubber carbon black production capacity by more than 130 million pounds.

II

It is further ordered, That while Paragraph I of this Order is effective, Columbian shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this order.

III

It is further ordered, that (a) if the Commission dismisses its complaint in *Bass Brothers Enterprises, Inc., et al.*, Docket No. 9178, with respect to Respondents Bass Brothers Enterprises, Inc. or Sid Richardson Carbon & Gasoline Co., (hereinafter collectively "Richardson") then this order shall, upon application of Respondent, be dismissed, unless the Commission determines that the grounds for the dismissal of Richardson are a material change in the market for rubber carbon black or in the competitive significance of Richardson in that market, and the Commission finds that said grounds are not applicable to Columbian; (b) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that does not require prior Commission approval of future acquisitions by Richardson or requires prior Commission approval for a period shorter than that set forth in Paragraph I above, then this Order shall, upon application of Respondent, be modified to impose only such lesser restriction on Respondent herein; and (c) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that permits without prior Commission approval acquisitions that would cumulatively increase Richardson's United States rubber carbon black capacity by more than 130 million pounds (including any permitted acquisition of capacity by Richardson from Ashland,) then this Order shall, upon application of Respondent, be modified to permit Respondent herein to acquire United States rubber black production capacity in the same amount.

IV

It is further ordered, that if Columbian shall make an acquisition of United States rubber carbon black production capacity permitted under this Order while Paragraph I of this Order is effective, it shall file with the Commission a written report describing such acquisition.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Columbian Enterprises, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint, which was issued May 8, 1984, challenges, as violations of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the proposed acquisition by Columbian Enterprises, Inc. ("Columbian") of the voting securities of Continental Carbon Company ("Concarb"), a wholly owned subsidiary of Conoco, Inc. (Concarb is now a wholly owned subsidiary of Witco Chemical Corp.) The complaint alleges that both Columbian and Concarb are substantial competitors in the United States carbon black market; that the United States carbon black market is highly concentrated, and that barriers to entry into the production and distribution of carbon black are substantial. The complaint alleges that the effects of the proposed acquisition would be to eliminate substantial actual competition between Columbian and Concarb, and eliminate Concarb as a substantial competitor in the carbon black market; to substantially increase concentration in an already highly concentrated market and encourage additional mergers or acquisitions in that market, thus increasing the likelihood of collusions; to tend to reduce the degree of price competition and to reduce the volume of production below competitive levels; and to tend to reduce the actual competition among other companies engaged in the production and distribution of carbon black. The complaint charges that the proposed acquisition constitutes a violation of section 5 of the Federal Trade Commission Act, and if consumated, would constitute a violation of Section 7 of the Clayton Act.

The proposed order requires Columbian to obtain prior Commission approval for a period of five years for acquisition of securities or assets of a competitor in the United States rubber carbon black business. The order does not cover acquisitions in the "industrial," non-rubber carbon black business. In addition, no prior approval is required if the cumulative total capacity added through acquisitions is less than 130 million annual pounds. Columbian is required to notify the Commission of any rubber carbon black acquisitions for which prior approval is not required.

The order provides that, upon application by Columbian, its terms may be modified in certain circumstances, depending on the Commission's action in the still-pending complaint against another acquisition in the carbon black industry, *Bass Brothers Enterprises, Inc.*, Docket No. 9178. If the *Bass Brothers* complaint is dismissed, then the Columbian order will also be dismissed, unless the Commission determines that the grounds for dismissal in *Bass Brothers* are a material change in the market for rubber carbon black or the competitive significance of Bass Brothers in that market, and the Commiission finds that those grounds are not applicable to Columbian. Further, if the Commission issues an order in *Bass Brothers* that does not require prior Commission approval of future acquisitions, or requires approval for a period shorter than five years, then the Columbian order will be modified to impoose the lesser restriction. Finally, if the Commission issues an order in *Bass Brothers* that permits, without prior approval, acquisitions cumulatively greater than 130 million pounds of capacity, then the Columbian order will be modified to conform to the higher threshold.

The agreement is for purposes of settlement only; it does not constitute an admission by Columbian that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-20944 filed 8-30-85; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 295

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes rules implementing section 419 of the Railroad Retirement Solvency Act of 1983, which amended section 14 of the Railroad Retirement Act to provide that, with respect to annuity amounts payable for months beginning with September, 1983, the Board must comply with a court decree of divorce, annulment or legal separation, or with the terms of any court-approved property settlement incident to any such decree, which characterizes specified benefits as property subject to distribution. The proposed regulations add a new Part 295 to Chapter II of the Board's regulations promulgated under the Railroad Retirement Act.

DATE: Comments must be received on or before October 3, 1985.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Karl Blank, General Attorney, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4941 (FTS 387–4941).

SUPPLEMENTARY INFORMATION: Retirement and survivor annuities under the Railroad Retirement Act are composed of independently calculated segments known as tiers. The tier I amount combines both railroad and non-railroad earnings, and is calculated using social security benefit formulas. The tier II amount is calculated under different formulas, generally representing railroad earnings alone. In addition, certain annuitants receive a dual benefit component based on non-railroad wages earned through December 1974, or in some cases through an earlier date. Finally, career railroad employees may receive a supplemental annuity ranging from $23 to $43 per month.

In 1979, the United States Supreme Court held that section 14 of the Railroad Retirement Act, which generally provided that no benefit under the Act may be assigned or subjected to other legal process, prohibited a court from awarding one spouse a community interest in any benefits, whether present or expected in the future, to which the other spouse may become entitled under the Railroad Retirement Act. *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572.

Section 419 of Pub. L. 98–76 (97 Stat. 411), enacted on August 12, 1983, amends section 14 of the Act by adding new section 14(b)(2), which provides that non-tier I annuity components are subject to property divisions set forth in state court divorce decrees and court-approved property settlements, effective with respect to benefits payable for months beginning in September 1983. Pursuant to section 14(b)(2), the Board will now honor a final decree of divorce, annulment or legal separation which is issued in accordance with the laws of the jurisdiction of that court and which provides for the division of benefits under the Act, to the extent that (1) the decree is intended to obligate the Board to make direct payments to the spouse or former spouse, and (2) the employee is entitled to an annuity or annuity component which is subject to division under that section (*i.e.*, a tier II, dual benefit, or supplemental annuity). Similarly, the Board will honor a court-approved property settlement incident to such a decree. As the amendment to section 14 of the Act specifically exempts the tier I annuity component from division, *Hisquierdo* remains applicable to this component.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 295

Railroad employees, Railroad retirement.

Title 20 CFR Chapter II is revised as follows:

1. Title 20 CFR, Chapter II is proposed to be amended by adding a new Part 295, reading as follows:

PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED PROPERTY SETTLEMENT

Sec.

295.1 Introduction.
295.2 Definitions.
295.3 Documentation and service.
295.4 Review of documentation.
295.5 Limitations.
295.6 Disclosure of information.
295.7 Miscellaneous.

Authority: 45 U.S.C. 231f; 45 U.S.C. 231m.

§ 295.1 Introduction.

(a) *Purpose.* This part implements section 419 of Pub. L. 98–76 (97 Stat. 438), which amended section 14 of the Railroad Retirement Act to provide that, with respect to annuity amounts payable for months beginning with September 1983, the Board must comply with a court decree of divorce, annulment or legal separation, or with the terms of any court-approved property settlement incident to any such decree, which characterizes specified benefits as property subject to distribution. Garnishment of benefits for alimony or child support is dealt with in Part 350 of this chapter.

(b) *Benefits subject to this part.* Only the following benefits or portions of benefits under the Railroad Retirement Act are subject to this part:

(1) Employee annuity net tier II benefit component as provided under section 3(b) of the Railroad Retirement Act;

(2) Employee annuity vested dual benefit component as provided under section 3(h) of the Act;

(3) Employee annuity net proportionate share of the annuity increases as provided under section 3(f) of the Act; and

(4) Supplemental annuities as provided under section 2(b) of the Act.

§ 295.2 Definitions.

As used in this part—

Act means the Railroad Retirement Act.

Court means any court of competent jurisdiction of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Island; or any court of the United States (as defined in section 451 of title 28 of the United States Code) having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

Court Decree means a final decree of divorce, dissolution, annulment, or legal separation issued by a court (including a final decree or order modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation), which is issued in accordance with the laws of the jurisdiction of that court and which provides for the division of property.

Division of Property means any transfer of property or its value by an individual to his or her spouse or formers spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses, which is intended as a present and complete settlement of the property rights of the parties.

Employee means an individual who is or was formerly an employee as defined by Part 203 of this chapter.

Final Decree means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

Property Settlement means an agreement between the parties to a suit for divorce, dissolution, annulment or legal separation in which they expressly agree to a division of their property rights, and which is incorporated in the final decree; is filed with the court in connection with a suit for divorce, dissolution, annulment or legal separation; or is otherwise present to the court in such a suit in accordance with the law of the jurisdiction. An agreement assigning or transferring property between spouses is not within the purview of this part unless it is subsequently approved by a court in connection with a suit for divorce, dissolution, annulment or legal separation.

Spouse of Former Spouse means the husband or wife, or former husband or wife, respectively, of an employee who, on or before the date of a court order, was married to the employee.

§ 295.3 Documentation and service.

(a) *Court decree or property settlement.* The Board will honor a court decree or a property settlement which meets the following criteria:

(1) The court decree or property settlement must provide that the spouse or former spouse is award payments from railroad retirement annuities payable to the railroad employee.

(2) The court decree or property settlement must specify an amount to be paid to the spouse or former spouse.

(3) The court decree or property settlement must obligate the Board to make payments directly to the spouse or former spouse.

(4) The court decree or property settlement must clearly identify both the employee and the spouse or former spouse to whom payments are to be made.

(5) The court decree or property settlement submitted to the Board must be a recently certified copy of the document filed with the court. Where the award is made in an order modifying an earlier court decree, copies of both the original decree and the subsequent order must be furnished. In the case of a court-approved property settlement, both the settlement and any decree or order incorporating or approving the settlement must be provided.

(b) *Date of decree.* While only benefits payable for months after August, 1983 are subject to this part, the date the decree is entered or the property settlement is approved may precede September 1, 1983. A subsequent modification of a decree which was entered or property settlement which was approved prior to September 1, 1983 must be in accord with the law of the jurisdiction in which the original decree was entered or the property settlement was approved.

(c) *Supporting documentation.* The spouse or former spouse shall submit such additional documentation as the Board shall require, including but not limited to:

(1) Identifying information concerning the employee such as social security number, railroad retirement claim number, full name, date of birth, and current address.

(2) Identifying information concerning the spouse or former spouse such as social security number, full name, and current address.

(3) A statement that—

(i) No condition of the law of the jurisdiction in which the decree was entered or the property settlement approved and no condition contained in the decree or agreement which requires termination of payment has occurred;

(ii) If any such condition does occur, the spouse or former spouse will immediately notify the Board; and

(iii) The spouse or former spouse agrees to repay any erroneous payment arising from occurrence of any such condition.

(d) *Delivery.* Any court decree or property settlement must be delivered by certified or registered mail, return receipt requested, or by personal service, to the Deputy General Counsel of the Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Where the decree or property settlement is delivered to any other office of the Board, it shall not be considered delivered until the date it is received by the Deputy General Counsel. Where the decree or property settlement was furnished to any office of the Board prior to September 1, 1983, delivery is not accomplished until a copy is received by the Deputy General Counsel subsequent to August 30, 1983.

(Approved by the Office of Management and Budget under Control No. 3220–0042.)

§ 295.4 Review of documentation.

(a) *Regularity.* The Deputy General Counsel or his or her designee shall review the court decree or property settlement to determine that it complies with both the law of the jurisdiction, and with Federal law and these regulations.

(b) *Amount.* Ambiguities in the amount to be paid the spouse or former spouse shall be resolved in accord with expressed indications of the court's intent, except that:

(1) Where the amount is expressed in terms of a dollar figure:

(i) If the figure exceeds the total benefits which may be allocated under this part, the excess will be disregarded, provided that any future increase in the benefits subject to this part will be prospectively applied to the excess effective with the date of the benefits increase.

(ii) If the figure is less than the total benefits which may be allocated under this part, only the amount specified will be paid.

(2) Where the amount is expressed as a fraction, percentage, or ratio:

(i) The amount specified shall be applied only against benefits subject to this part, irrespective of the wording of the decree or property settlement.

(ii) When the amount is expressed in terms of a fraction or ratio referring to the length of railroad service, years shall be converted into the equivalent months. If the length of railroad service specified in the decree or property settlement exceeds the number of creditable service months used by the Board to determine the employee's years of service for calculating an annuity, the actual number used by the Board shall be substituted. If the decree understates the actual number of creditable railroad service months, the number of years or months set forth in the decree or property settlement will be used.

(3) An amount may be expressed in any other fashion only to the extent to which it may be readily ascertained from records maintained by the Board in the regular course of administration of the Act.

(c) *Notification.* The Deputy General Counsel or his or her designee shall make reasonable effort to notify the spouse or former spouse and the employee of a determination that the decree or property settlement does or does not qualify as a decree or property settlement which will be honored pursuant to this part. This notice will be mailed to the most recent address of each party or representative of each party as shown in the Board's records. A copy of the decree or property settlement will be provided to the employee with this notice. The notice must state:

(1) The rationale for a determination that the decree or property settlement does not comply with this part; or

(2) The dollar amount or proportion of benefits which will be paid to the spouse or former spouse.

(d) *Withholding after notification.* (1) Where the Deputy General Counsel or his or her designee has notified the spouse or former spouse that a decree or property settlement will be honored under this part, but where the employee is not then entitled to any benefits subject to division under this part, the Associate Executive Director for Retirement Claims will notate the Board's records to reflect both the amount of benefits awarded to the spouse or former spouse pursuant to the decree or property settlement and his or her current address. Where the employee is currently entitled to benefits subject to this part, and the spouse or former spouse has furnished all additional documentation required, the Associate Executive Director for Retirement Claims will take action to withhold from the employee's monthly benefit the amount stated in the Deputy General Counsel's notice under paragraph (c) of this section that the Board will honor the decree or property settlement.

(2) Where the employee was not entitled to benefits subject to this part at the time of the notice by the Deputy General Counsel that the Board will honor the decree or property settlement, but the employee becomes so entitled at a later time, the Board will attempt to contact the spouse or former spouse at the most recent address shown in the Board's records. The notice will inform the spouse or former spouse that an annuity has been awarded, that the spouse or former spouse may, upon submission of all required documentation, receive a portion of the annuity, and that the spouse or former spouse should contact the Board within three months from the date of the notice. The Associate Executive Director for Retirement Claims will initiate withholding of the amount awarded to the spouse or former spouse from the employee's monthly benefit, and will continue to withhold this amount for three successive months; provided, that an initial annuity payment for a retroactive period shall count as one monthly benefit payment. If after the third month's payment has been withheld the Board has received no response from the spouse or former spouse, the amount withheld from the employee's benefit shall be paid to the employee, and the Board shall take no further action regarding the decree until the spouse or former spouse contacts the Board.

(3) Benefits withheld from the employee may not be paid to a spouse or former spouse until the spouse or former spouse has furnished all supporting documentation required pursuant to § 295.3 above. The Board shall allow a reasonable time, not to exceed three months from the date of the initial response from the spouse or former spouse, for the submission of all required documentation. If the documentation is not furnished within the time allowed, payment of the amounts withheld shall be made to the employee.

(4) Any payments made to the employee subsequent to the three-month notice period specified in paragraphs (d)(2) and (d)(3) above, and prior to receipt of a response or required documentation from the spouse or former spouse, shall be considered properly paid to the employee and the Board shall have no further liability to the spouse or former spouse with respect to such amounts.

§ 295.5 Limitations.

(a) *Employee benefit entitlement.* Payments will be made to a spouse or former spouse under this part only if the employee has been awarded an annuity under the Railroad Retirement Act. Payments to a spouse or former spouse shall be made only for months and from such amounts with respect to which an annuity is payable to the employee, and shall be suspended or terminated for any month in which the annuity of the employee is suspended or terminated. No arrearage accrues to the spouse or former spouse with respect to any month for which the annuity of the employee is suspended or reduced as required under the Act.

(b) *Minimum amount.* The amount of payment to a spouse or former spouse may not be less than one dollar per month.

(c) *Prospective payment.* Payment to a spouse or former spouse may accrue no earlier than the later of the date of delivery, pursuant to § 295.3 of this part, of a court decree or property settlement which will be honored under this part, or from October 1, 1983. The amount to be paid the spouse or former spouse under this part will not be increased to satisfy an arrearage due from the employee.

(d) *Payees.* Payment of an amount awarded to a spouse or former spouse by a court decree or property settlement will be made only to the spouse or former spouse except where the Board determines that another person shall be recognized to act in behalf of the spouse or former spouse as provided by Part 266 or this chapter, relating to incompetence. Payment will not be made to the heirs, legatees, creditors or assignees of a spouse or former spouse, except that where an amount is payable to a spouse or former spouse pursuant to this part, but is unpaid at the death of that spouse or former spouse, the unpaid amount may be paid in accordance with § 234.1 of this chapter, pertaining to employee annuities unpaid at death.

(e) *Net amount of benefits.* Notwithstanding the terms of the decree or property settlement, the amount of benefits payable to the employee which are subject to this part shall not include:

(1) Amounts deducted to satisfy a debt due the United States, including any amount withheld to recover erroneous payments under the Railroad Retirement Act, Railroad Unemployment Insurance Act, or any other acts administered by the Board, and the amount of any Medicare Part B premium; and

(2) Benefits which are waived pursuant to § 262.6 of this chapter.

(f) *Termination.* Payments to a spouse or former spouse terminate on the earlier of—

(1) The date on which the employee annuity terminates;

(2) The date required by the court decree or property settlement or the law of the jurisdiction in which the court decree or property settlement was entered; or

(3) The last day of the month before the month in which the spouse or former spouse dies.

(g) *Priority.* In the event that the Deputy General Counsel receives more than one decree or property settlement from competing parties, benefits shall be available to satisfy the decrees or property settlements on a first come, first served basis governed by the date of receipt by the Deputy General Counsel. Conflicting decrees or property settlements received on the same day shall be accorded priority based upon the earliest date upon which the decree or property settlement became final.

§ 295.6 Disclosure of information.

(a) *Immunity from process.* The provision for the payment of benefits under this part pursuant to a court decree or property settlement shall not be construed to be a waiver of the

sovereign immunity of the Railroad Retirement Board as an agency of the United States Government. The Board may not be joined in a suit for divorce, dissolution, annulment or legal separation, or otherwise subjected to the jurisdiction of any state court. Subpoenas, notices of joinder, interrogatories, orders for production of documents, and like state process issued in connection with a suit for divorce, dissolution, annulment or legal separation will be treated as requests for disclosure of information under this section.

(b) *Request for information.* A response to request for information to be used in connection with a suit for divorce, dissolution, annulment or legal separation may be made by the Deputy General Counsel or his or her designee, by the Associate Executive Director for Retirement Claims, or by a contact representative of the Board's field service.

(c) *Information available.* In the absence of signed authorization from the employee, a spouse or former spouse who is a party to a suit for divorce, dissolution, annulment or legal separation, or his or her legal representative, may be furnished the amount of benefits the employee is currently receiving. If the employee is not currently entitled to benefits, the Board may furnish the amount of any estimated benefit to which the employee would be entitled if he or she were of retirement age at the time of the request, as reflected by the records of the Board, to the extent it is possible for the Board to compute such amount. The Board shall not be required to furnish the present value of future benefits, the amount of benefits payable at a future date, or any other computations based on statistics or procedures not maintained by the Board in the normal course of administration of the Act.

(d) *Certification.* A letter or statement prepared by a Board official in the regular course of duty from the official records of the Board, which refers to the authority of this section and bears his or her signature, shall be a sufficient response for purposes of discharging the repsonsibilities of the Board under this section. A certification in accordance with this section may be considered a public document for purposes of admissibility as evidence of present or potential benefits under the Act for use in a divorce, dissolution, annulment or legal separation proceeding.

§ 295.7 Miscellaneous.

(a) *Disbursement cycle.* In honoring and complying with a court decree or property settlement, the Board shall not be required to disrupt its normal disbursement cycle, despite any special schedule of accrual or payment of amounts due the spouse or former spouse set forth in the decree or settlement. A decree or settlement received too late to be honored during the disbursement cycle in which it was received shall be honored with respect to the next payment due the employee.

(b) *Liability for payments.* Neither the Board nor any of its employees shall be liable with respect to any payment made to any individual from moneys due from or payable by the Board pursuant to a court decree or property settlement regular on its face, if such payment is made in accordance with this part.

(c) *Liability for disclosures.* No employee of the Board whose duties include responding to requirements contained in this part shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by such employee in connection with the performance of the employee's duties in making such response.

(d) *Applicable law.* For purposes of a proceeding under this part, the Board will apply the law of the jurisdiction in which the court decree or property settlement was issued unless it comes to the attention of the Board that the state of issuance has no contact with the plaintiff or defendant in the action; in which case, the Board may, in its sole discretion, apply the law of any jurisdiction with significant interest in the matter.

(e) *Erroneous payments.* If a spouse or former spouse receives a payment pursuant to this part from an employee's benefit, and the Board later determines that the employee was not entitled to all or part of those benefits for any month, the amount of the employee's benefits which was paid to the spouse or former spouse in excess of the amount which was actually payable shall be an erroneous payment to the spouse or former spouse within the meaning of section 10 of the Railroad Retirement Act.

Dated: August 23, 1985.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-20947 Filed 8-30-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N-0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to amend its regulations to recognize that a substance that was being used in food prior to 1958 can be shwon to be generally recognized as safe (GRAS) through experience based on its common use in food outside, as well as in, the United States. The agency received a request to extend the comment period, and FDA is granting a 60-day extension.

DATE: Comments by November 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFR-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 2, 1985 (50 FR 27294), FDA issued a proposed rule that would amend its regulations to recognize that a substance that was used in food prior to 1958 can be shown to be GRAS through experience based on its common use in food outside, as well as in, the United States. FDA proposed this amendment in response to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for general recognition of safety to experience in the United States. FDA also proposed to delineate the showing that must be made to establish that a substance is FRAS on the basis of its foreign use.

A trade association requested a 60-day extension of the comment period because it needed additional time to obtain views and information from its foreign affiliates on the proposed requirements. The agency believes that extending the comment period an additional 60 days will provide

sufficient time for interested persons to prepare comments on this proposed rule.

Interested persons may, on or before November 4, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 27, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20937 Filed 8-30-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-114-85]

Information Reporting for Mortgage Credit Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations that relate to mortgage credit certificates. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations affect all holders and issuers of mortgage credit certificates. In addition, in the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to mortgage credit certificates. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 4, 1985. These regulations are proposed to be effective with respect to mortgage credit certificates issued after September 30, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-114-85), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend § 1.25-4T of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title 26 of the Code of Fedeal Regulations. For the text of the Temporary Regulations, see FR Doc. 85-20969 (T.D. 8048) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

On May 8, 1985, temporary and proposed regulations with respect to mortgage credit certificates were published in the **Federal Register** (50 FR 19344; 50 FR 19383). Those regulations reserved § 1.25-4T (e), relating to the information reporting requirement, and § 1.25-4T (f), relating to the policy statement requirment. The Service received numerous written comments responding to a notice of proposed rulemaking published in the **Federal Register** on December 12, 1984 (49 FR 48323), with respect to the reporting and policy statement requirments as they apply to qualified mortgage bonds and qualified veterans' mortgage bonds, and a public hearing was held on April 30, 1985. After consideration of all comments regarding those proposed regulations, temporary and proposed regulations relating to the information reporting and policy statement requirements applicable to mortgage credit certificates are being provided.

The regulations interpret the provisions of section 25(g) of the Code, which add certain information reporting requirements to the requirements that mortgage credit certificate programs must meet.

These regulations are proposed to be issued under the authority of section 25(g) and section 7805 of the Internal Revenue Code (98 Stat. 911, 26 U.S.C. 25(g); 69A State. 917, 26 U.S.C. 7805).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefor is not required.

Regulatory Flexibility Analysis

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not consititute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs, of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washigton, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85-20970 Filed 8-29-85; 10:54 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Permanent Program Performance Standards; Underground Activities, Subsidence Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Public Hearing.

SUMMARY: On July 8, 1985, the Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposed to revise portions of its subsidence control rules relating to the protection of surface structures and facilities.

In response to a request from interested citizens a public hearing on the proposed subsidence control rules revisions is hereby scheduled at the location and time given below.

DATE: September 12, 1985, 7:00 p.m. to 10:00 p.m.

ADDRESS: Student Center, Rend Lake Junior College, Route 1, Ina, Illinois 62846.

FOR FURTHER INFORMATION CONTACT: Dr. C.Y. Chen, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone 202/343–1501 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Hearing
II. Background

I. Public Hearing

The public hearing will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a written copy of their testimony. OSM also requests that persons who plan to testify submit to OSM an advance copy of their testimony at the following address: Office of Surface Mining, Administrative Record, Room 5124B–L, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

II. Background

The Office of Surface Mining Reclamation and Enforcement (OSM), pursuant to the Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C.) (Memorandum Opinion filed Oct. 1, 1984), has proposed to revise portions of its subsidence control rules. (50 FR 27910, July 8, 1985).

The Court remanded to the Secretary for proper notice and comment the 1983 final rule, 30 CFR 817.121(c)(2) (48 FR 24652) which requires operators to redress subsidence-caused material damage to structures only to the extent required by State law. In addition to remanding § 817.121(c)(2) of the 1983 rule on Administrative Procedure Act grounds, the Court ordered OSM to request comments on the deletion of the subsidence monitoring requirement of 30 CFR 784.20(d), 44 FR 14902 (March 13, 1979), from the 1983 final rule.

A detailed discussion of these issues is set forth in the preamble to the proposed rule (50 FR 27910 July 8, 1985).

Dated: August 27, 1985.

H. Leonard Richeson,

Acting Assistant Director, Technical Service and Research.

[FR Doc. 85–20910 Filed 8–30–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Naval Restricted Area in the Pacific Ocean at San Clemente Island, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Navy has requested the Corps of Engineers to establish a naval restricted area in the Pacific Ocean at San Clemente Island, California, in the vicinity of West Cove. If established, the restricted area will prohibit vessels from anchoring in that designated area for the protection of the Navy's submarine cables.

DATE: Comments must be submitted on or before October 3, 1985.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Lukos at (213) 894–5606 or Mr. Ralph T. Eppard at (202) 272–0199.

SUPPLEMENTARY INFORMATION: The Corps of Engineers proposes to establish a restricted area in the vicinity of West Cove, San Clemente, California. This proposed restricted area would not affect normal vessel traffic in the area except with regard to a prohibition on anchoring. A drawing showing the configuration of the restricted area is available from the Los Angeles District Engineer by calling the local number listed under "**FOR FURTHER INFORMATION CONTACT.**"

Note.—This proposed regulation is issued with respect to a military function of the Defense Department, is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers also certifies that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Navigation (Water), Water transportation, Waterways.

Accordingly, 33 CFR Part 207 is amended as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1

2. Section 207.614a is added to read as follows:

§ 207.614a Pacific Ocean at San Clemente, Cal.; naval restricted area.

(a) *The Area.* All waters between the northern and southern boundaries of the area known as West Cove seaward approximately four miles.

The northern boundary is defined by the coordinates:

118°36'18" W 33°00'52" N
118°37'30" W 32°59'30" N
118°38'38" W 32°59'20" N

The southern boundary is defined by the coordinates:

118°35'27" W 33°00'40" N
118°36'40" W 32°58'30" N
118°36'38" W 32°57'45" N

(b) *The Regulation.* (1) The use of this area for anchorage is prohibited to all craft at all times.

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

Dated: August 15, 1985.

Dennis J. York,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 85–20955 Filed 8–30–85; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW-FRL-2890-2]

Underground Injection of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of Technical Seminar.

SUMMARY: The purpose of this notice is to announce that the Environmental Protection Agency (EPA) will hold a technical seminar concerning EPA's activities in the underground injection of hazardous wastes.

The seminar will provide EPA additional information and public opinion necessary to design EPA's technical effort in this area.

DATES: The technical seminar will be held on September 26, 1985, from 8:30 a.m. to 5:00 p.m. Requests to present oral presentations should be filed by August 30, 1985. If sufficient public interest in holding the seminar is not expressed by September 6, 1985, EPA reserves the right to cancel the seminar pursuant to the provisions of 40 CFR 145.31(c). If the seminar is cancelled, those persons having expressed interest in attending the seminar will be notified of the cancellation. Written comments can be made regardless of whether or not a seminar is held.

ADDRESSES: Comments and requests to make a formal presentation should be mailed to Joyce Kelly, State Programs Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The seminar will be held in the Virginian Hotel, 1500 Arlington Boulevard, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Joyce Kelly, State Programs Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-5522.

SUPPLEMENTARY INFORMATION: Subsection 3004(f) of the Resource Conservation and Recovery Act (RCRA), as amended, (42 U.S.C. 6924(f)) requires that the Administrator make a determination regarding the disposal of certain hazardous wastes by underground injection into deep wells. If it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the wastes remain hazardous, the disposal of these wastes into deep injection wells will be banned. The purpose of this meeting is to discuss the technical aspects of such disposal and to obtain information from the interested public regarding the effects of a possible ban.

Authority: Secs. 1421 and 1422, Pub. L. 93-523, 88 Stat. 1674 as amended (300 U.S.C. 300h, 300h-1).

Dated: August 23, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-20943 Filed 8-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-256; RM-4924]

FM Broadcast Station in Hoxie, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein proposes to allot FM Channel 263A to Hoxie, Arkansas, as that community's first local service, in response to a petition filed by Dennis Mitchell.

DATES: Comments must be filed on or before October 21, 1985, and reply comments on or before November 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Hoxie, Arkansas); MM Docket No. 85-256, RM-4924.

Adopted: August 13, 1985.
Released: August 28, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Dennis Mitchell ("petitioner") requesting the allocation of FM Channel 263A to Hoxie, Arkansas, as that community's first local service. Petitioner indicates that he will apply for the channel, if allocated.

2. A staff engineering analysis reveals that Channel 263A can be allotted to Hoxie in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. Since the proposed allotment could provide a first local service to Hoxie, Arkansas, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, to include that community, as follows:

City	Channel No.	
	Present	Proposed
Hoxie, AR		263A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 21, 1985, and reply comments on or before November 5, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Dan Winn & Associates, 500 East Markham Street, P.O. Box 214, Little Rock, AR 72203 (Consultant to Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings,

such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85-20884 Filed 8-30-85; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-257; RM-4913]

FM Broadcast Station in Hemet, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Channel 289A for Channel 288A at Hemet, California, and modification of the license of Station KHYE (FM), in response to a petition filed by the 2588 Newport Corporation.

DATES: Comments must be filed on or before October 21, 1985, and reply comments on or before November 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments FM broadcast stations (Hemet, California); MM Docket No. 85-257, RM-4913.

Adopted: August 13, 1985.
Released: August 28, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by the 2588 Newport Corporation, licensee of Station KHYE(FM) (Channel 288A), Hemet, California, requesting the substitution of Channel 289A for 288A at Hemet, and modification of its license to specify operation on Channel 289A.

2. Petitioner's request is premised on its desire to relocate its transmitter to a higher elevation to afford maximum utilization of the channel, thereby enabling it to more fully serve Hemet's growing population. In support of its request, petitioner advises that it is severely restricted from fully utilizing the facilities of Station KHYE(FM) at its present site due to constraints imposed by co-channel and adjacent channel stations to the east, west and south. As a result of technical limitations, Station KHYE(FM) now operates with an antenna at −75 meters, which is notably below the maximum of 100 meters provided for by our Rules. Petitioner claims the proposed channel substitution would enable it to move southeast of Hemet to Polly Butte mountain, from which maximum coverage of Hemet could be attained.

3. We believe the petitioner's proposal warrants consideration. The channel can be substituted in compliance with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules. Also, we shall propose to modify the license of Station KHYE(FM) (Channel 288A) to specify operation on Channel 289A.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. In view of the fact that the requested substitution of channels could provide Hemet with expanded coverage, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Hemet, CA	267A, 288A	267A, 289A

5. Since Hemet is located within 320 kilometers (199 miles) of the common U.S.-Mexican border, concurrence of the Mexican Government must be obtained.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 21, 1985, and reply comments on or before November 5, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Richard S. Rodin, Esq., Hogan and Hartson, 815 Connecticut Avenue NW., Washington, D.C. 20006–4072, (Counsel for Petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b) 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner costitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934 as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration, of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–20885 Filed 8–30–85; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85–262; RM–4922]

FM Broadcast Station in King City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Class B1 FM Channel 230 for Channel 221A at King City, California, and modification of the Class A license for Station KLFA(FM), in response to a petition filed by Ralin Broadcasting Corporation. The proposed allotment could provide King City with its first wide-coverage Class B1 FM station.

DATES: Comments must be filed on or before October 18, 1985, and reply comments on or before November 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b). table of allotments, FM broadcast stations (King City, California); MM Docket No. 85–262, RM–4922.

Adopted: August 13, 1985.
Released: August 27, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Ralin Broadcasting Corporation ("petitioner"), licensee of FM Station KLFA(FM) (Channel 221A), King City, California, which seeks to substitute Channel 230B1 for Channel 221A and modify its license to specify operation on the Class B1 channel.

2. In justification of its proposal, petitioner states that a modification to the Class B1 channel would enable it to provide expanded coverage, and thus improve service to its audience.

3. We believe the proposal warrants consideration in view of the expressed desire for a wider coverage area FM station to serve the public interest. A staff engineering study reveals that the proposed allotment of Channel 230B1 can be made at the present site of Station KLFA(FM) consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules.

4. Mindful of the Commission's modification policy, as expressed in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), petitioner advises that should another interest in the proposed allotment be shown, there are several other Class B1 channels available to King City to accommodate such interest. See, *Modification of FM and TV Station Licenses*, 56 R.R. 2d 1253 (1984). Specifically, petitioner advises that Channel 238B1 can be allotted to King City with a site restriction approximately 8 miles southwest of the Community.

PART 73—[AMENDED]

§ 73.202 [Amended]

5. Accordingly, we consider it appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
King City, California	221A	230B1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 18, 1985, and reply comments on or before November 4, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Vincent J. Curtis, Jr., Esq., Dan J. Alpert, Esq., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue, NW., Washington, D.C. 20036 (Counsel for Petitioner).

8. The Commission had determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Nacy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in inital comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See *§ 1.420(d) of the Commission's Rules.)*

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable

procedu.es set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20886 Filed 8-30-85; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-261; RM-4951]

FM Broadcast Station in Paauilo, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C Channel 279 for Channel 240A at Paauilo, Hawaii, and modification of the Class A license for Station KCHR(FM) accordingly, in response to a petition filed by Hamakua Broadcasting Corporation.

DATES: Comments must be filed on or before October 18, 1985, and reply comments on or before November 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Paauilo, Hawaii); MM Docket No. 85-261, RM-4951.

Adopted: August 13, 1985.
Released: August 27, 1985.
By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Hamakua Broadcasting Corporation ("Hamakua") ("petitioner"), licensee of Station KHCR(FM), Paauilo, Hawaii, which seeks to substitute Channel 279 for Channel 240A at Paauilo, and to modify its license to specify operation on the Class C channel.

2. In support of the proposal, Hamakua states that the northern part of the Island of Hawaii is severely under-served by local programming. Consequently, it intends to provide a first source of locally oriented programming as well as civic information and news to the region.

3. In accordance with our established policy, we shall propose to modify the license of Station KHCR(FM) to specify operation on Channel 279. Pursuant to the Commission's Rules, § 1.420(g), the modification cannot be implemented if another party expresses an interest in the proposed allotment unless an additional equivalent channel is available for allotment to Paauilo. See *Modificotion of FM Station Licenses*, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

§ 73.202 [Amended]

4. In view of the need for a wide coverage area FM station, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as it pertains to Paauilo, Hawaii as follows:

City	Channel No.	
	Present	Proposed
Paauilo, Hawaii	240A	279

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before October 18, 1985, and reply comments on or before November 4, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: F. Joseph Brinig, 1200—29th Street NW., Washington, D.C. 20007 (Counsel to Hamakua)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules. It is proposed to amend the FM Table of Allotments, § 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporated by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquartes, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20887 Filed 8-30-85; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-260; RM-4955]

FM Broadcast Station in Eldon, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposes the allotment of FM Channel 270A to Eldon, Missouri, in response to a petition filed by Roy D. Williford. The allotment of Channel 270A to Eldon could provide a second FM broadcast service to that community.

DATES: Comments must be filed on or before October 18, 1985, and reply comments on or before November 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments FM broadcast stations (Eldon, Missouri); MM Docket No. 85-260, RM-4955.

Adopted: August 13, 1985.
Released: August 27, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been field by Roy D. Williford ("petitioner"), requesting the allotment of FM channel 270A to Eldon, Missouri, as that community's second FM service. Petitioner has expressed an interest in applying for the channel. The channel can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

2. In view of the fact that the proposed allotment could provide a second FM service to Eldon, Missouri, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Eldon, Missouri	224A	224A, 270A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

4. Interested parties may file comments on or before October 18, 1985, and reply comments on or before November 4, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000, Washington, D.C. 20005 (Counsel for the petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Kathleen Scheurele, Mass Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the

matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comment. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20890 Filed 8-30-85; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-259; RM-4956]

FM Broadcast Station in Mt. Pleasant, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 282A to Mount Pleasant, Michigan, in response to a petition filed by Great Lakes Radio Corporation. This allotment could provide a second commercial service for the community.

DATES: Comments must be filed on or before October 18, 1985, and reply comments on or before November 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Mt. Pleasant, Michigan); MM Docket No. 85-259, RM-4956.

Adopted: August 13, 1985.
Released: August 27, 1985.
By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Great Lakes Radio Corporation ("petitioner"), seeking the allotment of FM Channel 282A at Mt. Pleasant, Michigan, as that community's second commercial broadcast service. Petitioner submitted information in support of the proposal and stated that it would apply for the channel, if allocated.

2. Channel 282A can be allocated to Mt. Pleasant, Michigan, consistent with the minimum distance separation requirements of the Commission's Rules. Since the allotment of Channel 282A to Mt. Pleasant is within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence of the Canadian government is required.

PART 73—[AMENDED]

§ 73.2021 [Amended]

3. In view of the fact that the proposed allocation could provide a second FM broadcast service to Mt. Pleasant, Michigan, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Mt. Pleasant, Michigan	233	233, 282A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 18, 1985, and reply comments on or before November 4, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, 10 East Fourth Street, P.O. Box 113, Frederick, MD 21701, (Counsel for petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–20688 Filed 8–30–85; 8:45 am]
BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 85–263; RM–4957]

FM Broadcast Station in Macon, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 263A to Macon, Mississippi, in response to a petition filed by Double 'H' Broadcasting Company. This allotment could provide for a first FM service for the community.

DATES: Comments must be filed on or before October 18, 1985, and reply comments on or before November 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Macon, Mississippi); MM Docket No. 85–263, RM–4957.

Adopted: August 13, 1985.
Released: August 27, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Double 'H' Broadcasting Company ("petitioner"), seeking the allotment of FM Channel 263A to Macon, Mississippi, as that community's first broadcast service. Petitioner submitted information in support of the proposal and stated that it would apply for the channel.

2. Channel 263A can be allocated to Macon, Mississippi, consistent with the minimum distance requirements of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed assignment could provide a first FM broadcast service to Macon, Mississippi, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Macon, MS		263A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 18, 1985, and reply comments on or before November 4, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

L. Lynn Henley, Partner, double 'H' Broadcasting Co., Rt. 3, Box 865, Macon, Mississippi 39341

Larry G. Fuss, Sr., Contemporary Communications, P.O. Box 3976, Jackson, Georgia 30233–0976 (consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–20889 Filed 8–30–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 549 and 552

[GSAR Notice No. 5–103]

Termination for Convenience of Government and Termination Liabilities

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, that would add sections 549.502, Termination for Convenience of the Government; 552.249–1, Termination for Convenience of the Government (Fixed-Price) (Short Form); 552.249–2, Termination for Convenience of the Government (Fixed-Price); and 552.249–70, Submission of Termination of Liability Schedule. The GSA Office of Information Resources Management has obtained a class deviation from the application of the Federal Acquisition Regulations (FAR) Termination for Convenience of the Termination clauses at sections 52.249–1 and 52.249–2 to contracts for the acquisition of telephone systems which are funded through the Federal Telecommunications (FT) Fund. The deviation provides for modification of the FAR clauses in order to make them compatible with a termination liability provision. The deviation also provides for the inclusion of a termination liability provision in such contracts. This proposed change to the GSAR would incorporate the substance of the class deviation into the regulation. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

DATES: Comments are due in writing not later than October 3, 1985.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW., Room 4027, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, (202) 523–4754.

SUPPLEMENTARY INFORMATION: This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. Under the proposed rule, GSA would follow the standard telephone industry practice regarding the use of termination liability provisions.

The information collection requirements contained in this rule have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 549 and 552

Government procurement.

Dated: August 5, 1985.

Richard H. Hopf III,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 85–20905 Filed 8–30–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–10; Notice 1]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Motor Vehicle Lamp Test Bulbs. This notice proposes an amendment to Safety Standard No. 108 that would delete paragraph § 4.1.1.20 which specifies that certain motor vehicle lighting equipment be tested with a bulb whose filament is positioned within ±0.010 inch of the nominal design position specified in SAE Standard J573d. The reasons for the proposal are the difficulty that manufacturers have in obtaining bulbs of this calibration, and the fact that the test bulb may not be representative of the bulb with which the lamp is sold. Deletion of this requirement would allow a manufacturer to test with a production bulb of a tolerance of ±0.040 inch. The proposal implements the grant of a rulemaking petition submitted by Dry Launch Light Company.

DATES: The comment closing date for the proposal is October 18, 1985. Effective date of the amendment would be six months after publication of the final rule in the **Federal Register**. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period (49 CFR 553.19).

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Ken Rutland, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: On June 21, 1973, Motor Vehicle Safety Standard No. 108 was amended to add paragraph § 4.1.1.20 (38 FR 16230), effective January 1, 1984. That paragraph states in pertinent part that a lamp not having a sealed-in bulb shall meet Standard No. 108 "when tested with a bulb whose filament is positioned within ±0.010 inch of the nominal design position specified in SAE Standard J573d, 'Lamps, Bulbs and Sealed Units', December 1968, or specified by the bulb manufacturer".

The preamble to the amendment gave the rationale for the adoption of this requirement, reporting that instances had arisen where noncompliances of lamps could not be proven in marginal cases because of the filament tolerances permitted in test bulbs. The amendment sought to render test results more reproducible by adoption of a strict filament tolerance. Although the proposal was supported, concern was voiced at the time that it would be difficult to obtain test bulbs with such a narrow tolerance. NHTSA, however, found that those alleged difficulties were outweighed by the need for objective and repeatable tests that would be obtained with a finely calibrated test bulb. It advised that a manufacturer need not test with such a bulb if it had test data to show a correlation between the Standard No. 108 test bulb and one that it may have used outside that tolerance, and that certification could be based on the test data and the correlation factor, assuming that that factor indicated compliance.

Dry Launch Light Company, a division of Sierra Products, Inc., Livermore, California, has petitioned for rulemaking to delete paragraph § 4.1.1.20 for two basic reasons: the first, its continued difficulties in obtaining a test bulb of the specified tolerance, and the second, the inconsistency represented in testing a lamp with one tolerance, and equipping it with a bulb that will have a different one. It suggested adoption of a "real life" approval such as SAE Recommended Practice J256 "Service Performance Requirements for Motor Vehicle Safety Devices and Components". NHTSA has granted that petition.

NHTSA has determined that test bulbs of the specified tolerance are available, albeit expensive and limited in production. Nevertheless, it has

tentatively decided that motor vehicle safety may be better served by deleting the requirement so that compliance may be judged with a bulb representative of those with which a lamp is equipped when sold to the public for use on the roads. These bulbs will be those in general use by the industry, almost invariably those that are listed in SAE Standard J575d. The tolerance permitted by SAE J573d is ±0.040 inch. If a lamp is equipped with a bulb that is not listed in SAE J573 and has not been assigned a mean spherical candlepower rating, § 4.1.1.19 requires it to meet Standard No. 108 when used with any bulb of the type specified by the lamp manufacturer.

The agency is aware that lamp manufacturers may object that the proposal will require them to insure photometrics for a wider range of bulb tolerances. This is true, and is exactly what the agency intends. But NHTSA has concluded that this ought not to be burdensome. It contracted with ETL Testing Laboratories, Inc. to perform a study comparing test results for stoplamps with an accurate rated bulb with a tolerance of ±0.010 inch and one with a tolerance exceeding 0.040 inch. Interpolating to correlate with a 0.040 inch tolerance, the change in performance resulting from increasing the tolerance was judged of such a nature as not to affect conformance. A copy of this report has been placed in the docket.

NHTSA has concluded that it does not appear necessary to adopt SAE J256 since, in essence, its zonal method has been adopted in Figures 1 and 2 of Standard No. 108 for parking, tail, stop, turn signal, and backup lamps.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures. The agency has also determined that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposed change should have no impact upon the cost of the lamp since it is directed towards a modification of a test procedure and not towards a modification in the lamp or its light source.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal would have no effect on the human environment since the weight and quantity of materials used in the manufacture of lamps will not be changed.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicle lighting equipment, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally small organizations and governmental jurisdictions would not be significantly affected since the price of new lamps will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Ken Rutland and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber products, Tires.

In consideration of the foregoing, it is proposed that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps Reflective Devices, and Associated Equipment*, be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407 delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

* * * * *

2. Paragraph S4.1.1.20 would be removed.

Issued on August 28, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-20949 Filed 8-30-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Iliamna Corei (Peter's Mountain Mallow) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Iliamna corei* (Peter's Mountain Mallow) as an endangered species. This plant species occurs as a single population in western Virginia. Its continued existence is threatened by the encroachment of competing vegetation, habitat degradation, and low reproductive potential. The population, which occurs on private land, was also reduced in total area and number of plants by construction of a hiking trail in the early 1970's. Although the trail has now been abandoned, hikers occasionally follow the old path through the colony. Listing as endangered would provide the species protection under the Endangered Species Act of 1973, as amended. The Service seeks comments

and further information concerning this proposal.

DATES: Comments from all interested parties must be received by November 4, 1985. Public hearing requests must be received by October 18, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965–5100 or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

Peter's Mountain Mallow is a member of the Malvaceae (mallow family) and is presently known to exist in only one small population in western Virginia. The population occurs on private land near the summit of Peter's Mountain in Giles County. The perennial plants are 20 to 36 inches (0.5 to 0.9 meters) tall and appear somewhat like small hollyhocks with large rose or light pink flowers 1 to 2 inches (2.5 to 5.0 centimeters) across. The flowers have no fragrance and appear in late July and August. The short-stalked flowers occur in terminal clusters or in the axils of the upper leaves.

When the population was first discovered by Dr. Earl Core in 1927 (Strausbaugh and Core, 1932), approximately 50 plants were growing vigorously in the soil-filled pockets and crevices of an exposed sandstone outcrop. The plants were in full sunlight and produced an "abundant supply of seeds." The Peter's Mountain site was visited periodically in ensuing years and "40 clumps, with 1 to 15 plants in each clump" were counted in 1962 (Keener and Hardin, 1962). The plants were noted as being scattered through a 150 by 30 foot (45 by 9 meters) area following the ridge contour. Although the interpretation and counting of clumps, stems, or plants has not been uniformly applied over the years, there is little doubt that the population has declined considerly, as only 5 plants and 55 stems were observed in July, 1984.

Considerable debate has existed among botanists as to the taxonomic distinction between *Iliamna corei* and a closely related species, *Iliamna remota*, which is also a candidate for Federal listing. Because of the confusion, significant points in the taxonomic history of these two taxa will be summarized. The first collections of *Iliamna remota* were made in 1872, by E.J. Hill, on a gravelly island in the Kankakee River near Altorf, Illinois. The distinct nature of the species was not recognized at that time and the plants were identified as a western species of mallow, *Sphaeralcea acerifolia*, which occurs in the Rocky Mountains from Colorado to British Columbia. In 1899, Dr. Edward L. Green examined the Illinois plants, recognized differences between them and the widespread western species, and called the Kankakee River plants *Iliamna remota*. Meritt L. Fernald transferred the Kankakee plants to the related genus *Spaeralcea* under the name *Sphaeralcea remota* in the seventh edition of *Gray's Manual of Botany* (Fernald, 1908). Seeking to clarify the situation for the second edition of *An Illustrated Flora of the United States, Canada and the British Possessions from Newfoundland to the Parallel of the Southern Boundary of Virginia and from the Atlantic Ocean Westward to the 102nd Meridian*, Nathaniel Lord Britton called upon Earl E. Sherff for assistance in obtaining specimens from the Kankakee Island site. Sherff visited the site with the original discoverer, Mr. Hill, in 1912. They found a vigorous colony and obtained several plants for analysis. Dr. Britton then named the species as *Phymosia remota*.

Twenty years then passed before P.D. Strausbaugh and Dr. Earl Core published an account (Strausbaugh and Core, 1932) of Dr. Core's discovery of *Phymosia remota* on Peter's Mountain in August of 1927. Dr. Sherff was particularly interested in reading of the discovery because of the remarkable distance between the two populations and the differences in habitat types, i.e., mountain outcrop versus river island. Of equal interest to Sherff was a statement in the article that reported the Kankakee River population as having been destroyed.

Sherff returned to the Kankakee River site in 1945, discovered "hundreds of plants flourishing" on the now abandoned island, and began a detailed study comparing the Illinois and Virginia populations. Dr. Sherff concluded that the Peter's Mountain and the Kankakee River plants appropriately belonged to the same species, but that the Virginia plants were a different variety, which he named *Iliamna remota* var. *corei* (Sherff, 1946). Later he concluded in fact that they were two separate species and in 1949 named the Peter's Mountain plants *Iliamna corei* (Sherff, 1949). Sherff's work has been the most comprehensive published analysis to date of the two populations. Although Kartesz (Kartesz and Kartesz, 1980) synonomized *Iliamna corei* under *Iliamna remota*, there appears to be no definitive and specific work on which to base that conclusion. The most recent work was conducted by William A. Pusateri, while a graduate student at Miami University. Mr. Pusateri is continuing his studies using more advanced techniques, including electrophoresis and chromosome analysis. Although he has not yet completed his investigations, he is of the opinion that Sherff's conclusion on the distinctiveness of the two species is correct (Pusateri, personal communication).

Iliamna corei was recognized as a "category-1" candidate for Federal listing in the Service's **Federal Register** notice of review of plant taxa for listing as endangered or threatened on December 15, 1980 (45 FR 82480). Category-1 taxa were defined as species for which sufficient information was on hand to support the biological appropriateness of proposing to list. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982 be treated as having been newly submitted on that date. The species covered by the December 15, 1980, notice are treated as if under petition, and the deadline for making a finding on such species, including *Iliamna corei*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing of *Iliamna corei* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding requires a recycling of the petition pursuant to section 4(b)(3)(c)(i) of the Act. Consequently, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the listing of this species is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Based on the continuing decline and the now precarious existence of the Peter's Mountain population of *Iliamna corei*, the Service considers that listing under the Act is warranted. Although *Iliamna remota* is also a candidate for Federal listing, sufficient information is not on hand to justify a proposal at this time. At least three wild or perhaps introduced populations of *Iliamna remota* are known to exist, and the literature refers to additional populations being established in home gardens and other "secure places." The original Kankakee River island site is

also now protected as a State ecological preserve.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 38900, October 1, 1984, codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application in *Iliamna corei* Sherff (Peter's Mountain mallow) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat degradation is the primary threat to the continued existence of *Iliamna corei*. The encroachment of competing vegetation and the subsequent reduction of direct sunlight reaching the plants appear to be major factors in the reduced size and reproductive vigor of the population. Historical references indicate that the population on the sandstone outcrop was previously open to a great deal more direct sunlight than is the case today. The growth of the forest canopy has been a factor, but the major threat is competition from an introduced herbaceous species, *Polymnia canadensis* (Canadian leafcup). Previous publications that list the woody and herbaceous plants growing in association with *Iliamna corei* (e.g., Keener and Hardin, 1962) make no reference to the leafcup, which now dominates the site. How the leafcup became established is open to speculation, but establishment could have been expedited by the completion of a nearby power transmission line or the construction of a hiking trail. Although the trail has now been abandoned, a number of *Iliamna* plants were destroyed when the trail was built through the colony.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Scientific collecting has been a problem, as many botanists have visited the site since the original discovery in 1927 to collect herbarium specimens. Local professors and students have visited the site for educational purposes.

The populations was once more vigorous and larger in numbers and in size, and some collecting might have been tolerated. Any further collecting, however, could be extremely detrimental. There is no known record of collection for commercial purposes; however, whole plants, fruits, and seeds have been taken for private purposes, particularly for home gardens.

C. *Disease or predation.* Disease has not been a factor, but could become so due to the vulnerability of the extremely small population. White-tailed deer have also been known to browse the plants to some extent but do not appear to be a significant factor in reducing or suppressing the population.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Virginia does not presently list *Iliamna corei* under protection of the Endangered Plant and Insect Act. Under the State law, it is unlawful to dig, cut, process or collect, remove, transport, possess, sell, offer for sale, or give away listed plants other than from one's own land. Because the Federal Endangered Species Act does not prohibit the taking of endangered or threatened plants on non-Federal lands, the listing of *Iliamna corei* under State law would provide an important degree of proteciton. The authority to list plants under the State law is vested in the Virginia Assembly.

E. *Other natural or man-made factors affecting its continued existence.* Because of the small size of the only known population, its lack of vigor, and its presently low reproductive potential, a number of chance events such as fire, insect infestation or intensive browsing could become sigificant factors in the species' continued existence.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action it to list *Iliamna corei* as endangered. Due to the continuing decline of the only known population and the rapid encroachment of competing vegetation, the plants are particularly vulnerable and in need of protection. Critical habitat is not proposed for this species for the reasons enumerated below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service considers designation of critical habitat to be prudent when such designation will benefit the species involved. Due to the extremely small size of the existing population and the documented history of taking the plant for private cultivation and/or scientific purposes, the Service finds that designation of critical habitat is not prudent at this time. Publication of detailed habitat descriptions and maps could expose the species to more intense horticultural collecting, vandalism, or trampling by curiosity seekers. Designation of critical habitat would therefore not be likely to benefit the species' conservation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies and private conservation organizations and individuals. The Nature Conservancy has discussed protection strategies with the private individual who owns the land upon which this species occurs, and talks are continuing in hopes of achieving a formal protection agreement. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service an any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify and area proposed to be designated as critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Currently, however, there is no known Federal action likely to affect the site where Peter's Mountain Mallow occurs, and no critical habitat is proposed to be designated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that

apply to all endangered plant species. With certain exceptions, these prohibitions would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale, this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Iliamna corei*, and the Service therefore anticipates few, if any, requests for such permits.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. This prohibition would apply to *Iliamna corei*, although no known populations exist on Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments are particularly sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Iliamna corei;*

(2) The location of any additional populations of this species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the taxonomy, range, and distribution of this species; and

(4) Current or planned activities that may affect the existing population.

Final promulgation of a regulation on *Iliamna corei* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton, Massachusetts 02158.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Fernald, M.L. 1908. Gray's Manual of Botany. 7th Edition. American Book Company, New York

Kartesz, J.T., and R. Kartesz. 1980. A Synonymized Checklist of the Vascular Flora of the United States, Canada, and Greenland. University of North Carolina Press. Chapel Hill, North Carolina.

Keener, C.S. and J.W. Hardin. 1982. *Iliamna corei* Revisited. Castanea 27:176–178.

Sherff, E.E. 1946. Notes on Certain Plants in the Gray's Manual Range. Rhodora 48:89–96

Sherff, E.E. 1949. Miscellaneous Notes on Dicotyledonous Plants. American Journal of Botany 36:499–511.

Strausbaugh, P.D., and E.L. Core. 1932. *Phymosia remota. Rhodora 34:142–146*

Author

The author of this proposed rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Malvaceae—Mallow Family:						
Iliamna corei	Peter's Mountain mallow	U.S.A. (VA)	E		NA	NA

Dated: August 13, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–20932 Filed 8–30–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 170
Tuesday, September 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice reviews the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982. (47 FR 19661)

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION:

I. Introduction

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of Headnotes 2 and 3 of subpart A of part 10 of schedule 1 of the TSUS, the International Sugar Agreement, 1977, Implementation Act, and Section 201 of the Trade Expansion Act of 1962. After reviewing the operation of the sugar import quota system, the Secretary of Agriculture has determined that the system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

A fundamental imbalance between world sugar supplies and demand continued during 1984/85. World output of centrifugal sugar in 1984/85 is estimated at 99.4 million metric tons, while consumption is projected at around 95.9 million metric tons. Ending stocks should increase by 3.5 million metric tons to 44.1 million metric tons and will constitute 45 percent of projected consumption, which will have a price depressing effect on world prices. U.S. centrifugal sugar production is estimated at 5.8 million short tons (5.3 million metric tons), and domestic utilization is expected to be 8.17 million short tons (7.41 million metric tons).

During the period October 1, 1984 through July 26, 1985, 1.93 million short tons were charged against the quotas for the 41 countries which have allocations totalling 2,675,000 short tons. The domestic price of raw sugar (c.i.f., duty and free paid, No. 12 contract spot, October 1, 1984 through May 31, 1985, and nearby futures, June 1, 1985 to present, as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 21.05 cents per pound for the first eleven months of the quota year. The world price (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, and Cocoa Exchange) has been depressed thrughout the entire 1984/85 quota year, averaging less than 4 cents per pound.

B. Outlook for World and U.S. Sugar Market

After the increase in ending stocks in 1984/85, it is likely that world centrifugal sugar production and consumption will be close to balanced in 1985/86. Prospective production declines around the world indicate that the dramatic build-up in stocks of recent years will not be repeated in 1985/86. However, large world sugar stocks will continue to have an extremely depressing effect on prices. This is reflected in world sugar futures prices which currently range from just under 4.5 cents per pound for contracts due in October 1985 to just over 5.5 cents per pound for contracts due to mature in October 1986.

Given these factors, we anticipate that world prices will remain at levels that make it impossible to achieve market conditions that give due consideration to the interests of domestic producers in the U.S. sugar market without a continuation of the current sugar import quota system.

II. Modification of Sugar Import Quota Year

Paragraph (d) of Headnote 3, subpart A, Part 10, schedule 1 of the TSUS authorizes the Secretary, after appropriate consultations, to amend the time period for which the quantitative limitations established by paragraph (c) are applicable if he determines that such an amendment is appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Accordingly, on January 11, 1985, after appropriate consultations, the Secretary amended the 1985 sugar import quota year from the period October 1, 1984 through September 30, 1985 to the period October 1, 1984 through November 30, 1985 (50 FR 2303). The amendment was effective on Juanuary 16, 1985 and was designed to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Notice

In accordance with paragraph (f) of headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of headnote 3 gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (g) of that headnote, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideraitn to such interests.

Signed at Washington, DC, on August 28, 1985.

John R. Norton,

Acting Secretary of Agriculture.

[FR Doc. 85-20950 Filed 8-28-85; 4:05 pm]
BILLING CODE 3410-10-M

Rural Electrification Administration

Finding of No Significant Impact; Fergus Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Fergus Electric Cooperative, Inc. (Fergus Electric), of Lewistown, Montana. The project consists of constructing approximately 72 km (45 miles) of 69 kV transmission line. The line will be located in Fergus County, Montana.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from the office of the Acting Director, Western Area—Electric, REA, Room Number 0207, 14th St. and Independence Avenue, SW., Washington, D.C. 20250, telephone number: (202) 382–8848, or the office of Fergus Electric Cooperative, Inc. (Mr. Richard Peck, Manager), P.O. Box 4040, Lewistown, Montana 59457, telephone number: (406) 538–3465, during regular business hours.

SUPPLEMENTARY INFORMATION: REA reviewed the Borrower's Environmental Report (BER) submitted by Fergus Electric and determined that it represents an accurate assessment of the environmental impact of the proposed project.

The proposed project consists of constructing approximately 72 km (45 miles) of 69 kV transmission line between Glengarry and Grass Range in Fergus County, Montana. Possible REA actions could include providing financing assistance to Fergus Electric for the proposed project and approving construction contracts, power supply contracts, etc., related to utilization of the proposed facilities.

The BER and EA adequately consider potential impacts of the proposed project to resources including threatened and endangered species, prime farmland, prime forest land, prime rangeland, cultural resources, floodplains, and wetlands.

Alternatives examined included no action, energy conservation, rebuilding the existing power line, alternative routes for transmission line construction, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative that meets Fergus Electric's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Fergus Electric advertised the availability of its BER in the local newspaper. No comments were received.

Based upon the BER and other data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 23, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85–20911 Filed 8–30–85; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 27, 1985, at the Embassy Suites. 3211 East Pinchot Street, Aztec Room, Phoenix Arizona. The purpose of the meeting is to discuss proposed plans for projects involving Yuma schools and the Arizona National Guard.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John P. White, or Philip Montez, Director of the Western Regional Office at (213) 688–3437, (TDD 213/894–0508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 27, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–20917 Filed 8–30–85; 8:45 am]

BILLING CODE 6335-01-M

California Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on September 20, 1985, at the Western Regional Office, 3660 Wilshire Blvd., Suite 810, Los Angeles California. The purpose of the meeting is to discuss proposed plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Maxwell Greenberg of Philip Montez, Director of the Western Regional Office, at (213) 688–34378, (TDD 213.894–3031).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 27, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–20918 Filed 8–30–85; 8:45 am]

BILLING CODE 6335-01-M

Delaware Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:00 p.m. on September 24, 1985, at the Boggs Federal Courthouse, 844 King Street, Conference Room #3207, Wilmington, Delaware. The purpose of the meeting is to discuss a draft of the Status of Civil Rights Report and possible new project(s) for the Program Year 1985–86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, William J. Conner, or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 27, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20916 Filed 8-30-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Change in the Construction Setback Line in the Town of Gulf Shores, AL as Amendment to the Alabama Coastal Area Management Program Under the Coastal Zone Management Act

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of Approval of Amendment.

SUMMARY: Notice is hereby given that on August 27, 1985, the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) approved Amendment No. 1 to the federally-approved Alabama Coastal Area Management Program (ACAMP). The change consists of the reduction of the Construction Setback Line (CSL) for the Business, Tourist and Lodging (BTL) and the Business, Central Resort (BCR) zones as defined on July 16, 1984 by the zoning maps of the Town of Gulf Shores to five (5) feet instead of forty (40) feet behind the most inland point of the crestline of the primary dune system. This approval was made pursuant to Section 306 of the Coastal Zone Management Act of 1972 (CZMA), as amended (16 U.S.C. 1451 *et. seq.*), and NOAA regulations on Amendments to Approved State Management Programs, 15 CFR 923.80-923.82 (March 28, 1979).

Notice of the Director's preliminary decision to approve the amendment was published on June 25, 1985 in the **Federal Register**. A 30-day comment period was provided, and two responses were received which supported approval or provided no objection. A copy of the findings made by the Director that this Amendment meets the requirements of the CZMA may be obtained from the Office of Ocean and Coastal Resource Management. Inquiries regarding the ACAMP and the findings should be addressed to:

James P. Burgess, Acting Chief, Coastal Programs Division, Page Building No. 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-1672

In accordance with Section 307 of the CZMA, Federal agencies are required to conduct their activities in the coastal zone consistent to the maximum extent practicable with the ACAMP, as amended. The Federal consistency requirements are fully explained at 15 CFR Part 930 (June 25, 1979). To determine how these requirements are applied in Alabama, Federal agencies should contact William A. Rushton, Director, Office of State Planning and Federal Programs, State Capitol, Montgomery, AL 36130, (205) 284-8706.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 27, 1985.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-20882 Filed 8-30-85; 8:45 am]

BILLING CODE 3510-08-M

[Modification No. 1 to Permit No. 292]

Marine Mammals; Permit Modification; Richard S. Borguss

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations governing the Taking and Importing of Marine Mammals (5) CFR Part 216), Public Display Permit No. 292 issued to Mr. Richard Scott Borguss, P.O. Box 2114, Key Largo, Florida 33037, on June 3, 1980 (45 FR 38432), is modified by adding the following:

Section B.7

7. The Holder is authorized to have a human/ dolphin diving program as described in the modification. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

Section B.8

8. The Holder shall submit a quarterly report, reporting number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Assistant Administrator for fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

This modification became effective on August 23, 1985.

The permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 26, 1985.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries.

[FR Doc. 85-20775 Filed 8-30-85; 8:45 pm]

BILLING CODE 3510-22-M

National Technical Information Service

Calcol, Inc.; Intent To Grant Exclusive Patent License

The National Technical Information Service, (NTIS), U.S. Department of Commerce, intends to grant to Calcol, Inc., having a place of business in Shaker Heights, Ohio an exclusive right to manufacture, use, and sell products embodied in the inventions entitled "Compound, 4-Carboxyphthalato (1,2-Diaminocyclohexane) Platinum (II) and Alkali Metal Salts Thereof," U.S. Patent No. 4,137,248 and "7-0-(2,6-dideoxy-α-1-lyxo-hexopyranosyl)-daunomycinone, desmethoxy daunomycinone, adriamycinone, and carminomycinone," U.S. Patent No. 4,201,773. The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed licenses may be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-20957 Filed 8-30-85; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; European Currency Unit Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in European Currency Units. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 4, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to the CBT European Currency Unit futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 (202) 254–7227.

A copy of the terms and conditions of the proposed CBT European Currency Unit futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, by November 4, 1985.

Issued in Washington, D.C., on August 28, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–20959 Filed 8–30–85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 30, 1985.

ADDRESS: Department of Education, 400 Maryland Avenue SW., Room 3000, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jacqueline McGregor, Executive Director, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Washington, D.C. 20202 (202) 472–6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Council is open to the public. The meeting is scheduled for 1 p.m. to 4 p.m. on September 30.

The proposed agenda includes:

—Upcoming Conference on Job Training and Retraining
—General Education Provisions Act (GEPA)
—Followup on National Networking Conference
—Adoption of Council Bylaws
—Election of Executive Committee

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C.

Signed at Washington, D.C. on Friday, August 23, 1985.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 85–20906 Filed 8–30–85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 25, 1985—Orientation session for NACCBE members from 9:00 a.m.–4:30 p.m. September 26–27, 1985 Business Meeting 9:00 a.m. to 4:30 p.m. The orientation and business meeting will be held at: The orientation and business meeting will be held at: The U.S. Department of Education, Federal Office Building Number (6), Room 5028, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order
II. Roll Call
III. Approval of Minutes from Previous Meeting
IV. Introduction of Visitors
V. Presentation of Information by Director of OBEMLA or Designee

VI. Presentation of Information by General Public or Organizations (Limited to 5 minutes)
VII. Committee Assignments
VIII. Old Business
IX. New Business
X. Presentations of Information by Members of the General Public on Items for Possible Future Action by the Council
XI. Meetings of Council Committees
XII. Council reconvenes
XIII. Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: August 29, 1985.

Carol Pandas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-20972 Filed 8-30-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Oxy Petroleum, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Oxy Petroleum, Inc., (Oxy) shall be made a final order of the DOE. The Consent Order resolves all claims by DOE asserted in a Notice of Probable Violation (NOPV) relating to Oxy's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 31, 1976. Oxy will pay to the DOE $2,717,320.75. The monies would be deposited in a suitable account pending distribution by DOE. The decision to make the Oxy Consent Order final as modified was made after a review of all written comments received.

The final Consent Order incorporates the following modifications:

(1) Inclusion of a record-keeping requirement that conforms to 10 CFR 210.1, ensuring the availability of data necessary to the completion of refund procedures; and

(2) Inclusion of a provision that makes clear that the Consent Order does not affect suits involving other crude oil property operators. Other modifications were made to the provisions regarding the release of sensitive commercial and financial information and DOE's reservation of a right to seek remedies for newly discovered regulatory violations.

The Consent Order as modified is effective as a final order of the DOE on the date the document was executed.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Office of Special Counsel (RG–13), Economic Regulatory Administration, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Modifications to the Consent Order
IV. Decision

I. Introduction

ERA issued a notice announcing a proposed consent order between DOE and Oxy which would resolve matters raised by an NOPV issued by the DOE relating to Oxy's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 31, 1976. 46 FR 50304 (December 27, 1984). The proposed consent order requires to pay $2,717,320.75 for the settlement of alleged overcharges and interest. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received four comments, which addressed the question of the ultimate disposition of the funds to be paid by Oxy pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following:

Attorney General of Texas
Controller, State of California
State of Indiana
Attorneys General of Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island, and West Virginia.

The comments received did not relate to the issue of whether the Consent Order should be modified, rejected or adopted as a final order. The Attorney General of Texas stated that, since ERA did not identify any injured persons, ERA should request the implementation of Subpart V proceedings. The State of Indiana, on the other hand, argued for disbursal of the monies to the states. Attorneys General from a number of states asserted that the monies shoud be paid to the states after refunds have been made to parties claiming actual injury. The Controller of the State of California indicated a preference for a specific reference in the Consent Order to Subpart V proceedings or payments to the states.

During the period covered by this Consent Order the violations allegedly committed by Oxy related to the miscertification of its crude oil. Such violations resulted in cost increases that were disseminated to all refiners by the entitlements program, who could then pass the overcharges on to others. *See United States* v. *Exxon Corp*, —F.2d—, Slip op. at 110–112 (TECA, July 1, 1985) (Nos. 91 *et seq.*).

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: The Department of Energy Stripper With Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertifications, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

> Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effects of the entitlements program, the fungibility of refiner costs and the consequent ability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.
>
> OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, . . . is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. *Id.*

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

> It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

Subpart V contemplates proceedings to identify injured persons (10 CFR 205.280). When it is impossible to determine which persons were ultimately injured, as in violations involving crude oil miscertifications,

such proceedings are futile and, therefore, not appropriate. Accordingly, the funds received from Oxy pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual claimants are infeasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury. The Policy Statement explains that this is preferable to further *ad hoc* payments to the states because:

> [T]he states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon* and *Sutton* courts) for these programs at this time. *supra*, at 27402.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to proceed with the finalization of the Consent Order.

III. Modifications to the Consent Order

The ERA is seeking to standardize its Consent Orders as much as possible and has modified the Oxy Consent Order pursuant to that goal. A matter of particular concern to the DOE is the need for the firm to retain records for possible future use by the DOE in the disbursement of settlement monies.

Pursuant to the preamble to the ERA's recent revision of its regulation, 50 FR 4957, 4960 (February 5, 1985), firms with restitutionary payments subject to distribution must be required to maintain records to permit appropriate distribution of these payments. Accordingly, ERA and Oxy have agreed to modify the proposed Consent Order.

Another modification makes clear that the Consent Order does not affect any action DOE may bring against a third-party crude oil property operator nor does the Consent Order afford Oxy any protection from any possible suit against it for contribution by such a third-party operator.

Because the above-mentioned modifications to the Consent Order do not affect the basic settlement amount or substantially alter the basis of the settlement, DOE has determined that the modifications do not require an opportunity to file additional comments.

IV. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Oxy and DOE as modified was made a final order of the DOE on August 5, 1985, the date the modified Consent Order was executed.

Issued in Washington, DC, on August 22, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-20977 Filed 8-30-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Marathon Petroleum Co.

Correction

In FR Doc. 85-20583 beginning on page 34901 in the issue of Wednesday, August 28, 1985, make the following correction:

In the second column, second complete paragraph, third line, "September 30, 1985" should read "September 27, 1985".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket No. CI85-244, et al.]

Notice of Quarterly Status Conferences and Cancellation of a Conference; Arkoma Production Co., et al.

August 27, 1985.

Listed below are quarterly status conferences to be held pursuant to Commission order of September 26, 1985, to evaluate whether the implementation of the special marketing program in each proceeding is achieving the Commission's purposes. The conferences shall be held at the offices of the Commission at 825 North Capitol Street, N.E., Washington, D.C. All interested persons and Staff are invited to attend.

Date	Time	Company	Docket No.
Sept. 18, 1985	10:00 a.m.	Arkoma Production Company	CI85-244
	2:00 p.m.	Samson Resources, Inc	CI85-238
Sept. 19, 1985	10:00 a.m.	Walter Oil & Gas Corporation	CI85-424
	2:00 p.m.	Panhandle Eastern Pipe Line Co./Trunkline Gas Company.	CP83-333
Sept. 20, 1985	10:00 a.m.	Cities Service Oil & Gas Company	CI84-465
	2:00 p.m.	Yankee Resources	CI84-565
Sept. 23, 1985	2:00 p.m.	Tennessee Gas Pipe Line Company	CP83-502
Sept. 24, 1985	10:00 a.m.	Columbia Gas Transmission Company	CP83-452
	2:00 p.m.	TXP Operating Company	CI84-374
Sept. 25, 1985	10:00 a.m.	Tenneco Oil Company, Inc.	CI83-269
	2:00 p.m.	Citizens Energy Corporation/Citizens Resources Corporation.	CI84-255
Sept. 27, 1985	10:00 a.m.	Union Texas Petroleum Company	CI85-99
	2:00 p.m.	Kerr McGee Corporation	CI85-176
Sept. 30, 1985	2:00 p.m.	Texas Gas Exploration	CI85-36

The quarterly meeting scheduled for September 24, 1985, for Amoco Production Company (Docket No. CI84-485) has been cancelled. Amoco's Special Marketing Program (ASMP) was terminated pursuant to the Company's request of June 18, 1985, and the Commission's order issued July 15, 1985, approving the request.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20913 Filed 8-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-40-000]

Petition for Adjustment and Waiver of Filing Fee; Dawson Operating Co., Inc.

August 27, 1985.

On June 14, 1985, Dawson Operating Co., Inc. (Dawson) filed with the Federal Energy Regulatory Commission, a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301, *et seq.*), and Part 385, Subpart K of the Commission's regulations. Dawson seeks adjustment under Subpart H of Part 271 of the Commission's regulations.

The petition and additional information indicate Dawson received a final determination in 1980 that the Roetker No. 2 Well in Harper County, Oklahoma, qualified as a stripper gas well. In 1981, Northern Natural Gas Company (Northern), purchaser from the well, filed a notice of disqualification with the Commission based on production of the well during the latter part of 1980 which exceeded stripper gas well limits. On September 14, 1981, Dawson filed a petition for enhanced recovery status with the Oklahoma Corporation Commission. The petition was denied based on the well's disqualification and lack of requalification prior to the enhanced recovery work performed in March of

1981. Data contained in the enhanced recovery filing indicates that had Dawson filed an application for a new NGPA section 108 determination subsequent to the disqualification, the well, based on sales to Northern, could have requalified as of the end of December, 1980. Dawson also states that it would not be able to make refunds to Northern if its petition were denied.

Dawson requests an adjustment under Subpart H of Part 271 of the Commission's regulations allowing it opportunity to seek or re-establish qualification of the well as a stripper gas well for a period prior to its enhanced recovery work, so that it may seek reconsideration of its enhanced recovery petition.

In addition, Dawson requests a waiver of the applicable filing fee, pursuant to 18 CFR 381.106.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20914 Filed 8-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-56-000, 001]

Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions; Valero Interstate Transmission Co.

August 28, 1985.

Take notice that on August 16, 1985, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing in an out-of-cycle PGA containing changes in rates pursuant to purchased gas cost adjustment provisions:

Ninth Revised Sheet No. 14, To FERC Gas Tariff, Original Volume No. 1.
Original Sheet No. 14.1, To FERC Gas Tariff, Original Volume No. 1.
Third Revised Sheet No. 6, To FERC Gas Tariff, Original Volume No. 2.

The changes proposed in the filing consist of:

(1) A PGA decrease of $.0047 per Mcf in Vitco's rate for service under Rate Schedule T-1;

(2) A rate for new service under Rate Schedule SS-1 of $2.64 per MMBtu;

(3) A PGA decrease of $.6076 per Mcf in Vitco's rate for service under Rate Schedule S-3; and

(4) A surcharge equivalent to $.1058 per Mcf under Rate Schedule S-3.

The PGA changes and the rate for service under Rate Schedule SS-1 are based on gas costs under limited term sales programs approved by the Commission in its August 2, 1985, order approving the Stipulation And Agreement filed June 12, 1985, in certain dockets [1], as amended. The surcharge under Rate Schedule No. S-3 is designed to eliminate the balance in the deferred purchased gas cost account for that rate schedule.

The proposed effective date for the above filing is August 19, 1985, coincident with the implementation by Vitco of the authorizations granted by the Commission in its order approving the Stipulation and Agreement. Vitco requests that the Commission waive any order or regulations as the Commission may deem necessary to accept the above tariff sheets to be effective August 19, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211 and 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20915 Filed 8-30-85; 8:45 am]

BILLING CODE 6717-01-M

---

[1] *Transcontinental Gas Pipe Line Corporation*, Docket Nos. CP84-183-000, CP84-183-001; *Valero Interstate Transmission Company*, Docket No. CP85-186-000; *Shell Western E&P Inc.*, Docket Nos. CI85-206-000, CI85-207-000, and CI85-213-000.

[Docket No. CI85-633-000]

Tenneco Oil Co., et al.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

August 27, 1985.

Take notice that on August 20, 1985, Tenneco Oil Company, Houston Oil and Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and Tenneco West, Inc. (hereinafter referred to collectively as Tenneco Oil) filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and the provisions of 18 CFR Parts 154, 157, and 385 seeking a blanket certificate of public convenience and necessity (1) authorizing the sale for resale in interstate commerce of certain natural gas produced by Tenneco Oil and its joint interest owners, (2) authorizing blanket temporary abandonment and pre-granted permanent abandonment of certain sales as described therein, and (3) authorizing transportation by interstate pipelines (and the pre-granted abandonment of same), where and if necessary, to effectuate the sale and purchase of gas on the spot market, as more fully described in the Application which is on file with the Commission and open for public inspection. The Applicants also request that said blanket authorization be made effective on or before November 1, 1985.

Tenneco Oil states that its considerable experience in the spot market to date demonstrates that the blanket authority as requested is consistent with the Commission's rules and regulations, *i.e.*, Parts 154 and 157 requirements, and is necessary to be compatible with the spot market. Further, Tenneco Oil states that, absent said blanket authorization, the flexibility and efficiency necessary for successful operation of the spot market would be hindered. Tenneco Oil intends to enter into blanket sales and transportation agreements in order to improve effective management of these spot market arrangements, and to facilitate more efficient and cost-effective transportation.

Tenneco Oil emphasizes that no Commission-mandated scheme of contract carriage or market access is sought by its Application. A decision by an interstate pipeline, intrastate pipeline

or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, or for pipelines to enter into blanket transportation agreements with Tenneco Oil, is purely voluntary. Rather, Tenneco Oil is seeking to further the efficient operation of the spot market.

Specifically, Tenneco Oil requests that the Commission authorize Tenneco Oil, effective on or before November 1, 1985:

(1) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the Natural Gas Policy Act (NGPA) section 109 ceiling price that is produced from various interests owned by Tenneco Oil;

(2) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and produced from various interests attributable to other owners having interests in the same wells as Tenneco Oil, to the extent that such joint interest owners agree to same;

(3) To abandon, temporarily, sales for resale of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale in the spot market to third parties;

(4) To abandon (pre-granted abandonment) any sale for resale in the spot market authorized pursuant to any blanket certificate issued herein; and

(5) To have both NGA- and non-NGA-gas that is sold in the spot market by Tenneco Oil and its joint interest owners transported in interstate commerce, on a self-implementing basis and without source or recipient limitations, by any willing transporter to any willing and able purchaser of such gas, with pre-granted abandonment of same.

Tenneco Oil is requesting the authorization described herein only to the extent that any element of such authorization is not otherwise made effective on or before November 1, 1985, as a result of Commission action in any other proceeding. In particular, Tenneco Oil references the Commission's Notice of Proposed Rulemaking (NOPR) issued May 30, 1985, in Docket No. RM85-1-000 and states that the blanket authority requested would be supplemental to the flexible transportation scheme proposed by the NOPR and would be necessary to achieve the NOPR objectives.

Sales proposed to be made by Tenneco Oil on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Tenneco Oil. The sales volumes, prices, purchasers, delivery points, transporter, and supply source will vary. Although sales made by Tenneco Oil to end-users would qualify as direct sales, and thus not require a sales certificate, other sales under the blanket authority requested will be for resale and will vary on a periodic basis, depending on the nominations. Tenneco Oil proposes to sell and deliver to various spot gas purchasers all or a portion of the gas Tenneco Oil determines is available for sale at the most favorable terms for Tenneco Oil for a particular month. Tenneco Oil will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Tenneco Oil and a purchaser. The actual contract between Tenneco Oil and the spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before September 10, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20938 Filed 8-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C185-632-000]

Tenngasco Corp. and Tenngasco Exchange Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

August 27, 1985.

Take Notice that on August 20, 1985, Tenngasco Corporation (Tenngasco) and Tenngasco Exchange Corporation (TGX), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717z (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), hereby applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by Tenngasco, TGX and the producers from which Tenngasco and TGX purchase natural gas, (2) authorizing sales for resale of natural gas in interstate commerce by producers through Tenngasco and TGX acting as their agents, (3) authorizing blanket partial abandonment and pregranted abandonment of certain sales as described herein, (4) authorizing transportation, where and if necessary, under Section 7(c) of the NGA for interstate pipelines, (5) authorizing pregranted abandonment of such transportation by interstate pipelines, and (6) authorizing transportation by intrastate and Hinshaw pipelines as set forth herein, all to be effective on or before November 1, 1985, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicants state that the certificate and abandonment authority sought herein, if granted, will enable Tenngasco and TGX to purchase from various producers, and resell, natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the Natural Gas Policy Act (NGPA), to act as agent in sales by producers for resale of natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the NGPA, and to have such gas, as well as gas which is no longer within the Commission's NGA authority, transported in interstate commerce to all

customers who have the ability to buy gas on the open market.

Tenngasco and TGX are requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in its Notice of Proposed Rulemaking, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85-1-000 (May 30, 1985) (NOPR), in the event a final rule in the NOPR is not issued by November 1, 1985, and/or in the event any such rule is stayed or not in effect after its issuance.

Tenngasco and TGX, on behalf of themselves, producers, and pipelines, are requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the Section 109 price; (2) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate, intrastate and Hinshaw pipelines, and local distribution companies, to producers for resale either by Tenngasco and TGX or by such producers through Tenngasco and TGX acting as their agents, (3) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein, (4) to have any such gas, as well as natural gas which is no longer subject to the Commission's NGA authority, transported in interstate commerce, on a self-implementing basis, by any transporter to any purchaser, and (5) to abandon (pre-granted abandonment) such transportation.

Such authority, if granted, will enable Tenngasco and TGX to purchase NGA gas for which the maximum lawful price is higher than the Section 109 price (hereinafter referred to as NGA gas) from producers willing to sell to Tenngasco and TGX, for resale on the spot market.

Such authority will also enable Tenngasco and TGX to act as agent for various producers in sales of NGA gas on the spot market. Tenngasco currently acts as agent on behalf of Tenngasco Oil Company (Tenneco Oil) in marketing the majority of Tenneco Oil's gas on the spot market, and will continue to do so. The grant of this authority will allow Tenngasco to continue to market Tenneco Oil's NGA gas. Further, pipelines will be authorized to transport both NGA gas and gas which is no longer subject to the Commission's NGA authority, sold by Tenngasco, TGX and producers on the spot market.

The authority sought by Tenngasco and TGX on behalf of themselves, producers and pipelines, is similar to that recently granted to other marketers of natural gas, it is asserted. The Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. Tenngasco and TGX can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation, on behalf of these producers. Tenngasco and TGX can provide the necessary marketing functions that many producers are not staffed to handle.

Tenngasco and TGX are willing to subject themselves to the Commission's NGA jurisdiction to the extent, and only to the extent, of their participation in these jurisdictional transactions, in the same manner and on the same basis that the Commission's jurisdiction attached to those marketers referred to above. Tenngasco and TGX request that the Commission clarify and declare that Tenngasco and TGX will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to their participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to be become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20939 Filed 8-30-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2889-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Hazardous Waste Programs

Title: Information Requirements for Facilities Petitioning for Hazardous Waste Delisting (ICR #1189). (This is an existing collection.)

Abstract: EPA requires facilities wishing to have a waste removed from the Agency's list of hazardous wastes to file a petition for delisting. Information is necessary to establish that the waste does not exhibit the characteristics for which it was listed and so may be exempted from regulation as hazardous. The Agency reviews this information to determine whether to grant or deny the petition.

Respondents: Owners and operators of hazardous waste management facilities.

Agency PRA Clearance Requests Completed by OMB

EPA #0226, Application for Permit to Discharge Wastewater and Associated Regulations, was approved July 18, 1985 (OMB #2040-0086; expires July 31, 1988).

EPA#0807, RCRA Closure and Post Closure, was approved August 7, 1985 (OMB #2050-0008; expires August 31, 1988).

EPA #1238, Part B Application, Reporting and Recordkeeping requirements for Hazardous Waste Tanks, was approved August 19, 1985 (OMB #2050-0050; expires August 31, 1988).

EPA #1246, Asbestos Abatement Worker Protection Rule, was approved June 27, 1985 (OMB #2070–0072; expires June 30, 1988).

EPA #1249, Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection, was approved August 7, 1985 (OMB #2050–0008; expires August 31, 1988).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM–223) U.S. Environmental Protection Agency Office of Standards and Regulations Regulation and Information Management Division 401 M Street, SW Washington, D.C. 20460

and

Nancy Baldwin
Office of Management and Budget
Office of Information and Regulatory Affairs
New Executive Office Building (Room 3228)
726 Jackson Place, NW.
Washington, D.C. 20503

Dated: August 26, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information.

[FR Doc. 85–20784 Filed 8–30–85; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–2891–4]

Management Advisory Group to the EPA Construction Grant Program; Open Meeting, September 18–19, 1985

Under Pub. L. 92–463, notice is hereby given that a one and a half day meeting of the Management Advisory Group to the EPA Construction Grant Program (MAG), will be held on September 18–19, 1985, in Washington, D.C. The meeting will begin at 9:00 a.m. on both days.

The principal agenda item will be work on a draft MAG report on compliance and operation and maintenance of publicly owned wastewater treatment works. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit then in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. The exact location of the meeting in Washington, D.C. has yet to be determined. Any member of the public wishing to know the location of the meeting or receive additional information should contact Georgette Brown at (202) 382–5859.

Dated: August 21, 1985.

Henry L. Longest II,

Acting Assistant Administrator, Office of Water (WH–556).

[FR Doc. 85–20931 Filed 8–30–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00064A; FRL–2890–1]

Interagency Toxic Substances Data Committee; Cancellation of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The September 10, 1985 meeting of the Interagency Toxic Substances Data Committee has been cancelled.

FOR FURTHER INFORMATION CONTACT: Gerhard Brown (TS–793), Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–333, 401 M St., SW., Washington, D.C. 20460, (202–382–3634).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee usually take place on the first Tuesday of alternate months at 9:30 a.m. and are open to the public. The meetings are held in: First Floor Conference Room, Council on Environmental Quality, 722 Jackson Pl., NW., Washington, D.C. 20006.

The September meeting has been cancelled. The next meeting of the Interagency Toxic Substances Data Committee will take place on November 5, 1985.

Dated: August 26, 1985.

Gerhard Brown,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 85–20930 Filed 8–30–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140066; FRL–2890–7]

Access to Confidential Business Information by Life Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractor, Life System, Inc., (LSI) of Cleveland, Ohio, with access to information submitted to EPA or collected by the Agency under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under this contract will not take place prior to September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or to the environment. EPA must evaluate new chemicals, i.e., those not listed on the TSCA Inventory of Chemical Substances, under section 5 of TSCA. Existing chemicals, i.e., those listed on the TSCA Inventory, are evaluated by EPA under sections 4, 6, 7, and 8 of TSCA.

Under EPA contract number 68–02–4228, LSI, 24755 Highpoint Road, Cleveland, Ohio, will assist the Office of Toxic Substances in assessing new and existing chemicals for health and environmental effects. LSI will, among other things, perform peer reviews of technical documents prepared under sections 4, 5, 6, and 8 of TSCA, analyze scientific issues related to regulatory policy options, and prepare or revise proposed test standards and guidelines.

In accordance with 40 CFR 2.306(j), EPA has determined that LSI will require access at its facilities in Cleveland, Ohio and at 1725 Jefferson Davis Highway, Suite 803, Arlington, Virignia, to confidential information submitted to the Agency under all sections of TSCA and to automated systems at EPA Headquarters containing data from such submissions to perform work under the above-mentioned contract successfully. EPA is issuing this notice to inform all submitters of information under these sections of TSCA that it will authorize LSI for access to these categories of information. LSI was previously authorized for access to TSCA CBI under contract number 68–01–6554, announced in th **Federal Register** of June 22, 1982 (47 FR 26909).

LSI has been authorized for access to TSCA CBI through September 30, 1986, under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" manual. LSI's security plan and physical security facilities have been approved by TSCA Security Staff.

Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are authorized for access to TSCA CBI. All CBI materials will be returned to EPA upon completion of LSI's review.

Dated: August 28, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-20926 Filed 8-30-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-10-FRL-2890-9]

Water Pollution; National Pollutant Discharge Elimination System (NPDES) Permits; State Determination of Consistency With the Alaska Coastal Zone Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Revised Public Notice Expiration dates for:

Public Notice No. AKG285000 (Cook Inlet/Gulf of Alaska) Original Public Notice Expiration Date: August 19, 1985 Revised Public Notice Expiration Date: September 18, 1985 (50 FR 28974, July 17, 1985)

Public Notice No. AKG286000 (Bering Sea Area II) Original Public Notice Expiration Date: August 23, 1985; Revised Public Notice Expiration Date: September 23, 1985 (50 FR 29928, July 22, 1985)

Public Comments: The public comment periods for the above permits have been extended 30 days. Persons wishing to provide comments on the draft permits listed above must ensure that EPA, Region 10, receives the comments by 4 p.m. on the dates shown above.

Dates for tentatively-scheduled public hearings on these draft permits will not be affected by the comment period extension.

FOR FURTHER INFORMATION CONTACT:

Kerrie Schurr (regarding the Cook Inlet/Gulf of Alaska draft permit), Telephone No. (206) 442-1774; or

Duane Karna (regarding the Bering Sea Area II draft permit), Telephone No. (206) 442-1413, Ocean Programs Section, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101-3188.

Dated: August 21, 1985.

Robert S. Burd,

Director, Water Division.

[FR Doc. 85-20942 Filed 8-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Approval of Agency Information Collection Requirement by OMB

August 26, 1985.

The following information collection requirement has been approved by the Office of Management and Budget. For further information contact Doris Peacock, FCC, (202) 632-7513.

OMB No: 3060-0104

Title: Temporary Permit to Operate a Part 90 Radio Station

Form No.: FCC 572

The approval on FCC 572 has been extended through 8/3/88. The October 1982 edition with an OMB expiration date of 9/30/85 will remain in use until updated forms are available.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-20891 Filed 8-30-85; 8:45 am]

BILLING CODE 6712-01-M

St. Clement's Episcopal Parish School et al.; Hearing Designation Order

In re Applications of: St. Clement's Episcopal Parish School (Inc.), MM Docket No 85-264; File No. BPET-850114KF; El Paso County Community College District, File No. BPET-850228KG, For Construction Permit El Paso, Texas.

Adopted: August 19, 1985.

Released: August 26, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of St. Clement's Episcopal Parish School (Inc.) (St. Clement's), and El Paso County Community College District (Community College) for authority to construct a new non-commercial educational television station on Channel 38, El Paso, Texas.

2. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that St. Clement's has done either. If it has not already done so, St. Clement's will be required to file a statement that it has or will comply with the public notice requirement with the adminstrative Law Judge within 20 days of the release of this Order.

3. Except as indicated by the issues specified below, the applicants are qualifed to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

2. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

3. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service;

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That St. Clement's Episcopal Parish School (Inc.) shall file a certification with the presiding Administrative Law Judge, within 20 days after this Order is released, that it has or will comply with § 73.3580 of the Commission's Rules.

6. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-20892 Filed 8-30-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-759]

Prices for Federal Home Loan Bank Services

August 28, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Office of District Banks and the Office of Policy And Economic Research of the Federal Home Loan Bank Board are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks for: (1) Processing and settlement of items and (2) demand deposit services offered to member institutions.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Ashley C. Speir, Jr., (202-377-6656) Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks: (1) To accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority.

Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Federal Home Loan Banks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the Board consistent with the principles set forth in section 11A(c) of the Federal Reserve Act." Board regulations at 12 CFR 534.6 require that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research (or their designees) review, approve, and publish these fees at least annually. The regulations specify that the fees must be reviewed in accordance with the following pricing principles:

(1) In determining the fees for services provided under this part, a Federal Home Loan Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this Part.

(3) All costs must be fully recovered within a period not exceeding five years. The prices charged for collection, processing, and settlement services must yield at least a competitive rate of return within a period not exceeding five years after offering such services.[1]

In accordance with these principles, the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research have reviewed and approved the current prices for Federal Home Loan Bank services, which are published herewith. The services and their prices are divided into two categories: (1) Services involved in the processing and settlement of items drawn on or issued by member institutions (Schedule A); and (2) service relating to demand deposit accounts maintained by member institutions with the Banks (Schedule B).

The services described in the attached schedules are not identical for any two Banks, as each Bank's program is tailored to meet the needs of the member institutions in the Bank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a Bank be specifically priced. This policy permits the Banks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district. However, total revenue from services must be sufficient to cover costs. In the case of item processing and settlement services, fees must be sufficient to recover all start-up costs within five years. Demand deposit service expenses must be recovered annually, because the Banks have provided these services for many years, and thus have attained mature service volumes.

The price analysis incorporates an imputed cost of captial adjustment factor of fifteen percent. This adjustment factor is required by 12 CFR 534.6(b)(2) in order to yield a fee structure competitive with prices charged by private-sector services. The current fifteen-percent figure was derived in accordance with a formula which is described in detail at 45 FR 64161 (Sept. 29, 1980).

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

[Services not provided]

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK

Service	Fee
Settlement (per month)	$75.00
Standard intercept (per item)	.02
Standard intercept-delayed check (per item)	.02
Check safekeeping:	
First 100,000 items/month (per item)	.015
100,001 plus items/month (per item)	.010
Bulk filing:	
First 100,000 items/month (per item)	.020
100,001 plus items/month (per item)	.015
Statement rendering:	
Bulk filing with items (per statement)	.30
Check safekeeping without items (per statement)	.05
Stop payment, suspect item, and certified item file (per entry)	1.00
Automatic item returns (per item)	2.50
Photocopies (per copy)	2.00
Original item retrieval (per item)	4.00
Datalex high dollar items (per item)	1.00
Counter item filing (per item)	.02
Counter item sorting (per item)	.005
Notices or advertising inserts (per insert)	.005
Microfilm monthly history (per 100,000 items)	5.00
Now transaction history-additional copies (per fiche card)	1.00
Held paid item filming (per item)	.02

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH

[For members located in the Third and Fourth Reserve Districts]

Services	Fee
Processing:	
First 50,000 items/month (per item)	$0.0360
50,001-100,000 items/month (per item)	.0362
100,001-150,000 items/month (per item)	.0344
150,001-200,000 items/month (per item)	.0328
Over 200,000 items/month (per item)	.0308

[1] By Resolution No. 82-211, the Board proposed to substitute a ten-year rule for this five-year requirement. 47 FR 57293 (December 23, 1982). No final action has been taken with respect to the proposal; however, the Board still has it under consideration.

[For members located in the Fifth Federal Reserve District]

Items/Month	Daily return unsorted	Daily return sorted	Truncation	Bulk filing without stuffing	Bulk with stuffing
First 19,000	$.0375	$.0500	$.0500	$.0575	$.0675
Next 20,000	.0325	.0450	.0450	.0525	.0625
Next 20,000	.0300	.0425	.0425	.0500	.0600
50,000 and Over	.0225	.0350	.0350	.0425	.0725

Special Services	Fee
Check retrieval or inspection of original item	$1.50
Photocopy	2.50
Advertising insertion (per item)	.01
Posted—"on-us" (per item)	.03
Statement stuffing for truncated statements (per statement)	.01
Statement stuffing of deposit tickets and dishonored notices (per item)	.09
Return items processed by bank (per item)	2.50
Additional sorting upon request:	
Fine sorting (per item)	.005
Cycle sorting (per item)	.005

District 4.—Federal Home Loan Bank of Atlanta

Services	Fee
Settlement only (per month)	$50.00
Daily delivery (same day and next day):	
1st 50,000 (per item)	.03
Over 50,000 (per item)	.025
Bulk filing:	
1st 50,000 (per item)	.035
Next 50,000 (per item)	.030
Over 100,000 (per item)	.025
Statement matching:	
1st 50,000 (per item)	.060
Next 50,000 (per item)	.055
Over 100,000 (per item)	.050
Truncation:	
1st 50,000 (per item)	.025
Next 50,000 (per item)	.020
Over 100,000 (per item)	.015
Caution/alert (stop payment)	2.00
Facsimile:	
Large dollar (per item)	2.00
On request (per item)	1.50
Bookkeeping and acc't re. rejects (per item)	2.00
Over-the-counter items (per item)	.015
Photocopies (per item)	2.00
Fineort (check number)—Special Accounts	.02

Note.—Minimum monthly billing for service options (other than Settlement Only) is $75.00.)

District 5.—Federal Home Loan Bank of Cincinnati

Service	Fee
Settlement Only (per month)	$50.00
Check retrieval or inspection of original item (per item)	1.50
Photocopy (per copy)	1.00
Advertising insertion (per item)	.01
Posted "on-us" (per item)	.03
Statement stuffing service for truncated statements (per statement)	.01
Statement stuffing of deposit tickets and dishonored notices (per item)	.09
Return items processed by bank (per item)	2.50
Additional sorting upon request:	
Fine sorting (per item)	.005
Cycle sorting (per item)	.005

Service

Items/month	Daily return unsorted	Daily return sorted	Truncation	Bulk filing w/ stuffing	Bulk filing w/out stuffing
0–25,000	$.0350	$.0375	$.0375	$.0750	$.0400
25,001–50,000	.0275	.0300	.0300	.0675	.0325
50,001–75,000	.0200	.0225	.0225	.0600	.0250
75,001–100,000	.0150	.0175	.0175	.0550	.0200
100,001–125,000	.0100	.0125	.0125	.0500	.0150
125,001–150,000	.0075	.0100	.0100	.0475	.0125
150,001 and over	.0050	.0075	.0075	.0450	.0100

District 7.—Federal Home Loan Bank of Chicago—Service

Items per month	Daily returns	24-hour delay	Bulk file	Truncation
0 to 50,000	$.025	$.024	$.023	$.020
50,001 to 100,000	.024	.023	.022	.019
100,001 to 150,000	.023	.022	.021	.018
150,000 and over	.022	.021	.020	.017

Service	Fee
Counter items (per item)	$0.025
Return items (per item)	4.00
Photocopies (per item)	3.00
Facsimile of items (per page)	2.00
Cash letter facsimile (per page)	2.00
Special sorts (per item)	.015
Monthly recap (per item)	.0025
Data transmission (per item)	.0030
NOW settlement only (per month)	100.00

District 6.—Federal Home Loan Bank of Indianapolis

Service	Fee
Settlement only (per month)	$40.00
Minimum processing fee (per month)	40.00
Over-the-counter items (per item)	.035
Microfilm	.035
Exception safekeeping statements	.25
Photocopies and facsimiles	2.00
Facsimile items for signature verification on day of presentment	(1)
Return items	2.75

[1] Fees for daily/cycle return, monthly return or monthly return with microfilm are in addition to the basic (truncated) fee.

Service

Item per/month	Safekeeping	Turnaround (daily or cycled)	Complete
0 to 5,000	$0.045	$0.053	$0.077
5,001 to 10,000	.037	.048	.075
10,001 to 15,000	.036	.044	.073
15,001 to 25,000	.031	.037	.072
25,001 to 50,000	.030	.033	.070
50,001 to 75,000	.026	.030	.068
75,001 to 100,000	.023	.027	.065
100,001 to 125,000	.021	.024	.064
125,001 to 150,000	.019	.022	.063
150,001 to 175,000	.017	.020	.062
175,001 and up	.014	.016	.059

District 8.—Federal Home Loan Bank of Des Moines

[Services]

Item processing volume level	Basic fee (truncated)	Daily cycle [1]	Monthly [1]	Monthly/film [1]
1 to 10,000	$.021	$.016	$.021	$.026
10,001 to 25,000	.019	.014	.019	.024
25,001 to 50,000	.017	.012	.017	.022
50,001 to 75,000	.015	.010	.015	.020
75,001 to 175,000	.0125	.0075	.0125	.0160
175,001 to 400,000	.012	.006	.010	.015
Bulk pricing 400,001 and over	.01	.006	.010	.015

[1] Fees for daily/cycle return, monthly return or monthly return with microfilm are in addition to the basic (truncated) fee.

Other Services

Service	Fee
Tape and transmission preparation	$0.0002
Key punch (rejects)	.04
Photo copies	2.75
Signatures verified	[1].70
Counter items with microfilm	.04
Fascimile transmission	1.00
Microfiche-monthly reports	1.50
Microfiche-copies	.18
Return items	2.50
Stop payments	2.00
Original item return	2.75
Certified checks	.50
Counter items without MICR encoding	.10
Fascimile transmission of daily cash letter	1.00
NOW transaction inquiry	1.00
Telephone advice on missing account No	.50
Microfilm copies for audit	10.00
Telephone check inquiry	1.00

[1] Dollar amount variable by association.

Note.—Minimum processing fee of $40.00 per month will apply for total NOW services.

District 8.—Federal Home Loan Bank of Des Moines (Continued)

	Fee
Statement per month—Non-truncated:	
First 2,000	$0.24
Next 4,000	.21
Next 4,000	.19
Next 4,000	.17
Next 4,000	.15
Statement per month—truncated	.05
Statement inserts	.005
Surcharge for one cycle per month	(1)
Fine sort counter items for statement insertion	.005
Sort Counter items without MICR	.02

[1] Ten percent.

Note.—Associations that have changed data processors and have more than one MICR account number corresponding to one statement account number are subject to additional fees.

District 9.—Federal Home Loan Bank of Dallas—Service

Basic service—items/month	Cycle-Daily [1]	Truncate
Tier 1: 0 to 50,000	$0.036	$0.030
Tier 2: 50,001 to 100,000	.030	.025
Tier 3: 100,001 to 150,000	.025	.020
Tier 4: 150,001 to 200,000	.020	.015
Tier 5: 200,001 to Over	.014	.010

Special services (per item)	Fee
Counter item integration	$0.036
Receive, microfilm, and fine sort with checks presently on hand at the FHLBank and store for truncation or delivery to association.	

District 9.—Federal Home Loan Bank of Dallas—Service—Continued

Special services (per item)	Fee
Return items	3.00
Fee for sorting and returning any items (NSF's stop payments, etc.) An additional %.50 will be added to reflect Federal Reserve Bank charges for checks processed through FRB Dallas, Houston, San Antonio and El Paso.	
Stop payment file	2.00
Fee for receiving and placing on file holds, stop pays, closed accounts, etc.	
Photocopies or original check retrieval	1.50
Postage	(1)

[1] An additional $.006 for month end.
[2] Acutal cost.

District 10.—Federal Home Loan Bank of Topeka

Level	Truncated	Fee per check cycle return
Processing Fees		
A First 10,000	$0.02	$0.035
B Next 15,000	.018	.034
C Next 25,000	.016	.032
D Next 200,000	.014	.03
E Next 250,000	.011	.027
F Each Over 500,000	.01	.026

District 10.—Federal Home Loan Bank of Topeka—Continued

Level	Truncated	Fee per check cycle return
Other Services		Fee
Return items—1st 50 (monthly) (per item)		$2.50
Over 50 (per item)		1.00
Settlement—(w/FHLB processing)		(1)
Settlement only (per month)		50.00
Item Retrieval (Photocopy) (per item)		2.00
Over-the-counter items (microfilmed and filed-per item)		.03
Facsimile transmissions (listing of paid item—per transmission)		1.50

[1] No charge.

District 11.—Federal Home Loan Bank of San Francisco

Service	Volume price based on total items per month				
	Less than 50,000	50,000 to 250,000	250,001 to 500,000	500,000 to 1,000,000	1,000,000 and more
Basic capture service (min. charge $500/mo.):					
Capture/fine/sort/microfilm	$0.0400	$0.0350	$0.0300	$0.0220	$0.0190
Return item processing	2.00	1.75	1.50	1.25	1.00
Comprehensive NOW service (min. charge $750/mo.):					
Capture/file/microfilm/fine sort	.400	.0350	.0300	.0220	.0190
Statement preparation (truncated)	.15	.14	.13	.12	.12
Statement preparation (standard)	.36	.30	.28	.26	.24
Return item processing	2.00	1.75	1.50	1.25	1.00
Over-the-counter items	.045	.045	.045	.045	.045
Statement inserts	.03	.03	.03	.03	.03

	Fee
Miscellaneous Services:	
Late return item transmission—after 2:00 p.m. (per item)	$.25
Second request on previously reconciled adjustment (per occurrence)	10.00
Truncated item retrieval (per item)	3.00
Data Line/Geeco generic envelopes (each)	.025
Reconciliation of member books (per hour)	25.00
Microfilm:	
Second copy of film daily (per month)	75.00
Special request copy (per copy)	5.00
Microfiche:	
Output report—2 copies each (per month)	50.00
Additional copies (per copy)	1.00
Special fine sort (per item)	.03
Photocopies (per copy)	2.00
Non-standard statement inserts (per insert)	.05
MICR line alterations (per item)	4.00
Supplementary Service Fees: Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau charges.	
Custom Programming:	
1. Breakout of items by routing transit number and/or branch number (incl. listing)	2,000.000
2. Breakout and capture of items (Processed items list/microfilm/commingled with other items for service bureau)	3,000.000
3. Breakout, capture, and separate tape produced, including above items	4,500.000
4. Selective account programming (maximum 50 accounts) in addition to regular programming requirements	1,500.00
5. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date.	
Statement Handling:	
Set-up fee/branch outsort of items	250.00
Standard statement rendition (close-out statement) (each)	.50
Non-standard statement rendition:	
First 90 days (each)	.75
After 90 days (each	1.00

District 12.—Federal Home Loan Bank of Seattle

Item/per month	Services			
	Daily return	Truncation	Bulk file	Statement stuffing
A. Seattle processing center:				
0 to 50,000	$0.0250	$0.0300	$0.0350	$0.0600
50,001 to 100,000	.0200	.0250	.0300	.0550
100,001 to 200,000	.0175	.0225	.0275	.0525
200,001 and up	.0150	.0200	.0250	.0500
B. Honolulu processing center:				
0 to 50,000	.0350	.0400	.0450	.0700
50,001 to 100,000	.0300	.0350	.0400	.0650
100,001 to 200,000	.0275	.0325	.0375	.0625
200,001 and up	.0250	.0300	.0350	.0600
C. Additional services and charges.				

Service	Seattle center	Honolulu center
Transportation charges for items outside of the Seattle Federal Reserve clearing district (except for Regional Processing Centers) (per item)	$0.005	$0.005
Return item handling (per item)	.75	.50
Facsimile transmissions (per item)	.75	.50
Large dollar verification (per item)	.75	.50
Research requests (per item)	.75	.50
Fine sort only (per item)	.006	.006
Settlement only (per item)	125.00	125.00

Schedule B: Demand Deposit Services

District 1.—Federal Home Loan Bank of Boston

Services	Fee
Checks and items Paid (per item)	$0.12
Deposits (per item)	.20
Debit/credit memos:	
Federal Reserve settlement (per item)[1]	.30
Internal transfer	([2])
Others (per item)	.10
Wire transfer:	
In (per item)	2.50
Out (per item)	5.00
Account maintenance (per month)	5.00
Special statements (per statement)	2.00
Stop Payment Orders (per item)	7.50
Account reconciliations:	
Paper issues (per item)	.05
Magnetic Tape issues (per item)	.035

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.
[2] No Charge.

District 2.—Federal Home Loan Bank of New York

Service	Fee
Teller checks and money orders:[1]	
First 10,000 items/month (per item)	$0.195
10,001 plus items/month (per item)	.145
Wire transfers:	
In (per wire)	([2])
Out (per wire)	7.50
Depository transfer checks (per check)	1.00
Collections: Coupon processing, bond redemption and recurring payments (per transaction)	4.00
Safekeeping: Purchases, Sales and Maturities (per transaction)	40.00
Special service fees:	
Saturday premium (per item)	.01
Cash letter deposit (per deposit)	.50
Return items (per return)	1.25
Non cash collection (per item)	3.50
Security coupon collection (per envelope)	3.50

[1] The indicated fee covers all aspects of check service including the cost of blank instruments, stop payment orders, inquiries and photocopies of paid items stored on microfilm. Blank stock is resupplied automatically, and other forms such as stop payment orders, photo request cards, check control sheets and address labels are supplied on request.
[2] No charge.

District 3.—Federal Home Loan Bank of Pittsburgh

Service	Fee
Deposit processing service:	
Deposit ticket entry (per entry)	$0.25
Deposit transfer voucher (per entry)	.75
Mail deposit entry (per entry)	1.75
Deposit item processing (per item)	.013
Deposit item encoding (per item)	.03
Deposit item return (per item)	1.25
Deposit item photocopy (per item)	2.00
Deposit pickup (per pickup)	6.75
Check and money order clearing service:	
Clearing item processing (per item)	.0667
Clearing item reconciliation copy processing:	
By manual input (per item)	.04
By magentic tape input (per item)	.01
Clearing item fine sorting for Return with Bank Statements (per item)	.05
Stop Payment Orders (per entry)	8.00
Imprinting checks and money orders	([1])
Standard earnings checks (per item)	.05
Wire transfer of funds:	
Outgoing (per transfer)	5.25
Incoming (per transfer)	3.25
Lockbox service:	
Lockbox item processing (per item)	.11
Deposit item processing (per item)	.03
Deposit ticket entry (per entry)	.25
Transportation (per month)	20.00
Account maintenance (per acct./month)	6.75
Account overdraft penalty [2]	

[1] Actual cost.
[2] Greater of $75 or interest for one day on the amount of the overdraft at the highest advance rate plus 3 percent.

District 4.—Federal Home Loan Bank of Atlanta

Service	Fee
Checks paid [1] (per item):	
Monthly statement w/items fine sorted	$0.12
Monthly statement w/items truncated	.08
Stop payment (per item)	6.00
Deposit transfer checks (DTC) (per item)	4.00
Wire transfers:	
In (per transfer)	4.00
Out (per transfer)	4.00
Account reconciliation service:	
Full reconciliation-magnetic tape ($20.00 min./mo.) (per issue)	.03
Full reconciliation-paper issue ($20.00 min./mo.):	
Encoded amounts (per issue)	.0425
Unencoded amounts (per issue)	.06
Partial reconciliation ($10.00 min./mo.) (per item)	.03
Deposit processing:	
Unencoded checks (per item)	0.525
Encoded checks (per item)	.0350
Foreign checks (per item)	2.50
Bond coupons (per envelope)	3.00
Deposited checks returned (per entry)	2.50
Automated clearinghouse (ACH) service:	
Originating-$15.00 per tape plus per item	.03
Receiving-$50.00 settlement per month plus per item charge	.03
Settlement only service:	
Automated clearinghouse (ACH) (per month)	50.00
Currency and con (per month)	50.00
Treasury tax and Loan (TT&L) (per entry)	2.50
Savings bonds (per entry)	2.50
Deposit of items at Fed (per month)	50.00
Non-cash collections (per entry)	2.50
Currency and coin service (full): $50.00 settlement/month plus per order	2.50
Account maintenance (per month)	5.00

[1] The checks paid charge includes at no additional charge: Internal transfers, special settlement drops, photocopies, and return of items not paid.

District 5.—Federal Home Loan Bank of Cincinnati

Service	Fee	
	Encoded	Unencoded
Items per month:		
0 to 25,000	$.0475	$.0575
25,001 to 50,000	.0450	.0550
50,001 to 75,000	.0425	.0525
75,001 to 100,000	.0400	.0500
100,001 to 150,000	.0375	.0475
150,001 to Over	.0350	.0450
Disbursement:	Per item charge	
Reconciled paid items	$0.060	
Unreconciled paid item	.165	
Magnetic tape	.045	
Advices	.040	
Other services:		
Stop payments	$2.00	
Wire transfer-in	2.00	
Wire transfer-out	5.00	
Charges	.11	
Credits	.11	
Photocopies	1.00	
Depository transfer check (DTC)	2.50	
Dishonored item:		
Returned to association	1.00	
Automatically re-deposited	([1])	
Non-cash collection service:		
Non-cash item	3.50	
Security coupon collection	3.50	
Coupon return item	5.00	
Foreign item	2.50	
U.S. Treasury and Gov't agency coupons	([2])	
Check and money order safekeeping	([2])	
Settlement Agent with Federal Reserve (per active month):		
ACH	25.00	
Treasury tax and loan	25.00	
Bond redemption	25.00	
Currency and coin	25.00	
Check deposits	25.00	

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI—(Continued)

Settlement day option	Per item charge	Earnings incentive (days)*
Money orders:		
1—Day	$0.01	1.5
2—Day	.03	0
3—Day	.05	0
Tuesday weekly	.09	0
Official checks:		
1—Day	.01	2.5
2—Day	.03	.75

[1] Check deposit fee.
[2] No Charge.
*The earnings incentive is applied to the associations' average daily remittance for the month at the Bank's earnings incentive rate (average 91-Day Treasury Bill Rate plus 10 basis points).

(Note.—The per item fees for disbursements and reconciliation advices do not include printing costs. If the Bank coordinates and pays for the printing of checks, the following printing allowances are assessed: $.055 for money orders; $.045 for dividend checks; $.15 for christmas club checks; $.085 for all other reconciled checks; $.045 for unreconciled checks; and $.02 for reconciliation advices).

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS

	Paid check charge	Advices	
		Paper	Tape
Quarterly transaction volume:			
First 3,750	$0.13	$0.05	$0.025
Next 9,000	0.11	0.04	0.02
Next 12,250	0.09	0.04	0.02
Next 25,000	0.08	0.03	0.015
All over 50,000	0.07	0.02	0.01

Overdrafts in excess of $10,000 are assessed a charge at the variable advance rate.
Collected balances will earn at an interest rate that approximates the 91 day Treasury Bill rate.

Other Services	Metropolitan area	
	Detroit	Indianapolis
Cast item deposited:		
Unencoded	$0.08	$0.07
Pre-encoded		0.04
Return item	0.75	0.75
Photocopies	2.00	2.00
Mortgage remittance:[1]		
Per deposit item received	$0.15	
Truncation of coupons	0.02	

[1] Fee.
Courier charges are assessed for each delivery at various rates depending upon the distances traveled and other cost considerations.
Services charges for the coin and currency program are $25.00 per delivery by armored truck servcie in the Metropolitan Area of Indianapolis and Detroit while fees vary outside the metropolitan areas depending upon distance involved. Excess funds are picked up if desired.

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO

Services	Fee	Non-truncated accounts	Truncated accounts
Checks and money orders paid items/month per association:			
A. Demand accounts:			
0 to 7,500	$.110		$.090
7,501 to 10,000	.100		.080
10,001 to 12,500	.090		.070
12,501 to 15,000	.080		.060
15,001 to 25,000	.075		.055
25,001 to and up	.070		.050
Ancillary services fees:			
Fine sorting (per item)		.015	
Recons:			
Non-encoded items (per item)		.055	
Encoded items (per item)		.020	
Magnetic tape items (per item)		.020	
Stop payments (per stop placed)		7.00	
Photocopies (per item)		3.00	
Account maintenance (per account per month)		10.00	
Additional statements (per statement)		5.00	
Checks supplied by bank		(1)	
Request for money order forms		(1)	
Postage/courier		(1)	
ACH services		(1)	
B. Deposit processing checks deposit drawn on:			
FHLB/Chicago-FHLB Inforcept Customers (per item)		.015	
City of Chicago financial institutions (Routing Numbers 0710, 2710) (per item)		.030	
Postal money orders (0020, 0119) (per item)		.030	
U.S. Treasury checks (0050, 0051) (per item)		.030	
Chicago RCPC financial institutions: (Routing Numbers 0711, 0712, 0718, 2711, 2712, 2719) (per item)		.053	
Transmit items—Other district financial institutions (per item)		.084	
Check encoding (per item)		.035	
Return items:			
Re-deposits		(2)	
Charge backs (per item)		1.00	
Food stamps (per item)		.02	
Coupons deposits (per envelope)		2.50	
Coin and currency Orders (plus costs)		2.00	
Visa/Mastercard deposits		2.00	
C. Money transfers:			
Wire transfers:			
In		2.00	
With telephone advice		4.00	
Out		4.00	
Quick drafts		2.00	
Safekeeping:			
Receipt or delivery:			
Book entry item		10.00	
Physical item		10.00	
Coupon collection		(2)	
Collection at maturity		(2)	
Annual maintenance (billed quarterly):			
Par amount under $5 million		60.00	
Par amount $5 million or over (per million)		20.00	
Monthly reports		(2)	
Registration fees		(1)	

[1] Actual Cost.
[2] No charge.

District 8.—Federal Home Loan Bank of Des Moines

Services	Fee
Account maintenance	$5.00
Account reconciliation	5.00
Check printing costs	(1)
Drafts Paid:	
Truncated	.04
Non-Truncated	.05
Stop payments	5.00
Ledger credits	.20
Ledger debits	.10
Bankwires In:	
Without phone advice	2.50
With phone advice	3.50
Bankwires out:	
Without phone advice	4.00
With phone advice	6.00
Special cut-off statements	3.00
Account reconciliation tape issues	.02
Issue encoding	.04
Safekeeping transactions	10.00
Retail repo customers, (per page) plus $25.00 Main. Fee	.25
Food stamps deposited (Des Moines, Kansas City, St. Louis)	.02

District 8.—Federal Home Loan Bank of Des Moines—Continued

Services	Fee
Coupons deposited (per envelope)	2.50
Microfilm processing	4.00
Microfilm duplication	5.00
ACH transaction	(1)
Miscellaneous charges	(1)
Controlled disbursement drafts	.055
Pre-encoded issues	.03
Proof of deposit fee schedule:	
Entry Fee for all items	.003
Re-enter rejects	.04
Encoding fee	.0225
Data transmission (per transmission)	1.50
Fine sort "on-us" items	.005
Printed reports—Standard (per report)	1.00
Plus:	
(per page)	.05
Optional	(2)
plus (per page)	.05
Minimum monthly billing	40.00
Facsimile Transaction (per transmission)	1.00
Accout Transaction Info. (per call)	1.00

[1] Actual.
[2] At quotes.

District 8.—Federal Home Loan Bank of Des Moines

	Minneapolis	Des Moines	St. Louis	Kansas City
Deposited Item Charges:				
Local	$.020	$.025	$.025	$.025
Regional	.035	.035	.030	
Regional premium	.045	.04	.035	
Country	.039	.0325	.0375	
Out of State	.075	.0525	.065	.060

	Encoded	Unencoded
Deposit processing fees/item:		
a. Des Moines Center:		
Local	$.025	$.0475
Regional	.035	.0575
Regional—premium	.040	.0625
Transit	.0525	.075
b. Minneapolis Center:		
Local	.020	.0425
Regional	.035	.0575
Regional—premium	.045	.0675
Country	.039	.0615
Transit	.075	.0975
c. Kansas City Center:		
Local	.0225	.0450
Country	.0375	.060
Transit	.060	.0625
d. St Louis Center:		
Local	.025	.0475
Regional	.030	.0525
Regional—premium	.035	.0575
Country	.035	.055
Transit	.0650	.0875

	Fee
Other fees at the four regional processing centers:	
Return items	$.0175
Food coupons (at Minneapolis only)	.02
Bond coupons (per envelop)	.04
Currency/coin orders	2.50
Other currency/coin fees	(1)
Additional services (St. Louis Center):	
Package sort I:	
(Pre-encoded items representing 100% or association's daily work):	
Local	.0175
Regional	.023
Country	.029
Transit	.065
Package Sort II:	
(Pre-encoded items that do not represent 100% of associations's daily work):	
Local	.022
Regional	.024
Country	.029
Transit	.065
Package sort III:	
(Deposits containing only pre-encoded transit items)	
(items not payable in the St. Louis zone).	
Pre-encoded transit items	.07

[1] Negotiated.

Note.—A 10% dicount per item on processing fees only is given when monthly volume exceeds 200,000 items. Volume discounts do not apply to any package sort plans.

Lockbox service	Fee
1. Basic service	$.13
2. Transmit via user supplied equipment	.01
3. Transmit via FHLBank supplied equipment	.015
4. Data prep. for transmission	.04
5. Re-enter/Reprocess item	.06
6. Keypunch or MICR encode from handwritten document	.05
7. Keypunch or MICR encode from pre-printed document	.04
8. Photocopies	.20
9. Microfilm copies	2.75
10. Storage	N/A
11. Dup on sale edit	.005
12. Write loan account number on check (per item)	.02
13. Write check number, amount and/or loan number on envelope and return (per item)	.05
14. Pull selected checks to be non-processed (per item)	.001
15. Check postmark/sort by date	.001
16. Call L.B. totals posted (daily)	1.00
17. Telephone verification of account number, etc. (per item)	.50
18. Process additions to savings or checks accounts	.25
19. Process additions to principals, escrow, etc. (per item)	.05
20. Sort and batch envelopes by type or return in sequence (per item)	.001
21. Batch payments by type in processing (per item)	.001
22. Process multiple payments (per item)	.001
23. Process late fees/delinquents, when total amount due not shown (per item)	.001
24. Process "certified funds required" (per item)	.001
25. Screen envelope for attention line (per item)	.001
26. Sort and package output (daily)	1.00
27. Date stamp checks, coupons, etc. (per item)	.005
28. Microfilm checks, coupeon, etc. (per item)	.01
29. Courier/postage	(1)
30. Post Office box rental	(1)
31. Local messenger service	(1)
32. Minimum monthly billing	40.00
33. Modified processing; open and screen performed by member	.08
34. Full system rejects/hot file rejects (per item)	.02
35. Update hot file (manual) (per addition)	.50
36. Update hot file (data transmission) (per addition)	.015
37. Process payments to hot file (per item)	.004

[1] Actual.

District 9.—Federal Home Loan Bank of Dallas

Service	Fee (per item)
Checks/money orders paid (standard check furnished)	$0.15
Truncation	(1)
Reconciliation of check/money order:	
Magnetic tape	.02
MICR	.07
Fine sort	.006
Deposits (per check)	.04
Credits/adjustments	(1)
Wire:	
In	2.00
Out	4.00
Check withdrawals	5.00
Stop payments	5.00
Exception item return	2.50
Depository transfer checks	4.00
Photocopy	2.50
Transmatic returns	2.50
Voids	(1)
Checks/money order forms (above standard check)	(2)
Paid items mailed to association	(2)
Overdrafts (per daily occurrence and interest at special variable advance rate plus 3 percent)	50.00

[1] No charge.
[2] Actual costs.

District 10.—Federal Home Loan Bank of Topeka

Service	Fee
Full service demand plus accounting (includes automatic branch control reconciliation, reporting of full account activity) (per item):	
Cycle	$0.15
Truncated	0.12
Basic demand plus accounting (standard summary statement, must be able to process magnetic tapes) (per item):	
Cycle	0.11
Truncated	0.09
Wire Transfers:	
Incoming (per item)	2.00
Outgoing (per item)	4.00
Safekeeping charges and—	
Physical securities (per transaction)	35.00
Wireable securities (per transaction)	30.00
Pass-through reserves (per month)	25.00

DEPOSIT PROCESSING

	Topeka		Oklahoma City		Kansas City	
	Encoded	Unencoded	Encoded	Unencoded	Encoded	Unencoded
Processing fees:						
Local	$0.025	$0.038	$0.025	$0.038	$0.038	$0.0555
RCPC and country	$0.054	$0.067	$0.038	$0.051	$0.0605	$0.078
Transit	$0.054	$0.067	$0.067	$0.08	$0.0605	$0.078

OTHER SERVICES

	Fee
Returns (per item)	$0.80
Collections (per item)	2.50
Coin and currency (per phone call)	2.50
Courier and armored car costs	As charged

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO

Service	Fee
Depository service charges (minimum charge—$300 per month)	
Deposit processing:	
5:30 P.M. deposit deadline:	
Encoded items deposited:	
Mixed (per item)	$.095
Group sort (per item)	.105
Unencoded items deposited:	
Mixed (per item)	.110
Group sort (per item)	.120
Deposit ticket (per cash letter)	1.00
Returned items (per item)	1.00
Member commercial accounts (per deposit ticket)	1.00
Wholesale lockbox (contact bank for details)	
10:30 P.M. deposit deadline:	
Encoded items deposited (per item)	.05
Unencoded items deposited (per item)	.065
Deposit ticket (per cash letter)	1.00
Returned items (per item)	1.00
Member commercial accounts (per deposit ticket)	1.00
10:00 A.M. deposit deadline:	
Direct deposit of items drawn on financial institutions for whom the Bank serves as in-clearings agent (list furnished upon request)	
(Per item)	.01
(Per cash letter)	1.00
(Per return)	1.00
Collection services:	
Clean collection (per item)	4.00
Documentary collection (per item)	10.00
Coupon collection (per envelope)	6.00
Foreign drafts (per item)	7.50
Coin and currency: (Pass-through price dependent on: carrier used; association location(s); frequency of delivery/pickup; and volume of coin and currency)	

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE

Service	Fee
Account maintenance (per month)	$3.50
Wire transfers out (per wire)	3.00
Wire transfer in (per wire)	2.00
Pre-authorized deposit transfers (per check)	1.25
Stop payments (per stop)	3.25
Government recurring payments (per item)	.25
Unreconciled checks paid and fine sorted (per item)	.075
Check paid and reconciled—tape entry (per item)	.065
Check paid and reconciled—register entry (per item)	.095
Check supplies	[1]

[1] Actual cost.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 85-20791 Filed 8-20-85; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed; Request for Additional Information

Agreement No.: 202-010789.
Title: Israel Westbound Conference.
Agreement No.: 202-010790.
Title: Israel Eastbound Conference.
Parties: Zim Israel Navigation Co., Ltd.; Farrell Lines, Inc.; Lykes Bros, Steamship Company, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6A(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720), has requested additional information from the parties to the agreements in order to complete the statutory review of Agreements Nos. 202-010789 and 202-010790 as required by the Act. This section extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: August 23, 1985.
Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-20933 Filed 8-30-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

August 28, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR §1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR §1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the Federal Register.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Street, N.W., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in §261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System. Washington, D.C. 20551 (202-452-3822)

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: One-Time Survey of Foreign Transactions of Primary Dealers
Agency form number: FR 3035
OMB Docket number: 7100-0214

Frequency: One-Time
Reporters: U.S. Government Securities Dealers
Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 248a(2) and 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report will provide information on the foreign activity of the 36 primary U.S. Government securities dealers over a period of one month. The information will be used to gauge the magnitude of foreign transactions and to gain some insight into their composition.

Board of Governors of the Federal Reserve System, August 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20902 Filed 8-30-85; 8:45 am]

BILLING CODE 6210-01-M

First Indiana Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 USC 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Indiana Bancorp*, Elkhart, Indiana; to merge with Syracuse Bancorp, Inc., Syracuse, Syracuse, Indiana, thereby indirectly acquiring State Bank of Syracuse, Indiana.

2. *First State Bancorp of Monticello*, Monticello, Illinois; to acquire 100 percent of the voting shares of Prairie State Bank, Bloomington, Illinois.

3. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Security Financial Services, Inc., Sheboygan, Wisconsin, thereby indirectly acquiring the following banks: Security First National Bank of Sheboygan, Sheboygan; South-West State Bank, Sheboygan; Farmers-Merchants National Bank in Princeton, Princeton; Eldorado State Bank, Eldorado; Security Bank, Menasha; and Manitowoc County Bank, Manitowoc, all located in Wisconsin. Comments on this application must be received not later than September 20, 1985.

Board of Governors of the Federal Reserve System, August 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20901 Filed 8-30-85; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0515]

Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: On May 17, 1985 (50 FR 21120; May 22, 1985), the Board issued a policy statement regarding risks on large-dollar wire transfer systems urging, among other things, that institutions participating on large-dollar wire networks adopt sender net debit caps. The Board has now taken steps to provide depository institutions and Edge corporations an additional option in sender net debit cap determination. Specifically, such institutions may have their sender net debit cap levels reviewed and established by either their own board of directors or by the board of a higher level corporation within its corporate family. If the new second option is selected, certain conditions (indicated below) must be met.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202-452-3368); Joseph R. Alexander, Attorney, Legal Division (202-452-2489); or Joy W. O'Connell, Telecommunication Device for the Deaf, TDD (202-452-3244).

SUPPLEMENTARY INFORMATION: The Board of Governors has issued the following interpretation of its policy statement concerning risk on large-dollar wire transfer systems:

Under the policy adopted by the Board in May, each depository institution and Edge Act and agreement corporation that incurs daylight overdrafts on Fedwire or participates on a large-dollar wire transfer network is encouraged to establish a cross-system sender net debit cap. In establishing this cap, each institution and Edge or agreement corporation was to (1) conduct its own self-evaluation of its creditworthiness, operational policies and procedures, and credit policies; (2) present the self-evaluation to that entity's board of directors for review and approval each six months; and (3) maintain for its primary examiner a file containing that self-evaluation and board review, the resultant cap level, and other materials which the examiner would review periodically, at least at each examination.

Since the Board's policy was announced, the Board has received several requests to allow an institution's sender net debit cap to be reviewed and approved by the board of directors of a parent organization. In one case, a bank has requested that its board of directors be permitted to review the cap determination of its Edge corporation subsidiary because the Edge's board does not meet every six months. Another bank that is a subsidiary of a multi-bank holding company has requested, in the name of efficiency, that the board of the holding company be permitted to review the cap determination of each of the subsidiary banks.

The Board believes that these requests are reasonable and has determined that a depository institution has the option of either having its own board of directors review its self-evaluation and determine its cap or having the board of directors of its parent holding company or parent bank review and approve its self-evaluation and cap, provided that (1) the self-evaluation be performed by each entity incurring daylight overdrafts or participating on a private large-dollar network; (2) the entity's cap be based on the entity's own capital (adjusted to avoid double counting); and (3) each entity maintain for its primary supervisor's review its own file with supporting documents for its self-evaluation and a record of its own or high level board of directors' review.

By order of the Board of Governors of the Federal Reserve System, August 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20903 Filed 8-30-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Social Security Administration

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). This material is amended to reflect the consolidation of various responsibilities associated with SSA's comprehensive systems planning and support processes for Information Technology Systems (ITS). This consolidation improves organizational effectiveness by merging all ITS planning and supporting functions into one component, a new Office of Planning, Support and Integration (OPSI), which reports through the Deputy Commissioner for Systems, to the Commissioner of Social Security. The functions currently assigned to the Strategic Planning Staff (SUB) of the Office of System Integration (OSI) (as published in 48 FR 341 on January 4, 1983), the Systems Security Staff (SUH2) of the OSI Office of System Engineering (OSE) (as published in 48 FR 36907 on August 15, 1983), and the Office of Systems Management (SQ) (as published in 49 FR 21121 on May 18, 1984) are realigned to the new OPSI, and the three organizations in which they now reside (SUB, SUH2 and SQ as noted above) are abolished.

To effect this consolidation of support and planning functions into OPSI, the following changes are made to Part S:

Chapter S, Section S.10 *The Social Security Administration*—(Organization):

Change the title of Subsection U.

The Office of Systems Management (SQ) to read as follows:

U. *The Office of Planning, Support and Integration (SQ).*

Chapter SU, Section SU.00 *The Office of System Integration*—(Mission):

Delete the entire first paragraph lines 1 through 8 in their entirety.

Section SU.10 *The Office of System Integration*—(Organization):

Delete E. The Strategic Planning Staff (SUB).

Reletter remaining Subsections E through H.

Subsection I *The Office of System Engineering (SUH)*

Delete number 2 The Systems Security Staff in its entirety (SUH2).

Renumber remaining Subsections 2 through 5.

Section SU.20 *The Office of System Integration*—(Functions):

Delete in its entirety:

E. The Strategic Planning Staff (SUB).

Reletter remaining Sections E through H.

Subsection I *The Office of System Engineering (SUH)*

Delete number 2 The Systems Security Staff in its entirety (SUH2).

Renumber remaining Subsections 2 through 5.

Chapter SO, *Office of Systems Management*

Delete this chapter in its entirety. In its place, add the new

Chapter SO, *Office of Planning, Support and Integration* as follows:

Section SO.00 *The Office of Planning, Support and* Integration—(Mission):

The Office of Planning Support and Integration (OPSI) directs and conducts SSA's comprehensive integration and strategic planning processes. OPSI analyzes Systems Modernization Plan (SMP) program strategies and coordinates the integration of SMP program interdependencies, critical paths and major milestones. OPSI analyzes strategic systems requirements, identifies systems design and architectural implications and maintains the design integrity of both software and systems engineering efforts SSA-wide. OPSI develops SSA's ITS budget, prepares the SSA Systems detailed budget submission and develops and maintains systems-wide procurement, contract and resource monitoring and tracking systems. OPSI directs the design, development and maintenance of automated systems and processes for the SSA Systems Management Center (SMC) in support of systems management and integration responsibilities. OPSI develops and monitors systems security policy for the SSA systems organization. The Office provides SSA's focal point for Information Resource Management (IRM) activities and liaison with the Department of Health and Human Services. OPSI identifies administrative and technical training requirements and integrates these with the Office of Training, Office of Management, Budget and Personnel. OPSI analyzes systems organizational issues and concerns and provides support to the Commissioner, the Deputy Commissioner for Systems, and Associate Commissioners in the development of plans to accomplish needed changes.

Section SQ.10 *The Office of Planning, Support and Integration*—(Organization):

The Office of Planning, Support and Integration under the leadership of the Director includes:

A. Office of the Director for Planning, Support and Integration (SQ).

Section SQ.20 *The Office of Planning, Support and Integration*—(Functions):

A. The Director, Office of Planning, Support and Integration (SQ), is directly responsible to the Commissioner through the Deputy Commissioner, Systems, for carrying out the OPSI mission and providing general supervision to the major components of OPSI.

Dated: August 22, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-20954 Filed 8-30-85; 8:45 am]

BILLING CODE 4110-07-M

Statement of Organization, Functions and Delegations of Authority; Social Security Administration

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Sections SD.00, SD.10 and SD.20 of the SSA statement, as published in the Federal Register on November 13, 1981 (46 FR 56055–56056), describes the mission, organization and functions of SSA's Office of Field Operations. Notice is given that these sections are being abolished.

Sections SDB.00, SDB.10 and SDB.20 of the SSA statement, as published in the Federal Register of September 10, 1979 (44 FR 52756–52757), and amended on June 11, 1980 (45 FR 39542–44), November 13, 1981 (46 FR 56055–56056) and June 1, 1983 (48 FR 24460), describe the mission, organization and functions of SSA's Office of the Regional Commissioner (ORC). Notice is given that these sections are being redesignated as Sections SD.00, SD.10 and SD.20, and that the reporting relationship of the ORC is being changed. Revise the SSA material as follows:

1. Abolish the current SD sections in their entirety.

2. Redesignate Chapter SDB as Chapter SD.

3. Under the redesignated Section SD.20 *The Offices of the Regional Comission*—(Functions):

A. Should read as follows: The Regional Commissioners (SDI–SDX) are directly responsible to the Commissioner, SSA for carrying out ORC's mission and managing their respective SSA regional organizations.

Dated: August 22, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-20953 Filed 8-30-85; 8:45 am]

BILLING CODE 4190-67-M

Statement of Organization, Functions and Delegations of Authority; Social Security Administration

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Chapter SA, as published in the Federal Register on March 21, 1979 (44 FR 17219) and last amended in February 9, 1984 (49 FR 4989) is amended to add the Field Liaison and Support Staff (FLSS). The new material is as follows: Section SA.10 *The Office of the Commissioner*—(Organization):

Add: Subsection F3. Field Liaison and Support Staff (SAY) Section SA.20 *The Office of the Commissioner*—(Functions):

Under Subsection F add:

3. Field Liaison and Support Staff (SAY)

a. Advises the Commissioner and his/her Executive Staff on the full range of issues pertaining to headquarters' support to the SSA field organization.

b. Ensures effective ongoing liaison between SSA headquarters and the SSA field organization.

c. Ensures that the concerns of and issues raised by the field organization on proposed legislation, operations, policy, procedures and systems matters are addressed by the appropriate headquarters' components.

d. Coordinates with field management in the identification of field components' systems needs, and in the installation and evaluation of systems applications in all SSA programs which affect field office operating procedures and practices.

e. Plans and coordinates a continuing program of operational analysis throughout field operations and the design and implementation of studies to measure the overall effectiveness and efficiency of field operations processes and identification and resolution of operating problems and issues.

Dated: August 22, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-20952 Filed 8-30-85; 8:45 am]

BILLING CODE 4110-07-M

Departmental Grant Appeals Board; Delegation of Authority

Notice is hereby given that on August 6, 1985, the Secretary of Health and Human Services delegated to any and all Administrative Law Judges in or assigned or detailed to the Departmental Grant Appeals Board authority under sections 1128(e), 1128A(b), 1872, and 1918 of the Social Security Act, as amended, to conduct hearings and to render decisions with respect to the imposition of civil money penalties and/or assessments under section 1128A(a) and the suspensions from Medicare under section 1128(c) of the Social Security Act. The delegation includes, but is not limited to, the authority to administer oaths and affirmations, to issue subpoenas, to examine witnesses, to receive evidence, and to make determinations to impose penalties and/or assessments and suspensions, which will be final unless reviewed by the Secretary or her designee in accordance with regulations.

The delegation rescinded the earlier delegation of these authorities to the Chairman of the Departmental Grant Appeals Board, dated December 13, 1983.

Dated: August 23, 1985.

John J. Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-20951 Filed 8-30-85; 8:45 am]

BILLING CODE 4160-04-M

Food and Drug Administration

[Docket No. 83N-0260]

Dental X-Ray Patient Selection Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of the Dental X-Ray Patient Selection Criteria Panel. This is the fourth meeting of the Panel. The meeting is being called to discuss the review comments received on the Panel's draft report entitled, "The Selection of Patients for Dental X-Ray Examinations: Routine Dental X-Ray Examinations."

DATES: Open sessions: September 11, 8:30 a.m. to 9 a.m., and September 12, 8:30 a.m. to 9 a.m.; closed sessions: September 11, 9 a.m. to 5 p.m., and September 12, 9 a.m. to 4 p.m.

ADDRESSES: The Panel meeting will be held at the Cascades Conference Center, Williamsburg, VA, 804-229-1000. The Panel's draft report may be reviewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health, FDA conducts and supports research, training, and other activities to minimize unproductive radiation exposure from diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, it is important that the dentist have current information about when a given radiological study is likely to provide needed diagnostic information. This information can take the form of decision guidelines based on patient signs, symptoms, or history, sometimes known as patient selection criteria.

Under one part of a program designed to facilitate the development and testing by the dental profession of patient selection criteria for diagnostic radiological examinations, FDA has provided logistical support for the convening of a small panel of clinical and scientific experts that have formulated patient selection criteria statements of use. A detailed description of the x-ray referral criteria development process was published in the Federal Register of June 9, 1981 (46 FR 30568).

The Panel's recommendations on the selection of patients for dental x-ray examinations are incorporated in a draft report entitled, "The Selection of Patients for Dental X-Ray Examinations: Routine Dental X-Ray Examinations." The availability of this draft report was announced in the Federal Register of July 19, 1985 (50 FR 29483). The Panel is now convening to discuss and review the comments received concerning the draft report. If through the review process new data provide sufficient and necessary argument to warrant changes in the recommendations, the Panel will consider them at this meeting.

Any interested person who wishes to request time for an oral presentation during the open portion of the meeting, or who would like to submit written comments to the Panel and is unable to attend the open portion of the meeting,

should inform the contact person listed above, either orally or in writing, before the meeting. Persons attending the meeting who do not request time for an oral presentation will be permitted to make an oral presentation at the conclusion of the open portion if time permits.

A list of committee members, the meeting agenda, summaries of the previous Panel meetings, the draft report, and comments received on the draft report may be reviewed at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday. The summaries of the Panel meetings will contain minutes of the open sessions, copies of written data and views submitted to the Panel in the open sessions, and summaries of the closed sessions.

Dated: August 22, 1985.

Mervin H. Shumate,

Acting Associate Commission for Regulatory Affairs.

[FR Doc. 85-20934 Filed 8-28-85; 2:09 pm]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming small business exchange meeting to be chaired by E. Pitt Smith, Director, Buffalo District Office.

DATE: The meeting will be held at 1 p.m., Thursday, September 26, 1985.

ADDRESS: The meeting will be held at the Leo W. O'Brien Federal Bldg., Conference Rm. B38 A and B, Clinton & North Pearl Sts., Albany, NY 12207.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Pl., East Orange, NJ 07018-2195, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: August 27, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20935 Filed 8-28-85; 2:08 pm]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-278-CN]

Medicare Program; Schedule of Limits on Home Health Agency Costs per Visist for Cost Reporting Periods Beginning on or After July 1, 1985

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final notice.

SUMMARY: This document corrects technical errors that appeared in the final notice published July 5, 1985 which set forth a schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. This document also lists three new metropolitan statistical area (MSA) designations that were announced by the Executive Office of Management and Budget (EOMB) and inadvertently omitted from that final notice.

FOR FURTHER INFORMATION CONTACT: Michael Notzon, (301) 597-6334.

SUPPLEMENTARY INFORMATION: We stated in the final notice published in the Federal Register on July 5, 1985 (50 FR 27734) that if EOMB were to announce changes in the MSA designations before July 1, 1985, we would recalculate the wage indexes for the affected areas and direct our intermediaries to use these revised indexes in determining the limits for HHAs they service. While the document was in the final clearance process, EOMB announced in a press release on June 27, 1985 (OMB 85-18) that, based on recent Bureau of the Census population data, effective June 30, 1985, OMB would be recognizing three new MSAs (Cheyenne, Wyoming; Jackson, Tennessee; and Rapid City, South Dakota). Inadvertently, however, the new MSAs were not added to the list in the July 5, 1985 publication. Therefore, we have included the new MSAs and their corresponding wage index values in this correction notice, along with other corrections of technical errors for that document. We have also recalculated the rural wage index values for Wyoming, Tennessee, and South Dakota to reflect the inclusion of previously rural counties in the new MSAs.

In FR Doc. 85-15965, beginning on page 27734 in the issue of Friday, July 5, 1985, make the following corrections:

A. *Page 27741, Column 1*

In the table, the column titled "Percent Increase", the superscript for 1984, "2," is corrected to "1".

B. *Page 27742*

1. In column 3, in Table IIIA, titled "Wage Index for Urban Areas", the wage index value for Allentown-Bethlehem, PA-NJ, "1.0017", is corrected to "1.0617."

2. In column 3, the wage index value for Atlanta, GA, ".9733", is corrected to ".9728."

C. *Page 27743*

1. In column 1, the wage index value for Bergen-Passaic, NJ, "1.0181", is corrected to "1.0184."

2. In column 1, the wage index value for Bloomington, IN, ".9185", is corrected to ".9171."

3. In column 2, the wage index value for Bremerton, WA, ".9434", is corrected to ".9562."

4. In column 2, a new MSA and its wage index value is inserted between the MSA entries for Chattanooga, TN-GA and Chicago, IL, reading as follows:

"Cheyenne, WY.....9914
Laramie, WY"

5. In column 3, the wage index value for Denver, CO, "1.0024", is corrected to "1.1875."

6. In column 3, the wage index value for Detroit, MI, "1.1661", is corrected to "1.1681."

D. *Page 27744*

1. In column 1 the wage index value for Grand Forks, ND, ".9576", is corrected to ".9796."

2. In column 2, the wage index value for Jackson, MI, "1.0062", is corrected to "1.0400."

3. In column 2, a new MSA and its wage index value is inserted between the MSA entries for Jackson, MS and Jacksonville, FL, reading as follows:

"Jackson, TN.....8180
Madison, TN"

4. In column 2, the wage index value for Janesville-Beloit, WI, ".9504", is corrected to ".9042."

5. In column 2, the wage index value for Johnson City-Kingsport-Bristol, TN-VA, ".9362", is corrected to ".9308."

6. In column 2, the wage index value for Kansas City, MO-KS, "1.0475", is corrected to "1.0451."

7. In column 3, the wage index value for Lansing-East Lansing, MI, "1.0469", is corrected to "1.0460."

8. In column 3, the wage index value for Lawrence, KS, "[1].9409", is corrected to ".9404[1]."

9. In column 3, the wage index value for Lincoln, NE, ".7913", is corrected to ".9171."

E. *Page 27745*

1. In column 1, the wage index value for Muncie, IN, ".9223", is corrected to ".9923."

2. In column 1, the wage index value for New Orleans, LA, "1.0186", is corrected to "1.0184."

3. In column 2, the wage index value for Ocala, FL, "[1].9658, is corrected to ".9666[1]."

4. In column 2, the wage index value for Odessa, TX, "[1] 1.0457", is corrected to "1.0451 [1]."

5. In column 2, the wage index value for Omaha, NE–IA, ".9622", is corrected to ".9667."

6. In column 3, a new MSA and its wage index value is inserted between the MSA entries for Raleigh-Durham, NC and Reading, PA, reading as follows:

"Rapid City, SD.....8823
Pennington, SD"

F. *Page 27746*

1. In column 2, the wage index value for Topeka, KS, "1.1128", is corrected to "1.1129."

2. In column 3, the wage index value for Colorado, ".8656", is corrected to ".8619."

3. In column 3, the wage index value for Georgia, ".8306", is corrected to ".8305."

4. In column 3, the wage index value for Illinois, ".8915", is corrected to ".8911."

5. In column 3, the wage index value for Louisiana, ".8623", is corrected to ".8626."

6. In column 3, the wage index value for Michigan, ".9362" is corrected to ".9349."

7. In column 3, the wage index value for Nebraska, ".7258", is corrected to ".7345."

G. *Page 27747*

1. In column 1, the wage index value for Rhode Island, "[1].9328", is corrected to ".9308 [1]."

2. In column 1, the wage index value for South Dakota, ".7621", is corrected to ".7437."

3. In column 1, the wage index value for Tennessee, ".7768", is corrected to ".7709."

4. In column 1, the wage index value for Wyoming, ".9658", is corrected to ".9613."

(Sec. 1102, 1861(v) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v) and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: August 23, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–20956, Filed 8–30–85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–1881]

Classification Vacated; Correction; Nevada

August 21, 1985.

In FR Doc 83–19364 issued Tuesday, July 19, 1983, third column, para numbered 4, the land description should read

T. 1 N., R. 33 E.,
Sec. 5, SW¼SW¼;
Sec. 8, N½NW¼NW¼.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85–20960 Filed 8–30–85; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places, Alabama, et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 3, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 18, 1985.

Bruce MacDougal,

Acting Chief of Registration, National Register.

ALABAMA

Calhoun County

Anniston, *Addie, Glen, Volunteer Hose Company Fire Hall (Anniston MRA)*, Forth St. & Pine Ave.
Anniston, *Anniston Cotton Manufacturing Company (Anniston MRA)*, 215 W. Eleventh St.
Anniston, *Bagley—Cater Building (Anniston MRA)*, 15 E. Tenth St.
Anniston, *Bank of Anniston (Anniston MRA)*, 1005 Noble St.
Anniston, *Calhoun County Courthouse (Anniston MRA)*, 25 W. Eleventh St.
Anniston, *Glenwood Terrace Residential Historic District (Anniston MRA)*, Roughly bounded by Oak St., Jefferson Ave., lots on S. side of Glenwood Terr. & N. side of Orchard St. and Highland Ave.
Anniston, *Glover, Henry Burt, House (Anniston MRA)*, 1119 Leighton Ave.
Anniston, *Grace Episcopal Church (Anniston MRA)*, 1000 Leighton Ave.
Anniston, *Hill Cemetery (Anniston MRA)*, Highland Ave. between Tenth & Eleventh Sts.
Anniston, *Huger, Richard P., House (Anniston MRA)*, 1901 Wilmer Ave.
Anniston, *Kilby House (Anniston MRA)*, 1301 Woodstock Ave.
Anniston, *Kress Building (Anniston MRA)*, 1106 Noble St.
Anniston, *Montgomery Ward—Alabama Power Company Building (Anniston MRA)*, 1201 Noble St.
Anniston, *Mount Zion Baptist Church (Anniston MRA)*, 212 Second St.
Anniston, *Noble, Samuel, Monument (Anniston MRA)*, Eleventh St. & Quintard Ave.
Anniston, *Noble—McCaa—Butler House (Anniston MRA)*, 1025 Fairmont Ave.
Anniston, *Nonnenmacher Bakery (Anniston MRA)*, 36 W. Eleventh St.
Anniston, *Nonnenmacher House (Anniston MRA)*, 1311 Gurnee Ave.
Anniston, *Oak Tree Cottage (Anniston MRA)*, 721 Oak St.
Anniston, *Parker Memorial Baptist Church (Anniston MRA)*, 1205 Quintard Ave.
Anniston, *Peerless Saloon (Anniston MRA)*, 13 W. Tenth St.
Anniston, *Rollstone Machinery Company (Anniston MRA)*, 300 W. Fifteenth St.
Anniston, *Saint Paul's Methodist Episcopal Church (Anniston MRA)*, 1327 Leighton Ave.
Anniston, *Security Bank Building (Anniston MRA)*, 1030 Noble St.
Anniston, *Smith, Lansing T., House (Anniston MRA)*, 531 Keith Ave.
Anniston, *Temple Beth-El (Anniston MRA)*, 301 E. Thirteenth St.
Anniston, *Tyler Hill Residential Historic District (Anniston MRA)*, Roughly bounded by E. Seventh & E. Sixth Sts. and Lapsley, Goodwin & Leighton Aves.
Anniston, *Union Depot and Freight House (Anniston MRA)*, 1300 Walnut Ave.
Anniston, *Wikle Drug Company (Anniston MRA)*, 1010 Noble St.

ARIZONA

Maricopa County

Phoenix, *Durand Grocery (Phoenix Commercial TR)*, 901 Grand Ave.
Phoenix, *Firestone (Phoenix Commercial TR)*, 302 W. Van Buren
Phoenix, *Higuera Grocery (Phoenix Commercial TR)*, 923 S. Second Ave.
Phoenix, *Overland Arizona Co. (Phoenix Commercial TR)*, 12 N. Forth Ave.
Phoenix, *Rehbein Grocery (Phoenix Commercial TR)*, 1231 Grand Ave.
Phoenix, *Valley Plumbing & Sheet Metal (Phoenix Commercial TR)*, 530 W. Adams.
Phoenix, *West End Hotel (Phoenix Commercial TR)*, 701 W. Washington

Montezuma County

Surouaro

MASSACHUSETTS

Bristol County

North Attleborough, *North Attleborough Town Center Historic District*, Bank, Bruce, Church, Grove & Mason Aves. and N. & S. Washington Sts.

Essex County

Peabody, *Hickey—Osborne Block*, 38–60 Main St.

MICHIGAN

Gratiot County

Brown Site (20GR21)

MONTANA

Sweetgrass County

Big Timber, *Grand Hotel*, 139 McLeod St.

NEW JERSEY

Ocean County

Island Heights, *BAT (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR)*

NEW YORK

Albany County

Colonie, *Bacon—Stickney House (Colonie Town MRA)*, 441 Loudon Rd.
Colonie, *Byrne, Senator William T., House (Colonie Town MRA)*, 463 Loudon Rd.
Colonie, *Cramer, Frederick, House (Colonie Town MRA)*, 410 Albany-Shaker Rd.
Colonie, *Dunsbach, Martin, House (Colonie Town MRA)*, 140 Dunsbach Ferry Rd.
Colonie, *Fuller, Royal K., House (Colonie Town MRA)*, 294 Loudon Rd.
Colonie, *Haswell, Isaac M., House (Colonie Town MRA)*, 67 Haswell Rd.
Colonie, *Hedge Lawn (Colonie Town MRA)*, 592 Broadway
Colonie, *Henry—Remsen House (Colonie Town MRA)*, 34 Spring St.
Colonie, *Hills, Ebenezer, Jr., Farmhouse (Colonie Town MRA)*, 1010 Troy-Schenectady Rd.
Colonie, *Humphrey, Friend, House (Colonie Town MRA)*, 372 Albany-Shaker Rd.
Colonie, *Kemp, John Wolf, House (Colonie Town MRA)*, 216 Wolf Rd.
Colonie, *Lansing, John V.A., Farmhouse & Billsen Cemetery and Archaeological Site (Colonie Town MRA)*, 219, 225 & 237 Consaul Rd.
Colonie, *Lawton, George H., House (Colonie Town MRA)*, 27 Maxwell Rd.
Colonie, *Menand Park Historic District (Colonie Town MRA)*, Roughly bounded by Menand Rd., Broadway & Tillinghast Ave.
Colonie, *Menand, Louis, House (Colonie Town MRA)*, 40 Cemetery Ave.
Colonie, *Menands Manor (Colonie Town MRA)*, 272 Broadway
Colonie, *Pruyn, Casparus F., House (Colonie Town MRA)*, 207 Old Niskayuna Rd.
Colonie, *Reformed Dutch Church of Rensselaer in Watervliet (Colonie town MRA)*, 210 Old Loudon Rd.
Colonie, *Renshaw, Alfred H., House (Colonie Town MRA)*, 33 Fiddlers Lane
Colonie, *Simmons Stone House (Colonie Town MRA)*, 554 Boght Rd.
Colonie, *Strong, Jedediah, House (Colonie Town MRA)*, 379 Vly Rd.
Colonie, *Treemont Manor (Colonie Town MRA)*, 71 Old Niskayuna Rd.
Colonie, *Trimble, George, House (Colonie Town MRA)*, 158 Spring Street Rd.
Colonie, *Van Denbergh—Simmons House (Colonie Town MRA)*, 537 Boght Rd.
Colonie, *Verdoy School (Colonie Town MRA)*, 957 Troy-Schenectady Rd.

Monroe County

Rochester, *Brown, Adam, Block (Inner Loop MRA)*, 480 E. Main St.
Rochester, *Chamber of Commerce (Inner Loop MRA)*, 55 St. Paul St.
Rochester, *Cohen, H. C., Company building—Andrews Building (Inner Loop MRA)*, 216 Andrews St.
Rochester, *Court Exchange Building—National Casket Company (Inner Loop MRA)*, 142 Exchange St.
Rochester, *Dewey, Chester, School No. 14 (Inner Loop MRA)*, 200 University Ave.
Rochester, *First National Bank of Rochester—Old Monroe County Savings Bank Building (Inner Loop MRA)*, 35 State St.
Rochester, *Gannett Building (Inner Loop MRA)*, 55 Exchange St.
Rochester, *Jewish Young Men's and Women's Association (Inner Loop MRA)*, 400 Andrews St.
Rochester, *Kirstein Building (Inner Loop MRA)*, 242 Andrews St.
Rochester, *Lehigh Valley Railroad Station (Inner Loop MRA)*, 99 Court St.
Rochester, *Little Theatre (Inner Loop MRA)*, 240 East Ave.
Rochester, *Michaels—Stern Building (Inner Loop MRA)*, 87 N. Clinton Ave.
Rochester, *Naval Armory—Convention Hall (Inner Loop MRA)*, 75 Woodbury Blvd.
Rochester, *Reynolds Arcade (Inner Loop MRA)*, 16 E. Main St.
Rochester, *Rundel Memorial Library (Inner Loop MRA)*, 115 South Ave.
Rochester, *Sibley Triangle Building (Inner Loop MRA)*, 20–30 East Ave.
Rochester, *University Club (Inner Loop MRA)*, 26 Broadway
Rochester, *Warner, H. H., Building (Inner Loop MRA)*, 72–82 St. Paul St.
Rochester, *Washington Street Rowhouses (Inner Loop MRA)*, 30–32 N. Washington St.
Rochester, *Watts, Ebenezer, House (Inner Loop MRA)*, 47 S. Fitzhugh St.
Rochester, *Wilder Building (Inner Loop MRA)*, 1 E. Main St.

Nassau County

Port Washington, *Sands—Willets Homestead*, 336 Port Washington Blvd.

New York County

New York, *Yiddish Art Theatre*, 189 Second Ave.

Oneida County

Vernon, *Vernon Center Green Historic District*, Roughly bounded by Park St.

Ulster County

Kingston, *Chestnut Street Historic District*, Roughly bounded by W. Chestnut St., Broadway, E. Chestnut, Livingston & Stuyvesant Sts.
Saugerties vicinity, *Trumpbour Homestead Farm*, 1789 Old Kings Hwy.

Wyoming County

Silver Lake, *Silver Lake Institute Historic District*, Roughly bounded by Wesley, Embury, Thompson, Haven, Lakeside & Lakeview Aves.

NORTH CAROLINA

Buncombe County

Asheville vicinity, *Church of the Redeemer*, 1202 Riverside Dr.
Leicester vicinity, *Camp Academy*, NC 63

Catawba County

Terrell, *Terrel Historic District*, NC 150 & SR 1848

Cumberland County

Carvers Creek vicinity, *Cool Springs*, Off SR 1607 at Cumberland

Martin County

Robersonville, *Little, W. J., House*, 109 N. Main St.

Nash County

Nashville, *Bissette—Cooley House*, W. First & E. Washington Sts.

Rockingham County

Eden, *King, Dr. Franklin, House—Idlewild*, 700 blk. of Bridge St.

Surry County

Mount Airy, *Mount Airy Historic District*, Main, Brown, Market, Franklin, W. Pine, Rockford, Worth, Cherry & Gilmer Sts. and Moore & Hines Aves.

Wake County

Wake Crossroads vicinity, *Rogers—Whitaker—Haywood House*, SR 2044 & US 401

Wilson County

Black Creek, *Aycock, Manalcus, House (Wilson MRA)*, Center St.
Black Creek, *Lucas, Dr. H. D., House (Wilson MRA)*, Center St.
Elm City vicinity, *Langley, W. H., House (Wilson MRA)*, N side of SR 1003
Elm City vicinity, *Webb-Barron—Wells House (Wilson MRA)*, E side SR 1512
Elm City, *Elm City Municipal Historic District (Wilson MRA)*, Roughly bounded by North, Pender, Branch, Wilson, Main and Anderson Sts.
Lucama, *Lucama Municipal Historic District (Wilson MRA)*, Roughly bounded by US 301, Railroad & Main Sts., Black Creek Rd. & Goldsboro St.
Sims vicinity, *Bullock—Dew House (Wilson MRA)*, NC 581
Stantonsburg vicinity, *Edmondson—Woodward House (Wilson MRA)*, NE cor. NC 58 & SR 1542
Stantonsburg, *Applewhite, W. H., House (Wilson MRA)*, Off NC 58
Stantonsburg, *Ward-Applewhite-Thompson House (Wilson MRA)*, S. side SR 1539
Wilson vicinity, *Barnes, General Joshua, House (Wilson MRA)*, W side of SR 1326 off jct of SR 1327

PENNSYLVANIA

Chester County

West Chester, *Sharples Homestead*, 22 Dean St.

Dauphin County

Middletown, *B'Nai Jacob Synagogue*, Nissley & Water Sts.

The 15-day commenting period for the following property is to be waived in order to assist the buildings preservation funding.

COLORADO

Denver County

Denver, *Littleton Creamery—Beatrice Foods Cold Storage Warehouse*, 1801 Wynkoop St.

[FR Doc. 85-20894 Filed 8-30-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 264)]

Burlington Northern Railroad Co.; Abandonment in Mercer and Dunn Counties, ND; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 40.86-mile rail line between Zap (milepost 80.50) and Killdeer (milepost 121.36) in Mercer and Dunn Counties, ND. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face in the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 8-20962 Filed 8-30-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-85-81-C]

Bartley and Bartley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bartley and Bartley Coal Co., P.O. Box 142, Rockhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 7 Mine (I.D. No. 15-02384) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 7 Mine is in the No. 1 Elkhorn seam ranging from 40 to 48 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's shuttle cars and roof bolting machines would result in a diminution of safety to the miners affected because the canopy would restrict the equipment operator's seating position and limit the operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20864 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-69-C]

BethEnergy Mines Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., Room 1871—Martin Tower, Bethlehem, Pennsylvania 18016 has filed a petition to modify the application of 30 CFR 75.1404-1 (braking system) to its No. 58 Mine (I.D. No. 36-00957) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that a trailing locomotive or equivalent device be used on trains that are operated on ascending grades.

2. Coal mined at the face is transported via shuttle car to section conveyor belts which transport the coal to a dumping point where it is dumped into mine cars. These cars are then hauled by mainline locomotives to a rotary dump where the coal is hoisted to the surface for processing. The empty mine cars are then brought back into the mine for reloading. On two sections, conveyors belts are not used and the shuttle cars dump the coal directly into the mine car.

3. Due to manpower distribution, little traffic, other than mainline locomotives, is on the haulage during production shifts. The track grades in the mine are basically level; however, these areas would be described as ascending grades.

4. As an alternate method, petitioner proposes that:

(a) In areas of the mines having ascending grades, a red light system will be employed. These lights will be located so that anyone waiting for a trip to travel an ascending grade will be in the clear;

(b) The red lights will be activated by a motorman when he arrives at the ascending grade;

(c) The red light will remain on until the last car has completely cleared the light;

(d) All access ways, if any, will also be connected to the red light system;

(e) No one will be allowed to enter the ascending grade areas while the trip is in this area;

(f) Signs will be posted and all employees will be instructed about this system and the procedures;

(g) If the red light system malfunctions, the dispatcher will be advised and will exercise special control over traffic in the ascending grade zones. Repairs will begin immediately to make the red light system operational; and

(h) If any other grades are encountered while the mine advances, this same proposed system will be incorporated.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20865, Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-83-C]

Consolidated Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Matthews Mine (I.D. No. 40-00520) located in Claibourne County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air-courses be examined in their entity on a weekly basis.

2. The return entries were developed between 1968 and 1969 and roof conditions have deteriorated, rendering these air courses hazardous to travel and examine. Rehabilitation of the affected areas would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish three check points where certified persons can take air and gas measurements when making weekly examinations of the affected return air courses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20866 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-101-C]

Eastern Associated Coal Corp.; Petition for Modification of Applications of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Wharton No. 4 Mine (I.D. No. 46-01272) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. All entries in the 1 South Mains are intake airways, and there are no return airways available to permit the 225 KVA AC transformer and the pump stations to be ventilated to the returns. The three pump stations are necessary to maintain the affected areas free of water.

3. As an alternate method to coursing the air currents which ventilate the electrical installations directly into the return, petitioner proposes to install dry chemical fire suppression devices on each of the installations.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20867 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-13-M

[Docket No. M-85-11-M]

Franklin Consolidated Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Franklin Consolidated Mines, Inc., P.O. Box 508, Idaho Springs, Colorado 80452 has filed a petition to modify the application of 30 CFR 57.19003 (hoists) to its Franklin 73 Mine (I.D. No. 05-00630) located in Clear Creek County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that belt, rope, or chains not be used to connect driving mechanisms to personnel hoists.

2. The Freighter's Friend shaft is currently being rehabilitated. Upon completion, it will be the operating shaft for personnel, ore and materials. At that time, the Franklin 73 hoists will be used only for inspections, materials, maintenance and repairs.

3. As an alternate method, petitioner proposes to use a link-belt silent chain to drive the Nordberg, single drum, personnel-material hoist at the Franklin 73 shaft, until the Freighter's Friend shaft becomes operable.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20868 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-9-M

Hydrocarbon Resources Co; Petition for Modification of Application of Mandatory Safety Standard

Hydrocarbon Resources Company, Star Route 2, Box 192, Randlett Utah 84063 has filed a petition to modify the application of 30 CFR 57.19065 (hoisting procedures) to its Cottonwood Mine (I.D. No. 42-01789) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that conveyances not be lowered by the brakes alone except during emergencies.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because when the hoist is lowering miners and equipment under power, the motor is drawing down as if under load; the brakes and brake system become overheated more under this condition than if allowed to operate without power.

3. In lieu of lowering the conveyance under power and with brakes, as an alternate method, petitioner proposes to lower miners and equipment using only the brake causing less wear and stress on the conveyance.

4. For these reasons, petitioner requests a modification of the standard

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20869 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-47-C]

Jet Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jet Coal Company, Inc., P.O. Box 276, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Maverick Mine (I.D. No. 15-07453) located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam and ranges from 40 to 50 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the canopies can strike and dislodge roof support, increasing the chances of an accident. The canopies also limit the equipment operator's visibility and restrict the operator's seating position, creating a potential hazard.

4. For these reasons, petitiqner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20870 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-45-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 5 Mine (I.E. No. 01-01322) located in Tuscaloosa County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high voltage cables, and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner is planning to install a longwall mining unit in the No. 5 Mine. In order to safely and efficiently mine the coal seam, a 500 hp shearing machine, an approximately 1,000 hp face conveyor and a stage loader with a crusher unit will be used.

3. As an alternate method, petitioner proposes to use 2300 A.C. high voltage cables to supply power to permissible longwall face equipment in or inby the last open crosscut.

4. In support of this request, petitioner states that:

(a) The cables used will be a SHD-GC 5KV MSHA-approved jacketed cable. Each power conductor in this cable is completely surrounded by a grounded metal shield interconnected with MSHA-required ground fault protection;

(b) The cable will enter the permissible equipment through approved stuffing box lead entrances or approved couplers. The use of higher voltage motors results in lower current flows, thereby reducing the heating effect on the cable;

(c) A properly calibrated and maintained methane monitor will prevent energization of the cables when 2% or greater methane content is detected;

(d) The ground fault current will be limited to 6.25 amperes and a sensitive ground fault and lock out protection circuit will be provided to detect, trip and lockout any cable with a ground fault current of 90 milliamperes;

(e) With a 995 volt system, the possible short circuit fault current can exceed the rating of presently available circuit breakers. A 2300 volt system will provide a much safer condition in that interrupting devices of this voltage class are presently available with ratings at least equal to that required to interrupt the fault current flow; and

(f) The smaller current flow through the high voltage cable makes it less susceptible to damage from the repeated bending experienced in normal use, lessening the possibility of an arcing fault.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20871 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-91-C]

McLayne Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

McLayne Resources, Inc., P.O. Box 393, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-15175) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is in the No. 1 Warfield Seam ranging from 38 to 56 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy will restrict the operator's seating position and limit the operator's visibility, as well as strike and dislodge roof supports, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20872 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-82-C]

Oneida Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Oneida Coal Company, Inc., Rt. 2, Box 72, Sutton, West Virginia 26601 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Wolf Creek No. 1 Mine (I.D. No. 46-05243), Wolf Creek No. 3 Mine (I.D. No. 46-06043), Wolf Creek No. 4 Mine (I.D. No. 46-06213), Prestonia No. 11 Mine (I.D. No. 46-06557), Prestonia No. 12 Mine (I.D. No 46-06846) and Prestonia No. 14 Mine (I.D. No. 46-06445) all located in Braxton County, West Virginia and its Prestonia No. 15 Mine (I.D. No. 46-06522) located in Webster County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a thumb screw in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking devices will be designed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The metal locking devices will be securely attached to the battery receptacles to prevent accidental loss of the devices.

3. Petitioner states that the locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot prevent the device from working as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20873 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-77-C]

Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Star Point No. 2 Mine (I.D. No. 42-00171) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return air courses be separated from belt haulage entries.

2. As an alternate method, petitioner proposes to develop the coal mine with a two-entry longwall development system and use the belt entry as a separate intake split of air to the longwall face. The belt/intake entry will be provided with an environmental monitoring system for low-level carbon monoxide monitoring. This separate split of air will provide two separate intake air travel routes for the longwall panel.

3. Petitioner states that application of the standard would introduce increased roof fall potential, excessive chain pillar and longwall face loading, and rib roll hazards that could be avoided by two-entry longwall development panels

using the belt entry as a separate intake split of air to the longwall face.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20874 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-53-C]

Shannon Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shannon Coal Company, Inc., P.O. Box 576, McDowell, Kentucky 41647 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its No. 1 Mine (I.D. No. 15-06287) located in Floyd County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on its mining equipment would result in a diminution of safety for the miners affected because the canopy cuts or damages cables due to the height and uneven conditions of the bottom and roof, thus creating an electrical hazard to the operator. In addition, the canopies can strike and dislodge roof support, impair the operator's visibility, and create a cramped and uncomfortable seating position for the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20875 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-97-C]

Tennessee Consolidated Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Tennessee Consolidated Coal Company, Box 878, Jasper, Tennessee 37347 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 24 Mine (I.D. No. 40-00577), No. 28 Mine (I.D. No. 40-01586), No. 30 Mine (I.D. No. 40-01813), No. 34 Mine (I.D. No. 40-02830), No. 35 Mine (I.D. No. 40-02839), No. 39 Mine (I.D. No. 40-02804), No. 41 Mine (I.D. No. 40-02875), all located in Sequatchie County, Tennessee and its No. 32 Mine (I.D. No. 40-02666) located in Marion County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternative method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well insulated blasting cable wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable; and

c. With a battery pack having an open circuit voltage of at least 120 votes when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20876 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-46-C]

Vojo Coals Inc.; Petition for Modification of Application of Mandatory Safety Standard

Vojo Coals Inc., Route 1, Box 53, Pennington Cap, Viriginia 24277 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-14101) located in Harlan County, Kentucky. the petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on the affected equipment would cause damage to roof bolts and restrict the equipment operator's vision.

3. As an alternate method petitioner proposes to use treated wooden planks in combination with roof bolts and headers in lieu of cabs or canopies.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 3, 1985. Copies of the petition are available for inspection at that address.

Dated: August 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-20877 Filed 8-30-85; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application No. D-5053 et al.]

Proposed Exemptions; First Nat'l Bank of Chicago, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

First National Bank of Chicago Pension Trust (the Plan) Located in Chicago, Illinois

[Application No. D-5053]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(21) (A) through (E) of the Code shall not apply to: (1) The proposed purchase by the Plan of certain real property (the Property) from First Chicago Building Corporation (the Building Corp.), a party in interest with respect to the Plan; (2) the lease (the Lease) of the Property by the Plan to the Building Corp., provided that the terms and conditions of the subject transactions are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party; and (3) the sublease of space in the Property by the Building Corp. to the First National Bank of Chicago (the Bank), the Plan sponsor, provided that the terms of the sublease are at arm's-length and that no profit enures to the Building Corp. as a result of the sublease.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which as of December 1, 1982 had 9,495 participants. As of January 1, 1983, the Plan had assets of $389,171,128. The Bank is the sponsor and trustee of the Plan. The Building Corp. is a wholly owned subsidiary of the Bank.

2. The applicant is seeking an exemption which will permit the plan to buy the Property from the Building Corp. and then lease the Property back to the Building Corp. The Property, which is located in Chicago's downtown business district, has a land area of approximately 8,600 square feet and includes a five-story office building built in 1912. The applicant represents that the most attractive aspect of the proposed transactions to the Plan is the potential for assemblage of the Property with an adjacent site (the Bell Federal Site) currently owned by the Plan and subsequent redevelopment of the combined parcels.

3. The Bell Federal Site is encumbered by a ground lease (the Bell Federal Lease) held by Bell Federal Savings and Loan (Bell Federal) which was entered into by the Plan in 1953 and continues to the year 2103. The Bell Federal Site consists of approximately 17,195 square feet and is improved with a thirteen-story office building constructed 1895-1914. The applicant represents that the assemblage by the Plan of the Property with the Bell Federal Site would significantly increase the redevelopment potential of the Bell Federal Site, in that, the value of the two parcels assembled would exceed the sum of their values standing alone. The Bell Federal site is

zoned for a floor area ratio (FAR) of 16.0 and is only marginally adequate in its land area to justify new office development. The FAR that would be allowed in a new high-rise office building on the assembled two parcels would probably approach 28.0, which the applicant represents is more than sufficient to warrant redevelopment. The increase in FAR results in substantially more rentable space than could be built on the two parcels standing alone. With an FAR of 16.0, the rentable space of the two individual parcels would total 412,700 square feet [(16×8600)+(16×17,195)=412,700]. With an FAR of 28.0, the rentable space for the combined parcel would be 722,000 square feet [28×(8600+17,195)=722,000]. In addition, the applicant represents that the combined value and redevelopment potential of the two parcels would put the Plan in a better position to negotiate an early termination of the Bell Federal Lease which, as noted above, extends to the year 2103. In addition, the applicants represent that the changing nature of the thrift industry may also affect Bell Federal's occupancy requirements and/or capital needs in a manner that predisposes Bell Federal to negotiate early termination. This combination of factors has led the Bank to estimate that the Bell Federal Lease interest could be terminated and the redevelopment possibilities pursued within the next ten years.

4. The proposed purchase price for the Property is $3,350,000, which is 95% of fair market value of the Property. Real Estate Analysis Corporation, an independent real estate appraising firm located in Chicago, Illinois, represents that as of August 1, 1983 the fair market value of the Property was $3,500,000. This figure represents less than 1% of the value of the Plan's assets. The appraisal price was for the Property "as is" as of August 1, 1983 and as such does not reflect the approximately $1,150,000 in improvements required to be made by the Building Corporation under the Lease. In addition, the appraisal does not consider the assemblage value of the Property with the Bell Federal Site, which the applicant represents would significantly increase the potential value of the Property to the Plan.

5. The Lease will be a 20 year triple net lease, under which the Plan retains virtually none of the costs of ownership: The Building Corp. will be responsible for operating expenses, repairs, replacements and maintenance (structural and non-structural), insurance, real estate taxes and special assessments. The Building corp. has made renovations which include, among other things: All interior partitions and flooring and ceiling materials on the second through fifth floors have been replaced; a completely new roof has been put on the entire building; new electrical service and electrical panels have been installed on each floor; new air-conditioning units have been installed on each floor; and a new electric heating system has been installed throughout the building. The cost to the Building Corp. of these improvements was approximately $1,150,000, as mentioned in paragraph 4, above.

6. The Building Corp. will pay the Plan an annual rent of $384,000 in the first Lease year on a triple net basis. The Lease contains an escalation clause that results in an increase in net rent by 30% of the Consumer Price Index annually over the Lease term. Callan Associates, Inc. (Callan), an independent investment consulting firm, has been retained to act as independent Plan fiduciary with respect to the proposed transactions. Callan represents that it is independent of the Bank and the Building Corp. and that it is familiar with and accepts its duties, responsibilities and obligations as a fiduciary under the Act. Callan has estimated that the total value of the expenses the Building Corp. will incur under the Lease, including the rent, would equate to a gross annual rent of $834,033. Callan represents that this rental rate is at least at market rate, and that the escalation clause is also at market rate.

7. The Building Corp. will be permitted under the Lease to sublet all or any portion of the Property with the consent of the Plan, but will remain primarily liable for payment of all of the rent and lessee's other obligations. It is anticipated that the Building Corp. will initially have two subtenants. Walgreen Co. will sublet the first floor and mezzanine pursuant to a lease between the Building Corp. and Walgreen Co. entered March 30, 1983 (the Walgreen's Lease) and extending for a term of twenty years, subject to lessor's right to cancel any time after the fifth lease year, as described below. Walgreen Co. will pay an annual rent of $259,000 for the first fifteen years and $280,000 for the final five years of its Lease. The Bank will sublet the second thru fifth floors and the basement. The Bank will pay an annual rent of $508,962.60 to the Building Corp. for the first year of its sublease. The Bank will pay 75% of any increase in operating expenses, taxes and rentals payable by the Building Corp. The Building Corp. will therefore receive a total of $767,962.60 in rents under the first year of the subleases. The applicant represents that this amount includes no profit for the Building Corp. nor will it for the term of the Lease. The subleases will not affect the Building Corp.'s liability for payment of the rent or the amount of the rent under the Lease.

8. The Lease between the Plan and the Building Corp. and the Walgreen's Lease both provide for termination by the lessor at any time after the fifth year of the Walgreen's Lease in the event the Plan intends to demolish the existing improvements on the Property. The applicant represents that the demolition provisions were structured to maximize the redevelopment potential of the Property. However, the Plan may incur costs if it elects to terminate the Lease. The cost of the Plan's election to terminate the Lease is a payment to Walgreen Co. for the unamortized value of leasehold improvements paid for by Walgreen Co. (These improvements, totalling approximately $300,000, are amortized evenly over a 12½ year period.) Since the Lease cannot be terminated prior to its sixth year, the maximum cost to the Plan for electing to terminate the Lease is $180,000. After 12½ years, the Plan can terminate the Lease with no payment due to Walgreen Co.

9. The applicant represents that the ability to terminate the Lease for redevelopment opportunities was essential to the Plan in negotiating the Lease provisions with the Building Corp. It was also considered necessary to have a sufficiently long lease period to provide security for the Plan if redevelopment is not a viable option in the short term. The cost to the Plan and exact timing of a termination of the Bell Federal Lease are not predictable with certainty. The applicant represents that the market conditions (supply-demand balance) for new office space in Chicago's central business district do not appear as favorable at present as they may be later in the decade of the 1980's, by which time there should have been an absorption of the substantial amount of vacant space in the new generation of office buildings now leasing or nearing completion. The applicant represents that because of the uncertainties surrounding redevelopment potential, it was viewed as prudent to provide an assured income stream for a time period substantially longer than the expected horizon for redevelopment. These considerations resulted in the Plan's proposal to make, as lessor, a 20-year absolute net lease with the Building Corp. for the entirety of the Property.

10. Callan surveyed rental rates for comparable office space in downtown Chicago and talked with commercial real estate brokers and represents that the rent to be paid by the Building Corp. is in excess of market rates given that the Lease is triple net. This provides an 11½% rate of return to the Plan on its investment in the first lease year.

11. After reviewing the investment merits of the Property, the goals and objectives of the Plan, the overall asset policy of the Plan, and the entire portfolio of the Plan and acting as an independent fiduciary of the Plan, Callan represents:

(1) The terms of the sales contract and Lease agreements for the proposed purchase are very beneficial to and protective of the rights of the participants of the Plan;

(2) The terms of the sales contract and Lease agreements for the proposed purchase are at least as beneficial to the Plan as an arms-length transaction with an unrelated party, in particular, the rent is not less than what the Plan could receive in the market place from unrelated parties;

(3) The sublease from the Building Corp. to the Bank will not result in any profit to the Building Corp. or the Bank;

(4) The goals and objectives of the Plan are compatible with and allow for the purchase of real estate and more specifically the Property;

(5) The purchase of the Property would add additional diversification to the real estate presently held by the Plan. This additional diversification would be both by type of property held, as well as geographic location; and

(6) The investment merits of the Property when judged without respect to redevelopment potential are at least equal to other real properties held by the Plan.

12. Callan will have the responsibility of monitoring the terms and conditions of the Lease on behalf of the Plan to ensure that the Plan's rights are enforced.

13. In summary, the applicant represents that the proposed transactions will satisfy the requirements of section 408(a) of the Act as follows: (1) The trustee of the Plan represents that the proposed transactions will be in the best interests of the participants and beneficiaries of the Plan; (2) the transactions have been approved by Callan, an independent fiduciary of the Plan; (3) the sales price of the Property was determined by an independent appraiser; (4) an independent fiduciary will monitor and enforce the terms and conditions of the Lease on behalf of the Plan; (5) the Plan will receive at least fair market rent for the Property; and (6) the Plan's acquisition of the Property will enhance the value of the Property as well as that of an adjacent parcel owned by the Plan.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

The Medical Clinic, P.A. Profit Sharing Plan (the Profit Sharing Plan) The Medical Clinic, P.A. Money Purchase Pension Plan (the Pension Plan) (together, the Plans) Located in Jackson, Mississippi

[Application Nos. D–5903 and D–5904]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the sale of certain real property (the Land) to the Plans by Manship Rentals, a party in interest with respect to the Plans, provided by the Plans pay no more than the fair market value of the Land on the date of the sale; (2) the lease of the Land by the Plans to The Medical Clinic, P.A., the sponsor of the Plans, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with unrelated parties; and (3) the assumption by the Plans of a portion of an outstanding note between Manship Rentals and First National Bank, the trustee of the Plans.

Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with approximately thirty-five participants and assets of approximately $550,009 as of January 14, 1985. The Pension Plan is a money purchase pension plan with approximately thirty-five participants and assets of approximately $428,326 as of January 14, 1985. First National Bank of Jackson, Mississippi is the Trustee for both Plans and it makes investment decisions for the Plans. The Medical Clinic, P.A. (the Employer) is a Mississippi professional services corporation specializing in internal medicine. Its principal place of business is located at 746 Manship Street, Jackson, Mississippi. As of September 30, 1984, the Employer had assets of approximately $200,575. Manship Rentals is a Mississippi partnership (the Partnership) comprised of shareholders and officers of the Employer. Its primary business consists of leasing real property to the Employer, and it had assets with a fair market value of approximately $1,091,960 as of December 31, 1984.

2. The Employer requests an exemption to permit the Plans to purchase the Land from the Partnership, which the Plans would subsequently lease to the Employer. The Land is approximately 51,688 square feet located at 746 Manship Street and 735 Popular Boulevard, Mississippi, where the Employer has its principal place of business. The Land is improved by a clinic facility which is also owned by the Partnership and leased to the Employer; however, ownership of the clinic facility will be retained by the Partnership until the expiration of the proposed lease (the Lease) discussed below. According to an appraisal performed by Randal Craft of Randal Craft Realty Co., Inc., Jackson, Mississippi, on August 18, 1983 and updated on September 12, 1984, the Land has a fair market value of $258,438. Mr. Craft represents that he is unrelated to the Employer and the Partnership.

3. The Plans will purchase the Land for the total purchase price of $258,000 or the fair market value at the time of sale, whichever is less. The Pension Plan will pay $32,602 in cash and assume a $72,541 obligation on an outstanding note (the Note) between the Partnership and First National Bank of Jackson, Mississippi (the Bank), the Trustee of the Plans. The Profit Sharing Plan will pay $47,398 in cash and assume a $105,459 obligation under the Note. Acquisition of the Land by the Plans will result in each Plan having less than 25% of its assets invested in the Land.

The Note is payable in total monthly installments of $11,060, including interest at 9.75%, and the final installment is due on February 1, 1998. Of that amount, the Profit Sharing Plan will pay $811 per month. The total outstanding balance on the Note was approximately $963,345 on June 30, 1985. The Plans will pay no closing costs or fees with regard to their assumption of a portion of the Note. The Bank has agreed that, in the event of default by the Partnership on its obligations under the Note, it will not foreclose on the Land. The Bank has accepted as substitute collateral on the Note the Employer's rights and obligations under the twenty-five year Lease, under which it would be bound to pay to the Plans

the fair market rental value of the Land. At the expiration of the twenty-five year period covered by the Lease, the Plans would receive clear title to the Land and the improvements thereon.

4. The Lease will be for a term of twenty-five (25) years. The minimum monthly rental under the Lease, which will be the monthly rental rate for the first year, will be $3,325, which amount was determined by Mr. Craft to be the fair market rental value. The monthly rental rate will be reviewed and updated annually, but it will never be lower than the minimum monthly rental. The Employer will pay all ad valorem taxes assessed against the Land during the term of the Lease and will maintain liability insurance on the Land to enable the Employer to hold the Plans harmless from any liability for any damages or injuries occurring to third parties on the Land. At the expiration of the twenty-five year term of the Lease, title to the improvements on the Land will be transferred to the Plans.

5. The Employer has retained Great Southern National Bank of Jackson, Mississippi to act as the independent fiduciary (the Independent Fiduciary) for the Plans. The Independent Fiduciary represents that it is unrelated to the Employer and the Partnership. The Independent Fiduciary will be responsible for approving the final terms of the Lease and monitoring the completion of the transactions. It will also review and update the monthly rental rate under the Lease annually, for which it will use independent appraisers to determine the fair market rental value. The Independent Fiduciary will verify the timely payment of rent under the Lease and will take whatever actions are necessary to enforce the rights of the Plans in the transactions.

6. The Independent Fiduciary represents that it has examined the proposed purchase of the Land by the Plans and the terms of the proposed Lease. It represents that the terms of the transactions are in the best interests of the Plans and their participants and beneficiaries, that the proposed rate of return under the Lease is very good, and that the Lease provides the Plans with terms at least as favorable as they would receive from an independent third party. The Independent Fiduciary further represents that it has reviewed the Plans' portfolios and has examined the impact that the proposed transactions will have on the diversity of assets in the Plans and on the Plans' liquidity requirements, and recommends after such review that the Plans enter into the purchase and lease of the Land.

7. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Plans will pay no more than fair market value for the Land, and will receive fair market rental value for the Land, as determined by an independent appraiser;

(b) The Lease will be monitored by an independent fiduciary; and

(c) The Independent Fiduciary has determined that the proposed transactions are in the interests of and protective of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Rosen's Furniture Company, Inc., Profit Sharing Plan (the Plan), Located in East Stroudsburg, Pennsylvania

[Application No. D-5911]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of certain real property by the Plan to Rosen's Enterprises Limited (the Partnership), a party in interest with respect to the Plan, provided the terms of the sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 25 participants. The independent trustee of the Plan is the Hazelton Bank (the Trustee). The Plan had total assets of $1,404,815 as of May 31, 1984. Rosen's Furniture Company, Inc. (the Employer) is a small, closely held corporation engaged in the business of selling furniture to a retail market.

2. On May 20, 1963, the Employer established a profit sharing plan and in 1966, it sold a warehouse located in Monroe County, Pennsylvania (the Warehouse) to the Plan for the amount of $12,500. The Employer then entered into a lease agreement (the Old Lease) with the Plan whereby the Employer leased the Property for use as a warehouse. This lease arrangement continued until April of 1974 when the Warehouse was condemned by the Redevelopment Authority of Monroe County. The condemnation resulted in the Plan's receiving $35,000 in condemnation proceeds. During 1974, the Plan constructed a new warehouse (the New Warehouse) at a cost of $183,850. The New Warehouse is presently owned by the Plan and occupied by the Employer pursuant to a lease arrangement (the New Lease) which provides net rental to the Plan of $2,200 per month.[1]

3. The Trustee seeks an exemption to permit the Plan to sell the New Warehouse to the Partnership. The partners of the Partnership are Messrs. Albert, David and Herbert Rosen (the Rosens). The Rosens each own a one-third capital and profits interests in the Partnership and they constitute the majority shareholders of the Employer. The proposed sales price is $275,000 in cash.

4. Due to growth in its business, the Employer seeks additional warehouse space to accommodate its increasing business demands. The applicant represents that under the New Lease, the construction of the necessary additions to the New Warehouse would create administrative burdens. After the consummation of the sale, the Partnership will then lease the New Warehouse to the Employer.

5. An independent appraisal (the Appraisal) of the property was performed by Ray Roberts, ASA, CA-S, a broker and real estate appraiser (the Appraiser) located in East Stroudsburg, Pennsylvania. The Appraiser established the fair market value of the New Warehouse at $225,000. The Appraiser used the following approaches to determine fair market value:

(1) Cost approach = $275,000.

(2) Income approach = $195,000.

(3) Sales comparison approach = $259,000.

The Appraiser stated that in his opinion the income and sales comparison approaches more closely reflect the typical buyer's analysis as evidenced in the market place. The Appraiser established the fair market value, based upon the above-described methods of valuation, at $225,000 as of September 4, 1984. The Partnership proposes to purchase the New

[1] The Department granted an administrative exemption, PTE 83-35 (48 FR 10951), which exempted the Lease from March 1983 through March 1988. IN PTE 83-85, the Department noted that it expressed no opinion as to the applicability of section 414 of the Act to the Old Lease. The Department again notes that it expresses no opinion with respect to this issue.

Warehouse for $275,000. This proposed purchase price is based upon the cost approach to valuation set forth in the Appraisal. The applicant represents that this purchase price affords the Plan the highest price it could reasonably obtain for the sale or the New Warehouse.

6. The Trustee is an independent trustee which is unrelated to the Employer. It has represented that it has reviewed the proposed sale of the New Warehouse. The Trustee represents that the proposed sales price of $275,000 is the highest price that the Plan could expect from the sale of the New Warehouse to an unrelated party and represents at least fair market value. This conclusion is based upon the Trustee's review of the Appraisal. The Trustee has ascertained that the Appraiser is independent and qualified to make an appraisal of the New Warehouse, and has knowledge of the New Warehouse because he has performed prior appraisal on the New Warehouse.

7. The Trustee has determined that the Plan should sell the New Warehouse at this time. It has considered whether the Plan should continue to hold the New Warehouse until the New Lease expires in March of 1988, in anticipation of realizing greater benefits from its appreciation in value. The Trustee concluded that the New Warehouse is located in an area which is not subject to increasing demand for real estate. There are no factors, such as planned business expansion in the area, which would indicate that demand for real estate in the area will increase appreciably in the future. The Trustee states that the proposed sale of the New Warehouse would permit immediate realization of cash which could be invested for the benefit of the Plan, rather than the risk associated with continuing to hold the New Warehouse in anticipation of uncertain appreciation to be realized at a future date.

8. The Trustee represents that the current income-producing potential of the New Warehouse is fixed by the terms of the New Lease until March of 1988. The Trustee believes that the Plan can earn more income from investing the proceeds from the sale of the New Warehouse than can now be obtained from the rents under the New Lease. The Trustee notes that there are several alternative investments available to the Plan with respect to the proceeds of the sale. Based upon its review of the performance of such alternative investments, the Trustee has determined that it could reasonably anticipate that the $275,000 proceeds from the sale could be invested at a rate which would yield approximately $30,250 in annual income. When compared to the current return of $26,400 on the New Warehouse under the terms of the New Lease, it is anticipated that the Plan could earn approximately $3,850 more per year from investment of the sale proceeds than can be earned from rentals under the New Lease. Thus, in addition to realizing a profit of $91,150 profit from the sale of the New Warehouse (the difference between the proposed sales price of $275,000 and the cost to the Plan of $183,850 for the New Warehouse), the Plan could derive an economic benefit from such additional investment income.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) This will be a one-time cash transaction;

(2) The Plan will be receiving at least fair market value for its asset; and

(3) The Plan's independent trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a), 404 and 415.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

WLB Group, Inc. Profit Sharing Plan and Trust (the Plan) Located in Tucson, Arizona

[Application No. D–6020]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain real property and certain personal property located therein (together, the Property) to the WLB Group, Inc. (the Employer), the sponsor of the Plan, provided that all terms of such sale are at least as favorable to the Plan as those which the plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 30 participants and total assets of $387,850.38 as of January 31, 1985. The Employer is a closely-held Arizona corporation engaged in consulting services related to civil engineering, land planning, landscape architecture and land surveying in Tucson and Phoenix, Arizona. The trustees of the Plan are William C. Walker, E. Fred Lowrey and David P. Valentine (the Trustees), each of whom is an officer of the Employer.

2. Among the assets of the Plan is the Property, a residential resort condominium unit in Maui, Hawaii. The Plan purchased the Property from unrelated parties in 1983 for a purchase price of $140,000, paying $28,000 in cash and becoming obligated under a mortgage for the remaining $112,000. The Trustees represent that this purchase price represented a bargain price for the Property, as the Plan purchased it from individuals who were in divorce proceedings and needed immediate cash to reach agreed property settlements. As of April 24, 1985, the Property had an appraised fair market value of $169,000, according to Edwin Higashiguchi, MAI (Higashiguchi), a professional real estate appraiser in Maui, Hawaii. The Trustees represent that the Plan's projected income from rentals on the Property was expected to meet or exceed the Plan's mortgage payments while the Property appreciated as a long-term investment for the Plan. The Trustees represent that the Property has not been leased to any parties in interest with respect to the Plan. However, rental market conditions have not met expectations and the Plan is losing money on the Property. In order to alleviate this negative cash flow, the Employer proposes to purchase the Property from the Plan and the Trustees are requesting an exemption to permit this transaction.

3. The Trustees have appointed Daniel H. O'Connell, Esq. (O'Connell) to act as an independent fiduciary on behalf of the Plan to determine whether the proposed transaction is in the best interests of the Plan and to represent the Plan in the consummation of the transaction if the requested exemption is granted. O'Connell is a tax attorney in the law firm of O'Connell and

Associates of Tucson, Arizona who represents that he is sufficiently familiar with the fiduciary responsibilities imposed by the Act to act in this capacity and that he is independent of and unrelated to the Employer. It is proposed that the Employer will pay the Plan cash in the amount of the full appraised fair market value of the Property as of the date of such sale and will pay all expenses related to the proposed sale transaction. In addition, the Employer will pay the Plan for certain moveable furnishings (the Furniture) which are located in the Property. The cost of the Furniture was included in the Property's purchase price when the Plan bought the Property in 1983. O'Connell represents that the Furniture was not included in Higashiguchi's appraisal because Higashiguchi was not informed that the Furniture would be included in a contemplated sale of the Property. However, O'Connell represents that the Furniture has a fair market value of $3,500, based on an oral appraisal rendered by Higashiguchi after an inspection of the Property. Thus, the proposed projected purchase price of the Property, including the Furniture, will be $172,500, but Higashiguchi's appraisal will be updated as of the date of the proposed sale to reflect any increase in the Property's fair market value since Higashiguchi's appraisal of April 27, 1985. Upon receipt of the cash purchase price from the Employer, the Plan will immediately pay off the outstanding mortgage of $112,000, leaving $60,500 (based on a purchase price of $172,500) in cash proceeds to the Plan. Total net rental proceeds received by the Plan from the Property to date amount to $5,929.00, leaving the Plan with total receipts from the Property, after its proposed sale to the Employer, of $66,429.00. The Plan's cash expenditures on the Property to date, including down payment, taxes, principal and interest payments on the mortgage, utilities and condominium fees, total $63,228.84.

4. O'Connell represents that he has reviewed all surrounding circumstances and terms of the proposed transaction and has determined that the Plan's sale of the Property to the Employer, as proposed, will be in the Plan's best interests. O'Connell has verified that the Plan's expenses relating to the Property are exceeding rental income from the Property. He has determined that if this situation persists, the Property's negative cash flow will consume all of the Plan's liquid assets in 1986, requiring a forced sale of the Plan's marketable securities to maintain sufficient liquidity under market conditions which cannot be predicted. The Plan's sale of the Property will terminate this negative cash flow, to which O'Connell sees no foreseeable end under foreseeable market conditions. Additionally, O'Connell notes that the Property currently constitutes approximately 38 percent of the Plan's total assets and that a sale of the Property will enable the Plan to achieve better diversification. O'Connell's investigation to the real estate market conditions in the vicinity of the Property reveals that the Property is located in a "flat" market with little or no likelihood of appreciation over the next few years. O'Connell states that the Property's appreciation since its acquisition by the Plan in 1983 is attributable to the bargain purchase price rather than any market factors. Having determined that the Plan should dispose of the Property, O'Connell represents that its purchase by the Employer would be in the Plan's best interests because it would ensure an immediate sale for cash, without any commissions or other expenses to the Plan in the amount of the Property's full appraised fair market value. In this regard, O'Connell notes that there are 20 other condominium units for sale in the 160-unit development containing the Property and that an attempted sale of the Property to an unrelated third party would take time (resulting in additional negative cash flow), may not generate all cash, would result in sales costs and commissions to the Plan, and may result in a purchase price below the appraised fair market value.

5. In summary, the Trustees represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan will be represented by O'Connell, an independent fiduciary who has determined that the proposed transaction is in the best interests of the Plan; (2) The Plan will receive the full appraised fair market value of the Property as of the date of the proposed sale; (3) The Plan will be paid cash for the Property and will not incur any commissions or other expenses related to the proposed sale transaction; and (4) The proposed transaction will enable the Plan to better diversify its assets by disposing of an asset which constitutes approximately 38 percent of the Plan's total assets.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Foster L. Bullard, Jr., M.D., P.A. Pension Plan (the Plan) Located in Naples, Florida

[Application No. D-6138]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of its beneficial interest (the Property) in the Lindgren Land Trust to Foster L. Bullard, Jr., M.D. (Dr. Bullard), a party in interest with respect to the Plan, provided that the sales price is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with seven participants and total assets of $970,729 as of October 31, 1984. The Plan is sponsored by the Foster L. Bullard, Jr., M.D., P.A. (the Employer), a Florida professional corporation engaged in a medical practice in Naples, Florida. The trustees of the Plan are Dr. Bullard and his office manager, Dwight Linn, (the Trustees).

2. The Property was originally purchased by the Foster L. Bullard, Jr., M.D., P.A. Money Purchase Pension Plan (the Money Purchase Plan) from an independent third party on February 6, 1973. The Money Purchase Plan was terminated effective November 1, 1984, and its assets, including the Property, were transferred to the Plan. The Property is a 2.5 percent interest in the Lindgren Land Trust (the Land Trust) which the applicant states has a cost basis of $55,003.84. The Land Trust owns two adjacent 88 acre parcels of unimproved land in Dade County, Florida which are subject to two mortgages (the Land). The applicant states that neither Dr. Bullard nor any other party in interest has any interest in the Land Trust. The applicant states further that the only assets of the Land Trust are the Land and the remaining payments on a $146,000 mortgage receivable.

3. The applicant represents that beginning in March, 1983, various proposals were submitted to the beneficial owners of the Land Trust, including the Plan, regarding the need to

obtain additional funds to improve the Land for resale or development. These proposals involved the possibility of obtaining land improvement and construction loans for commencement of construction of warehouses and office buildings. Mr. Richard Herzog, the plan administrator and investment manager for the Plan, states that under these circumstances continued ownership of the Property would not be in the Plan's best interest. Mr. Herzog states that since the original intent of the Land Trust was ownership of unimproved real estate, the Plan should not have to accept the risks commensurate with the development of the Land. These risks include the possiblity of the Plan incurring unrelated trade or business taxable income or the Plan becoming liable for any indebtedness that occurs as a result of development expenses. Further, Mr. Herzog states that interest costs on debt services currently being charged to the Land Trust are of no benefit to the Plan because the latter is a non-taxpaying entity which is unconcerned with maximizing tax deductions. Finally, costly annual appraisals are necessary to properly value the Property. Thus, the applicant concludes that the Property is an inappropriate investment for the Plan and is generally unmarketable.

4. The Land was appraised on March 18, 1985 by Edward M. Waronker, M.A.I. (Mr. Waronker), an independent real estate appraiser in Miami, Florida, as having a fair market value of $3,400,000. Dr. Bullard proposes to purchase the Property from the Plan in cash for the following amount: (a) 2.5 percent of the appraised value of the Land as evidenced by Mr. Waronker's appraisal (i.e. $85,000), and (b) 2.5 percent of the $146,00 mortgage receivable due the Land Trust in January 1986, prorated with respect to interest if the sale takes place prior to that time.

The mortgage receivable is a bond issued by Dade County as part of a purchase agreement with the Land Trust for the acquisition of 62.67 acres of land known as Tamiami Pineland. The last payment on the bond, including principal and interest, is due in 1986. The applicant represents that Dr. Bullard will reimburse the Plan for its share of the principal payment and accrued interest to the date of payment of the bond.

5. The applicant states that the Plan will pay no expenses, commissions, or fees in connection with the sale.

6. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent qualified appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; and (d) Mr. Herzog, as the Plan's administrator and investment manager, has determined that it is in the Plan's best interest to sell the Property because of the risks associated with the development of the Land by the Land Trust.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provision of section 404 or the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this twenty-seventh day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-20678 Filed 8-30-85; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-138; Exemption Application No. D-4585 et al.]

Grant of Individual Exemptions; Gibson Products, Co., Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices states that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Gibson Products Company, Inc. Employees Profit Sharing Plan Located in Sherman, Texas (the Plan)

[Prohibited Transaction Exemption 85–138; Exemption Application No. D–4585]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a 15 acre parcel of real property located in Grayson County Texas (the Property) by the Plan to Ms. Diane Loving and Mr. Gary Acklin, parties in interest with respect to the Plan, for $80,000 in cash, representing the fair market value of the Property, plus accrued earnings, provided such amount is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and rperesentations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1985, at 50 FR 25346.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Local 725 Pension Trust Fund of Dade, Broward and Monroe Counties, FL (the Pension Plan) and Local 725 Educational Trust Fund of Dade, Broward and Monroe Counties, FL (the Educational Plan) Located in Coral Gables, FL

[Prohibited Transaction Exemption 85–139; Exemption Application Nos. D–5072 and D–5073]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the continuation of a loan by the Pension Plan to the Educational Plan, provided that the terms and conditions of the loan were and will remain at least arm's-length.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1985 at 50 FR 25348.

Effective date: This exemption is effective July 1, 1984.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Farmers National Bank of Webster City Profit Sharing Plan (the Plan) Located in Webster City, Iowa

[Prohibited Transaction Exemption 85–140; Exemption Application No. D–5909]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase of participations in loans by the Plan from Commercial State Bank of Pocahontas, Iowa, a party in interest with respect to the Plan, for a period of five years from the date of this exemption, provided that the terms of the transactions are not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties.

For more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15246.

Written Comments: The Department received two written comments on the proposed transaction, both opposing the transaction. Only one of the comments raised a substantive issue, however, which was that the nature of Iowa's depressed farm economy made this transaction an inappropriate Plan investment. Valley National Bank, the Plan trustee (the Trustee), represented that it would review each loan participation on its own merits and would have to be satisfied that the credit risk involved is reasonable in relation to: (1) The rate of return; and (2) the composition of the the rest of the Plan's investment portfolio. If the Trustee foresees an unacceptable credit risk, it will not purchase participations.

Accordingly, after consideration of the entire record, the Department has conclude that the exemption be granted as proposed.

Temporary Nature of Exemption

This exemption will be temporary in nature and will expire 5 years from the date of this grant with respect to the acquisition of participations from Commercial.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll free number.)

George L. Nadler, D.D.S., P.C. Defined Benefit Pension Plan (the Plan) Located in Tucson, Arizona

[Prohibited Transaction Exemption 85–141; Exemption Application No. D–5949]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a certain parcel of unimproved real property (the Property) located in Tucson, Arizona to George L. Nadler, D.D.S., the sole shareholder of George L. Nadler, D.D.S., P.C., and the Plan trustee, for $100,000 in cash, provided that such price is not less than the fair market value of the Property as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 3, 1985 at 50 FR 18948.

In the published notice, the first sentence in representation number 5 was in error and should read as follows:

5. The applicant, however, represents that, "there is reason to believe the Property will not appreciate significantly in value over the next five years, and that the combination of growth and cash outlay for expenses will likely result in a net-loss for the Plan during this period."

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number).

Laney & Duke Storage Warehouse Company Employee Profit Sharing and Trust, Laney & Duke Terminal Warehouse Company, Inc., Employee Profit Sharing Plan and Trust (collectively, the Plans) Located in Jacksonville, Florida

[Prohibited Transition Exemption 85–142; Exemption Application No. D–5965 and D–5966]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the

Code, shall not apply to the cash sale of certain parcels of real property (the Property) by the Plans to Laney & Duke Terminal Warehouse Company, Inc., a party in interest with respect to the Plans, provided that the sale price of the Property is not less than the higher of either $2,709,500 or the fair market value on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1985, at 50 FR 25349.

Effective Date: The effective date of the exemption is June 20, 1985.

Written Comments: The only comment received by the Department was from the applicants, Laney & Duke Storage Warehouse Company and Laney & Duke Terminal Warehouse Company, Inc. The applicants state that the transaction was consummated on June 20, 1985, and therefore, they request that the exemption be granted effective June 20, 1985.

After consideration of the entire record the Department has determined to grant the exemption effective June 20, 1985.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Thomas R. Williams Self-Employed Defined Benefit Retirement Plan (the Plan) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 85–143; Exemption Application No. D–6129]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed contributions of common stock of First Atlanta Corporation to the Plan by Mr. Thomas R. Williams (Mr. Williams),[1] the Plan's sponsor, provided that the terms and conditions of each proposed contribution is no less favorable to the Plan than those available in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1985 at 50 FR 27862.

[1] Since Mr. Williams is the only participant in the Plan there is no jurisdiction under Title 1 of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C. this twenty-seventh day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–20879 Filed 8–30–85; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, FC 415–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 10.8 and is entitled "Guide for the Preparation of Applications for Medical Programs." The guide is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing license applications for medical programs. This draft guide also conforms to the proposed revision of 10 CFR Part 35, "Medical Use of Byproduct Material," that the Commission published for comment in the **Federal Register** on July 26, 1985 (50 FR 30616).

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by November 18, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to

the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 26th day of August, 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-20975 Filed 8-30-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-323]

Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Gas Electric Co.; Issuance of Facility Operating License DPR-82

Notice is hereby given that, pursuant to the approval given in a Memorandum and Order dated August 1, 1985, the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-82 (the licensee) to Pacific Gas and Electric Company (PG&E or the license) which authorizes operation of the Diablo Canyon Nuclear Power Plant, Unit 2 (the facility or Diablo Canyon Unit 2). Diablo Canyon, Unit 2 is a pressurized water reactor located in San Luis Obispo County, California. This license authroizes operation at reactor core power levels not in excess of 3411 megawatts thermal (100% rated power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan. Facility Operating License No. DPR-82 supersedes Facility Operating License No. DPR-81, previously issued to the licensee on April 26, 1985, which authorized the operation of the facility at power levels up to 5% of rated power.

The application for license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation was publiched in the **Federal Register** on October 19, 1973 (38 FR 29105).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (issued in May 1973, 38 FR 14183) and its Addendum (issued in May 1976, 41 FR 22895), the NRC Flood Plain Review (dated September 9, 1981) and the NRC Discussion of Environmental Effects of the Uranium Fuel Cycle (dated September 9, 1981) since the activity authorized by this License is encompassed by the overall action evaluated in those documents.

For further details with respect to this action, see (1) Commission Memorandum and Order (CL1-85-14) dated August 1, 1985; (2) Facility Operating License No. DPR-82 with Technical Specifications (NUREG-1151) and the Environmental Protection Plan; (3) Facility Operating License No. DPR-81 for fuel load and low power dated April 26, 1985; (4) the reports of the Advisory Committee on Reactor Safeguards dated June 12, 1975, August 19, 1977, July 14, 1978, November 12, 1980, February 14, 1984, April 9, 1984, June 20, 1984 and July 16, 1984; (5) the Commission's Safety Evaluation Report (NUREG-0675, Supplements No. 1 through No. 32); (6) the Final Environmental Statement dated May 1973 and its Addendum dated May 1976; (7) NRC Flood Plain Review of Diablo Canyon Nuclear Power Plant Site dated September 9, 1981; and (8) Discussion of the Environmental Effects of Uranium Fuel Cycle dated September 9, 1981. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407. A copy of the Facility Operating License No. DPR-82 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of NUREG-0675, NUREG-1151 and the Final Environmental Statement and its Addendum may be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or may be ordered by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or Visa or Mastercard number and expiration date.

Dated at Bethesda, Maryland, the 28 day of August, 1985.

For The Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-20973 Filed 8-30-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company, for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The purpose of the proposed amendment is to provide an extension of the initial 18-month surveillance interval on the following items:

1. Manual Initiations for Reactor Trip System and Engineered Safety Features Actuation System (ESFAS),
2. Portions of Diesel Generator Testing,
3. ESFAS Actuations on Safety Injection and Loss-of-offsite Power,
4. Containment Spray Actuation Testing,
5. Phase A and B Containment Isolations,
6. Class 1E Battery Service Test.

The requested change would allow the surveillance interval for these surveillances to be extended beyond that allowed by the technical specifications until startup following the first refueling outage or June 1, 1986, whichever occurs first, in accordance with the licensee's request dated July 10, 1985 as supplemented by letter dated August 9, 1985. The first refueling outage is the next scheduled shutdown and is currently scheduled to begin in April, 1986. This request entails an approximate six-month extension in the most limiting case.

Normally, since refueling outages occur about every 18-months, extensions beyond the 18-month surveillance interval required by the technical specifications for these items are usually not necessary. However, due to the extended length of the plant startup program and cycle 1, the licensee must either request an extension or be forced to shutdown prior to the first refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's amendment application considers that the extensions requested are justified based on a combination of preoperational test results, surveillances that are current into Refuel 1, surveillances that are periodically performed at power, and system performance verification following two operational occurrences. The following discussions address each of the parts of the amendment request and provide an analysis using the standards of 10 CFR 50.92.

The change to Technical Specification 4.3.1.1–17 regarding safety injection input from the engineered safety features actuation system does not involve a significant increase in the probability or consequences of an accident previously evaluated. The equipment tested by this surveillance is safety-related and highly reliable. In addition because of overlap testing, all portions of this circuit are tested in other surveillance tests with the exception of the control board manual switches as described in the next paragraph. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.3.2.1–1.a regarding manual initiation of safety injection (SI) does not involve a significant increase in the probability or consequences of an accident previously evaluated. The equipment tested by this surveillance is safety-related and highly reliable. Based on system performance verification following an operational occurrence (SI) on 3/30/85 and through the process of overlap testing, all portions of this circuit have been exercised within the past 18 months with the exception of the control board manual switches. These control board switches and their contacts require no calibration, are not required to respond to setpoints and have historically exhibited a low failure rate. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The changes to Technical Specifications 4.3.2.1–2.a and 4.3.2.1–3.b.1) regarding manual initiations of containment spray and phase B isolation, respectively, do not involve a significant increase in the probability or consequences of an accident previously evaluated. The equipment tested by these surveillances is safety-related and highly rellable. In addition because of overlap testing, all portions of these circuits are tested in other surveillance tests with the exception of the control board manual switches and the load sequencer output relay driver cards between the load sequencer and the containment spray pumps. In this case simultaneous depression of two switches is required for actuation which results in both containment spray actuation and phase B isolation. These control board switches and their contacts require no calibration, are not required to respond to setpoints and have historically exhibited a low failure rate. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.5.2.e.2) regarding emergency core cooling system actuation on a safety injection signal does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on system performance verification following an operational occurrence (SI) on 3/30/85 and through the process of overlap testing.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.6.2.1.c.2) regarding the containment spray actuation test does not involve a significant increase in the probability or consequences of an accident previously evaluated. Through the process of overlap testing, each of the components in this circuit is tested on a periodic basis between 18-month test intervals, with the exception of the load sequencer output relay driver cards. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specifications 4.6.3.2.a and 4.6.3.2.b regarding phase A and phase B isolation tests, respectively, do not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on system performance verification following an operational occurrence (SI) on 3/30/85 which exercised phase A and for phases A and B through the process of overlap testing. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.7.3.b.2) regarding component cooling water actuation on a safety injection signal does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on system performance verification following an

operational occurrence (SI) on 3/30/85 and through the process of overlap testing. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.7.4.b.2) regarding essential service water actuation on a safety injection signal does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on system performance verification following an operational occurrence (SI) on 3/30/85 and through the process of overlap testing. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.8.1.1.2.f regarding diesel generator testing does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on performance of monthly diesel surveillances and portions of the 18-month diesel surveillance test which are current into Refuel 1 [i.e., 4.8.1.1.2.f.1), and 11)]; system performance verification following two operational occurrences; overlap testing of components; and previous operational history of the Callaway diesels. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design change is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

The change to Technical Specification 4.8.2.1.d regarding battery service testing does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on performance of the batteries during preoperational testing; the fact that no substantial loads have been added to the batteries since the preoperational tests; Callaway is in its first cycle of operation and the batteries are relatively new; and weekly or quarterly battery surveillances which look at electrolyte level, float voltage, specific gravity, total battery terminal voltage, visible corrosion, terminal connection resistance and electrolyte temperature. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that no design is involved and the method and manner of plant operations is unchanged. This change does not involve a significant reduction in a margin of safety since the plant design bases, safety limits, limiting safety system settings, and limiting conditions for operation remain unchanged.

On the above mentioned bases, the staff proposes to determine that this amendment, which provides an extension of the initial 18-month surveillance intervals on the above mentioned items, does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 3, 1985 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. A request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B. J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 27th day of August 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85–20974 Filed 8–30–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: Mainstem Passage Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Committee charter and role
- Interim spill at Corps dams
- Other
- Public comment

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee.

DATE: September 4, 1985. 9:30 a.m.

ADDRESS: Meeting will be held in the Council's Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161

Edward Sheets,

Executive Director.

[FR Doc. 85–20904 Filed 8–30–85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Order No. 627]

Commission Notice and Order Concerning Filing of Petition of United Parcel Service for Study of Costing Methods and Establishing Time for Comments

Issued: August 27, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

On August 22, 1985, United Parcel Service (UPS) filed a petition requesting that we "initiate a rulemaking proceeding to study costing methods" in a number of areas. The topics include: (1) The new costing system for purchased transportation that the Postal Service said it was developing, (2) the distribution of purchased transportation costs to the various zones for zone-rated subclasses, (3) variability of waking route time, (4) driving time on park-and-loop routes, (5) the appropriate type of analysis for coverage-related variability, (6) the variability of retrace time, (7) possible instrumentation bias in developing elemental load time variability, (8) treating collection time with its own variability analysis, separate from other street-support activities, (9) whether time spent by city carriers conversing with customers should be assigned to route time or found to be partially variable, (10) whether "other" vehicle driving time should be included in the street support analysis, and (11) whether additional analysis would permit the attribution of a larger percent of the costs for vehicle service drivers.

Any person wishing to comment on the desirability of instituting some type of proceeding on the August 22, 1985, UPS filing may do so within 21 days of the publication of this Notice and Order. The UPS filing is available at the Commission offices, 1333 H Street, NW., Washington, D.C. 20268. Parties should be aware that in any such procedure the Commission reserves the right to raise other costing issues including, for example, those addressed in Docket No. R84–1 at pages 131–41, and Appendices J and K, as well as those that may be raised by other parties.

The Commission orders:

(A) Comments are due 21 days after the publication of this Notice and Order in the **Federal Register.**

(B) The Secretary shall publish this Notice and Order in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85-20845 Filed 8-30-85; 8:45 am]

BILLING CODE 7715-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of a meeting of the Prospective Payment Assessment Commission scheduled for Thursday, September 19, 1985. The meeting will convene at 10:00 a.m. in the Executive Room of the Shoreham Hotel, 2500 Calvert Street and Connecticut Avenue, Northwest, Washington, D.C. The meeting is open to the public.

Donald A. Young, MD,

Executive Director.

[FR Doc. 85-20862 Filed 8-30-85; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23804; 31-807]

Castle & Cooke, Inc.; Application To Be Declared Not To Be an Electric Utility Co.

August 26, 1985.

Castle & Cooke, Inc. ("C&C"), a Hawaii Corporation, P.O. Box 7330, 50 California Street, San Francisco, California 94120-7330, has filed an application on May 28, 1985 requesting an order of the Commission declaring that C&C is not an electric utility company pursuant to section 2(a)(3) of the Public Utility Holding Company Act of 1935 ("Act").

According to the application, C&C is engaged primarily in the worldwide sourcing, processing, distributing and marketing of branded food products. In addition, C&C, both directly and through its wholly-owned subsidiary Oceanic Properties, Inc., has extensive real estate holdings, primarily in Hawaii and California, a substantial portion of which are dedicated to C&C's agricultural production operations. The application states that C&C owns and operates five diesel generators located on the island of Lanai, where it owns 98% of the island's acreage. These generators supply electricity to the pineapple operations of C&C's Dole operating division. C&C also uses the generators to provide electric power to Maui Electric Company ("MECO"), which owns and operates the retail electricity distribution systems on both Lanai and its neighboring island of Maui.

According to the application, the electricity received by MECO from C&C is sold by MECO to its retail customers on Lanai, and the rates for those sales are regulated by the Public Utilities Commission of the State of Hawaii ("Hawaii PUC"). C&C has never been required to be certificated as a public utility by the Hawaii PUC, which has not asserted regulatory jurisdiction over C&C by reason of C&C's electricity generation operations. However, the Hawaii PUC requires MECO to obtain approval of the terms of its Purchase Power Agreement ("the Agreement") with C&C and in connection with its review of the contract, requires the submission of data which substantiates the price for power provided in the Agreement. The Agreement requires C&C to supply electricity sufficient to meet a maximum load of 2200 kilowatts. C&C maintains five diesel generators with a total name plate capacity of 4,060 kilowatts. In 1984, Dole took delivery of 5,038,107 kilowatt hours and MECO purchased 6,066,065 kilowatt hours. C&C's total revenues of $755,092.00 from its sales to MECO constituted approximately .05% of its total revenues of 1.52 billion for 1984.

C&C requests an order declaring it not to be an electric utility company pursuant to section 2(a)(3) of the Act. That section provides that the Commission shall by order declare a company not to be an electric utility company if it finds "such company is primarily engaged in [a nonutility business], and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for purposes of [the Act]."

The application and amendments thereto are available for public inspection through the commission's Office of Public Reference. Interesterd persons wishing to comment or request a hearing should submit their views in writing by September 19, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-20907 filed 8-30-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA Order 6850.26A]

Federal Funding of Visual Glideslope Indicators

Correction

In FR Doc. 85-20384 beginning on page 34573 in the issue of Monday, August 26, 1985, make the following corrections:

1. On page 34575, in the first column, in the table entitled "Number of Pilots", the heading of the column which reads "BVASI" should read "VASI".

2. On the same page, in the second column, the third line above the table at the botton of the column should read: "PLASI—$17,695 average for 27 locations".

3. Beginning on the same page, at the bottom of the second column, in the table listing bid prices, the headings of the columns were incorrect. The corrected table is reprinted in its entirety as follows:

BILLING CODE 1505-01-M

Location	VASI-2	VASI-4	PLASI	PAPI
Kissimmee, FL	$5,975			
Do	5,975			
Ocala, FL				$8,200
Do				8,200
Ormand Beach, FL	7,810			
Do	7,810			
St. Augustine, FL		5,500		
Do	6,820			
Leesburg, FL		7,070		
Do		7,070		
Mt. Pleasant, SC				7,955
Do				7,955
Greenville, NC		9,400		
Do		9,400		
Lincolntown, NC		9,475		9,475
Raleigh, NC				8,700
Cartersville, GA	8,500			
Newnan, GA	5,650			
Do	5,650			
Dalton, GA		9,000		
Do		9,000		
Punxsutawney, PA	7,950		9,110	
Altoona, PA	13,085		16,000	
Greenville, PA	28,875		30,000	
Do	28,875		30,000	

Location	VASI-2	VASI-4	PLASI	PAPI
Reedsville, PA	21,000		23,500	
Do	21,000		23,500	
Somerset, PA		14,915	29,691	
Wellsville, NY		22,250	19,500	
Do		22,250	19,500	
Olean, NY	7,725		13,817	
Poughkeepsie, NY	12,700		21,900	
Albany County, NY		27,840	17,391	
Utica, NY		23,432	25,775	
Port Lavaca, TX				6,000
Austin, TX	7,000			
McKinney, TX				15,975
Clarksville, ARK	10,609			
Sweetwater, TX	19,945			
McAllen, TX	7,800			
Conroe, TX		12,745		10,000
Harlem, MT			17,725	
Milbank, SD	6,510			
Pine Ridge, SD	8,240			
Do	4,960			
Duluth, MN		9,350	8,950	7,750
Mora, MN				9,320
Ely, MN		13,800	14,475	13,400
Red Wing, MN				6,340
Austin, MN				9,960
Ulm, MN		6,500		8,000
Watford, ND	5,170			
Walpeton, ND	4,800		9,000	11,000
Bowman, ND	5,500			
Dickenson, ND	5,500			
Frederick, MD		8,967	10,700	
Ocean City, MD		13,630	15,158	
Do		13,630	15,158	
Chesterfield, VA		9,484	10,420	
Blacksburg, VA			25,718	
Manassas, VA	7,676		10,780	
Brawley, CA	7,077			
Do	7,077			
Santaynez, CA	7,200		10,000	
Sedona, CA	11,800		20,000	
Coolidge, AZ	6,500			
Do	6,500			
Casa Grande, AZ	6,197			
Do	6,197			
Safford, CA	5,000			
Do	5,000			
Calexico, CA	7,564			
Do	7,564			
Moses Lake, WA				16,654
Pittsburg, KS		7,201		
Do		7,201		
Lebanon, MO			15,000	
Do			15,000	
Independence, IA	5,596			
Do	5,596			
Shenandoah, IA	5,164			
Do	5,164			
Hartselle, AL	11,279			
Do	11,279			
Talladega, AL		7,095		
Do		7,095		
Columbus, MS	6,000			
Troy, AL		16,000		
Fairhope, AL				6,600
Do				6,600
Enterprise, AL	6,000			
Do	6,000			
Eufaula, AL	8,300			
Do	8,300			
Pittsfield, MA	3,500			
Claremont, NH	5,921			
Highgate, VT	6,350			
Fryeburg, ME	6,709			
Laconia, NH		12,000		
Morrisville, VT	7,500			
Marathon, FL				17,804
Do				17,804

BILLING CODE 1505-01-T

Office of the Secretary

Fitness Determination; Cross Country Aviation Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-8-81, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Cross Country Aviation Services, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW. Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, Washington, DC 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-8-81 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, DC 20590. Persons outside the metropolitan area may send a postcard request for Order 85-8-81 to that address.

Dated: August 27, 1985.

Jeffrey N. Shane,

Acting, Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-20958 Filed 8-30-85; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 170
Tuesday, September 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Trade Commission	1
Postal Service	2

1

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, September 5, 1985.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public:

(1) Oral Argument in Orkin Exterminating Company, Docket No. 9176.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Orkin Exterminating Company, Docket No. 9176.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892; Recorded Message: (202) 523–3806..

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 85–21025 Filed 8–29–85; 11:52 am]
BILLING CODE 6750-01-M

2

POSTAL SERVICE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 34961, August 28, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE: 8:30 a.m., Friday, September 6, 1985.

CHANGES IN THE MEETING: Addition of the following agenda item: "Field Management Operational Strategies".

CONTACT PERSON FOR MORE INFORMATION: Mr. David F. Harris, Secretary of the Board, (202) 245–3734.

David F. Harris,
Secretary.

[FR Doc. 85–21045 Filed 8–29–85; 3:03 pm]
BILLING CODE 7710-12-M

federal register

Tuesday
September 3, 1985

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 218, 221 and 232

Railroad Safety: Rear End Marking Device—Passenger, Commuter and Freight Trains; Railroad Power Brakes and Drawbars; Special Safety Inquiry, Railroad Power Brakes; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 221

[Docket No. RSRM-2, Notice 1]

Rear End Marking Device; Passenger, Commuter and Freight Trains

AGENCY: Federal Railroad Administration (FRA), Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to amend 49 CFR Part 221 to reflect changes in railroad operations and technological developments that have occurred since adoption of this rule. The proposed changes would permit railroads greater flexibility in selecting the personnel who perform the required inspection of rear end marking devices and would accommodate recently developed telemetry devices that provide an electronic check on the marker's condition and display that information on a monitor located in the locomotive cab. In addition, FRA proposes to adopt new procedures in Part 221 to protect non-train crew personnel who perform the inspection and to make a corresponding amendment to 49 CFR Part 218. FRA proposes this action in response to technological change and in recognition of the many requests it has received for waivers of compliance that seek expansion of the categories of personnel permitted to conduct the required inspections.

DATES: (1) A public hearing will begin at 10:00 a.m. on October 23, 1985.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least seven days before the hearing date.

(3) Persons desiring to participate in the hearing should notify the Docket Clerk at least seven days before the hearing date.

(4) Written comments must be received not later than October 31, 1985. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) Hearing location. Room 7200 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA shall submit a stamped, self-addressed postcard with their comments.

The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, FRA, Washington, D.C. 20590. Telephone: 202-426-0897.

SUPPLEMENTARY INFORMATION:

Background

Section 5(b) of the Federal Railroad safety Authorization Act of 1976 (Pub. L. 94-348) required the issuance of necessary rules to require that the rear car of passenger, communter, and freight trains be equipped with highly visible markers within 180 days of its enactment. In response, FRA promulgated 49 CFR Part 221 on January 11, 1977 (42 FR 2321). In the development of that rule within the statutory period, the primary issue under discussion was whether a lighted or a retroreflective device was appropriate for freight trains. The intense concern over that issue resulted in litigation (*Association of American Railroads* v. *Adams*, 485 F. Supp. 1087 (D.C. Cir. 1978)) and distracted the commenters from the problems that were presented by other aspects of the rule.

In the eight years that have elapsed since the adoption of this rule, technological developments, operational changes and minor deficiences in the initial rule have combined to convince FRA that some regulatory changes are needed. The changes being proposed by FRA in this notice would (i) clarify the regulatory language concerning the equipping and inspection provisions; (ii) revise the inspection requirement to permit it to be either a visual observation or a radio telemetry vertification; (iii) permit expansion of the inspection force authorized to conduct the visual observation if they are given adequate training; and (iv) permit the use of a new procedure to protect this expanded inspection force.

Regulatory Clarification

FRA proposes to amend the regulatory language to reflect changes in industry practices since adoption of the original rule. In addition, FRA's enforcement experience over the years has shown that some improvement in the regulatory language would be helpful.

For example, FRA's implicit reliance on industry practices, prevalent at the time, provided the context for its decision not to impose an explicit requirement that an inspection be made to verify the presence and operational readiness of rear marker devices at initial terminals. At that time, virtually all trains were being operated with a caboose as the last car in the train. Many of these cabooses were equipped with electrical power and, as FRA assumed, the railroads merely outfitted these cars with a permanently installed rear marker device. Those cabooses not equipped with electrical power generally had brackets installed for mounting portable devices. FRA implicitly decided to rely on the crew occupying the caboose to check the device when boarding their train at the initial terminal. Since time is not normally of the essence when boarding at the initial terminal and since their own personal safety was at stake, FRA believed the same strong personal safety motivation that had fueled the drive for legislation would promote matter-of-course inspections.

FRA's approach to initial terminal inspections contrasts sharply with the approach taken in dealing with the enroute inspections after that same train had departed its initial terminal. In dealing with enroute inspections, FRA explicitly required that the inspection be made and limited the inspection force to train crew members. The inconsistency in FRA's approach was not commented on in the process of adopting the initial rule, and FRA has struggled with this regulatory discrepancy ever since the rule's adoption.

Over the years, FRA has also learned that the draftsmanship of this rule does not permit simple and effective enforcement. For instance, FRA inspectors have observed trains departing initial terminals without a visible marker when the inspectors are aware that the departing trains will likely encounter either bad weather or darkness during their trips. Although the inspectors have believed that such trains are not equipped and thus cannot display the marker if necessary, they are unable to take effective action without following that train to observe it until those circumstances arise. Subsequent observation is necessary to establish a failure-to-equip violation since, under the existing rule, FRA must demonstrate that the device was not stored inside the caboose where it was not visible to the inspector. The difficulty inherent in checking inside a caboose (the most

likely storage place) when observing an already moving train is obvious, and as a result, FRA's enforcement effort has focused on failure-to-display (during darkness or periods of reduced visibility) rather than failure-to-equip violations

Accommodating New Technology

FRA also proposes to permit the use of radio telemetry equipment as an alternative to visual observations. Products have recently come on the market that will monitor the condition of the rear end marker device and communicate that information through radio telemetry to a receiver located in the cab of a train's controlling locomotive. The degree of information and the sophistication of the monitoring varies, but some of these units are designed to check all of the functional elements of the marker device, including the filament of the bulb. Designs such as this, which guard against a wide variety of potential failure modes for the device, represent a significant improvement of the devices and provide an effective alternative inspection method.

FRA is proposing to permit the introduction of this new technology. Since this regulation already requires that railroads obtain FRA approval before using a marker device, FRA is already poised to review the design of new devices on a case-by-case basis. This review process will permit FRA to have a detailed understanding of any telemetry augmentation of the marker device before sanctioning its use as a substitute for visual inspection.

Increasing the Inspection Force

The third objective of these proposed changes is to permit additional employees to perform the visual marker inspection. Section 221.15(d) of the rule requires that when a train crew assumes responsibility for their train the device must be inspected by member of that train crew to assure that the marker device will perform its intended function during periods of darkness or adverse weather conditions.

Although one commenter suggested that FRA was being unduly restrictive in permitting only train crews to perform the inspection, FRA concluded that placing inspection responsibility on these individuals was appropriate. With the advent of cabooseless freight trains, concern over this constraint has arisen again. Several individual railroads, among them the Seaboard System, Chessie System, Burlington Northern, Consolidated Rail Corporation, and Atchison Topeka and Santa Fe Railway have requested that FRA permit them to use a variety of personnel, including mechanical department employees and supervisory personnel, to perform the needed inspection. As pointed out by the railroads and confirmed by FRA field inspections, no unusual skill or training is needed to perform the inspection and there is no discernible safety rationale for continuing this constraint in the face of changed operational practices. Indeed, by implicitly proscribing the use of all personnel but train crew members, the rule may in fact discourage more thorough examinations of trains.

After reviewing the individual railroad requests for waivers of compliance to permit noncrew members to perform the inspection, FRA believes that the rule as presently written is unduly restrictive and poses an economic burden that is not justified by a need to provide for employee safety. Since the problem affects all railroads, FRA is acting to improve the situation on an industry-wide basis rather than in the piecemeal approach suggested by the individual railroads.

When a railroad selects noncrew members to perform this inspection, however, FRA believes the railroad must determine that such personnel are qualified to accomplish this task. Even though minimal skill and ability are involved in performing the simple task of repositioning an activation switch or covering a photoelectric cell to determine whether the marker will function, there is a need to know that the individual performing the task shares the crew members' awareness of the safety function of this device, knows the proper safety procedures to follow when in close proximity to rolling equipment, and understands the proper procedure to follow if a failed device is found. In addition, the person needs to have effective communications with the new train crew so that personal notification can be accomplished. If a railroad chooses to use radio communications for this purpose, these personnel must be properly schooled in the use of radios.

Alternative Methods of Protection: "Blue Signal Rule"

The task of covering a photoelectric cell or repositioning an activation switch will usually require people to position themselves behind the last car of a train and within the clearance lines for that car. A person in that position is exposed to risk of injury from the unexpected movement of that car. For that reason, FRA has adopted rules requiring "blue signal" protection (49 CFR Part 218) for certain employees performing that task. In essence, these rules require that blue lights or blue flags be displayed to warn people that the equipment being protected must not be moved.

In adopting its blue signal regulation, FRA generally followed preexisting industry practice. The FRA rule also identified some personnel and tasks for which the requirement to provide blue signal protection was unnecessary. For example, the industry rule was intended to alert train and engine crews to the fact that a non crew member was in a position that exposed that worker to serious danger if the protected equipment was moved. The FRA rule, like the industry rule, recognized that crew members work as a unit and know one another's whereabouts. As a consequence, the industry rule exempted members of the train crew from blue signal protection and FRA adopted the same exception. FRA also identified certain discrete tasks which, though performed by other personnel, provide minimal exposure to the danger of moving equipment. Exceptions for those tasks were also incorporated and experience has shown these decisions to have been well taken.

The changes in the rear marker inspection requirements made necessary by the operation of cabooseless trains have prompted FRA to reevaluate the present blue signal requirements as well. Our analysis of the crew change inspection of rear markers reveals that, if only certain discrete tasks are performed during a marker inspection, the level of danger is substantially minimized, and if alternative protective measures are employed, there is no useful purpose in mandating blue signal protection. In attempting to reduce the risk of unanticipated movement, two primary energy sources must be considered: other trains and the locomotives of the train being inspected. The first involves the possibility that another train could strike the train being inspected and cause the standing train to move. When a train is occupying the main track, it is protected from impact by other trains because access to main track is limited by the railroad's operating rules. Under those rules, the potentially conflicting movement can occupy that main track only when authorized by timetable, train order, or signal indication. Therefore, when the train being inspected is positioned on a main track, the risk that it will move as a result of being struck by other rolling equipment, is remote.

The second potential energy source that could cause the unanticipated movement of the train being inspected is that train itself. This could occur because someone operated either the throttle or the brake controls for that

train. The risk of movement from this energy source can be eliminated when a crew member is positioned in the locomotive cab compartment of the controlling locomotive to control and thus prevent operation of both the throttle and brake controls. FRA believes that the person occupying the cab compartment of the controlling locomotive of the train must have an effective communications link to the inspector, since it is this person who is assuring the inspector that the train itself is secure against movement and will remain that way until the inspection has been completed. A system that incorporates these critical elements would, in FRA's judgment, functionally provide this inspector with the same status and protections as a member of the train crew and, for the same reasons, so minimize the risk of injury that it would be appropriate to authorize the inspection to be conducted without blue signal protection.

Section-By-Section Analysis

Section 221.5

FRA proposes to add a new definition to this section. This new definition reflects the expansion of the inspection force that FRA is sanctioning under proposed § 221.15 and the new procedures that FRA is sanctioning under § 221.16. FRA proposes to define the expanded inspection force as qualified only when they have been given adequate training concerning the task they are being asked to perform. As noted earlier, the degree of instruction needed will vary according to the type of experience the worker has had, but since new procedures are involved here, FRA believes that some training must be given to all non-train crew personnel before such a person can legally perform this task.

Section 221.13

FRA proposes to reword both paragraphs (a) and (b) to eliminate the inartful draftsmanship of the existing provision. The reworded provision would clearly set forth the existing requirement that each train be equipped; that the device be visible on the trailing end of the last car; and that the device be illuminated during darkness or periods of restricted visibility.

Section 221.14

FRA proposes to transfer the provisions that are currently contained in § 221.15 to this newly designated section. FRA is also proposing to delete from the repositioned section the requirement in paragraph (d) for train crew inspection at enroute crew change points. The requirements contained in paragraph (d) would be rewritten and would appear as § 221.15 under this proposal.

Section 221.15

FRA proposes to retain the requirement that rear markers be inspected at enroute crew change locations; to make explicit the requirement for an initial terminal inspection of the device; to accommodate possible telemetry inspections; and to permit the railroads to select individuals other than train crew members to conduct the inspection. FRA would require that the railroads only use personnel that the railroad has determined are qualified to perform this inspection in terms of their familiarity with the equipment, the inspection task, and the appropriate procedures to be followed to obtain the needed levels of personal safety when in such proximity to rolling equipment. In FRA's judgment, this would necessitate some training for all affected railroad employees and may require equipping some personnel with a communications capability that they do not currently possess.

Section 221.16

FRA is proposing to add an entirely new provision to the rule to allow railroads to conduct the required inspection in an expeditious fashion. As noted earlier, FRA believes that this new alternate inspection method will not have any adverse safety implications since the inspector will be receiving the same level of protection historically afforded to train crews; and it will reduce the economic burden for railroads by affording them some additional flexibility. This proposal is limited to "main track" (defined in § 221.5(d)), since only there do the operating rules serve to prevent other trains from occupying the track where the person needing protection will be stationed. This procedure would usually demand that both the locomotive engineer and the inspector be equipped with operating radios. The locomotive would have to be occupied by the locomotive engineer during the inspection to preclude movement before the task is completed. Although FRA considers this inspector to be functionally a member of the train crew, this proposal would not sanction any activity beyond either covering a photoelectric cell or repositioning the marker's activation switch. Under FRA's proposal, if a railroad wants to have battery readings taken, devices repaired, replaced, repositioned or otherwise given additional attention, or if other work is to be performed that is not related to the marker device, then the railroad must fully comply with the blue signal provisions of Part 218.

Section 218.5

FRA is proposing to make a corresponding change to the blue signal rules contained in Part 218. This proposed change would alter the language of the footnote to the definitions section of Part 218 to reflect the existence and relevance of this new inspection procedure. In adopting the revisions to this regulation that occured in 1979, FRA explicitly set forth in the footnote to § 218.5(a) the very narrow tasks that could be performed without providing a workman with protection. Since the task being performed during the marker inspection is primarily an operational test of the device and/or a visual check, FRA is proposing to revise the portion of the footnote relating to "testing" to reflect this new procedure.

Regulatory Impact

This NPRM has been evaluated in accordance with existing regulatory policies. It is neither a "major" proposed rule under Executive Order 12291 nor a "significant" proposed rule as defined under DOT policies and procedures.

The rule, if adopted, would not increase the economic burden of the existing regulation and has the potential for reducing the cost of compliance since it would provide the railroads with alternative means of complying with an existing rule. Although FRA is constrained in its analysis by the absence of well defined industry-wide economic data, FRA has prepared and placed in the rulemaking docket a draft economic analysis addressing the impact of the proposed rule. It can be inspected or copied at Room 8201, 400 Seventh Street SW., Washington, D.C. Copies can also be obtained from the Docket Clerk, FRA at the same address.

FRA's economic evaluation identifies total estimated benefits from avoidance of train delays to be $9,802,000 per year. The total first-year costs, attributable to the purchase and installation of telemetry devices, that can be associated with the proposed rule changes are estimated at $1,370,000. These amounts are annual averages from a 20 year forecast that uses a 10 percent discount rate. The benefit to cost ratio for the entire forecast period would be 7 to 1. Although this cost benefit ratio is conservative for a number of reasons, it necessarily simplifies the multiple variables that each railroad will have to consider in analyzing the economic and safety

benefits to be realized in the context of its specific operating environment when responding to this rule change. FRA specifically requests that commenters provide information on the question of the economic impact of this NPRM.

Since the rear marker regulation only applies to railroads and exempts from compliance small railroads that only operate one train at a time, this proposed rule would have no economic impact on those railroads. To the degree that any small railroad must comply with this regulation, this proposed rule would not have an adverse economic impact since it permits them greater discretion. Based in the facts set forth in this NPRM, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements in this proposed rule are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Impact

On June 16, 1980, FRA published (45 FR 40850) revised procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1C. These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions.

The FRA environmental procedures also contain a provision that enumerates seven criteria which, if met, demonstrate that a non-categorically exempt action is not a "major" action for environmental purposes. These criteria involve diverse factors, including the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State or local law; the possible adverse impact on natural, cultural, recreational, or scenic environments; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. This proposed rule meets the seven criteria that establish an action as non-major.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments and this proposal may be changed in light of the comments received. Communications should identify the regulatory docket number and notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Persons desiring that receipt of their communications be acknowledged should attach a stamped, pre-addressed postcard to the first page of their communication. Communications received before October 31, 1985, will be considered before final action is taken on the proposed rule. All comments received will be available for examination by interested persons at any time during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

In addition FRA has scheduled a public hearing to be held on October 23, 1985, in Washington, D.C. This hearing is scheduled to begin at 10:00 a.m. in Room 7200 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C. Persons desiring to participate in the hearing should notify the Docket Clerk at least seven days before the hearing and indicate the amount of time they will need to present their views. Prepared statements also should be submitted to the Docket Clerk at least seven days before the hearing date.

List of Subjects

49 CFR Part 218

Railroad safety, Railroad operating rules.

49 CFR Part 221

Railroad safety, Rear end marking devices.

In consideration of the foregoing, FRA proposes to amend Part 221 and Part 218, Title 49, Code of Federal Regulations, as set forth below:

1. The authority citation for Parts 218 and 221 continues to read as follows:

Authority: Sec. 202, 84 Stat. 971 45 U.S.C. 431; § 1.49(m) of the Regulations of the Secretary of Transportation (49 CFR 1.49(m).

PART 221—[AMENDED]

1. Section 221.5 is amended by adding a new paragraph (i) to read as follows:

§ 221.5 Definitions.

* * * * *

(i) "Qualified person" means any person who has the skill to perform the task and has received adequate instruction.

2. Section 221.13 is amended by revising paragraphs (a) and (b) to read as follows:

§ 221.13 Marking device display.

(a) Each train to which this part applies that occupies or operates on main track shall be equipped with and display a marking device prescribed by this part on the trailing end of the rear car of that train.

(b) The marking devices prescribed by this subpart shall be illuminated continuously during the hours between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions so restrict visibility that the end silhouette of a standard box car cannot be seen from ½ mile on tangent track by a person having 20/20 corrected vision.

* * * * *

3. Section 221.15 is redesignated as § 221.14 and is revised to read as follows:

§ 221.14 Marking Devices.

(a) Passenger, commuter and freight trains shall be equipped with at least one marking device which the Administrator approves, according to the procedures included in Appendix A of this part, as having an intensity of not less than 100 candela nor more than 1000 candela for flashing lights) as measured at the center of the beam with:

(1) A horizontal beam with a minimum arc width of fifteen (15) degrees each side of the vertical center line, and a vertical beam with a minimum arc width of five (5) degrees each side of the horizontal center line as defined in terms of the 50 candela intensity points;

(2) A color defined by the red-orange-amber color range; and

(3) If a flashing light is used, a flash rate of not less than once every 1.3 seconds nor more than once every .7 seconds.

(b) Marking devices used on passenger and commuter trains in compliance with paragraph (a) of this section shall be lighted under the conditions prescribed in § 221.13(b).

(c) When a locomotive is operated singly, or at the rear of a train, highly visible marking devices may be provided by the use of:

(1) At least one marking device which complies with paragraph (a) of this section; or

(2) At least one illuminated red or amber classification light on the rear of the locomotive, provided it complies with paragraph (a) of this section; or

(3) The rear headlight of the locomotive illuminated on low beam.

4. Add a new § 221.15 to read as follows:

§ 221.15 Marking Device Inspection.

(a) Each marking device displayed in compliance with this part shall be tested at a train's initial terminal and at each

crew change point to assure that the device is in proper operating condition.

(b) This test shall be accomplished by visually observing the condition of the device and determining that the device will function, by either (1) repositioning the activation switch or (2) covering the photoelectric cell.

(c) This test shall be conducted either by the train crew or some other qualified person, provided that, if a non-train crew member performs the test, the qualified person shall personally communicate the test findings to the locomotive engineer of the new train crew.

(d) When equipped with an approved radio telemetry capability, a marker displayed in accordance with this part may be tested by activating the monitoring function of the device and observing the readout information displayed in the cab of the controlling locomotive in lieu of conducting a visual observation.

5. Add a new § 221.16 to read as follows:

§ 221.16 Inspection Procedure.

(a) Prior to operating the activation switch or covering the photoelectric cell when conducting this test, a non-train crew person shall determine that he is being protected against the unexpected movement of the train either under the procedures established in Part 218 of this chapter or under the provisions of paragraph (b) of this section.

(b) In order to establish the alternative means of protection under this section (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer and be advised by that engineer that the engineer is occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspector's device activation task has been completed.

PART 218—[AMENDED]

6. In section 218.5, the footnote to paragraph (a) is revised to read as follows:

§ 218.5 Definitions.

(a) * * *

Note.—"Servicing" does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

"Testing" does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

Issued in Washington, DC on August 26, 1985.

John H. Riley,

Administrator.

[FR Doc. 85-20742 Filed 8-30-85; 8:45 am]

BILLING CODE 4910-06-M

---

49 CFR Part 232

[Docket No. PB-7, Notice No. 1]

Railroad Power Brakes and Drawbars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend FRA's power brake rules to permit use of a telemetry device that provides, in the cab of the controlling locomotive, a continuous readout of the brake pipe pressure at the rear car of a train, as an alternative to reliance on a gauge at the end of the train and visual observation of the application and release of the brakes on the rear car during intermediate terminal air brake tests. This action is in response to a petition for rulemaking submitted by the Association of American Railroads (AAR).

DATES: (1) *Written Comments*: Written comments must be receive before October 31, 1985. Written comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing*: A public hearing will be held at 10:00 a.m. on October 24, 1985. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk before October 17, 1985 by phone or by mail.

ADDRESSES: (1) Written Comments: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA shall submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) Public Hearing: A public hearing will be held in room 7200 of the Nassif Building. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202-426-8325) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, at the above address.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone 202-426-0897

Principal Attorney: Michael E. Chase, Office of Chief Counsel, Federal Railroad Administration, Wasington, DC 20590. Telephone 202-426-8285.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1984, FRA conducted a Safety Inquiry hearing to explore the safety implications inherent in sanctioning the use of radio telemetry devices, in lieu of gauge and visual observation, to convey information about the functioning of a train's air brake system. That hearing was partially responsive to an earlier AAR request that FRA amend its regulations pertaining to railroad power brakes (49 CFR Part 232) and most specifically the provisions in § 232.13, "Road Train and Intermediate Train Air Brake Tests."

The changes AAR is seeking are designed to permit the optional use of a device at the rear of a train in lieu of visual inspection of the rear of the train for compliance with certain test procedures in § 232.13. The device would monitor the brake pipe pressure at the rear of the train and convey that information to the cab of the locomotive controlling the train. Thus, where the current rule requires a gauge at the rear of the train to ascertain brake pipe pressure, the device could be used instead. Similarly, where the current rule requires a visual determination of the application and release of the brakes on the rear car, the device could be used instead to read the decrease and increase in brake pipe pressure resulting from a train crew member's applying and releasing the brakes by operating the brake valve on the locomotive. This decrease and increase could be used to determine the application and release of the brakes on the rear car.

Background on the Train Air Brake System and the Individual Car Air Brake System

The train air brake system is complex and sensitive. A simplified and summarized understanding of its operation is ueful in analyzing the impact of the proposed regulatory changes. In essence, the train air brake system has three major parts—(1) a signal sender, (2) a signal relayer, and (3) a signal receiver/responder.

The brake valve on the locomotive is the signal sender. Operation of the valve permits air to be pumped into or released from the brake pipe. The pressure change resulting from the additional or reduced air supply in the brake pipe is the "signal."

The brake pipe, also known as the train air line, is the "signal relayer". It is the continuous air line running from the front of the train to the rear of the train. The continuity of the air line from car-to-car is accomplished by means of flexible air hoses. The brake pipe is closed (sealed) at the rear of the train and pressurized so that, apart from air leakage in the system, changes in the brake pipe pressure are made through operation of the brake valve on the locomotive.

When the engineer on a locomotive "sets the brakes," air is released from the brake pipe through the locomotive brake valve. This release of air reduces the pressure of the brake pipe (the signal), beginning at the front of the train. The pressure reduction moves down the brake pipe (propagates) to the rear of the train. Thus, the signal (pressure reduction) is relayed by the brake pipe to the entire train. Similarly, when the brakes are released, the locomotive brake valve is positioned so that air is pumped into the brake pipe, sending a pressure increase through the brake pipe. A pressure reduction in the brake pipe rather than a pressure increase initiates a brake application. Thus, the train air brake system is said to be "failsafe," *i.e.*, if an air hose bursts, the resulting loss of air pressure in the brake pipe will initiate a brake application.

The third major part of the train air brake system is the "signal receiver/responder"; valves located on each car, which receive and interpret the changes in the brake pipe pressure. These signal receiving valves initiate the application or release of the brakes on each individual car. The degree of braking effort is determined by the degree of the brake pipe pressure drop, generally described as a partial service reduction, a full service reduction, or an emergency application.

The individual car air brake system is also complex. Although specific features vary from car to car, the individual car air brake system has five major components: (1) A signal receiving/responding valve (actually a series of valves); (2) air reservoirs (auxiliary and emergency); (3) brake cylinder(s); (4) brake rigging; and (5) brake beam and shoes. When a brake application signal is received by the signal receiving valve, the valve causes air to be transferred from the air reservoir(s) to the brake cylinder. (Whether air is transferred from both reservoirs or only the auxiliary reservoir is a function of the degree of the brake pipe pressure reduction.) The pressure of the transferred air causes the piston in the brake cylinder to move. The piston pushes the brake rigging (a series of rods and levers designed to increase the braking ratio), which moves the brake beam. The brake beam pushes the brake shoe against the wheel, which causes the braking action. (Truck mounted brakes and certain other types of brakes operate somewhat differently, but the differences are not pertinent to this analysis or the proposed changes to the rule.)

Although a pressure reduction in the brake pipe signals a brake application, the actual application of the brakes to stop the train requires stored air under pressure from the air reservoirs. The air reservoirs on each of the cars in a train are supplied this air by the brake pipe, which is pressurized, in a process called "charging the train." The train is charged before it is tested, and about six minutes are required to charge a single car (assuming the car air reservoirs are empty and the air pressure is being generated by an air compressor on a locomotive). Since numerous cars can be charged at the same time, however, a fifty-car train can be charged in approximately twenty minutes.

There is a limit to the number of brake applications that can be made in a short period of time, because each application reduces the air in the reservoirs, and some time must elapse before the reservoirs are recharged. Thus, several brake applications within a short time interval can sharply reduce the braking effectiveness of the system.

There was extensive discussion during the June hearing of the safety impact of the requested changes and the relationship of test procedures in § 232.13 to the operation of the train air brake system. Based on that discussion, other information obtained at the hearing, and operational data gathered during six, FRA-sanctioned test programs, FRA believes that the AAR's requested changes, with some modification, would provide a level of safety, in terms of the integrity of the air brake system, at least equivalent to that provided by the current rules.

Train Air Brake Tests

The initial terminal test is the cornerstone of air brake test procedures for road trains. It is a comprehensive test designed to insure that the train air brake system and each individual car's air brake system are operating properly. The test procedures in § 232.13 are "essentially derivative and are designed to deal with specific events that potentially undermine the previously determined effectiveness of the train air brake system." 47 FR 7285. These "events" include changing locomotives, picking up cars, and setting out cars.

In general, the requirement in various subsections of § 232.13 to determine that the brakes on the rear car apply and release serves the purpose of assuring brake continuity, *i.e.*, that no angle cock between the locomotive and the rear car has been left closed as a result of changes in the train consist. The rear car portion of the intermediate train air brake test is not intended to be a recheck of an individual car that was previously examined at the location where the train was made up. A device that accurately and continuously monitors the brake pipe pressure on the rear car, and continuously relays that information to the cab of the controlling locomotive, provides a reliable indication of the brake pipe continuity. Similarly, where there is a requirement in § 232.13 to charge the brake system to a given pressure "as indicated at rear of train," it makes no difference to safety whether the crew member is reading the brake pipe pressure while physically located at the rear of the train or while located in the cab of the locomotive. The important factor for compliance with the requirement is whether the gauge or device provides an accurate measurement of the pressure at the rear of the train.

Section-By-Section Analysis

Section 232.13(b)

FRA proposes to permit use of a "device" in addition to a "gauge" to ascertain that brake pipe pressure is being restored at the rear of the train. The performance specifications of the device would be included in a proposed new paragraph (g).

Section 232.13(c)

FRA proposes to permit use of a "device" to determine that brake pipe pressure has been charged to the prescribed level. FRA also proposes to

permit the device to be used to ascertain that the rear car brake pipe pressure is being reduced, as an alternative to a visual determination that the rear car brakes have applied. Finally, FRA proposed to permit the device to be used to ascertain that the rear car brake pipe pressure is being restored, as an alternative to a visual determination that the rear car brakes have released. Reliance on changes in rear car brake pipe pressure to determine the application and release of the brakes on the rear car appears to be reasonable since the valve on each individual car is designed to respond to such changes in pressure.

Section 232.13(d)(1)

As in § 232.13(c), FRA proposes to permit use of a device to determine that the brake pipe at the rear of the train is charged to the specified level, and to ascertain that the rear car pressure is being reduced and restored in lieu of determining visually that rear car brakes have applied and released. In addition, FRA proposes to incorporate the procedure authorized in a recent FRA technical bulletin that permits a single 20-pound brake pipe reduction in lieu of a 15-pound reduction followed by increasing the reduction to full service.

Section 232.13(d)(2)

FRA proposes to permit use of a gauge or device to determine that the rear car brake pipe pressure is being reduced and restored, as an alternative to a visual determination that the brakes on the rear car apply and release. To avoid any confusion about the proper test procedure, FRA also would propose to spell out the requirement to charge the train before the brake pipe pressure is reduced.

Section 232.13(g)

FRA proposes to add a new paragraph (g) describing the performance standards for a device that may be used to comply with the test procedures in § 232.13. The device must be capable of accurately determining the brake pipe pressure on the rear car on a continuous basis and must convey that continuous quantitative value in not more than one pound increments to the cab of the controlling locomotive. The display in the cab must be readily visible in daylight and at night from the engineer's normal operating position. Given this approach, FRA would consider the cab display to be a "brake gauge" subject to the provisions of § 229.53 of the Locomotive Safety Standards (49 CFR Part 229). Since that display will, under normal circumstances, only mimic the information communicated from the device at the end of the train, FRA would consider that device to be an integral part of the locomotive brake gauge and, therefore, also subject to the provisions of §§ 229.25 and 229.53. Although FRA has not previously considered a detached or detachable device part of a locomotive, these new monitoring devices, which function as an appurtenance to that locomotive, appear to warrant this treatment. By treating the devices as detached or detachable air gauges, FRA would have an effective way to remedy any accuracy or reliability problems.

In addition to the performance standards in proposed § 232.13(g), FRA is requesting comments on the need for other performance criteria. In particular, FRA is interested in comments addressing appropriate battery capacity requirements and methods for ensuring the uniqueness of the signal of each individual rear car device.

FRA is closely monitoring the accuracy and reliabilty of the initial units that have been placed in service. This involves a variety of devices in the sanctioned test programs, and FRA may revise this proposal on the basis of subsequent test data. In part, the extended comment period being provided in this proceeding is designed to permit the collection and analysis of the information generated by the test programs.

Section 232.13(h)

FRA proposes to add a new paragraph (h) requiring that the accuracy of the device be checked at the initial terminal air brake test. The accuracy will be determined by cross checking the rear car brake pipe pressure.

In addition to the proposed changes to § 232.13 noted above, other possible editorial changes are reflected in the contemplated proposed rule. These potential changes are not intended to alter any substantive requirements.

The possible course of action being proposed in this NPRM is not the only way to address the topic of telemetry devices. FRA seeks the ideas and suggestions of all parties about alternative approaches to this topic. In making such suggestions FRA asks that commenters provide as much detail as possible concerning their ideas, including the comparative advantages or disadvantages of their recommended course of action.

Regulatory Impact

This NPRM has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule as defined under Executive Order 12291 nor a "significant" rule under DOT's policies and procedures.

The rule, if adopted, would not increase the economic burden of the existing regulation since it does not propose any new mandatory requirement. The proposed alternative method of compliance with the existing requirement will have a positive economic impact by permitting carriers to reduce delays associated with manual power brake inspections at intermediate points. Although FRA is constrained in its analysis by the absence of well defined industry-wide economic data, FRA has prepared and placed in the docket a draft economic analysis addressing the impact of the proposed rule. It can be inspected or copied at Room 8201, 400 Seventh Street SW., Washington, DC. Copies can also be obtained from the Docket Clerk at the same address. FRA's economic evaluation identifies total estimated benefits from avoidance of train delays to be $11,135,000 per year. The total first year costs, attributable to the purchase and installation of telemetry devices, are estimated at $1,370,000. These amounts are annual averages from a twenty year forecast that uses a 10 percent discount rate. The benefit to cost ratio for the entire forecast period would be 8 to 1. Although this cost benefit ratio is conservative for a number of reasons, FRA specifically requests that commenters provide information on the economic impact of this NPRM. Accordingly, it is certified that the contemplated rule, if promulgated, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number and notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Persons desiring that receipt of their communications be acknowledged should attach a stamped pre-addressed postcard to the first page of their communication. Communications received before October 31, 1985 will be

considered before final action is taken on the proposed rule; comments filed after this date will be considered to the extent practicable.

All comments received will be available for examination by interested persons at any time during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

In addition, FRA will hold a public hearing on this proposal in Washington, DC. The public hearing will be held beginning at 10:00 a.m. on October 24, 1985 in room 7200 of the Nassif Building, located at 400 Seventh Street SW, Washington, DC.

List of Subjects in 49 CFR Part 232

Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend § 232.13 of Part 232, Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 232 continues to read as follows:

Authority: 72 Stat. 86, 45 U.S.C. 9; sec. 6(e), (f), 80 Stat. 939, 49 U.S.C. 1655; and § 1.49(c) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c).

2. Section 232.13 is proposed to be amended by revising paragraphs (b), (c) and (d) (1) and (d) (2) (i), and by adding paragraphs (g) and (h) to read as follows:

§ 232.13 Road Train and intermediate terminal train air brake tests.

(a) * * *

(b) *Freight trains.* Before motive power is detached or angle cocks are closed on a freight train, brakes must be applied with not less than a 20-pound brake pipe reduction. After recoupling, and after angle cocks are opened, it must be known that brake pipe air pressure is being properly restored as indicated by a rear car gauge or device. In the absence of a rear car gauge or device, or in the event the rear car gauge or device is inoperative for any reason, an air brake test must be made to determine that the brakes apply and release on the last car.

(c) (1) At a point other than an initial terminal where a locomotive or caboose is changed, or where one or more consecutive cars are cut off from the rear end or head end of a train with the consist remaining otherwise intact, after the train brake system is charged to within 15 pounds of the feed valve setting on the locomotive, but not less than 60 pounds as indicated at the rear of a freight train and 70 pounds on a passenger train, a 20-pound brake pipe reducton must be made and it must be determined that brake pipe pressure is being reduced at the rear of the train as indicated by a rear car gauge or device. Before proeeding it must be known that brake pipe pressure as indicated at the rear of a freight train is being restored as indicated by a rear car gauge or device.

(2) On trains operating with electro-pneumatic brakes, with the brake system charged to not less than 70 pounds, a test must be made to determine that rear brakes apply and release properly from a minimum 20-pound electro-pneumatic brake application as indicated by the brake cylinder gauge.

(d) (1) At a point other than a terminal where one or more cars are added to a train, after the train brake sytem is charged to not less than 60 pounds as indicated by a gauge or device at the rear of a freight train and 70 pounds on a passenger train, a brake test must be made to determine that brake pipe leakage does not exceed five (5) pounds per minute as indicated by the brake pipe gauge after a 20-pound brake pipe reduction. After this test is completed, it must be known that the brakes on each of these cars and the rear car apply and release. Before proceeding it must be known that brake pipe pressure at the rear end of the train is being restored as indicated by a rear car gauge or device. In the event that the rear car gauge or device is inoperative for any reason, an air brake test mut be made to determine that the brakes apply and release on the last car. Cars added to a train that have not been inspected in accordance with § 232.12(c)–(j) must be so inspected and tested at the next terminal where facilities are availble for such attention.

(2) (i) At a terminal where a solid block of cars, which has been previously charged and tested as prescribed by § 232.12(c)–(j), is added to a train, after the train brake system is charged to within 15 pounds of the feed valve setting on the locomotive, but not less than 60 pounds as indicated at the rear of a freight train and 70 pounds on a passenger train, a 20-pound brake pipe reduction must be made and it must be determined that pressure is being reduced at the rear of the train as indicated by a rear car gauge or device. Before proceeding it must be known that the brake pipe pressure at the rear of the freight train is being restored and indicated by a rear car gauge or device. In the event the gauge or device is inoperative for any reason, an air brake test must be made to determine that the brakes apply and release on the last car.

(ii) * * *

(g) As used in this section, "device" means a device that—

(1) Accurately determines the brake pipe pressure on the rear car of a train on a continuous basis during train operations;

(2) Conveys the rear car brake pipe pressure on a continuous basis during train oprations in not more than one pound increments to the cab of the controlling locomotive; and

(3) Displays the quantitative value in a manner readily visible in daylight and darkness from the engineer's normal operating position.

(h) The accuracy of the device to be used to comply with the test procedures in this section shall be determined as part of the initial terminal air brake test. After charging the train, the rear car brake pipe pressure reading of the device shall be cross checked with the reading of a gauge at the rear of the train. The device may not be used if the difference between the two readings exceeds three pounds.

Issued in Washington, DC, on August 28, 1985.

John H. Riley,
Administrator.

[FR Doc. 85–20741 Filed 8–30–85; 8:45 am]
BILLING CODE 4910-06-M

---

49 CFR Part 232

[Docket No. RSSI–85–1, Notice No. 1]

Special Safety Inquiry; Railroad Power Brakes

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Special Safety Inquiry.

SUMMARY: FRA is initiating a Special Safety Inquiry to obtain information from the public to assist in evaluating the impact of the changes in the power brake regulations made in August of 1983 in Docket PB–6. This information will be used in assessing whether further regulatory action to modify the 1982 power brake changes is appropriate.

DATES:

(1) A public hearing will begin at 10:00 a.m. on October 25, 1985.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least seven days before the hearing date.

(3) Persons desiring to participate at the hearing should notify the Docket Clerk at least seven days before the hearing.

(4) Persons desiring to submit written comments for inclusion in the safety inquiry docket should submit them by Ocober 18, 1985.

ADDRESSES:

(1) Hearing location—Room 7200, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590

(2) Docket Clerk, Office of Chief Counsel (RCC–30), Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–8285.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–0897.

Principal Attorney: Michael E. Chase, Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–8285.

SUPPLEMENTARY INFORMATION: On August 23, 1982, FRA published a final rule (47 FR 36792–36795) amending the regulations relating to railroad power brakes (49 CFR Part 232). The changes included extension of the intermediate inspection interval in § 232.12 from 500 to 1,000 miles and extension of the maximum permissible piston travel limit in § 232.11 from 10 inches to 10½ inches.

These changes were responsive to a joint recommendation by rail labor and rail management contained in a letter to FRA dated November 6, 1981. The letter also requested that at the end of two years a review by made of relevant statistical data to determine if the elimination of a mileage requirement for the intermediate inspection is appropriate and if further extension of the piston travel limit is appropriate. In the preamble to the final rule, FRA committed itself to "closely monitor" the impact of the changes and to take action as warranted.

Now that two full calendar years (1983 and 1984) have elapsed since the rule changes became effective, years for which accident data has been obtained and published, FRA has concluded that all interested persons should be afforded an opportunity to assess the impact of the 1982 changes. Hence, FRA is holding a power brake safety inquiry to obtain information from the public to assist its evaluation of the impact of the 1982 revision of the power brake regulations. This information will be used in deciding whether further regulatory action to modify the 1982 changes is warranted.

Public Participation

FRA encourages all interested persons to participate in this Special Safety Inquiry. Persons desiring to participate may do so by submitting written comments for inclusion in the Safety Inquiry docket and by participating in the public hearing that will be held on October 25, 1985, in Washington, D.C.

Persons desiring to participate in the hearing should notify the Docket Clerk at least seven days before the hearing and indicate the amount of time they will need to present their views. Prepared statements also should be submitted at least seven days before the hearing date to the Docket Clerk.

Issued in Washington, D.C. on August 26, 1985.

(Secs. 202 and 209, Federal Railroad Safety Act of 1970 (45 U.S.C. 431 and 437), Sec. 1.49(n) of the regulations of the Office of the Secretary, 49 CFR 1.49(n))

John H. Riley,

Administrator.

[FR Doc. 85–20740 Filed 8–30–85; 8:45 am]

BILLING CODE 4910–06–M

federal register

Tuesday
September 3, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1986 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-315-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1986 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are modifying the Medicare inpatient hospital prospective payment system in order to implement necessary changes arising from experience with the system. In addition, this final rule sets forth our first adjustment of the diagnosis-related group weights and classifications as required under section 1886(d)(4)(C) of the Act.

Also, in the addendum to this final rule, we are describing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. Changes to the Federal portion of the payment are applicable to discharges occurring on or after October 1, 1985.

Changes to the hospital-specific portion are effective with hospital cost reporting periods beginning on or after October 1, 1985. In effect, these changes apply to the final year of the three-year transition period for the hospital prospective payment system. The addendum also sets forth the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

EFFECTIVE DATE: With certain exceptions, this final rule is effective on October 1, 1985. We refer the reader to section VII.A. of this preamble for a detailed discussion of effective dates.

FOR FURTHER INFORMATION CONTACT:

Linda Magno (301) 594-9343—DRG Recalibration, Hospital Wage Index, New Hospital Exemption from Rate of Increase, Payment for Cost Outliers, Referral Centers, Indirect Medical Education, Transfer Policy, Prospective Payment Rates, Excluded Hospitals

Thomas Hoyer (301) 594-9446—DRG Reclassification, GROUPER Program, Alcohol/Drug Hospitals and Units, Review Activities

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Implementation of the Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list currently contains 470 specific categories.

Section 1886(d)(1) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a Federal rate per discharge. The Federal rate is based on regional average standardized hospital costs in the first year, and a blend of a regional and national rates per discharge in the second and third years. Beginning with the fourth year (that is, October 1, 1986), and continuing thereafter, the Federal portion of the payment for inpatient hospital services will be based entirely on national payment rates.

We published an interim final rule in the **Federal Register** (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections for that rule were issued on October 19, 1983 (48 FR 48467). In that rule, we established criteria for determining—

- Which hospitals are included in or excluded from the prospective payment system;
- The basis of payment under the prospective payment system;
- The prospective payment rate methodology;
- Additional payment amounts;
- Special treatment of certain hospitals; and
- Other conforming changes.

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule. Technical corrections for that rule were issued on June 1, 1984 (49 FR 23010).

As a result of our first year of experience with the prospective payment system and to accommodate changes resulting from the enactment of the Deficit Reduction Act of 1984 (Pub. L. 98-369) on July 18, 1984, we published a final rule on August 31, 1984 (49 FR 34728) that further revised the prospective payment regulations. In addition, in the addendum to that final rule, we described changes in the methods, amounts, and factors necessary to implement the second year of the payment transition period. Changes in the Federal rates were applicable to discharges occurring on or after October 1, 1984, while changes regarding the hospital-specific portion of the payment were effective with hospital cost reporting periods beginning on or after October 1, 1984. Technical corrections on that final rule were issued on October 15, 1984 (49 FR 40167).

On March 29, 1985, we published a final rule (50 FR 12740) that redesignated the prospective payment regulations under a new 42 CFR Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

B. Summary of June 10, 1985, Proposed Rule

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (50 FR 24366) to further amend the prospective payment system. We proposed to make the following changes:

- As required by section 1886(d)(4)(C) of the Act, we proposed to adjust the classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986.
- We proposed to use a new wage index for purposes of adjusting for variations in area wage levels. The proposed new wage index is based on a HCFA survey of hospitals and would be used in standardizing hospital costs for purposes of determining the Federal rate, in standardizing hospital charges for purposes of recalibrating the DRG weights, and for adjusting the Federal rate for purposes of determining prospective payments for hospitals.
- We discussed several current provisions of the regulations in 42 CFR Parts 405 and 412 and set forth certain proposed changes concerning—

—Exemptions for new hospitals from the rate-of-increase limits;
—Payments for indirect costs of medical education;
—Limitations on charges to beneficiaries for hospitals paid under State reimbursement control systems or demonstration projects;
—Payment for cost outliers; and
—Referral center qualifying criteria.

We also proposed several conforming changes to the regulations.

• In the addendum to the proposed rule, we set forth proposed changes to methods, amounts and factors for determining the FY 1986 prospective payment rates. We also proposed new target rate percentages for determining the rate-of-increase limits for FY 1986 for hospitals excluded from the prospective payment system.

In addition, the proposed rule discussed in detail the recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of section 1886(e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986. These recommendations are due to the Secretary no later than the April 1 preceding each Federal fiscal year. The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services. As required under section 1886(e)(5) of the Act, we published the report of the recommendations from ProPAC as Appendix C to the proposed rule.

C. Number and Types of Public Comments

A total of 2,201 letters containing comments on the proposed regulations were received by the end of the comment period (July 10, 1985). Among the many issues addressed in the proposed rule, the following subjects received the majority of comments:

• The zero percent increase in the prospective payment rates.

• Proposed wage index based on the HCFA survey.

• Count of interns and residents for determining the indirect medical education payment.

• The recalibration of the DRG weights.

• Revision of the alcohol/drug DRGs and termination of the exclusion for alcohol/drug hospitals and units. (We received 2,025 form or nearly identical letters from individuals on this issue as well as several other comments.)

The contents of the proposed rule, the public comments, and our responses to the comments are discussed throughout this document in the appropriate sections. However, we are responding to a general comment here rather than in one of the more issue-specific areas below.

Comment: Several commenters objected that the 30-day comment period afforded them in the proposed rule was too short. They believe that this amount of time was inadequate to allow the hospital industry to evaluate thoroughly the complex issues included in that proposed rule. One commenter suggested that the September 1 final rule be published as an interim final rule with comment period in order to give the public additional time to evaluate the issues and submit further comments.

Response: When we issued the proposed rule, we recognized the importance of affording the public the fullest opportunity to analyze the many issues raised in the document and to express their views. In fact, in several places in the proposed rule, we specifically invited comments on particular issues. However, under section 1886(e)(5)(B) of the Act, we are required to publish final regulations and rates for FY 1986 by September 1, 1985. Since we could not publish the proposed rule until we had reviewed ProPAC's April 1, 1985 recommendations and taken them into account, there was insufficient time available for a public comment period of more than 30 days between the publication of the proposed rule and the required date of publication of the final rule. Under these constraints, we had no choice but to limit the comment period on the proposed rule to 30 days and to proceed with publication of the final regulations and rates for FY 1986 by September 1, 1985.

As to the comment that we should issue an interim final rule with comment period by September 1 instead of a final rule, we again refer to the specific language in section 1886(e)(5)(B) of the Act, which provides that:

> The Secretary shall cause to have published in the **Federal Register**, not later than . . . the September 1 before . . . [the next ensuing Federal] fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final determination . . .

The statute is implemented by regulations at 42 CFR 412.8(b)(3), which state that:

> HCFA will publish a **Federal Register** notice setting forth final . . . prospective payment rates not later than the September 1 before the Federal fiscal year in which the rates would apply.

The statutory language clearly anticipates that *final* prospective payment rates will be issued each year by September 1. Publication by that date is intended to give the industry a full 30 days in which to make whatever adjustments may be necessary to implement the provisions of the final rule by October 1 (the beginning of FY 1986).

If we were to issue an interim final rule with comment period, we would be obligated to consider whatever further public comments we receive. Conceivably, this could result in modifications based on the comments that might alter in some respect the finality of the FY 1986 prospective payment system rates. This in turn would undermine the certainty, so essential to the prospective payment system, that is gained by issuing a final rule by a specified date. Under section 1886(e)(5)(B) of the Act, we are required to establish clear payment policy and prospective payment rates in advance of the fiscal year to which the policy and rates will apply. Issuing an interim final rule with comment period instead of a final rule at this point would serve only to introduce uncertainty into the process and would also raise the prospect of retroactive adjustments that might be necessary to accommodate any later decisions arising from the interim rule.

II. Changes to DRG Classifications and Weighting Factors

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case (comprised of a hospital-specific portion and an urban or rural Federal portion adjusted for area wages) and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weigh of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the

Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology. The DRG reclassifications and the recalibration for discharges occuring on or after October 1, 1985 are set forth below.

A. Basic Classification System

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. The intermediary enters medical and other information contained in each patient's bill into its claims system and subjects it to a series of automated screens called the Medicare Code Editor. These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by GROUPER into the appropriate DRG. The GROUPER software program was developed as a means of classifying each case into the appropriate DRG on the basis of the diagnosis and procedure codes and demographic information, that is, sex, age, and discharge status. It is used both to classify past cases in order to establish the DRG weights and to classify current cases for payment.

During the initial operating period of the prospective payment system, we learned that the use of the DRG method of classification posed some operational challenges that we needed to address further. In the NPRM, we proposed a number of improvements to the DRG classification system and included them in a revised GROUPER program that was used to develop the recalibrated DRG weights published in the addendum to the proposed rule (Table 5). The revised GROUPER program would be used to classify and assign cases to DRGs effective with discharges occurring on or after October 1, 1985.

We listed all the proposed changes made to GROUPER in Table 6 of the addendum to the NPRM. The following is a brief description of the general categories of proposed changes.

1. DRG Logic Issues and Technology Changes

We proposed that some GROUPER logic decisions be improved and others be corrected to reflect technological advances that have occurred since the development of the classification system. For example, as a method of solving a technology and coding problem, we proposed to move percutaneous transluminal coronary angioplasty from DRG 108 (Cardiothoracic Procedures, Except Valve and Coronary Bypass, With Pump) to DRG 112 (Vascular Procedures Except Major Reconstruction).

Comment: A few commenters suggested that percutaneous transluminal coronary angioplasty be assigned to DRG 109 (Cardiothoracic Procedure Without Pump), based on another view of the appropriate clinical placement of the procedure. Other commenters suggested that the change, as we described it, did not achieve our objective, because it failed to account for some cases that include open chest procedures. Many of the commenters agreed with the DRG 112 assignment.

Response: We are persuaded by our analysis and by ProPAC's recommendation that DRG 112 is the best assignment for percutaneous transluminal coronary angioplasty. Both DRGs 108 and 109 consist of major open cardiothoracic procedures with or without a cardiac bypass pump. Neither DRG is appropriate for percutaneous transluminal coronary angioplasty because, in order to perform the procedures listed in these DRGs, it is necessary to enter the chest surgically and expose the heart, as well as to perform surgery directly on the heart muscle or heart valves.

Percutaneous transluminal coronary angioplasty is not an operation that requires open chest surgery on the heart. Instead, a catheter is inserted in an artery in the arm or leg and is passed into the vessels that supply the heart muscle. Only a very small incision in the arm or leg is made and the chest is not opened. The procedure is carried out directly on the heart vessels but not on the heart muscle itself. This procedure is most closely related clinically to the procedures in DRG 112, which are procedures on the vessels of the body.

With respect to resource consumption, we believe DRG 112 is appropriate. Our data for FY 1984 indicate that the average charge for an uncomplicated percutaneous transluminal coronary angioplasty case was well within the range of charges for other cases that fall within DRG 112 and, in fact, is less resource intensive than many of the other cases within that DRG. Thus, we believe that the resource range required for this procedure fits within the DRG to which it is assigned.

We have, however, also noted comments on the NPRM that our proposed changes did not accomplish the result we desired because they do not permit those cases that entail use of a pump (code 39.61) to continue to be classified in DRG 108. We are correcting this omission in this document. We note that we published the changes as a proposal to elicit comments and corrections such as these.

We recognize that percutaneous transluminal coronary angioplasty is a significantly less invasive procedure than the one that it replaces and we are particularly concerned to assure that its placement in this DRG not create an incentive to continue to use more complex and invasive procedures. As we have noted, we believe that this assignment is appropriate from the standpoint of resource consumption and clinical coherence; however, as recommended by ProPAC, we will continue to monitor this issue to assure that placement of percutaneous transluminal coronary angioplasty cases in DRG 112 is appropriate from the perspective of both clinical characteristics and resource utilization.

2. Operating Room versus Non-Operating Room Assignment

The distinction between medical and surgical DRGs is meant to reflect the difference between cases that use operating rooms (a significant additional resource) and cases that do not. However, a few procedures that do not require the use of an operating room are recognized by GROUPER as operating room procedures. As we proposed, we are deleting these procedures from the list of procedures that could result in assignment to a surgical DRG in order to assure that the cases that included them as the only surgical procedure are classfied appropriately for payment purposes.

3. Complication and Comorbidity Membership

In some cases, DRGs are listed in pairs, one with and one without complications or comorbidities, with a higher weight generally assigned to the DRG that includes complication or comorbidity. We proposed to add a number of additional diagnostic and

procedural codes (mostly traumatic amputation codes) to the list of complications and comorbidities. The changes we are making will allow cases with these additional codes to be classified in DRGs that reflect the additional resources necessary to deal with complications or comorbidities.

4. Surgical Hierarchy Changes

An examination of length of stay and charge data has led us to reorder in the hierarchy of surgical procedures in a few cases, as we proposed in the NPRM.

5. DRG 468 (Unrelated OR Procedure) Issues

We proposed to modify a number of Major Diagnostic Categories (MDCs) and DRGs to include International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM) codes for surgical procedures that may be performed for diagnoses within them but that are not currently reflected in the GROUPER program that is used to assign cases to the particular MDC or DRG. Thus, with these changes, cases in which these procedures are performed will be recognized by GROUPER and properly classified in the appropriate DRG rather than DRG 468, where they are currently classified.

Comment: We received two comments on our list of operating room procedures that we proposed to add to the various DRGs so that assignment of cases to DRG 468 would be reduced. One commenter believes that the reassignment of some cases to DRGs 269 and 270 would reduce payments to the hospital for these procedures. Another commenter questioned whether the reassignment of these cases would mar the clinical homogeneity of the DRGs to which they will now group.

Response: Most of the procedures added to the various DRGs are relatively minor and were omitted from the original DRG system (and GROUPER software) through oversights. They are all clinically suited to the DRGs where they will now be grouped. Since the weights for all the DRGs that are set forth in Table 5 have been established using the revised GROUPER program, they accurately reflect the resources expended on all the cases that fall within them, including the cases that will be reassigned to them from DRG 468. Thus, the DRGs continue to be clinically homogeneous and any increase or decrease in payment for an individual case that previously would have grouped to DRG 468 will be an appropriate result of the changes.

In addition to these proposed revisions, we made a number of clarifying revisions in the documentation that describes how GROUPER works. Anyone interested in obtaining materials that reflect these changes may purchase revised GROUPER software and ICD–9–CM user manuals from:

Health Systems International, 100 Broadway, New Haven, Connecticut 06511.

As in the proposed rule, a listing of the changes appears in Table 6 of the addendum to this final rule.

B. Reclassification of DRGS

In addition to the generic types of changes discussed above, we also proposed to make changes in the DRG classification system for alcohol and drug abuse DRGs, certain major joint procedures, and kidney transplants for diabetic patients. We believed that the proposed changes would improve the accuracy of the classification system and, along with the use of FY 1984 claims data, would result in the establishment of more accurate weights. These changes should also strengthen the relationship between the consumption of resources in the cases whose assignments are affected by these changes and the payments made for these cases.

Set forth below are our responses to some general comments on DRG classification that we received. Comments related to our specific proposals are discussed later in this section.

Comment: A number of commenters made suggestions about DRG changes that reflected misconceptions as to the design of the system and manner in which the system works. A frequent comment was that one DRG or another should be given a higher weight to reflect the cost of caring for patients who may require more than the average intensity of services or to reflect the intensity of services associated with a particular clinical regimen favored by the commenter. Also, a number of comments dealt with cases in which a patient requires additional services unrelated to the principal diagnosis.

Response: We stress that the weights assigned to the various DRGs reflect the actual average intensity of services provided to patients whose cases fall within them. As we have noted, we used the FY 1984 Part A Tape Bill (PATBILL) file to establish the weights and are satisfied that they adequately reflect the intensity of services provided. We also note that both day and cost outlier payments are available for cases that are extraordinarily costly or for which the inpatient stay is prolonged. Finally, we noted that the geometric mean lengths of stay shown in the DRG listing (see Table 5) are not intended to be an expression of the typical length of stay for the DRG. Their main purpose is to serve as a benchmark for the computation of outlier payments. In fact, the arithmetic mean length of stay, which is typically longer, is the more common measure of the "average" stay for the DRGs. We have printed the arithmetic mean lengths of stay in Table 5 of the addendum to this final rule as a point of information for reviewers. We note that, with the exception of outlier cases, the weight assigned to a DRG reflects the average resource utilization for cases that fall within it even though some cases will require more or fewer resources. The system is designed so that, on balance, the aggregate Medicare payment to hospitals in a locality should be adequate for the aggregate Medicare utilization.

Comment: Various commenters suggested that the methodology by which reclassification issues were treated should be fully explained in connection with any proposed changes and that any difference in the payment for individual cases that may be moved from one DRG to another by such reclassifications should be fully discussed.

Response: As we have noted, we continue to employ the basic principles that were used for the original construction of the DRG system and that have been described in a variety of documents that are available to individuals who desire additional information. (See the September 1, 1983 interim final rule (48 FR 39761).)

Since the purpose of the system is to assure that cases are classified into DRGs that are both clinically coherent and that typically require a comparable range of resources, we do not believe that relative increases or decreases in payments for individual cases (so long as they fall within the general resource range) are relevant. We stress again that the classification system aims toward an aggregate payment that is appropriate for the sum of all cases, not payments that are based upon variations in resource consumption in individual cases. Thus, comments that are primarily anecdotal or that argue that payment should be based on a commenter's desired clinical practice (rather than actual resources used) have not been accepted.

Comment: A number of commenters suggested further changes in DRG classification or suggested further refinements of the changes we proposed.

Response: We have included in this final rule the changes we proposed (as revised on the basis of comments) as

well as certain other changes (for example, certain Grouper logic changes) that were suggested that we judged to be similar and complementary to the changes we discussed in the proposed rule. These changes are listed in Table 6 of the addendum. We have not discussed all these changes in detail in this document, but we have discussed briefly the changes in which we believe there was the most public interest. Other changes suggested by commenters will be dealt with in a separate notice, which we propose to publish early in 1986.

1. Alcohol and Drug Abuse DRGs

In the January 3, 1984 final rule, we excluded alcohol/drug treatment hospitals and units from the prospective payment system in response to criticism we received concerning the alcohol and drug abuse DRGs (49 FR 241). In that document, we specified that the exclusion would be permitted only until October 1, 1985, and that after that date we intended to include an adjustment to the DRG classification system that would permit prospective payment to be made appropriately for alcohol/drug treatment services. (See section IV of this preamble for a further discussion of the expiration date of this exclusion.)

In order to properly reclassify these DRGs, we consulted with medical experts of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), and the National Institute of Mental Health. The analysis we performed was explained in detail in the proposed rule (50 FR 24370). The following is the proposed reclassification of the substance abuse DRGs within MDC 20 (Substance Use and Substance Induced Organic Mental Disorders):

- DRG 433—Substance Use and Substance Induced Organic Mental Disorders, Left Against Medical Advice.
- DRG 434—Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence.
- DRG 435—Substance Dependence, Detoxification and/or other Symptomatic Treatment.
- DRG 436—Substance Dependence, Rehabilitation Therapy.
- DRG 437—Substance Dependence, Combined Rehabilitation and Detoxification Therapy.

The vast majority of letters we received were commenting on this proposal. The specific issues raised by those commenters are set forth below.

Comment: A number of commenters suggested that DRG 437 should be reweighted to allow payment for a mean length of stay of 16.9 days. The commenters argued that the course of rehabilitation for patients in DRG 437 requires a longer stay than the number of days shown as the geometric mean length of stay for this DRG (14.6).

Response: First of all, we wish to clarify that the length of stay data published along with the table of weights is neither prescriptive nor in any way intended to reflect limits on Medicare inpatient hospital benefits. Indeed, as long as an admission is medically necessary and the beneficiary has not exhausted his or her benefits, Medicare's payment to the hospital, except for outlier payments, is the same regardless of whether the patient remains hospitalized for one day or for one month. Each length-of-stay statistic represents the geometric mean of a distribution of hospital cases, some of which had lengths of stay considerably below the published mean and others that had lengths of stay considerably above the published means. In fact, although the geometric mean length of stay for DRG 437 is 14.6 days, the arithmetic mean length of stay, which is the measure of average length of stay for a DRG, is 16.9 days.

We have every reason to expect that the medical community will continue to concern itself with furnishing medically appropriate care to Medicare beneficiaries and that standards of care in particular cases will not be artificially constrained by published length of stay data that represent population means, not ranges.

We believe that these commenters may have misunderstood the principles upon which the DRG system is based. The recommendations we have received were apparently from commenters who added the separate geometric mean lengths of stay proposed for DRGs 435 and 436, and who have inferred that the lengths of stay and weights are based on a clinical assumption about the length of covered stay for both detoxification and rehabilitation. Our DRG system, however, is based on the actual medical practices of all hospitals that are subject to the prospective payment system and provide the services reflected in the DRG. The more than 38,000 claims we used to derive the weights of these DRGs came from nearly 4,500 different hospitals that submitted claims for these services in FY 1984. Since the DRG weights are based on the actual practice of the hospital furnishing care to the cases in question, it would not be appropriate to adjust the weights of one of them to reflect the views of a small group of providers with specific clinical preferences. We have therefore rejected this comment.

Comment: Some commenters noted that some drug-dependent or drug-intoxicated individuals who are dependent on multiple drugs may require a significantly longer period for detoxification and rehabilitation than is reflected in the DRGs. They question whether our proposed DRGs are adequate for these individuals.

Response: As we have noted before, the weight of any DRG is an approximate average of the cost of treating all Medicare cases that fall within it. We believe that the universe of claims we used to establish these weights was large enough to reflect some relatively long and short stay cases and that, on balance, the payments we make under these DRGs will adequately compensate hospitals treating the patients whose cases fall within them. For extremely long stay cases or extraordinarily expensive cases, of course, outlier payments are also available.

While it may be true, especially in a younger population, that the resources used in treating other drug problems may be greater than those used in treating alcohol alone, our data do not show that there is a difference of significant magnitude to warrant making this distinction between alcohol and drug problems in the Medicare beneficiary population. We do agree, however, that populations that include a significant number of younger patients (for example, Medicaid recipients) may have different overall characteristics and may require different DRG configurations. Moreover, we would expect the weights, not only for the substance abuse DRGs but for all DRGs, to vary substantially depending on the patient population on whose hospital experience the weights are based.

Comment: One commenter questioned whether the sample size of 5,577 cases used in studying the appropriateness of the proposed reconfiguration of the DRGs in MDC 20 was adequate, and whether the 1,112 providers in the sample were representative of the population of providers nationwide.

Response: It is important to note that the sample data were used solely to study the appropriateness of the proposed reconfiguration of the alcohol and drug abuse DRGs. These data were not used in deriving the relative weights reported in the proposed rule on June 10, 1985 (50 FR 24416). In order to treat the DRGs in MDC 20 consistently with the other DRGs, the larger recalibration data set was used in deriving the relative weights for the alcohol and drug abuse DRGs. However, statistical tests revealed that, with the exception of

DRG 433 (for which the sample did not contain a sufficient number of cases to generate a reliable estimate and which, in addition, was unaffected by the proposed reconfiguration of the DRGs), there were no significant differences between the mean charges for each DRG in the study sample and the mean charges in the larger recalibration data set.

The distribution by DRG of the 5,577 cases used in the study was as follows:

DRG 433—201
DRG 434—685
DRG 435—2,712
DRG 436—1,357
DRG 437—622

With the exception of DRG 433, the sample sizes were sufficiently large to conclude that our estimated mean charges for each DRG are within 10 percent of the true means with 95 percent confidence.

A chi-square test to determine how well the distribution of sample providers (that is, short-term general hospitals, alcohol and drug treatment hospitals, alcohol and drug units) matched the distribution of the population of providers with cases in the alcohol/drug DRGs revealed significant differences between the observed distribution of our sample of providers and the distribution of providers nationwide. In particular, alcohol and drug treatment hospitals and units of short-term general hospitals were overrepresented in our sample of providers, whereas short-term general hospitals without alcohol and drug treatment units were underrepresented in our sample. Despite these differences between the sample and the universe of hospitals, however, the means charges estimated from the sample were not significantly different from the mean charges obtained from the recalibration data set. Thus, there is no analytic basis for substituting weights derived from a sample for weights derived from essentially the universe of Medicare cases in these or any other DRGs.

Comment: Several commenters suggested that the revised alcohol/drug DRGs are overpaying for detoxification therapy relative to rehabilitation therapy.

Response: The relative weights of each DRG and the geometric mean lengths of stay are derived from actual consumption of resources as reflected in the 1984 Medicare PATBILL file and, thus, directly tracks the use of hospital resources to provide these services. In considering which services contributed to the weight derived for the DRG, it should be noted that many cases involve not only detoxification for drugs as well as alcohol but other symptomatic treatment as well. We note that if hospitals code cases inaccurately, here, as elsewhere, it could adversely affect payments and classifications in subsequent years, since we will continue to update the system based on the latest data available. While data submitted by hospitals is subject to review and correction, review activity is limited to samples. Therefore, we must view the bulk of the information furnished by hospitals as accurate and reflective of current hospital practices.

Comment: One commenter noted that patients with psychosis in alcohol dependence represented by ICD–9–CM codes 291.3, 291.8, 291.9 are not able to benefit from rehabilitative therapy while in a psychotic state and that their inclusion in DRGs 436 and 437 is inappropriate.

Response: We agree and are programming the GROUPER system so that these codes will group only to DRG 435 (Detoxification and Other Symptomatic Treatment).

Comment: One commenter noted that ICD–9–CM code 303.03 (Alcohol dependence syndrome in remission) presents ambiguities that suggest that every case may not be appropriate for inpatient rehabilitation.

Response: We agree and will institute prepayment review of cases that show this code as the principal diagnosis.

Comment: Several commenters noted that persons with an alcohol or drug problem with an ICD–9–CM code that does not indicate dependence may still have a medical need for detoxification.

Response: We agree and are revising the title of DRG 434 to read "Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence; Detoxification and/or Other Symptomatic Treatment."

Comment: One commenter indicated that most alcohol and drug abuse patients can be treated on an outpatient basis or in the home through the use of primarily medical and social treatment. It was suggested that increased payments for these DRGs was inappropriate.

Response: We agree that there are many settings in which both detoxification and rehabilitation may take place and that some of these settings are social and nonmedical. We believe, however, that some patients do require inpatient care for detoxification, rehabilitation, and other symptoms associated with alcohol and drug abuse. Our coverage rules explicitly indicate that inpatient care is only covered when it is medically necessary and, therefore, we would expect that inpatient hospital stays for those patients whose care could appropriately be provided in social and nonmedical settings would be denied as noncovered care.

Comment: One commenter suggested that the significantly higher weights assigned to DRGs that involve rehabilitation and combined detoxification and rehabilitation could create an incentive for misrepresenting cases in order to obtain increased payments.

Response: As we noted in the proposed rule, we believe that this potential problem can be solved by enhanced review by PROs. PROs will be asked to increase admission review of alcohol and drug abuse cases and also to increase attention to these cases during DRG validation. We believe that PRO review is adequate to prevent inappropriate payment.

2. Major Joint Procedures (DRG 209)

Hospitals, physicians, and professional societies allege that our current DRG 209 creates a disincentive for performing more than one medically-appropriate major joint procedure of the lower extremity during the same hospital stay. We have been told that some patients may be undergoing two separate hospitalizations when, in fact, the performance of both joint replacements during the same hospital stay might be more appropriate medically. This disincentive results from the high cost of each artificial joint prosthesis as well as the differing clinical course of patients who require this surgery and the nature of the postoperative rehabilitation process associated with lower extremity joint replacement.

Based on consultation with various professional organizations and individual physicians, including the American Academy of Orthopaedic Surgeons and the American College of Surgeons, and a review of all Medicare claims in our 1984 PATBILL file through September 1984 for DRG 209, we proposed to create a separate DRG for bilateral or multiple major joint procedures of the lower extremity.

We identified certain combinations of major joint procedures within DRG 209 that may both be performed during the same hospital stay. Each of these procedures requires the implantation of a separate prosthesis. We proposed that, if any two of the listed procedures are performed during the same hospital stay, they would be assigned to a new DRG that contains only those cases in which two major joint procedures, each requiring a separate prosthesis, were performed. Proposed DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) would contain the

following codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.

The original composition of DRG 209 would remain unchanged except that all cases indicating the performance of two major joint procedures during the same admission would be moved to the new DRG 471 representing multiple major joint procedure of the lower extremity.

Comment: The majority of commenters were supportive of our decision to revise DRG 209 and to create two DRGs—one for single joint procedures and one for multiple joint procedures. One commenter indicated that such a split set an unfortunate precedent for other DRGs and should not be implemented.

Response: As we noted in the proposed rule, we believe that there are sound clinical reasons for making the split and we are adopting our proposed policy. However, we will continue to monitor cases in these two DRGs to determine whether further action is necessary. In our opinion, our decision to split DRG 209 does not create a presumption that we would split other DRGs that include both single and multiple procedures. Any decision such as that would only be made after an examination of available data and a conclusion that it is appropriate and is based on sound medical reasons.

3. Kidney Transplants for Diabetic Patients

We learned that an anomaly in the ICD–9–CM coding conventions leads to the classification into DRG 468 of diabetic patients with end stage renal disease (ESRD) who receive kidney transplants. Because these cases are clearly more clinically coherent with the services described for DRG 302 (Kidney Transplant), we proposed to change the GROUPER program so that diabetic ESRD patients who receive kidney transplants would be properly classified into DRG 302. We note, also, that the range of resources embraced in DRG 302 is more appropriate for the procedures performed.

Comment: Commenters generally agreed with the result we proposed; however, one commenter suggested that the best method of achieving that result within the context of the DRG system would be to transfer those ICD–9–CM codes of diabetes with a manifestation of disease in a different organ system to the MDC corresponding to the organ system in which the disease manifestations occur.

Response: We agree and are revising the assignment of the following codes that are currently grouped to MDC 10, which includes the endocrine system. We are moving ICD–9–CM codes 25040 and 25041 for diabetes with renal manifestations to MDC 11, Diseases and Disorders of the Kidney and Urinary Tract, DRGs 331, 332, and 333. We are moving codes 25060 and 25061 for diabetes with neurologic manifestations to MDC 1, Diseases and Disorders of the Nervous System, DRGs 18 and 19. We are moving ICD–9–CM codes 25070 and 25071, diabetes with circulatory manifestations, to MDC 5, Diseases and Disorders of the Circulatory System, DRGs 130 and 131. All surgical procedures performed for patients with these diagnoses will group to the appropriate surgical DRGs within the MDC to which they have been assigned. We believe that these changes strengthen the logic of the GROUPER program and enhance the clinical coherence of the DRG system in the manner intended by its designers. In fact, we note that codes 25050 and 25051 for diabetes with ophthalmic manifestation were already grouped in MDC 2, Diseases and Disorders of the Eye.

C. Recalibration of DRG Weights

The DRG weights currently used in the prospective payment system are based on operating cost information from hospitals' 1981 cost reports as well as patient characteristics, diagnoses, and charge data from the 1981 Medicare provider analysis and review (MEDPAR) file. The MEDPAR file contains inpatient hospital billing records, coded to indicate principal diagnosis, presence or absence of a secondary diagnosis, and one surgical procedure, for a 20-percent sample of Medicare beneficiaries.

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. We considered continuing to develop cost-based weights using cost data or a combination of cost and charge data. Alternatively, we considered basing the relative weights solely on hospital charge information, adjusted or unadjusted for capital costs, teaching, and wage costs. Extensive and recent charge information is available from the FY 1984 PATBILL data set. Effective October 1, 1983, PATBILL is designed to contain fully coded inpatient hospital bills for 100 percent of Part A beneficiaries (MEDPAR is a 20 percent sample).

In order to determine if DRG relative weights based on charges can accurately reflect the relative resource consumption across DRGs, we conducted a study that compared relative DRG weights computed based on 1981 costs with those computed on 1981 charges. A description of this study was presented in the NPRM (50 FR 24372). Based on the results of the study, we proposed to recalibrate the DRGs based on charge data.

The recalibrated DRG relative weights set forth in the NPRM were constructed from FY 1984 PATBILL data received by HCFA through December 1984, which was about 90 percent complete and thus contained about 90 percent of all Medicare discharges occurring in FY 1984, the first year of the prospective payment system. Approximately 40 percent of these discharges were paid under the prospective payment system, and 60 percent under State demonstration waivers and on a reasonable cost basis under the rate of increase limits. The FY 1984 PATBILL file which now includes nearly 11 million Medicare discharges, is about 95 percent complete. Because it will eventually include all inpatient hospital bills of Medicare beneficiaries, it is referred to henceforth as a 100 percent file or the universe of FY 1984 Medicare hospital bills.

The methodology used to calculate the DRG weights is as follows:

- All the claims were reclassified using the proposed revised GROUPER program.
- The average charge per DRG was calculated by summing the total charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated from the calculation of the average charge per DRG.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average charge per case for the average hospital to determine the weighting factor.
- No adjustments were made to the charges to remove capital-related and medical education costs. However, the charges were standardized for wage differences using the proposed survey-based wage index and for variations in teaching activity. The standardization for wage and teaching differences was done in essentially the same manner as it was in developing the initial set of DRG relative weights.
- Kidney acquisition costs continue to be paid on a reasonable cost basis, but, unlike other excluded costs, kidney acquisition costs are concentrated in a

single DRG (DRG 302, Kidney Transportation). For his reason, it was necessary to make an adjustment to prevent distortion of the relative weight for DRG 302. Kidney acquisition charges were subtracted from the total charges for each case in DRG 302 prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

The weights developed according to the methodology described above were normalized so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

When we established the current set of DRG relative weights, there were 109 DRGs that either contained no MEDPAR cases or had too few cases to provide a statistically reliable weighting factor. In order to construct a full set of relative weights, we supplemented the MEDPAR file with discharge records from Michigan and Maryland. The combined data sets were then used to calculate the weighting factors for the 109 low volume or empty DRGs.

By using the 1984 PATBILL data set, which represents substantially the entire universe of fully coded Medicare claims, rather than the MEDPAR file, which is a 20 percent sample of claims, the number of low volume and empty DRGs is reduced from 109 to 30 DRGs. In addition, sampling error is no longer a concern, which means that, in theory, a DRG weight could be constructed from a single case. In practice, however, we believe that some minimum number of cases is required to compute reasonable weights. In the NPRM, we proposed to use a minimum of 10 cases.

In computing weights for the 30 remaining low volume and empty DRGs, we decided to adjust the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. Therefore, we adjusted the original weights of the DRGs involved downward by approximately three percent. However, the renormalization of the entire set of relative weights involves adjusting the weights upward by approximately three percent. Therefore, the combined effect of these adjustments on the 30 low volume and empty DRGs was to leave their relative weights unchanged.

We received 46 pieces of correspondence on the DRG recalibration. Many of the commenters were pleased with our recalibration methodology. However, others voiced some concerns. Their comments and our responses are set forth below.

Comment: Commenters questioned the propriety of recalibrating the DRG relative weights using charge data from the PATBILL file instead of the cost data used in the current DRG relative weight computation. They believe that a decision to change the methodology should be made by Congress rather than the Secretary.

Response: We disagree with the commenters. We believe that the Secretary has the authority to make changes in the methodology for calculating the DRG relative weights. Section 1886(d)(4)(C) of the Act clearly directs the Secretary to recalibrate and adjust the DRG weighting factors at least every four years beginning with discharges occurring in FY 1986. In the absence of specific congressional action that instructs the Secretary to use a certain methodology and a specified set of data in accomplishing the recalibration that is required by law, it must be assumed that the Secretary has discretion within the law to select the data and develop the methodology to accomplish the task required.

As we stated in the proposed rule (50 FR 24372), the decision to use FY 1984 charge data for the recalibration was based on the following factors:

- Only if we use these data will be able to classify cases more accurately than was possible in constructing the current weights. The reason is that FY 1984 PATBILL data contain more detailed information on diagnoses, procedures, age, and discharge destination than does MEDPAR. Consequently, we will be able to use the same GROUPER program for recalibration as will be used for payment.
- Since FY 1984 PATBILL data are derived from nearly 100 percent of FY 1984 Medicare hospital discharges, the weights will be more reliable for all DRGs. Thus, we will be able to reduce significantly the number of low-volume and empty DRGs compared to what is possible using MEDPAR.
- FY 1984 PATBILL data are the most recent data, and therefore are more reflective to current treatment patterns than is MEDPAR.

We believe that these factors constitute a strong case in favor of using FY 1984 PATBILL data for the FY 1986 recalibration. In addition, we believe that this change in data allows us to be most responsive to the congressional mandate (section 1886(d)(4)(C) of the Act) that reclassification and recalibration reflect changes in treatment patterns, technology, and other factors that affect relative use of hospital resources.

Comment: One commenter was concerned that the recalibration methodology used charges and costs from two different periods. Citing the ProPAC study, the commenter stated that the Commission found a high correlation between 1981 costs and charges. The commenter doubted whether such high correlation exists between 1981 costs and 1984 charges.

Response: The commenter appears to be confused as to the methodology used in recalibrating the DRG weights. The weights were recalibrated entirely from the FY 1984 PATBILL file, which contains only charge data. No cost data were employed in the recalibration.

With respect to the comparison of 1981 costs and charges to which the commenters refer, both ProPAC's analysis and the analysis we performed compared the original cost-based DRG weights and a set of weights based on 1981 MEDPAR charges. Both comparisons arrived at very similar conclusions. There is a very high correlation between the 1981 cost-based weights and a set of charge-based weights drawn from the same discharge file for the same period. Our results and those of ProPAC agree entirely on these points. Moreover, with respect to the relationship between 1981 costs and 1984 charges, we also compared the recalibrated weights based on the 1984 PATBILL charges to the current weights based on 1981 costs, and again found a very high correlation between the two sets of weights. The Pearson correlation coefficient for the two sets of weights is .95.

Comment: One commenter objected to the use of charges in recalibrating the DRG relative weights because Congress mandated that payments to hospitals be made on a reasonable cost basis. The commenter argued that the use of charges makes it more difficult to determine whether payments approximate costs and, thus, whether we are violating the law.

Response: Under section 1886(d)(1)(A) of the Act (as added by Pub. L. 98-21), prospective payments determined under section 1886(d) of the Act for inpatient hospital services are to be computed notwithstanding the provisions of section 1814(b) of the Act. Therefore, the requirement to pay a prospective payment hospital its reasonable costs no longer applies. Current payment levels are derived from 1981 cost report data and rolled forward to later periods. However, under sections 1886(d)(4) (A) and (B) of the Act, we are obligated to construct a DRG classification system for classifying hospital discharges and for assigning an appropriate weighting factor that reflects the relative hospital resources consumed in treating each patient case assigned to a DRG. Thus, payment rates are no longer based on a

hospital's actual costs, but the relative weights do reflect relative hospital resource consumption as measured by bills for FY 1984 Medicare hospital discharges.

Section 1886(d)(4)(C) of the Act further directs the Secretary to adjust the discharge classification system and weights at least every four years beginning with discharges occurring in FY 1986 to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources. By using charge data to recalibrate the DRG relative weights, we believe that we have maintained an appropriate index of relative hospital resources use across DRGs while, at the same time, complying with the legislative mandate to recalibrate the weights taking into account changes in treatment patterns, technology, and other factors affecting relative resources consumption.

Comment: One commenter argued that the high correlation reported in the proposed rule between DRG relative weights based on 1981 cost data and weights based on charge data for the same period is to be expected because of the use of charges in the original data base used to determine ancillary costs. To the extent that the cost to charge ratios have remained constant over the intervening years, the commenter believes that one could expect the same degree of correlation to persist. The commenter seemed to draw the conclusion that the PATBILL data used to recalibrate the DRG weights ". . . does not validate the weighing system . . . ." The commenter stated that a better system for measuring resource consumption must be utilized in order to validate the present system.

Response: The commenter appears to have misunderstood the reason for using charge data to recalibrate the DRG weights. We are using the charge-based weights because the charge data provided on the PATBILL is more detailed and current than the cost data available to us. Therefore, we consider the charge-based weights more valid than a comparable set of weights based on the available cost data. However, the charge-based weights are not intended to validate the cost based weights.

The fact that there is a high correlation between the two sets of weights permits us to use the 1984 charge-based weights with reasonable confidence that they reflect the relative resource use across DRGs as accurately as a set of cost-based weights do. As explained above, the use of the charge data in recalibrating the DRG weights affords us the advantages of using what we consider to be superior data than would be available were we to recalibrate the weights using cost data.

Comment: We received a comment inquiring whether the proposed revisions make the revised DRGs "better behaved" in a statistical sense and whether, for example, coefficients of variation are reduced.

Response: In general, the proposed grouper changes and reconfigurations of the DRGs were made on clinical rather than statistical grounds. Since the proposed changes do not alter the basic framework of the DRGs, we did not perform statistical tests such as those conducted by Yale University in establishing the DRGs.

Comment: We received a comment that we should recalibrate the DRG relative weights using only data for discharges paid under the prospective payment system to avoid distortions due to the previous cost-based payment system.

Response: Although in principle we agree with this comment, we think that the disadvantages of recalibrating using only the prospective payment system bills outweigh the advantages. All hospitals were required to begin coding 100 percent of their cases on the Uniform Institutional Provider Billing Form (UB–82) effective October 1, 1983. Since only 40 percent of the FY 1984 bills were paid under the prospective payment system, recalibrating using only the prospective payment system bills would significantly reduce the number of cases used to determine the relative weights. It also increases the number of low-volume DRGs. In addition, the FY 1984 prospective payment system cases are not representative of a full year's set of the prospective payment system cases because hospitals came on the prospective payment system at the start of their accounting year. For example, the hospital accounting year for many large teaching hospitals begins on July 1, so that their prospective payment system cases were limited to the fourth quarter of FY 1984. This phenomenon might also create seasonal effects that would not occur if data for a full year are used. Finally, differences between the prospective payment system and other cases may be lessened by the fact the law in effect before the prospective payment system was implemented also provided incentives for increased cost consciousness.

Comment: We received several comments about the use of charge data to recalibrate the DRG relative weights. Many commenters noted the high correlation between the cost and charge weights constructed from the 1981 data, but wondered about differences that might not be reflected by a measure as the correlation coefficient. A few commenters specifically questioned our statement that the two sets of weights differed by no more than five percent for most DRGs.

Response: The results reported in the proposed rule were based on an analysis of the 358 DRGs for which enough 1981 MEDPAR cases existed to construct reliable weights.[1] This study found a high degree of correspondence between the relative weights constructed according to our original methodology and those based solely on charge data. Both the Pearson and Spearman correlation coefficients were greater than .99. Further, the two sets of weights differed by less than 5 percent for 296 of the 358 DRGs, and these 296 DRGs accounted for 89.5 percent of the total cases. ProPAC's independent analysis of the 1981 MEDPAR data confirmed these results. ProPAC's cost and charge weights differed by less than 5 percent for 328 of the 358 DRGs (96.1 percent of the total cases). The greater similarity of ProPAC's cost and charge weights is attributable to the fact that they standardized the data for differences in indirect medical education costs; the internal HCFA study did not.

Comment: We received comments about two potential problems with our proposed use of charge data to recalibrate the DRG relative weights. Specifically identified were the common practice of setting different cost-to-charge ratios for different departments within a hospital and the lack of an adjustment for capital costs. Examples given included the effect on the charge weights of "undercharging" for intensive care and for expensive prostheses.

Response: Based on our study of the 1981 MEDPAR data, we concluded that neither of these factors creates major differences between the original set of weights and those based solely on charge data. The high degree of overall similarity between the cost and charge weights indicated that the effects of these factors were relatively small. The chief systematic difference between the two sets of weights was that the charge weights were slightly less compressed than the cost weights. That is, high-weight DRGs (low-weight DRGs) tend to have higher (lower) charge weights than cost weights.

---

[1] Philip Cotterill, Joel Bobula, and Rose Connerton, "A Comparison of Alternative DRG Relative Weights for the Medicare Prospective Payment System," HCFA Internal Working Paper, February 1985, available upon request.

The HCFA study recognized the issue raised in the comments regarding the effects of differences in cost-to-charge ratios among departments within the hospital. For example, if most hospitals cross-subsidize in the same manner, then DRGs with high proportions of cost in "undercharged" services might have lower charge weights than cost weights. Since "undercharged" services are typically thought to be relatively high cost services, cross-subsidization might be expected especially to affect high-weight DRGs with above average proportions of "undercharged" costs.

The HCFA study investigated this issue for the case of special care (which includes intensive care). The study found that among the 358 DRGs studied, there were 84 that had a relative weight greater than 1.0 and an above average proportion of special care costs (greater than 6 percent of total cost). Contrary to the hypothesized effect, the charge weights exceeded the cost weights for 77 of these 84 DRGs. The reason for this result is that there is a positive correlation between the proportions of cost in special care and in the ancillary categories with lower cost-to-charge ratios. In other words, a high proportion of special care costs does not generally compress the charge weight for a DRG because relatively high utilization of special care is accompanied by relatively high utilization of ancillaries, such as x-ray and laboratory services.

One commenter also mentioned DRGs 39 (lens procedures) and 209 (major joint procedures) as examples where "undercharging" for prostheses might be expected to yield charge weights that are lower than cost weights. A comparison of 1981 cost and charge weights from the HCFA study cited above did not yield this result. For both of these DRGs, the charge weight was about one percent higher than the cost weight.

Both the cases of special care and expensive prostheses suggest that the effects of cross-subsidization are more complicated than indicated by the reasoning set forth in the comments on this topic. Indeed, the effects may in many cases be largely offsetting.

Comment: One commenter stated that "HCFA readily admits problems in comparing the set of cost-based weights with the charge-based weights," and quotes our statement from the study of 1981 MEDPAR data that "Charge-based weights were not renormalized to accommodate 'external data' for the remaining 109 DRGs."

Response: Omission of the 109 "low volume" DRGs from the comparison of 1981 cost and charge weights does not significantly limit the comparisons that can be made between the two sets of weights. The point of the study was to compare weights constructed from Medicare data using alternative methods. The 109 DRGs omitted from the study accounted for less than 0.3 percent of Medicare inpatient hospital discharges in 1981. The sentence quoted in the comment was not indicative of a problem, but rather merely stated that the method of constructing the weights was consistent with the fact that the study was restricted to the 358 DRGs for which there were enough cases in the MEDPAR data to construct a reliable relative weight.

Comment: We received one comment that basing new weights on 1984 data suffers from the problem that claims processed and recorded by the fiscal intermediaries for that year are far from complete, and that the more complex and extraordinary cases may not be included in the recalibration process. The commenter also mentions that certain States may have larger backlogs than others and are, therefore, not fully represented in the recalibration data base.

Response: The data base used for recalibrating the relative weights for the proposed notice included all short-stay hospital bills for FY 1984 received as of December 28, 1984. The total number of bills used in the preliminary recalibration effort was 10.2 million, which represented approximately 90 percent of expected FY 1984 bills. The data base used for recalibrating the relative weights for this final rule included all short-stay bills for FY 1984 received through April 26, 1985. The total number of bills used in the final recalibration effort was 10.8 million, approximately 95 percent of all expected FY 1984 bills.

A comparison of average charges and lengths of stay between the preliminary data sets indicates that the earlier file may not have included all of the most costly and longer length of stay cases. In addition, some States were somewhat slower than others in bill processing, relative to the experience of prior years. However, the final recalibration data set, which included 95 percent of the expected total number of bills, conformed more closely with past experience. As a result, we believe that the concerns raised in this comment have been adequately addressed by the use of the final recalibration data set.

Comment: A commenter believes that it is inappropriate to adjust the data for the indirect costs of medical education when calculating the DRG relative weights. The commenter also noted that teaching hospitals account for a disproportionate number of cases in selected DRGs, so that the adjustment for indirect medical education costs will disproportionately reduce the relative weights for these DRGs. The commenter further noted that adjusting the relative weights for indirect medical education costs "alters the need" for an indirect medical education adjustment to payments and may redistribute payments among hospitals. The commenter concluded that it is critical that HCFA avoid building biases into the pricing system through the methods used to construct the relative weights and to set prices.

Response: We certainly agree that biases in the pricing system should be avoided, but we disagree that it is inappropriate to adjust the data for indirect medical education costs in calculating the relative weights. Our reasoning is precisely that noted in the comment: Teaching hospitals account for a disproportionate number of cases in selected DRGs.

Since the prospective payment system makes an additional payment for indirect medical education costs, the relative weights should be standardized to remove these costs in order to avoid overcompensating teaching hospitals for those DRGs. Further, we wish to note that the payment adjustment is twice that used in standardizing the data used to derive the relative weights. We believe that the appropriate policy would be to reduce the adjustment factor used in computing the additional payments to the same level as that used in standardizing the relative weights, not to alter the latter adjustment. The consistent treatment of indirect medical education costs in computing the relative weights and in adjusting payments would achieve the objective of avoiding biases in the pricing system.

Comment: A commenter was conserned that, by including transfer cases in the calculation of the relative weights, we might be inappropriately reducing the relative weights of DRGs in which there are significant proportions of transfer cases.

Response: This commenter assumes that the charges for transfer cases are lower than charges for the average case in a DRG. Our data show that this assumption is not correct for many DRGs. To test the effect of including transfers in the calculation of the relative weights, we computed mean charges for each DRG, both with and without the transfer cases. We then conducted statistical tests to determine whether these two means differed significantly at the .05 confidence level (that is, there is only a .05 probability that the observed difference in the

means would occur if the two sets of cases came from the same underlying population). The results indicate that transfers have a statistically significant effect on the mean charges of only 16 DRGs. For 13 of the 16 DRGs, inclusion of transfer cases tends to increase the mean charges. However, for three DRGs, the mean charges are reduced by the inclusion of the transfer cases.

Since the inclusion of transfer cases raises the mean charges for some DRGs and lowers them for others, and because these effects are limited to such a small number of DRGs, we decided not to revise the method we used to recalibrate the relative weights. During FY 1986, we will be studying the entire issue of transfers and the appropriate payment for these cases. This study may reveal other ways of handling transfer cases in future recalibrations.

Comment: We received several comments on the topic of normalization of the relative weights; that is, the adjustment that was made to ensure that recalibration did not affect the aggregate level of payments. Some of these comments reflected confusion over the nature of this adjustment. One commenter referred to this adjustment as "restandardization," a term we use only for adjustments that influence relative payments among different hospitals. A second commenter misunderstood our normalization of the relative weights compared to the method recommended by ProPAC. Finally, several commenters requested evidence that our normalization would in fact have no effect on aggregate payments in FY 1986.

Response: In the regulatory impact analysis section of the proposed rule (Appendix A), we presented our estimate of the impact of recalibration on aggregate payments to all hospitals. Column one of the table at 50 FR 24438 showed a 0.11 percent increase in total payments due to recalibration. This estimate has been updated using more recent data than was available at the time the proposed rule was published and appears in the appendix to this document. In both cases, these estimates support our belief that recalibration of the relative weights was carried out in a manner that does not materially affect the aggregate level of payments to all hospitals in FY 1986.

Regarding the difference between our method of normalizing the relative weights and the method recommended by ProPAC, we note that the two methods are equivalent, except that we did not follow Pro PAC's recommendation that the weights be adjusted for any demonstrable changes in reported case mix occurring during FY 1985. ProPAC made this recommendation to "prevent these coding changes from being built into future prospective payment system payments." We have not penalized hospitals, as the commenter argues, by not adopting this ProPAC recommendation. We do not have sufficient data for FY 1985 to enable us to make this adjustment.

Comment: We received two comments about our use of the 1984 PATBILL data to determine the relative weight for a DRG as long as there were at least 10 cases for the DRG. One of these comments was quite critical, stating that the threshold of 10 cases is "without merit, unsupported and completely unjustified." The other comment did not oppose the proposed threshold but expressed concern that the affected DRGs be monitored to determine the appropriateness of their relative weights.

Response: The use of 1984 PATBILL data for recalibration permitted us to reduce the number of DRGs whose relative weight had to be based on non-Medicare data because the PATBILL data contains 100 percent of Medicare inpatient hospital discharges. (The MEDPAR data, in contrast, is only a 20 percent sample.) The use of the 100 percent data also changed the basis for deciding whether enough Medicare cases were available to establish a reliable relative weight for a DRG. Specifically, since the data are not from a sample but now represent the universe of Medicare beneficiaries' hospital experience, there is no explicit statistical criterion to be applied. As a result, we elected to set a relatively low threshold in order to maximize our use of Medicare data in determining the relative weights.

Our decision was based on the premise that relative weights based on Medicare data will yield more appropriate relative payment rates for Medicare beneficiaries than will some external data source. The aged or disabled nature of Medicare beneficiaries may make their medical care needs different from those of other population groups. We believe that a comparison of the original and proposed weights for the 79 affected DRGs supports our approach. In general, the relative weights of these DRGs increased as a result of replacing non-Medicare data with Medicare data. This result is explained by the fact that a majority of these DRGs are for persons under age 18 or for obstetrical patients; and Medicare beneficiaries in these groups are almost exclusively end stage renal disease patients or disabled beneficiaries. These groups clearly have special needs that may account for their relatively resource intensive hospital care.

There are fewer than 50 DRGs with fewer than 50 cases each. In total, these DRGs account for fewer than 500 cases out of the more than 10 million Medicare cases in FY 1984. Given the very small number of cases affected by the choice of a particular threshold, we do not believe that the affected DRGs require special monitoring.

Comment: We received inquiries during the comment period concerning the weights assigned to DRGs 385, 386, 389, 390, and 391 (which consist of diagnoses associated with newborns) and the fact that these DRGs are no longer low-volume DRGs. The commenters state that, with the exception of certain diagnoses codes for congenital anomalies not elsewhere classified or not otherwise specified (7597, 7598, and 7599), which could theoretically apply to adults and children beyond infancy, all other diagnoses resulting in assignment to MDC 15, Newborns and Other Neonates with Conditions Originating in the Perinatal Period (that is DRGs 385 through 391), are specific to infants. Moreover, because Medicare entitlement for infants is statutorily limited to those infants suffering from end-stage renal disease, an extremely small population group, and because few adults should have principal diagnoses described by the above-mentioned codes, the commenters believe that there should be virtually no Medicare cases in this MDC. Therefore, the commenters do not understand why these DRGs were not designated as low-volume in Table 5 of the NPRM.

Response: As a result of these inquiries and our continuing analysis, we have determined that DRGs 385, 386, 389, 390, and 391 should continue to be treated as low-volume DRGs. In reviewing the diagnostic information associated with these cases in the PATBILL file used for recalibration, we have found that certain ICD–9–CM codes that are specific to infants, such as unspecified fetal and neonatal jaundice (code 7746), are being used for adult patients. It appears that these codes are being incorrectly assigned to similar conditions occurring in adult patients, and we are continuing to review these cases in order to evaluate the propriety of the coding.

In light of our concerns about the potentially faulty coding of these cases and the fact that there should be few, if any, Medicare cases assigned to the DRGs in MDC 15, we have decided to continue to treat DRGs 385, 386, 389, 390,

and 391 as low-volume DRGs. Accordingly, their weights as shown in Table 5 of this final rule are the same as those currently in use (see the proposed rule (50 FR 24373) for a full explanation of the assignment of weights to low-volume or empty DRG categories). Since there should be few Medicare cases appropriately grouped to this MDC, maintaining the weights currently in effect should have a negligible impact, if any, on a particular hospital's Medicare payment. We note that DRGs 387 and 388 were already classified as low-volume DRGs in the proposed rule, having not met the 10-case threshold that was set forth in that document. Therefore, there are now 35 low-volume or empty DRGs rather than 30, as was stated in the NPRM.

In addition to reviewing the particulars of the PATBILL cases that were grouped into MDC 15, we are also examining the possibility of modifying the DRG classification or the GROUPER in order to distinguish newborns from adult or nonnewborn pediatric patients with certain congenital anomalies. In keeping with our provisions on changes to the DRG classifications and the GROUPER, described in this section of the preamble, these changes would be subject to notice and comment. Also, to assure that cases assigned to MDC 15 are appropriately coded, we may institute age screens in the Medicare code editor.

Comment: Many of the commenters argued that they were prevented from submitting meaningful comments on many aspects of the proposed rule, including the DRG recalibration and the FY 1986 rates, because we did not release timely the date necessary for a thorough evaluation of these proposals. In particular, many commenters believe that our failure to disclose the PATBILL file prevented verification of the accuracy of the proposed recalibrated DRG weights, as well as a determination of the impact of the recalibration on specific hospitals. In addition, these commenters objected to the 30-day comment period allowed for the proposed rule because they claim that 30 days is not enough time to evaluate the proposals, especially since the data requested by these commenters were not released until July 2.

Response: As we indicated earlier, we understand the concerns expressed by the commenters regarding the length of the comment period, as well as concerns about public access to data that were used in determining the various weights, factors, and rates set forth in the proposed rule. However, because of the voluminous amount of data associated with the computation of the weights, factors, and rates and because of the limited interest that these data would have for the majority of readers, we do not as a matter of policy publish this material as an adjunct to our proposed rules. We believe that the methodology used to recalibrate the DRG weights was described in sufficient detail to allow informed public comment. In this regard, we believe we have complied with the Administrative Procedure Act (5 U.S.C. 553).

All disclosable data and information are available to the public upon request. While we do not guarantee that requested information will be furnished in the format desired by the requester, we have responded and will continue to respond promptly to all requests for material and provide all the available data to assist the hospital industry and other parties interested in the evaluation of our proposals for the prospective payment system.

In response to the specific request for the FY 1984 PATBILL data used in recalibrating the DRG weights, we made these data available at a July 2, 1985 meeting that was held specifically to present interested parties with a description of the data and methodology used to develop the proposed FY 1986 prospective payment rates. HCFA technical staff were available at the meeting to answer any questions concerning our methodology. While public meetings of this type may be helpful in the exchange of information and recommendations on regulatory matters, we still view the formal rulemaking process as the principal avenue for announcing changes in the Medicare program. The proposed rule was the formal instrument for disseminating our proposed policy concerning the payment rates, DRG weights, and other relevant factors for FY 1986.

As a part of the rulemaking process, we recognize our obligation to provide a reasonable period of time for interested parties to comment and make recommendations on our proposed policies. Yet, we do not believe that the fact that the PATBALL file was not disclosed at the time we published the proposed rule is a sufficiently strong argument to have extended the comment period and risk missing the September 1 publication deadline for the final rule mandated by section 1886(d)(6) of the Act. The PATBILL file is not necessary to comment on the significant issues related to the proposed methodology but is primarily useful only for the relatively minor purpose of checking the accuracy of our computations. We have not received any indication that we made computational errors. Section 1886(e)(5)(B) of the Act reiterates the requirement to publish the final rule timely for FY 1986. We believe that a 30-day comment period was justified considering our obligation to publish the new rates timely.

We would like to point out that in addition to disclosing the FY 1984 PATBILL file, we have readily provided, upon request, the hospital cost report file and the wage index raw data file. We believe that we have cooperated fully in furnishing information to the public, and we will continue to cooperate fully with proper requests for information.

Comment: One commenter recommended that we recalibrate the DRG relative weights annually.

Response: Section 1886(d)(4)(C) of the Act requires the Secretary to reclassify and recalibrate the DRG weighting factors for discharges occurring in FY 1986 and at least every four years thereafter. Under section 1886(d)(4)(D) of the Act, ProPAC is required to advise the Secretary on any adjustment of the DRG weights based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities.

Although the medical treatment of patients is evolving at a rapid pace, these changes do not automatically translate themselves into changes of the DRG weights. For example, changes in medical technology or practice patterns may result in the substitution of low risk procedures for high risk procedures, or procedure modifications within the same DRG may offset one another leaving resource consumption virtually unchanged. We believe that treatment changes in and of themselves do not necessarily alter resource consumption levels and often have no significant effect on the relative weights.

It is our opinion that recalibration should be performed periodically, as required by law, and when there is an indication that changes in practice patterns, technologies, or treatment modalities have significantly altered relative resource consumption patterns. We will also consider changes in the GROUPER Program that could alter relative consumption among DRGs. As a part of the process for considering when to recalibrate, we will review ProPAC's recommendations as well as comments from all interested parties. In essence, except for statutory requirements, we believe that a decision to recalibrate should be made when the accumulated evidence indicates a need for recalibration.

Comment: One commenter believes that the entire procedure currently in place for paying for discharges that include an unrelated operating room procedure (currently classified into DRG 468) should be reexamined. The commenter states that originally DRG 468 was intended to be used for cases that were ". . . truly different types of cases or were coding problems . . ." that were to be reviewed and reassigned to the DRG providing the fairest relative weight as indicated by the clinical circumstances. The commenter is concerned that the current method of payment for cases assigned to DRG 468 makes no sense clinically and can result in significant overpayments because of the high weight of DRG 468.

In lieu of the current procedure, the commenter proposed a procedure in which a Peer Review Organization (PRO) would review all DRG 468 cases to determine the necessity for admission, procedure, and length of stay. Payment for the discharge would be based on the average per diem amount of DRG 468 using the same procedure we currently use for day outliers. The commenter believes that this procedure would also solve the problem of patients who are assigned to DRG 468 because of complications that result from outpatient surgical procedures.

Response: We agree with the commenter that the present payment system may not provide the most appropriate payment amount for some cases that are assigned to DRG 468. Currently, payment for cases in DRG 468 is determined the same way payments for the other 467 DRGs are computed; however, DRG 468 is intended to represent a category of cases that cannot be logically assigned to any other DRG. Operationally, we have defined these cases as those in which all of the surgical procedures performed are unrelated to the patient's principal diagnosis. We have computed the relative weight of DRG 468 to reflect the relative resources consumed in the treatment of cases that are assigned to this DRG.

While the present system and method of payment may not be totally appropriate for the type of cases assigned to DRG 468, we believe that we are using the best method for determining this payment given the design of the prospective payment system. Currently, 100 percent of the cases assigned to DRG 468 are reviewed by a PRO for admission review and coding accuracy, and cases that are inappropriately coded are changed. This review process has served to substantially reduce the number of cases finally assigned to and paid under DRG 468.

In addition, as discussed in section II.A. of this preamble, we have revised the GROUPER program to include additional surgical procedures that could be associated with a particular MDC so that a discharge that includes one of these procedures will be assigned to the appropriate DRG rather than DRG 468. For example, procedure 7679 (open reduction of facial fracture, not elsewhere classified), commonly associated with principal diagnoses in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissues), can now also be associated with principal diagnoses in MDC 2 (Diseases and Disorders of the Eye). Therefore, cases including a facial bone fracture in conjunction with a principal diagnosis of a disease or disorder of the eye will no longer be grouped into DRG 468.

Although we believe that these changes in the GROUPER program will further reduce the number of cases that could potentially be assigned to DRG 468, we recognize that these modifications do not address other problems of DRG assignment such as the one described by the commenter involving complications resulting from outpatient surgery. This issue requires further study.

Comment: One commenter objected to the recalibration methodology on the grounds that the DRG classification scheme fails to recognize and compensate for the severity of a patient's illness or condition within any given DRG. Citing a recent study on severity of illness,[2] the commenter argued that the current DRG-based payment system is inherently inequitable because it fails to account for the severity of illness differences among cases within DRGs.

Response: Without discussing here the specifics of the study cited by the commenter, the degree to which the current prospective payment system is creating distortions in the selection of patients for inpatient treatment is far from clear. However, the possibility of the failure of the DRG system to distinguish methodically among and account for resource use by severely ill patients is of deep concern to us. We clearly recognize our responsibility for constructing an economically neutral set of relative weights that will not systematically advantage hospitals that treat the relatively simple cases within a given DRG while denying treatment to other more severely ill patients because of the lack of appropriate economic incentives.

As a result of this concern for payment equity, we are anticipating conducting a research program to collect data and study the effects of severity of illness on hospital prospective payments. The study will also examine and test various competing measures of illness severity to determine which system or combination of systems affords us the best opportunity for improving the payment system with minimal disruption to the present system and minimal added implementation cost. If it is determined that severity of illness is a significant factor in resource use that is unaccounted for by the adjustments already made by the DRG system, we would certainly seek to recognize it appropriately through an equitable redistribution of payments.

Comment: One commenter suggested that because of the degree of variation between the previous set of DRG weights and the proposed set, the recalibrated weights should be phased in over a three-year period through a blending of the old and new weights. Based on an analysis of the recalibrated weights, the commenter believes that hospital revenues will be adversely affected. By having the new weights phased-in, the commenter hopes that the expected negative impact of the recalibration would be ameliorated.

Response: We disagree with the commenter's recommendation to phase in the new weights through a blending of the old and new weights for several reasons. First, by blending the two sets of weights, we perpetuate the use of outdated data in the payment formula. We believe that these data no longer reflect the current resource consumption patterns in either an absolute or relative sense. Nor do the previous weights reflect changes in practice patterns or technology that have occurred since 1981. We believe that retaining the old weights in the payment system through some form of blending would retain outdated data in the recalibrated weights, thus producing distortions in the payment amounts and diluting the effects of the recalibration.

In addition, if we recalibrate the weights annually by blending the previous year's weights with the recalibrated weights, we could create a situation in which old data were perpetually incorporated into the payment formula. We believe that the intent of Congress in including section

[2] Susan D. Horn, et al.; "Interhospital Differences in Severity of Illness; Problems for Prospective Payment Based on Diagnoses-Related Groups (DRGs), *New England Journal of Medicine*, Vo. 313, No. 1, 7/4/85, pp. 20–24.

1886(d)(4)(C) in the Act was to permit periodic updating of the relative weights to reflect the most current resource consumption patterns based on the most current data. Blended weights that are constructed using combined old and new data would defeat the purpose of this statutory requirement.

A further objection to the commenter's suggestion is that it only addresses the negative impact of recalibration on hospital revenues while ignoring any positive effects. Blending the weights that were in effect for FY 1985 with the recalibrated weights would only benefit those hospitals with discharges predominantly occurring in those DRGs whose recalibrated weights are lower than the FY 1985 weights. However, hospitals with discharges concentrated in those DRGs whose weights are increased by the recalibration would be disadvantaged if we adopted a blending recommendation.

In section J of the impact analysis, in the appendix to this final rule, we indicate that, in the aggregate, recalibration has an insignificant effect on hospital revenues. This lends support to our belief that the method used in recalibrating the weights, by itself, is neutral with respect to total hospital payments. (In fact, as indicated earlier in this section of the preamble, the recalibrated weights were normalized so that the average case weight using the recalibrated weights equals the average case weight using the weights in effect for FY 1985. Without this normalization, the average case weight using the recalibrated weights would have been lower.) It is the distribution of cases across hospitals that produces fluctuations in hospital revenues rather than the recalibration of the weights.

We point out that a decrease in a particular DRG's relative weight because of recalibration indicates that in FY 1985 we may have overpaid hospitals for discharges assigned to that DRG. Conversely, an increase in a particular DRG's weight indicates that hospitals were probably underpaid for discharges in that DRG for FY 1985. Blending the weights effective in FY 1985 and the recalibrated weights would merely maintain these inequities.

Finally, if the recalibrated weights represent the best available and most current measure of relative resource use, blending weights will potentially aggravate the cash flow problems of hospitals that have been experiencing losses because the current weights are based on out-of-date data. In effect, implementing blended weights would only create different categories of hospitals that are advantaged or disadvantaged; blending would not result in a technically superior set of weights. It is possible that an individual hospital could receive increased payments because of the recalibrated weights, just as another hospital may experience a decrease in payments.

D. Procedures for Making Changes During the Year

We stated in the proposed rule that we plan to make most of the changes we would want to make in the GROUPER program or the DRG classification system at the same time we publish the annual prospective payment rate notices required by § 412.8(b) in order to make the system as predictable as possible during the year. However, we believe that this interest may occasionally be overridden by the need to make certain changes on a more current basis to—

- Account for new items and procedures that become covered under Medicare during the course of the year; and
- Correct omissions or inequities that have a potentially substantial adverse impact on beneficiaries or a significant and unwarranted fiscal impact on the system.

We proposed to add a new § 412.10 to the regulations that would allow us to make these types of changes to the DRG classification system during the Federal fiscal year. We stated that these changes would be announced through HCFA's administrative issuance system. We also proposed that changes made under this provision of the regulations would be published for public comment in the next annual notice of prospective payment rates.

With one exception, which is described below, we did not made any significant DRG classification changes until now because we had not stated in previous documents that we would make changes outside of the overall recalibration and reclassification effort prescribed by section 1886(d)(4)(C) of the Act. However, we believe than when we identify cases that have a major fiscal impact, it is appropriate to deal with them as soon as possible after they are discovered so that appropriate levels of payment can be made.

In addition, Congress provided the Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classification and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

We believe, however, that our decision to make limited changes in this way is consistent with the view of Congress, which exempted the establishment, methodology and weighting of DRGs from Judicial review because of their complexity and ". . . the necessity of maintaining a workable payment system." (H.R. Rep. 25, 98th Cong., 1st Sess. 143 (1983).) In order to assure adequate public notice of these changes and an opportunity to comment on the coverage additions, we plan to publish an annual notice of classification changes for public comment, as described below.

The one change we have made already was to incorporate into the classification system two types of lithotripsy procedures so that Medicare beneficiaries could benefit from the procedures and hospitals could be paid for them once Medicare coverage was extended. In the case of these procedures, it was possible to incorporate them into the system by identifying the appropriate DRG and assigning an appropriate code. We included in the proposed rule (50 FR 24374) a full discussion of the process by which we determined how to make the lithotripsy change as an example of the approach we plan to take with interim changes. That change was subject to comment in the proposed rule along with the proposed procedures.

If the GROUPER program is not capable of assigning cases to the DRG that we have found to be appropriate, the Medicare Code Editor or manual claims review may be considered for use in the interim until GROUPER changes can be made.

Comment: Virtually all those who commented were disturbed by our proposal to make interim changes during the year by means of our administrative issuances system with all changes being subjected to public comment at the time of the first annual prospective payment update notice published after the changes were made. They all indicated the need for the opportunity for public comment before any changes are implemented. ProPAC, in its comment, pointed out that the law requires that we consult with it before making any changes.

Response: We recognize the basis for the concerns that were expressed by these commenters and have modified the approach we plan to take. We note, however, that the comments generally failed to take account of two important factors that affect the selection of procedures to use. First, as we noted several times in the proposed rule, we plan to implement very few changes other than during the annual notice of classification changes. We would make interim changes only to provide coverage of new items or services or to correct serious omissions or inequities. Our examples showed the type of rare situations of which we planned to take account.

The use of the full notice and comment process to make such interim changes would largely defeat the purpose of making them since that process can typically take from six to nine months to complete. We have, therefore, decided to establish two separate mechanisms for making interim changes apart from the annual notice of classification changes. Changes that are of the greatest importance are those that involve additions of coverage, and we still plan to implement these decisions by means of administrative issuances, since we do not believe that extensions of coverage should be delayed until the payment system can accommodate these changes in the most appropriate manner. Changes that involve omissions or inequities would be made formally, with a prospective effective date, through a **Federal Register** final notice with comment period, so that comments can be made by the public. Before either type of change takes effect, we will consider ProPac's comments. In order to assure adequate public notice and opportunity for comment, we will also include both types of changes in the annual classification notice discussed below. The coverage changes will be subject to formal comment; changes involving omissions or inequities already published in a **Federal Register** notice with comment period will be republished for purposes of providing complete information.

Comment: A number of commenters stated that any changes during the year would be disruptive because they would require modifications in hospital versions of the GROUPER program. They indicated that they needed a stable grouping and pricing mechanism during the year to conduct proper financial planning. They further suggested that all GROUPER changes (that is, classification changes) should be made before the annual updating process so that it would be available to them for analysis and for use in evaluating other changes. Some commenters suggested that software should be made available from Medicare without cost to the hospital.

Response: In part, we believe that the concern about disruptions is based on the mistaken belief that changes would be relatively numerous and would require reprogramming of software for grouping programs. We expect that these changes will be very infrequent and that hospitals will be able to make them manually until the next annual update of the GROUPER program. We do recognize that it would be more convenient for us, for ProPAC, and for the provider community to have annual GROUPER revisions completed before the annual prospective payment update notice and we have therefore decided to propose these changes separately. We will analyze all proposed changes in the classification system and the GROUPER program on a continuing basis and publish proposed changes in a separate notice early in the calendar year. (As noted above, this notice will also include for public comment all the interim changes made through administrative issuances during the previous year to accommodate coverage changes. Changes previously published that year in the **Federal Register** to correct omission and inequity problems will also be published as a matter of information but would not be subject to comment.) We will then analyze the comments and publish a final notice before or concurrently with the annual prospective payment update proposal. The changes will be effective beginning on the next October 1, at the same as the annual update on the prospective payment rates. Thus, both HCFA and the provider community will be able to evaluate the updating proposals by use of an updated GROUPER software package. Because it is not necessary for a provider to purchase such software in order to submit claims for Medicare payment, however, we did not accept the recommendations that Medicare provide the software without charge.

Although we are planning to publish future classification changes as discussed above, we have included in this regulation the classification changes proposed in the June 10 proposed rule as modified by the comments and suggestions we have received. We have also included some additional changes that we believe follow the principles discussed in the proposed rule or are similar to them. Future changes of this nature will, however, be published separately.

Some commenters will note that this preamble does not address certain GROUPER and classification issues they raised. This is because the suggestions either required indepth statistical analysis or a change in the ICD–9–CM coding system. All comments that fit these categories will be analyzed and reviewed during the next several months and actions on them will be published early in 1986.

In keeping with our commitment to review GROUPER and classification changes on an ongoing basis, any proposed GROUPER or classification changes should be made in writing. They should state succinctly the issue of concern. Any rationale for the change or supporting documentation should be included in the proposal and sent to the following address:

Health Care Financing Administration,
Department of Health and Human Services,
GROUPER Changes, P.O. Box 26681,
Baltimore, Maryland 21207

An acknowledgment of receipt of the proposal will be sent.

Comment: We received several comments concerning the assignment of extracorporeal shock wave lithotripsy to the medical DRGs 323 and 324. The commenters believe that the resources consumed in the provision of this procedure are much greater than the resource consumption reflected in the weights for these two DRGs. They suggest that either the procedure be classified into DRGs 304 and 305 (surgical DRGs) or that a separate DRG be created.

Response: We appreciate the concern expressed by the commenters. However, based on the data available, we believe that DRGs 323 and 324 are the appropriate clinical classification for extracorporeal shock wave lithotripsy and that this classification will result in adequate reimbursement for efficiently operated, fully utilized lithotripsy centers.

We assigned extracorporeal shock wave lithotripsy to a medical DRG primarily because it is a noninvasive procedure and the clinical course of patients treated with lithotripsy, particularly length of stay, more closely resembles that of nonsurgical rather than surgical patients in the renal MDC. Measures of resource use for extracorporeal shock wave lithotripsy are currently limited because of the fact that the procedure was, until March 1985, considered experimental and, therefore, was not covered by Medicare. Consequently, the FY 1984 PATBILL file used for recalibration contains no extracorporeal shock wave cases.

However, we have reviewed limited charge data available from lithotripsy centers engaged in clinical trials, even though these data are from a different period from the remainder of bills used for recalibration, reflect low utilization, and, because clinical trials were underway, include the delivery of services that were furnished as an integral component of the research protocol (services that are not likely to be furnished to patients on a routine basis). In light of this analysis, we believe that the procedure does fit appropriately in the DRGs into which we have placed it. We will continue to monitor the resource intensity of this procedure to assure ourselves that this classification is appropriate and that payment is adequate.

III. Development of a New Hospital Wage Index

Section 1886(d)(2)(C)(ii) of the Act requires that we standardize the average cost per case of each hospital used to develop the separate urban and rural standardized amounts for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts for the nine census regions and the national rates be adjusted for hospital area wage levels as part of the methodology for determining the prospective payments to hospitals. To fulfill both requirements, we constructed a wage index to eliminate variations in the average cost per case.

We used calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics (BLS's) ES 202 Employment, Wages and Contributions file for hospital workers to construct the wage index applied under both of the above provisions of the Act for computing prospective payments to hospitals during FY 1984 and FY 1985. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

We have been aware since the beginning of the prospective payment system of certain limitations of the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full-time employees. Although we recognized these shortcomings, we believed the disadvantages were outweighed by the advantage of being able to utilize the best national data available.

In an effort to overcome the limitation of the BLS data with regard to full time and part-time employment, we conducted a survey that we hoped would permit the analysis of options for the construction of an improved wage index. The survey provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report for hospital fiscal years ending in calendar year 1982, and for the extraction from hospital records of data on paid hours worked. A complete description of the survey, as well as the survey results, can be found in the proposed rule published on July 3, 1984 (49 FR 27439), the final rule published on August 31, 1984 (49 FR 34764), and the June 10, 1985 proposed rule (50 FR 24375).

As we stated in the proposed rule, we computed two hospital wage indexes using the data from the 5,595 hospitals that were included in our survey data base. Both of these indexes were presented in our March 29, 1985 report to Congress on the HCFA wage index. One index is derived from gross hospital salaries; the second index is developed from adjusted gross hospital salaries. Adjusted gross salaries are defined as the net of wages for and hours worked by interns and residents, personnel employed in nonhospital cost centers, and hospital-based physicians.

The two indexes were developed from different categories of hospital workers. The index based on gross salaries and wages measures the difference from area to area in gross hospital wages; that is, the wages paid to all hospital employees, including interns and residents, provider-based physicians, and workers employed by the hospital but working in areas of the facility other than the hospital inpatient area. The other index is based on adjusted salaries and hours; that is, it eliminates the effect of interns and residents, provider-based physicians, and hospital workers in areas of the facility other than the hospital inpatient area.

Both indexes control for regional differences in part-time employment since each is based on the average hourly wage in each urban or rural area. However, because many hospitals have indicated that they had difficulty in determining the wages and salaries and hours worked for the excluded worker categories used to develop the adjusted gross wage index, that index is probably not as accurate as the gross wage index.

Therefore, we proposed to use the gross wage index, since we believe it is the better of the two wage indexes derived from the HCFA wage survey.

In the proposed rule (50 FR 24377), we set forth the method we used to compute the gross wage index as it appeared in that document. However, as is explained in detail in the comments and responses that appear below, we have incorporated corrected data into the survey data base. Therefore, the following is a corrected explanation of the method used to compute the gross wage index:

The method used to compute the gross wage index is as follows:

Step 1—Each of the 5,602 (5,595 in the NPRM) non-Federal acute care hospitals subject to the prospective payment system, for which a properly completed survey form has been received, is classified into its appropriate urban or rural area based on the Executive Office of Management and Budget's (EOMB's) metropolitan statistical area (MSA) definitions including the changes that were announced on June 27, 1985 and were effective June 30, 1985, (the NPRM used those definitions in effect as of June 10, 1985) and which would be recognized for prospective payment purposes beginning October 1, 1985.

Step 2—For each hospital, the total gross hospital salaries (item 4 on the survey report) are inflated from the end of the hospital's cost reporting year through the end of calendar 1982 using the annual 1982 rate of increase in the wages and salaries portion of the hospital market basket. The annual rate used was 11.0 percent. This is done to eliminate any distortion in the data caused by differing hospital cost reporting years.

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 are divided by the reported number of total paid hours worked (item 12 on the survey report) to yield an average hourly wage.

Step 4—Hospitals with an aberrant average hourly wage, which is defined as an average hourly wage either less than $3.35 (the minimum wage in 1982) or greater than $19.58 (2.5 times the 1982 national average hourly hospital wage as reported in BLS' *Employment and Earnings Bulletin* as of February 1984), are excluded. This results in the elimination of records from 63 (73 in the NPRM) hospitals.

Step 5—Within each urban or rural area, the result computed in step 2 is summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 6—The total gross hospital salary result computed in step 5 is divided by the corresponding total number of paid hours worked to yield an average hourly wage for each urban or rural area.

Step 7—The arithmetic mean of the result in step 6 is computed across all urban and rural areas to obtain the national average hourly hospital wage based on gross salaries. The national average is $8.0253 ($8.03 in the NPRM).

Step 8—For each urban or rural area, the hospital wage index is calculated by dividing the average hourly wage computed in step 6 by $8.0253 ($8.03 in the NPRM), the national average.

On July 18, 1984, while we were conducting our survey, Congress enacted section 2316 of Pub. L. 98–369, which requires the Secretary to conduct a study to develop an appropriate wage index that specifically addresses the part-time employment problem. As mentioned above, this study was presented to Congress on March 29, 1985. In addition, section 2316(b) specifies that any changes made in the wage index under that provision of the law are to be retroactive to cost reporting periods beginning on or after October 1, 1983. We proposed to make the appropriate payment adjustments to overpaid and underpaid hospitals throughout FY 1986. The survey-based wage index used to determine the amount of a hospital's underpayment or overpayment would be based on the recognized urban/rural definitions in effect for the entire Federal fiscal year for which the payment adjustment determination is being made. We believe that spreading the payment adjustments over the course of one year, rather than requiring lump-sum payments, would minimize the negative impact on overpaid hospitals. Therefore, to accomplish these adjustments, we proposed that overpaid hospitals make 26 equal payments to us throughout FY 1986. Conversely, we would make 26 equal payments to underpaid hospitals over the same period of time.

We received 80 pieces of correspondence that contained comments on the proposed wage index. Reactions to our changes ranged from very positive to very negative; however, the majority of the commenters were in favor of the survey-based gross wage index. We have considered all of these comments quite carefully and have decided to proceed with implementation of the survey-based gross wage index as we proposed in the NPRM. Our reasons for doing so were set forth at length in the NPRM and are further explained in our responses to comments below.

Comment: Several commenters questioned the accuracy of the survey-based gross wage index, pointing out significant changes in the values of the index for specific locales that were perceived by the commenters as not being credible changes. Some commenters were highly critical of the way in which the survey was coordinated, characterizing the instuctions as ambiguous and citing the questionable nature of the preliminary survey results that led to the need for a follow-up effort to validate the accuracy of the initially reported records. We received several comments requesting that implementation of the gross wage index be delayed until we fully disclose all information that has a bearing on the validity and reliability of the survey and an opportunity for further public comment. Other commenters requested that hospitals be afforded an opportunity to submit corrected records if they can demonstrate that survey errors resulted in incorrect gross wage index values for their particular area.

Response: We wish to point out that the survey form and instructions for collecting hospital financial data in order to address the part-time employment limitation of BLS ES 202 records were reviewed and approved by a workgroup that included representatives from HCFA, the American Hospital Association, and State hospital associations from Connecticut, Ohio, Louisiana, Nebraska, and California. The survey instrument was designed with a view toward balancing the need to obtain comprehensive data by occupational category in order to correct all of the technical limitations of the BLS ES 202 data base with the desire to obtain data quickly in order to resolve the part-time employment problem in time for the FY 1985 update of the prospective payment rates.

For reasons that were discussed in detail in the July 3, 1984 proposed rule (49 FR 27439) and the August 31, 1984 final rule (49 FR 34764), the disappointing quality of the initial survey results precluded our adoption of a revised wage index effective October 1, 1984. Therefore, we subsequently afforded each hospital the opportunity to check the accuracy of the survey data reported for that facility. On July 2, 1984, we informed the Medicare fiscal intermediaries of this decision and directed them to send a letter to each hospital requesting that they check and, if necessary, correct the data reported. In our notification, we pointed out the sources of some of the more common errors in the survey reports, and hospitals were asked to review and ensure the accuracy of key data items.

In order to promote wide participation in the survey and ensure hospital cooperation in our validation effort, the various national and State hospital associations encouraged their respective memberships to complete the survey reports and return them to us promptly. Hospitals were furnished the name and telephone number of a contact in HCFA central office who could answer any questions concerning the proper completion of the survey report. In addition, HCFA staff attempted to resolve any discrepancies on validated survey reports by telephoning the hospital directly. In many instances, repeated contacts were made. Therefore, we must conclude that all hospitals wishing to participate in the wage index survey have been given sufficient opportunity to submit accurate wage and employment data.

With respect to the significant changes in the gross wage index compared to the 1981 BLS measures for certain locales, the HHS Office of the Inspector General (OIG) and our fiscal intermediaries audited key data items from the survey reports of 173 hospitals. Many of these hospitals were located in areas in which the Federal portion of the prospective payment rate, as computed by using the gross wage index, differed from that calculated by using the 1981 BLS index by more than 10 percent. Any corrections were incorporated in the survey data base. OIG concluded that, notwithstanding any differences between the reported and audited survey data for specific hospitals, their analysis indicated a very high degree of accuracy between the audited and reported data overall. Subsequent to the OIG's audit, additional corrected reports were added to the summary data base used to calculate the final gross wage index values that appear in Tables 4a and 4b of the addendum to this final rule. Some of these revised data were audtied, as indicated in the responses to comments below.

With respect to the comment that we should furnish an additional opportunity for public comment prior to implementing the revised wage index, we do not see how this would serve a useful purpose. Our report to Congress on the hospital wage index required by section 2316(a) of Pub. L. 98–369, OIG's report of its audit findings, as well as the data used to compute gross and adjusted gross wage indexes, have been available to the public both before and since the publication of the June 10, 1985 proposed rule.

We have expended considerable effort to provide hospitals with repeated opportunities to participate in the wage index survey and to submit corrected wage and employment records used to develop the gross wage index. Both HCFA and OIG have audited hospital records in areas in which implementation of the gross wage index

would significantly alter the Federal portion of the prospective payment rates to ensure the accuracy of the reported data. We have extended the deadlines for hospitals to submit their survey reports several times in order to obtain high quality records from as many hospitals as possible, which resulted in our delaying the issuance of the wage index report to Congress. Because we believe that hospitals have been provided ample opportunity to participate in the survey and to submit accurate records for purposes of constructing the gross wage index, wa plan no further changes to the wage index values published in the addendum to this final rule.

Comment: Several commenters indicated concern about errors in the survey data that have been detected since the data collection was terminated (in order to allow HCFA to prepare the wage index report that was sent to Congress on March 29, 1985).

Response: We carefully reviewed any additional data received, as well as accompanying narrative, to determine the validity of altering the certified survey from data. The corrections received fell into four categories: corrections to the adjusted index data; minor changes to the gross wage index data; significant changes to the gross wage index data; and incorrect or inappropriate changes to survey data.

Many of the corrections to the survey data would have had an impact on only the adjusted wage index. Since we are not adopting the adjusted wage index, it is unnecessary to act on these corrections.

Each suggested change to the gross wage index data was reviewed for correctness and its impact on the area's wage index. If the reguested change had a significant impact in terms of average hourly wage amounts compared to the average hourly wage in the area or if the data submitted had not been certified by the hospital, we asked for further verification in the form of an audit. These audits were conducted by the Medicare fiscal intermediaries. Information contained in the audits was evaluated, and in most cases, the audited data have been incorporated in the final wage index values.

Information submitted suggesting that changes be made in recognition of events subsequent to the data collection year were not accepted as valid. These changes were not accepted because the survey was designed to extract uniform data covering the latest full cost reporting period in which audited data were expected to be available. Therefore, changes suggested as a result of subsequent events were not accepted. Subsequent events will be recognized in any later wage and employment data used to update the wage index.

In summary, we received additional data from 140 hospitals. Of these 140, we did not accept data from 40 for a number of reasons (for example, data from the wrong year). The data from 63 hospitals made no difference to the gross wage index because they either reflected no change to the data already on file or contained corrections to the data used in computing the adjusted wage index. Of the remaining 37, we accepted the changes from 13 hospitals without further review because the changes in the data had only a minimal effect on the hourly wage in the area, and we audited 24 hospitals. As a result of the audits, we accepted changes from 19 hospitals and did not accept changes from the remaining five. At this time, we anticipate that no further corrections will be made.

A number of hospitals also submitted revised data that they believe should have been included in the survey. A particular area of concern involved the use of contract labor by hospitals. While some hospitals may have included contract labor costs as salary costs on their Medicare cost reports, these costs are not generally considered salary costs. Therefore, in most cases, the wage data collected from the 1982 cost reports did not include contract labor. When the wage survey was initially designed, the workgroup members agreed that, in many cases, fees paid for contract labor may not be representative of area wages. Therefore, it was decided that no special attempt would be made to collect these data. (In fact, the survey form approved by the workgroup provided for the reporting of data that would allow for the removal of any contract labor costs that hospitals had happened to include in salary costs). The workgroup was also concerned that the survey impose as little additional reporting burden on hospitals as possible.

In light of the history of the development of the wage survey, we did not revise the data of any hospital that asked that its report be revised to include the costs of contract labor not reported as salaries on the Medicare cost report. While the question of whether a wage index should reflect these costs is a valid policy issue, it is an issue that is properly addressed on its own, and not in the context of corrections for the current survey wage data. Moreover, revising the data as these commenters indicated would have had the effect of raising the gross wage index for affected areas. This would have unfairly advantaged them compared to hospitals in other areas that would not have received the benefit of having their data similarly revised.

Comment: One commenter maintained that the proposed gross wage index did not differ materially from the BLS 1981 index currently in use, citing the reported .85 Pearson product-moment correlation between the two measures of hospital wage levels. The commenter suggested that our proposed adoption of the gross wage index on the basis of its similarity to an index that has been widely discredited is dubious at best.

Response: We have not cited the high correlation between the 1981 BLS and the survey-based gross wage indexes as evidence that supports that adoption of the latter measure. In our wage index report to Congress, we stated that this degree of correlation supports the position that despite the technical limitations of the BLS data, the use of aggregated data from all hospitals in each urban and rural area subject to indexing tends to mitigate the effect of any potential distortion for which no specific control was made. The correlation coefficient obtained, while statistically significant, only explains 72 percent of the variation in the BLS wage index associated with that of the gross index. While the BLS 1981 and gross wage index values are similar for many areas, there are also significant differences between the two values for other locales. We agree, however, with the commenter's implication that a very high degree of congruence between the BLS and either of the two survey based wage indexes [for example, as reflected in a perfect correlation coefficient of 1.0) would have been strong evidence in support of *not* revising the current index. Such a result would have indicated that the two survey-based wage indexes are equally as good at predicting differences in hospital wage levels as is the BLS wage index, and that replacing the BLS index with one of the others would not have yielded a superior wage index.

Comment: Several commenters pointed out that the gross wage index, while an improvement over the BLS measure, still fails to recognize the generally higher labor costs associated with hospitals within the more economically interdependent central counties of each urban area. These commenters recommended that we apply separate wage indexes to urban areas subdivided into "core" and "ring" (that is, inner city and suburban) counties.

Response: We have previously acknowledged that the current urban definitions that form the basis for constructing the area wage index may

not recognize the widely varying hospital labor conditions that can prevail within each locale. The implication of this comment, which is similar to ProPAC's recommendation 13 (see section V.B. of this preamble for a discussion of this recommendation), is that an alternative means for aggregating counties to obtain wage indexes more reflective of economically integrated areas needs to be investigated, not only for urban but for rural areas as well. Because of their greater specificity, the use of "core" and "ring" urban distinctions would, in principle, permit more precise urban wage index values. In practice, however, it is impossible to designate boundaries that will be completely satisfactory to all hospitals. Before any revised urban or rural definitions are adopted for the purpose of modifying the area wage index, we believe extensive research and analysis of potential impact will be necessary. Although we are examining other classification systems such as the Department of Commerce's Bureau of Economic Analysis economic areas, we intend to proceed carefully and must be certain that any alternative labor market definitions are an improvement over the current MSA/non-MSA classifications.

Comment: In the proposed rule (50 FR 24377), we explained that the denominator of each locale's gross wage index is the mean of the average hourly gross hospital wage computed for all urban and rural areas. The average hourly wage for each urban or rural area is weighted equally in determining the national average. One commenter maintained that using this method for computing the national average hourly hospital wage was upwardly biased and served to depress the wage index for areas in which hospital wage levels are lower. It was recommended that a more appropriate method would be to use a weighted national average in which each area's average hourly wage was weighted by the total number of paid hours worked in each locale.

Response: We believe that the current method of computing the national average hospital wage used as the base to develop the area wage index is logical and allows an understanding of interarea differences in wage levels. Each locale is weighted the same, regardless of the number of hospitals or size of the hospital labor force in the area. However, the choice of the base (that is, the national average wage level) used to index each area's average hourly hospital wage would have no effect on the Federal portion of a hospital's prospective payment, as long as the same wage index is used consistently to develop the labor-deflated regional and national rates and multiplied by the appropriate regional/national rate to derive the blended payment rates for the urban and rural locales. The following greatly simplified example (in which we assume that there are only two census divisions rather than the actual nine) demonstrates our point:

Urban areas A, B, C, D, and E each contain one hospital. Areas A and B are located in Census Division 1 while the remaining areas are in Census Division 2. Each hospital's labor cost per discharge, average hourly wage, area wage index, wage index deflated labor cost per discharge, and labor-related Federal portion of the prospective payment rate reflecting the FY 1986 regional/national blend are as follows:

Region	Area	Labor cost per discharge	Average hourly hospital wage	Wage index (WI)	Deflated labor cost per discharge
1	A	$4,000	$10.00	1.2500	$3,200
1	B	3,000	8.00	1.0000	3,000
2	C	2,625	7.00	.8750	3,000
2	D	2,250	9.00	1.1250	2,000
2	E	3,000	6.00	.7500	4,000

National Average Hourly Hospital Wage $8.00.
Region 1 Labor Deflated Standardized Amount $3,100.00.
Region 2 Labor Deflated Standardized Amount $3,000.00.
"National" Labor Deflated Standardized Amount $3,040.00.

CALCULATION OF LABOR-RELATED FEDERAL RATES

Region	Area	
1	A	.50 ($3,100.00×1.2500)+ .50 ($3,040.00×1.2500)=$3,837.50
1	B	.50 ($3,100.00×1.0000)+ .50 ($3,040.00×1.0000)=$3,070.00
2	C	.50 ($3,000.00×.8750)+ .50 ($3,040.00×.8750)=$2,642.50
2	D	.50 ($3,000.00×1.1250)+ .50 ($3,040.00×1.1250)=$3,397.50
2	E	.50 ($3,000.00×.7500)+ .50 ($3,040.00×.7500)=$2,265.00

In the example below, we perform the same calculations with the exception of computing the area wage index using an arbitrary national average hourly wage of $7.00. (This average need not be set arbitrarily. It could represent a case-weighted national average or average derived by weighting each area average using the total number of paid hours worked in each locale.)

Region	Area	Labor cost per discharge	Average hourly hospital wage	Wage index (WI)	WI deflated labor cost per discharge
1	A	$4,000	$10.00	1.4286	$2,799.94
1	B	3,000	8.00	1.1429	2,624.90
2	C	2,625	7.00	1.0000	2,625.00
2	D	2,250	9.00	1.2857	1,750.02
2	E	3,000	6.00	.8571	3,500.18

Arbitrary National Average $7.00.
Region 1 Labor Deflated Standardized Amount $2,712.42.
Region 2 Labor Deflated Standardized Amount $2,625.07.
"National" Labor Deflated Standardized Amount $2,600.01.

CALCULATION OF LABOR-RELATED FEDERAL RATES

Region	Area	
1	A	.50 ($2,712.42×1.4286)+ .50 ($2,660.01×1.4286)=$3,837.53
1	B	.50 ($2,712.42×1.1429)+ .50 ($2,660.01×1.1429)=$3,070.07
2	C	.50 ($2,625.07×1.0000)+ .50 ($2,660.01×1.0000)=$2,642.54
2	D	.50 ($2,625.07×1.2857)+ .50 ($2,660.01×1.2857)=$3,397.52
2	E	.50 ($2,625.07×.8571)+ .50 ($2,660.01×.8571)=$2,264.92

Except for slight differences due to rounding, the labor-related Federal amount in each area is the same regardless of whether the national average hospital wage used to develop the area wage index is area-weighted, hospital-weighted, or otherwise selected.

The following formula expresses the calculation of the labor-related portion of the standard payment amounts (regional or national):

$$Yj = \frac{1}{n}\sum_{i=1}^{n}\frac{Xi}{Wi/Z}$$

where Yj is the labor-related portion of the jth standard payment amount, Xi is the labor cost per discharge of the ith hospital, Wi is the average hourly wage in the area in which the ith hospital is located, Z is the national average hourly wage weighted in any manner one chooses, and n is the number of the hospitals in the area of the jth standard payment amount.

Since Z does not vary across hospitals in the summation, the equation above can be written:

$$Yj = \frac{1}{n}\left(Z\right)\left(\sum_{i=1}^{n}\frac{Xi}{Wi}\right)$$

The labor-related regional or national Federal payment (Pij) for the ith hospital in the area of the jth standardized payment amount is expressed as the product of the labor-related portion of jth standardized payment amount and the wage index value applicable to the ith hospital:

$$Pij = Yj\left(\frac{Wi}{Z}\right)$$

$$\text{or } Pij = \frac{1}{n}\left(Z\right)\left[\sum_{i=1}^{n}\frac{Xi}{Wi}\right]\frac{Wi}{Z} = \frac{1}{n}\left(\sum_{i=1}^{n}\frac{Xi}{Wi}\right)Wi$$

Since Z, the national average hourly wage, appears in the numerator and the denominator of this expression, it cancels out. Therefore, the method of weighting the average national wage has absolutely no effect on the labor-related Federal payment as long as the wage index is consistently applied in both standardization and payment.

Comment: Our commenter stated that the adoption of the gross wage index requires that the labor-related component of the cost per discharge values used to develop the regional and national standardized amounts be restandardized. It was alleged that the need to restandardize resulted from the method used to calculate the national average hourly hospital wage used as the base to compute each locale's index in which each urban and rural area is weighted equally. The commenter maintained that the need to restandardize could be avoided by reweighting the national average used as the denominator of the wage index to reflect the proportion of cases in each urban and rural area.

Response: We do not understand how reweighting the national average hospital wage would obviate the need for restandardizing the labor-related national and regional standardized amounts. As we discussed in the preceding comment and response, the choice of the national average hospital wage used as the base to calculate the wage index values is irrelevant as long as the resulting indexes are used consistently in developing the labor-deflated regional and national standardized amounts and multiplying these amounts by the area's applicable wage index. We restandardized the cost per discharge values used to derive the labor-deflated regional and national standardized amounts only because of the adoption of a new type of wage index.

We believe that revising the methodology for constructing the wage index does not avoid the need for restandardization but rather requires it, particularly since the survey-based gross wage index was explicitly designed to capture a different measure of area wage levels and, as a consequence, reflects different relative wage levels among areas. It is the effects of this difference that restandardization is intended to remove from the adjusted costs per case used to develop the standardized amounts.

Had we used a wage index developed from BLS ES 202 records for calendar year 1982 or 1983, we would in fact not have restandardized the labor-related national and regional standardized amounts. The reason is that the standardized payment amounts already have the effects of wage differences across areas removed from them, as such wage differences are measured by BLS. Any changes in BLS index values in subsequent years reflect different wage levels relative to an earlier time, not the effects of a different means of constructing an index. Those changes are precisely the kinds one would want the payment system to recognize. Restandardizing each year without new data potentially distorts the resultant payment rates, since it is based on the premise that variations across hospitals in a single year can be attributed repeatedly to subsequent years' events and relationships.

The point of standardizing for wages is to assure that each hospital's costs have been adjusted to what they would theoretically be if each hospital faced the same wage level as the national average. If this is successfully accomplished by whatever measure is

chosen for each hospital's wage levels relative to the national average, then it is never necessary to restandardize again as long as the type of index is not changed.

Comment: Several commenters endorsed the use of the adjusted gross wage index rather than the gross measure, pointing out that the adjusted gross index excludes salaries attributable to interns and residents, hospital-based physicians, contract labor, and employees working in nonhospital areas such as provider affiliated home health agencies and skilled nursing facilities. Because the adjusted gross wage index was constructed to control partially for differences in employment mix among hospitals by excluding salaries for physicians and employees engaged in hospital-based activities secondary to the provision of hospital services, these commenters believe that the adjusted gross index resulted in more comparable indexes among areas by reducing distortion due to area differences in occupational mix.

Response: Of the two survey-based wage indexes, we believe that the adjusted gross wage index is theoretically the better measure of hospital wage levels because of the greater uniformity of hospital occupational categories used in its construction. However, during the survey, many hospitals indicated they had difficulty in accurately determining the salaries and hours worked for the hospital worker categories excluded in developing the adjusted gross index. This is understandable since hospitals are not ordinarily required to record where employees are working at a level of detail that easily permits their classsification into separate categories. Therefore, the adjusted gross wage index is probably not as accurate as the gross wage index, a point that was clearly made in the wage index report to the Congress. Because the precision of the adjusted gross wage index is more problematic, we have addressed the part-time employment limitation of the current BLS index by implementing the gross wage index.

Comment: Several hospitals maintained that our use of the gross wage index rather than the adjusted gross wage index to develop the FY 1986 prospective payment rates unfairly penalizes those facilities whose gross wages did not include salaries for the worker categories excluded in deriving the adjusted gross measure. Compared to hospitals in the locales for which the gross wage index was constructed from survey data that includes salaries for the excluded categories, such as hospital-based physicians and contract labor, these hospitals pointed out that it is likely that their applicable gross wage index was understated. These commenters requested that either the adjusted gross wage index be used to develop the FY 1986 update of the prospective payment rates, or that hospitals be permitted to have their gross wage indexes recalculated to include the employee categories for which wages and salaries were not previously reported as gross salaries on the 1982 cost reports used for the wage index survey.

Response: We have not adopted the adjusted gross wage index for reasons explained in our response to the proceding comment. Compensation to hospital-based physicians and contract labor expenses are not supposed to be reported as salaries on the Medicare hospital cost report and ususally are not so reported. These expense categories, while they may include salaries for the affected physicians on the hospital's staff and wages for contracted workers, often include other remuneration and contract employer overhead expenses that should not be considered hospital wages. Therefore, these expenses are usually classified as "other" expenses on Worksheet A of the Medicare cost report and would not have been considered part of gross hospital salaries in completing the wage index survey report form.

If all hospitals had properly completed their 1982 cost reports that were used in the survey, both the gross and adjusted gross wage indexes would have excluded salaries for hospital-based physicians and contract labor. The survey instructions and July 2, 1985 letter requesting hospitals to verify the accuracy of the initially reported survey data (see Appendixes C and D of the March 29, 1984 wage index report to Congress) explicitly provided for the exclusion of salaries attributable to interns and residents, hospital-based physicians, contract labor, and employees working in nonhospital cost centers in reporting adjusted salaries and paid hours *only to the extent* that these figures were included as total gross salaries on Worksheet A of the hospital's cost report. We are not implementing the adjusted gross wage index. Therefore, hospitals that did not include contract labor expenses and salaries for provider-based physicians in reporting their gross salaries and total paid hours on their survey reports because their 1982 cost reports were completed correctly should not be permitted to have their gross wage indexes recalculated to include these figures.

Comment: In our proposed rule, we specifically solicited comments on how a survey-based wage index should be updated if we adopted such an index to develop the FY 1986 prospective payment rates. We received only a few comments in response to our solicitation. One commenter believes that if a survey-based wage index is implemented, we should establish a system for regularly updating the data used to complete the index. However, the preferred means for accomplishing this was not specified. Another commenter recommended use of the Medicare cost report as the appropriate instrument for obtaining the necessary wage and employment data to develop a more refined index. One industry association endorsed the use of a survey approach to obtain the required data, pointing out that the information necessary to compute the wage indexes should be more current than that contained in the cost reports.

Response: We believe that a method needs to be established in order to update the gross wage index, and we are committed to maintaining the quality and timeliness of this data. We are undecided as to how these goals could best be accomplished. In 1981, we proposed revising the cost report to obtain standardized wage and employment information to develop an improved wage index. However, at that time, certain segments of the industry opposed the use of the cost report for this purpose because of concerns over the disclosure of hospital-specific salary records and the additional reporting burden.

We believe that we can address these concerns while at the same time safeguarding the public's access to Medicare program data. Because the data elements that would need to be collected for obtaining more current and refined hospital wage and employment information will have a considerable bearing on selection of the appropriate reporting vehicle, we are deferring a final decision on how to update the gross hospital wage index. We believe further consultation with the industry is appropriate before proceeding any further on this issue.

Comment: One commenter suggested that the hospital industry be given access to the wage survey information in advance of its implementation so that it can validate its accuracy.

Response: We have worked with the hospital industry since the wage index survey began. The survey form itself was developed by a workgroup that was

comprised, in part, of several members of the hospital industry. In addition, each hospital was afforded the opportunity to validate the correctness and accuracy of the survey data. Over 92 percent of all hospitals subject to the prospective payment system submitted signed forms validating the completeness and accuracy of the data submitted. In addition, the data for a number of hospitals have been audited, and changes or corrections were made if appropriate.

In this connection, it should be noted that the Department's OIG, in a report submitted to the Undersecretary, stated that ". . . our analysis of these statistical data indicated a very high correlation of accuracy between the wage data reported to HCFA and the results of the audits. In fact, the correlation coefficient between the reported wages and hours and the wages and hours verified during the audits was .9999. This correlation coefficient is a statistical measurement of the strength of the relationship between the reported data and the verified data. Mathematically, the correlation coefficient cannot exceed +1 nor be less than −1. The closer a computed correlation coefficient is to one of these values, the stronger the relationship. A correlation coefficient of .9999 shows that providers generally reported accurate wage and hour data to HCFA."

Comment: Several commenters noted that while the gross wage index represented an improvement over the current BLS wage index because of its resolution of the part-time employment problem, the revised wage index still did not address the remaining technical limitations of BLS ES 202 records that prevent the construction of a more precise measure of area wage levels. These include the failure of the gross wage index to account for area variations in hospital fringe benefits, occupational/skill mix, and differences in labor markets not accounted for by the MSA/non-MSA definitions. Several of these commenters recommended that we undertake additional studies to further improve the gross wage index to account for these factors. Other commenters proposed that we make no change from the present BLS wage index until data can be obtained that would permit further analysis of these problems.

Response: We do not believe that the inability of the gross wage index to account for all of the factors that may be desirable in developing a very precise measure of area wage levels should present an obstacle to adopting an index that controls for local variation in the employment of part-time hospital personnel. Both the industry and Congress have advocated the adoption of a revised wage index that corrects the part-time employment deficiency of the index developed from BLS ES 202 hospital wage and employment data as soon as possible. Because this problem can now be addressed, we do not believe that delaying its resolution by deferring the implementation of a revised wage index would be appropriate.

Although the wage index survey solicited hospital employee health and welfare expenses (that is, fringe benefit costs), we did not compute wage indexes using the reported figures. The wide variability in the amount and scope of employee health and welfare expenses, coupled with the generally poor quality of the data reported, would have introduced a source of error in the development of a new hospital wage index that could have negated any increased precision due to correction of the part-time employment problem. However, further research is warranted on this issue to determine the degree to which hospitals in high and low wage areas weight their compensation between direct remuneration and additional fringe benefits. A potential future modification of the wage index to include a standard mix of fringe benefits has not been ruled out. For reasons explained in response to a previous comment, we did not adopt the adjusted gross wage index, which attempted to partially control for area differences in hospital occupational mix. Neither did we attempt to adjust the urban and rural definitions to better accommodate actual hospital labor markets. We believe further research and industry consultation are required before any legislative or regulatory proposals on these issues are recommended.

Comment: Although many commenters endorsed the use of the gross wage index because of its correction of the part-time employment limitation of the current BLS measure, several expressed strong concerns over its implementation retroactive to October 1, 1983. In several instances, affected hospitals estimated the adverse financial impact that retroactive implementation of the gross wage index would pose for facilities that would incur overpayments. Hospitals that perceived themselves to be particularly disadvantaged generally recommended the adoption of the gross wage index on a prospective basis only. Conversely, facilities that would receive additional payments if the gross wage index were adjusted retroactively generally favored its implementation effective October 1, 1983, and cited our obligation to comply with section 2316(b) of Pub. L. 98–369.

Response: We wish to point out that we have no administrative discretion not to comply with the provision. Section 2316(b) prescribes that any revised wage index that addresses the part-time employment limitation be implemented retroactively to October 1, 1983. Accordingly, we intend to meet our statutory obligation and make the appropriate payment adjustments to overpaid and underpaid hospitals based on the urban/rural definitions in effect for the Federal fiscal year for which the payment adjustment determinations must be made. Absent any Congressional action on this issue, we will begin making refunds to underpaid hospitals and collecting from overpaid hospitals after April 1, 1986. Detailed instructions to the Medicare fiscal intermediaries for accomplishing these adjustments will be issued as soon as possible.

Comment: Two comments were received endorsing the use of the survey-based gross wage index but recommending that its implementation by progressively phased-in over time by blending it with the 1981 BLS wage index so as to mitigate any adverse financial impact. One commenter supported a 50 percent blend between the 1981 BLS index and the gross wage index effective October 1, 1985. The gross wage index proportion would be increased to 75 percent of the blend beginning October 1, 1986 with full phase-in achieved in FY 1988. Other commenters recommended immediate implementation of the gross wage index retroactive to October 1, 1983, but suggested that any recoupment of overpayments be spread over two years rather than one year as originally proposed.

Response: We believe that phasing in the new wage index through a gradually increasing blend with the present BLS measure would only serve to perpetuate any existing distortion in the BLS index caused by its inability to account for local variation in hospital part-time employment. Therefore, we have not adopted this recommendation. However, we are concerned with mitigating any negative financial consequences for hospitals for which implementation of the new gross wage index would cause severe hardship. Therefore, as we proceed to develop methods of implementing the retroactivity provision, we will consider alternatives that would help reduce any adverse financial impact on these hospitals.

Comment: One commenter not only endorsed the use of the gross wage index retroactive to October 1, 1983, but also recommended its implementation for hospitals that exceeded their section 223 cost limits beginning in 1981. This commenter stated that hospitals that were disadvantaged by a lower wage index than would be justified compared to the gross wage index never received proper reimbursement from 1981 up to the present.

Response: Although adoption of the gross wage index requires its implementation retroactive to October 1, 1983 under section 2316(b) of Pub. L. 98–369, we will not go beyond the law by extending the application of the gross wage index to earlier reporting periods. The wage indexes used in connection with the annual updates of the cost limits prior to the establishment of the prospective payment system were based on the latest best available data consistent with a national hospital reimbursement system. We do not propose now to erode the prospective nature of the cost limits by retroactively applying a statutory provision only intended for the prospective payment system.

Comment: One commenter, citing the table that appeared in the impact analysis contained in the proposed rule (50 FR 24438), pointed out that the effect of implementing the gross wage index was a reduction in the payment of every bed-size class of rural hospitals. Thus, this commenter claims that the proposed wage index does not satisfy the original intent of either Congress or HCFA that a revised wage index correct the inadequacy of the prospective payment amounts to rural hospitals because of their greater utilization of part-time employees.

Response: We disagree with the commenter's premise. The purpose of adopting a revised wage index is not to assist a particular class of hospitals but to correct an acknowledged technical deficiency of the present BLS index; that is, its inability to account for local variation in hospital part-time employment. The fact that certain urban and rural hospitals may incur reductions in their total payment amounts as a result of the adoption of a more refined wage index is not an unexpected outcome of an improvement in the system. Whether particular hospitals as a class are disadvantaged or advantaged should have no bearing on our decision to replace the BLS wage index with an improved measure of area wage levels. However, we note that, while rural hospitals as a class do not benefit, many rural hospitals will receive increased payments.

Comment: One commenter pointed out that labor-related costs under the prospective payment system comprise approximately 80 percent of total inpatient operating costs. The commenter believes that hospital labor costs as a proportion of total inpatient costs have decreased over the past two years. The commenter recommends that we recognize this trend by applying the wage index to a smaller proportion of inpatient operating costs per discharge in developing updated prospective payment rates.

Response: Revisions in the market basket cost weights, including those that are considered labor-related for purposes of applying the hospital wage index, are presently under review as part of an overall rebasing and updating of the hospital input price index using later data. Once the necessary review and analyses are complete, revised market basket weights may be implemented in connection with further updates of the prospective payment rates. To the extend that the labor-related share of hospital inpatient operating costs is revised, the change will be recognized in the proportion of cost subject to adjustment by the area wage index in developing future prospective payment rates.

Comment: We received several comments that advocated that we adjust the nonlabor portion of the standardized amounts to account for geographic variation in nonlabor costs. One commenter maintained that a "labor" adjustment to these costs would not be inappropriate because a significant portion of nonlabor costs contains a labor component.

Response: We believe that the application of the hospital wage index to the average proportion of inpatient operating cost representing not only wages but also employee benefits, professional fees, costs of business services, and other miscellaneous expenses partially responds to this concern. In the final notice of the schedule of hospital cost limits for cost reporting periods beginning on or after July 1, 1980 published in the Federal Register on June 20, 1980 (45 FR 41868), we stated that the wage index, which is used to reflect area differences in wage levels that occur for a variety of reasons, also acts as a proxy for other variables affecting overall hospital costs that we have been unable to identify.

Now that we have adopted a revised wage index for use in the prospective payment system, the issue of whether we should modify the proportion of inpatient operating costs subject to adjustment by the gross wage index, or consider the development of a specific nonlabor index, will require further investigation and research. Revisions in the market basket cost weights, including those presently considered "nonlabor", are currently under review as part of an overall rebasing and updating of the hospital input price index.

In addition, section 2311(e) of Pub. L. 98–369 requires that we study the advisability and feasibility of varying by DRG the proportion of cost that is considered labor and nonlabor. These investigations will help us to determine whether explicit adjustments to the nonlabor share should be considered further.

IV. Other Changes to Current Regulations

A. Rate of Increase Limits (§ 405.463)

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) added section 1886 to the Act in an attempt to restrain growth of hospital costs. Specifically, as originally enacted, section 1886(b) of the Act set forth a program of control on hospital cost increases. This provision required that we establish a target level for the allowable rate of increase of hospitals' inpatient operating costs per case. In addition, the statute provided for incentive payments for hospitals that keep their costs below the target, and penalties for hospitals that incur costs greater than the target.

This target rate system was expected to apply only to hospital cost reporting periods beginning before October 1, 1985 (section 1886(b)(2) of the Act). However, Pub. L. 98–21, which established the prospective payment system, also extended the target rate system indefinitely for all hospitals excluded from the prospective payment system by repealing section 1886(b)(2) of the Act.

1. Target Rate Percentage

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. As set forth in section 1886(b)(3)(B) of the Act, as amended by section 601(b) of Pub. L. 98–21, the target rate percentage was the estimated hospital market basket increase factor plus one percentage point.

Section 2310 of Pub. L. 98–369 revised section 1886(b)(3)(B) of the Act to provide that, for cost reporting periods

beginning in FY 1985, the annual target rate percentage to be applied for updating the target rate is equal to the estimated hospital market basket increase factor plus one-quarter of one percentage point. Beginning in FY 1986 (cost reporting periods beginning on or after October 1, 1985), the target rate percentage will be equal to an update factor determined by the Secretary under section 1886(e)(4) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

Currently, § 405.463(c)(3)(i) states that the target rate percentage is equal to the estimated increase in the market basket index plus one percentage point. We proposed to revise § 405.463(c)(3)(i) to reflect the changes made by Pub. L. 99-369. We received no comments on this issue.

2. Exemption for New Hospitals

When we published the regulations implementing section 101 of Pub. L. 97-248 on September 30, 1982 (47 FR 43282), we included a provision that exempted new hospitals from the target rate system (§ 405.463(f)(1)). We exempted new hospitals from the rate-of-increase limits to prevent the distortion inherent in a new hospital's operating cost per case from adversely affecting its target rate reimbursement. This exemption expired at the end of the earliest of—

- The first cost reporting period beginning at least two years after the hospital accepts its first patient; or
- The first cost reporting period beginning on or after October 1, 1985 (that is, the original statutory expiration date for the rate-of-increase limits).

However, when we revised the regulations at § 405.463 in the September 1, 1983 interim final rule, we inadvertently did not delete the October 1, 1985 date from § 405.463(f)(1). Since the reasons for providing a new hospital exemption remain as valid today as when the target rate system was first established, and since the statutory termination date of October 1, 1985 has been repealed, we proposed to revise § 405.463(f)(1) by deleting the October 1, 1985 expiration date for the exemption. We received no comments on this issue.

B. Exclusion of Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

In the January 3, 1984 final rule, we developed a set of criteria for the exclusion of hospitals and distinct part units that specialize in alcohol/drug dependency treatment. As provided in §§ 412.23(c) and 412.32, this exclusion terminates on October 1, 1985. However, if the exclusion expires on that date, all excluded alcohol/drug hospitals and units, regardless of their actual cost reporting period, would have to close their books and file cost reports as of September 30, 1985.

Since we originally intended these hospitals and units to be excluded from the prospective payment system for two full years, and because we believe it would be inappropriate to force excluded entities to close their cost reporting periods on September 30, 1985, we proposed to revise §§ 412.23(c) and 412.32. We proposed that the exclusion would expire at the end of the hospital's cost reporting period that began before October 1, 1985.

Comment: A large number of comments urged us to continue the exclusion of alcohol and drug treatment units and hospitals. They indicate that the newly reconstructed DRGs for alcohol and drug treatment are an improvement but that further refinements are necessary. The major refinement suggested is an increase in the payment for DRG 437 to reflect a mean length of stay of 16.9 days (instead of the 14.6 days reflected in the proposed rule). In addition, several letters were received from commenters who suggested that the exclusions should remain in place until further research has been done. Some of the letters cited statements in ProPAC's report to the effect that current research is proceeding and suggested that the results of that research be awaited.

Response: We note that the initial decision to create a temporary exclusion for alcohol and drug abuse treatment units and facilities was based on allegations by the treatment community and professional organizations that the grouping principles for the DRGs in question were inappropriate and that the resulting payments were generally inappropriate for the types of services clients typically were provided. During the past year, we have worked with our claims data and with NIAAA to develop groupings of cases that are consistent with the pattern in which the services are delivered. We have also made significant improvements in the coding of alcohol and drug cases. As a result, we have developed new DRGs that do follow the pattern in which services are generally provided.

We believe that these DRGs (see section II.B. of this preamble for a discussion of changes made in response to comments) are an appropriate expression of the clinical groupings of individuals who suffer from alcohol and drug abuse and who are in the Medicare age group. Because we have used the FY 1984 Medicare PATBILL file on alcohol and drug treatment cases in acute care general hospitals and excluded alcohol and drug treatment units and facilities to establish the weights, we know that they generally reflect the actual range of resources used during FY 1984 by Medicare hospitals for discharges falling into each new group.

We note that the HCFA research ProPAC refers to was conducted by us and described in the proposed rule (50 FR 24370). The research was concluded and resulted in the DRGs and weights contained in both the proposed rule and this final rule. Some commenters have suggested that the weights should be revised to reflect what they believe to be optimal clinical practice for the types of care they describe in their comments. We have noted in section II.B.1. of this preamble that the weights of the DRGs reflect actual clinical practice in hospitals that participate in Medicare.

We recognize, however, that further improvements in these DRGs are desirable to assure that the weights assigned to them capture the true range of resources used by currently excluded units and hospitals. Our analysis of alcohol and drug abuse claims leads us to conclude that coding practices for these cases need improvement. Although we issued an instruction to institute some improvements in coding, we believe further improvements are desirable and are undertaking them. Also, as noted in section II.B.1. of this preamble, in our discussion of the new alcohol and drug treatment DRGs, we have made some further refinements in the classification system. In order to assure that these DRGs are properly constituted and weighted, we have decided to continue the exclusion for another year for units and hospitals that are currently excluded and continue to be eligible for exclusion. During the next year, we will continue our efforts to improve coding practices and will continue to look at the new groupings we have developed. We believe that these actions will enable us to discontinue the exclusion, for cost reporting periods beginning on or after October 1, 1986.

In deciding to continue the exclusion, we decided to limit the extension to units and facilities that were excluded for their cost reporting period beginning in FY 1985. As noted above and by many of the commenters, our revised DRGs for these cases are greatly improved over the ones currently in effect. Thus, the appropriateness of payments to facilities and units not currently excluded will be improved when this final rule takes effect. Any hospital or unit that has not previously qualified for the alcohol/drug exclusion will be paid on the basis of the revised

DRGs set forth in this final rule. Since our overall objective is to eliminate reasonable cost reimbursement in short-term acute care hospitals, we do not believe it would be appropriate to temporarily exclude units and hospitals that have been operating under the prospective payment system at a time when the accuracy of our payment mechanism for these cases has measurably improved to a point at which the payment is fully adequate.

C. Review Activities

1. Responsibility for Medical Review (Subparts C and F of Part 412)

In the January 3, 1984 final rule, we used the term "medical review entity" to describe the various organizations that would be performing inpatient hospital medical review (49 FR 282). Now that the PROs are fully functioning, they have the responsibility for the medical review of hospital claims. Therefore, in Subparts C and F of 42 CFR Part 412, we proposed to replace all references to medical review entities, Professional Standard Review Organizations (PSROs), and to fiscal intermediaries as appropriate, with a reference only to PROs. We received no specific comments on this issue.

2. Limitations on charges to beneficiaries (§ 412.42)

In the January 3, 1984 final rule, we added § 405.472(b)(1)(iii) (since redesignated at § 412.42(c)) to allow prospective payment hospitals to charge beneficiaries for items and services excluded from coverage on the basis of § 405.310(g) (custodial care) or § 405.310(k) (medically unnecessary services) if certain conditions are met and the services are furnished by the hospital We provided this mechanism because the prospective payment system did not change Medicare's coverage rules and was not intended to prevent a hospital from charging a beneficiary for a noncovered service that he or she might choose to receive. In order to ensure that beneficiaries are protected from liability for noncovered services about which they had not been informed, we included § 412.42(c)(3), which requires that the written notice contain specific information.

Since implementation of the PRO program, we have received inquiries from some hospitals and hospital associations in States that either have a State reimbursement control system approved under section 1886(c) of the Act or participate in a demonstration project authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90-248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92-603), concerning the hospital's authority to charge beneficiaries for custodial or medically unnecessary care. Before the inception of the PRO program, many of these hospitals were delegated the PSRO review function; that is, they could review and deny services by issuing denial letters to beneficiaries. Under the PRO program, however, they no longer are delegated this authority.

Hospitals paid under a State reimbursement control system or demonstration project believe that they are at a disadvantage as opposed to prospective payment hospitals. They argue that they may be faced with situations in which they have to provide medically unnecessary or custodial care and there is no administrative mechanism that enables the hospitals to notify the beneficiary of noncoverage in a manner that the State will find provides a satisfactory basis for Medicaid payment for an ICF level of care in the hospital.

The hospitals can give notices of noncoverage under the waiver of liability regulation (§ 405.332). However, these notices, unlike the notices under the stricter requirements of § 412.42(c) applicable to prospective payment hospitals, can be given without the concurrence of either the attending physician or the PRO. Thus, the States operating under a State reimbursement control system or demonstration project are not prepared to accept these notices as a basis of Medicaid payment to the hospital for an ICF level of care. The hospital must wait for Medicaid payment until the PRO makes a retrospective determination regarding the level of care furnished.

We agreed that these hospitals are at a disadvantage and, therefore, we proposed to amend the regulations by adding a new § 405.308 to provide that the notice requirements of § 412.42(c) rather than § 405.332 would apply when a short-term acute care hospital (that is, a hospital that would be subject to the prospective payment system if it were not under a State reimbursement control system or demonstration project) receiving payment under a State reimbursement control system or demonstration project gives notice that a beneficiary who has been admitted for covered care no longer requires inpatient hospital services.

In the proposed rule, we stated that we had learned that some prospective payment hospitals have inappropriately implemented the notice process required by § 412.42(c), resulting in a detrimental effect on beneficiaries and inappropriate program payments. As we noted, we believe that these difficulties could be eliminated by increased oversight activity, and, therefore, we issued instructions to the PROs on this subject. The instructions (PRO Manual, Interim Manual Instruction, Transmittal No. 85-3) specify that the PROs are responsible for monitoring the notices used by hospitals and provide further guidance on the appropriate content of the notices.

We plan to continue to monitor this situation carefully to ensure that inappropriate notices are not issued. As we stated in the proposed rule (50 FR 24379), we will consider precluding hospitals from billing patients for any services if the situation does not improve. We do not believe that this step will be necessary, however, because our current authority provides a basis for a number of administrative actions to deal with individual hospitals that give inappropriate notices.

We note that the terms of Medicare provider agreements as expressed in 42 CFR Part 489 prohibit a hospital from billing a patient for services that are covered under Medicare. If a hospital does so (that is, if a hospital gives an inappropriate notice and then charges a beneficiary for care), Medicare may terminate its participation agreement. Thus, individual hospitals can suffer the loss of their provider status.

In addition, PROs have specific authority to make claims denials when a readmission is due to a premature discharge or when an unnecessary transfer is made. They also have the authority to recommend sanctions when inappropriate notices are given or when inappropriate care is given. PROs must also confirm any hospital notice of nonconverage with which the beneficiary or his or her physician disagrees. If a PRO finds that the notice is incorrect, a hospital may not bill the beneficiary.

Also, we proposed to revise §§ 412.42(c)(3)(iv) and 412.42(d)(4) to allow the attending physician as well as the hospital or the beneficiary to appeal a PRO's decision as to the validity of a hospital's finding that a beneficiary's stay is no longer covered care. We proposed to make a technical change in §§ 412.42(d) (3) and (4) to indicate that validation of a hospital's findings regarding coverage are made by the intermediary and the PRO (to the extent that there is a medical component to the decision).

We received several comments from hospitals, hospital systems, professional associations, unions, individual physicians, medical groups, and States

about the provisions on charges to beneficiaries. The major comments and issues raised are as follows:

Comment: One commenter expressed the view that allowing hospitals that receive payment under a State reimbursement control system or demonstration project to give notices and then charge beneficiaries for custodial or medically unnecessary care undermines Medicare's most basic protection and violates the law. The commenter believes that hospitals and physicians, not beneficiaries, should pay for decisions to keep patients in the hospital unnecessarily.

Response: Hospitals in States with a State reimbursement control system are already permitted to charge beneficiaries for medically unnecessary services, subject to the waiver of liability provisions of section 1879 of the Act. The provisions for payment for hospital services in these States do not prevent a hospital from charging a beneficiary for any noncovered services he or she may choose to receive. The new § 405.308 is designed to substitute for the waiver of liability rules governing charges for medically unnecessary continued hospitalization, the more stringent safeguards provided under the prospective payment regulations governing these charges. The rules for prospective payment hospitals, unlike the waiver of liability rules, require the concurrence of the attending physician or PRO before the hospital can give the notice of noncoverage.

It is desirable that hospitals be able to charge beneficiaries for a medically unnecessary continued hospitalization for two reasons. First, these charges are often required in order to induce the beneficiary to make the arrangements necessary to leave the hospital timely. Second, a continued hospitalization, while not medically necessary, may be desirable from the beneficiary's personal point of view. The regulations should not preclude a beneficiary from purchasing continued hospital care if he or she wants it.

Comment: One commenter noted that while the proposed regulations would govern the issuance of continued stay denials, other noncoverage letters (for example, at preadmission) are governed by Medicare's waiver of liability regulations. The commenter urged that all coverage denials should be subject to the same rules to ensure consistency and clarity.

Response: The waiver of liability regulations govern all notices regarding noncovered hospital admissions. The significance of these admissions does not differ appreciably whether the hospital is a prospective payment hospital, a State reimbursement control system hospital, or some other type of hospital. In the case of prospective payment hospitals, special safeguards on continued stay denials are necessary, however, and have been provided by the regulations. These safeguards are necessary because a finding that a continued stay is not medically necessary (permitting charges to the beneficiary) does not usually result in a corresponding reduction in Medicare payment to the hospital. Hospitals paid under a State reimbursement control system would ordinarily be subject to the waiver of liability rules with respect to continued stay denials, but many hospitals have requested that the more stringent prospective payment system rules apply to these continued stay denials in order to provide a firm basis for the State to pay under Medicaid in appropriate circumstances for the lower level of care provided after the denial.

Comment: Some commenters were critical of our statement that we may consider precluding hospitals from charging for medically unnecessary services and custodial care if the hospitals continue to fail to comply with the notice requirements of § 412.42(c) regarding continued stay denials. The commenters recommended that we continue to work with the hospital industry through the PROs to educate providers when necessary, and correct these deficiencies on an individual basis, rather than arbitrarily penalizing the entire industry. They suggest that we should not only issue clarifying instructions on the notice requirements to the PROs, as has been done, but also communicate these instructions to the hospitals in the Hospital Manual.

Response: We have no intention of dealing with this problem by generally eliminating, without cause, the right of hospitals to bill for medically unnecessary and custodial care. As we noted in the NPRM, we believe that steps we have already taken to eliminate this problem are adequate. Furthermore, we hope that the increased consciousness of the hospital community will render this issue moot. We already have the regulatory authority to terminate provider agreements with hospitals that charge beneficiaries for covered care and can move now to deal with individual hospitals that bill inappropriately. As we noted in the NPRM, however, we will monitor this matter closely to assure that beneficiaries generally are not being misinformed or disadvantaged by hospitals and will take any other appropriate action to prevent this behavior.

Comment: One commenter stated that certain PROs and intermediaries have taken inappropriate actions to discourage hospital determinations of noncoverage. Allegedly, PROs have warned hospitals that, if they make a determination of noncoverage and charge the beneficiary, the beneficiary will be totally ineligible for inpatient Part A coverage for a period of 60 days following the date of discharge regardless of the medical necessity of any subsequent services. Additionally, the PROs are reported to have stated that even if a PRO is consulted on a medical necessity issue and concurs with the hospital, it reserves the right to reverse its own decision.

Response: If a PRO or intermediary made the statement that a determination of noncoverage could restrict the eligibility of a beneficiary for future Part A coverage, it gave completely erroneous information. A PRO could reverse its original concurrence with respect to a hospital finding of noncoverage on review, but this should rarely happen and then only on a finding that the original concurrence was on the basis of misinformation or the receipt of new and material evidence. We will look into these allegations of questionable actions by PROs and intermediaries.

Comment: A number of physicians, primarily radiologists, commented on the change in § 412.42(d)(4) that permits an attending physician to be among the individuals entitled to appeal an intermediary or PRO decision that certain diagnostic or therapeutic services were medically unnecessary. The commenters suggested that they, too, as physicians performing diagnostic testing on a referral basis, should have the right to appeal these denials because they have an interest in receiving payment for their services.

Response: We understand the concerns of these physicians; however, we do not believe that the right to appeal these denials should be extended to them. The services with which we are dealing here are hospital services, not physicians' services. The purpose of an appeal is to permit the interested party to demonstrate that there was a medical basis for providing or ordering the service in question. The hospital is given the right to appeal the decision because it furnished the service; the attending physician is given the right to appeal because he or she ordered the services. A referral physician, by definition does not establish the medical need for his or her service: the order of the attending physician is accepted. Therefore, there

is nothing for the referral physician to appeal.

If the Medicare claim from a physician who provided a service ordered by another physician is denied, the physician may bill and collect from the beneficiary, subject to the terms of the Medicare assignment agreement. On the other hand, if the referral physician submits a claim to Medicare for his or her own services, and the claim is denied because the services are found to be not medically necessasry, the physician has the right to appeal that decision.

3. Admission Pattern Monitoring (§ 412.45)

We proposed to delete § 412.45, which concerns admissions pattern monitoring, from the regulations because our operating experience with this type of review has led us to begin developing procedures that are more efficient and that use more current data than the data referred to in § 412.45.

Comment: Some commenters suggested that the revised procedures that we are developing for admission pattern monitoring should be included in a regulation that is published in the Federal Register with an opportunity for public comment.

Response: We believe that the commenters may have misunderstood our intent in deleting the specific procedural requirements of admission pattern monitoring from the regulations. The provisions we are deleting were written at a time when we did not have enough operational experience with the PRO program to identify the types of review and the intensity of review that were appropriate. Our experience has led us to understand that the volume of claims and review procedures to which the regulations bound us were not cost effective and to seek other, more current and focused means of achieving the desired result.

We agree with the commenters that review activities should be planned so that there is a minimum of wasted effort—either by PROs of by the hospitals. We believe that this effect is most effectively achieved by avoiding general prescriptive regulatory review formulas and relying, instead, on approaches to admission pattern monitoring that are data oriented and hospital-specific. Therefore, we have deleted this section from the regulations.

4. Other Medical Review Issues

Although we proposed no changes in the physician attestation requirements contained at § 412.46, we received a number of comments on them and we believe it is appropriate to clarify the policy here.

Comment: One commenter noted that some hospitals have or are installing automated medical records systems that do not involve the use of many paper documents and asked if the signature required under the physician attestation requirement could be an "electronic" one; that is, a computer code or other physician identifier.

Response: As we noted in previous documents (most recently in the August 31, 1984 final rule (49 FR 34735)), an actual signature is required under § 412.46. An electronic code will not suffice. It is critical that the physician's actual signature be submitted since the payment made is based on the information provided by the physician and the physician is liable for the correctness of the information.

Comment: One commenter objected to requirements, which are imposed by PROs, that the physician attestation statement be dated. The commmenter noted that the regulations requiring this attestation do not require that it be dated.

Response: Although the language at § 412.46(a) does not require a date, the regulations do require that the attestation statement be completed before a claim is submitted. We believe that a dated attestation is the most sensible method of demonstrating that this requirement has been met.

D. Payment for Cost Outliers (§ 412.84)

Under the prospective payment system, an additional payment is made to hospitals for a typical case known as "outliers." These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG. A cost outlier case is a discharge that does not qualify as a day outlier case but in which covered charges adjusted to costs exceed the greater of a fixed dollar amount or a fixed multiple of the Federal prospective payment rate.

Currently, § 412.84 requires that, in the case of a cost outlier, the hospital must request medical review of all services furnished to the beneficiary. This medical review is performed before the additional amount requested by the hospital can be paid. Of course, if the medical review determines that some of the services are noncovered, the charges for those services will not be considered in determining if the claim meets the cost outlier threshold or the outlier payment amount.

We proposed to revise § 412.84 to provide that medical review prior to payment of cost outliers would not be required. However, if the PRO finds that a hospital has a pattern of inappropriately claiming these payments, the PRO could increase review of that hospital's claims, including review of all cost outlier cases for that hospital prior to payment. For cases in which payment is made for a cost outlier prior to medical review, the PRO would review a sample of these cases after payment. If the PRO determines that any services furnished in these cases are noncovered or inappropriately billed, the outlier payment for those services would be recovered from the hospital.

In addition to these changes, we would also revise § 412.84 to allow hospitals to request an outlier payment at the time they submit the bill for the discharge rather than waiting until they receive the intermediary's determination of the prospective payment rate for the discharge.

The majority of commenters were very much in favor of these proposed changes. However, the following issues were raised.

Comment: One commenter questioned whether the changes concerning review of cost outliers would revoke the intermediaries' current option of withholding the entire Medicare payment until the PRO has reviewed the claim.

Response: Under the revised regulations, intermediaries will no longer have an option for processing cost outlier cases. Except for claims from those hospitals placed on prepayment review by the PRO, the intermediary will process outlier claims just as it does any other claim under the prospective payment system. If cost outlier payment is requested with the initial submission of the bill, that payment will be included in the initial payment. The outlier portion of the payment is, of course, subject to recovery pending the outcome of any PRO review. If cost outlier payment is not requested in the hospital's initial submission of the bill, the basic DRG payment will be made and the hospital may request the additional outlier payment within 60 days.

Of course, if a hospital has demonstrated a pattern of inappropriate billing, the PRO may place the hospital under special review procedures. These procedures may include increased review of cost outlier cases or review of cases prior to payment. We expect that the need for prepayment review will occur infrequently.

Comment: One commenter believes that the new procedures would place a heavy burden on fiscal intermediaries

that may outweigh the benefits of such a change.

Response: We do not agree that the proposed changes would place a burden on the intermediaries. Day outlier payments prior to medical review have been authorized since January 1, 1984 (see the January 3, 1984 final rule (49 FR 311)). There has been little difficulty with this process and, therefore, we believe that there will be little difficulty in extending the policy to cost outliers. We will, however, continue to monitor the impact of this change closely in terms of administrative burden and program cost.

Comment: Commenters expressed concern that the sample level of cost outlier reviews currently prescribed in our administrative issuances is excessive in light of the low denial rate.

Response: The revised regulations deliberately do not define the sample size for review of cost outlier cases. They are intended to provide flexibility so that we may alter administratively the number of cases reviewed by the PRO as necessary. We have suggested that, at a minimum, 50 percent of cost outlier cases should be reviewed. However, PROs have the flexibility to review more claims from an individual hospital based on the hospital's past performance. We intend to continue to monitor denial rates in this area. If we believe it is appropriate to further reduce medical review of cost outliers, we will take action through our administrative issuance system.

E. Referral Centers (§ 412.96)

Hospitals may qualify as rural referral centers under three different approaches. Most hospitals qualify using the criteria set forth in § 412.96(c). One of the criteria that a hospital must meet under § 412.96(c) is that it has a case-mix index value that demonstrates the comparatively high degree of complexity of cases treated by the hospital. We believe a high case-mix index value helps to demonstrate the comparability of rural referral centers to urban hospitals in the same region. In the August 31, 1984 final rule, we set forth in § 405.476(g)(1)(iii)(A) (redesignated as § 412.96(c)(1)) four different case-mix index criteria, of which a hospital must meet at least one in order to qualify as a referral center for cost reporting periods beginning on or after October 1, 1984. These case-mix criteria are also factors against which a referral center is judged during its triennial review.

In the NPRM, we proposed to update the case-mix index values effective October 1, 1985 using the most current data we have available on case-mix. In addition, we proposed to revise § 412.96 so that, rather than state the actual criteria, it will describe the process we will use to calculate the case-mix indexes and will provide that we will publish the updated case-mix index values in the annual notices of prospective payment rates. These case-mix criteria would also be used during HCFA's triennial review to evaluate hospitals that are currently granted referral center status.

We proposed that, to qualify as a referral center for cost reporting periods beginning on or after October 1, 1985 under § 412.96(c)(1), a hospital's case-mix index during FY 1985 under the prospective payment system be at least—

- 1.1172; or
- Equal to the median urban case-mix index values calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Adjusted median urban case mix
1	1.1443
2	1.1616
3	1.1226
4	1.1345
5	1.0955
6	1.1085
7	1.0542
8	1.1454
9	1.1638

For both the national case mix and median urban values, we multiplied the 1981 standards as published in the August 31, 1984 final rule (40 FR 34741) by 9.6 percent. This figure represented the percentage by which the average case-mix index value had increased from 1981 to bills processed through April 1985. The resulting figure was divided by 1.0105 to account for the reduction in the DRG relative weights for discharges occurring on or after October 1, 1984. (See the August 31, 1984 final rule (49 FR 34770) for a detailed discussion of this matter.) Thus, the proposed national case-mix criterion was computed as follows:

$$\frac{1.03 \times 1.096}{1.0105} = 1.1172$$

The same method was used to update the 1981 regional median urban case-mix index values.

In the NPRM, we also proposed to revise § 412.96(c)(2) to specify that we would publish the criteria for the number of discharges in each year's annual notice of prospective payment rates. However, we did not propose to update the number of discharges criteria applicable to cost reporting periods beginning in FY 1985 because we did not have current data available on total inpatient discharges for individual hospitals. Therefore, as proposed, the number of discharges criteria published in the August 31, 1984 final rule (49 FR 34741) would be used for FY 1986. In addition, we proposed to revise the title of § 412.96(b) (which provides alternative methods of qualifying for referral center status to those in § 412.96(c)) to indicate that these criteria apply to cost reporting periods that began on or after October 1, 1983, and that these criteria continue to apply in the future. We also made a technical change to § 412.96(f) to clarify the provisions of that paragraph.

Comment: One commenter stated that the current § 412.96(c) (which sets forth the criteria for cost reporting periods beginning in FY 1985) must be retained in the regulations. The commenter believes that this is necessary to distinguish between the criteria for cost reporting periods beginning on or after October 1, 1984 and ending before October 1, 1985 and the criteria effective for cost reporting periods beginning on or after October 1, 1985.

Response: We do not believe that this is necessary. The August 31, 1984 final rule specified that the alternative criteria published at § 405.476(g)(iii) (redesignated as § 412.96(c)) were effective for cost reporting periods beginning on or after October 1, 1984. The revised criteria set forth in this final rule are effective with cost reporting periods beginning on or after October 1, 1985. Thus, we believe the distinction between the earlier and revised sets of criteria and the periods to which they are applicable is clear. It has always been true for the most part that when dealing with the criteria applicable to a particular period of time, one must return to the regulations in effect at that time. Thus, we do not believe the commenter's suggestion is valid.

Comment: One commenter pointed out that the current criteria for rural referral center status, such as patient origin distance (that is, a certain percentage of patients treated at the hospital live more than a certain number of miles from the hospital) and case-mix indexes, do not adequately define rural referral centers The commenter believes that the types of special programs developed at referral centers should be the key characteristic considered.

Response: We believe that if we change the criteria as the commenter wishes, we would then be relying on

subjective rather than objective and numerical standards. In a program as large and complex as the Medicare program, we believe that reliance on subjective standards should be avoided.

Standards such as the types of special programs developed at referral centers would be very difficult to develop because almost any hospital can claim that it performs some type of service better than any other hospital in its vicinity. Even if these standards could be developed, each hospital that applies would then have to be reviewed—probably onsite—by a team of intermediary or HCFA personnel and physicians. Such a review would be very time-consuming and expensive.

Establishing numeric standards such as case-mix index and number of discharges permits us to determine with relative ease whether a facility qualifies for a particular exemption. These standards can be measured exactly and applied uniformly to all hospitals. Furthermore, objective standards are fairest to hospitals because the hospitals know in advance how the standards are derived and applied. Thus, we believe that it continues to be appropriate to rely on the objective standards set forth in the regulations.

Comment: One commenter recommended that service-specific criteria for referral centers be developed rather than arbitrary criteria based on a hospital's case-mix index or number of discharges. The commenter believes that service-specific criteria would better recognize the differences that exist between referral centers and other hospitals.

Another commenter suggested that a scope of services criterion be substituted for the case-mix index criterion. The suggestion was that the scope of services in the rural hospital should be compared to that offered by hospitals of comparable bed size in the surrounding urban areas. This commenter believes that objective criteria could be developed using American Hospital Association (AHA) listing of services or the number of the MDCs in which the hospital had Medicare discharges. For example, if a rural hospital had discharges in at least 17 of the 23 MDCs, then the case-mix index criterion would not have to be met, although the other criteria (that is, number of discharges and medical staff specialists) would still have to be met. This same commenter also suggested that a rural facility be designated as a rural referral center if it meets the scope of services criterion and it is located in a county that is at least 95 percent surrounded by areas designated as urban, even though it does not meet the case-mix criterion.

Response: We do not agree with the commenters' suggestions. As noted in the discussion of scope of services contained in the August 31, 1984 final rule (49 FR 34742), we believe that the criterion in § 412.96(c)(3) that at least 50 percent of a referral center's medical staff are specialists and the establishment of a case-mix index standard adequately address the scope of services measurement suggested by Congress in section 1886(d)(5)(c)(i) of the Act. In particular, we note that a high case-mix index value results from treating some of the sickest patients or patients that require complex services, and a hospital's ability to treat these patients generally means that it can furnish certain diagnostic and therapeutic services that are not readily available in most community hospitals. Any other potential standards, such as the AHA's Facility Codes or the MDCs, as suggested by commenters, would not, in our opinion, be as exact a measure of a hospital's devotion to treatment of the most ill patients as is the case-mix index standard.

The AHA uses over 50 Facility Codes that describe services and facilities available within each hospital. Some of these codes, such as abortion services and obstetrics, represent services that are used relatively infrequently by Medicare beneficiaries. Other codes, such as hospital auxiliary, volunteer services, and health promotion, are not relevant to a hospital's treatment of the sickest patients.

Similarly, we do not believe that using MDCs would be appropriate. Because the MDCs are based on organ systems of the body, the number of MDCs into which a hospital's patients are classified is, at best, a measure of the number of organ systems a hospital is prepared to treat. Since there are, in general, relatively low-weight and high-weight DRGs in virtually all of the MDCs, such a measure would not necessarily indicate that a hospital treats difficult or complex cases within an MDC. On the contrary, it is quite possible that a hospital could treat patients in the entire range of the MDCs but only those DRGs with low weights within each MDC, transferring to other hospitals all patients who would fall in the higher-weighted DRGs precisely because the hospital is not prepared to handle complex cases. Finally, we note that using a criterion based on the number of MDCs could adversely affect the status of specialty hospitals that are organized to treat patients in a relatively small number of MDCs and that, in light of their high degree of specialization, do serve as regional or national referral centers.

Scope of services would also be far more difficult to monitor than use of the case-mix index, which is easily determined and also used for other purposes. Comparison of a rural hospital's scope of services to the scope of services offered by urban hospitals of comparable size could be particularly subjective.

Section 1886(d)(5)(C)(i) of the Act states that a referral center should demonstrate that its characteristics are "similar to those of a typical urban hospital located in the same census region." In defining the characteristics of a typical urban hospital, we determined that comparable bed size was less relevant to a hospital's serving as a referral center than other characteristics. Accordingly, we developed criteria that rely on case-mix index and volume of discharges, using urban median values of both as a measure of typicality within each census region. (See the August 31, 1984 final rule (49 FR 34741).) In determining what a typical urban hospital would be, we believe that comparable size is less relevant than these characteristics. In addition, since rural counties are bounded by urban counties to varying degrees, some rural hospitals would be compared to only a few urban hospitals while others would be compared to many hospitals.

A commenter suggested that a rural hospital should be designated as a rural referral center under § 412.96(c) if it meets the scope of services, discharge, and medical specialist criteria, and if it is located in an area which is 95 percent or more surrounded by areas designated as urban. We have determined that there are approximately 30 hospitals in 12 counties that are substantially surrounded by urban areas or by bodies of water. In addition to this particular group of hospitals, we note that hospitals in numerous other rural counties similarly argue that they are like a neighboring county's urban hospitals and, therefore, ought to be deemed rural referral centers in order to be paid the urban rate. In our opinion, to permit these facilities to become rural referral centers without consideration of their case-mix index values would be inappropriate. The underlying principle of section 1886(d)(5)(C)(i) of the Act is that the hospitals that wish to be designated as rural referral centers must be able to demonstrate that they resemble typical urban hospitals, not that their geographic location is like an urban location.

We believe that the case-mix index is an important measure in determining a rural referral center's status because it measures the complexity of a hospital's cases and differentiates a true referral center from other rural hospitals. To substitute characteristics such as the percentage of the counties' boundaries on urban areas would undermine this important element in determining which hospitals qualify as rural referral centers.

Comment: One commenter objected to the inclusion of a number of discharges criterion. The commenter pointed out that in many rural communities one hospital may meet all of the criteria to qualify as a rural referral center, while another hospital in the same community cannot meet the volume of discharges criterion and, thus, is severely disadvantaged financially. Instead of making the discharge criterion mandatory, the commenter suggested that we look at the volume of discharges in a community rather than on an individual hospital basis, that we make the discharge criterion optional, or that we drop the concept of rural referral centers altogether.

Response: At the time the original prospective payment legislation was passed, there was no existing definition of referral centers. We therefore relied heavily on Congressional reports for guidance in defining the criteria for qualification for the rural referral center adjustment. Throughout congressional discussions, there were references to "large" facilities that treat "patients who require an intensity of resources beyond the capabilities of general community hospitals." Congress also referred to such centers as "large, technologically sophisticated hospitals" (129 *Cong. Rec.* S3224 (daily ed. March 17, 1983)). Thus, we determined that we should include a criterion to measure size. We considered other measures of size, such as bed size, but ruled them out because they do not necessarily reflect the number of patients treated by the hospital. We believe volume of discharges is the fairest and most accurate measure of size, an element that Congress clearly intended us to consider.

While we understand the difficulties inherent in one facility qualifying for the adjustment while a neighboring facility does not, we do not believe that these difficulties justify extending the provision to a hospital that clearly does not meet the current criteria. Regarding the alternatives offered by the commenter, we do not believe any are acceptable. Defining a community would be very difficult. Regardless of how the boundaries were established, there would be some hospitals just outside them that would be faced with the same difficulties that this commenter now faces; that is, that nearby hospitals are granted an adjustment while they are not. Also, we do not believe a community concept is in keeping with congressional intent. The law refers to "referral centers" and "hospitals"—not to communities.

The community concept could also result in some very small hospitals acquiring the adjustment by virtue of their proximity to a large hospital, or a very large hospital that meets the criteria not receiving the adjustment because of its location in a community with several very small hospitals. For example, if the discharge criterion for a community that has two hospitals was set at 10,000 discharges, and one hospital has 9,000 discharges and the other has 1,000, then both would qualify as referral centers. However, if one hospital had 7,000 discharges and the other has 2,500, then neither would qualify.

Finally, with regard to the commenter's suggestion that the entire concept of referral centers be eliminated, we do not have authority to do this. Although the concept of an adjustment for referral centers was not included in our original presentation of the prospective payment system to Congress, Congress did enact this provision and, therefore, we must implement it.

Comment: One commenter pointed out what appears to be a discrepancy in the proposed rule between the language on number of discharges in the preamble and the language in the regulations text. The preamble language stated (50 FR 24381), "Therefore, the criteria published in the August 31, 1984 final rule (49 FR 34741) would be used for FY 1986." The commenter believes that this means that a hospital that had 6000 discharges in 1981 could still meet the discharge criterion. However, § 412.96(c)(2) as presented in the proposed rule (50 FR 24388) states that "For the hospital's most recently completed cost reporting period, its number of discharges (excluding discharges from subprovider units and newborn units) is at least 6,000 . . . ."

Response: We agree that the language in the preamble could cause confusion and that it should have read "the number of discharges published in the August 31, 1984 final rule would be used for FY 1986." As proposed, a hospital seeking to qualify as a referral center for cost reporting periods beginning on or after October 1, 1985 must have had at least 6,000 discharges in its most recently completed cost reporting period, not in 1981, the time period specified in the current regulations.

Comment: Several hospitals wrote to protest the fact that we retained the original volume of discharges criteria while they claim that admissions have declined since 1981. One commenter specifically wanted the 1981 alternative retained; that is, a hospital would meet the discharge criteria in the future if it had 6,000 discharges in 1981.

Response: The 1981 standard was included originally because it was the last year for which we could accurately determine the total number of discharges for hospitals. We do not believe that continuing to permit a hospital to qualify forever based on 1981 experience is appropriate. The 1981 data are not relevant to a hospital's qualification for rural referral center status five or more years later.

We agree with the commenters' observation that there has been an overall decline in the number of discharges since 1981. However, as noted in the proposed rule, current data are not available on total inpatient discharges for individual hospitals (50 FR 24381). While sample data from the AHA's National Hospital Panel Survey for 1984 indicate that admissions have declined by about four percent nationally from 1981 through 1984, we do not yet have complete data on the distribution of this decline by type of hospital. It appears that much of this decline is related to efforts to shift certain kinds of cases to outpatient departments and other less resource-intensive settings. We believe that hospitals serving as referral centers, because they are organized to treat the sickest patients and the most complex cases, would be less able to shift patients to outpatient and other ambulatory care settings. Therefore, we have not revised the number of discharges criteria. The criteria published in the August 31, 1984 final rule (49 FR 34741) will be used for FY 1986. The national discharge criterion is 6,000 discharges in the most recently completed cost reporting period. The regional median urban discharges are set forth in the table below.

Region	Urban discharges
1	7,467
2	8,601
3	7,785
4	9,309
5	8,330
6	8,515
7	5,888

Region	Urban discharges
8	9,928
9	5,564

Comment: One commenter suggested that data from hospitals that offer highly complex and sophisticated care be deleted in determining the median urban case-mix index criterion. The commenter's rationale was that the urban benchmark becomes skewed when it includes case-mix data for large teaching hospitals, national referral centers, research centers, and other hospitals of this type. This commenter also questioned some of the wording in our discussion of the triennial review for hospitals other than those that failed to continue to meet the criteria for referral center in the first two years; specifically questioned is the meaning of "other situations" and experience in the first two years. Finally, the commenter claimed that the regulations were silent on the methodology and criteria to be used to conduct the triennial review.

Response: We do not agree with the commenter's suggestion concerning the median urban case-mix index values. In the first place, identifying these types of hospitals would be very difficult. Certainly, we could identify teaching facilities, but delineating research centers would be far more difficult since, to our knowledge, there are no existing, widely accepted definitions of these facilities. Use of these classifications is often by self-designation.

In its discussions of referral centers during passage of the original prospective payment legislation, Congress intended referral centers to be "large" facilities which treat "patients who require an intensity of resources beyond the capabilities of general community hospitals." (129 *Cong Rec* S3224–3226 (daily ed. March 17, 1983).) Congress also referred to these centers as "large, technologically sophisticated hospitals which serve as regional and national referral centers and which are characterized by high case mix indices, diverse geographical patient origin, and numerous multidisciplinary medical education programs." Thus, to delete the case-mix data of urban facilities of this type would be to delete data on the very type of facility that Congress envisioned as a rural referral center.

In fact, we could justify increasing the case-mix index value criterion by the percentage change in urban hospitals' average case mix, which would have been higher than the national average case-mix index increase, since rural referral centers are supposed to have characteristics similar to those of "typical" urban hospitals. We chose to use the national average case-mix index increase because it would be less disadvantageous to rural hospitals.

However, we have made two changes in the case-mix index criterion. The first is to apply the case-mix index criterion on a Federal fiscal year basis instead of a hospitals' cost reporting year basis. This will eliminate the need to recompute case-mix index values from data spanning two fiscal years using weights applicable to only one. Computation of hospitals case-mix index values spanning two Federal fiscal years requires estimates based on quarterly case-mix index values, which may disadvantage some hospitals seeking referral center status. Therefore, we believe a case-mix index value based on discharges occurring in a single Federal fiscal year will permit more precise and uniform application of the case-mix criterion.

Because the case-mix index criterion, which is based on a Federal fiscal year, is calculated for an earlier period of time than hospitals' cost reporting periods beginning during that fiscal year (except for October 1–September 30 cost reporting periods), we have also decided to update the criterion by the total national average case-mix index increase for discharges through the midpoint of the Federal fiscal year instead of through as much of the fiscal year for which we have case-mix index data. On the basis of hospital bills received in HCFA through July 1985 (FY 1985 discharges through March 1985), we have determined that the national average case-mix index increased by 10.8 percent since 1981. Using the same methodology as described in the proposed notice, we calculated the national case-mix criterion as follows:

$$\frac{1.03 \times 1.108}{1.0105} = 1.1294$$

Using the same formula applied to the census region, urban median case mix yields the following regional criteria:

Region	Adjusted urban median case mix
1	1.1568
2	1.1743
3	1.1349
4	1.1469
5	1.1075
6	1.1206
7	1.0658
8	1.1579
9	1.1765

These national and regional criteria figures replace those we announced in the proposed rule.

We note that the percentage increase used here to update the case-mix index criteria is higher than that used in the proposed notice, although the time period that the 10.8 percent case-mix index increase reflects is limited to FY 1985 through March 1985. The reason for this is the time lags between discharge date and receipt of bills in HCFA. In addition, the increase used in the proposed rule was based on case-mix increases using FY 1984 and FY 1985 bills, since we did not have a sufficient number of FY 1985 bills at that time to calculate a reliable estimate of FY 1985 case-mix increases relative to 1981. We now have sufficient data on FY 1985 discharges to calculate a reliable measure of case-mix increases.

Regarding the commenter's views on our discussion of how the triennial review will be conducted, we note that this was discussed in detail in the August 31, 1984 final rule (49 FR 34746). A reading of this section should clarify many of the commenter's concerns. "Other situations" refers to instances in which a hospital has met the criteria for either one or both of the first two years of its existence as a referral center. "Experience in the first two years" refers to whether or not the referral center met the criteria applicable to the periods in which it was classified as a rural referral center. Finally, both the methodology and the criteria to be used to conduct the evaluation are adequately defined in the proposed rule (50 FR 24380). Once a hospital meets rural referral center criteria based on prior experience, it will be paid at the urban rate for three years. In order to retain that status after the three years, it must continue to demonstrate that it meets the criteria.

The purpose of the triennial review is to assure that a hospital, having met the qualifying criteria to achieve referral center status based on a prior period, continues to resemble a typical urban hospital during at least two of the three years after it qualifies. Meeting the qualifying criteria does not automatically mean that a hospital will meet the retention criteria in its first year as a referral center. In order to meet the retention criteria, it must meet the same criteria for the same period as

other rural hospitals must meet to qualify for referral center status initially.

For example, if a hospital acquired rural referral center status anytime on or after October 1, 1984 and before October 1, 1985, it did so on the basis of criteria applicable to an earlier time period, such as 1981 or FY 1984. In order to retain referral center status upon triennial review, it will have to meet in its first year as a referral center the case-mix index, volume of discharges, and one of the optional criteria that are published effective October 1, 1985; that is, those published in this final rule. For its second and third years as a referral center, it will have to meet the criteria published in the annual notice of prospective payment rates that will set forth the rates effective for October 1, 1986 and October 1, 1987, respectively.

The following table demonstrates under which timeframes hospitals qualify for and continue to meet rural referral center status.

Qualifying criteria	Period of referral center status—cost reporting period beginning in fiscal year	Mandatory retention criteria for triennial review
Criteria for cost reporting periods beginning in FY 1985 as published in the August 31, 1984 final rule.	1985	Case-mix index criteria for FY 1985 and discharges criteria for cost reporting periods beginning in FY 1985 as set forth in this final rule.
	1986	Case-mix index criteria for FY 1986 and discharges criteria for cost reporting periods beginning in FY 1986 as set forth in the final notice of prospective payment rates for FY 1987.
	1987	Case-mix index criteria for FY 1987 and discharges criteria for cost reporting periods beginning in FY 1987 as set forth in the final notice of prospective payment rates for 1988.
Criteria for cost reporting periods beginning in FY 1986 as set forth in this final rule.	1986	Case-mix index criteria for FY 1986 and discharges criteria for cost reporting periods beginning in FY 1986 as set forth in the final notice of prospective payment rates for FY 1987.
	1987	Case-mix index criteria for FY 1987 and discharges criteria for cost reporting periods beginning in FY 1987 as set forth in the final notice of prospective payment rates for 1988.
	1988	Case-mix index criteria for FY 1988 and discharges criteria for cost reporting periods beginning in FY 1988 as set forth in the final notice of prospective payment rates for FY 1989.

The following examples using two rural hospitals with cost reporting periods beginning on January 1 help explain the above table:

Example 1

Hospital A had a 1981 case-mix index value of 1.08 and a discharge level of 7,000 in 1981. Because Hospital A also met one of the optional criteria, it qualified for rural referral center status beginning in January 1985 under the criteria published in the August 31, 1984 final rule. During the FY 1985 cost reporting period (that is, January 1–December 31, 1985), the hospital's case-mix index value rose to 1.13 and its discharges declined to 6,500. Since both of these criteria are higher than the minimum needed for qualification for FY 1986 (as set forth in this final rule), Hospital A meets the retention criteria for case mix and discharges for its first year of referral center status (assuming it continues to meet one of the optional criteria). The hospital's continued status as a referral center depends essentially on whether it meets the criteria for at least one more year in the following two years.

Example 2

Hospital B had a 1981 case-mix index value of 1.08 and a discharge level of 5,900 in 1981. Since it did not meet the discharge criterion, it could not qualify for referral center status beginning in January 1985. During its FY 1985 cost reporting period, Hospital B's case-mix index value rose to 1.13 and its discharges rose to 6,050. Since it will qualify under the criteria set forth in this final rule, Hospital B will be given referral center status beginning January 1, 1986 if it meets one of the optional criteria. It will keep referral center status at least three years. Hospital B's status as a referral center after that will depend essentially on whether or not it meets the criteria applicable to two of those three years.

Comment: One commenter stated that while our existing regulations do authorize additional payment for rural referral centers, they fail to acknowledge that urban hospitals may also serve as referral centers. The commenter requests that we review urban hospitals against the criteria to determine whether the hospital qualifies.

Response: The criteria in §412.96(b)(2) do apply to urban as well as rural hospitals. To our knowledge, only one urban hospital has applied under this section and its application was approved. However, we have not provided for any adjustment for this referral center because we have no data to show that an adjustment is warranted or justified.

Comment: One commenter believes that the rural referral center concept has been commingled with that of national and regional referral centers. The commenter would prefer that these two concepts be separated, as it is unlikely that most rural referral centers are analogous to the types of institutions described in the legislative history as national and regional referral centers.

Response: The original legislation that created that prospective payment system (Pub. L. 98–21) provided in section 1886(d)(5)(C)(i) of the Act that the Secretary take into account the special needs of regional and national referral centers (including those hospitals of 500 or more beds located in rural areas). The accompanying conference Committee report contained little clarifying language beyond the reference to very large acute care hospitals in rural areas. In our September 1, 1983 interim final regulations, we made a special payment provision for rural hospitals with 500 or more beds. We did not believe that other hospitals would need relief in the first year of the system when hospitals were receiving 75 percent of their payment based on their historical cost. In the January 3, 1984 final rule, we provided additional criteria for referral centers that apply to either urban or rural hospitals. These criteria depend upon referrals to the hospital by other hospitals and by physicians not on the hospital's staff, as well as the length of distance its Medicare patients traveled to receive care and the percentage of services furnished to those patients. We believe that these criteria were acceptable to Congress because the changes made to section 1886(d)(5)(C)(i) of the Act by section 2311(a) of Pub. L. 98–369 applied only to rural hospitals and that legislation did not add any new requirements for national and regional

referral centers. Thus, we have separate criteria for rural hospitals, as well as criteria that apply to urban as well as rural hospitals.

Comment: One commenter requested that we conduct an assessment to determine whether any payment adjustment should be made for urban hospitals, given the existence of the kinds of institutions described in the legislative history, the commenter believes that the absence of any adjustment other than that for rural referral centers slights the intent of this statutory provision.

Response: Until we obtain and review the cost data of urban hospitals under the prospective payment system, we cannot determine whether or not urban hospitals that meet the criteria for referral centers should receive any payment adjustment.

Comment: One commenter suggested that our criteria be revised to permit rural osteopathic hospitals to qualify for the rural referral center adjustment by lowering the volume of discharges criterion to 3000 a year. The commenter pointed out that osteopathic hospitals tend to be small and complex and draw their patients from outlying areas.

Response: We do not believe it would be equitable to single out one category of hospitals for special treatment. This would be unfair to other hospitals seeking the adjustment. In addition, it should be noted that a hospital can qualify as a rural referral center without regard to its number of discharges. Volume of discharges is not a consideration under § 412.96(b), although drawing patients from outlying areas (to which the commenter refers) is a criterion under that section.

F. Indirect Medical Education (§ 412.118)

Section 1886(d)(5)(B) of the Act provides that hospitals subject to the prospective payment system receive an additional payment for the indirect costs of medical education. The amount of this payment is based on a hospital's ratio of full-time equivalent interns and residents to bed size. The regulations governing this provision are found at § 412.118.

In our August 31, 1984 final rule, we revised § 412.118 (then § 405.477) based on the amendment made to section 1886(d)(5)(B) of the Act by section 2307(b) of Pub. L. 98-369. The amendment requires that, in determining the additional payment amount for indirect medical education, we must count interns and residents on the basis of where they furnish services, regardless of which entity (for example, hospital, university, or medical school) employs them. However, no intern or resident is counted as more than one full-time employee for any cost reporting period. (See the August 31, 1984 final rule for a detailed discussion of this revision (49 FR 34747).)

In the NPRM, we proposed to revise § 412.118 to change the way interns and residents are counted for purposes of making payment for indirect medical education costs effective with cost reporting periods beginning on or after October 1, 1984. Currently, § 412.118(e) provides that interns and residents must work 35 hours or more per week to be counted as one full-time employee. All interns and residents who do not meet this criterion are counted as one-half of a full-time employee. At present, we determine the additional payment amount based on the number of interns and residents employed during the last week of a hospital's cost reporting period. Therefore, if an intern or resident works for a hospital at least 35 hours per week for only a few weeks at the end of its cost reporting period, that individual is counted as a full-time employee for the entire cost reporting period.

Section 412.118(d)(2) currently requires that hospitals must submit a quarterly report to their fiscal intermediaries that includes, among other information, the actual hours worked by each intern and resident during each month. However, we believe that the 35-hour threshold is not reflective of the normal work week of interns and residents. Furthermore, the use of hours as a measure of intern of resident time requires substantial recordkeeping, and, if interns and residents rotate among several hospitals, a method of apportionment that is not necessarily consistent with reporting and counting for an institution's or program's scheduling purposes. We received numerous suggestions from hospitals that the policy be made easier to administer and require less paperwork.

Therefore, we proposed that the additional payment for indirect medical education costs for a hospital cost reporting period would be based on the number of interns and residents assigned to the hospital on September 1 during the hospital's cost reporting period. We also proposed that this method of counting interns and residents be retroactively applied to all hospital cost reporting periods beginning on or after October 1, 1984 (the date on which we implemented the system of reporting quarterly on intern and resident time). If we were to make the changes effective with cost reporting periods beginning on or after October 1, 1985, and not retroactive, hospitals would be required to implement one procedure for counting interns and residents effective on October 1, 1984 and another on October 1, 1985. This is a burden that we avoided by proposing to apply this rule retroactively.

For hospitals with cost reporting periods beginning on July 1, the same date that their graduate medical education programs begin, there would be a relatively stable number of interns and residents throughout the cost reporting period. However, in any other hospital, the cost reporting period would span more than one academic year. Thus, there could be significant fluctuation between the two years in the number of interns and residents to be counted. In these cases, we proposed to prorate the intern and resident counts for the two academic years based on the number of months of each academic year that fell into the cost reporting period.

Prior to October 1, 1984, hospitals were not required to keep schedules of assigned time or logs of actual time on which to base the intern and resident count. Therefore, for cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, we proposed to use April 15, 1985 instead of September 1, 1984 as the uniform reporting date.

Many interns and residents are assigned to freestanding family practice centers, hospital outpatient departments, and excluded units, such as psychiatric units. Currently, time spent in freestanding family practice centers and excluded units is not counted for purposes of the indirect medical education payment since these settings are not subject to the prospective payment system. Although we are currently counting time spent in outpatient departments, we proposed that time spent in these departments would not be counted for purposes of the indirect medical education payment because outpatient departments also are not subject to the prospective payment system and because the additional operating costs of outpatient departments associated with interns and residents are already recognized through reasonable cost reimbursement for hospital services furnished to outpatients.

Interns and residents assigned to areas of the hospital not subject to the prospective payment system would be counted based on where they are assigned on September 1. If an intern or resident is dividing his or her time on that day between these areas and the areas or units of a hospital subject to the

prospective payment system, the hospital would have to report to its intermediary the proportion of time spent in or assigned to both the included and excluded areas. The indirect medical education payment would be computed based on the proportion of time assigned to the areas of the hospital subject to the prospective payment system.

The additional payment for the indirect medical education costs is computed on the basis of the ratio of interns and residents to hospital bed size. Currently, for determining the intern and resident to bed ratio, as well as for classification purposes, a hospital's bed size has been determined based upon the total number of beds available on the first day of the pertinent cost reporting period. Since a hospital's bed size may increase or decrease, sometimes substantially, over the course of a cost reporting period, we proposed to base the number of beds on the number of available bed days (excluding beds assigned to newborns, custodial beds, and beds in excluded units) during the current cost reporting period divided by the number of days in the cost reporting period. We proposed that this change also be effective with cost reporting periods beginning on or after October 1, 1984.

We believe that a hospital's assignment of interns and residents on one day (September 1) would generally be representative of the academic year as a whole. However, it may be necessary for intermediaries to audit hospital records to verify the documentation of the September 1 assignments as reported to us and to verify that the September 1 count is representative of the count over the entire cost reporting period. Based on its review of the hospital's documentation, the intermediary may adjust the intern and resident to bed ratio for purposes of the final indirect medical education payment.

We received approximately 60 letters on this proposal from hospitals; hospital, physician, and other associations; a fiscal intermediary; and ProPAC. The commenters were generally in favor of the one-day count of interns, but were opposed to the exclusion from the count those interns and residents assigned to outpatient departments. The following are their specific concerns.

Comment: Some commenters have pointed out that in those years in which September 1 falls on a weekend or holiday, hospital staffing patterns may not be typical of their intern and resident assignments over the rest of the year. They suggest that we use the closest business day for the count in these years.

Response: We agree that in those years in which September 1 falls on a weekend or Labor Day, some hospitals may assign interns and residents in a different way than if September 1 were a typical business day. Therefore, we are revising the regulations to use a different date in these years. However, rather than use the closest business day, which in some cases will be at the end of August and at a time when hospitals may be changing their interns and resident assignments in preparation for the upcoming month, we will use the first business day following September 1.

Comment: One commenter gave an example of a residency program in which the count taken on September 1, 1985 would present a distorted picture of the distribution of interns and residents between two hospitals.

Response: Although we believe that for most hospitals, the September 1 date provides an accurate count of the intern and resident assignments throughout the year, we provided in the proposed rule that a hospital may provide additional information to the intermediary to demonstrate that the September 1 date is not representative. Similarly, intermediaries may audit hospital records to verify that September 1 represents the actual count of the assignments of interns and residents throughout the year. Based on the review, the intermediary may adjust the intern and resident to bed ratio.

Comment: One commenter stated that the proposal to count interns and residents as of September 1 each year will lead to distortions and uneconomic behavior on a given day of the year and lend the measurement to manipulation. The commenter suggested that since the 35-hour threshold did not reflect a normal work week of interns and residents, and since hospitals had to make quarterly reports to intermediaries anyway, it would be more appropriate to count as full-time each resident with 455 reported hours per quarter.

Response: We believe that this commenter misunderstood our proposal. The commenter's suggestion would continue to link payment to a 35-hour work week for interns and residents. Our proposal would revise our policy in which the count of interns and residents is made based on the number of hours in a work week. We believe that the one-day count is far superior to any methodology based on actual hours worked. Further, we believe that our proposal is less subject to manipulation than are the current procedures. There are a limited number of interns and residents during an academic year, and a one-day count should be reflective of the distribution of assignments through the year.

Comment: Commenters were concerned about the impact of using a single day approach to the counting of interns and residents for programs in which the number of these individuals varies widely from month to month. For example, two hospitals that share 20 residents who work approximately half the time in each hospital do not divide them on an equal basis each month. In one month there could be 15 at one hospital and 5 at the other. The commenters believe that this would lead to unequal payment to the hospitals if on September 1 the residents were not close to equally divided.

Response: Section 1886(d)(5)(B) of the Act requires that we establish a system of counting that does not distinguish on the basis of who employs an intern or resident and ensures that no intern or resident is counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she works. We agree that the single day concept may not work in every possible situation. However, we do not believe that it is appropriate to impose substantial reporting requirements on all teaching hospitals, the majority of which appear satisfied with the single day count, in order to capture detailed data from the few for which a one day count is not representative. Therefore, we stated in the proposed rule (50 FR 24383) that hospitals could submit comprehensive data to show that the September 1 date is not typical of the entire cost reporting period.

We believe that the September 1 date meets the requirements of the law without skewing the results to the extent that there is a substantial adverse impact on any particualr facility. In previous years, we used September 30 as the single day for counting interns and residents (see the final notice of the schedule of limits on hospital per diem inpatient general routine operating costs published in the **Federal Register** on September 30, 1981 (46 FR 48010)), and it did not generate any adverse comment from the hospital industry. In considering a return to the single day approach, we worked with representatives of the hospital industry and took their comments and concerns into consideration.

Comment: One commenter indicated that the audit of hospital records to verify documentation of the September 1 assignments as to whether they are

representative of the entire cost reporting period defeats the purpose of the "single day" counting method; that is, to simplify recordkeeping while preserving the integrity of the count. The commenter suggests that examples should have been included to illustrate the nature of the intermediary's review. Finally, the commenter recommends that the proposal be dropped in favor of the current quarterly reporting system except that assigned time should be used instead of actual time in determining full-time equivalents. Other commenters indicated that the September 1 count might not be reflective of an individual's assignments over the course of the year, and that more documentation would be required such as residency program assignment schedules, intern and resident contracts, and payroll records.

Response: The "single day" approach to the counting of interns and residents is independent of the monitoring activity. We believe that in many cases, it will be clear that the count is accurate both for the date taken and for the year. This would be most apparent in the case of hospitals in which the number counted is less than the number of interns and residents who spend time in the facility, indicating that outpatient and excluded units assignments have been accounted for.

In the event the intermediary has reason to believe that the count of interns and residents is substantially in error for a particular facility, or if it is found upon audit that the facility may be counting interns and residents assigned to units reimbursed on a reasonable cost basis, the intermediary has the responsibility for reviewing hospital records and making any necessary changes in the count at the end of the cost reporting period. For purposes of the monitoring activity, hospitals are not being asked for any information not already in their records.

With respect to the inclusion in the preamble of examples to illustrate intermediary review activities, we believe that this information represents technical details that have an impact on implementation. Therefore, these examples should be included in policy guidelines issued through appropriate manual instructions for the purpose of implementing those regulations.

The August 31, 1984 final rule, which contained a provision for a quarterly reporting system, generally elicited negative reaction from the hospital industry. Many hospitals believe such a reporting system places an unnecessary recordkeeping burden on them. We agree with their stated concerns, and the regulations set forth in this document were written to simplify the recordkeeping activity accordingly. We believe that the new method for counting interns and residents takes into consideration individual rotations among hospitals and is consistent with reporting and counting for an institution's or program's scheduling purposes.

Comment: One commenter objected to the use of social security numbers as identifiers of interns and residents but did not object to the creation of another means of identifying interns and residents.

Response: The provision requiring the use of the social security number was contained in the regulations published in the August 31, 1984 final rule, and no negative comments were received. We do not believe that section 7 of the Privacy Act (U.S.C. 552a) is violated by withholding payment from hospitals that refuse to furnish social security numbers to intermediaries. No benefit is denied to an individual for failure to furnish the social security number. We would simply be denying an additional payment to a teaching hospital because it voluntarily decided not to furnish the information necessary to validate whether the payment is appropriate. We do not believe that the costs to Medicare involved in creating a whole new set of identifiers for interns and residents and the additional burden it would place on hospitals are justified.

Comment: Several commenters stated that the proposed rule did not clearly address how interns and residents are to be counted when they are assigned to ancillary departments, including operating rooms and radiology and laboratory departments. They pointed out that a percentage of the services provided in ancillary departments involve services for outpatients and inquired if the ancillary area's inpatient-outpatient allocation should be considered in the intern and resident count for adjustment purposes.

Response: Our position in the final rule is not to count interns and residents furnishing services to outpatients. Thus, interns and residents who treat outpatients or who furnish ancillary services to outpatients would not be counted for purposes of the indirect medical education adjustment.

Since the ancillary departments provide services to both outpatients and inpatients, we will determine the proportion of interns and residents who provide outpatient services on the basis of the ratio of outpatient charges to total charges in each ancillary department. While this approach does not necessarily reflect the precise way interns and residents spend their time in the ancillary departments, we believe it is a good approximation of the outpatient intern and resident count. This method also minimizes the recordkeeping activity of the hospital. If hospitals believe that the above methodology for apportioning interns and residents assigned to ancillary departments is inappropriate, they may provide additional information to their fiscal intermediary to document a more accurate apportionment.

Comment: One commenter asked how interns and residents who are on-call would be counted.

Response: Under the current regulations, the actual hours worked by interns and residents determined whether they were counted as full-time or one-half of a full-time employee. On-call time while an intern or resident was on the premises could make a difference in whether he or she was considered a part-time or a full-time equivalent. The new method of counting interns and residents based on their assignment to a hospital on September 1 eliminates the need to consider on-call time. If we were to count on-call time under the new rule, it would introduce a situation in which an intern or resident could be assigned to an excluded unit but on-call in another area of the hospital. Thus, he or she could be counted even if assigned to an excluded unit. To consider on-call time in situations such as this would defeat the intent of the regulations.

Comment: One commenter asked if dentistry and podiatry residents would be counted for purposes of the adjustment.

Response: At present, dentistry and podiatry residents are included in the count. However, we are reviewing this issue and, if we believe that a change in this policy should be made, we will propose that change in a future document published in the **Federal Register** for public comment.

Comment: One commenter believes that an intern or resident can account for more than one full-time equivalent. Also, the commenter questioned whether we have the authority to mandate the counting of interns and residents using one specific day in the reporting period.

Response: We believe it was Congress' intention, and our regulations at § 412.118 reflect that intent, that no intern or resident be counted as more than one full-time equivalent in any reporting period. This is true regardless of the number of hospitals in which he or she is providing services.

Previously, the "single day" approach was used for reporting the intern and resident count. Before publication of the

September 1, 1983 interim final rule, the single day for determining the count was September 30. The authority to establish the September 30 rule for counting interns and residents was never questioned by outside organizations or Congress.

Comment: Several commenters believe that we should count interns and residents in excluded units of the hospital, such as psychiatric and rehabilitation units, and in freestanding family practice centers outside the hospital setting.

Response: The indirect medical education adjustment recognizes that there are additional costs that teaching hospitals incur in connection with the presence of graduate medical education programs. Congress was concerned that teaching hospitals might be adversely affected by the implementation of the prospective payment system because these hidden costs would not be reflected in the prospective payment system payment rates as costs were standardized and the system moved toward a national payment rate applicable to all hospitals. Therefore, Congress authorized an additional payment representing those otherwise unidentified costs.

However, this rationale does not extend to excluded units or to freestanding family practice centers. Medicare continues to reimburse excluded units on a reasonable cost basis. The indirect costs of medical education are included in the overall costs of the unit upon which Medicare determines reasonable costs. Services furnished in freestanding clinics are payable on a Part B reasonable charge basis. The direct and indirect costs of operating the clinic are included in the charges made for services furnished there. In both cases, making an additional payment under the provisions of the indirect medical education adjustment to reflect the presence of interns and residents would be a duplicate payment.

Comment: One commenter indicated that it was inappropriate to reduce payment for indirect medical education costs without a careful analysis of the impact on availability of medical services in the communities that will be affected.

Response: We believe that the changes in the proposed regulation would have only a modest effect on the level of indirect payments to individual hospitals. Therefore, we do not think that our proposal would have a major impact on the availability of medical services in the affected communities.

Comment: Many commenters, in expressing concern over the proposal to exclude time that interns and residents spend in outpatient areas of hospitals in the calculation of the ratio of interns and residents to beds, pointed out that the proposal will be destructive to primary care specialty programs, which the Federal government has supported in the past. They also maintain that the proposal will encourage hospitals to assign interns and residents to inpatient areas of the hospital, that it will discourage the most cost-effective treatment of patients, and that it will remove an important source of funding for care furnished to uninsured patients.

Response: The additional payment to teaching hospitals for the indirect costs of graduate medical education programs was created because of the belief that these programs, by their very existence within institutions, increase the hospitals' costs in many ways. These indirect costs may include increased department overhead and the higher cost of treating patients due to a higher relative volume of laboratory tests and similar services.

In the September 1, 1983 interim final rule, the application of the indirect medical education payment was limited to hospitals that employed interns and residents who furnished services on their premises. Based on comments received, the rule was modified in the January 3, 1984 final rule to permit hospitals to count interns and residents employed by an organization with which the hospital had a longstanding relationship. The regulations were further modified in the August 31, 1984 final rule, based on enactment of section 2307 of Pub. L. 98–369, which precluded any consideration of who the employer of the interns and residents was in making these payments. Thus, this additional payment provision has been liberalized twice since the inception of the prospective payment system two years ago.

We believe that our proposal not to count interns and residents furnishing services to outpatients of the hospital is reasonable because outpatient services are not subject to the prospective payment system. Further, inclusion of interns and residents assigned to these areas is a misallocation of program resources since it means Medicare Part A funds are used to pay for services that are covered under Part B. Medicare continues to pay for outpatient services on a reasonable cost basis, and the indirect costs of the interns and residents providing these services are included in these payments. We believe that if this distinction is not made, Medicare will be making duplicate payments for indirect costs in the outpatient department.

We believe that the negative effects described by the commenters will not occur. It would be unfortunate if the decisions on whether to treat patients in the outpatient rather than inpatient setting were made strictly to promote the access of hospitals to additional Medicare payments. We continue to pay a great deal of the costs that hospitals that wish to promote primary care specialties incur for graduate medical education program.

Comment: Many commenters stated that we are required under section 1886(d)(5)(B) of the Act to count interns and residents furnishing services in outpatient settings because that section provides that the additional payment for the indirect costs of medical education be "computed in the same manner" as set forth in regulations in effect on January 1, 1983. They further argued that in the September 1, 1983 interim final rule we said that we would be counting interns and residents in hospital outpatient departments in order to avoid "altering only one element of the variable and failing to maintain comparability between the methodology used for developing the adjustment factors and subsequently standardizing hospital costs based on that factor" (48 FR 39778). Some commenters said that if interns and residents assigned to outpatient areas of the hospital are not counted on September 1, a new adjustment factor should be developed using the revised method of counting. A few commenters do not believe that these changes should be made retroactively.

Some commenters indicated that the indirect medical education adjustment was designed as a proxy for many cost factors that are difficult to quantify but are known to exist, that the financing of graduate medical education is extremely complex, and that certain medical specialty programs would be unfairly disadvantaged by our revision.

Response: We continue to believe that interns and residents who are not furnishing services to hospital outpatients should not be counted in determining additional payment to teaching hospitals for indirect medical education. We understand the concern of the commenters for the need to train interns and residents in primary care specialties, and we do not believe that hospitals will drop these programs solely because Medicare will not be paying for them under the indirect medical education adjustment.

It is important to note that Medicare, in fact, continues to pay for outpatient services on a reasonable cost basis, and these costs include the indirect costs of

services performed by interns and residents treating outpatients. Continuing to pay for them under the indirect medical education adjustment, while simultaneously paying on a reasonable cost basis, would pay for their indirect costs twice. Furthermore, since many interns and residents will be assigned to the outpatient setting on September 1 for only part of the day, their time spent furnishing services to inpatients on that day still will be computed in the indirect medical education ratio.

The commenters made two main arguments against our position. They cited language from the preamble of the September 1, 1983 interim final rule, in which we stated that we would not exclude interns and residents in outpatient departments in applying the factor because we would be altering only one element of the regression analysis on which it was based, with the result being that the amount of the adjustment would be incorrect. They also pointed out that section 1886(d)(5)(B) of the Act requires that the indirect medical education adjustment be computed "in the same manner as the adjustment" in effect on January 1, 1983.

In response to these comments, we first note that we are computing the adjustment "in the same manner" as previously, because we are basing it on the ratio of interns and residents to bed size. However, we do not believe that Congress intended that we ignore the fact that the stated rationale for the adjustment does not apply to outpatient services. There were no specific regulations in effect on January 1, 1983, although there was a description of the methodology to be used that was published in the final notice of the schedule of hospital cost limits for cost reporting periods beginning on or after October 1, 1982 that was published in the **Federal Register** on September 30, 1982 (47 FR 43310). We believe that Congress, in enacting the prospective payment system, intended that the methodology in effect be adopted rather than the entire description published in that notice. We also point out that in both the January 3, 1984 and August 31, 1984 final rules (the latter in response to the Congressional mandate in Pub. L. 98-369), we revised the methodology for counting interns and residents to adapt the previous system to the prospective payment system more effectively, yet we did not decrease the indirect medical education adjustment to reflect the larger number of interns and residents that hospitals were permitted to count. Therefore, the current adjustment itself is no longer entirely consistent with the original factor.

If the deletion of time furnishing services to outpatients, which decreases the count of interns and residents, invalidates the indirect medical education adjustment, it should follow that the expansion of programs that took place since the current factor was developed also should have invalidated the adjustment. However, especially since Congress did not mandate that the factor be recalculated, we believe that if there are, as here, overriding concerns, then revision to the method of counting interns and residents is justified. While a new regression analysis that takes into account the changes that have arisen since 1981 would be worthwhile, the cost data on which to base this are not yet available.

In the meantime, it has become apparent, since publication of the September 1, 1983 interim final rule, that even if it may cause some inconsistency with the regression analysis on which the current factor is based, exclusion of interns and residents furnishing services to outpatients is justified in light of the double counting that results from including these interns and residents. Moreover, since the ratio of intern and residents to beds has risen in most hospitals since 1981, even before the change in the August 31, 1984 final rule was fully implemented, we believe that the current adjustment, even without the adjustment factor being doubled, pays hospitals more than their actual indirect costs.

Finally, prior to the proposed rule, we defined a full-time employee as an intern or resident who worked 35 hours a week or more. Since most residents frequently work far more than this amount, the previous policy may have been justifiable as residents could have worked 35 hours or more treating patients in each of the settings, inpatient and outpatient. With the change to the one-day count, that policy no longer is appropriate.

However, we are going to make one change in response to the comments. We agree that it is inappropriate and contrary to what we said in the January 3, 1984 interim final rule (49 FR 268) to exclude interns and residents retroactively. Therefore, we are changing the proposed revision to § 412.118 to make the exclusion for interns and residents furnishing services to hospital outpatients effective with cost reporting periods beginning on or after October 1, 1985. By making this a prospective change, it will give teaching hospitals some time to plan for the impact of the change on their operations.

Comment: One commenter asked if interns' and residents' time spent in the outpatient department furnishing services to individuals admitted as inpatients before midnight of the next day could be included in the count. These individuals are considered hospital inpatients as of the day on which they are formally admitted as inpatients.

Response: If an individual is furnished outpatient hospital services and is thereafter admitted as an inpatient of the same hospital before midnight of the next day, the outpatient hospital services furnished to him or her are treated as inpatient services unless the patient does not have Part A coverage. Generally, for purposes of the indirect medical education adjustment, the time spent by interns and residents in the outpatient department is not counted regardless of the patient's status subsequent to treatment in the outpatient department. Consequently, there will generally be no allocation of interns' and residents' time to areas of the hospital covered under the prospective payment system due to this rule. However, if a hospital is able to furnish adequate documentation to its fascal intermediary concerning the percentage of Medicare beneficiaries treated in the outpatient department who are subsequently admitted to an inpatient area subject to prospective payment under this rule, the intermediary will use that percentage to apportion interns and residents assigned to the outpatient department back to the inpatient setting for purposes of the intern and resident-to-bed ratio.

Comment: One commenter indicated that time spent by interns and residents in outpatient departments is not comparable to time spent in freestanding centers or excluded units. The commenter pointed out that time in freestanding centers was excluded because they are not subject to Part A reimbursement, and that the time spent by interns and residents in excluded units must be excluded from the caluclation since the indirect costs are reimbursable on a cost basis. This policy would avoid duplicate payment of some of the costs. On the other hand, the indirect costs associated with time spent in outpatient departments were historically subject to cost reimbursement under Part A, and unlike the revised calculation resulting from excluded units, only residents' time, and not beds, would be removed from the calculation with a resultant distortion.

Response: We do not agree with the commenter. The situation regarding outpatient services is largely the same as that for excluded units. Both continue to be reimbursed on a reasonable cost basis (or charge basis in the case of freestanding centers), and these costs include indirect costs. The only difference between the two is that the removal of the excluded units from the adjustment affected bed size as well as the count of interns and residents. Bed size cannot change based on a different treatment of outpatient services since the historical Medicare definition of bed size is that it consists of beds (other than new born) maintained for inpatient use.

The indirect costs of graduate medical education activities associated with outpatient care are reimbursed on a reasonable cost basis under Part B. Including a count of interns and residents furnishing such care in the ratio of interns and residents to beds results in a duplication of payment of the indirect costs of the outpatient department.

Comment: One commenter believes that our proposal not to count interns and residents assigned to outpatient departments means that we are proposing to eliminate reimbursement for their services.

Response: The proposal applies only to the payment of an additional amount for the indirect costs of graduate medical education programs. The direct and indirect costs of operating these programs associated with the care of hospital outpatients will continue to be reimbursed on a reasonable cost basis. What we are proposing to eliminate is the duplicate payment for the indirect costs associated with interns and residents furnishing services to outpatients since these costs are included in the total cost for outpatient services.

Comment: One commenter requested a more precise definition of the term "available bed days."

Response: For purposes of the prospective payment system, "available beds" are generally defined as adult or pediatric beds (exclusive of newborn bassinets, beds in excluded units, and custodial beds that are clearly identifiable) maintained for lodging inpatients. Beds used for purposes other than inpatient lodging, beds certified as long-term, and temporary beds are not counted. If some of the hospital's wings or rooms on a floor are temporarily unoccupied, the beds in these areas are counted if they can be immediately opened and occupied.

Comment: One commenter suggested a change in the method of calculating the indirect medical education adjustment. Instead of using the ratio of interns and residents to beds, the commenter recommended that patient days would be used in lieu of available beds. The commenter believes that the use of patient days would not require an additional calculation, the data are readily available, and recommended a legislative change.

Response: As the commenter points out, this change would require legislation. Thus, we cannot change the regulations to meet this suggestion. However, as we obtain more data, we will consider this approach and others. If our analysis indicates that a change is necessary, we will propose a legislative amendment.

G. Transfer Policy (§ 412.4)

Our current policy concerning transfers between prospective payment hospitals provides for transferring hospitals to receive payment on a per diem basis. The discharging hospital receives the full DRG payment. Transferring hospitals may also receive an additional payment for extraordinarily high-cost cases that meet the cost outlier criteria in §§ 412.80 and 412.84; they are not eligible for day outlier payments.

As we have stated in previous prospective payment documents (most recently in the August 31, 1984 final rule (49 FR 34730)), our ultimate goal is to make one payment for the entire course of treatment. Because of the complexities of this issue, we did not propose any changes in the regulations that would implement a new transfer policy. However, we noted in the proposed rule that we are continuing to study this problem and to collect relevant data so that we can implement a single payment for transfers in the future.

Several commenters wrote to voice their opposition to the prospect of a single payment for transfer situations. Their specific objections are set forth below.

Comment: One commenter believes that a single payment policy would result in inequitable payments and operational problems.

Response: The prospective payment system is intended to provide full payment less applicable deductibles and coinsurance for all inpatient services associated with a particular episode of hospitalization. As we have previously stated on several occasions, our current transfer policy is an interim policy to be used until we restructure the payment methodology for making one payment to a hospital for the entire course of treatment. The single payment methodology will be developed only after we conduct a thorough review of the PATBILL file to evaluate the distribution of costs in a transfer situation. This review will enable us to develop a transfer payment policy that will be designed to result in equitable payments among hospitals and to limit administrative difficulties.

Comment: One commenter proposed that in transfer situations either full payment should be made to each hospital or the per diem method of payment should be continued. The commenter's greatest concern was that in no case should the transferring hospital or the discharging hospital be placed at risk for services furnished outside of its institution.

Response: We do not believe that full payment to the transferring hospital is appropriate in the majority of transfer situations. In multiple transfer situations in which the initial admitting hospital is also the ultimate discharging hospital, that hospital would receive two full payments—one for stabilizing the patient before transfer to the treatment facility and one for providing recuperative care before the patient is discharged. We agree that we should develop a methodology that allows the most appropriate payment to be made to hospitals for the medically necessary care furnished by each hospital in transfer situations. However, we do not believe that the solution lies in overpaying all hospitals involved to guarantee an adequate payment to the hospital that furnishes the bulk of a patient's care.

V. Other ProPAC Recommendations

As required by law, we reviewed the April 1, 1985 report submitted by ProPAC and gave its recommendations careful consideration in conjunction with the formulation of the proposals set forth in the NPRM. We received many comments on our treatment of the ProPAC recommendations. We have included these comments in our discussion of the issues to which they relate as they are set forth in the preamble and addendum to this final rule. Set forth below are the remaining ProPAC recommendations and the comments we received on them.

A. Hospital Market Basket (Recommendations 2, 4 through 6, and 9)

1. The Number of Market Baskets (Recommendation 2)

For FY 1986, ProPAC recommended using a single market basket for prospective payment system hospitals. However, it plans to study the

appropriateness of developing multiple market baskets by region and class of hospital.

We believe that this is an area that warrants further study and we support ProPAC's research. In the past, we have studied variations in regional market baskets and we plan to continue our research concerning multiple market baskets by region and class of hospital.

2. Market Basket Wage Component—Occupational Groups (Recommendation 4)

ProPAC recommended that separate wage categories by occupational groups should be created to take into account the broad changes in skill mix among managers, professionals, and other hospital workers. ProPAC suggested that changes in wages for these categories should be measured using a combination of internal and external proxy measures as follows:

- Managers and Administrators: The Employment Cost Index (ECI) for Managers and Administrators.
- Professionals and Technicians: A 50–50 blend of the Average Hourly Earnings (AHE) for the hospital industry and the ECI for Professionals and Technicians.
- Other Hospital Workers: A 50–50 blend of the AHE for the hospital industry and the ECI for all private industry.

The issue of whether to use only internal proxies as we do in formulating the current single wage component or a combination of internal and external (that is, hospital and nonhospital) proxy measures as ProPAC recommends has been debated for some time. We have opted to use internal proxies, since that position is consistent with our treatment of the wage index, which is also based on internal wage measures. Moreover, as ProPAC noted, the various external measures that might be used (including the ECI) also have certain drawbacks that we believe warrant further examination. We are studying this issue further and plan to develop various market basket models using internal and external proxies, as well as weighted occupational categories, for further consideration.

3. Employment Cost Index Feasibility Study (Recommendation 5)

ProPAC recommended that the Secretary should work with BLS to study the advantages and feasibility of developing an ECI for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

The basic difference between an ECI and the AHE we currently use to measure increases in hospital workers' salaries is that the ECI controls for occupational mix. Therefore, the ECI would maintain the relative hospital worker skill mix constant over time and would preclude skill mix from affecting the amount of the increase in the hospital wage measure. We agree that this is an area that warrants further study and we plan to examine the merits of establishing an ECI for hospital workers as part of our ongoing analysis of the market basket.

4. Study Effects of Changes in the Minimum Wage Law on Hospital Workers (Recommendation 6)

ProPAC plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under the prospective payment system, workers who earn more than the minimum wages are differentially affected by statutory increases in the minimum wage compared with workers in other industries.

Since it is our desire that the prospective payment system be equitable, we would certainly want to know about any dimension of the system that is found to be unfair. However, we point out that the purpose of the prospective payment system is to develop prices for individuals DRGs. In accomplishing this, we have referred not only to wages paid to hospital workers, but to the entire spectrum of resources expended by hospitals in producing health care.

5. *Rebasing of Market Basket Weights (Recommendation 9)*

ProPAC suggested that the market basket weights should be rebased at least every five years or more frequently if significant changes in the weights occur. We agree that it is appropriate to periodically rebase the market basket weights in order to reflect more current data, especially if significant changes in the mix of inputs used by hospitals occur. We are currently in the process of developing rebased market basket weights. We also recognize that the market basket weights may require further revision to account for payment changes that might occur if additional costs, such as capital-related costs, are included in the prospective payment system.

B. Hospital Labor Market Areas—Area Wage Index: Improvement of Labor Market Area Definitions (Recommendation 13)

The current area wage index used to adjust payments for interarea wage differences does not distinguish separate labor markets within MSAs. ProPAC recommended that the prospective payment rates be adjusted to take into account variations in wages paid within a metropolitan area and in different rural locations within a State. ProPAC noted that several studies have shown that there is substantial variation in the wages paid in the inner city as compared with suburban areas (that is, "core" areas and "ring" areas) within the same MSA and that similar concern has been expressed regarding rural areas within a State.

ProPAC recommended that these differences in hospital labor markets be reflected in the application of the area wage index used to adjust the prospective payment rates for actual variation in area wage levels. While ProPAC recommended that labor market area definitions be improved to better reflect hospital labor market areas, the report did not discuss how specific alternatives to the current MSA/non-MSA definitions might be established.

We have previously acknowledged in various **Federal Register** documents that the current MSA/non-MSA definitions may not adequately recognize widely varying hospital labor market conditions, especially among counties classified as rural. We have been looking into possible alternative classification systems that would better define hospital labor markets. The core-ring concept for splitting MSAs that is addressed in ProPAC's recommendation is one alternative that we have previously considered (see the January 3, 1984 final rule (49 FR 254)). In addition, we are studing other classification systems such as the Department of Commerce's Bureau of Economic Analysis (BEA) economic areas that are defined based on area ties to economic centers.

However, we believe that extensive research and study will be required before alternative labor market definitions are adopted. As with any classification system in which boundaries must be established, it is impossible to designate boundaries that will be completely satisfactory to all concerned. Therefore, we must be certain that any new classification system is based on objective criteria that will provide more equitable labor market area definitions than the current MSA/non-MSA classifications.

Comment: One commenter was in favor of our using the BEA economic areas to establish whether a hospital is located in an urban or rural area.

Response: Section 1886(d)(2)(D) of the Act defines an urban area as an area

within an MSA as designated by EOMB or within a similar area, as we recognized under the regulations (§ 405.460) establishing limits on total inpatient operating costs under section 1886(b) of the Act. We have begun preliminary analysis of the suitability of using BEA economic areas for area wage index classification purposes. However, more thorough analysis will have to be performed to determine whether these areas are more or less appropriate than MSAs for defining hospitals' labor market areas.

As we move closer to a national standardized amount for the prospective payment system, we are continuing to evaluate the necessity of establishing separate national urban and rural rates. In addition, Congress has requested a study on the feasibility and impact of eliminating or phasing out separate urban and rural classifications.

Comment: Commenters requested that an adjustment be provided for hospitals located in rural areas where the residents commute to more than one nearby MSA. Under current EOMB guidelines, a county is included in an MSA if a certain percentage of the county's resident population commutes to the MSA. However, the commenters point out that if the same percentage of residents of a county commute to more than one MSA, the county is not included in any MSA. The commenters believe that a county such as this should be designated as an urban county rather than rural and the wage index value assigned to it should be the value of the MSA to which the greatest number of persons commutes.

Response: As we noted above, for purposes of the prospective payment system, section 1886(d)(2)(D) of the Act defines an urban area as an area within an MSA as designated by EOMB or within a similar area, as recognized under the regulations (§ 405.460) establishing limits on total inpatient operating costs under section 1886(a) of the Act. The designation of a county as urban or rural is based on whether or not a particular location qualifies as an MSA or New England County Metropolitan Area (NECMA). The criteria for MSA or NECMA status are not within our control. EOMB determines which areas qualify as MSAs or NECMAs and the effective date of their qualification based on standards prepared by the Federal Committee on MSAs, which advises EOMB on metropolitan area definitions.

We are not aware of any criteria that are as objective as the MSA criteria are for use in determining whether a hospital is located in an urban or rural area. We do not believe it would be appropriate to establish criteria in our regulations that have been derived solely to allow a targeted hospital or group of hospitals to be classified as urban. On the contrary, we believe that the criteria we establish should have broad applicability and serve to delineate common characteristics that objectively define urban and rural areas.

Comment: A commenter indicated that hospitals located in the same MSA but not the same census division should all be assigned to the same census division.

Response: We addressed this situation in the August 31, 1984 final rule (49 FR 39738). Section 1886(d)(2) of the Act authorizes us to deem a hospital to be located in the region in which the largest number of hospitals in the same MSA are located or the largest number of discharges occur. We elected to assign a hospital in an MSA or NECMA that crosses two or more census divisions to the census division in which most of the MSA's or NECMA's hospitals are located (§ 412.62(f)(2)). These regulations were effective for cost reporting periods beginning on or after October 1, 1983. We believe that the current regulations address the problem of hospitals in the same MSA that are located in different census regions and do not plan to revise them.

C. Hospitals Serving Disproportionate Shares of Low Income or Medicare Patients (Recommendations 14 and 15)

ProPAC recommends that an adjustment be established for FY 1986 rates for hospitals that serve a disproportionate share of low income or Medicare patients or both and that a definition of these hospitals be established based on a broader concept of low income than simply percentage of Medicaid patients. However, ProPAC made no specific recommendation as to the basis for such an adjustment.

As required by section 2315(h) of Pub. L. 98–369, we have been working on the development of the definition. However, as discussed more thoroughly in the proposed rule (50 FR 24384), our research efforts have been hampered by the lack of data of sufficient quality to permit us to develop a definition with any degree of confidence.

Once we obtain accurate data, we will be able to turn our attention to analyzing whether, in fact, hospitals serving a significantly disproportionate number of low income or Part A Medicare patients experience higher Medicare costs per case due to the provision of care to these patients or whether these additional costs are accounted for by severity, inefficiency, or other factors. We will then determine whether these costs are already appropriately recognized in the prospective payment system or if additional payment adjustments should be made.

Comment: Numerous commenters expressed their belief that an adjustment should be provided to hospitals serving a disproportionate share of low income or Medicare Part A patients.

Response: As we explained in the proposed rule, we do not have conclusive evidence to date that warrants an adjustment for hospitals serving a significantly disproportionate share of low income or Medicare Part A patients. A disproportionate share adjustment must be firmly rooted in an analytical research model that accurately depicts the relationship between high proportion of low income patients and a hospital's average Medicare costs. Currently, no model exists.

The present methodology assumes that all hospitals serve an average proportion of low-income or Medicare Part A patients. Implementing a national adjustment would arbitrarily select one definition of a disproportionate share hospital and reward only those hospitals that conform to the arbitrary definition. The selection of hospitals and the magnitude of any adjustment are critical because the funds to pay for the significantly disproportionate share adjustment would likely come from lowering the standardized Federal rates to exclude from the base those costs associated with treating a disproportionate share of low income or Medicare Part A patients. If an analysis shows that hospitals with a high percentage of low-income or Medicare Part A patients are being underpaid, then hospitals with low levels of these types of patients must be overpaid. An arbitrary national adjustment would only create a new set of payment inequities among hospitals.

As mentioned in the proposed rule, we are continuing to review the feasibility of using Medicare patient origin data and census data on the aged with income below the poverty level to assess the impact of low-income Medicare patients on hospital costs. We are also continuing to investigate an alternative proxy for low income other than "percent Medicaid" that will be more reliable than the data we obtained from the Office of Civil Rights (OCR) survey. At this time, the relationship between Medicare costs and low income patients is not well understood even though research done by the Congressional Budget Office, ProPAC,

and HCFA indicates that hospitals with a high percentage of Medicaid patients tend to have higher average Medicare costs.

Recently, we have obtained survey data from the AHA on hospitals' Medicare and Medicaid utilization information. The AHA data base is also somewhat flawed because the data are self-reported on a voluntary basis and unaudited. In addition, data are missing for about 20 percent of the hospitals. Through analysis of this information on Medicare and Medicaid utilization, we will try to determine if hospitals that serve a significantly disproportionate share of low-income patients or Medicare Part A patients have different average Medicare inpatient costs due to the provision of care to these patients or if these additional costs are accounted for by severity, inefficiency, or other factors.

In addition, ProPAC recently compiled information that demonstrated the range of Medicaid coverage of the population below the poverty level in 1979. The data ranged from a high of 143 percent in Massachusetts to a low of 25 percent in Texas. These results lead us to question the assumption that percent of Medicaid utilization has a consistent relationship to low income. We recognize the importance of this issue and are committed to continuing the search for realistic policy options. Only with some further analysis will we be able to determine if inpatient costs associated with the treatment of low income patients are already appropriately recognized in the prospective payment system or if additional payment adjustments should be made.

VI. Summary of Changes

For the convenience of the reader, we are summarizing the changes we are making to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

A. Rate of Increase Limits

We are revising § 405.463 to—

- Provide that the applicable target rate percentage is the prospectively determined percentage, published by HCFA, based on the estimated market basket index for the calendar year adjusted by other factors as determined by the Secretary: and
- Delete the October 1, 1985 expiration date for the exemption from the rate of increase limit that is available to new hospitals.

B. Changes in the DRG Classification System

We are adding a new § 412.10 that describes the procedures we will use to revise the DRG classification system both annually and, on a very limited basis, during the Federal fiscal year.

In response to comments, we have revised our proposed § 412.10 to provide that any interim changes made because of a serious omission or inequity in the DRG classification system will be published as a final notice with comment period in the Federal Register. Changes made to incorporate a newly covered service or item will be issued through our administrative issuance system as we proposed. Both of these changes will be included in the next annual notice of changes to the DRG classification system, which we hope to publish early each year. We also added a provision describing ProPAC review of interim changes.

C. Exclusion of Alcohol/Drug Hospitals and Units

In §§ 421.23(c) and 412.32, we are changing the expiration of the qualifying date of the exclusion for alcohol/drug hospitals and units from October 1, 1985 to the end of the hospital's cost reporting period beginning before October 1, 1985. In response to comments, we have decided to extend the exclusion for one more year for those units and hospitals who currently qualify for an exclusion.

D. Review Activities

We are making changes in Subparts C and F of 42 CFR Part 412 to replace all references to PSROs and medical review entities with references to PROs because the PROs are now fully operational. In addition, we are deleting § 412.45, which describes how we monitor discharge rates under the prospective payment system.

E. Charges to Beneficiaries

We are adding a new § 405.308 that allows hospitals excluded from the prospective payment system because of their participation in a State reimbursement control system or demonstration project to change beneficiaries for custodial or medically unnecessary care after issuing the proper notices that are currently required in § 412.42(c) for prospective payment hospitals.

F. Payment for Cost Outliers

We are revising § 412.84 to delete the requirement that all cost outlier cases must be reviewed by the PRO before payment. However, these cases could be subject to prepayment review if the hospital demonstrates a pattern of inappropriate billing. The PRO will also review a sample of the claims that were not reviewed prior to payment. If, as a result of its postpayment review, the PRO determines that any services were noncovered, the outlier payment will be recovered from the hospital. We are also revising § 412.84 to allow hospitals to request cost outlier payment at the time they submit bills for payment, rather than waiting until after the intermediary has notified them of its determination on payment for the discharge.

G. Referral Centers

We have revised § 412.96 as follows:

- The title of pargraph (b) is changed to indicate that this paragraph is effective for cost reporting periods beginning on or after October 1, 1983.
- Paragraphs (c)(1) and (c)(2) are revised to provide that the criteria related to case-mix index and discharges for referral centers will be published in the proposed and final annual prospective payment rate notices.
- We added a new paragraph to describe the method we will use to calculate updated case-mix indexes each year.

H. Indirect Medical Education

We are revising § 412.118 effective for cost reporting periods beginning on or after October 1, 1984 as follows:

- Change the method used to determine the number of beds in a hospital for purposes of counting interns and residents.
- Delete the requirement of a quarterly report from hospitals on numbers of interns and residents and replace it with an annual report that counts by specialty the number of interns and residents on September 1 (with an additional count on April 15, 1985 for hospitals with cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985). In response to comments, we added a provision that requires the count to be made on the next business day after September 1 when that day falls on a weekend or Federal holiday.
- Delete the requirement of counting hours of interns and residents to determine full-time equivalents. Instead, all interns and residents assigned to the hospital on September 1 (or April 15, 1985, if applicable) will be counted as full-time except for those individuals splitting their time between prospective payment areas and one or more areas excluded from the prospective payment system or spending all their time in the excluded areas. In response to

comments, we have delayed until cost reporting periods beginning on or after October 1, 1985 implementation of our decision to no longer count interns and residents furnishing services to outpatients as full-time.

• Provide for intermediary review of hospital documentation to verify the hospital's intern and resident-to-bed ratio.

VII. Other Required Information

A. Effective Dates

The effective date of the final rule (including the addendum and appendix) is October 1, 1985. Changes to the regulations are effective as follows:

October 1, 1985

§§ 405.301 and 405.308—Charges to beneficiaries.

§ 405.463—Rate of increase limits.

§ 412.10—Changes to the DRG classification system.

§§ 412.23 and 412.32—Exclusion of alcohol/drug hospitals and units.

§§ 412.42, 412.44, 412.45, and 412.48—PRO medical review.

Effective With Discharges Occurring on or After October 1, 1985

§ 412.84—Payment for cost outliers.

Effective With Cost Reporting Periods Beginning on or After October 1, 1984

§ 412.118—The changes affecting the indirect medical education adjustment factor are all effective with cost reporting periods beginning on or after October 1, 1984 except that the provision under which interns' and residents' services to outpatients will no longer be counted for purposes of the adjustment factor is effective with cost reporting periods beginning on or after October 1, 1985.

Effective With Cost Reporting Periods Beginning on or After October 1, 1985

§ 412.76—Referral centers.

§ 412.118—Count of interns' and residents' services to outpatients.

B. Paperwork Reduction Act

Section 412.118 of this final rule contains information collection requirements that are subject to review by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals who wish to submit comments on the information collection requirements should direct those comments to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC, 20503, Attention: Fay Iudicello.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science Sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

C. Impact Analyses

The appendix to this final rule, which is printed immediately following the addendum to this final rule, sets forth our analyses of the projected impact and effect on small businesses of the changes that are set forth in this document.

42 CFR Chapter IV, Subchapter B is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart C is amended as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a)(2)(B), 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

2. The table of contents of Subpart C is amended by adding the title of a new § 405.308 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

Sec.
405.308 Limitations on charges to beneficiaries.

* * * * *

§ 405.301 [Amended].

3. Section 405.301 is amended by revising the citation "405.310" to read "405.308".

4. A new § 405.308 is added to read as follows:

§ 405.308 Limitation on charges to beneficiaries.

(a) *Prospective payment hospitals.* A hospital receiving payment under the prospective payment system for a covered hospital stay may charge a beneficiary for items and services excluded from coverage only as described in § 412.42 of this chapter.

(b) *Hospitals participating in State reimbursement control systems or demonstration projects.* A hospital receiving payment for a covered hospital stay under either a State reimbursement control system approved under 1886(c) of the Act or a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)) and that would otherwise be subject to the prospective payment system may charge a beneficiary for noncovered services as follows:

(1) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42 (c)(1) through (c)(4) are met; and

(2) For all other services in accordance with the applicable rules described in Part 489 of this chapter.

B. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services By Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1935x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.463 is amended by revising paragraphs (c)(3)(i) and (f)(1) to read as follows

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).* * * *

(3) *Target rate percentage.* (i) The applicable target rate percentage will be the prospectively determined percentage, published by HCFA, based on the estimated increase in the market basket index for the calendar year

adjusted by other factors as determined by the Secretary.

* * * * *

(f) *Exemptions*—(1) *New hospitals.* New hospitals that request and receive an exemption from HCFA are not subject to the rate of increase ceiling imposed under this section. For purposes of this section, a new hospital is a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years. This exemption expires at the end of the first cost reporting period beginning at least two years after the hospital accepts its first patient.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

B. The table of contents of Part 412 is amended by adding the title of a new § 412.10 to Subpart A and deleting the title of § 412.45 from Subpart C to read as follows:

Subpart A—General Provisions

Sec.

* * * * *

412.10 Changes in the DRG classification system.

* * * * *

C. A new § 412.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 412.10 Changes in the DRG classification system.

(a) *General rule.* HCFA issues changes in the DRG classification system in an annual notice. Except as specified in paragraphs (c) and (d) of this section, the DRG changes will be effective prospectively with discharges occurring on or after the same date the payment rates are effective.

(b) *Basis for changes in the DRG classification system.* All changes in the DRG classification system are made using the principles established for the DRG system. This means that cases are classified so each DRG is—

(1) Clinically coherent; and

(2) Embraces an acceptable range of resource consumption.

(c) *Interim coverage changes*—(1) *Criteria.* HCFA makes interim changes to the DRG classification system during the Federal fiscal year to incorporate items and services newly covered under Medicare.

(2) *Implementation and effective date.* HCFA issues interim coverage changes through its administrative issuance system and makes the change effective as soon as is administratively feasible.

(3) *Publication for comment.* HCFA publishes any change made under paragraph (c)(1) of this section in the next annual notice of changes to the DRG classification system published in accordance with paragraph (a) of this section.

(d) *Interim changes to correct omissions and inequities*—(1) *Criteria.* HCFA makes interim changes to the DRG classification system to correct a serious omission or inequity in the system only if failure to make the changes would have—

(i) A potentially substantial adverse impact on the health and safety of beneficiaries; or

(ii) A significant and unwarranted fiscal impact on hospitals or the Medicare program.

(2) *Publication and effective date.* HCFA publishes these changes in the **Federal Register** in a final notice with comment period with a prospective effective date. The change is also published for public information in the next annual notice of changes to the DRG classification system published in accordance with paragraph (a) of this section.

(e) *Review by ProPac.* Changes published annually in accordance with paragraph (a) of this section are subject to review and comment by ProPac upon publication. Interim changes to the DRG classification system that are made in accordance with paragraphs (c) and (d) of this section are subject to review by ProPac before implementation.

D. Subpart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System

1. In § 412.23, the introductory language in paragraph (c) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(c) *Alcohol/drug hospitals.* If an alcohol/drug hospital meets the following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1986, but no hospital is excluded for its cost reporting period beginning during Federal fiscal year 1986 unless it was excluded for its cost reporting period beginning during Federal fiscal year 1985:

* * * * *

2. In § 412.32, the introductory language is revised to read as follows:

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

If a distinct part alcohol/drug unit meets the following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1986, but no unit is excluded for its cost reporting period beginning during Federal fiscal year 1986 unless it was excluded for its cost reporting period beginning in Federal fiscal year 1985:

* * * * *

E. Subpart C is amended as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

1. In Subpart C, all occurrences of the phrase "medical review entity" are revised to read "PRO".

2. In § 412.42, the introductory language of paragraphs (c) and (c)(3) is reprinted for the convenience of the reader; paragraphs (c)(2) and (c)(3)(iv) are revised; the introductory language of paragraph (d) is reprinted for the convenience of the reader; and paragraphs (d)(3) and (d)(4) are revised to read as follows:

§ 412.42 Limitations on charges to beneficiaries.

* * * * *

(c) *Custodial care and medically unnecessary inpatient hospital care.* A hospital may charge a beneficiary for services excluded from coverage on the basis of § 405.310(g) of this chapter (custodial care) or § 405.310(k) of this chapter (medically unnecessary services) and furnished by the hospital after all of the following conditions have been met:

* * * * *

(2) The attending physician agrees with the hospital's determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the PRO. Concurrence by the PRO in the hospital's determination will serve in lieu of the physician's agreement.

(3) The hospital (acting directly or through its utilization review committee) notifies the beneficiary (or person acting on his or her behalf) in writing that—

* * * * *

(iv) The determination of the PRO made after the beneficiary received the purportedly noncovered services will be appealable by the hospital, the attending physician, or the beneficiary under the appeals procedures that apply to PRO determinations affecting Medicare part A payment; and

* * * * *

(d) *Medically unnecessary diagnostic and therapeutic services.* A hospital may charge a beneficiary for diagnostic procedures and studies, and therapeutic procedures and courses of treatment (for example, experimental procedures) that are excluded from coverage under § 405.310(k) of this chapter (medically unnecessary items and services), even though the beneficiary requires continued inpatient hospital care, if those services are furnished after the beneficiary (or the person acting on his or her behalf) has acknowledged in writing that the hospital (acting directly or through its utilization review committee and with the concurrence of the intermediary) has informed him or her as follows:

* * * * *

(3) If the beneficiary receives the services, e formal determination on the validity of the hospital's finding is made by the intermediary and, to the extent that the decision requires the exercise of medical judgment, the PRO.

(4) The determination is appealable by the hospital, the attending physician, or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment.

* * * * *

3. In § 412.44, the introductory language is revised to read as follows:

§ 412.44 Medical review requirements: Admissions and quality review.

Beginning on November 15, 1984, a hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

* * * * *

§ 412.45 [Removed]

4. Section 412.45 is removed.

5. Section 412.48(b) is revised to read as follows:

§ 412.48 Denial of payment as a result of admissions and quality review.

* * * * *

(b) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (a)(1) of this section, and liability is not waived in accordance with §§ 405.330 through 405.332 of this chapter, notice and appeals are provided under procedures established by HCFA to implement the provisions of section 1155 of the Act. Right to Hearing and Judicial Review.

* * * * *

F. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.82, the introductory language of paragraph (b) is revised to read as follows:

§ 412.82 Payment for extended length of stay cases (day outliers).

* * * * *

(b) The PRO must review and approve to the extent required by HCFA—

* * * * *

2. Section 412.84 is amended by revising paragraph (b); redesignating current paragraphs (c), (d), (e), and (f) as paragraphs (f), (g), (h), and (i) respectively; adding new paragraphs (c), (d), and (e); revising the introductory language of newly redesignated paragraph (f); and revising newly redesignated paragraph (i) as follows:

§ 412.84 Payment for extraordinarily high cost cases (cost outliers).

* * * * *

(b) The hospital must request additional payment—

(1) With initial submission of the bill; or

(2) Within 60 days of receipt of the intermediary's initial determination.

(c) Except as specified in paragraph (e) of this section, an additional payment for a cost outlier case is made prior to medical review.

(d) As described in paragraph (f) of this section, the PRO reviews a sample of cost outlier cases after payment. The charges for any services identified as noncovered through this review will be denied and any outlier payment made for these services will be recovered, as appropriate, after a determination as to the provider's liability has been made.

(e) If the PRO finds a pattern of inappropriate utilization by a hospital, all cost outlier cases from that hospital are subject to medical review, and this review may be conducted prior to payment until the PRO determines that appropriate corrective actions have been taken.

(f) The PRO reviews the cost outlier cases, using the medical records and itemized charges, to verify the following:

* * * * *

(i) The additional payment amount will be derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in § 412.82(c).

G. In Subpart G § 412.96 is amended by revising the title of paragraph (b), the title and the introductory language of paragraph (c), paragraphs (c)(1), (c)(2), and (f), and adding a new paragraph (g) to read as follows:

Subpart G—Special Treatment of Certain Facilities

§ 412.96 Special treatment: Referral centers.

* * * * *

(b) *Criteria for cost reporting periods beginning on or after October 1, 1983.*

* * * * *

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1985.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located in a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.* The hospital's case-mix index for the Federal fiscal year that ended prior to the beginning of the cost reporting period for which the hospital is seeking referral center status must be at least equal to the national or median urban regional case-mix index value set forth in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section.

(2) *Number of discharges.* For the hospital's most recently completed cost reporting period, its number of discharges (excluding discharges from subprovider and newborn units) is at least equal to the number of discharges under one of the two criteria set forth in each year's annual notice of prospective payment rates published under § 412.8(b).

* * * * *

(f) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital continues to meet the criteria set forth in paragraphs (b) or (c)

of this section. If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, HCFA will discontinue the adjustment beginning on the first day of the hospital's next cost reporting period.

(g) *Methodology for calculating case-mix index criteria.* HCFA calculates the national and regional case-mix index value criteria as described in paragraph (g)(1) through (g)(5) of this section.

(1) *National criterion.* HCFA calculates a national case-mix index value for all hospitals subject to the prospective payment system and compares it to the 1981 national average case-mix index value of 1.00. The percentage of change between those two figures is used to update the 1981 national case-mix index criterion of 1.03.

(2) *Regional criterion.* HCFA calculates the median urban case-mix index values for each census region by updating the 1981 regional criterion using the percentage of change that is calculated under paragraph (g)(1) of this section.

(3) *Source of data.* In making the calculations described in paragraphs (g)(1) and (g)(2) of this section, HCFA uses all inpatient hospital bills received for discharges through the midpoint of the Federal fiscal year before the year in which the criteria will be effective.

(4) *Effective date.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are used to determine if a hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(5) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial HCFA review of a referral center's status as described in paragraph (f) of this section, the referral center's case-mix index value for Federal fiscal year is evaluated using the updated case-mix value criteria published in the subsequent Federal fiscal year's notice of prospective payment rates.

H. In Subpart H, § 412.118, the introductory language of the section is revised; the introductory language of paragraph (a) is reprinted for the convenience of the reader; paragraph (a)(1) is revised; current paragraphs (b) through (e) are redesignated as paragraphs (c) through (f) respectively; a new paragraph (b) is added; the introductory language of newly redesignated paragraphs (d) and (e) is reprinted for the convenience of the reader; newly redesignated paragraphs (d)(3), (e)(2), (e)(3), (e)(4), and (f) are revised; and a new paragraph (g) is added to read as follows:

Subpart H—Payments to Hospitals under the Prospective Payment System

§ 412.118 Determination of indirect medical education costs.

For cost reporting periods beginning on or after October 1, 1984, to determine the indirect medical education costs, HCFA uses the following procedures:

(a) *Basic data.* HCFA determines for each hospital its—

(1) Ratio of full-time equivalent interns and residents to number of beds (as determined in paragraph (b) of this section), excluding those interns and residents in anesthesiology who are employed to replace anesthetists; and

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds assigned to newborns, custodial care, and excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

* * * * *

(d) *Determination of payment amount.* Each hospital's indirect medical education payment will be determined by multiplying the following three factors:

* * * * *

(3) The education adjustment factor determined under paragraph (c) of this section.

(e) *Count of interns and residents.* In order to have interns and residents included in the count under paragraph (a)(1) of this section, the following requirements must be met:

* * * * *

(2) The hospital must submit an annual report to its fiscal intermediary. The report must include the following information:

(i) A listing, by specialty, of all interns and residents assigned to the hospital and providing services to the hospital on September 1 of that year. If September 1 falls on a weekend or a Federal holiday, the next business day is used for purposes of the count of interns and residents. For cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, the hospital must also report this information for April 15, 1985.

(ii) The social security number of each intern and resident.

(iii) The hospital unit or department to which each intern and resident is assigned on the day of the count.

(3) No intern or resident will be counted as more than one full-time employee on the date counted, regardless of the number of hospitals in which he or she is providing services.

(4) Fiscal intermediaries must verify the correct count of interns and residents and may review the hospital's entire cost reporting period.

(f) *Limits on count of interns and residents.* (1) Interns and residents who are assigned to a freestanding family practice center or an excluded distinct part hospital unit on the day that the count of interns and residents (as described in paragraph (e)(2)(i)) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day the count is made is used to determine the indirect medical education adjustment.

(2) For cost reporting periods beginning on or after October 1, 1985, interns and residents who are assigned to the outpatient department of the hospital on the day the count is made are subject to the provisions of paragraph (f)(1) of this section.

(3) For cost reporting periods beginning on or after October 1, 1985, the number of interns and residents assigned to ancillary departments of the hospital will be apportioned between inpatient and outpatient settings based on the ratio of each ancillary department's inpatient and outpatient charges to total department charges, respectively. In determining the indirect medical education adjustment, only that percentage attributable to furnishing inpatient services will be included in the computation of the intern and resident-to-bed ratio.

(g) *Intermediary review.* Based on its review of a hospital's documentation concerning the hospital's count of interns and residents under this section, the intermediary may adjust the intern and resident-to-bed ratio for purposes of the final indirect medical education payment.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance)

Dated: August 2, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 27, 1985.

Margaret M. Heckler,

Secretary.

Editorial Note: The following addendum and appendix will not appear in the Code of Federal Regulations.

ADDENDUM—SCHEDULE OF STANDARDIZED AMOUNTS EFFECTIVE WITH DISCHARGES ON OR AFTER OCTOBER 1, 1985, AND UPDATE FACTORS AND TARGET RATE PERCENTAGES EFFECTIVE WITH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1985

I. Summary and Background

In this addendum to the final rule we are making changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the third and final year of the transition period of the prospective payment system. In addition, the addendum sets forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

Under the prospective payment system, for hospital cost reporting periods beginning October 1, 1985 through September 30, 1986, except for sole community hospitals, each hospital's payment per discharge will be the sum of a Federal portion that is 75 percent of the Federal rate and a hospital-specific portion that is 25 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Social Security Act (the Act)). Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate. We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During FY 1986, the Federal rates will be comprised of a blend of 50 percent of the national rate and 50 percent of the appropriate regional rate, as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, FY 1984), the Federal rates were comprised solely of the regional rate. During the second year, FY 1985, the Federal rates are comprised of a blend of 25 percent of the national rate and 75 percent of the regional rate.

As discussed in section II below, we are making changes (proposed on June 10, 1985, 50 FR 24366) in the determination of the prospective payment rates. The method for determining these rates was published in an interim final rule on September 1, 1983 (48 FR 39752) and modified in final rules published on January 3, 1984 (49 FR 234) and August 31, 1984 (49 FR 34728). The changes, to be applied prospectively, affect the calculation of both the Federal rates (adjusted standardized amounts) and the hospital-specific rates that are used to determine transition period prospective payment rates. As part of these changes, we are incorporating adjustments for the updated market basket index and additional adjustments as authorized under section 1886(e)(4) of the Act.

We are also including in the discussion below a summary of the comments we received on the addendum of the June 10, 1985 notice of proposed rulemaking (NPRM or proposed rule) and our responses to the comments.

Section III, below, sets forth our changes in determining the rate-of-increase limits for hospitals excluded from the prospective payment system. Section IV contains the tables referred to throughout the preamble to the final rule and in this addendum.

II. Changes To Prospective Payment Rates and DRG Weighting Factors for FY 1986

The basic methodology for determining Federal regional and national prospective payment rates is set forth at § 412.63, and for hospital-specific rates is set forth in § 412.73. Below, we discuss the manner in which we are making changes to some of the factors and methodology used for determining the prospective payment rates. The Federal rate changes, the revised wage index, and the DRG weights will be effective with discharges occurring on or after October 1, 1985. Updated hospital-specific rates will be effective for hospital cost reporting periods beginning on or after October 1, 1985.

In summary, we are establishing the FY 1986 Federal rates (that is, the standardized amounts set forth in Table 1, below) by:

- Restandardizing the base year cost data to reflect adoption of the survey-based gross wage index (described in section II.A.1.);
- Grouping the standardized amounts by urban/rural averages for the nine census regions and the nation, reflecting the most recent geographic designations (described in section II.A.2.);
- Updating the standardized amounts by zero percent, after considering—
  - —Certain factors that resulted in payment rates for FY 1985 that were overstated by 7.5 percent;
  - —The forecasted FY 1986 market basket increase of +4.27 percent; and
  - —A policy target adjustment factor of −1.5 percent (described in section II.A.3.);
  - —The adjustment factor (+.31 percent) for Part B costs and FICA taxes (described in section II.A.4.); and
- Applying the same adjustment factors for nonphysician anesthetist costs and outlier payments as were used for FY 1985 (described in section II.A.4.).

Further, for cost reporting periods beginning in FY 1986, we are not increasing either the hospital-specific rates for hospitals under the prospective payment system, or the rate-of-increase limits for hospitals excluded from the prospective payment system.

Although we believe the standardized amounts for FY 1985 were so overstated that a significant reduction could be justified, we are not reducing them for FY 1986. Rather, we are maintaining them at the same level as the FY 1985 payment rates. Thus, the amounts in Table 1 differ from the FY 1985 standardized amounts only as a result of restandardization to reflect the new wage index, as well as changes in MSA area designations announced by EOMB since September 30, 1984. In section II.A.3. below, we discuss our reasons for maintaining the FY 1986 Federal rates at the FY 1985 level.

The new DRG weights and outlier criteria are included in Table 5 of section IV, below.

Comment: Several commenters requested that special adjustments be made to the average standardized amounts for the costs of uncompensated care, labor room days, and malpractice insurance.

Response: Section 1886(d) of the Act requires that the prospective payment rates serve as total Medicare payment for inpatient operating costs of each discharge for all items and services furnished other than physicians' services. Operating costs are defined as all routine operating costs, ancillary service operating costs, and special care unit costs. Uncompensated care represents a loss of revenue and is not an operating cost. However, the operating costs associated with uncompensated care, labor room days, and malpractice insurance that are attributable to services furnished to Medicare patients, are already a part of inpatient operating costs and an

appropriate payment is already made for these costs under the prospective payment system.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base Year Costs Per Case Used in Calculation of Federal Rates

Section 1886(d)(2)(A) of the Act requires the establishment of base year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base year cost data are established and how they are used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act requires that the updated base year per discharge costs be standardized in order to remove from the cost data the effects of certain causes of variation in cost among hospitals. These include case-mix, wage levels, cost of living, and indirect medical education costs. We have decided to restandardize the base year costs to reflect the survey-based wage index.

As stated in the proposed rule (50 FR 24390), we do not believe that section 1886(d) of the Act contemplates rebasing the standardized amounts. Rather, it directs that the rates be updated annually. However, there has been much discussion concerning the desirability of rebasing the standardized amounts so that they are more reflective of hospital behavior under the prospective payment system. There has been concern that changes in hospital behavior, such as shorter lengths of stay and shifts of services to the outpatient setting, are difficult to quantify as part of the annual update because of the limited amount of data available to estimate the effects of these factors. Since rebasing the standardized amounts would automatically reflect changes in hospital behavior under the prospective payment system, it may be appropriate to consider such rebasing in the future.

a. *Adjustments for Variation in Hospital Wage Levels.* Section 1886(d)(2)(C)(ii) of the Act requires that the updated amounts be standardized by adjusting for variations among hospitals in the average area hospital wage level. Therefore, the updated average cost per discharge is divided into labor-related and nonlabor-related portions. We established labor and nonlabor portions, based on the labor and nonlabor components of the hospital market basket, and standardized the labor portion of the FY 1984 and FY 1985 standardized amounts using the Bureau of Labor Statistics' (BLS) area wage index. However, adoption of a new wage index (discussed in section III of the preamble of this final rule) requires us to restandardize the base year costs used to calculate the standardized amounts. Therefore, we have removed the effect of the previous standardization for each hospital's BLS wage index by multiplying each hospital's average cost per discharge value by the old index and by restandardizing the amounts by dividing that result by the survey-based gross wage index.

The comments and responses on the adoption of a new wage index are located in section III of the preamble to this final rule.

b. *Variations in Case Mix Among Hospitals.* Section 1886(d)(2)(C)(iii) of the Act requires that the updated amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768–39771). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a, section VII of the addendum to the September 1, 1983 interim final rule (48 FR 39847–39870), contains the case-mix index values used for this purpose for the FYs 1984 and 1985 rates.

Because we are using new charge-based DRG weights for discharges occurring in FY 1986, we considered calculating new case-mix indexes based on 1981 charge data, and using these indexes to restandardize the base year costs used to determine the prospective payment rates. This would be technically the most accurate method for restandardizing the 1981 cost data. However, we found that restandardizing with 1981 charge-based case-mix index values would have a negligible effect on the standardized amounts. Therefore, we are continuing to standardize for case mix using 1981 cost data, and we have decided not to restandardize with 1981 charge-based data.

Comment: One commenter suggested that we consider restandardizing the Federal payment rates using 1981 charge-based (rather than cost-based) case-mix indexes. Because the charge data are slightly less compressed than the cost data, the commenter argued that failure to restandardize could have the potential outcome of paying hospitals with high case-mix indexes too much and hospitals with low case-mix indexes too little.

Response: We recognized this point in the NPRM (50 FR 24391), but argued that the differences in the Federal payment rates are small and the resulting payment differences are negligible. We would like to note further that there are technical disadvantages to restandardizing the rates for the use of charge-based relative weights. In particular, the charge-based case-mix indexes would incorporate all the limitations of the MEDPAR data that are inherent in the cost-based case-mix indexes currently used in the standardization. In addition, the charge-based case-mix indexes that we have calculated are based on only the 358 DRGs for which the 1981 MEDPAR data contain enough cases to calculate a reliable relative weight. We do not have charge-based weights for the original set of 109 low volume DRGs. Finally, restandardization of the rates with charge-based case-mix indexes may reduce total payments because hospitals with high case-mix indexes account for a disproportionately large percentage of total Medicare cases.

c. *Indirect Medical Education Costs.*—Section 1886(d)(2)(C)(i) of the Act requires that the updated amounts be standardized for indirect medical education costs. Therefore, in establishing the standardized amounts used to determine the FY 1984 and FY 1985 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation and case-mix, we divided each cost by 1.0 plus the product of double the education adjustment factor (5.795 percent, which, when doubled, yields 11.59 percent) and the individual hospital's adjusted intern and resident-to-bed ratio. We determined that adjusted ratio by dividing the hospital's number of full-time equivalent interns and residents for the cost reporting period by the hospital's bed size determined at the beginning of the data base period to obtain the hospital's intern and resident-to-bed ratio, and dividing that ratio by 0.1.

We are not revising the education factor, because we do not have the latest intern and resident counts needed to rerun the regression. Therefore, we cannot restandardize the updated amounts to reflect the latest intern and resident-to-bed ratios. In addition, we do not believe that the indirect medical education factor would necessarily

change even if the data were available. That factor is based on considering interns and residents that work 35 or more hours per week as full-time, and those that work less than 35 hours as half-time. Even if certain interns and residents worked some hours furnishing services to out outpatients, they probably would have still spent 35 or more hours furnishing services to inpatients. Therefore, since the count of interns and residents in 1981 almost certainly would not have changed significantly had outpatient time been eliminated, the indirect medical education factor is unlikely to have changed. We will, however, reestimate the relationship between costs and teaching activity in the future once data become available.

The comments and responses on the calculation of indirect medical education costs are located in section IV.F. of the preamble to this final rule.

d. *Cost-of-Living Factor for Alaska and Hawaii.* Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The higher cost of labor is accounted for in the wage index adjustments discussed above. However, the higher cost-of-living in these States also affects the cost of nonlabor items (for example, supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. The factors used for this adjustment have not changed from FY 1985; therefore, we are not restandardizing the base-year cost data for cost-of-living adjustments. We note that some of the adjustment factors were incorrect in the NPRM. The table below presents the most recent (FY 1985) cost-of-living adjustment factors.

We received no comments on this issue.

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.15
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.125

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts per discharge must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation.

For FY 1986 the Federal rates will be comprised of 50 percent of the national rate and 50 percent of the regional rate (section 1886(d)(1)(D) of the Act). Therefore, Table 1 contains 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related and nonlabor-related portions). The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural groups include hospitals from all urban or rural geographic areas, respectively.

On June 27, 1985, EOMB announced, effective June 30, 1985, revised listings of the Metropolitan Statistical Area (MSA) designations that are used in calculating the standardized amounts. We note that under the law *Making Continuing Appropriations for FY 1985,* (Title I of Pub. L. 98–473), enacted October 12, 1984, the designation of the St. Louis MSA was also changed. As stated in the January 3, 1984 final rule (49 FR 253), such changes in designation will not be recognized in the prospective payment rates until the beginning of each new Federal fiscal year following the announced changes. The revised wage index (as well as the standardized amounts) included in this final rule incorporates this change, as well as those effective June 30, 1985, which will be effective October 1, 1985 for prospective payment purposes. Note that such changes in the MSA designations account for modest changes in the nonlabor portions, as well as the labor portions, of the standardized amounts.

3. Updating the Average Standardized Amounts

a. *Legal Requirements.* In accordance with section 1886(d)(3)(A) of the Act, we are adjusting the urban and rural average standardized amounts using the applicable percentage as determined by the Secretary in accordance with section 1886(e)(4) of the Act. That section reads as follows:

(4) Taking into consideration the recommendations of the Commission [that is, the Prospective Payment Assessment Commission, or ProPAC], the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary:

shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Section 1886(b) of the Act sets forth the requirements under which a rate of increase limit is established for the inpatient operating costs of hospitals excluded from the prospective payment system. Under this section, a target amount is determined annually for each hospital cost reporting period, based on each hospital's base year cost per case, updated by an "applicable percentage increase."

This "applicable percentage increase" is defined in section 1886(b)(3)(B) as:

one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

We have used the hospital market basket index as the measure of the cost of goods and services for determining both prospective payment rates and the target amounts applicable to hospitals and units excluded from the prospective payment system. For FY 1986 and subsequent fiscal years, section 1886(e)(4) of the Act requires that the

determination of a percentage change, considering at least the factors set forth in that section and section 1886(e)(2) of the Act, *will substitute for* the "applicable percentage increase" that would otherwise apply as it did in FY 1984 and FY 1985. However, section 1886(b)(3)(B) of the Act specifies that for FY 1986, the percentage determined under section 1886(e)(4) may not exceed the applicable percentage increase that would otherwise be determined for that period. (Note that, under the statute, from FY 1986 on, the percentage determined by the Secretary under section 1886(e)(4) will be applied to *both* the prospective payment rates and the rate-of-increase limits applicable to hospitals and units excluded from the prospective payment system. Although the statute is not explicit on using the same percentage, we believe that the update factor is to be the same for both classes of hospitals. Section 1886(e)(2) of the Act requires ProPAC to make recommendations on the "appropriate percentage change [singular] which should be affected for hospital inpatient discharges under subsections (b) [non-prospective payment system hospitals] and (d) [prospective payment system hospitals] . . . ." Similarly, section 1886(e)(3) of the Act refers to "an" appropriate change factor and section 1886(e)(4) of the Act to "the percentage change.")

Comment: Many commenters stated that we are overstepping our authority by providing for a zero percent increase in the FY 1986 prospective payment rates from the FY 1985 levels. They stated that we have circumvented the legislative prerogatives of Congress by administratively setting Medicare prospective payments for FY 1986 at the FY 1985 levels in order to reduce the Federal budget deficit, and that we do not have the authority to make those budget decisions.

Response: We believe that our proposal to hold the FY 1986 prospective payment rates at FY 1985 levels is not only analytically defensible and supportable, but also fully complies with statutory requirements. Our decision not to inflate the FY 1986 prospective payment rates was made with explicit regard to the law.

Sections 1886(e) (2) and (4) of the Act specify the factors that ProPAC and the Secretary must consider in making an appropriate update determination. These factors include, but are not limited to, the following:

- Changes in the cost of goods and services that hospitals purchase (that is, market basket inflation or deflation).
- Hospital productivity.
- Technological and scientific advances.
- Quality of health care provided in hospitals.
- Long-term cost effectiveness in the provision of inpatient services.

Each of these factors, together with ProPAC's recommendations, was given careful consideration in the development of the proposed rule and this final rule as required under sections 1886(e) (2) and (4) of the Act.

In addition, section 1886(b)(3)(B) of the Act provides the Secretary authority to establish a rate of increase not to exceed the annual rate of increase in the hospital market basket plus one-quarter of one percentage point. While the law specifies the upper limit that could be used to establish the prospective payment rates, it neither requires that the ceiling rate be implemented nor prohibits the establishment of lower rates.

We considered the ramifications of not inflating the FY 1985 prospective payment rates. As explained below, we could have justified a reduction of 4.42 percent. We believe that sections 1886(e) (2) and (4) of the Act provide the Secretary sufficient authority to maintain FY 1986 prospective payment rates at the FY 1985 levels. According to section 1886(e)(4), the Secretary has the discretionary authority to determine the appropriate "percentage change" in the payment rates beginning with FY 1986. As part of this authority, the Department is responsible for ensuring that the Medicare Trust Funds are not overpaying for services provided to Medicare beneficiaries. Therefore, as further justified below, a zero percent increase in the prospective payment rates for FY 1986 is appropriate.

Comment: A number of commenters stated that nothing in the statute authorizes the Secretary to adjust the prior year's rates. They stated that the law authorizes the Secretary to "update previous standardized amounts," not to recalculate them.

Response: We believe that section 1886(d)(3)(A) of the Act gives the Secretary authority to consider the appropriateness of the prior year's standardized amounts as part of the update of the FY 1986 payment rates. This section states that the standardized amounts for fiscal years subsequent to FY 1985 are to be "adjusted in accordance with" the Secretary's final determination of the "percentage change" under section 1886(e)(4) of the Act. In addition, section 1886(d)(3)(A) of the Act specifically authorizes the Secretary to adjust the standardized amounts to reflect the latest case-mix data.

We believe that, in providing discretionary authority to adjust the standardized amounts, Congress intended that, rather than merely to update the rates mechanically, we should evaluate the appropriateness of the current payment levels. If we were to update the previous standardized amounts without consideration for how much they are overstated, as the commenters suggest, this would guarantee a windfall to hospitals that clearly Congress could not have intended as meeting the "amounts necessary for the efficient and effective delivery" of medically needed health care. In this connection, Congress also prescribed specific factors to be considered by ProPAC in making its recommendation on the "percentage change" for FY 1986 and beyond. In commenting on the proposed rule, ProPAC agreed that it was reasonable to consider the appropriateness of current payment levels in developing an update factor. While ProPAC may have disagreed with the extent of our adjustments to the prior years' rates, it supported the nature of these adjustments. A discussion of ProPAC's comments concerning the update factor is included elsewhere in this section.

Comment: A few commenters stated that we are required by law to increase the payment rates for FY 1986. They state that sections 1886(d)(3)(A) and 1886(e)(4) of the Act, which address the update of the previous years' standardized amounts, specifically refer to the "percentage increase" and, therefore, preclude us from not increasing the payment rates.

Response: We disagree with this interpretation. Section 1886(d)(3)(A) of the Act, in referring to the "percentage increase", is addressing the FY 1985 update and not subsequent updates. In addition, for FY 1986 and subsequent fiscal years, section 1886(e)(4) of the Act requires that the determination of a percentage change, considering at least the factors set forth in that section and section 1886(e)(2) of the Act, *will substitute for* the "applicable percentage increase" that would otherwise apply as it did in FY 1984 and FY 1985. We believe that this change in terminology clearly implies that a factor other than an increase may be applied for updates beginning with FY 1986.

b. *Factors Considered in Determining the Proposed FY 1986 Update.* Based on the legal requirements for establishing the FY 1986 update factor, we had to consider at least the following factors in addition to the hospital market basket index: hospital productivity, technological and scientific advances,

quality of care, cost-effectiveness, and case-mix data. In addition, we considered prior years' experience with the prospective payment system.

Since the standardized amounts for FY 1985 are used as the basis for the determination of rates for later years, the level of the FY 1985 standardized amounts must be corrected for any experience that developed since they were published. We believe that it is necessary, each year, to review the appropriateness of the level of the previous year's prospective payment rates for providing reasonable payment for inpatient hospital services furnished to beneficiaries. Further, we think this review must include assessment of whether the previous year's prospective payment rates have established adequate incentives for the efficient and effective delivery of needed care.

In addition to this general consideration, the FY 1985 adjusted average standardized amounts (Federal rates) were required by law to be adjusted to achieve budget neutrality; that is, to ensure that aggregate payments for the operating costs of inpatient hospital services would be neither more nor less than we estimated would have been paid under prior legislation for the costs of the same services. (The technical explanation of how this adjustment was made was published in the August 31, 1984 final rule (49 FR 34791).) These budget neutrality-adjusted rates for FY 1985 are then to be used as the basis for the determination of rates for later years.

Our FY 1985 budget neutrality adjustment factors were based on data and assumptions that resulted in standardized amounts that were higher than necessary to achieve budget neutrality. Therefore, we have updated the FY 1985 standardized amounts using a factor that takes into account the overstatement of the FY 1985 amounts to ensure that accuracy of the FY 1986 standardized amounts. To this end, we have identified several factors, discussed in section II.A.3.c., below, that contributed to the overstatement of the FY 1985 standardized amounts. We have determined an appropriate percent value for each of them, and have combined them into a proposed composite correction factor for FY 1986 that equals −7.5 percent.

In addition, we have developed factors representing productivity, technological advances, and the elimination of ineffective practice patterns, which are necessary to ensure the cost-effective delivery of care. Each of these factors interacts with the others, to some extent, and has an impact on the quality of care. Making conservative assumptions, we have determined an appropriate percent value for each of these factors, taking into consideration their potential effect on quality. We have combined these values into a composite policy target adjustment factor, as discussed in section II.A.3.e., below. For FY 1986, this factor equals −1.5 percent.

The Secretary is required under section 1886(e)(4) of the Act to make those adjustments in establishing the update factor that are "... necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality." Establishing FY 1986 prospective payment rates based on FY 1985 rates that have been demonstrated to be overstated, clearly would not comport with the statutory requirement that the rates represent payment for efficiently delivered care.

Since the forecasted hospital market basket increase for FY 1986 is +4.27 percent, and the adjustment for Part B costs and FICA taxes is +.31 percent, it is clear that there is a potential justification of a −4.42 percent decrease in the FY 1986 standardized amounts as compared to those for FY 1985 as described below:

	Percent
Forecasted market basket increase	+4.27
Part B costs and FICA taxes	+.31
Composite correction factor	−7.5
Composite policy target adjustment factor	−1.5

However, for the reasons discussed in section II.A.3.f., below, we have decided that such a decrease is undesirable. Therefore, we are maintaining the FY 1986 standardized amounts at the same average level as FY 1985, in effect applying a zero percent update factor.

Comment: Many commenters stated that our framework for determining the update factor is not justified and is contrary to the recommendations of ProPAC. Other commenters stated that we had completely ignored ProPAC's recommendations.

Response: We disagree with these commenters. Our framework for developing an update factor is very similar to ProPAC's. For example, ProPAC recommended similar adjustments for case-mix increases and market basket forecast errors. While the extent of these adjustments and our methodology for making them may have differed somewhat from those recommended by ProPAC, the nature of the adjustments is very similar. In fact, in commenting on the proposed rule and notice of rates, ProPAC stated its belief that we had constructively considered its recommendations. Along with its comments, ProPAC submitted the following table comparing the components of our updating factor for the FY 1986 rates with its recommendations. We have added a third column to reflect our most recent information. We believe this table demonstrates that, in principle, our framework for updating the FY 1986 rates is very similar to ProPAC's.

BILLING CODE 4120-01-M

ESTIMATED INCREASE IN PROSPECTIVE PAYMENT AMOUNTS FOR FY 1986: COMPARISON OF NPRM TO PROPAC RECOMMENDATION (percentage change)

	NPRM	ProPAC	Final Rule
FY 1986 market basket increase	4.85	4.85	4.27
Previous market basket forecast errors	-1.30	-0.57[a]	-1.20
Policy Target Adjustment Factor or Discretionary Adjustment Factor	-1.50	-1.00	-1.50
Components:			
Productivity	-1.0	-1.5 to -2.0	-1.0
Cost-effective technologies	1.5	1.5 to 2.0	1.5
Product change		-1.0	
Cost-ineffective practice patterns	-2.0		-2.0
SUBTOTAL (market basket plus adjustment factor)	2.05	3.28	1.57
Observed change in case mix	-4.90 (1981-1985)	-2.00[b] (1985 only)	-6.30 (1981-1985)
Part B costs and FICA taxes	0	0	.31
Case-mix changes within DRGs during FY 1985	0	0.80[c]	0
TOTAL	-2.85	2.08	-4.42
PROPOSED INCREASE	0	2.08	0

[a] The Commission recommended that errors in forecasting internal price proxies (the wage component of the market basket) should not be corrected. The estimate of -0.57% (44% of -1.3%) assumes that the magnitude of the forecast errors was about the same for wages as for other price change measures.

[b] ProPAC estimate based on the findings of the Rand study cited in the proposed rule. The 2% increase in observed case mix for fiscal year 1985 is based on RAND's estimate of a 0.5% quarterly increase in case mix after hospitals have switched to the prospective payment system.

[c] The 0.8% increase estimated here for fiscal year 1985 takes into account historical trends in real case-mix change, recent shifts to outpatient treatment, and within-DRG case-mix changes that would not show up in the case-mix index.

BILLING CODE 4120-01-C

The extent of the case-mix adjustment continues to be the most significant area of difference. ProPAC believes we should adjust only for case-mix increases occurring in FY 1985. As explained in the NPRM (50 FR 24393), we believe the adjustment should also reflect previously unaccounted for changes in case mix prior to FY 1985. Otherwise, the standardized amounts, which serve as the basis for determining future prospective payment rates, would be overstated. The basis for ProPAC's recommendation is unclear since failure to also adjust for case-mix increases prior to FY 1985 would result in perpetuating overstated standardized amounts. In order to ensure an appropriate payment base for updating future rates, we believe it is essential to adjust for the entire overstated amount.

ProPAC's comments on other components of the update factor, such as adjusting for real case-mix increases, are discussed along with other comments received on these issues.

Comment: Several commenters maintained that our proposed 4.9 percent reduction in the FY 1986 standardized payment rates to correct for the understatement in the FY 1984 and FY 1985 budget neutrality adjustments attributable to case-mix increases beyond those recognized in the 1981 MEDPAR file was in violation of section 1886(e)(1) of the Act. These commenters pointed out that the budget neutrality provisions in section 1886(e)(1) only apply to the determination of the FY 1984 and FY 1985 prospective payment rates. None of the factors set forth in the law explicitly provide for computing the FY 1986 standardized amounts to include budget neutrality. Therefore, these commenters claimed that applying the proposed 4.9 percent reduction to correct the amount of the budget neutrality offsets for FY 1984 and FY 1985 due to an underestimation of the rate of increase in case mix is inappropriate. The commenters argued that the FY 1986 prospective payment rates should be calculated based on the FY 1984 and FY 1985 standardized amounts *prior* to the adjustment of these amounts for budget neutrality.

Response: Section 1886(e)(1) of the Act requires that the prospective payment system result in aggregate program reimbursement equal to "what would have been payable" under the limits enacted under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) during FYs 1984 and 1985. That is, for FY 1984 and FY 1985, the prospective payment system should be "budget neutral." Section 1886(e)(1)(A) states in part, "The Secretary shall provide for such proportional adjustment . . . as may be necessary to assure that—

(i) The aggregate payment amounts otherwise provided . . . for that fiscal year . . . are not greater or less than—

(ii) The target percentage . . . of the payment amounts which would have been payable . . . for that fiscal year . . . under the law as in effect before the date of enactment of the Social Security Amendments of 1983."

In order that total estimated payments under the prospective payment system would equal "what would have been payable" under prior law, we applied an adjustment factor to both the Federal and hospital-specific portion of each hospital's blended prospective payment rate at the time the rate was determined. The budget neutrality adjustments for both FY 1984 and FY 1985 were both offsets, although an add-on could have been required to ensure compliance with law. Our preliminary determination of the case-mix adjustment for FY 1984 was 3.38 percent. We used an additional 1.05 percent for the FY 1985 rates. The portions of the budget neutrality offsets for these Federal fiscal years solely attributable to the estimated rate of increase in case mix were 3.38 percent and 1.05 percent, respectively.

The commenter's position is that a literal reading of the law precludes *any* reconsideration of the budget neutrality adjustment factors incorporated in the FY 1984 and FY 1985 standardized amounts in establishing payment rates for FY 1986. We disagree. The estimate of the rate of change in case mix affects the accuracy of the initially computed budget neutrality adjustments. Since our latest measure is more accurate than the earlier measurements used to compute the previously published factors because of the availability of more complete and later data, its use should result in a more precise approximation of the amounts that should have been paid in FY 1984 and FY 1985, if we had been able to achieve budget neutrality accurately. There is no reason to believe that Congress would have intended that the hospital industry receive a windfall as a result of these misestimations. Because the creation of overpayments and underpayments for FY 1984 and FY 1985 through retroactive implementation of revised budget neutrality adjustments would not comport with the basic principle of prospectivity of the prospective payment system, we have not applied these adjustments retroactively, but have converted these factors prospectively by adjusting the FY 1986 rates accordingly.

We have also considered the commenter's position that FY 1984 and FY 1985 standardized rates be recalculated to remove the entire effect of budget neutrality prior to developing the FY 1986 payment rates. We do not agree that the prior years' standardized rates before budget neutrality should serve as the basis for updating the FY 1986 rates. Since the budget-neutralized standardized amounts represent the actual payment rates used to pay hospitals in FY 1985, we believe the "percentage change" for FY 1986 should be applied to these amounts. In addition, section 1886(d)(3)(A) and (C) of the Act does not explicitly require that the update factor apply to the FY 1985 payment rates prior to the adjustments for budget neutrality in FY 1985.

However, absent the budget neutrality requirement applicable to FY 1984 and FY 1985 payment rates, we believe an adjustment to remove the effects of coding-related case-mix index increases from the standardized amounts would still be necessary. Since our analysis and RAND's study indicate that by far the greatest portion of the observed increase in case mix measures is due to coding changes, we would be overpaying on a prospective basis, because the case-mix increase would not reflect real changes in resource use, but only improve coding. These case-mix increases should not be reflected in the standardized amounts because they are unrelated to actual increases in costs per case. In addition, we believe the language in section 1886(d)(3)(A) of the Act requires that the standardized rates for fiscal years subsequent to FY 1985 be adjusted (that is, deflated) to reflect the most recent case-mix data available. Even if we were to accept the commenters' premise that the update factor should be applied to FY 1985 standardized amounts prior to budget neutrality, the result would be the same (that is, a zero percent update for FY 1986). The following table illustrates the adjustments that would apply to the FY 1986 update if the budget neutrality adjustment was eliminated. We recomputed the applicable overall rate of increase in the FY 1986 rates to remove the budget neutrality offset and case-mix rates of increase previously recognized in FY 1984 and FY 1985.

	Percent
Forecasted market basket increase for FY 1986	+4.27
Change due to elimination of budget neutrality [1]	[2] +5.26
	[3] +4.82

	Percent
Change due to elimination of case-mix increases previously recognized in FY 1984 and FY 1985 [4]	+1.05
Reduction in rates due to case-mix increase CY 1981–FY 1985 (as of June 1985) [5]	−8.19
Change due to market basket forecasting error [6]	−1.5
Policy target adjustment factor	−1.5
Productivity	−1.0
Cost effective technologies	+1.5
Cost ineffective practice patterns	−2.0
Total	[2] −0.61
	[3] −1.05

The combined effect is still a reduction in the standardized amounts for FY 1986 compared to those for FY 1985

[1] 1÷.950 (Regional budget neutrality adjustment factor)=1.0528. 1÷.954 (National budget neutrality adjustment factor)=1.0482

[2] Regional.

[3] National.

[4] The 3.38 percent case-mix adjustment, and the .31 percent adjustment for Part B costs and FICA taxes, are included as part of the above budget neutrality adjustments.

[5] This factor represents the nominal increase in case mix from the 1981 MEDPAR file to FY 1985, and does not include any "real" case-mix increase. This figure was derived using the results of the RAND study, which found that 2.2 percentage points (or 26.2 percent) of the 8.4 percent observed case-mix increase for 1984 was related to "real" increases in case mix. Therefore, 73.8 percent (or 8.19 percentage points) of the 11.1 percent increase in average case-mix index through FY 1985 is nominal.

[6] This factor is the compounded difference between the latest FY 1984 and FY 1985 projections, and the FY 1984 and FY 1985 projections provided in the addendum to the August 31, 1984 final rule (49 FR 34767).

Comment: Many commenters stated that the actual Medicare outlay experience was far below the estimated outlays for the budget neutral period (FYs 1984 and 1985), and, therefore, hospitals were underpaid. Other commenters suggested that we should compare estimated payments for budget neutrality with actual outlays rather than incurred payments.

Response: Actual Medicare outlays are lower than estimated outlays because of a slow-down in the speed with which hospitals process bills and because of a decline in admissions. Although both factors affect estimated outlays, neither factor affects the determination of budget neutrality.

Budget neutrality, as provided for under section 1886(e)(1) of the Act, requires that outlays be the same under the prospective payment system as they would have been under the limits enacted under Pub. L. 97–248, that is, the law in effect prior to Pub. L. 98–21.

Budget neutral outlays should not necessarily equal the estimated outlays that appear in the budget for planning purposes. Thus, if actual outlays under budget neutrality are lower than estimated, they also would have been lower under the limits enacted by Pub. L. 97–248. Comparing estimated outlays with actual outlays provides absolutely no measure of the performance of budget neutrality.

In addition, we stated our intent in the addendum of the September 1, 1983 interim final rule (48 FR 39887) to determine budget neutrality on an incurred payment basis rather than a cash basis, and to assume that admission rates would be the same under the prospective payment system as under Pub. L. 97–248. We received no adverse comments on these provisions.

Comment: We received comments that our model does not reflect full experience under the prospective payment system and that we need cost report information to make these adjustments.

Response: It would be impractical to determine payments under the prospective payment system using current year cost reports, especially since we must set these rates before the cost report accounting years begin. Thus, we have used the best data and most recent information available to us in determining the payment rates.

Comment: We received comments stating that a shorter length of stay does not imply lower costs.

Response: Although this may be true in isolated instances, it is generally not the case. If such were the case, then there would be a zero marginal cost associated with longer stays, implying that our day outlier payment is excessive. Most hospitals see a financial advantage to a shorter length of stay, and are working to reduce length of stay in order to reduce costs.

c. *Corrections for Prior Years' Experience.*—(1) *Case mix.* In the proposed rule, the timeframes for the observed case-mix increase of 9.6 percent were based on prospective payment billing experience received through April 1985 for both FYs 1984 and 1985 combined. Using patient bill data received through July 1985, and using the FY 1984 relative DRG weights, we have determined that the average case-mix index for hospitals under the prospective payment system has increased 11.1 percent over the 1981 MEDPAR level. Relative to 1981, the average case mix increased 9.0 percent through FY 1984, and 11.1 percent through FY 1985. Since we now have significant experience for FY 1985 (4.7 million discharges), it would be more appropriate to use the FY 1985 experience than the combined experience, especially since FY 1985 is the basis for the prospective payment system in future years. We have previously taken 4.47 percent of this case-mix increase into account by adjusting the original FY 1984 standardized amounts by 3.38 percent and reducing the FY 1985 DRG weights by 1.05 percent. (The relationship of these percent changes is multiplicative, rather than additive; that is 1.0338×1.0105=1.0447.) Thus, the observed case-mix increase to date is 6.3 percent greater than the total prior adjustment (1.111 divided by 1.0447=1.063).

Comment: Several commenters pointed out that the proposed rates make no allowance for real changes in case mix from 1981 through FY 1985, despite ProPAC's recommendation that an allowance for real increases in case mix that occurred during FY 1985 be incorporated in the FY 1986 rates.

Response: We disagree with the commenters' allegation for the following reasons. In FYs 1981 through 1983, prior to implementation of the prospective payment system, hospitals were reimbursed on a reasonable-cost basis which automatically made allowances for real changes in case-mix severity. Under the prospective payment system, for changes in real case mix that have occurred in FYs 1984 and 1985, as compared to 1981, we believe that an explicit add-on to the standardized payment rates would, in effect, result in the Medicare program paying for higher-cost, more resource intensive cases twice; first, by means of the specific add-on, and secondly, through the classification of the case in a higher-weighted DRG. To the extent that a hospital's case mix has changed because a greater proportion of cases are assigned to DRGs with higher weights, the provider has and will continue to receive increased prospective payments that reflect its real case mix. Therefore, a separate add-on to the standardized payment rates for real changes in case mix would not be appropriate.

In addition, we point out that under the budget neutrality provisions applicable for FY 1984 and FY 1985, any increases in case mix, whether "real" or attributable to changes in medical coding practices, should not have been recognized in increased prospective payments to hospitals. In the addendum to the proposed rule (50 FR 24393), we stated that, based on bills received through April 1985, the average case-mix index for hospitals under the prospective payment system increased 9.6 percent over the 1981 MEDPAR level. We now have data through July 1985, and the average case-mix index increased by 11.1 percent. Of this overall increase, only 4.47 percent was accounted for in budget neutrality reductions to the FY 1984 and FY 1985 prospective payment rates. Because budget neutrality is required by law and in view of the understatement of the FY

1984 and FY 1985 budget neutrality adjustments, a further 6.3 percent reduction in the standardized amounts of the prospective payment rates for FY 1986 is necessary to ensure that the first post-budget-neutrality payment rates are established on an appropriate basis. We reiterate, however, that even absent budget neutrality, we would want to make some adjustments for case mix in order to avoid overpaying for services.

Comment: Many commenters stated that we should not make any downward adjustments for increases in case mix that occurred in FY 1985 because increases in case mix would have been passed through under the Pub. L. 97–248 limits. They believe that any increases in real case mix would also been passed through under these limits.

Response: We agree that the limits under Pub. L. 97–248 would have passed through and did pass through a portion of the increase in real case mix. We will recognize increases in real case mix under the prospective payment system that occur in FY 1986 and later. To the extent that cases are falling into the higher-weighted DRGs, real case-mix increases will be automatically recognized and paid for under the prospective payment system. In addition, because the limits under Pub. L. 97–248 constituted a cost-based reimbursement system, increases in real case mix would have resulted in increased costs that would have been reimbursed subject to both the regulations describing the reasonable cost limits (§ 405.460) and the rate of increase limits (§ 405.463).

In modeling the limits under Pub. L. 97–248, we used cost-per-case increase assumptions that had a more than adequate margin for case-mix increases. Furthermore, we were careful to ensure that the cost-per-case increase assumptions did not reflect any of the incentives of the prospective payment system, such as a shorter length of stay. In fact, as described in the addendum to the June 10, 1985 proposed rule (50 FR 24393), we determined that the cost-per-case increase assumptions that we used in calculating budget neutrality in FYs 1984 and 1985 were too high. Thus, there was a liberal margin to allow for real case-mix increases under Pub. L. 97–248.

Comment: Some commenters stated that we removed all case-mix increases from 1981 through 1985, and that we are not allowing any real case-mix increases for 1981 through 1986. Other commenters requested that we remove all case-mix adjustments made in prior years.

Response: The model we used for determining budget neutrality under Pub. L. 97–248 implicitly allowed for all real case-mix changes that would have been allowed under Pub. L. 97–248 in FYs 1984 and 1985 as compared to the 1981 MEDPAR data. If we had not adjusted for the reported increases in case mix during the budget neutrality period, we would have paid double for increases in case mix (that is, first by means of overpaying for changes in case-mix due to improved medical coding, and secondly through classification of cases into higher-weighted DRGs). For this reason, and the reasons discussed in the previous comment, we cannot remove case-mix adjustments that we have already made (or we would be making excessive payments). We agree that real case-mix increases that occur during FY 1986 should be paid in full through classification of cases into higher-weighted DRGs, and we are not preventing increases in payments for real case-mix increases in FY 1986.

Comment: One commenter stated that our staff had acknowledged that unexpected case-mix increases would have been payable under Pub. L. 97–248.

Response: Unexpected real case-mix increases would have been partially recognized under Pub. L. 97–248, to the extent that case-mix increases resulted in increased costs per admission. An adequate margin for "real" case-mix increase was incorporated in the cost-per-case assumptions used in the determination of budget neutrality. Thus, if we were not to make a full adjustment for reported case-mix increases under the prospective payment system, we would, in effect, be paying double for increases in case mix.

Comment: Some commenters stated that the limits under Pub. L. 97–248 were adjusted for case mix and that exceptions were available.

Response: Sections 405.460 and 405.463 permit the granting of exceptions to the Pub. L. 97–248 cost limits and rate of increase limits based on changes in case mix. However, these exceptions are granted only on a limited basis and only where the provider can demonstrate that it has experienced an abrupt change in case mix due to the addition of new services or the discontinuance of previously provided services. Therefore, in the aggregate, changes in case mix under Pub. L. 97–248 would have little effect on total cash outlays since only a comparatively few hospitals will be granted increases in their Pub. L. 97–248 cost limits or rate of increase limits. To date, only a handful of exceptions have been granted. In addition, we do not believe the same incentives to improve coding of bills exist under the Pub. L. 97–248 limits since hospital payments are not dependent on the DRG to which a case is assigned.

Comment: Many commenters stated that we had abandoned the policy set forth in the addendum of the August 31, 1984 final rule (49 FR 34770) for allowing increases in real case mix. The commenters believe that the FY 1985 adjustment was binding in future years.

Response: As discussed previously, we have more than allowed for increases in real case mix even after we made adjustments for coding changes. The FY 1985 case-mix adjustment represented a discretionary policy decision that was made for FY 1985 pending further studies of case-mix data. This decision, made in consultation with the hospital industry, represented a delay to the full reduction for nominal (improved medical coding) case mix until a study of the nature of the case-mix increases was completed. This study, now completed by the Rand Corporation, supports a full reduction for nominal case-mix increase that occurred prior to publication of the FY 1986 prospective payment rates. This study found that, since 1981, only a small portion of the reported case-mix increases are "real". As discussed previously in this section, the cost-per-case assumptions, used in developing the budget neutrality adjustments in prior years, provided an adequate margin for "real" case-mix increases.

Comment: Many commenters objected to the adjustments we made to refine the FY 1985 base, such as adjustments for case mix and market basket forecasts. As well, many commenters objected to what they referred to as the retroactive nature of the adjustments, and to our using budget neutrality to adjust for case mix. Other commenters stated that we had destroyed the prospective nature of the prospective payment system. Quoting section 1886(e)(4) of the Act,

> Taking into consideration the recommendations of the Commission, the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality,

these commenters claimed that we violated this section of the law.

Response: In order to comply with section 1886(e)(4) of the Act, we adjusted the prospective payment change factor to compensate for FY 1985 payments being excessive. Though this adjustment, in the sense of looking back, may have been retrospective, it certainly was not retroactive. We have not

destroyed the concept of prospectivity since we are not recovering overpayments or refunding underpayments nor have we reduced rates so as to effect recovery of overpayments during FY 1986. Rather, we are ensuring that payment levels for FY 1986 will be adequate for the appropriate and necessary care of Medicare beneficiaries. There is no statutory requirement to establish rates so as to perpetuate estimating errors, whether upward or downward, indefinitely into the future. Also, there is no statutory provision prohibiting us from correcting past estimating errors. We made reference to budget neutrality in adjusting for case mix because budget neutrality applied in FY 1985, and FY 1985 is the basis for all future prospective payments. We have not received any evidence or studies suggesting that the prospective payment rates are inadequate so as to preclude the hospital industry from providing Medicare beneficiaries with high quality, medically appropriate care. In addition, as we have already noted, we would have had to make these adjustments even in the absence of budget neutrality in order to comply with section 1886(e)(4) of the Act.

Comment: We received comments stating that we should separate the FY 1985 case-mix increase into real increases and coding increases. Other comments suggested that we had acknowledged that we were unable to separate the reasons for case-mix increases.

Response: A study performed by RAND provided this analysis for us. For purposes of FY 1985, in which budget neutrality applied, separating real case-mix increases from increases resulting from improved coding is unnecessary since the limits enacted by Pub. L. 97-248 did not pass through increases in reported case mix, and since the cost-per-case assumptions used to determine budget neutrality more than allowed for real increases in case mix.

Comment: Several commenters were critical of the study conducted by the Rand Corporation to determine the reasons for the increase in the Medicare case-mix index since 1981. That study concluded that, of the 8.4 percent increase in the case-mix index observed from calendar year 1981 through FY 1984, 6.2 percentage points, or almost three-quarters of the increase, were due to documentation and coding changes. (Subsequent to the completion of this study, RAND has revised the 8.4 percent figure to 11.3 percent based on bills received through April 1985.) The study concluded that since coding changes were responsible for a large portion of the case-mix increase experienced to date, these changes should be reflected in an adjustment (that is, an offset) to eliminate the effect of nominal (improved coding) case-mix increases (as opposed to "real" changes) in the determination of the prospective payment rates. One commenter stated that the Rand study did not use an appropriate time series design and that the only experimental design that would have permitted an assessment of the effects of real changes in case mix from changes in coding would have been a reabstracting study. We received other comments that the study failed to address the issue of whether the sharp increase in the case-mix index could have been at least partially attributed to the significant decline in Medicare admissions since the beginning of the prospective payment system. The implication is that those DRGs with a low weight may have had a disproportionate share of the decline in admissions due to the furnishing of care on an outpatient or other basis. The impact of such an effect would be an understatement of approximately 25 percent of the observed 8.4 percent increase in case mix considered "real."

Response: As we stated previously in this section, any increases in case mix prior to FY 1986, whether "real" or not, should not be recognized in increased FY 1986 prospective payments because of the budget neutrality requirement that applies through FY 1985. Furthermore, we disagree with the statement that the only experimental design that would have allowed an accurate determination of the reasons for the substantial increase in the case-mix index is a reabstraction study. Because RAND examined the increase in hospital case mix for facilities with different reporting periods from calendar year 1981 through FY 1984, a time series analysis was reflected in the experimental design. We point out that a time series analysis of data from the Commission on Professional and Hospital Activities was performed by RAND. This design enabled RAND to distinguish coding improvements from the estimated effects due to "real" increase in the case-mix index. Therefore, a reabstraction study is not essential in distinguishing real from nominal increases in case mix.

Furthermore, a reabstracting study would not capture the effect of improved documentation of diagnoses and procedures by physicians. Thus, reabstracting is unnecessary, and, if done, would not be definitive.

An examination of case-mix changes that have occurred in the four waiver States (New York, New Jersey, Maryland, and Massachusetts) provides further evidence that a significant portion of the increase in the case-mix index reflects prospective payment system-induced changes in coding and medical practice. Since the four waiver States either do not use DRGs for reimbursement, or place less emphasis on them than the prospective payment system, comparing their case-mix index rate of change to that of hospitals in the non-waiver States over the same period of time would provide a rough measure of the magnitude of prospective payment system-induced coding improvements. Also, because the waiver States are subject to the same changes in medical technology and the impact of changes in the patient population as the rest of the country, such a comparison should reveal the extent to which the prospective payment system has affected nominal changes in case mix. At our request, the Rand Corporation performed such an analysis. As the table below reveals, Medicare data show an 8.4 percent increase in case mix in the non-waiver States from calendar year 1981 to FY 1984, while the corresponding increase for the waiver States was only 2.0 percent. A similar analysis was performed on the Professional Activity Study (PAS) data (discharge abstract data collected by the Commission on Professional and Hospital Activities) from the fourth quarter of 1981 to the fourth quarter of 1984. This analysis revealed the case-mix index increased by 5.9 percent in the non-waiver states but only 0.3 percent in the waiver States. These comparisons provide further evidence that much of the observed case-mix index increase reflects prospective payment system-induced changes in coding.

CASE-MIX INCREASE IN WAIVER STATES

	Percent change, 1981-1984	
	Non-waiver	Waiver
Medicare data [1]	8.4	2.0
PAS data [2]	5.9	0.3

[1] Calendar Year 1981 to Fiscal Year 1984.
[2] Fourth Quarter of Calendar Year 1981 to Fourth Quarter Calendar Year 1984.

We also asked RAND to investigate whether the sharp decline in Medicare admissions from 1983 to 1984 may have contributed to the increase in the case-mix index (although, as we note elsewhere in this section of the addendum, Medicare admissions did *not* decline during the period 1981 through 1984). A reduced demand for hospital services at the same time the

prospective payment system was being implemented could have led to an understatement of the rate of increase in case mix that was real if it led to an increase in the complexity of the admissions that occurred. A regression model that explicitly included volume changes was performed on the Professional Activity Study data. RAND found that the magnitude of the volume effect was very small. For example, a four percent decline in admissions is estimated to have increased case mix by only 0.2 percent in FY 1984. Therefore, controlling for volume changes did not alter the significance of the conclusion that most of the observed change in case mix is due to changes in medical coding.

Finally, in response to the assertion that a significant portion of the 8.4 percent increase in case mix that RAND observed may be attributed to a shift in the proportion of cases falling in DRGs with relatively low weights from an inpatient to an outpatient setting, RAND selected 37 DRGs having a significant potential for outpatient substitution to determine their contribution to the increase in the case-mix index. The 37 DRGs accounted for only 0.7 percent of the 8.4 percent increase, and virtually all of that 0.7 percent was accounted for by DRG 39 (lens procedures). In response to further comments that several DRGs with a high potential for outpatient substitution were not included in the analysis, 3 DRGs were added to the original 37 initially selected. They are DRGs 364, 410, and 412. The three were dominated by category 410 (chemotherapy), which *increased* as a proportion of Medicare discharges under the prospective payment system. Because DRG 410 has a relatively low weight, the increased proportion of Medicare discharges tended to lower the case-mix index. Thus, with an expanded list of outpatient DRGs, the portion of the case-mix index increase attributed to a shift in cases to outpatient settings (that is, the portion that reflects "real" increase in the case-mix index) was somewhat reduced. This result further supports the finding that most of the increase in the case-mix index that RAND observed reflected changes in medical coding practices.

Comment: Many commenters stated that reduced admissions and the movement of certain cases to an outpatient setting would increase case mix leaving hospitals with more severely ill patients. One commenter supplied evidence purporting to show that patients are more severely ill because fewer patients can get out of bed unassisted and because hospitals have increased the number of employees per bed on their staffs. One commenter suggested that shortening the length of stay did not reduce the cost per admission. We also received comments that the prospective payment system was the cause for fewer admissions.

Response: We agree that a reduction in admissions could increase case mix. The RAND study measured the increase in case mix due to the shifting of cases to the outpatient setting. The cost-per-case assumptions used in the determination of budget neutrality more than compensated for these increases in case mix. It is not surprising that a higher percentage of patients are unable to get out of bed unassisted. Shortening the length of stay can lead to this situation, since the days removed from the stay are the latter days, when the patient is more mobile. This does not imply that such shortened admissions are more costly. The staffing level in a hospital has not been shown to be a reliable indication of the severity of illness of the patients. As one commenter stated, "physicians, not hospitals, admit patients and hospitals do not determine the location of treatment." We agree, therefore, that the prospective payment system does not appear to have an impact on the number of admissions.

We refer the reader to the discussion in the previous comment and response of the RAND regression analysis, which included volume changes. The results of this analysis showed that volume changes had little impact on case mix.

Comment: We received comments that admissions have declined substantially since 1981. One commenter supplied evidence showing that admissions declined since 1983.

Response: Panel Survey Data published by the American Hospital Association do not show Medicare admissions declining during the period 1981 through 1984. Admissions declined from 1983 to 1984 because 1983 was a year with an unusually high Medicare admission level. However, Medicare admissions still increased substantially during the period 1981 through 1984.

Comment: Some commenters suggested that we simply dismissed the effect of aging on average case mix, and that costs within a DRG increase with age.

Response: The DRG. system considers age when assigning a DRG. Consequently, the aging of the population should have minimal impact on costs within a DRG. In addition, the RAND study estimated the effect of the aging of the inpatient population through calculating case-mix indexes by age group and by the proportion of Medicare discharges in each age group in 1981 and 1984. As a check, RAND calculated the case-mix indexes by age group using both 1981 and 1984 data.

As shown in the table below, aging did not affect the case-mix index. Calculating the case-mix indexes by age group from 1981 data, the 1984 age distribution would have resulted in a 1981 case-mix index of 1.0490, which is close to the actual 1981 case-mix index of 1.0486. Similarly, the 1981 age distribution would have resulted in a 1984 case-mix index of 1.1183, which is close to the actual 1984 case-mix index of 1.1181. Therefore, the aging of the Medicare population has had a negligible impact on the observed increase in case mix.

AGE OF MEDICARE INPATIENTS AND THE CASE-MIX INDEX (CMI)

Age group	1981		1984	
	Percent	CMI	Percent	CMI
<65	11.91	1.0356	11.30	1.1063
65 to 69	22.45	1.0386	21.17	1.1233
70 to 74	21.61	1.0633	21.05	1.1404
75 to 79	18.55	1.0511	18.41	1.1178
80 to 84	13.69	1.0444	14.43	1.0972
85+	11.78	1.0555	12.85	1.1065
Total	100.00	1.0486[1]	100.00	1.1181

Source: Medicare data, nonwaiver states.

[1] The Medicare case-mix index, which was based on MEDPAR data for calendar year 1981, was 1.046. The slight difference between the value of this case-mix index, and that appearing in the above table, is due to cases with missing DRGs.

Moreover, both our studies and the RAND study have determined that the aging of the Medicare population has had negligible impact on the increase in case mix.

Comment: A commenter suggested that we should use RAND's 8.4 percent case-mix increase instead of our proposed 9.6 percent increase.

Response: As explained in the addendum to the proposed rule (50 FR 24393), we used the 9.6 percent increase because it was based on more recent data and included not only FY 1984

data, but also FY 1985 data. Additional data received since the NPRM was issued show that case mix has now increased by 11.1 percent.

When RAND updated its data to include FY 1984 claims that were received well into FY 1985, they concluded that the case-mix index for FY 1984 increased 9.2 percent. Similarly updated RAND data project that the case-mix index for FY 1985, for claims received through April 1985, increased 11.3 percent.

Comment: Many commenters complained that we did not describe the methodology used to calculate the case-mix increases, and that we did not specify the timeframe to which these increases applied.

Response: The methodology used to compute the case-mix increase is the same methodology used and fully described in the July 3, 1984 proposed rule (49 FR 27442) and in the August 31, 1984 final rule (49 FR 34770). To summarize, for each hospital, and for each month, the case-mix level in the 1981 MEDPAR file for the corresponding month is weighted by the prospective payment system discharges for the month. Then, all months of the 1981 MEDPAR file are weighted together. This is divided into the average case-mix under the prospective payment system to compute the case-mix increase. This method automatically adjusts for seasonal variations in case-mix, for the different rates at which hospitals submit bills, and for the phasing in of hospitals to the prospective payment system by accounting year. In the proposed rule, the timeframe for the case-mix increase was the total prospective payment system experience, including bills we received through April 1985, for both FYs 1984 and 1985. Looking at the experience as reflected through bills received through July 1985, we now have prospective payment system case-mix experience on 5.8 million discharges in FY 1984 and 4.7 million discharges in FY 1985. Relative to 1981, the average case-mix index increased 9.0 percent through FY 1984, and 11.1 percent through FY 1985. Since we now have significant experience for FY 1985, it would be more appropriate to use the FY 1985 experience than the combined experience, especially since FY 1985 is the basis for the prospective payment system in future years.

Comment: One commenter alleged that we cut reimbursement upon observing that the average case weight had increased to a level in excess of 1.000.

Response: We disagree with the commenter's allegation and note that the average case weight in the MEDPAR file was on a discharge-weighted basis of about 1.05.

Comment: Many commenters stated that the law requires us to consider the most recent case-mix data available.

Response: We agree with the commenters. We have considered the most recent case-mix data available and have determined that corrections need to be applied. Further, we have made every effort to acquire and analyze the latest possible case-mix data.

Comment: We received comments that stated that we must consider case-mix changes when recalibrating the relative DRG weights.

Response: In fact, we were careful to ensure that average case weight using both the old set of weights and the new set of weights is the same. This "normalization" of the recalibrated weights had the effect of increasing all the recalibrated weights by three percent. Therefore, had we not taken care to provide for normalization, all the recalibrated weights would be lower. We did not use the recalibration to adjust for changes in case mix.

Summary of Case Mix Discussion

Many comments reflect confusion over whether and to what extent increases in case mix would have been recognized and paid for under Pub. L. 97-248. Because the case-mix index is, by definition, a measure of a hospital's average cost per case relative to the average of all hospitals' average costs per case (as described in the September 1, 1983 interim final rule (48 FR 39764)), the only changes in case mix that would have been recognized under Pub. L. 97-248 are "real" changes in case mix, since it is only real changes in case mix that affect a hospital's average cost per case.

Because aggregate outlays under the prospective payment system were required to be neither greater nor less than what outlays would have been under the Pub. L. 97-248 limits, it was necessary to estimate expected reimbursement levels under both Pub. L. 97-248 and the prospective payment system, and to set the prospective payment rates at a level that would result in equality between outlays under Pub. L. 97-248 and the prospective payment system.

Hence, for purposes of budget neutrality, it was assumed that under Pub. L. 97-248, Medicare costs per case would have increased at the following rates:

Estimates used to set fiscal year 1984 and fiscal year 1985 rates

	Percent
1983	10.9
1984	9.8
1985	9.8

(See the August 31, 1984 final rule at 49 FR 34796 and the June 10, 1985 NPRM at 50 FR 24395.)

These assumptions implicitly incorporated increases in hospital input prices, changes in technology, increases in the intensity of services provided to hospital inpatients, increases in real case mix (which, by definition, result in increases in costs), and other factors.

One can remove the effects on cost per case of inflation by use of the most recent market basket factors, which are:

	Percent
1983	6.3
1984	5.7
1985	4.8

Thus, the extent to which cost-per-case estimates exceeded hospital industry inflation is:

1983	4.3%	(1.109÷1.063=1.043)
1984	3.9%	(1.098÷1.057=1.039)
1985	4.8%	(1.096÷1.048=1.048)

These increases in the cost per case (over and above inflation adjustments) that we estimate would have occurred under Pub. L. 97-248 are, we believe, more than ample allowances for increases in real case mix and changes in technology, intensity, and utilization of inpatient services. Indeed, as noted elsewhere, we conclude, on the basis of actuarial estimates, that the cost-per-case assumptions used in setting the prospective payment rates to date have resulted in an overstatement of the FY 1985 rates of approximately 1.2 percent. Nevertheless, we are not including an offset for this overstatement in our composite correction factor. However, because we believe that the FY 1985 rates already include a generous margin for changes in real case mix, we believe it is wholly appropriate to include in our composite correction factor a full adjustment for reported case-mix increases not previously accounted for.

In summary, we believe it is essential to adjust the FY 1985 standardized amounts to remove the effects of all previously unaccounted for increases in case mix, whether "real" or coding-related, for the following reasons:

• Unaccounted for increases in case mix resulted in FY 1985 standardized rates that were overstated. Under budget neutrality, these increases in case mix should not have increased payments to hospitals.

• As described in the August 31, 1984 final rule (49 FR 34773) and the June 10, 1985 proposed rule (50 FR 24393), our estimates of cost-per-case increases for budget neutrality purposes that would have occurred during FYs 1984 and 1985 under Pub. L. 97–248 incorporated an implicit recognition of case-mix increases that would have occurred regardless of implementation of the prospective payment system. (This included recognition that the Pub. L. 97–248 cost-per-case group limits were also case-mix adjusted, so that increases in case mix would have been reflected in those limits to the extent they had an impact on hospital costs.) Since the same incentives to improve coding would not exist under Pub. L. 97–248, this margin would essentially represent potential real case-mix increases as opposed to coding-related increases.

• Therefore, since a margin for real case-mix increases has already been incorporated in the standardized amounts through the cost-per-case assumptions used in determining the budget neutrality adjustment for FY 1984 and FY 1985, we would be recognizing real case-mix increase twice in the prospective payment rates if we failed to make adjustments for all reported case-mix increases.

• Hospitals have already received the benefit of both real case-mix increases as well as coding improvements. To the extent that future case-mix increases are real, these will be paid through assignment of cases to the higher weighted, more resource-intensive DRGs.

• The results of the RAND study demonstrated that much of the observed increase in case mix was due to prospective payment system-induced coding improvements. Since the cost-per-case assumptions used to determine budget neutrality in FY 1984 and 1985 already more than allowed for those increases in case mix which are real to be incorporated in the prospective payment rates, it is appropriate to adjust for all reported increases in case mix whether "real" or coding-related.

(2) *Market basket.* The forecasted hospital market basket increase factors used to calculate the FY 1985 standardized amounts were 6.2 percent for 1983, 6.0 percent for 1984, and 6.5 percent for 1985. Our latest hospital market basket factors, as of July 1985, reflect more actual experience than those available at the time the FY 1985 rates were published. The most recent factors are 6.3 percent for 1983, 5.7 percent for 1984, and 4.8 percent for 1985. Substituting these latest market basket factors into our budget neutrality model for correction of the standardized amounts reduces them by 1.2 percent.

We are not making retroactive adjustments. We believe that there is ample statutory authority to correct previous market basket forecasting errors *prospectively.*

Comment: Many commenters stated that we had promised not to revise the market basket for projection errors. Some commenters opposed any revisions in the market basket while others supported the concept of revisions in the market basket projections. ProPAC suggested that, because only the third quarter of the fiscal year would have elapsed when the market basket projection was determined in this addendum, we wait another year, or that we make corrections for the first three quarters of the fiscal year and then correct the fourth quarter in the following year.

Response: To maintain the integrity of the prospective payment system, we must have an appropriate base upon which payment levels are set. Since FY 1985 is the basis for future year payment rates, any market basket projection errors in FY 1985 would be carried forward into all future years. Therefore, based on the recommendation of ProPAC and other commenters, we decided to use a more recent update (the latest data available) of the market basket to develop a more accurate payment basis. We are revising the market basket estimate only for forecast changes and are not making any changes in the market basket itself.

If we were to revise the market basket estimates to reflect only actual experience through June 1985, and not to reflect the most recent estimates available, we could be forced to make even larger changes in the market basket update factor in next year's prospective payment rate notice. We believe that it is in the best interests of the hospital industry, therefore, to reflect changes in the market basket estimates using the latest estimates available at the time we issue the annual prospective payment notice.

Comment: Several commenters stated that we should adjust the market basket, but that the changes should not be applied retroactively.

Response: We agree that the market basket forecast changes should not be applied retroactively. Hence, we are not making any recoveries for overpayments for FYs 1984 and 1985.

Comment: Many commenters stated that we should acknowledge that FY 1986 is not a budget neutral year.

Response: We agree that FY 1986 is not a budget neutral year. However, budget neutrality is a consideration because FY 1985 is the base year for future prospective payment system payments, and because budget neutrality applied in FY 1985. Because payments in FY 1985 were higher than they should be under budget neutrality, we are correcting the update factor for FY 1986 to ensure that payment levels are not distorted in all future years.

Comment: Many commenters wanted documentation on the 1.3 percent difference in the forecasted market basket projections.

Response: The 1.3 percent difference represents the difference between the standardized amounts, holding the budget neutrality adjustment factor constant, by comparing the FY 1985 market basket forecast with our revised market basket forecast as discussed in the addendum to the proposed rule (50 FR 24394). The actual difference in the market basket updates (as documented at the beginning of this section) is actually greater than 1.3 percent. However, because actual costs are a factor in budget neutrality, only part of the difference in the updated market basket is reflected in the impact on budget neutrality. The latest market basket update for FY 1985 increased 0.1 percent since the February update, and consequently, we revised the adjustment to −1.2 percent.

(3) *Additional causes for the overstatement of FY 1985 Federal rates.* In addition to the factors above, which we believe we must correct, other considerations also contributed significantly to the overstatement of the FY 1985 standardized amounts.

When we set the standardized amounts for FY 1985, we made assumptions on hospital cost per case increases in order to estimate, for purposes of budget neutrality, the payments that would have been made had prior payment rules continued in effect. These assumed rates of increase in cost per case were 10.9 percent for 1983, 9.8 percent for 1984, and 9.8 percent for 1985. These assumptions were significantly higher than the actuarial estimates. The actuarially estimated rates of increase in cost per case (which ignore any effects of the prospective payment system such as shorter lengths of stay) are 9.8 percent for 1983, 8.1 percent for 1984, and 8.5 percent for 1985. After application of the revised market basket, discussed previously, use of these actuarial

estimates would reduce the standardized amounts by an additional 1.2 percent.

For FY 1985, we also used 1981 unaudited, as-submitted cost reports (to get recent data as quickly as possible) to set the Federal rates. The hospital-specific rates were set using later (1982 or 1983) cost reports that were fully audited. The audits adjusted the total cost for these reports downward by $2.2 billion, of which Medicare realized about $900 million in inpatient recoveries. Since the cost data used to set the Federal rates do not reflect audit recoveries, it is likely that they are overstated by a similar amount. We do not know precisely what proportion of this amount applies to capital-related costs and other costs that would not affect the Federal rates. However, approximately 90 percent of hospitals' total inpatient costs are operating costs, and if only 40 percent of the $900 million in audit recoveries is related to Federal payments for inpatient operating costs, there would have been, conservatively estimated, at least a one percent overstatement of allowable costs incorporated into the cost data to determine the FY 1985 standardized amounts.

In addition, the General Accounting Office (GAO) recently conducted a study to evaluate the adequacy of the standardized amounts. In its report to Congress dated July 18, 1985 (GAO/HRD-85-74), GAO reported findings that the standardized amounts, as originally calculated, are overstated by as much as 4.3 percent because they were based on unaudited cost data and include elements of capital costs. GAO recommended that the rates be adjusted accordingly.

We believe that these causes for the overstatement of the standardized amounts are related to our own procedures and decisions. Thus, they are unlike both the market basket index, which is a technical measure of input prices, and the increases in case-mix, which would not have been passed through beyond the extent to which they affected the estimates of cost per case. Further, as discussed below, even without making these corrections, we could justify a negative update factor for FY 1986, although we are not establishing one. Since we have decided to set FY 1986 standardized amounts at the same level as those for FY 1985, making corrections now to reflect the cost per case assumptions and the audit data would have no practical effect. Therefore, we have decided at this time not to correct the standardized amounts for these factors.

We received no comments on this issue.

(4) *Composite Correction Factor.* We are adjusting the standardized amounts as follows to take into consideration the overstatement of the prior years, amounts:

	Percent
Case mix	−6.3
Market basket	−1.2
Composite correction factor	−7.5

d. *Forecast Market Basket Increase.* We considered forecasted market basket index increases in determining the percentage increase for both prospective payment rates and rate-of-increase limits for FY 1986 and subsequent fiscal years. However, the percentage change determined under section 1886(e)(4) of the Act does not have to equal the market basket index plus one quarter of one percentage point, although section 1886(b)(3)(B) of the Act does specify that for FY 1986 the percentage determined under section 1886(e)(4) of the Act *may not exceed* the applicable percentage increase that would otherwise be determined for that period.

FORECASTED MARKET BASKET (MB) PERCENT INCREASE PLUS ONE-QUARTER OF 1 PERCENTAGE POINT

Calendar year	MB percentage	MB + ¼ percentage
1985	4.8	5.05
1986	4.1	4.35
1987	4.8	5.05

Based on these calendar year factors, we project a hospital market basket increase factor for FY 1986 (that is, October 1, 1985 through September 30, 1986) of 4.27 percent. Thus, the maximum update factor we could use in updating the FY 1986 standardized amounts (that is, the market basket plus one-quarter of one percentage point) would be 4.52 percent.

Comment: One commenter suggested that HCFA should not use the most current Data Resources, Inc. forecast of the market basket, because it incorporates the assumption that an update of zero percent of the prospective payment rates may take place in FY 1986. In particular, the commenters believe that the zero percent update could influence the pattern of hospital wage setting, and that Data Resources, Inc. may incorporate such changes in patterns of wage setting in its forecasts.

Response: The market basket forecast (4.85 percent) stated in the NPRM did not incorporate as an assumption that we were proposing a zero percent increase to the prospective payment rates. However, the most recent market basket forecast (4.27 percent) does incorporate changes resulting from the prospective payment system.

In addition, for the reasons stated below, we believe that incorporating these changes is appropriate. A primary objective of the prospective payment system is to alter the incentives of Medicare payment to encourage efficiency and effectiveness. Improvements in the processes of hospital purchasing, operations, quality control, practice patterns, etc., were desired and anticipated by Congress. The intent is to adjust the prospective payment rates to reflect these changes in behavior under the prospective payment system. For instance, the congressionally mandated recalibration of individual DRG rates is a demonstration of the intent to adjust for behavioral changes associated with the prospective payment system.

To most accurately capture the unique labor market characteristics of the hospital industry, and to be consistent with the use of the area wage index to adjust the standardized amounts for geographic area wage cost differentials, we use a hospital industry wage rate in our market basket.

During the last four calendar years, average hourly earnings in the hospital industry have increased at rates substantially in excess of economy-wide wage increases (see table below). The hospital wage rate we use captures the effects of skill-mix and occupation-mix shifts in the hospital industry, because it is measured by payroll expenses divided by hours of work. If case mix becomes more severe as a result of behavioral changes associated with the prospective payment system, and it becomes medically appropriate to shift to a higher quality and skill level of employees, the hospital wage variable we use captures observed behavioral changes to upgrade the skill-mix of employees. Likewise, if hospitals respond to a decrease in hospital admissions and lengths of stay, laying off workers with less seniority and associated lower wages, the hospital wage variable we use captures the upward pressure on average hourly earnings.

CALENDAR YEAR (PERCENTAGES)

	1981	1982	1983	1984
Hospital industry wage rate increases used in the prospective payment market basket..	12.3	11.2	7.4	5.5
Economy-wide wage rate increases (Index of Hourly Earnings of Production Workers—total private nonfarm), Bureau of Labor Statistics.....	9.1	6.9	4.6	3.4

An intended effect of the prospective payment system is to encourage hospitals to be prudent buyers of labor using state-of-the-art wage and salary administration procedures used in other sectors of the economy.

Forecasts of hospital wage increases, and other components of the hospital market basket, as provided by the private consulting firm of Data Resources, Inc. include their best estimates of the combined forces expected over the period 1985 to 1987. Since forecasting is inherently difficult and subject to error, we will prospectively correct for forecast errors.

In summary, we feel our treatment of hospital wages in the market basket is appropriate and makes specific allowance for quality and skill level of employees as shifts are made in response to prospective payment system incentives.

Comment: One commenter stated that we did not supply any of the supporting information on which the FY 1986 hospital market basket projections were based.

Response: The market basket components, relative weights as well as the data source for each component measure, are listed in the September 1, 1983 interim final rule (48 FR 39845). Also, referenced in the rule as a source for further background on the development of the market basket index is an article by Freeland, Anderson and Schendler, "National Hospital Input Price Index," *Health Care Financing Review,* Summer 1979. In addition, Data Resources, Inc., which is the forecaster of the market basket increases, is specifically identified. The addresses for Data Resources, Inc. are also provided in the September 1, 1983 document for anyone interested in obtaining additional information on these forecasts. Upon request, Data Resources, Inc. will provide in writing a description of the general methodology as well as a discussion of the variables considered in developing the market basket forecasts. Because this information continues to be available to the public, we believe we have supplied the public with sufficient information concerning the development of the market basket forecasts, including specific data sources for interested parties. As pointed out previously, because of the limited interest that these data would have for the majority of readers, it is not our policy to publish the voluminous amount of data associated with the various factors developed for the prospective payment system. However, we note that this does not imply that the information is unavailable to the public upon request.

e. *Composite Policy Target Adjustment Factor—(1) General considerations.* In analyzing the prospective payment system [1] we considered the effects of the rates we set on outcomes such as quality of health care, access to care, and the financial viability of the hospital industry. The annual prospective payment percentage increase factor should be set so that it provides incentives for desired outcomes under the prospective payment system. To achieve incentives for the desired outcome targets, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of production of hospital inpatient care. Our objective is to translate the intent of the statutory requirements for updating the prospective payment rates into a methodology for making adjustments to the current update factor that would enable us to express our consideration of these variables as policy targets.

To this end, we have identified three factors that correspond to matters that must be considered under sections 1886(e)(2) and (e)(4) of the Act. For FY 1986, we are incorporating into the prospective payment update factor a composite "policy target adjustment factor" that takes account of productivity (efficiency), cost-effective technologies, and cost-ineffective practice patterns. Although, for the purposes of analysis and discussion, we have developed separate values for each of these three factors, we are combining them into a composite policy target adjustment factor, which we used in determining the FY 1986 prospective payment update factor.

Comment: Several commenters suggested there was lack of data or data known only to us that were used in the development of the policy target adjustment factors. In particular, one commenter asserted an inability to comment on the productivity adjustment because the BLS productivity indexes were not adequately identified.

Response: HCFA and ProPAC were fully aware that there were not as many data available on the update factors as would be preferred. On the other hand, both HCFA and ProPAC also agreed that sufficient data were available on the public domain to make estimates to carry out the congressional intent to consider and account for the effects of productivity, new technologies, and other factors. These data sources and related studies are specifically cited in Appendix B of the June 10, 1985 proposed rule (50 FR 24440) or in the Technical Appendix of the ProPAC Report to the Secretary. The BLS indexes used to develop the productivity adjustment were those cited in the "Current Labor Statistics" section of the *Monthly Labor Review* of the U.S. Department of Labor, BLS. These are readily available to the public and were not cited specificially in Appendix B of the NPRM because of our assumption that the availabitiy of government data was generally known. Currently there is no specific productivity measure for hospitals; however, BLS is in the process of developing such a measure. In developing the productivity adjustment, we benefited from discussion with BLS staff on productivity measures.

Our add-on for cost-effective new technologies of 1.5 percent takes into account the congressional intent for continued growth in intensity of services associated with new technologies and scientific advances. It is important to note that capital-related costs for new technologies continue to be paid for on a retrospective cost basis. The new technologies factor is for operating expenses only. HCFA's 1.5 percent add-on for new technologies is within the range recommended by ProPAC for its factor "Scientific and Technological Advances."

[1] In determining how to implement the requirements of sections 1886(e)(2) and (e)(4) of the Act, we have adopted an analytic framework developed by the Division of National Cost Estimates of HCFA's Office of the Actuary. A technical explanation of this framework was issued as Appendix B of the proposed rule (50 FR 24440). A revised version of Appendix B will be appearing in the Fall 1985 *Health Care Financing Review* in the Legislative Update section.

ProPAC recommended two offset factors: Hospital Productivity (−1.5 to −2.0 percent) and Changes in Hospital Product (−1.0 percent). Combined, these two offset factors equal −2.5 to −3.0 percent. ProPAC's "Changes in Hospital Product" factor is included within HCFA's "Ineffective Practice Pattern Offset" factor. Using essentially the same publicly available data sources, ProPAC and HCFA derived similar estimates for the combined offsets. Our combined offset was ×3.0 percent; whereas, ProPAC's was −2.5 to −3.0 percent. The analytical framework that we incorporated contributed to a different interpretation and split between the two ProPAC offset factors, with HCFA allocating relatively more emphasis to the changes in the hospital product factor and less to the hospital productivity factor.

Both HCFA and ProPAC concur that as more data become available, we can incorporate it to improve the update adjustment factors. Likewise, in order to meet congressional intent, both HCFA and ProPAC also agree that more clear-cut methodologies must be developed. The interactions among the factors and the difficulty of disentangling these factors from other factors contributing to cost increases require that judgment will be necessary.

Comment: Some commenters suggested that because we did not use terminology identical to ProPAC, we did not adequately consider ProPAC's analyses and recommendations.

Response: HCFA began its study of the prospective payment rate increase factor by carefully examining section 1886(e)(4) of the Act, which we quoted in the proposed rule (50 FR 24392). Section 1886(e)(4) of the Act reads as follows:

> (4) Taking into consideration the recommendations of the Commission [that is, ProPAC] the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for the purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

Further, as prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary,

> . . . shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

We believe that our framework more accurately captures the congressional intent of the statute than does ProPAC's formulation. For example, section 1886(e)(4) of the Act specifically states that the effectiveness dimension of health care delivery be considered and accounted for in the percent increase factor. Further, we believe that our framework has a substantially stronger analytical basis than the ProPAC formulation. Our framework incorporates ProPAC's factors where they are specifically included in the statute. We believe that ProPAC made important conceptual and quantitative contributions to our understanding of the percent increase factor. However, we used different terminology, such as policy target adjustment factor rather than the discretionary adjustment factor, for two reasons:

- To more accurately characterize our framework and the decision-making process, and
- To reduce confusion between our framework and ProPAC's approach, since they differ, as mentioned above.

Some commenters made recommendations for changing some of the terminology used in describing the policy adjustment target factors. We are now considering certain changes in terminology as a result of these comments. Some examples are changing "productivity offsets" to "productivity improvements," and changing "cost-effective practice patterns" to "clinical practice pattern improvements."

Comment: Some commenters suggested that to measure cost-effectiveness of care, we needed to measure total systems cost for the entire episode of illness, including costs before and after the hospital stay.

Response: Our policy target adjustment factor, like ProPAC's discretionary adjustment factor, focuses on the percent increase for hospital *inpatient* services only. This focus is appropriate because hospital prospective payments are for inpatient hospital services only. However, we are very concerned about the effect of the prospective payment system on total system costs.

Comment: Several commenters suggested that there potentially can be double-counting between our offsets for productivity and ineffectiveness.

Response: We were fully aware that significant interactions exist among the components of the policy target adjustment factor (see the June 10, 1985 proposed rule (50 FR 24396)), and took this into account when using the analytical framework to assure no duplicative counting. For inpatient stays, ineffective practice patterns include certain services that are more appropriately provided in lower cost settings (for example, preadmission testing in outpatient facilities, skilled nursing care, and home health agency services), or services that do not give value for money expended. Those persons whose care is shifted totally to a noninpatient setting are not included in this analysis. HCFA used the observed reductions in length of stay during FY 1984 as an indicator of reductions in inpatient hospital ineffective practice patterns. Physicians reduced outputs and we assume that this reduction in outputs, associated with the decline in length of stay, is because they concluded that such outputs did not give value for money expended or could be provided more effectively in a lower cost setting. Under the retrospective cost-based reimbursement system in effect prior to prospective payment system, there was a financial incentive that encouraged longer lengths of stay. The offset factor will not take effect until FY 1986, even though the costs associated with the observed reductions in length of stay occurred in FY 1984. There is no duplication caused by offsets for both productivity and ineffective practice patterns, because the latter are for observed changes in FY 1984 and the productivity offset is for prospective improvements during FYs 1985 and 1986. The policy target adjustment factor for productivity takes into account that productivity increases may occur with a lag after reductions in ineffective pattern outputs associated with the reduction in length of stay in FY 1984. It should be noted that reductions in length of stay do not necessarily translate into increases in productivity when using conventional definitions of productivity (real output per unit of input). Measures of both outputs and inputs are necessary to quantify productivity.

ProPAC agreed with us that the minus one percent allowance for productivity change in the proposed rule represents a reasonable target for FY 1986—even excluding reductions of length of stay observed in FY 1984.

Comment: Several commenters raised questions on the most appropriate assumptions for the marginal cost of a day in a hospital relative to average cost. This ratio is needed to make an estimate of the likely cost savings

associated with observed reductions in length of stay.

Response: For purposes of determining additional payments for day outlier cases, NCFA currently assumes that the marginal cost of an additional day of stay is equal to 60 percent of the average per diem payment for the applicable DRG, excluding payment for pass-through costs that are not included in the prospective payment rate. (See the January 3, 1984 final rule (49 FR 266) for the discussion of marginal cost assumptions.) The 11 percent reduction in length of stay results in a 6.6 percent reduction in cost per case using this assumption. Our offset factor for the observed length of stay reduction is 2 percent. This allows for the majority of FY 1984 estimated savings to accrue to the hospital industry, and does not take any additional amounts for potential gains in FYs 1985 and 1986. We are not applying an offset of 2 percent until FY 1986, even though the observed reduction in length of stay occurred in FY 1984.

ProPAC points out that studies indicate the marginal cost associated with a patient day ranges from 20 percent to 80 percent, depending on the timeframe. Given this variation in empirical studies, we chose the marginal cost percentage (60 percent) already in place under the prospective payment system. It must also be noted that all overhead associated with capital-related costs and other pass-through items have been eliminated.

As an alternative, we also estimated a 4.4 percent cost savings that would be associated with a 40 percent marginal cost assumption. However, we believe it would be inconsistent to use a higher estimate of marginal cost for outliers and a lower one for the cost effects of reductions in length of stay. We believe the two percent offset used is reasonable and conservative.

(2) *Productivity.* Productivity measures output per unit of input and answers the question as to whether the same output can be accomplished with fewer resources or with a different, less costly, mix of resources. Hospitals often hire industrial engineers and management experts to increase productivity (efficiency) in hospital operations. Productivity improvements result in increases in output prices that are less than the increase in the price of inputs (holding profit margin and the nature of the outputs constant). In competitive industries, consumers benefit from the increases in productivity by paying lower prices. Likewise, under the prospective payment system, increases in productivity should be reflected by lower prices (that is, prospective payment rates) than would otherwise be the case.

Although studies of hospital productivity have been done, and some measures of productivity have been devised for specific applications. Valid productivity indexes comparable to those for other industries are not currently available for the entire hospital industry. Various economy-wide productivity indexes developed by BLS indicate national productivity increases of approximately three percent annually for the last two years (1983 and 1984). However, long-term avarage rates of increase show substantial variation depending upon the time period covered, the industries included, and the productivity measure used (multi-factor productivity or labor productivity).

Given the years of retrospective, cost-based reimbursement, with attendant perverse incentives for productivity, we believe hospitals have the potential for substantial improvements in productivity. We expect that a two percent or more annual increase in productivity would not be unreasonable. Therefore, we are incorporating a 1.0 percent productivity offset (reduction) in the FY 1986 policy target adjustment factor. We believe this is a conservative offset that will allow hospitals to retain more than half of potential productivity gains. We believe sharing the benefits of the prospective payment system in this way provides desirable incentives.

(3) *Cost-effective technologies.* Certain technological changes, especially those related to the adoption of new products (with accompanying labor and nonlabor inputs), increase the operating cost of treating illness but also improve health status commensurately. We believe that the prospective payment rates should recognize new science and technology factors, which are cost-increasing, but also enhance health status. This should provide positive incentives for continued technological and scientific excellence.

The effects of new technologies and scientific advances on operating cost and health status are very complex and are difficult to isolate. Typically, a specific new technology increases cost in some uses and decreases costs in other uses. Concurrently, in some situations, health status is improved while in other situations, it may be unaffected or even worsened using the same technology. Separating out the relative importance of each of these effects for individual technologies and new technologies that are cost-increasing has proven to be elusive from a statistical point of view. Yet, it is important to allow for new technologies and scientific advances. Therefore, we are incorporating a 1.5 percent add-on in the FY 1986 policy target adjustment factor. We expect this add-on to promote, within bounds, the development and use of cost-effective new technologies. The 1.5 percent add-on allows significant growth over time in cost-increasing, health-enhancing new technologies and scientific advances, especially when one considers that all capital costs are currently paid on a cost basis and that this affords an additional allowance for accompanying labor and nonlabor inputs.

(4) *Elimination of ineffective practice patterns.* Just as cost-effective new technologies and scientific advances are expected to increase a hospital's production of cost-effective outputs, and must be encouraged, existing practice patterns that are ineffective in the production of outputs should be discouraged. We believe the implementation of the prospective payment system has substantially increased the incentive for such changes of behavior, by affording hospitals a clear benefit from pursuing them, rather than the disincentive of potential decreases in cost reimbursement. As a prudent buyer, we want to get value for our money. We desire the Medicare Trust Funds and its contributors to share in the benefits accruing from more effective and economical provision of care. Thus, one of our policy targets in setting the level of the Federal rates is to ensure that those rates afford an opportunity for both buyer and provider of services to share the benefits resulting from the elimination of ineffective practice patterns.

Effectiveness compares the objective of improving health status with alternative uses of resources for achieving that objective to determine whether the right, or best available, care is being provided. A hospital can improve the effectiveness with which it delivers health care by—

- Eliminating practices that do not need to be done at all; and
- Ensuring that the only procedures and services furnished in the hospital are those that require a hospital level of care.

We believe that the data on per case costs on which the FY 1984 and FY 1985 standardized amounts were based included a component of unnecessarily high costs reflecting ineffective practice patterns. We believe that hospitals deserve to accrue benefits from these changes, but, nonetheless, we believe it

is reasonable for us to share in them also. Therefore, for these reasons and for the reasons we stated in the addendum to the NPRM (50 FR 24396), we are incorporating a 2.0 percent offset (reduction) in the policy target adjustment factor for FY 1986.

(5) *Composite Policy Target Adjustment.* For FY 1986 and thereafter, we are adjusting the average standardized amounts by a percentage composite policy target adjustment factor, as authorized under section 1886(e)(4) of the Act. For FY 1986, this composite policy target adjustment factor is a composite of the offsets and add-ons for productivity, cost-effective technologies, and cost-ineffective practice patterns, as follows:

	Percent
Productivity	−1.0
Cost-effective technologies	+1.5
Cost-ineffective practice patterns	−2.0
Composite policy target adjustment factor	−1.5

f. *Summary.* The combined effect of the forecasted increase in the hospital market basket, the adjustments for Part B costs and FICA taxes, the composite correction factor, and the composite policy target adjustment factor would be a negative FY 1986 prospective payment update factor, as follows:

	Percent
Forecasted market basket increase	+4.27
Part B costs and FICA taxes	+.31
Composite correction factor	−7.5
Composite policy target adjustment factor	−1.5
	−4.42

Such a negative update factor would result in a significant decrease in the standardized amounts for FY 1986, compared to those for FY 1985, and a corresponding reduction of anticipated revenue for hospitals subject to the prospective payment system. However, although we have substantial technical and legal justification for issuing FY 1986 standardized amounts that would be lower, on the average, than FY 1985 standardized amounts, we are not establishing lower amounts. In addition, because we believe it is important to protect the prospectivity of this payment system, we are not recouping any excessive payments resulting from the overstated FY 1985 standardized amounts.

The prospective payment system was intended, from its inception, to produce significant changes in the hospital industry. However, if these changes take place too rapidly, disruptions and unintended consequences may result that would adversely affect the industry and Medicare beneficiaries. Neither do we want to encourage changes that would compromise the access to quality inpatient hospital care historically enjoyed by Medicare beneficiaries. Our objective is to set the FY 1986 update factor at a percentage level that takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, in accordance with section 1886(e)(4) of the Act, and we believe that the payment rates should be set no lower than we have proposed in order to assure that this statutory standard is met.

Thus, we are establishing FY 1986 standardized amounts that are set at the same level as those for FY 1985. Because we restandardized the base year costs to reflect the proposed new survey-based wage index, and because the standardized amounts are adjusted to reflect EOMB's revised MSA designations, the amounts set forth in Table 1, in section IV, below, are not identical to those of last year. For the reasons given above, we believe that the resulting payments take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

4. *Other Adjustments to the Average Standardized Amounts*—a. *Part B Costs.* Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital, or by an entity under arrangements made by the hospital under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, we increased the amounts by a 0.13 percentage increase (as described in the September 1, 1983 interim final rule (48 FR 39766) and the August 31, 1984 final rule (49 FR 34768)) in both FY 1984 and FY 1985.

We refer the reader to the comment and response discussed in the following section on FICA taxes.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In FY 1984 and FY 1985, we increased the urban and rural regional and national standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospitals entering the Social Security system.

Comment: One commenter stated that the budget neutrality adjustment in FY 1985 effectively eliminated the adjustments for Part B costs and FICA taxes (estimated at about .31 percent). Therefore, because budget neutrality no longer applies in FY 1986, these adjustments should be restored.

Response: We agree with the commenter that although specific add-on adjustments were made to the average standardized amounts for Part B costs and FICA taxes, these adjustments were nullified through the budget neutrality adjustment. In compliance with sections 1862(a)(14) and 1886(b)(6) of the Act, which require that these costs be reflected in the standardized amounts, we are making an upward adjustment for Part B costs and FICA taxes. However, because we decided against reducing the prospective payment rates for FY 1986, these upward adjustments are offset against the amount by which the rates should have decreased. Since the percent magnitude of these adjustments is small, there still is a justified decrease in the rates. Hence, the zero percent increase of the prospective payment rates more than compensates for these adjustments.

c. *Nonphysician anesthetist costs.* In the August 31, 1984 final rule, we implemented section 2312 of Pub. L. 98-369, which provided that hospital costs for the services of nonphysician anesthetists will be paid in full as a reasonable cost pass-through for cost reporting periods beginning before October 1, 1987.

We did not directly reduce the FY 1985 Federal rates to exclude the estimated costs of these services, because any required adjustment would be incorporated in the budget neutrality adjustment factors applied to the national and regional standardized amounts. (See 49 FR 34794; August 31, 1984). Since the FY 1986 standardized amounts are derived from an update of the FY 1985 amounts, which were adjusted for budget neutrality, the rates will automatically include the appropriate adjustment. We are not making further adjustments to the Federal rates for this factor for either FY 1986 or FY 1987.

d. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made

for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent or more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 1, 1983 interim final rule (48 FR 39767), we estimated that outlier payments for FY 1984 would be 6.0 percent of total payments (including both standard prospective payment system payments and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments.

In the final rule published August 31, 1984 (49 FR 34728), we reduced the size of the reserve for outliers from 6.0 percent of total payments, which we had established for FY 1984, to 5.0 percent of total payments for FY 1985, while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. We believe that it was in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and correspondingly increase the amount of the standardization rates, thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has had the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. Therefore, we are continuing to set the size of the outlier reserve at apporoximately the five percent level for FY 1986. As indicated in the previous rules on prospective payments, we will pay for any outlier that meets the criteria in § 412.80, even if aggregate outlier payments result in more than five percent of total payments.

The FY 1985 standardized amounts were reduced by means of the budget neutrality methodology to the level necessary to take into account outlier payments of five percent of total payments based on the Federal rates. (See the August 31, 1984 final rule (49 FR 34795).) We are not making further adjustments to the standardized amounts for FY 1986 or future years, unless we later propose to increase the size of the outlier reserve.

We are revising the day outlier and cost outlier thresholds, using the most recent length of stay and charge data available, to ensure that total estimated outlier payments for FY 1986 are 5.0 percent of total payments. A discharge in FY 1986 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 17 days or 1.94 standard deviations. (For FY 1985, we set the day outlier threshold at the lesser of 22 days or 1.94 standard deviations.) We refer the reader to Table 5 in this addendum for the DRG day outlier thresholds. For FY 1986, a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 2.0 times the Federal rate for the DRG, or $13,500. (For FY 1985, we set the cost outlier thresholds at the greater of 2.0 times the Federal rate for the DRG, or $13,000.)

Comment: Several commenters suggested that the cost outlier thresholds should remain at the greater of 2.0 times the Federal rate for the DRG or $13,000, or be indexed in proportion to the increase in the prospective payment rates. Because we are not increasing the prospective payment rates in FY 1986, the commenters recommended that the cost outlier threshold criterion should not increase from $13,000 to $13,500.

Response: The thresholds for both cost and day outliers are set so as to achieve estimated outlier payments of five percent. Section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In order that the outlier thresholds reflect as closely as possible changing conditions in the hospital industry, we reduced the length-of-stay threshold for day outliers to 17 days in recognition of the continuing decline in hospital lengths of stay. Similarly, as discussed in the NPRM (50 FR 24398), we raised the cost outlier threshold criterion to $13,500 based on the most recent data available (that is, 1984 PATBILL data) that reflect current experience under the prospective payment system.

The cost of discharges is determined by multiplying the billed charges for covered services by .72. This figure represents a national ratio of Medicare inpatient charges and was derived from an analysis of cost and billing data used to establish the DRG relative weights. The .72 figure has remained constant, so that an increase in the charges would lead to increases in costs used to determine cost outlier payments. Therefore, if we did not increase the charge threshold, we would be paying, in the aggregate, too much for cost outliers.

We reiterate that the thresholds are set in order to yield an estimated dollar volume of outlier payments. If we were to retain the cost outlier criterion at $13,000, we would have to change other thresholds in order to achieve the same estimated dollar volume.

Comment: Commenters suggested that we are not following the requirements of section 1886(d)(5)(A)(iv) of the Act concerning outlier payments for hospitals. This section provides that payments for outliers may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates for a given year. Another commenter requested that we publish data to show that outlier payments are in fact between five and six percent of total payments.

Response: We believe that these comments may reflect a misunderstanding of the way in which outlier payments are made. In response to the comments received on the September 1, 1983 interim final rule, in the January 3, 1984 final rule we restricted the reduction for outlier payments to the Federal share of the prospective payment rates based on a literal interpretation of sections 1886(d)(2)(E), 1886(d)(3)(B), and 1886(d)(5)(A) of the Act (49 FR 261). Accordingly, we have limited the reduction for outlier payments to the Federal rates, and apply the outlier reduction factor only to the standardized amounts used to compute the Federal portion of the rates. The hospital-specific portion of the prospective payment rate is not reduced for outlier payments.

Because the hospital-specific portion included the cost of outlier cases in each provider's base period, (and in the January 3, 1984 final rule we had determined that the hospital-specific portion was no longer reduced to take account of outliers (49 FR 264)), outlier payment amounts to individual hospitals were reduced in FY 1984 to 25 percent of the otherwise applicable outlier amount. Similarly, in the second year of the transition period (FY 1985), outlier payment amounts were 50 percent of the otherwise applicable outer amount. In the third year of the transition period (FY 1986), outlier payment amounts are 75 percent, and in the fourth year (FY 1987), outlier payment amounts to individual hosptials will be 100 percent of the outlier amount that is computed. Once outlier payments to individual hospitals are based on 100 percent of the computed outlier amount, total system-wide outlier payments will be estimated

to equal five percent of total prospective payments.

As a result of this change in policy, that is, the hospital-specific portion was no longer reduced for outlier payments, which was made in response to comments from the hospital industry, a further calculation is made in determining the appropriate level of outlier payments. Assuming that the threshold level is set at five percent, outlier payments must be multiplied by the appropriate Federal blend percentage for the year involved. For example, during the second year of the transition period (FY 1985), outlier payments should approximate 2.5 percent (5 percent times 50 percent) of total DRG payments.

It is also important to note that, given the data available, forecasts of probable future outlier payments are inexact. Yet, it is these same data that must be used in setting the outlier thresholds. When more recent data become available, they are used in determining whether the outlier thresholds should be revised in order to achieve the percentage of outlier payments within the corridor specified in the law. As with all other aspects of the prospective payment system, we use the most recent data availabe to set the outlier criteria. To the extent that average hospital length of stay remains the same in the future as it is reflected in the most recent data, then we would be paying for outliers at the proper level. If average length of stay continues to decline, we will reflect that in subsequent years' outlier thresholds. It should be noted that, if average length of stay goes up, we will, in effect, overpay the outliers. However, we would not correct this retroactively. Data on actual outlier payments are incomplete at this time and therefore not available.

Comment: One commenter suggested that outlier payments are insufficient and should be increased.

Response: We refer the reader to the previous comment and response regarding our literal interpretation of the law on the level of outlier payment. In addition, the imprecision of data, also discussed in the previous comment and response, is relevant in this regard. The changes in the outlier thresholds that were set in the August 31, 1984 final rule (49 FR 34768) should also be noted. In that document, we stated that hospitals appeared to be encountering fewer outlier cases than originally anticipated. Therefore, we believe that it was justifiable to increase the outlier thresholds. This had the effect of reducing the offset of the standardized amounts for outlier payments required under section 1886(d)(2)(E) of the Act, and, in effect, increasing the payments (standardized amounts) to all hospitals for typical cases rather than outlier (atypical) cases. We believe that these adjustments are fully within our authority under the law (that is, outlier payments must be within five to six percent of total payments projected to be made under the prospective payment system), and benefitted the large majority of hospitals.

Comment: One commenter suggested that HCFA should increase the FY 1986 rates because outlier payments in FY 1985 were lower than expected.

Response: Sections 1886(d)(3)(B) and 1886(d)(5)(A)(iv) of the Act require that the standardized amounts be reduced by an amount sufficient to create a fund for outlier payments equal to five to six percent of the total payments estimated to be made during the following year. The outlier payments are then made based on criteria ("trimpoints") established under sections 1886(d)(5)(A)(i) and (ii). Although we properly reduced the standardized amounts in FY 1984 and FY 1985 to create an outlier fund equal to six percent and five percent of total estimated payments respectively, not all of the fund has been disbursed in outlier payments. This low level of payments resulted from the unexpectedly small number of cases that met the criteria established for such payments. Although we believe that the criteria were reasonable at the time they were determined, the subsequent substantial reduction in average hospital length of stay significantly reduced the number of cases qualifying for outlier payments.

We have considered whether this underpayment should be included in the composite correction factor used to establish the rates for FY 1986, but we have concluded that this would not be appropriate. The purpose of the composite correction factor is not to recover overpayments or reimburse for underpayments but to assure that the appropriate percentage change in the rates is applied to the correct base amount. Although fewer outlier payments were made than anticipated, this did not result in lower standardized amounts than would have been the case if outlier payments had been made as predicted. Standardized amounts could not have been increased because of the statutory requirement that they be so reduced as to create at least a five percent outlier fund. Hence, the underpayment does not affect the correctness of the current base and no correction factor would be appropriate.

We have also considered whether the policy target adjustment factor should be increased to account for the lower-than-expected outlier payments in previous years, but we do not believe that such an increase would be appropriate. The policy target adjustment factor is intended to adjust rates for the upcoming year to a level appropriate for the future. It is not appropriately used as a device to collect overpayments or reimburse for underpayments in past years, since such a use would be contrary to the prospective nature of the prospective payment system.

As discussed above, we have made, however, revised the outlier criteria for FY 1986 on the basis of the latest data available. This should reuslt in payment of the full outlier fund in the future.

Comment: Many commenters questioned why we pay hospitals only for the number of days indicated by the geometric mean length of stay assigned to each DRG listed in Table 5.

Response: There are no requirements under the prospective payment system that Medicare patients, who are classified within a given DRG, be discharged after a specific number of days as indicated by the geometric mean length of stay for that DRG, nor will hospitals be paid for only a certain number of days of care for each discharge within a given DRG. The prospective payment system is not predicated on the belief that all patients should receive the mean or average unit of services or length of stay.

Subject to Medicare eligibility and coverage requirements, payment under the prospective payment system is on a discharge basis without regard to the actual number of days of care furnished to a patient.

The geometric mean length-of-stay figures published in Table 5 of this addendum are geometric means, not the arithmetic means that an individual would usually consider in calculating the average of a distribution. The geometric mean is used as the appropriate statistical measure of central tendency for the purpose of determining day outlier (atypically long length of stay) cases. The geometric mean length-of-stay values, which are usually less than the arithmetic mean values, were used in calculating day outliers because of the particular skewness that is typical of the length-of-stay distribution for each DRG. Because the geometric mean length of stay is typically lower than the arithmetic mean, the day outlier thresholds were lower and less affected by atypically long stays in the data base used to establish outlier thresholds. Those values should not be considered

treatment norms or thresholds for requiring a patient's discharge.

With respect to both geometric and arithmetic mean length-of-stay values, it is important to note that, by virtue of being averages, each measure contains cases on both the high side and the low side. Therefore, it is to be expected that hospitals will encounter cases in which the lengths of stay are longer than the geometric or arithmetic means. Theoretically, it is possible that no case within a particular DRG will fall at exactly the mean length of stay value.

To assist the reader in understanding the difference between arithmetic and geometric mean lengths-of-stay, Table 5 now includes the arithmetic as well as the geometric mean length of stay for each DRG. Note that the addition of the arithmetic mean length-of-stay values is for illustrative and comparative purposes only. The arithmetic values, like the geometric values, do *not* represent limits on the number of hospital days that are paid for under Medicare. The geometric mean lengths of stay will continue to be used in the determination of day outlier cases.

Comment: One commenter believes that we should change our outlier policy for hospitals serving as regional referral centers for burn treatment patients. The commenter suggested that these hospitals receive 100 percent of reasonable costs for the outlier portions of patient stays. For the non-outlier portions of stays, the hospital would receive no more than the full DRG payment.

Response: The prospective payment system is not designed to recognize all the costs of furnishing services to each Medicare beneficiary. Instead, a predetermined payment amount per discharge is established to provide incentives for hospitals to manage their operations more efficiently. A hospital's payment may be more than its costs for some DRGs, and less than its costs for other DRGs. We believe that aggregate Medicare outlays for inpatient hospital services will equal or exceed the aggregate costs of treating Medicare beneficiaries in efficiently run hospitals.

Section 1886(d)(5)(A) of the Act requires the Secretary to provide an additional payment (day outlier payment) to hospitals for a DRG discharge that exceeds the geometric mean length of stay for discharges within that DRG by the lesser of a fixed number of days or a fixed number of standard deviations. For discharges that do not qualify as day outliers, or for discharges occurring in transferring hospitals, we provide cost outlier payments if the cost of covered services exceeds specified levels.

Under section 1886(d)(5)(A) of the Act, payment for outliers must approximate the marginal cost of care beyond the established cutoff criteria. Consistent with the basic nature of the prospective payment system, we believe that the amount of the additional payments for day outlier cases should be determined in advance, rather than be on a cost-reimbursement basis, as suggested by the commenter. According to health and hospital literature, marginal cost estimates range from 20 to 80 percent of average cost. For purposes of making outlier payments, we are using a 60 percent marginal cost estimate which is at the high end of this range. This 60 percent marginal cost factor is applied to all outlier cases under all DRGs. We do not, however, have sufficient data to estimate marginal costs on a DRG-specific basis or by type of provider.

We recognize that we have general authority under section 1886(d)(5)(C)(iii) of the Act to grant exceptions and adjustments, as we deem appropriate, to the prospective payment amounts. However, we believe that it is generally the better course of action to handle problems that occur under the prospective payments system in a manner that preserves the basis of the system in a fundamentally prospective formula for setting payment for individual DRGs. Establishing individual exceptions and adjustments, to the extent the changes are based on actual costs incurred, tends to undermine the prospective and predictable nature of the system.

We do realize that there may be instances in which the DRG payment may not be reflective of the resources used in treating a patient. We are currently in the process of determining the feasibility as well as the necessity of a severity of illness index. The development of such an index, however, is in the preliminary stage. Still to be determined is whether this index is actually needed, and, if so, what type of index would be most equitable, and at the same time, administratively simple to implement.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as we revised it in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this final rule, we discuss a new wage index based on our own wage survey data. This index is set forth in Tables 4a and 4b of section IV of this addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1986, the adjustment necessary for nonlabor-related costs for hosptials in Alaska and Hawaii will be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

Table—Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.15
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.125

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

C. DRG Weighting Factors

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, sorting them into DRGs and have developed weighting factors for each DRG that are intended to reflect the relative resource consumption associated with each DRG.

Table 5 of section IV of this addendum contains the weighting factors that we use for discharges occurring in FY 1986. These factors have been recalibrated as explained in section II of the preamble, and reflect

the changes in the GROUPER program summarized in Table 6.

To indentify certain DRGs more clearly, the titles of the following DRGs are revised as indicated below. These changes are in addition to those discussed in section II.B. of the preamble.

DRG	Current title	Revised title
15	Transient Ischemic Attack.	Transient Ischemic Attack and Precerebral Occlusions.
39	Lens Procedures	Lens Procedures with or W/O Vitrectomy.
61	Myringotomy Age >17.	Myringotomy with Tube Insertion Age >17.
62	Myringotomy Age 0–17.	Myringotomy with Tube Insertion Age 0–17.
76	O.R. Proc on the Resp System Except Major Chest With C.C.	Other Respiratory System O.R. Procedures with C.C.
77	O.R. Proc on the Resp System Except Major Chest W/O C.C.	Other Respiratory System O.R. Procedures W/O C.C.
101	Other Respiratory Diagnoses Age >69 and/or C.C.	Other Respiratory System Diagnoses Age >69 and/or C.C.
102	Other Respiratory Diagnoses Age <70 W/O C.C.	Other Respiratory System Diagnoses Age <70 W/O C.C.
106	Cardiothor Proc, Except Valve and Coronary Bypass, With Pump.	Other Cardiovascular or Thoracis Proc With Pump.
110	Major Reconstructive Vascular Procedures Age >69 and/or C.C.	Major Reconstructive Vascular Proc W/O Pump Age >69 and/or C.C.
111	Major Reconstructive Vascular Procedures Age <70 W/O C.C.	Major Reconstructive Vascular Proc W/O Pump Age <70 W/O C.C.
112	Vascular Procedures Except Major Reconstruction.	Vascular Procedures Except Major Reconstruction W/O Pump.
115	Permanent Cardiac Pacemaker Implant with AMI or CHF.	Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock.
116	Permanent Cardiac Pacemaker Implant W/O AMI or CHF.	Permanent Cardiac Pacemaker Implant W/O AMI, Heart Failure or Shock.
120	Other O.R. Procedures on the Circulatory System.	Other Circulatory System O.R. Procedures.
144	Other Circulatory Diagnoses with C.C.	Other Circulatory System Diagnoses with C.C.
145	Other Circulatory Diagnoses W/O C.C.	Other Circulatory System Diagnoses W/O C.C.
157	Anal Procedures Age >69 and/or C.C.	Anal and Stomal Procedures Age >69 and/or C.C.
158	Anal Procedures Age <70 W/O C.C.	Anal and Stomal Procedures Age <70 W/O C.C.
168	Procedures on the Mouth Age >69 and/or C.C.	Mouth Procedures Age >69 and/or C.C.
169	Procedures on the Mouth Age <70 W/O C.C.	Mouth Procedures Age <70 W/O C.C.
170	Other Digestive System Procedures Age >69 and/or C.C.	Other Digestive System O.R. Procedures Age >69 and/or C.C.
171	Other Digestive System Procedures Age <70 W/O C.C.	Other Digestive System O.R. Procedures Age <70 W/O C.C.
209	Major Joint Procedures.	Major Joint and Limb Reattachment Procedures.
244	Bone Diseases and Septic Arthropathy Age >69 and/or C.C.	Bone Diseases and Specific Arthropathies Age >69 and/or C.C.
245	Bone Diseases and Septic Arthropathy Age <70 W/O C.C.	Bone Diseases and Specific Arthropathies Age <70 W/O C.C.
260	Subtotal Mastectomy for Malignancy Age <70.	Subtotal Mastectomy for Malignancy Age <70 W/O C.C.
263	Skin Grafts for Skin Ulcer or Cellulitis Age >69 W/O C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age >69 W/O C.C.
264	Skin Grafts for Skin Ulcer or Cellulitis Age <70 W/O C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age <70 W/O C.C.
265	Skin Grafts Except for Skin Ulcer or Cellulitis with C.C.	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis with C.C.
266	Skin Grafts Except for Skin Ulcer or Cellulitis W/O C.C.	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis W/O C.C
285	Amputations for Endocrine, Nutritional + Metabolic Disorders.	Amputations of Lower Limb for Endocrine, Nutritional + Metabolic Disorders.
304	Kidney, Ureter and Major Bladder Proc For Non-Malignancy Age >69 and/or C.C.	Kidney, Ureter and Major Bladder Proc For Non-Neopl Age >69 and/or C.C.
305	Kidney, Ureter and Mayor Bladder Proc For Non-Malignancy Age <70 W/O C.C.	Kidney, Ureter, and Major Bladder Proc For Non-Neopl Age <70 W/O C.C
359	Tubal Interruption for Non-malignancy.	Incisional Tubal Interruption for Non-malignancy.
376	Postpartum Diagnoses W/O O.R. Procedure.	Postpartum and Postabortion Diagnoses W/O O.R. Procedure.
377	Postpartum Diagnoses with O.R. Procedure..	Postpartum and Postabortion Diagnoses with O.R. Procedure.
381	Abortion with D+C.	Abortion with D+C, Aspiration Curettage or Hysterotomy.
386	Extreme Immaturity, Neonate.	Extreme Immaturity or Respiratory Distress Syndrome, Neonate.
401	Lymphoma or Leukemia with minor O.R. Proc Age >69 and/or C.C.	Lymphoma or Leukemia with other O.R. Proc Age >69 and/or C.C.
402	Lymphoma or Leukemia with Minor O.R. Procedure Age <70 W/O C.C.	Lymphoma or Leukemia with Other O.R. Procedure Age <70 W/O C.C
408	Myeloprolif Disord or Poorly Diff Neopl with Minor O.R. Proc.	Myeloprolif Disord or Poorly Diff Neopl with Other O.R. Proc.
449	Toxic Effects of Drugs Age >69 and/or C.C.	Poisoning and Toxic Effects of Drugs Age >69 and/or C.C.

DRG	Current title	Revised title
450 ..	Toxic Effects of Drugs Age 18 to 69 W/O C.C.	Poisoning and Toxic Effects of Drugs Age 18 to 69 W/O C.C.
451 ..	Toxic Effects of Drugs Age 0–17.	Poisoning and Toxic Effects of Drugs Age 0 to 17.

D. Calculation of Prospective Payment Rates for FY 1986

FY 1986 represents the third year of the three-year transition period.

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1985 and Before October 1, 1986

Prospective Payment Rate=Hospital-Specific Portion+Federal Portion.

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{(Base year costs per discharge)}}{\text{(1981 case-mix index)}} \times \text{Updating factor} = \text{Hospital specific rate}$$

For the first prospective payment cost reporting period, the hospital-specific portion equaled 75 percent of the hospital-specific rate. For each subsequent transition period cost reporting period, the hospital-specific portion is derived as follows:

Previous Period's Hospital-Specific Rate × Updating Factor × Blending Percentage × DRG Weight

The blending percentage for cost reporting periods beginning in FY 1986 is 25 percent. For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. *Updating the Hospital-Specific Rates for FY 1986 Cost Reporting Periods.* We are carrying forward the hospital-specific rates for FY 1985 cost reporting periods without increasing them for FY 1986. For reasons discussed below, the FY 1985 hospital-specific rates were set too high, just as the FY 1985 Federal rates were. If we were to correct the rates prospectively for the full amount of the overstatement, it would result in a reduction of the hospital-specific rates. For the same reasons that we have decided not to reduce the FY 1986 Federal rates, we have decided that it is preferable to carry the rates forward unchanged for the last year of the transition period.

For cost reporting periods beginning in FY 1985, we determined each hospital's hospital-specific rate (before applying the 50 percent blending percentage for the second year of the prospective payment transition period) by applying the applicable compounded target rate percentage, as adjusted for budget neutrality, to the hospital's previous year's hospital-specific rate. The target rate percentages we used incorporated the same overstated market basket percentages as were used in determining the FY 1985 standardized amounts (Federal rates). In addition, each hospital's base-year costs were adjusted to remove the effect of the hospital's 1981 case-mix index, so that the hospital-specific portion, as well as the Federal portion, could be adjusted by a DRG weight in determining payment. As a result, the unanticipated rate of increase in case mix since the implementation of the prospective payment system, discussed above, has also resulted in overstated hospital-specific rates. Note that these are the same factors for which corrections are being applied in determining the revised Federal rates, as discussed in section II.A.3., above.

The requirement of budget neutrality (section 1886(e)(1) of the Act), which is discussed in relation to the Federal rates in section II.A.3 . . above, also governed the level of the target rate percentage increase for hospital-specific rates for cost reporting periods beginning in FY 1985. As we discussed above in regard to the Federal rates, the intent of Congress was that the hospital-specific rates for FY 1986 be updated from *budget neutral* rates for the previous period. However, the target rate percentages for cost reporting periods beginning in FY 1985 were too high to achieve actual budget neutrality. Therefore, we believe that we are required to adjust those hospital-specific rates downward before updating them for cost reporting periods beginning in FY 1986. Similarly, for the same reasons discussed above in relation to the Federal rates, we also believe that the proper exercise of our responsibility under the law would require us to make these adjustments even in the absence of a requirement that the FY 1985 rates be budget neutral.

The reductions to the hospital-specific rates that would be necessary to correct the FY 1985 overstatement fully are as follows:

	Percent
Case-mix	6.3
Market basket	1.2
Combined	7.5

b. *Calculation of Hospital-Specific Portion.* For hospital cost reporting periods beginning in FY 1986, the hospital-specific portion of a hospital's payment for a given discharge is calculated by:

Step 1—Multiplying the previous cost reporting period's hospital-specific rate by 25 percent, and

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge.

The result is the hospital-specific portion of the FY 1986 prospective payment for a given discharge.

c. *New Providers.* Hospitals that had not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983, or hospitals that meet the criteria in § 412.74(a)(2), are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed solely on the Federal rates. Thus, new providers are paid a blend of 50 percent of the appropriate Federal regional rate and 50 percent of the Federal national rate for discharges occurring on or after October 1, 1985 and before October 1, 1986.

2. Federal Portion

For cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the Federal portion of the hospital's total prospective payment will be 75 percent of the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1985, the Federal rate is comprised of a blend of the appropriate Federal regional rate (50 percent) and the Federal national rate (50 percent).

Comment: Various commenters suggested that, if there is a zero percent increase in the prospective payment rate, the blend of the payment rate should remain at the same levels as in FY 1985; that is, 50 percent of the Federal portion (standardized amounts) and 50 percent of the hospital-specific portion. However, other commenters

recommended that the transition to national prospective payment rates should continue as scheduled.

Response: We agree with the latter commenters' recommendation that we should proceed with the transition period as scheduled. The blend of the Federal portion and the hospital-specific portion of the prospective payment rates is mandated by section 1886(d)(1) of the Act. That section provides for a three-year transition period during which a declining portion of the prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a regional Federal rate per discharge in the first year and a blend of a regional and national Federal rate per discharge in the second and third years of the transition period. Section 1886(d)(1) of the Act provides that for discharges occurring on or after October 1, 1983 and before October 1, 1984, the blend was 75 percent hospital-specific portion and 25 percent of the Federal portion; for discharges occurring on or after October 1, 1984 and before October 1, 1985, the blend is 50 percent of the hospital-specific portion and 50 percent of the Federal portion; and for discharges occurring on or after October 1, 1985 and before October 1, 1986, the blend will be 25 percent hospital-specific portion and 75 percent Federal portion. Because the law states exactly what the blend is to be, we must proceed with the third year of the transition period using a blend of 25 percent hospital-specific portion and 75 percent Federal portion. Any change in the blend would require congressional action.

We also point out that hospitals have known since the passage of Pub. L. 98-21 early in 1983 that there would be a transition to national prospective payment rates, and what the transition schedule would be. In our view, hospitals have had sufficient time to accomodate themselves to the transition and to anticipate the implementation of national rates in FY 1987. To delay the transition period at this point would, we believe, have the effect of penalizing efficient hospitals who have taken those steps necessary in anticipation of implementing the national rates in FY 1987.

III. Revised Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established by section 1886(b) of the Act and implemented in § 405.463 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that target amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage is the estimated hospital market basket increase factor plus one-quarter of one percentage point, as prescribed by section 1886(b)(3)(B) of the Act. For cost reporting periods beginning in FY 1986 and thereafter (that is, on or after October 1, 1985), the target rate percentage will be adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

B. Revised Target Amounts for Cost Reporting Periods Beginning in FY 1986

For cost reporting periods beginning in FY 1986, we are carrying forward each hospital's previous year's target amount without increase. This is consistent with the update we are establishing for both Federal rates and hospital-specific rates under the prospective payment system and would comply with the provisions of sections 1886(b)(3)(B) and 1886(e)(4) of the Act, which contemplate a single "percentage change" for all hospitals. In discussing the percentage change, these sections of the Act do not distinguish between hospitals subject to or excluded from the prospective payment system. Thus, we are required to apply the same update factor to both groups of hospitals and to units excluded from the prospective payment system. Given the fact that the target rate is a limit rather than a payment rate, and only affects those hospitals whose costs exceed the limit, it was reasonable for Congress to specify use of the same update factor rather than requiring independent development of different factors for each type of hospital.

In addition, even if we were not required by law to apply the same update factor to hospitals both included in and excluded from prospective payment, we believe it is appropriate to do so. Although certain of the adjustments and factors considered in determining the appropriate update under prospective payment may not apply to excluded hospitals and units, there are other considerations that we believe justify a zero percent increase for FY 1986.

Comment: Some commenters stated that it was inappropriate to apply the same prospective payment system update factor to excluded hospitals and units. These commenters disagreed with our determination that the statute requires us to apply the same update factor to both prospective payment hospitals and excluded hospitals and units. One commenter stated that the composite adjustment factor represents a correction of the standardized amounts and is not part of the update factor; therefore, it should not be applied to excluded hospitals and units.

Response: Since the rate-of-increase limits were established by Pub. L. 97-248, we have used the same market basket forecast for setting and updating hospitals' target amounts and, effective with the implementation of the prospective payment system, Federal regional and national standardized payment amounts. Moreover, as noted in the June 10, 1985 NPRM (50 FR 24401), in reviewing ProPAC's recommendation that separate market basket weights be used for hospitals and units excluded from the prospective payment system but subject to the rate-of-increase limits, studies to date indicate little difference in market baskets. Therefore, because we have used the same market basket forecasts in the past, and since little evidence supports the hypothesis that the market basket input weights would differ for excluded hospitals, we believe that it is appropriate to use the same market basket forecast of 4.27 percent in updating the target amounts in lieu of developing a separate update factor. Use of the same market basket forecast in the past means that the current target amounts are overstated relative to the most recent market basket forecasts. For this reason, we believe that it is appropriate to apply the same correction

factor of −1.2 percent for market basket forecast error.

While excluded hospitals and units have not had the opportunity to increase their reimbursement through coding changes that increase their case-mix index, it is important to note that an excluded hospital may qualify for an exception to the rate-of-increase limit based on a change in case mix as a result of an addition or discontinuance of services that results in a distortion in the rate of cost increase. (See § 405.463(g).) As to the appropriateness of the policy target adjustment factor, it might at first appear that the incentives to increase productivity and cost-effectiveness are not as strong for hospitals and units still reimbursed on a reasonable cost basis. The determinative factor, however, is that the excluded hospitals have the same opportunities for cost reduction that the prospective payment system hospitals have already exploited and thereby shown to be feasible. Moreover, we believe that the limit on the rate-of-increase in such hospitals' target amounts does, in fact, create the same incentives. This is especially true in view of the fact that a hospital, whose costs are below its target amount, is paid its costs plus the lower of—

- Fifty percent of the difference between its inpatient operating cost per discharge and the target amount; or
- Five percent of the target amount.

For these reasons, we believe it is appropriate to apply the composite policy target adjustment factor of −1.5 percent to the target amounts of hospitals and units subject to the rate-of-increase limits.

We believe that applying the same update factor to *all* hospitals and units is particularly important in view of our goal (and, we believe, Congressional intent) of bringing excluded hospitals and units under the prospective payment system as soon as possible. It is, therefore, appropriate at this time to begin providing excluded hospitals and units with incentives comparable to those experienced by hospitals under the prospective payment system. We expect many excluded hospitals and units will be able to achieve greater efficiency and effectiveness in the delivery of needed services as a response to these limits.

Since the rate-of-increase ceiling is a limit and not a payment rate, excluded hospitals and units that operate efficiently and maintain per case costs below their target amounts would continue to have a margin for increasing costs. In addition, under the provisions of section 1886(b)(4)(A) of the Act and § 405.463(g), a hospital or unit subject to the rate of increase limit may qualify for exceptions to that limit if it demonstrates that a portion of its costs above the limit is attributable to extraordinary circumstances or abrupt changes in patient mix. The availability of such exceptions affords protection for those hospitals that may exceed their target amount ceiling for reasons other than inefficiency.

Beginning with FY 1986, section 1886(e)(3)(A) of the Act instructs the Secretary to "adjust" the standardized amounts in accordance with her final determination under section 1886(e)(4) of the Act, which describes the update factor as the "percentage change". This would include any and all adjustments made to the standardized amounts. The "percentage change" under section 1886(e)(4) replaces the "percentage increase" under section 1886(b)(3)(B) of the Act, which applies to both prospective payment system hospitals and excluded hospitals and units. The law refers to the "percentage change" as a single factor and does not contemplate the application of separate factors for prospective payment system hospitals and excluded hospitals and units. Therefore, we are required to apply the same "percentage change" to both the prospective payment standardized amounts and the target rate of increase limit for excluded hospitals and units.

IV. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum. For Tables 2, 3a, and 3b, refer to the September 1, 1983 interim final rule (48 FR 39845).

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2361.23	668.56	2132.35	507.22
2. Middle Atlantic (PA, NJ, NY)	2217.30	660.71	2166.25	514.40
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2354.78	612.14	1987.52	427.03
4. East North Central (IL, IN, MI, OH, WI)	2435.73	712.68	1971.73	478.79
5. East South Central (AL, KY, MS, TN)	2235.04	544.16	1977.12	399.85
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2260.57	633.09	1836.34	410.83
7. West South Central (AR, LA, OK, TX)	2307.62	599.67	1853.44	398.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2203.70	634.49	1819.46	445.73
9. Pacific (AK, CA, HI, OR, WA)	2208.57	745.34	1828.74	521.49
10. National	2308.29	664.16	1920.46	437.97

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX	.8937
Taylor, TX	
Akron, OH	1.1000
Portage, OH	
Summit, OH	
Albany, GA	.8124
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9278
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0998

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bernalillo, NM	
Alexandria, LA	.9102
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0379
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9950
Blair, PA	
Amarillo, TX	.9526
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2528
Orange, CA	
Anchorage, AK	1.5735

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Anchorage, AK	
Anderson, IN	.9185
Madison, IN	
Anderson, SC	.8309
Anderson, SC	
Ann Arbor, MI	1.2515
Washtenaw, MI	
Anniston, AL	.8457
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0671
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.8780
Buncombe, NC	
Athens, GA	.8120
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9594
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0489
Atlantic, NJ	
Cape May, NJ	
Augusta, GA–SC	.9533
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0936
Kane, IL	
Kendall, IL	
Austin, TX	1.1096
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1972
Kern, CA	
Baltimore, MD	1.1069
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9135
Penobscot, ME	
Baton Rouge, LA	.9754
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0228
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0009
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0840
Beaver, PA	
Bellingham, WA	1.1388
Whatcom, WA	
Benton Harbor, MI	.8847
Berrien, MI	
Bergen-Passaic, NJ	1.0670
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0152
Yellowstone, MT	
Biloxi-Gulfport, MS	.8428
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9489
Broome, NY	
Tioga, NY	
Birmingham, AL	.9594
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9871
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9828
Monroe, IN	
Bloomington-Normal, IL	.9773
McLean, IL	
Boise City, ID	1.0508
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1485
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.1244
Boulder, CO	
Bradenton, FL	.9129
Manatee, FL	
Brazoria, TX	.8679
Brazoria, TX	
Bremerton, WA	.9742
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1760
Fairfield, CT	
Brownsville-Harlingen, TX	.8912
Cameron,TX	
Bryan-College Station, TX	.9500
Brazos, TX	
Buffalo, NY	1.0474
Erie, NY	
Burlington, NC	.7868
Alamance, NC	
Burlington, VT	1.0058
Chittenden, VT	
Grand Isle, VT	
Canton, OH	1.0007
Carroll, OH	
Stark, OH	
Casper, WY	1.0984
Natrona, WY	
Cedar Rapids, IA	1.0101
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9893
Champaign, IL	
Charleston, SC	.8847
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0406
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8926
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9276
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9968
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9631
Laramie, WY	
Chicago, IL	1.2299
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2373
Butte, CA	
Cincinnati, OH-KY-IN	1.0970
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8124
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1481
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0363
El Paso, CO	
Columbia, MO	1.0942
Boone, MO	
Columbia, SC	.9102
Lexington, SC	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Richland, SC	
Columbus, GA-AL	.7872
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9614
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9827
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8931
Allegeny, MD	
Mineral, WV	
Dallas, TX	1.0656
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8028
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0583
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0860
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9073
Volusia, FL	
Decatur, IL	.9523
Macon, IL	
Denver, CO	1.2772
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0480
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1640
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8396
Dale, AL	
Houston, AL	
Dubuque, IA	1.0514
Dubuque, IA	
Duluth, MN-WI	.9858
St. Louis, MN	
Douglas, WI	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Eau Claire, WI	.9429
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9369
El Paso, TX	
Elkhart-Goshen, IN	.9581
Elkhart, IN	
Elmira, NY	.9670
Chemung, NY	
Enid, OK	.9557
Garfield, OK	
Erie, PA	.9919
Erie, PA	
Eugene-Springfield, OR	1.1082
Lane, OR	
Evansville, IN-KY	1.0143
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0567
Clay, MN	
Cass, ND	
Fayetteville, NC	.8270
Cumberland, NC	
Fayetteville-Springdale, AR	.8020
Washington, AR	
FLint, MI	1.2018
Genesee, MI	
Florence, AL	.7832
Colbert, AL	
Lauderdale, AL	
FLorence, SC	.7631
FLorence, SC	
Fort Collins-Loveland, CO	1.0768
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1168
Broward, FL	
Fort Myers-Cape Coral, FL	.9464
Lee, FL	
Fort Pierce, FL	1.0141
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9176
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8688
Okaloosa, FL	
Fort Wayne, IN	.9499
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9926
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1407
Fresno, CA	
Gadsden, AL	.8713
Etowah, AL	
Gainesville, FL	.9572
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1329
Galveston, TX	
Gary-Hammond, IN	1.0899

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lake, IN	
Porter, IN	
Glens Falls, NY	.9538
Warren, NY	
Washington, NY	
Grand Forks, ND	.9800
Grand Forks, ND	
Grand Rapids, MI	1.0586
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0644
Cascade, MT	
Greeley, CO	1.0685
Weld, CO	
Green Bay, WI	1.0252
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9320
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9064
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9516
Washington, MD	
Hamilton-Middletown, OH	1.0140
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9796
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Middletown-Britain-Bristol, CT	1.1379
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8917
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1935
Honolulu, HI	
Houma-Thibodaux, LA	.9162
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0591
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9441
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8599
Madison, AL	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Indianapolis, IN	1.0517
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.2990
Johnson, IA	
Jackson, MI	1.0132
Jackson, MI	
Jackson, MS	.9279
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7859
Madison, TN	
Jacksonville, FL	.9412
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7908
Onslow, NC	
Janesville-Beloit, WI	.9353
Rock, WI	
Jersey City, NJ	1.0529
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8555
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9457
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1172
Grundy, IL	
Will, IL	
Joplin, MO	.9136
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2252
Kalamazoo, MI	
Kankakee, IL	.9441
Kankakee, IL	
Kansas City, KS-MO	1.0583
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0796
Kenosha, WI	
Killeen-Temple, TX	.8785
Bell, TX	
Coryell, TX	
Knoxville, TN	.8931
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9799
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0093
LaCrosse, WI	
Lafayette, LA	1.0041
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9097
Tippecanoe, IN	
Lake Charles, LA	.9964
Calcasieu, LA	
Lake County, IL	1.1552
Lake, IL	
Lakeland-Winter Haven, FL	.8787
Polk, FL	
Lancaster, PA	1.0320
Lancaster, PA	
Lansing-East Lansing, MI	1.0692
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8104
Webb, TX	
Las Cruces, NM	.8703
Dona Ana, NM	
Las Vegas, NV	1.1173
Clark, NV	
Lawrence, KS	1.0106
Douglas, KS	
Lawton, OK	.9400
Comanche, OK	
Lewiston-Auburn, ME	.9357
Androscoggin, ME	
Lexington-Fayette, KY	.9802
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9795
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9640
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1055
Faulker, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8349
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0205
Lorain, OH	
Los Angeles-Long Beach, CA	1.3193
Los Angeles, CA	
Louisville, KY-IN	1.0009
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0055
Lubbock, TX	
Lynchburg, VA	.8198
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9257
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0823
Dane, WI	
Manchester-Nashua, NH	.9508
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9847
Richland, OH	
McAllen-Edinburg-Mission, TX	.8046
Hidalgo, TX	
Medford, OR	1.0281
Jackson, OR	
Melbourne-Titusville, FL	.9310
Brevard, FL	
Memphis, TN-AR-MS	1.0418
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.0625
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0274
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1223
Midland, TX	
Milwaukee, WI	1.1329
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1687
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8863
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2015
Stanislaus, CA	
Monmouth-Ocean, NJ	.9853

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9275
Ouachita, LA	
Montgomery, AL	.8612
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9993
Delaware, IN	
Muskegon, MI	.9840
Muskegon, MI	
Naples, FL	1.0373
Collier, FL	
Nashville, TN	.9346
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Ruthford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3278
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9725
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.1194
New Haven, CT	
New London-Norwich, CT	1.1023
New London, CT	
New Orleans, LA	.9277
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3710
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1321
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8894
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9622
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4793
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8672
Marion, FL	
Odessa, TX	.9550
Ector, TX	
Oklahoma City, OK	1.0851
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0709
Thurston, WA	
Omaha, NE-IA	1.0433
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9232
Orange, NY	
Orlando, FL	1.0115
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8184
Daviess, KY	
Oxnard-Ventura, CA	1.2807
Ventura, CA	
Panama City, FL	.8293
Bay, FL	
Parkersburg-Marietta, WV-OH	.9055
Washington, OH	
Wood, WV	
Pascagoula, MS	.9608
Jackson, MS	
Pensacola, FL	.8679
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0508
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1789
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0723
Maricopa, AZ	
Pine Bluff, AR	.7952
Jefferson, AR	
Pittsburgh, PA	1.0932
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0172
Berkshire, MA	
Portland, ME	.9808
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1987
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9305
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0174
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0426
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9786
Utah, UT	
Pueblo, CO	1.1129
Pueblo, CO	
Racine, WI	.9930
Racine, WI	
Raleigh-Durham, NC	.9650
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9554
Pennington, SD	
Reading, PA	1.0174
Berks, PA	
Redding, CA	1.2306
Shasta, CA	
Reno, NV	1.1753
Washoe, NV	
Richland-Kennewick, WA	1.0182
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9529
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2426
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8932
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0210
Olmsted, MN	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Rochester, NY	1.0152
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1272
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2875
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0990
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9945
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9418
Buchanan, MO	
St. Louis, MO-IL	1.0748
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0892
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2480
Monterey, CA	
Salt Lake City-Ogden, UT	1.0279
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8656
Tom Green, TX	
San Antonio, TX	.8878
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3009
San Diego, CA	
San Francisco, CA	1.6380
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4698
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.1749
Santa Barbara, CA	
Santa Cruz, CA	1.2343
Santa Cruz, CA	
Santa Fe, NM	.9738
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3017
Sonoma, CA	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Sarasota, FL	.9569
Sarasota, FL	
Savannah, GA	.8853
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9910
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1495
King, WA	
Snohomish, WA	
Sharon, PA	.9687
Mercer, PA	
Sheboygan, WI	.9813
Sheboygan, WI	
Sherman-Denison, TX	.8557
Grayson, TX	
Shreveport, LA	.9543
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9989
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0137
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0014
St. Joseph, IN	
Spokane, WA	1.1475
Spokane, WA	
Springfield, IL	1.0587
Menard, IL	
Sangamon, IL	
Springfield, MO	.9792
Christian, MO	
Greene, MO	
Springfield, MA	.9988
Hampden, MA	
Hampshire, MA	
State College, PA	1.0694
Centre, PA	
Steubenville-Weirton, OH-WV	.9585
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2778
San Joaquin, CA	
Syracuse, NY	1.0389
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0972
Pierce, WA	
Tallahassee, FL	.9441
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9759
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8395
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8588

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Miller, AR	
Bowie, TX	
Toledo, OH	1.2178
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0555
Shawnee, KS	
Trenton, NJ	1.0242
Mercer, NJ	
Tucson, AZ	1.0017
Pima, AZ	
Tulsa, OK	1.0058
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0099
Tuscaloosa, AL	
Tyler, TX	.9963
Smith, TX	
Utica-Rome, NY	.8667
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3300
Napa, CA	
Solano, CA	
Vancouver, WA	1.1574
Clark, WA	
Victoria, TX	.8145
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9858
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0566
Tulare, CA	
Waco, TX	.9051
McLennan, TX	
Washington, D.C.-MD-VA	1.1878
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9920
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9800
Marathon, WI	
West Palm Beach-Boca Raton-Delary Beach, FL	.9900
Palm Beach, FL	
Wheeling, WV-OH	.9700
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1506

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8712
Wichita, TX	
Williamsport, PA	.8983
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0511
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9522
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9961
Worcester, MA	
Yakima, WA	1.0314
Yakima, WA	
York, PA	.9782
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0404
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0385
Sutter, CA	
Yuba, CA	

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7412
Alaska	1.4880
Arizona	.9255
Arkansas	.7647
California	1.1374
Colorado	.9258
Connecticut	1.0384
Delaware	.8582
Florida	.8751
Georgia	.7723
Hawaii	1.0084
Idaho	.9064
Illinois	.9726
Indiana	.8622
Iowa	.8656
Kansas	.8419
Kentucky	.7978
Louisiana	.8543
Maine	.8585
Maryland	.8710
Massachusetts	1.0516
Michigan	.9520
Minnesota	.8725
Mississippi	.7650
Missouri	.8265
Montana	.9087
Nebraska	.8250

TABLE 4B.—WAGE INDEX FOR RURAL AREAS—Continued

Non-urban area	Wage index
Nevada	1.0721
New Hampshire	.9185
New Jersey [1]	
New Mexico	.9146
New York	.8766
North Carolina	.8071
North Dakota	.8995
Ohio	.9034
Oklahoma	.8401
Oregon	1.0704
Pennsylvania	.9359
Rhode Island [1]	
South Carolina	.7770
South Dakota	.8203
Tennessee	.7677
Texas	.8121
Utah	.9436
Vermont	.8824
Virginia	.8167
Washington	1.0199
West Virginia	.8752
Wisconsin	.8929
Wyoming	.9674

[1] All counties within the State are classified urban.

BILLING CODE 4120-01-M

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5632	21.4	16.2	33
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.8117	19.7	13.4	30
3	1	SURG *	CRANIOTOMY AGE <18	2.9183		12.7	30
4	1	SURG	SPINAL PROCEDURES	2.7300	20.2	15.0	32
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6510	9.7	8.0	25
6	1	SURG	CARPAL TUNNEL RELEASE	.4072	2.8	2.3	7
7	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE >69 +/OR C.C.	1.3867	11.5	6.1	23
8	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE <70 W/O C.C.	.7466	5.6	3.7	19
9	1	MED	SPINAL DISORDERS + INJURIES	1.4237	14.4	8.4	25
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C.	1.1324	11.6	7.8	25
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	.9338	10.2	6.1	23
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.0016	11.4	7.8	25
13	1	MED	MULTIPLE SCLEROSIS + CEREBELLAR ATAXIA	.9789	10.9	7.7	25
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3144	12.6	8.5	26
15	1	MED	TRANSIENT ISCHEMIC ATTACK AND PRECEREBRAL OCCLUSIONS	.6241	6.1	4.7	19
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	.9044	8.9	6.8	24
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	.6803	7.8	5.6	23
18	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C.	.7567	8.2	6.1	23
19	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	.6548	7.2	5.3	22
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.4090	11.5	7.8	25
21	1	MED	VIRAL MENINGITIS	1.3144	10.6	7.9	25
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7087	6.5	5.0	20
23	1	MED	NONTRAUMATIC STUPOR + COMA	1.1242	8.5	5.2	22
24	1	MED	SEIZURE + HEADACHE AGE >69 AND/OR C.C.	.7644	6.8	5.0	22
25	1	MED	SEIZURE + HEADACHE AGE 18-69 W/O C.C.	.5522	5.5	4.0	18
26	1	MED	SEIZURE + HEADACHE AGE 0-17	.6255	3.9	2.7	14
27	1	MED	TRAUMATIC STUPOR + COMA, COMA >1 HR	1.5648	9.8	4.7	22
28	1	MED	TRAUMATIC STUPOR + COMA, COMA <1 HR AGE >69 AND/OR C.C.	.9422	8.5	5.0	22
29	1	MED	TRAUMATIC STUPOR + COMA <1 HR AGE 18-69 W/O C.C.	.6462	6.0	3.6	21
30	1	MED *	TRAUMATIC STUPOR + COMA <1 HR AGE 0-17	.3539		2.0	8
31	1	MED	CONCUSSION AGE >69 AND/OR C.C.	.5383	5.7	3.9	20
32	1	MED	CONCUSSION AGE 18-69 W/O C.C.	.4064	4.1	2.9	14
33	1	MED *	CONCUSSION AGE 0-17	.2457		1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR C.C.	.9777	8.9	6.1	23
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	.7384	7.6	4.9	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	2 SURG		RETINAL PROCEDURES	.7103	4.7	4.1	12
37	2 SURG		ORBITAL PROCEDURES	.6688	4.2	3.2	12
38	2 SURG		PRIMARY IRIS PROCEDURES	.3990	3.1	2.4	8
39	2 SURG		LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5721	2.3	2.1	4
40	2 SURG		EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4129	2.5	2.1	6
41	2 SURG	*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657		1.6	4
42	2 SURG		INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS + LENS	.6543	3.7	3.0	10
43	2 MED		HYPHEMA	.3462	4.6	3.7	13
44	2 MED		ACUTE MAJOR EYE INFECTIONS	.6397	7.3	5.9	21
45	2 MED		NEUROLOGICAL EYE DISORDERS	.5409	4.7	3.6	14
46	2 MED		OTHER DISORDERS OF THE EYE AGE >17 WITH C.C.	.6010	5.6	3.7	21
47	2 MED		OTHER DISORDERS OF THE EYE AGE >17 W/O C.C.	.4192	3.6	2.5	11
48	2 MED	*	OTHER DISORDERS OF THE EYE AGE 0-17	.4018		2.9	13
49	3 SURG		MAJOR HEAD + NECK PROCEDURES	2.8745	17.1	13.1	30
50	3 SURG		SIALOADENECTOMY	.7034	4.4	3.7	11
51	3 SURG		SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5887	4.0	3.3	10
52	3 SURG		CLEFT LIP + PALATE REPAIR	.6956	4.4	3.5	13
53	3 SURG		SINUS + MASTOID PROCEDURES AGE >17	.6176	3.8	3.0	10
54	3 SURG	*	SINUS + MASTOID PROCEDURES AGE 0-17	.6889		3.2	11
55	3 SURG		MISCELLANEOUS EAR, NOSE + THROAT PROCEDURES	.4342	2.6	2.1	6
56	3 SURG		RHINOPLASTY	.4358	2.8	2.3	7
57	3 SURG		T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE >17	.7718	5.7	3.7	20
58	3 SURG	*	T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097		1.5	3
59	3 SURG		TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.4132	2.9	2.3	7
60	3 SURG	*	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616		1.5	3
61	3 SURG		MYRINGOTOMY WITH TUBE INSERTION AGE >17	.4274	2.9	2.0	8
62	3 SURG	*	MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	.3089		1.3	3
63	3 SURG		OTHER EAR, NOSE + THROAT O.R. PROCEDURES	1.1619	8.1	5.1	22
64	3 MED		EAR, NOSE + THROAT MALIGNANCY	.9769	8.5	4.8	22
65	3 MED		DYSEQUILIBRIUM	.4499	4.8	3.8	14
66	3 MED		EPISTAXIS	.4146	4.3	3.3	13
67	3 MED		EPIGLOTTITIS	.9364	6.5	4.8	21
68	3 MED		OTITIS MEDIA + URI AGE >69 AND/OR C.C.	.6092	6.3	5.1	17
69	3 MED		OTITIS MEDIA + URI AGE 18-69 W/O C.C.	.5040	5.1	4.1	14
70	3 MED		OTITIS MEDIA + URI AGE 0-17	.5251	4.2	3.3	12

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	3	MED	LARYNGOTRACHEITIS	.6594	5.8	4.6	18
72	3	MED	NASAL TRAUMA & DEFORMITY	.5217	5.2	3.5	19
73	3	MED	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	.6049	5.1	3.4	18
74	3	MED	* OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	.3427		2.1	9
75	4	SURG	MAJOR CHEST PROCEDURES	2.9780	16.2	13.4	30
76	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES WITH C.C.	2.5667	14.9	10.3	27
77	4	SURG	OTHER RESPIRATORY SYSTEM O.R. PROCEDURES W/O C.C.	1.6735	11.5	7.0	24
78	4	MED	PULMONARY EMBOLISM	1.4802	11.7	9.5	27
79	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >69 AND/OR C.C.	1.9546	13.0	9.6	27
80	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 18-69 W/O C.C.	1.4403	12.2	8.5	26
81	4	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	.8652		6.1	23
82	4	MED	RESPIRATORY NEOPLASMS	1.1259	9.9	6.6	24
83	4	MED	MAJOR CHEST TRAUMA AGE >69 AND/OR C.C.	.8398	8.6	6.6	24
84	4	MED	MAJOR CHEST TRAUMA AGE <70 W/O C.C.	.5921	6.0	4.6	19
85	4	MED	PLEURAL EFFUSION AGE >69 AND/OR C.C.	1.1198	9.9	7.2	24
86	4	MED	PLEURAL EFFUSION AGE <70 W/O C.C.	.9761	8.8	5.9	23
87	4	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.8078	10.2	7.0	24
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0769	8.5	6.6	24
89	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE >69 AND/OR C.C.	1.1768	9.6	7.5	25
90	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE 18-69 W/O C.C.	.8900	7.7	6.2	22
91	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.8216	5.7	4.4	19
92	4	MED	INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C.C.	1.1117	9.0	6.8	24
93	4	MED	INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	.8642	7.5	5.4	22
94	4	MED	PNEUMOTHORAX AGE >69 AND/OR C.C.	1.3044	10.1	7.6	25
95	4	MED	PNEUMOTHORAX AGE <70 W/O C.C.	.8797	7.8	5.9	23
96	4	MED	BRONCHITIS & ASTHMA AGE >69 AND/OR C.C.	.8448	7.3	6.0	20
97	4	MED	BRONCHITIS & ASTHMA AGE 18-69 W/O C.C.	.7092	6.2	5.1	17
98	4	MED	BRONCHITIS & ASTHMA AGE 0-17	.7202	4.5	3.8	12
99	4	MED	RESPIRATORY SIGNS & SYMPTOMS AGE >69 AND/OR C.C.	.8078	6.4	4.6	22
100	4	MED	RESPIRATORY SIGNS & SYMPTOMS AGE <70 W/O C.C.	.6255	5.0	3.6	16
101	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.8461	7.5	5.5	23
102	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES AGE <70 WITHOUT C.C.	.6843	6.1	4.3	21
103	5	SURG	HEART TRANSPLANT	.0000			
104	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP & WITH CARDIAC CATH	7.3161	21.0	18.0	35
105	5	SURG	CARDIAC VALVE PROCEDURE WITH PUMP & W/O CARDIAC CATH	6.3400	18.2	15.0	32

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5 Page 4 of 14

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	5	SURG	CORONARY BYPASS WITH CARDIAC CATH	5.3332	16.3	14.7	32
107	5	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.6614	14.5	12.7	30
108	5	SURG	OTHER CARDIOVASCULAR OR THORACIC PROC, WITH PUMP	4.7810	14.7	10.6	28
109	5	SURG	CARDIOTHORACIC PROCEDURES W/O PUMP	4.3597	14.7	9.0	26
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE >69 AND/OR C.C.	3.3215	16.4	13.1	30
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE <70 W/O C.C.	2.4581	13.1	11.2	28
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.2239	11.8	8.1	25
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB + TOE	2.5406	21.8	17.2	34
114	5	SURG	UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8946	17.2	12.4	29
115	5	SURG	PERM CARDIAC PACEMAKER IMPLANT WITH AMI, HEART FAILURE OR SHOCK	4.1634	16.6	13.9	31
116	5	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.9709	9.6	7.8	25
117	5	SURG	CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY	1.4684	6.5	4.8	20
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.8784	4.7	3.4	14
119	5	SURG	VEIN LIGATION + STRIPPING	.9165	7.7	5.6	23
120	5	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2580	17.0	11.4	28
121	5	MED	CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH. ALIVE	1.7694	12.4	10.3	27
122	5	MED	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3270	10.6	8.8	26
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.3525	5.6	3.0	20
124	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG	1.2553	7.1	5.0	22
125	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	.7266	3.8	2.8	11
126	5	MED	ACUTE + SUBACUTE ENDOCARDITIS	2.9840	23.8	18.1	35
127	5	MED	HEART FAILURE + SHOCK	1.0100	8.9	6.8	24
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8456	9.9	8.6	24
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.7200	7.9	3.8	21
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C.C.	.8254	8.3	5.7	23
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	.6712	6.7	4.5	22
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR C.C.	.8040	7.0	5.3	22
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O C.C.	.7050	5.2	3.8	16
134	5	MED	HYPERTENSION	.6365	6.6	5.1	20
135	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C.	.8936	7.3	5.3	22
136	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C.	.7526	5.6	3.8	18
137	5	MED *	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 0-17	.6315		3.3	20
138	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE >69 AND/OR C.C.	.8138	6.5	4.9	21
139	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C.C.	.6517	5.1	3.9	16
140	5	MED	ANGINA PECTORIS	.6895	5.7	4.6	16

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	5	MED	SYNCOPE + COLLAPSE AGE >69 AND/OR C.C.	.6188	5.7	4.4	18
142	5	MED	SYNCOPE + COLLAPSE AGE <70 W/O C.C.	.5335	4.7	3.6	14
143	5	MED	CHEST PAIN	.5895	4.5	3.5	13
144	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES WITH C.C.	1.1158	8.4	6.2	23
145	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O C.C.	.8477	7.1	5.0	22
146	6	SURG	RECTAL RESECTION AGE >69 AND/OR C.C.	3.0755	18.9	16.6	34
147	6	SURG	RECTAL RESECTION AGE <70 W/O C.C.	2.2737	15.4	14.0	31
148	6	SURG	MAJOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	2.9487	17.8	15.3	32
149	6	SURG	MAJOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.1072	14.3	12.6	30
150	6	SURG	PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C.	2.3428	14.9	12.8	30
151	6	SURG	PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	1.5902	11.5	10.1	27
152	6	SURG	MINOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	1.4069	10.8	8.6	26
153	6	SURG	MINOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.0993	9.1	7.3	24
154	6	SURG	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE >69 AND/OR C.C.	2.6880	15.1	11.5	29
155	6	SURG	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 18-69 W/O C.C.	1.7906	11.7	8.9	26
156	6	SURG *	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 0-17	.8382		6.0	20
157	6	SURG	ANAL AND STOMAL PROCEDURES AGE >69 AND/OR C.C.	.7302	6.4	4.8	21
158	6	SURG	ANAL AND STOMAL PROCEDURES AGE <70 W/O C.C.	.5513	4.9	3.9	14
159	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE >69 AND/OR C.C.	1.0000	7.8	6.3	22
160	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE 18-69 W/O C.C.	.7457	5.9	5.0	16
161	6	SURG	INGUINAL + FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C.C.	.6538	5.3	4.4	14
162	6	SURG	INGUINAL + FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	.5264	4.1	3.6	10
163	6	SURG	HERNIA PROCEDURES AGE 0-17	.9648	5.6	4.2	18
164	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR C.C.	2.0649	12.2	10.7	28
165	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.4379	9.2	8.4	19
166	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR C.C.	1.3606	9.0	7.5	23
167	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	.8855	6.0	5.3	13
168	6	SURG	MOUTH PROCEDURES AGE >69 AND/OR C.C.	.9188	6.2	4.0	21
169	6	SURG	MOUTH PROCEDURES AGE <70 W/O C.C.	.6585	4.0	3.0	12
170	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE >69 AND/OR C.C.	2.7615	17.6	12.3	29
171	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE <70 W/O C.C.	2.3305	15.4	9.8	27
172	6	MED	DIGESTIVE MALIGNANCY AGE >69 AND/OR C.C.	1.0749	10.4	6.7	24
173	6	MED	DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	.9604	9.3	5.4	22
174	6	MED	G.I. HEMORRHAGE AGE >69 AND/OR C.C.	.9075	7.5	5.8	23
175	6	MED	G.I. HEMORRHAGE AGE <70 W/O C.C.	.7069	6.0	4.7	18

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	6	MED	COMPLICATED PEPTIC ULCER	.9318	8.3	6.3	23
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C.	.6617	6.6	5.4	18
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	.5556	5.5	4.6	15
179	6	MED	INFLAMMATORY BOWEL DISEASE	.9877	9.6	7.1	24
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR C.C.	.7584	7.4	5.4	22
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O C.C.	.5828	5.8	4.5	18
182	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE >69 +/OR C.C.	.6034	6.1	4.8	18
183	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE 18-69 W/O C.C.	.5107	5.0	4.0	15
184	6	MED	ESOPHAGITIS, GASTROENTERITIS + MISC. DIGEST. DISORDERS AGE 0-17	.4828	3.7	2.6	12
185	6	MED	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE >17	.7147	6.6	4.3	21
186	6	MED *	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17	.4112		2.9	11
187	6	MED	DENTAL EXTRACTIONS + RESTORATIONS	.4211	2.9	2.3	7
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.7173	6.4	4.3	21
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	.5272	4.8	3.3	17
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9178	6.1	4.3	21
191	7	SURG	MAJOR PANCREAS, LIVER + SHUNT PROCEDURES	4.4608	22.0	18.1	35
192	7	SURG	MINOR PANCREAS, LIVER + SHUNT PROCEDURES	4.0442	21.7	16.7	34
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C.	2.0120	18.4	15.7	33
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	2.1206	15.0	12.3	29
195	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C.C.	2.2727	14.6	13.1	30
196	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	1.5976	11.2	10.3	22
197	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR C.C.	1.7058	11.9	10.5	27
198	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.1400	8.7	8.0	17
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3378	17.4	14.2	31
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6286	15.8	10.9	28
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7150	16.1	10.4	27
202	7	MED	CIRRHOSIS + ALCOHOLIC HEPATITIS	1.1665	10.8	7.8	25
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0339	10.1	6.9	24
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9703	8.2	6.5	24
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C.	1.0720	9.5	6.7	24
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C.	.7735	7.5	5.0	22
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C.C.	.7775	7.8	5.4	22
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	.5794	5.2	4.0	16
209	8	SURG	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.3930	15.8	14.4	31
210	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C.C.	2.0320	16.9	14.6	32

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	8 SURG		HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.7867	15.0	12.7	30
212	8 SURG		HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6609	9.7	8.3	23
213	8 SURG		AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM & CONN. TISSUE DISORDERS	1.9753	17.1	12.1	29
214	8 SURG		BACK & NECK PROCEDURES AGE >69 AND/OR C.C.	1.8776	15.6	13.1	30
215	8 SURG		BACK & NECK PROCEDURES AGE <70 W/O C.C.	1.4281	12.0	10.2	27
216	8 SURG		BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5566	13.7	8.9	26
217	8 SURG		WND DEBRID & SKN GRFT EXC HAND,FOR MUSCSKELETAL & CONN.TISS.DIS	2.3100	18.8	11.2	28
218	8 SURG		LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 &/OR C.C.	1.3798	11.2	8.9	26
219	8 SURG		LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0437	8.1	6.7	22
220	8 SURG	*	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242		5.3	22
221	8 SURG		KNEE PROCEDURES AGE >69 AND/OR C.C.	.9758	7.0	4.7	22
222	8 SURG		KNEE PROCEDURES AGE <70 W/O C.C.	.7113	4.7	3.4	15
223	8 SURG		UPPER EXTREMITY PROC EXC HUMERUS & HAND AGE >69 AND/OR C.C.	.9853	7.1	5.3	22
224	8 SURG		UPPER EXTREMITY PROC EXC HUMERUS & HAND AGE <70 W/O C.C.	.7891	5.2	4.1	15
225	8 SURG		FOOT PROCEDURES	.6520	4.8	3.9	13
226	8 SURG		SOFT TISSUE PROCEDURES AGE >69 AND/OR C.C.	.9811	8.1	5.4	22
227	8 SURG		SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	.6872	5.2	3.8	17
228	8 SURG		GANGLION (HAND) PROCEDURES	.3661	2.3	1.9	5
229	8 SURG		HAND PROCEDURES EXCEPT GANGLION	.6212	4.0	2.9	12
230	8 SURG		LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0555	9.2	6.1	23
231	8 SURG		LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.7516	5.6	3.8	19
232	8 SURG		ARTHROSCOPY	.6706	4.6	3.2	14
233	8 SURG		OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE >69 &/OR C.C.	1.3723	11.5	8.1	25
234	8 SURG		OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE <70 W/O C.C.	.9457	7.5	5.3	22
235	8 MED		FRACTURES OF FEMUR	1.4137	17.9	10.1	27
236	8 MED		FRACTURES OF HIP & PELVIS	1.0714	13.1	8.8	26
237	8 MED		SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.6049	7.4	5.4	22
238	8 MED		OSTEOMYELITIS	1.6470	15.8	11.1	28
239	8 MED		PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN.TISS.MALIGNANCY	.9272	10.6	8.0	25
240	8 MED		CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C.C.	.9049	9.5	7.3	24
241	8 MED		CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	.7492	8.2	6.2	23
242	8 MED		SEPTIC ARTHRITIS	1.4562	13.5	9.7	27
243	8 MED		MEDICAL BACK PROBLEMS	.6843	8.0	6.2	23
244	8 MED		BONE DISEASES & SPECIFIC ARTHROPATHIES AGE >69 AND/OR C.C.	.6748	7.9	6.1	23
245	8 MED		BONE DISEASES & SPECIFIC ARTHROPATHIES AGE <70 W/O C.C.	.6407	6.7	5.1	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5 Page 8 of 14

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	8 MED		NON-SPECIFIC ARTHROPATHIES	.5936	6.9	5.4	21
247	8 MED		SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE	.5797	6.4	4.7	21
248	8 MED		TENDONITIS, MYOSITIS + BURSITIS	.5892	6.3	4.8	20
249	8 MED		AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.7899	8.8	5.6	23
250	8 MED		FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C.C.	.5162	5.6	3.8	20
251	8 MED		FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	.4084	3.5	2.5	11
252	8 MED	*	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496		1.8	7
253	8 MED		FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE >69 +/OR C.C.	.6323	7.8	5.4	22
254	8 MED		FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	.4931	5.8	4.0	20
255	8 MED	*	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638		2.9	15
256	8 MED		OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.6993	7.2	4.9	22
257	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0634	8.7	7.8	19
258	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	.9698	7.6	6.9	16
259	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	.8605	7.0	4.9	22
260	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	.6661	4.8	3.5	15
261	9 SURG		BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC	.6184	4.1	3.3	11
262	9 SURG		BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY	.4252	2.8	2.3	6
263	9 SURG		SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE >69 AND/OR C.C.	2.4177	22.1	16.1	33
264	9 SURG		SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE <70 W/O C.C.	2.1802	21.7	14.9	32
265	9 SURG		SKIN-GRAFT AND/OR DEBRID EXC SKIN ULCER OR CELLULITIS WITH C.C.	1.3993	11.6	7.6	25
266	9 SURG		SKIN-GRAFT AND/OR DEBRID EXC SKIN ULCER OR CELLULITIS W/O C.C.	.7313	6.1	4.0	21
267	9 SURG		PERIANAL + PILONIDAL PROCEDURES	.6362	5.4	4.0	17
268	9 SURG		SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES	.5698	3.9	2.8	12
269	9 SURG		OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE >69 +/OR C.C.	1.1338	9.6	5.5	23
270	9 SURG		OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C.	.7623	6.3	3.8	21
271	9 MED		SKIN ULCERS	1.2609	14.1	10.1	27
272	9 MED		MAJOR SKIN DISORDERS AGE >69 AND/OR C.C.	.8523	9.5	7.2	24
273	9 MED		MAJOR SKIN DISORDERS AGE <70 W/O C.C.	.7972	9.4	6.5	24
274	9 MED		MALIGNANT BREAST DISORDERS AGE >69 AND/OR C.C.	1.0368	10.9	7.0	24
275	9 MED		MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	.9882	10.4	5.8	23
276	9 MED		NON-MALIGANT BREAST DISORDERS	.5676	5.4	3.4	19
277	9 MED		CELLULITIS AGE >69 AND/OR C.C.	.8866	9.2	7.3	24
278	9 MED		CELLULITIS AGE 18-69 W/O C.C.	.7594	7.9	6.2	23
279	9 MED	*	CELLULITIS AGE 0-17	.4739		4.2	13
280	9 MED		TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C.	.5417	6.4	4.6	22

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C.C.	.4468	4.8	3.4	16
282	9	MED *	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 0-17	.3424		2.2	9
283	9	MED	MINOR SKIN DISORDERS AGE >69 AND/OR C.C.	.6368	7.0	5.0	22
284	9	MED	MINOR SKIN DISORDERS AGE <70 W/O C.C.	.5172	5.3	3.7	18
285	10	SURG	AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL&METABOLIC DIS.	3.2724	28.0	21.5	39
286	10	SURG	ADRENAL + PITUITARY PROCEDURES	2.6731	15.8	13.3	30
287	10	SURG	SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS	2.3781	21.5	15.7	33
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1130	12.4	9.7	27
289	10	SURG	PARATHYROID PROCEDURES	1.3308	8.8	6.9	24
290	10	SURG	THYROID PROCEDURES	.8563	5.9	5.0	14
291	10	SURG	THYROGLOSSAL PROCEDURES	.6073	4.2	3.4	11
292	10	SURG	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C.	2.3131	16.7	11.3	28
293	10	SURG	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C.	1.7962	14.0	8.2	25
294	10	MED	DIABETES AGE =>36	.7454	8.3	6.7	24
295	10	MED	DIABETES AGE 0-35	.7886	6.7	5.0	22
296	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C.	.8271	8.3	6.1	23
297	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	.6998	7.0	4.9	22
298	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17	.7202	5.3	3.3	18
299	10	MED	INBORN ERRORS OF METABOLISM	.8080	7.7	5.3	22
300	10	MED	ENDOCRINE DISORDERS AGE >69 AND/OR C.C.	.9349	9.2	6.9	24
301	10	MED	ENDOCRINE DISORDERS AGE <70 W/O C.C.	.6882	6.9	5.1	22
302	11	SURG	KIDNEY TRANSPLANT	4.6273	24.6	21.3	38
303	11	SURG	KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.7610	16.6	14.2	31
304	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-NEOPL AGE >69 +/OR C.C.	2.0323	13.5	10.8	28
305	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-NEOPL AGE <70 W/O C.C.	1.4894	10.4	8.4	25
306	11	SURG	PROSTATECTOMY AGE >69 AND/OR C.C.	1.2595	9.8	8.1	25
307	11	SURG	PROSTATECTOMY AGE <70 W/O C.C.	.9587	7.7	6.5	19
308	11	SURG	MINOR BLADDER PROCEDURES AGE >69 AND/OR C.C.	1.1490	8.8	6.1	23
309	11	SURG	MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	.8665	6.7	4.7	22
310	11	SURG	TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C.	.7266	5.6	4.3	17
311	11	SURG	TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	.5563	4.1	3.3	11
312	11	SURG	URETHRAL PROCEDURES, AGE >69 AND/OR C.C.	.7308	5.8	4.4	18
313	11	SURG	URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	.5936	4.7	3.5	14
314	11	SURG *	URETHRAL PROCEDURES, AGE 0-17	.4323		2.3	11
315	11	SURG	OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES	2.7760	15.4	9.8	27

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3212	10.0	6.4	23
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4907	3.4	2.3	10
318	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C.	.9231	8.8	5.5	23
319	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	.7418	6.6	3.8	21
320	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C.C.	.8629	8.2	6.5	24
321	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	.6753	6.4	5.1	19
322	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 0-17	.6998	6.4	5.2	19
323	11	MED	URINARY STONES AGE >69 AND/OR C.C.	.5863	5.1	3.7	17
324	11	MED	URINARY STONES AGE <70 W/O C.C.	.4098	3.6	2.8	11
325	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.6504	6.5	4.6	22
326	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C.C.	.5159	4.9	3.5	16
327	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17	.5511	28.6	3.3	20
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR C.C.	.5939	5.4	4.0	18
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O C.C.	.4870	4.1	3.0	12
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.2788		1.6	5
331	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE >69 AND/OR C.C.	.8333	7.6	5.4	22
332	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	.6740	6.0	4.1	21
333	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17	.7915	5.9	3.7	21
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH C.C.	1.8038	13.5	12.3	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.4644	11.9	11.0	23
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C.	.9871	7.9	7.0	18
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	.7788	6.3	5.8	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8907	7.3	4.9	22
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.5766	4.4	3.4	12
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335		2.4	7
341	12	SURG	PENIS PROCEDURES	.9974	6.4	5.3	16
342	12	SURG	CIRCUMCISION AGE >17	.4266	3.0	2.4	8
343	12	SURG *	CIRCUMCISION AGE 0-17	.3788		1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1216	8.3	6.3	23
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8196	6.5	4.8	22
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C.	.8569	8.5	5.6	23
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	.6441	5.9	3.7	21
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C.	.6260	5.6	3.9	19
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	.4854	3.9	2.9	12
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6270	5.9	4.8	17

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	STERILIZATION, MALE	.3334	1.9	1.6	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5388	4.8	3.3	16
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY	1.8818	14.0	10.8	28
354	13	SURG	NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C.C.	1.2335	9.7	8.8	19
355	13	SURG	NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C.	.9767	7.8	7.4	13
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8511	7.7	7.0	15
357	13	SURG	UTERUS + ADENEXA PROCEDURES, FOR MALIGNANCY	2.1101	14.9	12.3	29
358	13	SURG	UTERUS + ADENEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT	1.1185	8.6	6.9	24
359	13	SURG	INCISIONAL TUBAL INTERRUPTION FOR NON-MALIGNANCY	.5044	3.3	2.7	9
360	13	SURG	VAGINA, CERVIX + VULVA PROCEDURES	.6055	4.8	3.4	16
361	13	SURG	LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION	.7063	4.8	3.2	17
362	13	SURG	LAPAROSCOPIC TUBAL INTERRUPTION	.3596	2.0	1.8	4
363	13	SURG	D+C,CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY	.6176	4.9	3.6	15
364	13	SURG	D+C,CONIZATION EXCEPT FOR MALIGNANCY	.3922	2.6	2.3	7
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9086	14.8	10.9	28
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C.	.8626	8.4	4.9	22
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	.5354	4.7	2.8	16
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7610	7.8	5.9	23
369	13	MED	MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5498	5.6	3.9	20
370	14	SURG	CESAREAN SECTION WITH C.C.	1.0856	7.9	7.1	16
371	14	SURG	CESAREAN SECTION W/O C.C.	.7670	6.2	5.6	12
372	14	MED	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.5945	5.2	4.0	14
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3538	3.1	2.8	7
374	14	SURG	VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C	.5755	3.7	3.3	8
375	14	SURG •	VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C	.6817		4.4	15
376	14	MED	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	.4523	4.9	3.3	16
377	14	SURG	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	.7886	4.3	3.3	15
378	14	MED	ECTOPIC PREGNANCY	.7358	5.2	4.3	14
379	14	MED	THREATENED ABORTION	.2409	2.6	1.9	8
380	14	MED	ABORTION W/O D+C	.3609	2.8	1.9	9
381	14	MED	ABORTION WITH D+C, ASPIRATION CURETTAGE, OR HYSTEROTOMY	.3783	2.1	1.7	5
382	14	MED	FALSE LABOR	.1137	1.5	1.2	3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4453	4.8	3.4	16
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.4586	4.4	2.6	16
385	15	•	NEONATES, DIED OR TRANSFERRED	.6811		1.8	14

• MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
•• DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15	*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480		17.9	35
387	15	*	PREMATURITY WITH MAJOR PROBLEMS	1.8267		13.3	30
388	15	*	PREMATURITY W/O MAJOR PROBLEMS	1.1571		8.6	26
389	15	*	FULL TERM NEONATE WITH MAJOR PROBLEMS	.5425		4.7	16
390	15	*	NEONATES WITH OTHER SIGNIFICANT PROBLEMS	.3486		3.4	9
391	15	*	NORMAL NEWBORNS	.2218		3.1	7
392	16	SURG	SPLENECTOMY AGE >17	3.2494	17.3	13.7	31
393	16	SURG *	SPLENECTOMY AGE 0-17	1.5206		9.1	26
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD & BLOOD FORMING ORGANS	1.0891	8.0	5.0	22
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7153	6.7	4.7	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.2952	1.7	1.3	4
397	16	MED	COAGULATION DISORDERS	.9971	8.4	5.9	23
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE >69 AND/OR C.C.	.9753	8.1	5.5	23
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE <70 W/O C.C.	.7247	6.4	4.2	21
400	17	SURG	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.6646	16.7	12.8	30
401	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROC AGE >69 AND/OR C.C.	1.5902	12.3	8.2	25
402	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROCEDURE AGE <70 W/O C.C.	1.0555	8.2	5.6	23
403	17	MED	LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C.	1.3279	10.7	6.7	24
404	17	MED	LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C.	1.0449	8.4	5.0	22
405	17	MED *	LYMPHOMA OR LEUKEMIA AGE 0-17	1.0407		4.9	22
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC & C.C.	2.5307	16.8	12.9	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	1.7127	13.0	8.6	26
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH OTHER O.R.PROC	1.0502	8.3	5.3	22
409	17	MED	RADIOTHERAPY	.9856	10.9	7.0	24
410	17	MED	CHEMOTHERAPY	.4285	3.1	2.4	9
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.5907	5.9	3.8	21
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3389	2.4	1.9	6
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 &/OR C.C	1.0457	10.7	6.9	24
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	.8984	9.2	5.4	22
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.3292	20.5	14.7	32
416	18	MED	SEPTICEMIA AGE >17	1.6183	11.7	8.3	25
417	18	MED	SEPTICEMIA AGE 0-17	1.1532	7.6	5.4	22
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0026	9.8	7.5	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C.C.	.9306	8.4	6.1	23
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	.8319	7.5	5.5	23

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.5674	5.8	4.6	16
422	18	MED	VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17	.6582	5.2	3.6	18
423	18	MED	OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES	1.3287	11.0	8.0	25
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.2112	22.1	15.0	32
425	19	MED	ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6097	7.6	4.8	22
426	19	MED	DEPRESSIVE NEUROSES	.8330	11.8	7.8	25
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7019	9.8	6.4	23
428	19	MED	DISORDERS OF PERSONALITY + IMPULSE CONTROL	.8513	11.9	7.4	24
429	19	MED	ORGANIC DISTURBANCES + MENTAL RETARDATION	.8424	11.8	7.6	25
430	19	MED	PSYCHOSES	1.0762	15.5	10.5	28
431	19	MED	CHILDHOOD MENTAL DISORDERS	.8495	10.4	6.6	24
432	19	MED	OTHER DIAGNOSES OF MENTAL DISORDERS	.6969	8.1	4.9	22
433	20		SUBSTANCE USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.3906	4.4	2.9	16
434	20		SUBST ABUSE,INTOX INDUCE MNTL SYN EXC DEPEND & OR OTH SYMPT TRT	.7098	8.2	5.4	22
435	20		SUBSTANCE DEPENDENCE, DETOX AND/OR OTHER SYMPTOMATIC TREATMENT	.7980	10.2	6.7	24
436	20		SUBSTANCE DEPENDENCE WITH REHABILITATION THERAPY	1.0166	14.2	9.8	27
437	20		SUBSTANCE DEPENDENCE, COMBINED REHABILITATION AND DETOX THERAPY	1.3276	19.0	14.6	32
438			NO LONGER VALID	.0000			
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7930	15.4	9.0	26
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.0315	15.8	9.3	26
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7305	4.6	2.7	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C.	1.8156	10.5	6.1	23
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.4872	9.4	5.6	23
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR C.C.	.7074	7.7	5.4	22
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	.6015	6.2	4.1	21
446	21	MED	• MULTIPLE TRAUMA AGE 0-17	.4796		2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4471	4.1	2.9	14
448	21	MED	• ALLERGIC REACTIONS AGE 0-17	.3470		2.9	9
449	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C.C.	.6954	6.5	4.7	22
450	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	.5422	5.1	3.3	18
451	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	.5498	5.0	3.4	20
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C.	.8080	7.0	4.7	22
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	.7505	6.5	4.3	21
454	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C.	.8098	7.5	4.6	22
455	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C.C.	.6003	6.0	3.5	21

• MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
•• DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.8156	11.9	5.5	23
457	22		EXTENSIVE BURNS	7.5688	22.0	8.8	26
458	22	SURG	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.9499	28.0	18.9	36
459	22	SURG	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC	3.2662	20.8	13.5	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.1595	11.2	7.5	25
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.3572	10.2	5.3	22
462	23	MED	REHABILITATION	2.1408	24.2	18.0	35
463	23	MED	SIGNS + SYMPTOMS WITH C.C.	.7951	8.0	5.9	23
464	23	MED	SIGNS + SYMPTOMS W/O C.C.	.6948	7.8	5.0	22
465	23	MED	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2882	2.1	1.7	5
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.4153	4.5	2.7	16
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.7223	7.9	3.9	21
468			UNRELATED OR PROCEDURE	2.4542	17.1	11.7	29
469		**	PDX INVALID AS DISCHARGE DIAGNOSIS	.0000		.0	0
470		**	UNGROUPABLE	.0000		.0	0
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREMI	3.8994	23.5	20.9	38

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
A. DRG LOGIC ISSUES	
1. In MDC 5 (Diseases and Disorders of the Circulatory System), GROUPER assigns a patient who has had a toe or upper limb amputation to DRG 114 (Upper Limb and Toe Amputation for Circ. Sys. Disorders). If this same patient also has a leg amputated during the same hospital episode, the patient is still assigned to DRG 114, rather than to DRG 113(Amputations for Circ. Sys. Disorders Except Upper Limb and Toe).	Assign a patient to DRG 114 if only a toe or upper limb has been amputated. If the patient also had a leg amputation or any amputation of the lower extremity for circulatory disorders other than a toe, the assignment is DRG 113.
2. In MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), GROUPER assigns a patient who does not have a principal diagnosis of malignancy and who has had an open breast biopsy to DRG 262 (Breast Biopsy and Local Excision for Non-malignancy). If the patient also has, for example, a unilateral simple mastectomy during the same hospital episode, the patient is still assigned to DRG 262 rather than DRG 261 (Breast Proc. for Non-malignancy Except Biopsy and Loc. Excision).	Change the initial search from "Principal Diagnosis of Malignancy" to "Any Diagnosis of Malignancy" and assign those patients who do not have any diagnosis of a breast malignancy and who have a biopsy and local excision only to DRG 262. If the patient also has a breast procedure for nonmalignancy other than a biopsy or local excision, the assignment is DRG 261.
3. Most of the congenital anomaly diagnosis codes are included in the MDC associated with the organ system affected. There are, however, four congenital anomaly codes in MDC 15 (Newborns and Neonates with Conditions Originating in the Perinatal Period) that would be more appropriately included in another MDC as they are not solely used as newborn or neonate diagnoses.	Move diagnosis code 7583 (Autosmal Deletion Snyd.) to MDC 19 (Mental Diseases and Disorders); DRG 429 (Organic Disturbances and Mental Retardation). Move diagnosis code 7584 (Balance Autosom. Transloc.) and diagnosis code 7585 (Autosomal Anomolies NEC) to MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services); DRG 467 (Other Factors Influencing Health Status). Move diagnosis code 7586 (Gonadal Dsygenesis) to MDC 12 (Diseases and Disorders of the Male Reproductive System); DRG 352 (Other Male Reproductive System Diagnoses); and MDC 13 (Diseases and Disorders of the Female Reproduction System); DRG 369 (Menstrual and Other Female Reproductive System Disorders). The MDC assignment is dependent on the sex of the patiant.
4. MDC 17 (Myeloproliferative Diseases and Disorders, Poorly Differentiated Neoplasms) differs from all other MDCs with a surgical hierarchy because patients with O.R. procedures are, in some cases, assigned to medical DRGs. That is, patients who had selected O.R. procedures are assigned to certain DRGs and patients who had an O.R. procedure not in the selected list are assigned to the medical DRGs (403-405, 409-414).	Assign patients who have any surgical procedure, other than those listed as major procedures (DRGs 400, 406, and 407), in MDC 17 to DRGs 401, 402, and 408, rather than to the medical DRGs. Consequently, the titles of DRGs 401, 402, and 408 are revised by changing the phrase "Minor O.R. Procedures" to "Other O.R. Procedures."

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
5. DRG 243 (Medical Back Problems) includes diagnosis codes for all type of back pain except code 7241 (Pain in Thoracic Spine), which is assigned to DRG 247 (Signs and Symptoms of Musculoskeletal System and Connective Tissues).	Add diagnosis code 7241 to DRG 243 and remove it from DRG 247.
6. DRG 108 and DRG 109 include cardiothoracic procedures. The distinction is that procedures in DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, With Pump) are performed with a heart pump and procedures in DRG 109 (Cardiothoracic Procedures Without Pump) are performed without a heart pump. Currently, however, not all procedures in DRG 108 always require the use of a heart pump and procedures in DRG 109 are not always performed without a heart pump.	Combine the O.R. procedures in DRG 108 and DRG 109. The presence of procedure code 3961 (Extracoporeal Circulation) determines whether or not a heart pump was used. If code 3961 is present on the record, assign the patient to DRG 108; if code 3961 is not present, assign to DRG 109.
*7a. Procedure code 36.0 (Remove Coronary Artery Obstruction) is now used almost exclusively to code percutaneous transluminal coronary angioplasty. Code 36.0 is currently assigned to DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, With Pump), which is considered to be major cardiac surgery with heart pump. Percutaneous transluminal coronary angioplasty is not done with heart pump. However, the open procedure on the coronary artery requiring the use of a heart-lung machine should remain in DRG 108 using the identifying codes combination of 36.0 plus 39.61 (Extracorporal Circulation). The use of resources for these patients is similar to the other patients classified in DRG 108.	a. Move procedure code 36.0 to DRG 112 (Vascular Procedures Except Major Reconstruction). However, if procedure code 36.0 is used in combination with 3961, it is still assigned to DRG 108.
b. Some procedures in DRGs 110 and 111 (Major Reconstructive Vascular Procedures) and DRG 112 (Vascular Procedures Except Major Reconstruction) are performed with a heart pump.	b. If patients currently assigned to DRGs 110, 111 and 112 have procedure code 39.61 present, assign them to DRG 108.
*8a. Presently, diagnosis code 7746 (Fetal/Neonatal Jaundice, NOS) is on the list of complications and comorbidities (CC). It is also listed in MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period); DRG 391 (Normal Newborns) as an incidental problem.	Remove code 7746 from the list of CCs and continue to treat it as an incidental problem for DRG 391.
b. In the past, there have been problems with the assignment of patients to DRG 391 (Normal Newborns) in MDC 15.	A patient is assigned to DRG 391 if the principal diagnosis is from the following list:

V300 Single liveborn-in hosp	V360 Multiple nb/sb-in hosp
V301 Singl liveborn-before adm	V361 Mult nb/sb-before adm
V310 Twin, mate lb-in hosp	V370 Mult birth NOS-in hosp
V311 Twin, mate lb-before adm	V371 Mult brth NOS-before adm
V320 Twin, mate sb-in hosp	V390 Liveborn NOS-in hosp
V321 Twin, mate sb-before adm	V391 Liveborn NOS-before adm
V330 Twin NOS-in hospital	7624 Prolapsed cord aff nb
V331 Twin NOS-before admissn	7625 Oth umbil cord compress
V340 Oth multiple nb-in hosp	7626 Umbil cord NEC aff nb
V341 Oth mult nb-before adm	7630 Breech del/extrac aff nb
V350 Oth multiple sb-in hosp	7631 Malpos/dispro NEC aff nb
V351 Oth mult sb-before adm	7632 Forceps delivery aff nb

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	7633 Vacuum extrac del aff nb 7636 Precipitate del aff nb 7639 Compl deliv NOS aff nb 7660 Exceptionally large baby 7661 Heavy-for-date infan NEC 7662 Post-term infant NOS 7671 Scalp injury at birth 7686 Mild/mod birth asphyxia 7746 Fetal/neonatal jaund NOS 7788 Nb integument cond NEC A patient is assigned to DRG 391, if there is a principal diagnosis from the list above and there is no secondary diagnosis or all secondary diagnoses are from the following: V300 Single liveborn-in hosp V301 Singl livebrn-before adm V310 Twin, mate lb-in hosp V311 Twin, mate lb-before adm V320 Twin, mate sb-in hosp V321 Twin, mate sb-before adm V330 Twin NOS-in hosp V331 Twin NOS-before admissn V340 Oth multiple nb-in hosp V341 Oth mult nb-before adm V350 Oth multiple sb-in hosp V351 Oth mult sb-before adm V360 Multiple nb/sb-in hosp V361 Mult nb/sb-before adm V370 Mult birth NOS-in hosp V371 Mult brth NOS-before adm V390 Liveborn NOS-in hosp V391 Liveborn NOS-before adm V502 Routine circumcision V703 Med exam NEC-admin purposes V773 Screen-phenylketonuria 605 Redun prepuce phimosis 6869 Local skin infection NOS 6910 Diaper or napkin rash 7624 Prolapsed cord aff nb 7625 Oth umbil cord compress 7626 Umbil cord NEC aff nb 7630 Breach del/extrac aff nb 7631 Malpos/dispro NEC aff nb 7632 Forceps delivery aff nb 7633 Vacuum extrac del aff nb 7636 Precipitate del aff nb 7639 Compl deliv NOS aff nb 7660 Exceptionally large baby 7661 Heavy-for-date infan NEC 7662 Post-term infant NOS 7671 Scalp injury at birth 7686 Mild/mod birth asphyxia 7746 Fetal/neonatal jaund NOS 7788 Nb integument cond NEC Therefore, the branching criteria on the tree diagram in MDC 15 changes from "Normal Newborns Without Significant Secondary Diagnosis" to "Normal Newborns Without Any Significant Complicating Diagnosis."
9. Diagnosis codes 1946 (Malig. Neopl. Paraganglia NEC), 2276 (Benign neopl. paraganglia), and 2373 (Unc. Behav. Neo. Paragang.) are in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) while other related diagnoses are in MDC 1 (Diseases and Disorders of the Nervous System).	Add diagnosis codes 1946, 2276, and 2373 to MDC 1 (DRGs 10 and 11) and remove from MDC 10.
10. Diagnosis code 9968 (Complication Transplanted Organ) is assigned to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs). Since this code relates to <u>any</u> transplanted organ, it cannot be assigned to an organ specific MDC. Currently, codes 5051 (Ancillary Liver Transplant) and 5059 (Liver Transplant) are allowed with MDC 21 and assigned to DRG 442 and DRG 443 (Other O.R. Procedures for Injuries). Payment for these DRGs is inadequate for the procedure. All other transplant procedures associated with rejected organs are grouped to DRG 468.	Remove procedure codes 5051 and 5059 from MDC 21 (DRG 442 and DRG 443) and allow assignment to DRG 468.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
11. Procedure code 5494 (Create Peritoneal Vascular Shunt) is a major shunt procedure, yet it is DRG 201 (Other Hepatobiliary or Pancreas O.R. Procedures) and not in DRG 191 (Major Pancreas, Liver and Shunt Procedures).	Add procedure code 5494 to DRG 191 and remove it from DRG 201.
12. Diagnosis code 4565 (Pelvic Varices) is assigned only to MDC 13 (Diseases and Disorders of the Female Reproductive System. This diagnosis code is also applicable to MDC 12 (Diseases and Disorders of the Male Reproductive System).	Add diagnosis code 4565 (Pelvic Varices) to MDC 12, DRG 352 (Other Male Reproductive System Diagnoses).
13. Procedure code 031 (Division Intraspinal Nerve Root) is applicable to neck and back procedures and therefore should also be assigned to MDC 8 (Disease and Disorder of the Musculoskeletal Sep. and Connective Ties.)	Add procedure code 031 (Division Intraspinal Nerve Root) to MDC 8, DRGS 214 and 215 (Back and Neck Procedures).
14. DRG 209 (Major Joint Procedures) does not adequately distinguish multiple joint procedures from single joint procedures.	Create DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) to include any combination of two or more of the following procedure codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.
15. DRGs 434 through 438 do not adequately reflect substance dependance detoxification and rehabilitation treatment.	Revise DRGs 434 through 438 as follows: Move all diagnosis codes in DRGs 435, 437, and 438 (except diagnosis codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390) to DRG 434 (Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence). Move all diagnosis codes in DRGs 434 and 436 and diagnosis codes 2910, 2920, 30300, 30301, 30302, 30303, and 30390 to DRGs 435, 436, and 437. Move diagnosis codes 2913, 2918, and 2919 to DRG 435. Diagnosis procedure code V57.89 must be present for a case to be assigned to DRG 436. Diagnosis procedure codes V57.89 and 94.25 must be present for a case to be assigned to DRG 437. Delete DRG 438.
*16. Patients with a principal diagnosis of diabetes mellitus with manifestations in an organ system other than the endocrine system (that is, renal circulatory, or neurologic) currently group to DRG 468 (Unrelated O.R. Procedure) when they undergo a procedure that is properly assigned to the MDC of the organ system that is affected.	Move "diabetes with manifestation of ..." codes to the MDC for the manifestation as follows: a. Move diabetes with renal manifestations (250.40 and 250.41) from DRGs 294 and 295 in MDC 10 to DRGs 331, 332, and 333 in MDC 11. For example, if the diagnosis of 250.40 or 250.41 and procedure 55.69 (Kidney Transplant), the case will group to DRG 302. b. Move diabetes with neurological manifestations (250.60 and 250.61) from DRGs 294 and 295 in MDC 10 to DRGs 18 and 19 in MDC 1. Move diabetes with circulatory manifestations (250.70 and 250.71) from DRGs 294 and 295 in MDC 10 to DRGs 130 and 131 in MDC 5. c. Diabetes with ophthalmic manifestations (250.50 and 250.51) is already in MDC 2.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
**17. Procedure Code 57.33 (Transurethral biopsy of bladder) should be added as a valid code for MDC 12- Diseases and Disorders of the Male Reproductive System and MDC-13 Diseases and Disorders of the Female Reproductive System.	Add procedure code 57.33 to MDC 12, DRGs 344 and 345 (Other Male Reproductive System O.R. Procedures) and also to MDC 13-Diseases and Disorders of the Female Reproductive System, DRG 365 (Other Female Reproductive System O.R. Procedures). Procedure code 57.33 remains in its current assignment, DRGs 310 and 311 (Transurethral Procedures), as well.
**18. Since code 724.1 (Pain in Thoracic Spine) will be transferred from DRG 247 to DRG 243, in order to consistently classify all back symptoms to the same DRG, it is recommended that code 724.8 (Other unspecified back disorders) also be transferred from DRG 247 to DRG 243.	Add diagnosis code 724.8 to DRG 243 (Medical Back Problems) and remove from DRG 247 (Signs and Symptoms of Musc Sys. and Conn. Tissue.)
**19. Procedure 77.28 (wedge osteotomy of tarsals and metatarsals) done for Keratoderma plantaris improperly codes to DRG 468. This procedure appears in DRG 225 (Foot Procedures) but it should also be listed in DRGs 269 and 270 (Other Skin Subcutaneous Tissue and Breast O.R. Procedures).	Add procedure code 77.28 to MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), DRGs 269 and 270.
**20. Procedure codes 6952 (Aspiration curettage following delivery or abortion) and 7491 (Hysterotomy to terminate pregnancy) are not delivery codes. Therefore, they should not be in DRG 375 (Vaginal Delivery with O.R. Procedure Except Sterilization and/or D&C). These codes should be added to DRG 381 (Abortion with D&C). Correspondingly, aspiration curettage is considered to be a procedure generally performed in the operating room.	Add procedure codes 6952 and 7491 to DRG 381 (Abortion with D&C) and remove procedure code 7491 from DRG 375. Also add 6952 to the list of O.R. Procedures.
**21. If performed, an appendectomy procedure is an incidental procedure for DRG 365 (Other Female Reproductive Sys O.R. Procedures).	Remove procedure code 470 (Appendectomy) from DRG 365 and replace it with procedure code 471 (Incidental Appendectomy).
**22. The diagnosis code 228.1 (Lymphangioma, any site) should be classified in MDC 16 (Diseases and Disorders of the Blood and Blood Forming Organs and Immunological Disorders) and not in its current MDC 5 (Circulatory System) assignment. This was an inadvertent misclassification made during the original DRG classification process.	Move diagnosis code 228.1 to DRGs 398 and 399 (Reticuloendothelial and Immunity Disorders) and remove it from MDC 5.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
B. OPERATING ROOM vs NON-OPERATING ROOM ASSIGNMENT	
1. Procedure code 3786 (Remove Cardiac Pacemaker) is used for the removal of both a temporary pacemaker and a permanent pacemaker. Presently, this code appears on the list of operating room procedures and, when coded, results in assignment to one of the operative pacemaker DRGs. In general, the removal of a temporary pacemaker is not performed in the operating room. If a permanent pacemaker is removed, then usually a replacement pacemaker is inserted. In that case, the reinsertion is coded and the patient is assigned to the appropriate DRG. The current operating room procedures, listed below, are also considered to be procedures not generally performed in the operating room. 8623 (Removal of nail) 5499 (Abdomen region operation, NEC) 3996 (Total body perfusion) 5196 Percutaneous Extraction of common duct stones)	Remove codes 3786, 8623, 5499, 3996, and 5196 from the list of operating room procedures and from the DRGs to which they are currently assigned.
2. Procedure codes 6813 (Uterine Biopsy) and 7076 (Hymenorrhaphy) are generally performed in an operating room and therefore should be assigned to the list of O.R. procedures.	Add procedure codes 6813 (Uterine biopsy) and 7076 (Hymenorrhaphy) to the list of O.R. procedures and to MDC 13, DRG 360 (Vagina, cervix and vulva procedures).
**3. Procedure code 3961 (Extracorporeal circulation) is performed in conjunction with another operating procedure, and is not generally considered the only procedure performed.	Remove procedure code 3961 from the list of O.R. procedures.
C. COMPLICATION AND COMORBIDITY MEMBERSHIP	
*1. A number of diagnostic codes should be added to the list of complications and comorbidities.	Add the following diagnosis codes to the list of complications and comorbidities: 25090 Diab w compl NOS adult 25091 Diab w compl NOS juven 64820 Anemia compl preg 64821 Anemia - delivered 64822 Anemia - delivered w P/P 64823 Anemia - antepartum 64824 Anemia - postpartum 87272 Open wnd ossicles-comp 87273 Open wnd eustach tb-comp 87274 Open wound cochlea-comp 87333 Open wnd nas sinus-compl 8743 Open wound thyroid-compl 8745 Open wound pharynx-compl 8870 Amput below elb, unilat 8871 Amp below elb, unil-comp 8872 Amput abv elbow, unilat 8873 Amput abv elb, unil-comp 8874 Amputat arm, unilat NOS 8875 Amputat arm, unil NOS-comp 8876 Amputation arm, bilat 8877 Amputat arm, bilat-compl 8960 Amputation foot, unilat 8961 Amput foot, unilat-compl 8962 Amput foot, bilat 8963 Amputat foot, bilat-comp 8970 Amput below knee, unilat 8971 Amputat bk, unilat-compl 8972 Amput above knee, unilat 8973 Amput abv kn, unil-compl 8974 Amputat leg, unilat NOS 8975 Amput leg, unil NOS-comp 8976 Amputation leg, bilat 8977 Amputat leg, bilat-compl
**2. Diagnosis transient hypertension of pregnancy-unspecified (code 64230) and transient hypertension of pregnancy - antepartum (code 64233) are not significant antepartum complications.	Remove diagnosis codes 64230 and 64233 from the list of medical complications for DRG 383 (Other Antepartum Diag with Medical Complications).

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
D. SURGICAL HIERARCHY AND WEIGHT ISSUES 1. When a cataract operation is performed, the patient is assigned to DRG 39 (Lens Procedure). If a vitrectomy or anterior chamber injection or evacuation is performed during the cataract operation, and coded accordingly, the patient is assigned to DRG 42 (Intraocular Procedures Except Retina, Iris and Lens). This is because vitrectomies and anterior chamber procedures are higher than lens procedures in the surgical hierarchy. However, the process of removing a small amount of vitreous or an injection or evacuation from the anterior chamber during a cataract operation is incidental to the lens extraction and the DRG assignment, therefore, should be for the lens extraction, not for the higher weighted vitrectomy or anterior chamber.	If a lens procedure only or a lens procedure and one of the following procedures is performed, assign to DRG 39. 1291 Therapeut Evac Ant Chamber) 1292 Anterior Chamber Inject. 1471 Anterior Removal Vitreous 1472 Vitreous Removal NEC 1473 Anterior Mechan Vitrect. 1474 Mechan Vitrectomy 1475 Vitreous Substitut Inject. 1479 Vitreous Operation NEC If any of the procedures listed above are performed without a lens procedure, assign to DRG 42.
2. There has been concern regarding the DRG surgical hierarchy in MDC 6 (Diseases and Disorders of the Digestive System). The position of Peritoneal Adhesiolysis, DRG 150-151, in relation to Minor Small and Large Bowel Procedures, DRG 152-153, and Hernia Procedures, DRG 159-163 is of particular concern. Analysis of HCFA average LOS and average charge data for the surgical DRGs in MDC 6 supports modification of the surgical hierarchy for MDC 6.	Change MDC 6 surgical hierarchy as follows: MDC 6-Diseases and Disorders of the Digestive System DRG 146-147 Rectal Resection DRG 148-149 Major Small and Large Bowel Procedures DRG 154-156 Stomach, Esophageal and Duodenal Procedures DRG 150-151 Peritoneal Adhesiolysis DRG 152-153 Minor Small and Large Bowel Procedures DRG 164-167 Appendectomy DRG 159-163 Hernia Procedures DRG 157-158 Anal Procedures DRG 168-169 Procedures in the Mouth DRG 170-171 Other Digestive System O.R. Procedures
**3. Analysis of HCFA average LOS and average charge data supports modification of the following MDCs:	
MDC 8 (Diseases and Disorders of the Musculoskeletal and Connective Tissues) wound debridement should be placed above amputations.	a. Place wound debridement above amputation in the surgical hierarchy for MDC 8.
MDC 9 (Diseases and Disorders of the Skin and Subcutaneous Systems) skin grafts should be placed above breast procedures.	b. Place skin grafts above breast procedures in the surgical hierarchy for MDC 9.
MDC 12 (Diseases and Disorders of the Male Reproductive System) penis procedures should be placed above transurethral resections.	c. Place penis procedures above transurethral prostatectomy in the surgical hierarchy for MDC 12.
**4. New DRG 471 (Bilateral or Multiple Joint Procedures of the Lower Extremity) should be included only in MDC 8 - Diseases and Disorders of the Musculoskeletal System, and should acquire the first position in the surgical hierarchy for MDC 8, before Major Joint and Limb Reattachment Procedures.	DRG 471 is to be included in MDC 8 only and acquires the first position in the surgical hierarchy for the MDC.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
*E. DRG 468 Patients are assigned to DRG 468 (Unrelated O.R. Procedure) when all the operating room procedures are unrelated to the MDC of the patients' principal diagnosis. There appears to be a need to update certain DRGs by including O.R. procedures that could possibly be performed for diagnoses within the MDC, so patients would no longer be assigned to DRG 468.	Add the following list of O.R. procedures, listed by MDC, to the DRG specified: MDC 01 - Diseases and Disorders of the Nervous System DRG 4 (Spinal procedures) 7781 Oth chest cage ostectomy 7791 Tot chest cage ostectomy DRG 5 (Extracranial vascular procedures) 3832 Head/neck ves resec-anas 3929 Vasc shunt and bypass NEC 3930 Suture of vessel NOS 3931 Suture of artery 3932 Suture of vein 3956 Repair vess w tis patch 3957 Rep vess w synth patch 3958 Repair vess w patch NOS 3959 Repair of vessel NEC 398 Vascular body operations 3992 Vein inject-scleros agnt DRGs 7 and 8 (Peripheral and cranial nerve and other nervous sys. procs.) 0719 Endocrine dx proc NEC 0780 Thymectomy NOS 0781 Part excision of thymus 0782 Total excision of thymus 0851 Canthotomy 0852 Blepharorrhaphy 0859 Adjust lid position NEC 8131 Foot arthroplas w prosth 8139 Foot/toe arthroplast NEC 8171 Hand arthroplas w prosth 8179 Hand arthroplasty NEC 8186 Carpal arthropl-syn pros 8187 Wrist arthroplasty NEC 8313 Other tenotomy 8314 Fasciotomy 8319 Soft tissue division NEC 8321 Soft tissue biopsy 8341 Tendon excision for grft 8343 Musc/fasc excis for grft 8345 Other myectomy 8349 Other soft tissue excis 8681 Repair facial weakness MDC 02 - Diseases and Disorders of the Eye DRG 37 (Orbital procedures) 7679 Open reduct face fx NEC 7691 Bone graft to face bone 7692 Syn implant to face bone 7646 Facial bone reconstr NEC DRG 38 (Primary iris procedures) 1273 Cyclophotocoagulation DRG 39 (Lens Procedures) 1301 Removal of foreign body from lens with magnet

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	DRGs 40 and DRG 41 (Extraocular procedures except orbit)
	864 Radical excis skin les
	MDC 03 - Diseases and Disorders of the Ear, Nose and Throat
	DRG 55 (Miscellaneous ear, nose and throat procs.)
	0609 Incis thyroid field NEC
	0912 Lacrimal sac biopsy
	0919 Lacrimal sys dx proc NEC
	0981 Dacryocystorhinostomy
	0999 Lacrimal system op NEC
	DRG 63 (Other ear, nose and throat O.R. procs.)
	0474 Periph nerv anastom NEC
	0475 Postop revis per nerv op
	0476 Late repair per nerve inj
	1652 Orbit exent w bone remov
	1665 2ndry exent cavity graft
	1666 Revis exenter cavity NEC
	1698 Operation on orbit NEC
	7779 Excise bone for gft NEC
	MDC 04 - Diseases and Disorders of the Respiratory System
	DRGs 76 and 77 (O.R. proc. on the resp. sys. except major chest with O.R.)
	5012 Liver biopsy NEC
	8321 Soft tissue biopsy
	MDC 05 - Diseases and Disorders of the Circulatory System
	DRG 120 (Other O.R. procedures)
	251 Destruction tongue les
	863 Other local destruc skin
	5591 Renal decapsulation
	MDC 06 - Diseases and Disorders of the Digestive System
	DRGs 146 and 147 (Rectal resection)
	688 Pelvic evisceration
	DRGs 152 and 153 (Minor small and large bowel procs.)
	5684 Close ureter fistula NEC
	5783 Repair rectovesical fistula
	6942 Closure uterine fistula
	7075 Repair vag fistula NEC
	7172 Repair vulvar fistula
	DRGs 154, 155, and 156 (Stomach, esophageal and duodenal procs.)
	293 Ex. or destr. of lesion or tissue of pharynx
	3173 Trachea fistula clos NEC
	3805 Thoracic vessel resect/anast
	3835 Thor vessel resec/anast
	3845 Thor ves resect w replac
	3865 Thoracic vessel excision
	3885 Occlude thoracic ves NEC
	5183 Pancreat sphincteroplas
	527 Rad pancreaticoduodenect
	DRGs 170 and 171 (Other digestive procedures)
	3804 Incision of aorta
	3949 Vasc. proc revision NEC
	3991 Freeing of vessel
	5103 Cholescystostomy NEC
	MDC 07 - Diseases and Disorders of the Hepatobiliary System and Pancreas
	DRG 201 (Other Hepatobiliary or Pancreas O.R. Procedure)
	4439 Gastroenterostomy

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	MDC 08 - Diseases and Disorders of the Musculoskeletal Sys. and Connective Tiss.
	DRG 217 (Wound debridement and skin graft exc. hand)
	8665 Heterograft to skin
	8666 Homograft to skin
	8671 Cut. prep. ped graft
	8672 Pedicle graft advancement
	DRGs 233 and 234 (Other musculoskel. sys. and connect. tiss. O.R. procs.)
	1651 Radical orbitomaxillect
	1659 Orbital exenteration NEC
	2172 Open reduction nasal fx
	2262 Exc max sinus lesion NEC
	3327 Other lung biopsy
	3481 Excise diaphragm lesion
	4051 Rad dissec axillary node
	4052 Rad dissec periaort node
	4053 Rad dissect illac nodes
	4054 Radical groin dissection
	4059 Rad node dissection NEC
	5900 Retroperit dissect NOS
	6241 Remove both testes
	DRGs 226 and 227 (Soft tissue procedures)
	543 Destruc abdom wall les
	864 Radical excis skin les
	8681 Repair facial weakness
	MDC 09 - Diseases and Disorders of the Skin, Subcutaneous Tissue & Breast
	DRG 268 (Skin, subcutaneous tissue and breast plastic procs.)
	0838 Correct lid retraction
	2755 Full-thick grft to mouth
	2756 Skin graft to mouth NEC
	2769 Oth plastic repair palat
	8289 Hand plastic op NEC
	DRGs 269 and 270 (Other skin, subcutaneous tissue and breast O.R. procs.)
	0609 Incis thyroid field NEC
	0722 Unitateral adrenalectomy
	073 Bilateral adrenalectomy
	0763 Part excis pituitary NOS
	0764 Tot exc pituit-transfron
	0765 Tot exc pituit-transsphen
	0768 Total exc pituitary NEC
	0769 Total exc pituitary NOS
	0772 Pituitary gland incision
	0779 Pituitary operation NEC
	0823 Exc major les lid, part-thick
	6561 Remove both tubes and ovar
	6711 Endocervical biopsy
	6712 Cervical biopsy NEC
	6719 Cervical dx procedur NEC
	6739 Cervical les destruc NEC
	7024 Vaginal biopsy
	7111 Vulvar biopsy
	7119 Vulvar diagnos proc NEC
	MDC 10 - Endocrine, Nutritional and Metabolic Diseases and Disorders
	DRGs 292 and 293 (Other endocrine, nutritional and metabolic O.R. procs.)
	3426 Other mediastinal biopsy

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	3802 Head/neck ves incis NEC
	3829 Blood vessel dx proc NEC
	3830 Vessel resect/anast NOS
	3833 Arm vessel resect/anast
	3838 Leg artery resect/anast
	3843 Arm ves resect w replace
	3848 Leg artery resec w repla
	3855 Thorac var v lig-strip
	3863 Arm vessel excision
	3868 Leg artery excision
	3883 Occlude arm vessel NEC
	3888 Occlude arm vessel NEC
	3925 Aorta-iliac-femor bypass
	3931 Suture of artery
	3941 Postop vasc op hem contr
	3949 Vasc proc revision NEC
	3956 Repair vess w tis patch
	3957 Rep vess w synth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	3991 Freeing of vessel
	544 Destruct peritoneal tiss
	MDC 11 - Diseases and Disorders of the Kidney and Urinary Tract
	DRGs 310 and 311 (Transurethral Procedures)
	6012 Other biopsy of prostate
	DRG 315 (Other kidney and urinary tract O.R. procs.)
	0681 Total Parathyroidectomy
	0689 Other parathyroidectomy
	3806 Abdomen artery incision
	3807 Abdominal vein incision
	3816 Abdominal endarterectmy
	3836 Abd vessel resect/anast
	3837 Abd vein resect and anast
	3846 Abd artery resec w repla
	3847 Abd vein resect w replac
	3866 Abdominal artery excis
	3867 Abdominal vein excision
	3886 Occlude abd artery NEC
	3887 Occlude abd vein NEC
	3952 Aneurysm repair NEC
	3956 Repair vess w tis patch
	3957 Repair vess w synth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	5493 Create cutaneoperiton fist
	8622 Wound debridement
	MDC 12 - Diseases and Disorders of the Male Reproductive System
	DRGs 334 and 335 (Major male pelvic procs.)
	4869 Rectal resection NEC
	5411 Exploratory laparotomy
	DRGs 344 and 345 (Other male reproductive Sys. O.R. procs.)
	5641 Partial ureterectomy
	5751 Excision of urachus

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	MDC 13 - Diseases and Disorders of the Female Reproductive System
	DRG 360 (Vagina, cervix and vulva-procedures)
	4873 Closure of other rect fistula
	7023 Cul-de-sac biopsy
	7029 Vagin/cul-de-sac dx NEC
	7119 Vulvar diagnos proc NEC
	DRG 365 (Other female reproductive system O.R. procs.)
	5641 Partial ureterectomy
	5734 Bladder biopsy NEC
	5751 Excision of urachus
	5759 Open Ex or dest oth les ortis of blad
	576 Partial cystectomy
	5771 Radical cystectomy
	5779 Total cystectomy
	5902 Oth lys of periter adhes
	5909 Perirenal/ureterexc NEC
	5919 Oth incis of perives tiss
	7012 Culdotomy
	MDC 14 - Pregnancy, Childbirth and the Puerperium
	DRG 374 (Vaginal delivery with sterilization and/or C.C.)
	6697 Bury fimbriae in uterus
	DRG 375 (Gaginal delivery with O.R. proc. except steril. and/or D.C.)
	387 Plication of vena cava
	4024 Excise inguinal node
	403 Regional lymph node exc
	5411 Exploratory laparotomy
	5421 Laparoscopy
	680 Hysterotomy
	MDC 16 - Blood, Blood Forming Organs and Immunological Diseases and Disorders
	DRG 394 (Other O.R. procs. of the blood and blood forming organs)
	400 Incis lymphatic structur
	MDC 17 - Myeloproliferative Diseases and Poorly Differentiated Neoplasms
	DRG 400 (Lymphoma or leukemia with major O.R. proc.) and
	DRGs 406 and 407 (Myeloprolif, disord. or poorly diff. neopl. with maj. O.R. With C.C.)
	3229 Destroy loc lung les NEC
	343 Destruct mediastin les
	0371 Spin subarach-peritoneal shunt
	0372 Spin subarach-ureteral shunt
	0379 Other shunt spinal theca
	410 Bone marrow transplant

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
	MDC 21 - Injury, Poisoning and Toxic Effects of Drugs
	DRGs 442 and 443 (Other O.R. procedures for injuries)
	0141 Thalamus operations
	0201 Linear craniectomy
	0444 Tarsal tunnel release
	0780 Thymectomy NOS
	0781 Part excision of thymus
	0782 Total excision of thymus
	0791 Thymus field exploration
	0792 Incision of thymus
	0793 Repair of thymus
	100 Remov embed FB conjunct w incis
	110 Magnet remov embed FB cornea
	111 Corneal incision
	1372 Secondary insert lens
	138 Implanted lens removal
	139 Other operations on lens
	1839 Excis external ear NEC
	214 Resection of nose
	2169 Turbinectomy NEC
	245 Alveoloplasty
	2792 Mouth incision NOS
	2799 Oral cavity ops NEC
	287 Hemorr contrl post T and A
	2891 Incis to remov tonsil FB
	290 Pharyngotomy
	294 Plastic op on pharynx
	2953 Closure pharynx fistula NEC
	2959 Pharyngeal repair NEC
	2999 Pharyngeal operation NEC
	301 Hemilaryngectomy
	3021 Epiglottidectomy
	3022 Vocal cordectomy
	3029 Other part laryngectomy
	303 Complete laryngectomy
	3173 Trachea fistula clos NEC
	3199 Other tracheal operation
	321 Other bronchial excision
	330 Incision of bronchus
	331 Incision of lung
	3392 Bronchial ligation
	3398 Bronchial operation NEC
	3399 Lung operation NEC
	341 Incision of mediastinum
	3421 Transpleura thoracoscopy
	3489 Diaphragm operation NEC

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM		GROUPER MODIFICATION
	3499	Thoracic operation NEC
	3711	Cardiotomy
	537	Abd repair-diaphr hernia
	5380	Thor rep-diaph hern NOS
	5381	Diaphragmatic plication
	5382	Parastern hernia repair
	5553	Rejected kidney nephrect
	5554	Bilateral nephrectomy
	576	Partial cystectomy
	5779	Total cystectomy NEC

F. DOCUMENTATION ISSUES

1. Some of the language in the DRG documentation is not completely descriptive of the classification of cases.

Make the following changes to the DRG documentation:

- Update MDC tree diagrams to reflect the surgical hierarchy of each MDC. The tree diagrams have each surgical group ordered from top to bottom in hierarchical order. Since DRG numbers are not changed, the trees no longer increase in numerical order from left to right.
- In the medical partitioning section of MDC 5 (Diseases and Disorders of the Circulatory System), change the labels to better define the list of "Cardiovascular Complications" and "Complex Cardiovascular Diagnoses."
- Remove procedure codes 431 (Temporary Gastrostomy) and 7022 (Culdoscopy) from the list of operating room procedures in MDC 3 and MDC 14, respectively. These codes do not appear in the list of operating room procedures and are not considered by GROUPER to be operating procedures.
- The title of the branching criteria in the tree diagram for DRG 115 (Permanent Cardiac Pacemaker Inplant with AMI or CHF) is changed from "Principal Diagnoses of AMI or CHF" to "Principal Diagnoses of AMI, Heart Failure or Shock."
- The title of the branching criteria in the tree diagram for DRGs 164 and 165 (Appendectomy With a Complicated Principal Diagnoses) is changed from "Complicated Diagnosis" to "Complicated Principal Diagnosis."
- The title of the branching criteria in the tree diagram for DRG 303 (Kidney, Ureter and Major Bladder Proc. for Neoplasm) is changed from "Principal Diagnosis of Malignancy" to "Principal Diagnois of Neoplasm.

These changes are editorial in nature and do not affect in any way the classification of cases.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
**2. Some of the operating room and nonoperating room codes are erroneously listed.	Make the following changes: • Remove operating room procedures 3421, 3422, and 5421 from the nonoperating room procedure listing for DRG 412 (History of Malignancy With Endoscopy) • Remove nonoperating room code 431 from the list of operating room procedures for DRG 63 (Other Ear, Nose and Throat O.R. Procedures). • Remove nonoperating room code 7022 from the list of operating room procedures for DRG 375 (Vaginal Delivery With O.R. Procedure Except Sterilization and/or D and C).

* These items have been revised based on public comments.
** These items have been added to the table based on public comments.

BILLING CODE 4120-01-C

Appendix—Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we also prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

Several provisions of this final rule will exceed the $100 million threshold under E.O. 12291. Therefore, we are including an impact analysis that contains a discussion of each significant change. In our summary, we discuss the expected net effects resulting from these changes.

Under the RFA, we treat all hospitals as small entities. It is clear that the changes contained in this final rule will affect all hospitals, and the effects on some may be significant. Therefore, we are providing a regulatory flexibility analysis.

The discussion below, in combination with the preamble of this final regulation, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Objectives

We expect the changes contained in this rule to further our original objectives in implementing the prospective payment system, which include:

- Creating incentives for efficiency, which translates into lower rates of increase in hospitals' costs and reduction of expenditures from the Medicare trust fund;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement; and
- Reinforcing the role of the Federal Government as a prudent buyer of services.

We believe these regulations will further our goals while maintaining the financial viability of the hospital industry and assuring access to high quality care for beneficiaries.

We expect these changes to further our objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes of this payment system, in general, are reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectives.

C. Problems of Impact Quantification and Attributing Causality

In previously published interim and final rules, we discussed the objectives and impacts of the rules largely in general conceptual terms. We did not always have adequate data, analytic resources, or time to perform a detailed quantitative impact analysis of particular provisions for publication with these previous rules. However, we did solicit comments and information that would enable us to describe and quantify better the anticipated effects of the Medicare prospective payment system.

As noted in the NPRM, we still have no adequate way to model potential behavioral changes on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Much of the available Medicare program data reflect only patterns and trends of utilization and payment. Also, much of our data still reflects hospital behavior under cost reimbursement. Where it is feasible and appropriate, we have used these data to model and analyze the effects of particular proposals. Nonetheless, any of the quantitative estimates given below should be viewed with a qualified recognition of the limitations of the data on which they are based.

A second problem that limits our ability to quantify the effects of this rule is attributing the causation of particular changes in the hospital industry directly to specific statutory or regulatory provisions. This is made especially difficult by the changing nature of the health care sector. The prospective payment system is but one of numerous efforts aimed at controlling rapidly rising health care costs. In many cases, then, it may be difficult to determine the extent that the prospective payment system, or some other initiative, caused the result, or whether two (or more) initiatives caused the result interactively.

Apart from the more easily identifiable initiatives that are affecting the health care market, especially on the demand side, changes also have been occurring on the supply side. Most notable of the latter, is the increase in the supply of physicians, which enhances the competition for patients among providers. There has also been a significant growth of facilities furnishing out-of-hospital treatment. For example, since 1973, 2,000 ambulatory care clinics have opened. There are currently about 300 ambulatory surgical centers participating in Medicare, with another 100 awaiting approval. In addition, home health services are the fastest growing component of the Medicare program.

The multiple changes in the health care system require the use of caution in attributing positive or adverse effects to one or another initiative or policy change. However, the incentives provided by prospective payment are identifiable, and the system has been implemented and is revised on a regular schedule. Therefore, it is possible to attribute some of the effects resulting from this payment system to the system itself and to changes to its structure.

Comment: Several commenters expressed dissatisfaction with the degree and extent of analysis published in the NPRM. For example, one commenter felt that the summary table showing relative (percent) impacts (50 FR 24438) was not specific enough; the commenter believes that we should have examined and presented the impact of recalibration on specific hospitals. Several commenters argued that the effects of reclassifying DRGs should have been separately identified and presented.

Response: We disagree with commenters who claim that we should publish an analysis of the impact of recalibration or any other changes on specific hospitals. E.O. 12291 and the RFA require us to identify affected entities in general. An analysis of potential effects on specific entities would go substantially beyond those requirements. Further, we believe that the lower the level of aggregation of the data available to us, and the more specific the focus of analysis of that data, the less reliable are the results.

We have tried to present an analysis of impacts that would be consistent with the national scope of the program. We recognize that payment amounts hinge on urban/rural status and census division, and that impacts vary significantly by hospital size. We have, therefore, prepared a simple and understandable summary table of the relative impacts for hospitals using those identifying criteria. We believe that this meets both the letter and the intent of the requirements of E.O. 12291 and the RFA.

More importantly, we are aware of the limitations of our data. Seeking to use it to assess impacts on very small groups or individual hospitals would be misleading and methodologically unjustifiable. As the level of data aggregation is lowered, the magnitude of distortions caused by anomalies and undetected errors in the data base increase. Hospital-specific analyses would have a very high risk of encouraging misleading or inaccurate conclusions, and providing such analyses would be irresponsible. Moreover, hospital-specific analyses necessarily rely on historical cost data, and since we do not yet have complete hospital cost data under prospective payment, we cannot quantify the effects of changes in hospital behavior on costs. Consequently, affected hospitals are in a better position than we are to estimate the probable impact of the changes on their specific operations.

We agree that we are obligated to analyze the impact of changes to the prospective payment system to the extent that time, resources, and the availability, accuracy, and completeness of data permit. In fact, the very table that elicited these comments was the product of our efforts to provide more such analysis than we had been able to provide during the first two years of the prospective payment system. We believe it afforded hospitals a reasonable framework for grouping the probable effects of the proposals. Nevertheless, we agree with some commenters that there are some aggregate analyses that we could have provided that would have been helpful to them. Therefore, we are providing further analysis and expanded tables below.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the best feasible. In some cases we have included quantitative estimates of program savings. However, since it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits of all the provisions to the various affected parties, we have primarily focused on explaining the kinds of interactions, and the decisions, which those parties will have to consider.

D. Hospitals Included in and Excluded From the Prospective Payment System

Since October 1983, hospitals operating under prospective payment have been phasing-in to the system according to their own accounting year starting dates. As of September 1984, 5,405 hospitals (81 percent of all hospitals) were operating under the prospective payment system. This represents virtually 100 percent of all hospitals currently subject to the new payment system. As of May 1985, 1,249 Medicare-participating hospitals were excluded from the prospective payment system and continue to be paid either on the basis of reasonable cost reimbursement (for example, psychiatric, long-term care, and children's hospitals) or on the basis of special reimbursement methodologies in waiver States. Another 1,489 psychiatric, rehabilitation, and alcohol/drug units of hospitals were excluded from prospective payment as of the same date.

Additionally, as of May 1985, 454 hospitals were being paid on a special basis under the prospective payment system. They included hospitals accorded special treatment under our regulations at 42 CFR Part 412, Subpart G, such as sole community hospitals and cancer treatment and research hospitals. Also included in this group receiving payment on a special basis are referral centers and hospitals that previously allowed extensive direct billing under Part B.

Comment: We received a significant number of comments requesting that we extend the exclusion from prospective payment by one year for alcohol and drug treatment centers and units.

Response: As of June 4, 1985, 23 hospitals and 317 units that furnish alcohol and drug treatment services have been excluded from the prospective payment system under §§ 412.23 and 412.32 of our regulations. Exclusion was afforded these hospitals and units on a temporary basis because of difficulties associated with implementation of DRGs for the related services. As discussed in the preamble of this final rule, we have decided to extend the exclusion for one additional year to those hospitals and units that were excluded from the system for their cost reporting periods beginning during Federal FY 1985.

Because the exclusion is mandatory for hospitals and units that meet the requirements in § 412.23 or § 412.32, we do not believe that our decision to extend it for a year will cause a significant change in the number of excluded units. There is a possibility that a few institutions or units would be adversely affected if required to join the prospective payment system at present and we are concerned that beneficiaries' treatment not be adversely affected.

E. DRG Classification and Weights

1. Recalibration

We are making certain changes in the DRG classification system and recalibrating the DRG weights based on 1984 PATBILL charge data. The changes we are making are discussed in detail in section II of the preamble.

The advantages of using newer and more complete data from the PATBILL file outweigh both the potential disadvantages of using charges, and the advantages of using currently available cost report data. Charges appear to be a valid measure of relative resource use, at least on the basis of historical data, the existing DRG classifications, and the current methodology for deriving DRG weights. Use of 1984 charge information would also explicitly incorporate the effects of changes in hospital behavior, whereas the 1981 cost data would not.

Since its implementation in October 1983, the prospective payment system has used DRG relative weights calculated by a complex methodology using data from the 1981 MEDPAR file, a 1981 Medicare Cost Report abstract file, and a 1981 hospital wage index based on hospital wage information collected by BLS. These cost-based relative weights were used in the Medicare prospective payment system on the assumption that they would better reflect differences in true resource costs among DRGs than would relative weights derived from charges. However, as discussed in section II of the preamble, charge data have some potential advantages compared to operating cost data. Weights based on charges could be constructed without cost report data, which is typically two to three years old before it becomes available for analysis. Charge-based relative weights are also simpler to compute, since complex adjustments are not required to convert charges to costs and to remove capital and medical education costs. Because of these potential advantages of charge-based weights, we initiated a study to determine whether it would be feasible to recalibrate the DRG relative weights on the basis of charges rather than costs.[1]

Using the 1981 data upon which the prospective payment system was based, this study investigated the extent to which relative weights based on costs differ from relative weights derived

[1] Philip Cotterill, Joel Bobula, and Rose Connerton, "A Comparison of Alternative DRG Relative Weights for the Medicare Prospective Payment System." HCFA Internal Working Paper, February 1985.

exclusively from charge data. The study also assessed the validity of a case-mix index developed from charge-based relative weights as a measure of the relative costliness of a hospital's Medicare cases. The main findings of the analysis indicate that charge-based and operating cost relative weights, based on 1981 MEDPAR data, are very similar, as follows:

- The difference between relative weights based on operating costs and relative weights based on total charges is less than five percent for most of the DRGs.
- The structure of the relative weights across DRGs for each method are also very similar. The Spearman and Pearson correlation coefficients are greater than .99.
- The relative dispersion of costs or charges within a DRG are also very similar, although for most DRGs the coefficients of variation are slightly higher using charge data than the coefficients of variation using cost data.
- The dispersion of average costs or charges across DRGs are also very similar. However, DRGs with high (low) relative weights tend to have slightly higher (lower) relative weights if computed using charge data rather than cost data.
- Large, urban hospitals and teaching hospitals tend to have slightly higher case-mix index values using charge-based weights rather than cost-based weights, whereas small, rural hospitals and nonteaching hospitals tend to have slightly lower case-mix index values using charge-based weights.

The results of the analysis support the use of charge data in constructing DRG relative weights. We believe that differences among hospitals in cost-to-charge ratios do not result in large, arbitrary differences between charge-based and operating cost weights.

Whether the data are standardized for differences in capital and medical education costs also appears to make little difference. These inter-hospital differences would only affect the DRG relative weights if there were a high degree of specialization among hospitals in different groups of DRGs they treat. Our results indicate that, in 1981, hospitals' case mixes were similar enough that most inter-hospital effects disappear when the data are partitioned by DRG.

In addition, we analyzed the relationship between hospitals' 1981 Medicare cost per case and their case-mix index values constructed from the charge-based relative weights. Using multiple regression analysis, the charge-based case-mix index was found to be approximately proportional to the expected costliness of an individual hospital's Medicare patient mix. This result further supports the study's major finding that there do not appear to be large differences between charge-based and cost-based weights, or between case-mix indexes constructed from charge-based or cost-based weights.

2. Proposed New Weight Values

Table 5 in section IV of the Addendum to this rule sets forth the recalibrated DRG weights. This table reflects all the reclassifications and GROUPER changes discussed in section II of the preamble. The revised DRG weights are highly correlated with the published FY 1985 DRG weights. The Pearson correlation coefficient for the two sets of relative weights is .95.

The changes in values for particular DRGs are affected by a number of factors other than the use of charge data. In fact, we believe that the use of charge data accounts for a smaller proportion of the change in weights than some of the other factors. The changes are accounted for largely by GROUPER changes and behavioral changes that are reflected in the more recent data base.

Approximately 83 percent of FY 1984 discharges fell into DRGs for which the revised weights will differ from the FY 1985 weights by less than 15 percent. Nonetheless, 125 DRGs have weights that will differ from their previous weights by 15 percent or more. Of these, 60 will increase and 65 decrease. Only about 6 percent of all FY 1984 discharges occurred in DRGs with weights that will decrease more than 15 percent, whereas about 11 percent occurred in DRGs with more than a 15 percent increase.

Many of the DRGs that show weight changes of more than 15 percent have relatively low Medicare case frequencies. Thirty-five of the DRGs that will go up more than 15 percent are DRGs for which non-Medicare data was used to calculate their previous weights. These 35 DRGs account for only about 2.3 percent of the cases that fall into the 60 DRGs that will increase by more than 15 percent. More than half of the cases in the 60 high-increase DRGs are in only 3 DRGs: DRG 39 (lens procedures) will increase 15.4 percent, DRG 148 (major bowel procedures) will increase 16.6 percent, and DRG 468 (unrelated OR procedure) will increase 17.9 percent. Further, among the 25 most common DRGs, only DRGs 39, 148, and 468 will increase by 10 percent or more.

Each hospital will have to assess the effect of the revised DRG weights for itself. As noted elsewher, the general tendency of the recalibration is to decompress both charge weights and case-mix index values, so that the higher weights and index values are, on average, a little higher, and the lower ones are, on average, a little lower. However, the degree to which this occurs will vary from hospital to hospital. Further, changes in the DRG weights will interact with changes in Federal rates, wage indexes, and the blending of Federal and hospital-specific portions. (See additional discussion in section J below.)

3. Alcohol and Drug-Related DRG Reclassification

As previously discussed, we have decided to allow an extension of one year, of limited application, to the time-limited exclusion from prospective payment for alcohol and drug treatment centers and units. We have, however, reclassified the alcohol and drug-related DRGs to better reflect the patterns of practice in alcohol and drug detoxification and rehabilitation services. Thus, for cost reporting periods beginning in FY 1986, the revised weights will be applied to alcohol and drug-related services furnished by hospitals under the prospective payment system.

We are replacing the six DRGs in the previous classification for this MDC with five DRGs. The revised weights for DRGs 436 and 437 (rehabilitation therapy and combined detoxification and rehabilitation treatment) are higher than the weights for treatment without rehabilitation. However, there are many more cases in the DRGs for treatment without rehabilitation (DRGs 433 to 435). As a result, the average weight for the cases in the alcohol and drug-related MDC, taken as a whole, will decline about 5 percent.

F. Wage Index

1. Background

As discussed in section III of the preamble, this final rule incorporates a new wage index based on our own survey data rather than on the hospital wage and employment data obtained from the ES 202 reporting system of BLS. The new survey-based wage index will be applied in two ways:

- Prospectively, to restandardize hospitals' operating costs per case to remove the effects of wage differences (as measured by the HCFA gross wage index) in computing the Federal rates; and
- Retroactively, to determine overpayments and underpayments resulting from the use of a wage index based on BLS data since the implementation of the prospective

payment system for cost reporting periods beginning on or after October 1, 1983.

The revised wage index is discussed in detail in the *Report on Hospital Wage Index Required by Section 2316(a) of Public Law 98-369*, submitted to Congress by the Department on March 29, 1985. That report includes detailed estimates of the effects of implementing the proposed index and an alternative wage index that we considered using, based on certain adjustments to the survey data to exclude wages and salaries for certain classes of hospital employees.

2. Prospective Impact of the New Index

Implementation of the survey-based gross wage index prospectively for cost reporting periods beginning on or after October 1, 1985 will have several effects. Of course, each hospital will be relatively advantaged or disadvantaged according to whether the wage-adjusted Federal rates for its geographic area increased or decreased. (Note, however, that a number of other factors will affect whether a hospital's actual total prospective payment revenue increased or decreased.) In addition, the new index will be used to restandardize the standardized amounts on which the Federal national and regional rates are based. This should have a negligible effect on the national urban and rural rates, but will affect the relative level of regional rates significantly.

Since FY 1986 is the last year during which regional rates will be included in the blended Federal rates, this secondary impact of the new index will be time-limited. Nonetheless, for FY 1986, some regional rates will go up and others will go down, with concomitant advantages and disadvantages for affected hospitals.

All hospitals under the prospective payment system will be affected, although some only slightly. For FY 1986, affected hospitals will fall into four groups, as follows:

- Those doubly advantaged by increases to both their wage index values and their regional rates;
- Those doubly disadvantaged by decreases to both their wage index values and their regional rates;
- Those advantaged by an increased wage index value and relatively disadvantaged by a revised regional rate; and
- Those disadvantaged by a decreased wage index value and relatively advantaged by a revised regional rate.

In addition, the changes to the wage index will interact with changes to the DRG weights, the effects of the increased proportion of the national rate in the Federal rate, and the change in blending proportions between Federal and hospital-specific portions. (For further discussion, see section J, below, especially the table summarizing the anticipated percent payment changes for FY 1986.)

4. Retroactive Impact of the New Index

Under section 2316(b) of Pub. L. 98-369, any new wage index that is adopted as a result of the study conducted in accordance with section 2316(a) must be implemented retroactively for hospital cost reporting periods beginning on or after October 1, 1983.

As explained previously, we will begin making refunds to underpaid hospitals and collecting from overpaid hospitals after April 1, 1986, absent any Congressional action on this issue. Because the revised wage index is implemented effective October 1, 1985, some hospitals (that is, those whose reporting periods began October 1, 1983) will have been paid using the BLS index for two full years. If a hospital's payments based on a revised wage index are higher than its payments using the previous index, the Medicare program will have to compensate the hospital for the underpayments. Conversely, where a hospital has been overpaid using the previous index compared to what it will be paid using the revised index, the program will have to recoup the overpayments that have been made.

G. Excluded Hospitals

As discussed in section III. of the Addendum, for cost reporting periods beginning in FY 1986, each hospital or unit subject to the rate-of-increase limits (§ 405.463) will have a target amount equal to the target amount for its previous cost reporting period. We estimate that this will result in $20 million in savings for FY 1986 Medicare Part A expenditures, compared to the maximum level of expenditures allowable under law.

The effect this will have on affected hospitals and units will vary depending on each one's existing relationship of costs per discharge to its target amount for FY 1985, any increase in inpatient costs from FY 1985 to FY 1986, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that continue to achieve per discharge costs lower than their target amounts, the primary impact will be a reduction of the level of additional payments made under § 405.463(d)(2) proportional to the increases in per-discharge costs.

For hospitals and units whose costs are currently in excess of their target amounts, we would expect FY 1986 excess costs to increase, unless the hospitals are able to achieve significant productivity improvements.

In general, we expect the continued ceiling on payments to increase existing incentives for economy and efficiency experienced by excluded hospitals and units. We do not believe that even these limits would achieve incentives comparable to those produced by the prospective payment system. Therefore, we will, as required under the law, continue to study means for establishing an appropriate prospective payment methodology for those hospitals and units that are currently excluded from the prospective payment system. Nonetheless, we believe this decision will ensure that services furnished to beneficiaries by affected hospitals and units will, for the most part, be paid for at a level no higher than necessary for the efficient delivery of needed health services.

H. Indirect Medical Education Costs

As noted in the NPRM, we are changing the way interns and residents are counted for purposes of making payment for the indirect costs of medical education. The indirect medical education payment would be computed based on the ratio of interns and residents to beds, including only those interns and residents furnishing services paid for under the prospective payment system. We are also changing the requirements for counting interns and residents from using actual hours worked at the hospital and reported quarterly, to a one-time count on September 1 of each year or, should September 1 fall on a weekend or holiday, the first workday thereafter.

We anticipate that the change in our counting of interns and residents will result in levels of payment that are reflective of the actual intensity of teaching activity during the cost reporting period. In addition, we estimate budget savings to result from eliminating duplicate payments for the indirect costs of intern and resident time spent furnishing services to hospital outpatients.

We estimate payments of $1.510 billion in FY 1986 and $2.294 billion in FY 1987 to about 975 participating hospitals for their related indirect medical education expenses. As discussed below, we anticipate reductions in payments to most of these hospitals due to implementation of the provisions of this final rule dealing with the method of counting interns and

residents. However, we cannot quantify these reductions in payment because of the absence of adequate data regarding interns' and residents' time spent furnishing services to outpatients. Several commenters submitted their own data concerning residents' time furnishing services to outpatients. The comments suggest that residents' time spent treating outpatients varies widely among programs and depends on the residents' specialties.

However, the estimates submitted by different comments are neither comparable, nor sufficient, to form the basis of a reliable budget estimate. Therefore, although we cannot estimate potential savings, based on what information is available, we have some indication that savings will be far greater than we stated in the NPRM's analysis.

The primary effect on those hospitals whose intern and resident programs include time spent furnishing services to outpatients will be a reduction in indirect medical education payments. The actual impact on a particular hospital would be related to the volume of services its interns and residents furnish to outpatients for which additional indirect medical education payments will not longer be made. The distribution of the impact will vary according to characteristics of hospitals, including: regional and urban/rural settings; bed size; the amount of reimbursement that is related to time spent furnishing services to outpatients and actions hospitals are taking to control the operating costs associated with their training programs. Limiting our payment to affected hospitals may lead to changes in the distribution of residents' time. However, we are unable to predict what specific actions these hospitals will take in response to this change in our payment policy.

In addition to the impact of this particular regulation, some hospitals and their medical education programs have been affected by the limits on payments for direct medical education costs published on July 5, 1985 (50 FR 27722). On page 27730 of that final rule, we discussed the anticipated impact of that limitation on certain hospitals incurring direct medical expenses. For those hospitals that are affected by both the direct medical education limitation and the provision of this final rule affecting indirect medical education payments, the impact of these provisions could well be additive and intermingle with the effects of the direct medical education regulation. However, we cannot determine the exact impact, either in the aggregate or on a particular hospital, due to the variation in hospital characteristics as discussed above and because of the absence of data regarding intern and resident treatment of outpatients.

I. Referral Centers

As discussed in section IV. E. of the preamble to this rule, we are updating the case-mix criteria for hospitals to qualify as referral centers under our regulations at § 412.96(c). Currently, there are about 150 referral centers, all but one of them rural hospitals, that are paid under the prospective payment system, on the basis of urban standardized amounts as a result of their referral center status.

More than 95 percent of the referral centers are eligible for higher payment because they meet the criteria of § 412.96(c) rather than those of § 412.96(b). These criteria refer to case-mix index, number of discharges, medical staff, source of inpatients, and volume of referrals. Each new qualifying hospital and those wishing to retain their referral center status must meet both the case-mix and discharge criteria, and at least one of the other criteria. Thus, the level at which the case-mix and discharge criteria are set determines whether a specific hospital meets the criteria.

We expect that a substantial number of the current referral centers will not meet the case-mix criterion that applies to cost reporting periods beginning in FY 1985. However, this will not result in their being terminated as referral centers, since once qualified, referral center status continues for three years. For the triennial review, they need meet the criteria only two out of three years. At this time, we are unable to determine how many hospitals may gain referral center status under the revised FY 1986 criteria. However, we believe the new criteria will afford us a reasonable measure of the degree to which hospitals seeking special treatment under this provision differ from the average rural hospital and resemble typical urban hospitals, nationally or in their region.

J. Updated Payment Rates and Resulting FY 1986 Payment Amounts

One of the primary functions of this final rule is to publish updated prospective payment rates in accordance with requirements in the law and regulations (section 1886(d) of the Act and § 412.8 of the regulations). Accordingly, the addendum to this document, which is printed after the text of the changes in the regulations, sets forth tables of new Federal national and regional rates, new DRG relative weights and outlier thresholds, and new factors for calculating hospital-specific rates. In accordance with section 1886(d)(1)(D) of the Act, the Federal rate for FY 1986 will be a blend set at 50 percent of the Federal regional rate plus 50 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1985. Further, as each hospital begins its third year under prospective payment, with its cost reporting period beginning on or after October 1, 1985, the relative proportions of hospital-specific and Federal portions will change from 50 percent and 50 percent, respectively, to 25 percent hospital-specific and 75 percent Federal.

In FY 1986, for the first time, the updated Federal rates (that is, the adjusted average standardized amounts) will not be adjusted to achieve "budget neutrality". Under section 1886(e)(1) of the Act, for FYs 1984 and 1985, the rates were adjusted so that estimated aggregate payments for inpatient hospital services would be the same as they would have been had the Medicare payment system in effect at the time of the prospective payment legislation continued in effect. This requirement for budget neutrality does not apply to rates for FY 1986 and thereafter.

In determining the level of the payments and the adjustment factors to be applied to them, such as DRG weights and wage index values, two issues of impact are paramount: the size of the prospective payment pie, which may be expressed in terms of either the average payment per case or the estimated total expenditures, and how that pie will be divided, that is, how payments will be distributed among DRGs or hospitals. Under budget neutrality, the size of the pie, expressed as average payment per case, was, to the extent it could be predicted and controlled, prescribed by law. As a result, in assessing the impacts of the revised rates, adjustments, and special treatment provisions of previous proposed rules, we focused primarily on the distributive effects of our proposals. This year, however, our primary concern is the proper level of payments, and the major alternatives we considered in setting the payment rates were assessed in light of this concern.

By the end of 1984, we realized that, despite our best efforts to achieve budget neutrality, the FY 1985 prospective payment rates were too high. As a result, in preparing the President's budget, we assumed that the FY 1986 payment rates would be

maintained at the FY 1985 level.[2] At that time, we did not realize that later data and experience would show that we would have substantial legal and technical justification to actually reduce the rates.

In the end, we had to choose among a fairly wide range of potential percentage changes. The hypothetical upper end was constrained by the legal requirement, under section 1886(b)(3)(B) of the Act, that rates for FY 1986 be increased by no more than the forecasted market basket increase plus one-quarter of one percentage point. Thus, the highest conceivable increase for the FY 1986 prospective payment rates was +4.52 percent.

On the other hand, as explained in section II.A.3. of the addendum of this rule, we had a number of reasons for finding the FY 1985 prospective payment rates too high. Considering the combined effect of case-mix increases, market basket forecasting error, inaccurate cost per case assumptions, and the consequences of using unaudited cost data as a basis for rate-setting, the FY 1985 rates are probably overstated by at least 9.8 percent.

ProPAC's first recommendation was a major alternative that had to be considered. It recommended increasing the FY 1985 rates by the forecasted market basket increase, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during FY 1985. It described the negative one percentage point, or "discretionary adjustment factor," as a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change. It also recommended that we made corrections for market basket forecasting error. In essence, by identifying a number of factors to be considered in determining an update percentage, including both negative and positive values, ProPAC performed an analysis very similar to ours.

In considering the same kinds of things as ProPAC did in developing its proposed discretionary adjustment factor, we developed categories and allowances with some analytic differences, but nonetheless arrived at a policy target adjustment factor of −1.5 percentage points, in lieu of their −1.0 percentage point factor.

In theory, it would be possible to choose to combine the various corrections, adjustments, and inflation factors in a variety of combinations, yielding nearly any percentage change between +4.52 percent and −9.8 percent. However, we believe the preponderance of the evidence, including recent industry reports on hospital profitability margins, shows that current payments are already set at levels that are at least adequate. Accordingly, in section II.A.3. of the addendum, we set forth the factors we believe are best, and show that these factors, in combination, would result in a −4.02 percent reduction of the FY 1986 prospective payment rates. For the reasons given in the Addendum, we are maintaining FY 1986 Federal rates at the same level as FY 1985.

The Federal rates change only as a result of restandardization of the base data to reflect the survey-based gross wage index. Further, as explained in section II. D. of the addendum, we are not increasing the hospital-specific rates for cost reporting periods beginning in FY 1986. As a result, the amounts a hospital may expect to receive from prospective payments for FY 1986 discharges will change as a result of the effects of the new wage index, the new DRG classifications and weights, and the statutorily required changes in blending of Federal and hospital-specific portions.

We have projected the separate and combined expected effects of changes to the DRG weights and wage index on payments to hospitals grouped by census regions, urban/rural status, bed-size, teaching status, and type of control (ownership). This estimate of payment changes is based on 5302 hospitals with Medicare discharges in the PATBILL file and for which hospital-specific information (hospital-specific rates, resident/bed ratios, rural referral center status, and so forth) was provided by the fiscal intermediaries. We did not include any hospitals from waiver States (Maryland, Massachusetts, New Jersey, New York) or hospitals excluded from the prospective payment system. This projection also reflects the impact of the statutorily required retroactive application of the survey-based wage index. The following table summarizes our findings.

BILLING CODE 4120-01-M

---

[2] *U.S. Budget in Brief, Fiscal Year 1986.* Executive Office of the President, Office of Management and Budget, Washington, D.C. February 4, 1985. Page 48.

BILLING CODE 4120-01-C

TABLE-ESTIMATED IMPACT OF CHARGE-BASED DRG WEIGHTS AND THE SURVEY-BASED WAGE INDEX ON FY 1986 OPERATING PAYMENTS

Percent Change in Total Payments for FY 1986 Due to:

	DRG Recalibration[1]	Revised Wage Index [2]	Combined Prospective Effects[3]	Retroactive Wage Index Application	Total Combined Effects
All Hospitals	-0.01	-0.08	-0.09	-0.11	-0.20
By Census Regions					
New England	0.49	0.40	0.89	0.51	1.40
Mid Atlantic	0.47	-0.51	-0.04	-0.59	-0.62
South Atlantic	-0.13	-0.55	-0.69	-0.66	-1.35
East North Central	-0.13	-0.11	-0.24	-0.17	-0.41
East South Central	-0.41	-0.31	-0.72	-0.19	-0.91
West North Central	0.03	0.19	0.22	0.14	0.37
West South Central	-0.32	-0.26	-0.58	-0.26	-0.84
Mountain	-0.13	-0.06	-0.19	-0.10	-0.28
Pacific	0.35	0.61	0.96	0.68	1.64
Urban Hospitals	0.13	-0.07	0.06	-0.10	-0.04
0-99 Beds	-0.19	0.19	-0.00	0.25	0.25
100-404 Beds	0.06	0.04	0.10	0.04	0.14
405-684 Beds	0.15	-0.19	-0.03	-0.24	-0.27
685 + Beds	0.46	-0.35	0.10	-0.46	-0.36
Rural Hospitals	-0.65	-0.13	-0.78	-0.15	-0.93
0-99 Beds	-1.16	-0.00	-1.16	-0.00	-1.17
100-169 Beds	-0.43	-0.05	-0.48	-0.05	-0.53
170 + Beds	-0.12	-0.38	-0.50	-0.44	-0.94
By Teaching Status[4]					
Non-teaching	-0.23	-0.12	-0.35	-0.15	-0.51
Light-teaching	0.06	-0.04	0.02	-0.04	-0.01
Heavy-teaching	1.04	-0.05	1.00	-0.08	0.92
By Type of Control					
Voluntary	0.08	-0.02	0.06	-0.04	0.02
Proprietary	-0.24	-0.24	-0.48	-0.29	-0.77
Government	-0.29	-0.25	-0.53	-0.31	-0.84

1/ This is the combined effect of using charge weights and a revised GROUPER program.

2/ Prospective application only. This comparison reflects the difference we expect from using the HCFA gross index in FY 1986 as compared to estimated FY 1986 payments using the BLS index. It does not include MSA redesignations or other changes that would have occurred in any event.

3/ This is the combined effect of DRG recalibration and the revised wage index.

4/ Non-teaching hospitals are defined as those with 0 residents. Light-teaching hospitals are those with a ratio of residents-to-beds less than 0.25. Heavy-teaching hospitals are those with a ratio of residents-to-beds greater than 0.25.

Note that the magnitude of the changes is generally small and that changes to DRG weights and wage index values will often offset each other. Nevertheless, it is clear that some groups will be advantaged and others disadvantaged. Generally, large urban hospitals in New England or on the Pacific coast will be benefited most by these changes. Small rural hospitals, especially those in the South, will be disadvantaged most.

The change in blending gives more effect to the Federal national rates and less to hospital-specific rates. Thus, a hospital's payments will be affected by the relation between its Federal national rate and its hospital-specific rate. If the applicable Federal rate is higher, a hospital will benefit; if lower, it will be disadvantaged. Even though the payment rates are maintained at the same level for FY 1986, we expect the average payment per case to increase by about 2 percent, because many FY 1985 discharges occurred during hospitals' cost reporting periods beginning in FY 1984, and thus were paid for using a lower hospital-specific rate.

K. Conforming and Minor Proposed Regulation Changes

We are making several other regulation changes that will have relatively minor impacts.

- The revisions to the medical review regulations to conform to the recently published PRO regulations will not have a significant effect on provider revenues.
- The elimination of the prepayment review requirement for all cost outlier payment claims will be administratively simpler for us and for the hospitals, and will give the hospitals quicker payment, but will not affect aggregate revenues significantly.
- The clarification of when hospitals may send denial notices to beneficiaries does not represent a change of policy. It may benefit beneficiaries who might otherwise be sent an inappropriate notice, or hospitals who may not have sent an appropriate notice.

L. Quality of and Access to Care

As we have stated on other occasions, the prospective payment system endeavors to change hospital behavior through financial incentives. We are acutely aware of the possibility that for some hospitals, economic incentives might, in some cases, overshadow concerns for the quality of care delivered and access to appropriate services and levels of services.

There are a number of public and private programs involved in evaluating the quality of hospital care. Utilization and Quality Control Peer Review Organizations (PROs) have, under contract with HCFA, responsibility for evaluating whether the quality of services meets professionally recognized standards of health care and may intervene to correct various patient care problems. Sanctions may be applied to hospitals where standards are not met or notices to beneficiaries are improperly utilized. In addition, we survey hospitals for compliance with the health and safety requirements of the conditions of participation for hospitals participating in the Medicare program (42 CFR Part 405 Subpart J). (Hospitals accredited either by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association are deemed to meet these requirements.) Under each of the above programs, we investigate any allegations of poor care. There are additional Federal programs involved in review of specific areas such as radiation safety and infectious diseases. In addition, voluntary second-opinion programs and the efforts of PROs appear to have contributed to a decline in unnecessary surgery.

On the State level, health departments enforce a variety of facility and professional licensure requirements aimed at reducing health care risks and ensuring that only appropriately trained personnel provide services.

Numerous private programs are involved in quality issues. The Joint Commission on Accreditation of Hospitals and the American Osteopathic Association accredit facilities meeting their high standards of care. Almost all of the health professions themselves have and review professional standards of practice. Finally, health care literature suggests that a large number of special research projects are underway, publicly and privately financed, and aimed at measuring various aspects of the quality of hospital care.

The hospital delivery system seems to be adjusting to prospective payment generally as we anticipated, at least as measured by utilization and consumption of resources. We have noted a significant decrease in average length-of-stay and an increase in reported average case mix. To date, there is no systematic evidence linking the behavioral changes that have taken place to any of the potential problems in quality that some expected to result from the changed incentives (for example, shift of acutely ill patients to lower-level providers unable to furnish necessary care, or inappropriate reductions of diagnostic testing or support services). Moderate shifting of patients to less expensive settings has occurred, but the extent of such shifting is not yet known. However, we have seen no data showing an increased number of deaths or complications as a result. Simply stated, a shorter stay in the hospital has not been equated with lower quality care. There may be reason to believe that, in many instances, shorter stays expose patients to fewer risks.

We received a number of comments on the effects of various requirements in this rule on the overall quality of care. These comments generally can be categorized as follows:

- Restraints on payment rates may/will result in a reduction of quality;
- Economic incentives created by prospective payment may/will result in hospital closings or reduction of services provided, thus restricting access;
- Inadequate DRG weighting factors in specific MDCs (for example, in alcohol and drug abuse treatment) may/well result in inadequate treatment; and
- Various technologies (for example, shock wave lithotripsy) may/will be discontinued.

Although none of the comments received on these issues included objective data in support of the assertions, we accept the basic premise that there is an indirect relationship between payment levels and quality of and access to care. We, however, reject the notion that more money equals better care and less money, therefore, must result in poorer care. This argument presented by some commenters ignores the many non-economic variables involved in patient treatment decision-making. We believe that hospital administrators, practicing physicians, and all health care providers are first and foremost guided by the desire to provide the best care possible.

Because payment levels can indirectly affect quality of care, we have been and will continue to be cautious in setting rates and providing for special circumstances. We have evaluated the comments received to date and have made revisions where appropriate. We expect to make many adjustments and policy-revisions in the future, further refining the program as we gain more experience. We encourage those commenters concerned about quality to continue providing us with feedback on the effects of the prospective payment system on patient care.

Ensuring proper access to care is of great concern to us. It is possible that the prospective payment system may in time create incentives for hospitals to establish more outreach programs, expand outpatient services, and form delivery systems to reach populations

that were once ignored. To some extent, this seems to be occurring. The hospital industry's literature encourages hospitals to develop outreach programs and frequently suggests that these will strengthen a hospital's financial picture.

The issues of quality and access are particularly important to certain subgroups of enrollees. Disabled enrollees (especially aged disabled), end-stage renal disease (ESRD) enrollees, and those dually entitled to Medicare and Medicaid coverage ("crossovers") have certain health and socio-economic characteristics that make them particularly vulnerable to changes in health care programs. For example, ESRD enrollees are hospitalized at a rate three times as often as other enrollees. Also, we know that the dually eligible are characterized by higher hospital utilization and costs relative to other aged enrollees. This group represented 2.6 million beneficiaries, or about nine percent of an estimated 28 million aged persons (as of July 1, 1984 according to the U.S. Census Bureau). Thus, a significant portion of the Medicare beneficiary population is particularly sensitive to changes in health care programs and we must ensure that their health care needs are met.

We emphasize our commitment to carefully review the quality of care provided and to investigate any allegations of poor care. We believe that growth in health care expenditures can be restrained without harming patients. In the short-term, we have proper safeguards in place to protect patients. On a long-term basis, there are mechanisms (both public and private) that will enable us to recognize potential problem areas and respond through appropriate changes in policy. The changes contained in this document essentially represent further refinement of the basic prospective payment system. We do not believe any of these changes will create new problems in quality or alter the incentives that might add risks to patient care.

M. Alternatives Considered

Throughout the discussions in the preamble and this analysis, we have explained why we are doing one thing rather than another. As noted in section I.B. of the preamble, as part of our analysis we have been considering various approaches to updating DRG weights and wage indexes while trying to minimize fluctuations of payments. Many interrelated decisions are involved in this process, and the number of possible combinations of different wage indexes, different DRG weights, and different update factors is large. Further, there are additional alternatives that had to be considered within each of the key technical methodologies for deriving the proposed wage index, DRG weights, and Federal rates. Altogether, there is a potentially enormous number of permutations.

Nonetheless, we have been particularly concerned with the impact of certain main options, and we have reviewed them in the light of how they would interact with each other. These include, for example, using unstandardized DRG weights, rather than weights standardized for geographic wage differences and indirect medical education. This would have had the effect of "decompressing" average case mix relative to standardized weights and would have disadvantaged rural hospitals. We also considered all the ProPAC recommendations. Each of the factors taken into consideration in the development of the FY 1986 standardized amounts was challenged and debated both individually and in combination with other factors.

N. Summary and Conclusions

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in impact analyses, and show that the potential benefits outweigh the potential cost to society. In addition, we must discuss alternative methods of achieving the objectives we propose in our regulations. Throughout the preamble, addendum, and other sections of this impact analysis, such alternatives are discussed. In this summary, we assess the overall costs of the changes we are making, the overall benefits, and the resulting net benefits.

For the most part, the costs and disadvantages that may result from these changes will take the form of reductions in anticipated revenue to affected hospitals. Most of the changes will have their major effect through their influence on the level of FY 1986 prospective payments. The only significant exception will be the retroactive application of the revised wage index.

As we have said before, the primary benefit expected to result from this rule is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economical and efficient operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of these changes is to refine the prospective payment system. Whereas the system as a whole has had a large and dramatic impact, the refinements are of a marginal nature, rather than large-scale adjustments.

We believe that, from this perspective, the overall benefits to society more than offset any resulting liabilities. For the above reasons, we believe that this analysis meets the objectives of E.O. 12291 and the RFA as noted in the Introduction to the Regulatory Impact Analysis.

[FR Doc. 85-20681 Filed 8-28-85; 12:07 pm]
BILLING CODE 4120-01-M

VOL
50

ISS
170

SE

3

985

UMI

federal register

Tuesday
September 3, 1985

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations, Indian Territory, and Ceded Lands; Final Rule

DEPARTMENT OF THE INTERIOR

50 CFR Part 20

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations, Indian Territory, and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final hunting regulations to be established for certain tribes on Federal Indian reservations, Indian Territory, and ceded lands in the 1985–86 hunting season. The rule also implements revised guidelines for establishing migratory bird hunting regulations on Federal Indian reservations, Indian Territory, and ceded lands. However, because of the complex nature of the subject, and the need for ample time for comment, the comment period on the guidelines will remain open indefinitely. These final regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

EFFECTIVE DATE: This rule takes effect on September 1, 1985.

ADDRESSES: Comments received on the proposed regulations for certain tribes, the proposed guidelines for establishing regulations, and the environmental assessment are available for public inspection during normal business hours in room 536, Matomic Building, 1717 H Street, NW., Washington, D.C. Communications regarding the documents should be directed to Director (FWS/MBMO), Room 536, Matomic Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, U.S. Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the June 4, 1985, **Federal Register** (50 FR 23459–23470 and particularly 23467–23468), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed revised guidelines for migratory bird hunting regulations on Federal Indian reservations, Indian Terrority, and ceded lands. The guidelines would replace proposed criteria published in the March 23, 1984, **Federal Register** (49 FR 11125–11126). The revised guidelines were prepared in response to tribal assertion of reserved hunting rights, and tribal interest in exercising these rights. The guidelines include possibilities for: (1) On-reservation hunting (including Indian Terrority), by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by surrounding State(s); (2) on-reservation hunting (including Indian Territory) by tribal members only, outside of usual Federal frameworks; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the proposed guidelines would have to be consistent with the closed season requirement mandated by the 1916 Migratory Bird Treaty with Canada.

The Service requested comments on the proposed guidelines and on a draft environmental assessment that evaluates their likely impacts. The Service also indicated the intention to establish special regulations for some tribes in the 1985–86 hunting season. Tribes that desired special seasons were asked to submit a proposal that included details on anticipated harvest, methods that would be used to monitor harvest, steps that would be taken to limit harvest where it could be shown that failure to do so would impact seriously on the resource, and tribal capabilities to establish and enforce migratory bird hunting regulations.

Four State conservation agencies wrote the Service in regard to the proposed guidelines, and their comments are discussed in the August 6, 1985, **Federal Register** (50 FR 31828). The States generally recognize the special status of reserved hunting rights of Indian tribes and the need to provide flexibility in this area. However, the comments reflected concern regarding the potential adverse effects that the ad hoc exercise of these hunting rights and management authority could have on the waterfowl resource and on State waterfowl management programs. In a July 30, 1985, letter that was received too late for inclusion in the August 6, 1985, **Federal Register**. Mr. James H. Glass, President, The Wildlife Legislative Fund of America, stated his concern that the guidelines offer the possibility for longer hunting seasons and higher bag limits for Indians than non-Indians, even in cases where both will be hunting on the same public lands. In his letter, Mr. Glass recognized that the treaty hunting rights of Indians cannot be ignored. However, he urged the Service to stand for regulations that are designed to protect and improve the resource for all people, whether Indian or non-Indian.

The Service recognizes that the guidelines may provide greater hunting opportunities in some instances for Indians than for non-Indians, and that this will be viewed as discriminatory by some non-Indians. Nevertheless, the Service believes that it is appropriate to recognize the unique nature of the reserved hunting rights of Indian tribes and, to the extent possible and commensurate with the conservation of the resource, to provide them reasonable flexibility in hunting regulations. As discussed in the June 4, 1985, **Federal Register**, the Service believes that hunting by tribal members is unlikely to cause a substantial increase in migratory bird harvest. However, hunting seasons on ceded lands and hunting seasons for non-tribal members on Federal Indian reservations where tribes have full wildlife management authority could result in increased harvest. The Service will scrutinize proposals for such seasons carefully to ensure that they do not have serious impacts on the migratory bird resource, and most seasons will be experimental.

Five Indian tribes, bands, and Indian organizations also commented on the June 7, 1985, proposed guidelines. Their comments and the Service responses are summarized in the August 6, 1985, **Federal Register** (50 FR 31829–31833), in which the Service announced proposed regulations in the 1985–86 hunting season for certain Indian tribes.

On August 14, 1985, Mr. Allen R. McKay, Director of the Game and Fish Division, Three Affiliated Tribes, Fort Berthold Reservation, New Town, North Dakota, commented on the proposed guidelines and the draft environmental assessment. Mr. McKay stressed that the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara) assert jurisdiction over hunting by tribal and non-tribal members on the reservation. He stated that the tribes support the guildeline that would permit establishment of seasons for non-tribal members that might differ from the State regulations, but the tribes do not request action at this time. Mr. McKay indicated that the tribes have the capability to establish and enforce

migratory bird hunting regulations, and that they would like to be included in meetings or correspondence regarding establishment of waterfowl hunting regulations that affect the Three Affiliated Tribes.

In earlier Federal Registers the Service has stated that Indian tribes that wish to do so should have the opportunity to participate in technical meetings on migratory bird matters. The Service intends to investigate ways in which this can be accomplished.

While there were some questions and concerns raised by Indian tribes and organizations, their comments generally were supportive of the revised guidelines and of the Service's attempts to develop reasonably uniform standards dealing with reserved hunting rights of Indian tribes. The Shoshone-Bannock Tribes on the Fort Hall Reservaton in Idaho are an exception. In letters dated June 27, 1985, and August 16, 1985, the tribes raised a number of objections to the guidelines. Among other things, Mr. John D. Ross III, Tribal Attorney, pointed out that a number of tribes were not aware of the proposed guidelines published in the June 4, 1985, Federal Register and thus did not have an opportunity to comment on them. The Service believes that tribes on all Federal Indian reservations should have this opportunity and, therefore, the Service intends to keep the comment period on the guidelines open indefinitely, and to ensure that all tribes receive them for review. The Service has acknowledged that the revised guidelines might not cover all situations. For this reason, some changes may be required, and they should not be viewed as inflexible. However, the Service believes they are reasonable and necessary interim standards to employ in establishing migratory bird hunting regulations for Indian tribes, and they will be used for his purpose for the affected tribes in the 1985–86 hunting season.

Nontoxic Shot Regulations

In the February 12, 1985, Federal Register (50 FR 5759–5764) and more recently in the May 7, 1985, Federal Register (50 FR 19178–19182), the Service published a list of zones and areas where nontoxic shot will be required for waterfowl hunting in the 1985–86 hunting season.

More recently, on June 14, 1985, the National Wildlife Federation sued the Department of the Interior to block use of lead shotgun ammunition for waterfowl hunting in parts of 22 counties in California, Illinois, Missouri, Oklahoma, and Oregon. The issues in the case involve the protection of the endangered bald eagle from lead poisoning. The outcome of this lawsuit could have a bearing on future nontoxic shot regulations on Federal Indian reservations and ceded lands where waterfowl are hunted by tribal and non-tribal members.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25242). In addition, several environmental assessments have been prepared on specific matters that serve to supplement the material in the Final Environmental Statement. Of particular importance is the environmental assessment, "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" that was distributed for review and public comment on June 4, 1985. The Service has concluded that the action proposed in the assessment is not a major Federal Action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on the proposed action is not required. Copies of the assessment are available from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, D.C. 20240.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] "by taking such action necessary to insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical." Consequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indian Reservations, Indian Territory, and ceded lands. On June 18, 1985, the Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction of adverse modification of their critical habitats.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed guidelines were published on June 4, 1985, and when the proposed hunting regulations for certain tribes were published on August 6, 1985, the Service established the longest period possible for public comment. In doing this the Service recognized that time would be of the essence. The comment periods provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1985. The Navajo Nation's regulatory proposal has been adopted in this final rule, even though it was not described in the proposed rule of August 6, 1985. The Service finds that, because its guidelines on Native American hunting on Indian reservations have been the subject of repeated public comment and review, and because the Navajo's proposal falls within prescribed Federal frameworks, good cause exists for adopting the Navajo regulations in this final rule. To require a new public comment period at this stage of the rulemaking process for migratory game hunting would be impracticable, unnecessary, and contrary to the public interest.

Therefore, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 et seq.), the Service prescribes the final hunting regulations for certain tribes on Federal Indian reservations, Indian Territory, and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal frameworks for waterfowl hunting seasons (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 2, 1985. Because it was necessary to publishing this document by September 1, 1985, most waterfowl regulations for the tribes listed here are shown as within final frameworks to be established.

The Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will,

therefore, take effect on September 1, 1985.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985 (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (at 50 FR 30424).

Authorship

The primary author of this proposed rulemaking is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

Accordingly, 50 CFR Part 20 is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712), unless otherwise noted.

2. Section 20.110 is added to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

This section provides for establishing annual migratory bird hunting regulations for certain tribes on Federal Indian reservations, Indian Territory, and ceded lands.

(Editorial Note.—The following annual hunting regulations will not appear in the Code of Federal Regulations because of their seasonal nature)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Great Lakes Indian Fish and Wildlife Commission.* In letters dated August 15, 1985, and August 19, 1985, the Commission and the Wisconsin Department of Natural Resources, respectively, accepted the following experimental hunting regulations proposed by the Service for Chippewa tribal members hunting on ceded lands in public ownership in Wisconsin, which are hereby adopted in this final rule for the 1985–86 season:

(1) *Ducks*[1]

Season Dates: Begin 15 days prior to opening of regular Wisconsin duck season. End with closure of State hunting season.

Daily Bag and Possession Limits: Same as permitted under Federal frameworks.

Special Scaup-only Season: Same dates, season length, and daily bag and possession limits permitted Wisconsin under Federal frameworks.

Rest Period: A 5-day non-hunting period beginning 5 days before the regular State duck hunting season.

(2) *Geese*[1]

(i) *Canada Geese*

Season Dates: Same as permitted under Federal frameworks.

Bag and Possession Limits: Daily bag limit 3. Possession limit.

6. No season limit.

(ii) *Other Geese* (Snow Geese, Blue Geese, White-fronted Geese): Same dates, season length, and daily bag and possession limits permitted Wisconsin under Federal frameworks.

(3) *Other migratory birds.*

(i) *Coots, Common Moorhens, and Purple Gallinules (Gallinules)*

Season Dates: Same as for ducks.

Bag limit: 15 daily, singly or in aggregate. Possession limit 30.

(ii) *Sora and Virginia Rails*

Season Dates: September 15 through November 19.

Bag Limit: 25 daily, singly or in aggregate. Possession limit 30.

(iii) *Common Snipe*

Season Dates: September 15 through November 19.

Bag Limit: 8 daily. Possession limit 16.

(iiii) *Woodcock*

Season Dates: September 15 through November 18.

Bag Limit: 5 daily. Possession limit 10.

[1] Final frameworks for waterfowl to be established.

(4) *General conditions.* Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, shooting hour regulations, 50 CFR Part 20, Subpart K, and nontoxic shot zone regulations, 50 CFR 20.108. For purposes of enforcing bag and possession limits, all waterfowl or other migratory birds in the possession or custody of tribal hunters on ceded lands will be considered to have been taken on these lands.

(b) *Colorado River Indian Reservation.* The following regulations will apply to both tribal and non-tribal members while hunting on the reservation during in 1985–86 hunting season:

(1) *Ducks*[1]

Season Dates: Same as Arizona and Colorado River Zone in California.

Daily Bag and Possession Limits: Same as permitted under Federal frameworks for Arizona and Colorado River Zone in California.

(2) *Geese*[1]

Season Dates: Same as Arizona and Colorado River Zone in California.

Daily Bag and Possession Limits: Same as permitted under Federal frameworks for Arizona and Colorado River Zone in California.

(3) *Other migratory birds*

(i) *Coots and Common Moorhens (Gallinule)*

Season Dates: Same as for ducks in Arizona and Colorado River Zone in California.

Daily Bag and Possession Limits: 25 singly or in aggregate.

(ii) *Common Snipe*

Season Dates: Same as for ducks in Arizona and Colorado River Zone in California.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(iii) *Mourning Doves and White-winged Doves*

Season Dates: September 1–October 15; November 16–November 30.

Daily Bag and Possession Limits: Daily bag limit is 15 and possession limit is 30 mourning and white-winged doves, singly or in the aggregate of these species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

(4) *General conditions.* Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Hunters

under 16 may voluntarily purchase a duck stamp and help preserve wetlands for waterfowl. Special regulations established by the Colorado River Indian Tribes also may apply on the reservation.

(c) *Penobscot Indian Nation.* (1) In a June 25, 1985, letter, the tribe proposed to adopt 2 separate migratory bird seasons: a general season for both tribal and non-tribal members, and a sustenance season for tribal members only. The general season would be the same as selected by the State of Maine, as has been the case in the past. The proposed sustenance season would include only ducks and would begin on September 21 and end on November 30, and it would permit Sunday hunting (not permitted under State regulations). The daily bag limit under sustenance hunting regulations would be 4 ducks, with no more than 2 wood ducks or 2 black ducks. Where sustenance and general seasons coincide, the daily bag limit for any species or in total would be the greater of the 2 possible limits. All usual Federal basic regulations would apply.

(2) In a letter to the Service dated July 19, 1985, Mr. Norman Trask, Maine Department of Inland Fish and Wildlife, expressed concern regarding the proposed black duck regulations. Mr. Trask pointed out that the more liberal tribal regulations might erode continued support by non-Indians for the restrictive regulations that have been set in the State during the past 3 years to reduce black duck harvest.

(3) The Service did not object to the tribe adopting different hunting regulations for tribal and non-tribal members. The guidelines provide for this possibility. However, in the August 6, 1985, **Federal Register**, the Service proposed that the tribe limit subsistence harvest to species that are more abundant than the black duck. In an August 15, 1985, response, Mr. Tim Lukas, Wildlife Biologist for the tribe indicated that the Service proposal was not feasible for several reasons and asked that the Service approve the tribal proposal. Mr. Lukas requested consultation with the Service and State if there were continuing concerns regarding the tribal proposal. The Service met with tribal and State officials on August 21, 1985. At the meeting, tribal officials assured the Service that the subsistence harvest would be too small to impact adversely on local populations and that the tribe would carefully monitor the harvest to ensure that this is the case. The Service has approved the 1985 sustenance hunting regulations on an experimental basis, pending an evaluation.

(d) *White Earth and Other Minnesota Chippewa Indians.* In a June 27, 1985, letter, Mr. Dwight Wilcox, White Earth Reservation Biologist, submitted proposed 1985 migratory bird hunting regulations for on-reservation hunting by tribal members. Mr. Wilcox suggested that a memorandum of agreement between the White Earth Tribal Council and the Service may be appropriate. The Service concurred with this suggestion in the August 6, 1985, **Federal Register** and has subsequently arranged a meeting for this purpose with Tribal Council officials. The Service also intends to consult with officials of other Chippewa Indian reservations in Minnesota, with the aim of reaching agreement on 1985 hunting regulations.

(e) *The Navajo Nation.* (1) In a June 29, 1984, letter, Mr. John E. Antonio, Director, Navajo Game and Fish Program, stated that the Navajo Nation has full wildlife management authority, and he submitted a proposal for uniform migratory bird hunting regulations throughout the reservation (in parts of Arizona, New Mexico, and Utah). The proposed regulations would apply to both tribal and non-tribal hunters. The Service had not developed the revised guidelines at that time and the proposal could not be approved. However, in the June 4, 1985, **Federal Register**, the Service announced the intention to establish uniform regulations on the reservation in the 1985–86 hunting season.

(2) In an August 20, 1985, telephone conversation, Mr. Antonio requested that the Service approve regulations for the 1985–86 hunting season. Mr. Antonio indicated that it had not been possible to make a request earlier, and that the tribe would meet all law enforcement and other criteria for special seasons that were described in the June 4, 1985, **Federal Register**. The 1985–86 hunting regulations proposed by the tribe are more restrictive than Federal frameworks permit, and the Service approves the following regulations for both tribal and non-tribal members in the 1985–86 hunting season, on an experimental basis, pending an evaluation of hunting activity and harvest:

(i) *Ducks* [1]

Season Dates: October 12, 1985–December 1, 1985.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under Federal frameworks.

(ii) *Geese*

Canada Geese (season closed on other geese):

Season Dates: December 28, 1985–January 5, 1986.

Daily Bag and Possession Limits: 2 per season.

(iii) *Other migratory birds*

(A) *Coots and Common Moorhens (Gallinule)*

Season Dates: October 12, 1985–December 1, 1985.

Daily Bag and Possession Limits: 25 singly or in aggregate.

(B) *Mourning Doves*

Season Dates: September 7, 1985–September 29, 1985.

Daily Bag and Possession Limits: 12 daily. Possession limit 24.

(C) *Band-tailed Pigeons*

Season Dates: September 7, 1985–September 29, 1985.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(iv) *General conditions.* Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Hunters under 16 may voluntarily purchase a duck stamp and help preserve wetlands for waterfowl. Special regulations established by the Navajo Nation also may apply on the reservation.

The final rule promulgated here that implements interim guidelines for migratory bird hunting regulations on Federal Indian reservations, Indian Territory, and ceded lands, and that also establishes final hunting regulations for certain tribes for the 1985–86 hunting season is authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Dated: August 23, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–20726 Filed 8–29–85; 4:12 pm]

BILLING CODE 4310–55–M

VOL
50

ISS
70

SE
3

985

UMI

Reader Aids

Federal Register
Vol 50, No. 170
Tuesday, September 3, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1985

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
September 3	September 18	October 3	October 18	November 4	December 2
September 4	September 19	October 4	October 21	November 4	December 3
September 5	September 20	October 7	October 21	November 4	December 4
September 6	September 23	October 7	October 21	November 5	December 5
September 9	September 24	October 9	October 24	November 8	December 9
September 10	September 25	October 10	October 25	November 12	December 9
September 11	September 26	October 11	October 28	November 12	December 10
September 12	September 27	October 15	October 28	November 12	December 11
September 13	September 30	October 15	October 28	November 12	December 12
September 16	October 1	October 16	October 31	November 15	December 16
September 17	October 2	October 17	November 1	November 18	December 16
September 18	October 3	October 18	November 4	November 18	December 17
September 19	October 4	October 21	November 4	November 18	December 18
September 20	October 7	October 21	November 4	November 19	December 19
September 23	October 8	October 23	November 7	November 22	December 23
September 24	October 9	October 24	November 8	November 25	December 23
September 25	October 10	October 25	November 12	November 25	December 24
September 26	October 11	October 28	November 12	November 25	December 26
September 27	October 15	October 28	November 12	November 26	December 26
September 30	October 15	October 30	November 14	November 29	December 30

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
300–399	8.00	Jan. 1, 1985
400–699	12.00	Jan. 1, 1985
700–899	14.00	Jan. 1, 1985
900–999	14.00	Jan. 1, 1985
1000–1059	12.00	Jan. 1, 1985
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
1–239	20.00	Apr. 1, 1985
240–End	14.00	Apr. 1, 1985
18 Parts:		
1–149	12.00	Apr. 1, 1985
150–399	19.00	Apr. 1, 1985
400–End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1–399	8.00	Apr. 1, 1985
400–499	16.00	Apr. 1, 1985
500–End	18.00	Apr. 1, 1985
21 Parts:		
1–99	9.00	Apr. 1, 1985
100–169	11.00	Apr. 1, 1985
170–199	13.00	Apr. 1, 1985
200–299	4.25	Apr. 1, 1985
300–499	20.00	Apr. 1, 1985
500–599	16.00	Apr. 1, 1985
600–799	6.50	Apr. 1, 1985
800–1299	10.00	Apr. 1, 1985
1300–End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0–199	11.00	Apr. 1, 1985
200–499	19.00	Apr. 1, 1985
500–699	6.50	Apr. 1, 1985
700–1699	13.00	Apr. 1, 1985
1700–End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0–1.169	21.00	Apr. 1, 1985
§§ 1.170–1.300	12.00	Apr. 1, 1985
§§ 1.301–1.400	7.50	Apr. 1, 1985
§§ 1.401–1.500	15.00	Apr. 1, 1985
§§ 1.501–1.640	12.00	[8] Apr. 1, 1984
§§ 1.641–1.850	11.00	Apr. 1, 1985
§§ 1.851–1.1200	22.00	Apr. 1, 1985
§§ 1.1201–End	22.00	Apr. 1, 1985
2–29	15.00	Apr. 1, 1985
30–39	9.50	Apr. 1, 1985
40–299	18.00	Apr. 1, 1985
300–499	11.00	Apr. 1, 1985
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1985
27 Parts:		
1–199	18.00	Apr. 1, 1985
200–End	13.00	Apr. 1, 1985
*28	16.00	July 1, 1985
29 Parts:		
0–99	11.00	July 1, 1985
100–499	5.00	July 1, 1985
500–899	19.00	July 1, 1985
900–1899	7.00	July 1, 1985
1900–1910	15.00	July 1, 1984
1911–1919	5.50	[8] July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	6.00	July 1, 1985
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.50	July 1, 1985
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	[3] July 1, 1984
700–799	13.00	July 1, 1984
800–999	7.50	July 1, 1985
1000–End	5.50	July 1, 1985
33 Parts:		
1–199	14.00	July 1, 1984
200–End	14.00	July 1, 1985
34 Parts:		
*1–299	15.00	July 1, 1985
300–399	8.50	July 1, 1985
400–End	14.00	July 1, 1984
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	12.00	July 1, 1984
*37	9.00	July 1, 1985
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
*1–100	7.50	July 1, 1985
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

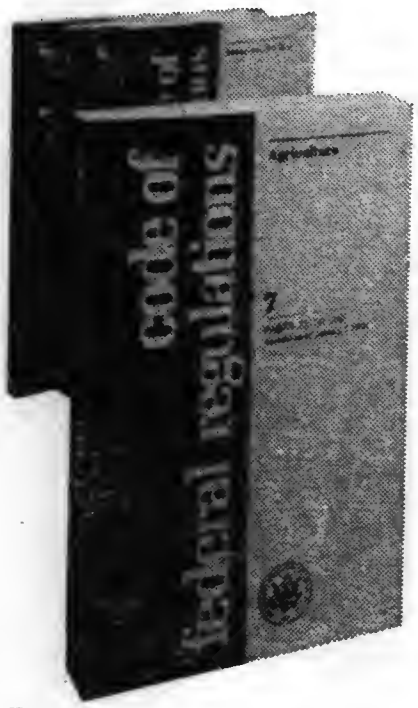
VOL
50

ISS
70

SE
3

985

UMI



Just Released

Code of Federal Regulations

Revised as of July 1, 1985

Quantity	Volume	Price	Amount
_____	Title 28—Judicial Administration (Stock No. 822-004-00089-0)	$16.00	$_____
_____	Title 34—Education (Parts 1-299) (Stock No. 822-004-00111-0)	15.00	_____
_____	Title 37—Patents, Trademarks, and Copyrights (Stock No. 822-004-00117-9)	9.00	_____
_____	Title 41—Public Contracts and Property Management (Chaps. 1-100) (Stock No. 822-004-00131-4)	7.50	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐-☐

Order No._____

VISA® MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
50

ISS
170

SE
3

985

UMI

VOL
50

ISS
171

SE
4

985

UMI

9-4-85
Vol. 50 No. 171

federal register

Wednesday
September 4, 1985

***********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N SEEB RD
ANN ARBOR MI 48106
97

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
171

SE
4

985

UMI

9-4-85
Vol. 50 No. 171
Pages 35767-36030

Federal Register

Wednesday
September 4, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Color Additives
Food and Drug Administration

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Government Procurement
Energy Department

Hazardous Waste
Environmental Protection Agency

Hunting
Fish and Wildlife Service

Loan Programs—Education
Education Department

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Postal Service
Postal Service

Radio Broadcasting
Federal Communication Commission

Security Measures
Defense Department

Contents

Federal Register
Vol. 50, No. 171
Wednesday, September 4, 1985

Agricultural Marketing Service
RULES
35767 Almonds grown in California
35767 Oranges (Valencia) grown in Arizona and California
35769 Raisins produced from grapes grown in California
PROPOSED RULES
35828 Kiwifruit grown in California
Milk marketing orders:
35829 Southwestern Idaho-Eastern Oregon
35828 Pears, plums, and peaches grown in California

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service.

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
35849 Southwest boll weevil eradication program

Arts and Humanities, National Foundation
NOTICES
Meetings:
35884 Arts National Council (Ad Hoc Group on Arts Education)
35884 Visual Arts Advisory Panel

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
35866 Hepatitis B vaccine trial follow-up
Meetings:
35867 Pediatric screening for lead poisoning and iron proficiency utilizing protoporphyrin assays

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
35849 Iowa

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Loan and purchase programs:
35772 Shorn wool and unshorn lambs [pulled wool]; interim; correction

Commodity Futures Trading Commission
NOTICES
Meetings:
35853 Leverage transaction merchant applications, etc.

Defense Department
RULES
Federal Acquisition Regulation (FAR):
35815 Certification of commercial pricing; meeting, etc.
Security:
35790 Industrial personnel security clearance program
NOTICES
Meetings:
35853 DIA Scientific Advisory Committee
35853 DOD-University Forum Working Group
35854 Strategic Defense Initiative Advisory Committee

Education Department
PROPOSED RULES
Postsecondary education:
35964 Guaranteed student loan and PLUS programs
NOTICES
Grants; availability, etc.:
35854–35856 Handicapped research (4 documents)
35857 National direct student loan, College work-study, and Supplemental educational opportunity grant programs

Employment and Training Administration
NOTICES
Adjustment assistance:
35881 National Semi Conductor et al.
35880 NRC Corp. et al.
35882 Onetia Knitting Mills et al.
35882 W.I. Forest Products

Energy Department
RULES
Acquisition regulations:
35956 Representations and certifications, preparation

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
35796 California
Hazardous waste program authorizations:
35798 Texas
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
35844 N,N-Diethyl-2-(1-naphthalenyloxy) propionamide
NOTICES
Air quality; prevention of significant deterioration (PSD):
35865 Permit determinations, etc.; Region IX
Meetings:
35865 State-FIRFA Issues Research and Evaluation Group
Pesticide registration, cancellation, etc.:
35862 Solvit Chemical Co., Inc., et al.
35859 Pesticides; receipts of State registration
Pesticides; temporary tolerances:
35858 Nor-Am Chemical Co. et al.

Federal Aviation Administration
RULES
Airworthiness directives:
35772 Societe Nationale Industrielle Aerospatiale
PROPOSED RULES
Airworthiness directives:

35830 Mooney Aircraft Corp.
35837–35839 Rolls-Royce Ltd. (3 documents)
35840 Transition areas

Federal Communications Commission
RULES
Common carrier services:
35800 Pacific telecommunications needs, 1981–1985; facility construction activities, etc.; authorization policies
Radio stations; table of assignments:
35800 California
35799 Hawaii
PROPOSED RULES
Radio stations; table of assignments:
35845 Virginia
NOTICES
35865 Rulemaking proceedings; petitions filed, granted, denied, etc.

Federal Deposit Insurance Corporation
NOTICES
35903 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood insurance program:
36016 Coverage, flood plain management standards, risk premium rate zone designations, etc.

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
35900 Waldo County, ME

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
35866 Citizens Bancshares, Inc., et al.
35866 Manufacturers Hanover Corporation

Fish and Wildlife Service
RULES
Hunting:
35815 Refuge specific hunting regulations

Food and Drug Administration
RULES
Color additives:
35783 FD&C Red. No. 3, FD&C Yellow No. 6, D&C Red Nos. 8, 9, 19, 33, 36, and 37, D&C Orange No. 17; provisional listing; closing date postponed
35789 FD&C Yellow No. 5; provisional listing; closing date postponed
35774 FD&C Yellow No. 5; stay removed
PROPOSED RULES
Color additives:
35841 FD&C Yellow No. 5
NOTICES
Food additive petitions:
35867 American Enka Co.
Meetings:
35867 Advisory committees, panels, etc.; correction

Forest Service
NOTICES
Environmental statements; availability, etc.:
35849 Transfer of lands and minerals management responsibilities
Land and jurisdication transfers, etc.:
35875 National Forest System lands, CA; Transfer to Interior Department, etc.

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
35815 Certification of commercial pricing; meeting, etc.

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; Human Development Services Office; Social Security Administration.

Health Resources and Services Administration
NOTICES
35867 Health maintenance organizations, qualified; list

Historic Preservation, Advisory Council
See entry under Interior Department.

Human Development Services Office
NOTICES
Grants; availability, etc.:
35906 Coordinated discretionary funds program

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service.
NOTICES
Meetings:
35874 Alaska Land Use Council
Senior Executive Service;
35874 Performance Review Board; membership (Historic Preservation Advisory Council)

International Trade Administration
NOTICES
Antidumping:
35849 Spun acrylic yarn from Italy
Countervailing duties:
35851 Steel products from South Africa

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
35877 Missouri Pacific Railroad Co.
35877 Waterloo Railroad Co. et al.

Justice Department
NOTICES
35878–35879 Privacy Act; systems of records (3 documents)

Labor Department
See Employment and Training Administration; Labor Statistics Bureau; Pension and Welfare Benefit Programs Office.

Labor Statistics Bureau
NOTICES
Meetings:
35880 Labor Research Advisory Council Committees

Land Management Bureau
NOTICES
Alaska Native claims selection:
35876 Akiachuk, Ltd.
Environmental statements; availability, etc.:
35875 Transfer of lands and minerals management responsibilities
Exchange of lands:
35875 California
Minerals management:
35876 Coal leases held for ten years; guidelines; correction
35876 Logical mining unit application and processing; guidelines; correction
Meetings:
35876 Burley District Grazing Advisory Board
Withdrawal and reservation of lands:
35876 Wyoming

Mississippi River Commission
NOTICES
35901, 35902 Meetings; Sunshine Act (4 documents)

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
35815 Certification of commercial pricing; meeting, etc.

National Highway Traffic Safety Administration
NOTICES
Meetings:
35901 Rulemaking, research, and enforcement programs

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
35825 Gulf of Alaska, Bering Sea and Aleutian Islands groundfish
35826 Ocean salmon off coasts of Washington, Oregon, and California
NOTICES
Meetings:
35853 Caribbean Fishery Management Council; date change, etc.

National Park Service
NOTICES
Concession contract negotiations:
35877 Carteret Boat Tours, Inc.

Nuclear Regulatory Commission
NOTICES
Reports; availability, etc.:
35884 Seismic qualification of equipment in operating nuclear power plants; draft availability and inquiry

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
35886 Losses and Goals Advisory Committee
35885 Resident Fish Substitutions Advisory Committee

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
35882 McShane & Bowie Profit Sharing Plan, et al.

Postal Service
PROPOSED RULES
Domestic Mail Manual:
35843 Merchandise return service for Federal agencies

Science and Technology Policy Office
NOTICES
Meetings:
35885 White House Science Council

Securities and Exchange Commission
NOTICES
Applications, etc.:
35892 Allied Capital Corp.
35894 Metropolitan Edison Co.
35889 North Holding Co.
Securities:
35886 Foreign issuers; exemption from registration and reporting requirements; list
Self-regulatory organizations; proposed rule changes:
35890, 35895 Midwest Stock Exchange, Inc. (2 documents)
35896 Municipal Securities Rulemaking Board
35897 Options Clearing Corp.
35898 Pacific Clearing Corp. et al.
35899 Pacific Stock Exchange Inc.
Self-regulatory organizations; unlisted trading privileges:
35891 Cincinnati Stock Exchange, Inc.
35900 Pacific Stock Exchange, Inc.
35892 Philadelphia Stock Exchange, Inc.

Social Security Administration
NOTICES
Social security; foreign insurance or pension systems:
35874 Dominican Republic; correction

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration.
NOTICES
Aviation proceedings; hearings, etc.:
35901 Braniff International Airways

Treasury Department
NOTICES
Senior Executive Service:
35901 Performance Review Board; membership

Separate Parts in This Issue

Part II
35906 Department of Health and Human Services, Office of Human Development Services

Part III
35956 Department of Energy

Part IV
35964 Department of Education

Part V
36016 Federal Emergency Management Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
908 35767
981 35767
989 35769
1472 35772
Proposed Rules:
917 35828
920 35828
1135 35829

14 CFR
39 35772
Proposed Rules:
39 (4 documents) 35830–35839
71 35840

21 CFR
74 35774
81 (3 documents) 35774–35789
82 35774
Proposed Rules:
74 35841
82 35841

32 CFR
155 35790

34 CFR
Proposed Rules:
682 35946
683 35946

39 CFR
Proposed Rules:
111 35843

40 CFR
52 35796
271 35798
Proposed Rules:
180 35844

44 CFR
59 36016
60 36016
61 36016
64 36016
66 36016
70 36016
72 36016
75 36016

47 CFR
73 (3 documents) 35799–35800
Proposed Rules:
73 35845

48 CFR
15 35815
52 35815
914 35956
915 35956
952 35956

50 CFR
32 35815
611 35825
661 35827
672 35825
675 35825

Rules and Regulations

Federal Register
Vol. 50, No. 171
Wednesday, September 4, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 360]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 360 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 6–12, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 360 (§ 908.660) is effective for the period September 6–12, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regarding the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on August 27, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges continues to be slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.660 is added to read as follows:

§ 908.660 Valencia Orange Regulation 360.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 6, 1985, through September 12, 1985, are established as follows:

(a) *District 1:* 278,000 cartons;

(b) *District 2:* 472,000 cartons;

(c) *District 3:* Unlimited cartons.

Dated: August 29, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–21059 Filed 9–3–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 981

Handling of Almonds Grown in California; Salable, Reserve, and Export Percentages for the 1985–86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1985–86 crop year, which began July 1, 1985. This action is taken under the marketing order for almonds grown in California and is designed to promote orderly marketing conditions in view of a projected record large almond supply for the 1985–86 crop year.

EFFECTIVE DATES: July 1, 1985 through June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). The marketing order for California almonds requires that the salable, reserve, and export percentages established for a particular crop year apply to all marketable almonds received by handlers from the beginning of that year.

The 1985–86 crop year began July 1, 1985, and handlers are now receiving new crop almonds.

Notice of this action was published in the August 8, 1985, issue of the **Federal Register** (50 FR 32083) and interested persons were afforded an opportunity to submit written comments. Two comments were received in favor of the proposal.

The authority to establish salable, reserve and export percentages is contained in §§ 981.47 and 981.49 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "Order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The percentages are based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1985–86 crop year. The Board's 1985 marketable production estimate of 470 million kernel weight pounds in based on its 1985 crop estimate of 495 million pounds, minus an estimated weight loss of 25 million pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 400 million pounds—150 million pounds for domestic needs and 250 million pounds for export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1984–85 marketing year and for supplies deemed desirable to be carried out on June 30, 1986, for early season shipment during the 1986–87 crop year until the 1986 crop is available for market. After adjusting for inventory, the trade demand is calculated at 376 million pounds, the quantity of almonds from the estimated 1985 marketable production necessary for trade demand needs. The salable percentage of 80 percent will meet those needs.

The remaining 20 percent (94 million pounds) of the 1985 crop marketable production must be withheld by handlers to meet their reserve obligations. Authorized outlets for reserve almonds include new uses and markets for almonds such as almond butter, the school lunch program, an almond paste made from unblanched almonds, sales of almond snack packs to airlines and hotels at reduced prices with the agreement that these organizations would give away the snack packs to their customers on a complimentary basis, an various fund raising promotions. Such market development is necessary in view of the current supply situation and anticipated large crops in future years. Reserve almonds also could be disposed of in other noncompetitive outlets as specified in § 981.66(c) of the order or as approved by the Board.

All or part of these almonds could be released to salable if it is found that the salable supply made available by the 80 percent salable percentage is insufficient to satisfy 1985–86 trade demand including desirable carryover requirements for use during the 1986–87 crop year.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1985–86 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve will be eligible for export to normal export outlets. Thus, an export percentage of 0 is established.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1985 CROP

[Kernal Weight Basis]

	Million pounds	Percent
Estimated Production		
1. 1985 Production	495.0	
2. Loss and Exempt—5.05%	25.0	
3. Marketable Production	470.0	
Estimated Trade Demand		
4. Domestic	150.0	
5. Export	250.0	
6. Total	400.0	
Inventory Adjustment		
7. Carryin 7/1/85	228.0	
8. Desirable Carryover 6/30/86	204.0	
9. Adjustment	(24.0)	
Salable/Reserve		
10. Adjusted Trade Demand (6 plus 9)	376.0	
11. Reserve (3 minus 10)	94.0	
12. Salable % (10>3 x 100)		80
13. Reserve % (100% minus 12)		20

The objective of the order's volume regulation provisions is to establish and maintain orderly marketing conditions for all California almonds. This action will help to stabilize supplies and prices as the industry faces its second largest crop in history on the heels of last year's record large crop of 587 million pounds. This year's total marketable supply (1985 crop marketable production plus salable carryin from the 1984 crop is projected at a record 698 million pounds—6.6 percent above last year's previous record of 654.5 million pounds. World production also is expected to set a record, and sales of California almonds in export are expected to be difficult due to unfavorable exchange rates and large projected crops in Spain and Italy. Thus, California faces strong competition for export markets.

This action will provide an estimated 604 million pounds of California almonds for unrestricted sales (1985 crop salable production plus carryin from the 1984 crop) to meet increasing domestic and world almond consumption. This amount exceeds the actual 1984–85 record for delivered sales of California almonds by 52 percent.

Therefore, after consideration of all relevant matter presented, including that in the notice, the Board's recommendation, comments received, and other available information, it is further found that the establishment of salable, reserve, and export percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.234 is added to Subpart—Salable, Reserve, and Export Percentages to read as follows: (This subpart and section will not appear in the Code of Federal Regulations).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Salable, Reserve, and Export Percentages

§ 981.234 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1985.

The salable, reserve, and export percentages during the crop year beginning July 1, 1985, shall be 80 percent, 20 percent, and 0 percent, respectively.

Dated: August 29, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-21060 Filed 9-3-85; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Establishment of Incoming Weight Dockage and Weight Adjustment Systems for Certain Seedless Raisins, and Addition of Marketing Order Grade Standards for Cluster Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes: (1) A weight dockage system for certain seedless raisins which do not meet incoming marketing order maturity requirements to mitigate the impact of the tighter requirements that took effect August 1, 1985; (2) a weight adjustment system, based on moisture content, for certain seedless raisins to foster the delivery of drier raisins; and (3) incoming and outgoing marketing order grade standards for Cluster Seedless raisins to increase consumer confidence in this relatively new product. This action was recommended by the Raisin Administrative Committee (Committee), which works with the USDA in administering the order.

EFFECTIVE DATE: Effective with the 1985-86 crop year which began August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This action amends Subpart-Supplementary Regulations (7 CFR 989.210-989.221) by revising § 989.210 and by adding §§ 989.211, 989.212, and 989.213 to establish (1) a weight dockage system for Grade B or better maturity,[1] and (2) a weight adjustment system for moisture for certain seedless raisins delivered by producers to packers. It also amends Subpart—Quality Control (7 CFR 989.701-989.702) by revising §§ 989.701 and 989.702 to establish incoming and outgoing marketing order quality standards for Cluster Seedless raisins. These subparts are operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order, hereinafter referred to collectively as the "order", are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Authority for the following action is contained in §§ 989.58 and 989.59 of the order.

The proposal was published in the Federal Register on July 24, 1985 (50 FR 30200), and interested persons were invited to submit written comments until August 7, 1985. Two comments were received.

One comment pointed out that Golden Seedless raisins were inadvertently omitted from § 989.212 in the proposal. This change has been incorporated in this action. The other comment favored the proposal.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the 1985 crop year has already begun. In addition, raisin producers will soon be delivering raisins to packers and these changes should be in effect when producers deliver their raisins. Furthermore, beginning August 1, 1985, raisin lots of those varietal types delivered by producers to packers must meet tighter minimum grade standards.

Last year changes were made in the incoming grade standards for raisins delivered by producers to packers contained in § 989.701 and the grade standards for packed raisins contained in § 989.702 to make the California raisin industry more quality competitive with foreign producers, and to increase user acceptance of California raisins (49 FR 33992). One of those changes, starting November 15, 1985, requires packed Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins to contain at least 70 percent Grade B or better maturity raisins. Beginning August 1, 1985, raisin lots of those varietal types delivered by producers to packers must contain a minimum of 50 percent Grade B or better maturity raisins. Raisin lots containing less than 50 percent Grade B or better maturity raisins are off-grade and can not be acquired by raisin packers except for reconditioning or disposition as off-grade raisins.

To alleviate the impact on producers as much as possible in delivering raisins to packers, the Committee recommended a weight dockage system for Grade B or better maturity for those raisins delivered failing to meet the new incoming marketing order standard. Raisin packers may acquire lots of those varietal types of raisins with 40 to 49.9 percent Grade B or better maturity without reconditioning, but the net weight of the deliveries are to be docked 2 percentage points in weight for each one percentage point the Grade B or better maturity content is less than 50 percent. The weight reduction of the lot approximates the weight of the raisins needed to be removed from the lot by the packer during normal processing for the balance of the lot to meet the new 70 percent Grade B or better maturity taking effect on November 15, 1985. Deliveries determined to have less than 40 percent Grade B or better maturity would be off-grade and thus would have to be disposed of by the packer as off-grade, reconditioned, or returned to the producer. If there raisins were acquired under a dockage system, packers would experience higher than normal yield losses, and greater processing costs in obtaining a product that would meet the 70 percent Grade B or better maturity for packed raisins. No changes were proposed in the incoming marketing order standards for substandard raisins[2] of those varietal types.

The amount of dockage under the dockage system for Grade B or better maturity and the system currently in effect for substandard raisins will operate concurrently. Dockage for both categories will be calculated and the highest dockage would be applied to the net weight of the producers deliveries.

The weight adjustment system for moisture is intended to encourage raisin producers to deliver drier Natural (sun-dried) Seedless and Monukka raisins to packers (i.e., in the 10 to 14 percent moisture range). The industry has found that higher maturity raisins of these

---

[1] For the purposes of this document Grade B or better maturity raisins are raisins which are well-matured or reasonably well-matured as defined in the U.S. Standards for Grades of Processed Raisins (7 CFR 52.1841-52.1858).

[2] For the purpose of this document, substandard raisins are raisins which are less than fairly well-matured as defined in the United States Standards for Grades of Processed Raisins (7 CFR 52.1841-52.1858).

varietal types with a moisture level in excess of 14 percent tend to sugar if held in storage for extended periods of time. Sugaring is an undesirable condition in raisins because the raisins feel gritty, rather than soft and pliable, when eaten. Increasing the storage life of raisins is important to the industry.

Under this system, growers delivering lots of raisins containing 14.1 through 16.0 percent moisture will be docked 2 pounds of raisins per ton for each 1/10 percent moisture in excess of 14 percent. Growers delivering raisins with 12.0 through 13.9 percent moisture, will receive a weight credit of 2 pounds of raisins per ton for each 1/10 percent moisture under 14.0 percent. Raisins with a moisture percentage of 10.0 through 11.9 percent will receive a weight credit of 40 pounds per ton. The weight of raisins containing less than 10 percent moisture will not be docked or adjusted because such raisins are difficult to hydrate, damage in processing, and result in increased packer processing costs. There will be no dockage or adjustment on raisins containing 14 percent moisture.

The moisture adjustment calculations will be made when applicable prior to the application of substandard or Grade B or better maturity dockage.

Last year, the Committee exempted 10 tons of Cluster Seedless raisins from all order requirements pursuant to § 989.60 of the order. Cluster Seedless raisins are sun-dried Thompson Seedless grapes which are marketed unstemmed and left in bunches. About 3 to 4 tons were marketed under this exemption. Experiments were conducted to determine the grade and condition standards which could be applied to Cluster Seedless raisins. As a result of marketing experience gained last year, and experimentation on quality requirements, 100 tons were approved for exemption from volume controls for the 1985 season. However, the Committee recommended that incoming and outgoing marketing order standards for Cluster Seedless raisins should be established under the order to assure consumers of a quality product and help expand markets for this new product. Also, this will allow the industry another year's experience before recommending standards to the Department to be established in the United States Standards for Processed Raisins.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.221) is revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage and/or weight adjustment (moisture) system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage and/or weight adjustment (moisture) provisions described in §§ 989.211, 989.212, and 989.213. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable factor(s) from the appropriate dockage and/or weight adjustment (moisture) table(s) included in those sections.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage and/or weight adjustment (moisture) system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins, any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage and/or weight adjustment (moisture) system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by him with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of Subpart—Schedule of Payments.

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of, the inspection service, or authorized Committee personnel.

(g) *Application of dockage and/or weight adjustment (moisture) factor(s).* The weight adjustment factor for moisture shall be applied to the net weight of raisins acquired, prior to application of the dockage factor for substandard or maturity. A lot of raisins acquired which may be subject to both a substandard and maturity dockage factor shall have only the highest of the two dockage factors applied to determine the creditable weight.

3. A new § 989.211 is added to Subpart—Supplementary Regulations (7 CFR 989.210–989.221) to read as follows:

§ 989.211 Weight adjustment (moisture) system.

(a) *General.* Natural (sun-dried) Seedless, and Monukka raisins containing from 14.1 percent through 16.0 percent moisture or from 10.0 percent through 13.9 percent moisture may be acquired by a handler under a weight adjustment system. The creditable weight of each lot of raisins acquired under this adjustment system shall be obtained by multiplying the net weight of the raisins in the lot by the applicable factor prescribed in paragraph (b) or (c) of this section.

(b) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 14.1 percent through 16.0 percent moisture:*

Percent moisture	Adjustment factor
16.0	.980
15.9	.981
15.8	.982
15.7	.983
15.6	.984
15.5	.985
15.4	.986
15.3	.987
15.2	.988
15.1	.989

Percent moisture	Adjustment factor
15.0	.990
14.9	.991
14.8	.992
14.7	.993
14.6	.994
14.5	.995
14.4	.996
14.3	.997
14.2	.998
14.1	.999
14.0	1.000

Note.—No adjustment for deliveries at 14 percent and in excess of 16 percent.

(c) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 10.0 percent through 13.9 percent moisture:*

Percent moisture	Adjustment factor
14.0	1.000
13.9	1.001
13.8	1.002
13.7	1.003
13.6	1.004
13.5	1.005
13.4	1.006
13.3	1.007
13.2	1.008
13.1	1.009
13.0	1.010
12.9	1.011
12.8	1.012
12.7	1.013
12.6	1.014
12.5	1.015
12.4	1.016
12.3	1.017
12.2	1.018
12.1	1.018
12.0–10.0	1.020

Note.—No adjustment for deliveries at 14 percent and below 10 percent.

4. A new § 989.212 is added to Subpart—Supplementary Regulations (7 CFR 989.210–989.221) to read as follows:

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless and Monukka raisins containing from 5.1 through 10.0 percent, by weight, of sustandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture), of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) *Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.*

Percent substandard	Dockage factor
5.0 or less	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995

[1] No dockage.

Note.—Percentage in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage for the preceding increment. No dockage for deliveries in excess of 10 percent substandard.

(c) *Substandard dockage table applicable to Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins.*

Percent substandard	Dockage factor
12.0 or less	(1)
12.1	.999
12.2	.998
12.3	.997
12.4	.996
12.5	.995

[1] No dockage.

Note.—Percentage in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

5. A new § 989.213 is added to Subpart—Supplementary Regulations (7 CFR 989.210–989.221) to read as follows:

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins containing from 40.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture) of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraph (b) of this section.

(b) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.*

Percent well-matured or reasonably well-matured	Dockage factor
50.0 or more	(1)
49.9	.998
49.8	.996
49.7	.994
49.6	.992
49.5	.990
49.4	.988
49.3	.986
49.2	.984
49.1	.982
49.0	.980

[1] No dockage.

Note.—Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .002 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 39.9 percent or less well-matured or reasonably well-matured raisins.

6. The introductory text and paragraph (a) of § 989.701 of Subpart—Quality Control (7 CFR 989.701–989.702) are revised to read as follows:

§ 989.701 Minimum grade and condition standards for natural condition raisins.

Effective pursuant to § 989.58, raisins meeting the varietal standards hereinafter set forth shall be considered as standard raisins and those failing to meet such standards shall be considered as off-grade raisins. Where the raisins in any lot consist of two or more varietal types commingled within their containers, the lot shall be considered as a mixed lot and as standard raisins if they meet for each defect the most restrictive requirements for the varietal types of raisins comprising the lot. In the event layered Muscats (including other raisins with seeds) or Cluster Seedless raisins are commingled within their containers with loose Muscats (including other raisins with seeds) or loose Cluster Seedless raisins respectively, the entire lot shall be considered as loose Muscats (including other raisins with seeds) or Natural (sun-dried) Seedless raisins. The raisins shall be considered as standard raisins if the lot as a whole meets the minimum standards for loose Muscats (including other raisins with seeds) or Natural (sun-dried) Seedless raisins: *Provided,* That with respect to the requirements peculiar to a varietal type such as possessing characteristic color, flavor, or odor, the raisins shall be considered as meeting such requirements if they

have been properly prepared as raisins. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoilage, shall be considered as storable raisins.

(a) *Natural (sun-dried) Seedless and Monukka raisins.* Natural condition Natural (sun-dried) Seedless and Monukka raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins; (3) shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and shall also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) shall not exceed 16 percent moisture as determined by the dried fruit moisture tester method, except that there shall be no maximum moisture content for Cluster Seedless raisins; and (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee, and that with respect to Cluster Seedless raisins, in addition to the above requirements the raisins shall be fairly free from shattered (or loose end) berries, and be uniformly cured; shall contain 30 percent or more "2 Crown" or larger size berries; and shall be of such quality and condition that when processed in accordance with good commercial practice will, except for moisture content, meet the minimum standards for processed raisins established by the Committee.

* * * * *

7. Section 989.702(g) of Subpart—Quality Control (7 CFR 989.701–989.702) is revised and a new § 989.702(h) is added to read as follows:

§ 989.702 Minimum grade standards for packed raisins.

* * * * *

(g) *Cluster Seedless raisins*—(1) *Description.* Raisins referred to as "Cluster Seedless raisins" means the raisins have not been detached from the main bunch. Cluster Seedless raisins shall at least meet the requirements of Marketing Order Grade B prescribed in this paragraph. The processed raisins are prepared from clean, sound, dried grapes; are stored or cleaned, or both, and are washed with water to assure a wholesome product.

(2) *Grades.* (i) Marketing Order Grade A is a quality of Cluster Seedless raisins that have similar varietal characteristics; have a good typical color; have a good characteristic flavor; are uniformly cured and show development characteristics of raisins prepared from well-matured grapes; contain not more than 23 percent, by weight, of moisture; that not less than 30 percent, by weight, of the raisins, exclusive of stems and branches, are "2 Crown" size or larger and meet the additional requirements as outlined in the table in paragraph (2)(iv) of this paragraph.

(ii) Marketing Order Grade B is the quality of the Cluster Seedless raisins that have similar varietal characteristics; have a reasonably good typical color; have a good characteristic flavor; are uniformly cured and show characteristics of raisins prepared from reasonably well-matured grapes; contain not more than 23 percent, by weight, of moisture; that not less than 30 percent, by weight, of raisins, exclusive of stems and branches, are "2 Crown" size or larger and meet the additional requirements as outlined in the table in paragraph (2)(iv) of this paragraph.

(iii) Substandard is the quality of Cluster Seedless raisins that fail to meet the requirements of Marketing order Grade B.

(iv) Allowances for defects in Cluster Seedless raisins:

Defects	Marketing order grade A	Marketing order grade B
	Maximum (percent by weight)	
Sugared	5	10
Discolored, damaged, or moldy.	5	7
Provided these limits are not exceed:		
Damaged	3	4
Moldy	2	3
Substandard Development and Undeveloped.	2	5
Shattered (or loose) individual berries and small clusters of 2 or 3 berries each.	Practically free	Reasonably free.
	Appearance or edibility of product	
Slightly discolored or damaged by fermentation or any other defect not described above.	May not be affected.	May not be more than slightly affected.
Grit, sand, or silt	None of any consequence may be present that affects the appearance or edibility of the product.	

(h) A handler may grind raisins which do not meet the minimum grade standards prescribed in paragraphs (a) through (g) of this section because of mechanical damage or sugaring, into a raisin paste.

Dated: August 28, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–21056 Filed 9–3–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1472

Loans, Purchases, and Other Operations; Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1985)

Correction

In FR Doc. 85–20051, beginning on page 34079, in the issue of Friday, August 23, 1985, make the following correction:

On page 34079, third column, in the **ACTION** line, "Final rule" should read "Interim rule".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–ASW–12; Amdt. 39–5128]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the main rotor mast on Aerospatiale (SNIAS) Model AS 350 and AS 355 helicopters. This amendment is needed because the FAA has determined that the repetitive inspection interval for visual inspections specified in the existing AD is inadequate to detect all

main rotor mast cracks in sufficient time to prevent mast failure and subsequent loss of control of the helicopter. This amendment decreases the previous inspection interval.

DATES:

Effective Date: September 18, 1985.

Compliance: As prescribed in body of AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, TX 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30, or R. T. Weaver, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone number (817) 877-2548.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendments 39-4698 (48 FR 37924), and 39-4887 (49 FR 29054), which currently requires inspection of the main rotor mast and repair or replacement, as necessary, on Aerospatiale (SNIAS) Model AS 350 and AS 355 series helicopters. After issuing Amendment 39-4887, the FAA has determined, based on service experience, that the repetitive intervals required by the AD are inadequate. Since Amendment 39-4887 was issued, an additional extensive mast flange crack was found on a Model AS 350 helicopter. The French airworthiness authorities determined that daily inspections were necessary and issued French AD's 85-94-25(B) and 85-95-40(B) which require daily visual inspections; therefore, the FAA is further amending Amendment 39-4599, as amended, by reducing the visual inspection interval from 50 hours to daily on Aerospatiale Model AS 350 and AS 355 helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels; Belgium, APO NY 09667, telephone number 513.38.30, or R. T. Weaver, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone number (817) 877-2548.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendments 39-4698 (48 FR 37924), and 39-4887 (49 FR 29054), which currently requires inspection of the main rotor mast and repair or replacement, as necessary, on Aerospatiale (SNIAS) Model AS 350 and AS 355 series helicopters. After issuing Amendment 39-4887, the FAA has determined, based on service experience, that the repetitive intervals required by the AD are inadequate. Since Amendment 39-4887 was issued, an additional extensive mast flange crack was found on a Model AS 350 helicopter. The French airworthiness authorities determined that daily inspections were necessary and issued French AD's 05-15 and 05-13 which require daily visual inspections; therefore, the FAA is further amending Amendment 39-4599, as amended, by reducing the visual inspection interval from 50 hours to daily on Aerospatiale Model As 350 and AS 355 helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves 399 aircraft at an annual cost of $10,500 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By further amending Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendments 39-4698 (48 FR 37924) and 39-4887 (49 FR 29054), by revising paragraphs (e) and (f) as follows:

Aerospatiale Helicopter Corporation (SNIAS): Applies to Aerospatiale Model AS 350 and AS 355 series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

* * * * *

e. For AS 355 helicopters (within 10 hours' time in service from the effective date of this amended AD, unless already accomplished):

(1) * * *

(2) Visually inspect the mast upper flange-to-shaft radius before the first flight of each day. Inspect for finish * * *

(3) Upon the accumulation of 450 hours' total time in service, remove from service any main rotor mast which does not qualify for limited saline environment operation. To qualify for consideration of limited saline environment operations, an individual Model AS 355 helicopter mast must comply with all the following:

(i) It must not be operated over saltwater for a major part (excess of 50 percent) of any month.

(ii) It must not have a total of 300 hours' or more time in service of over saltwater operations.

(iii) It must not be installed on a helicopter that had a main rotor mast replaced due to corrosion.

f. For AS 350 helicopters (within 10 hours' time in service from the effective date of this amended AD, unless already accomplished):

(1) * * *

(2) Visually inspect the mast upper flange-to-shaft radius before the first flight of each day. Inspect for finish * * *

* * * * *

This amendment becomes effective September 18, 1985.

This amendment amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendments 39-4698 (48 FR 37924), and 39-4887 (49 FR 29054).

Issued in Fort Worth, Texas, on August 20, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-20983 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 84N-0319]

FD&C Yellow No. 5

AGENCY: Food and Drug Administration.

ACTION: Final rule; removal of stay.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing FD&C Yellow No. 5 for use in externally applied drugs and in cosmetics generally. The agency is also removing this color additive from the provisional list and is removing the stay on the use of FD&C Yellow No. 5 in external cosmetics. These actions respond to a petition filed by the Certified Color Industry Committee.

DATES: Effective October 7, 1985. Objections by October 4, 1985.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1960, Congress passed the Color Additive Amendments (the amendments). In *Certified Color Mfg. Ass'n* v. *Matthews*, 543 F.2d 284, 286-287 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of this legislation:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them. * * *
>
> [Footnotes omitted.]

As amended, section 706(a) of the Federal Food, Drug, and Cosmetic Act (the act) provides that a color additive will be deemed unsafe for use in food, drugs, cosmetics, and some medical devices unless FDA has issued a regulation permanently listing that color additive for its intended use (21 U.S.C. 376(a)). FDA will issue such a regulation only if it has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person who is seeking approval of the use of the additive.

In passing the amendments, Congress provided for the provisional listing of the color additives in use at that time, pending completion of the scientific investigation needed for a determination about the safety of these additives (section 203(b) of the transitional provisions of the amendments, Title II, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376, note)). Section 81.1 of the agency's color additive regulations (21 CFR 81.1) enumerates those color additives that are still provisionally listed. Among them is FD&C Yellow No. 5 for use in externally applied drugs and cosmetics generally, along with its lakes which are provisionally listed in § 81.1(a).

II. Regulatory History

In the **Federal Register** of March 27, 1965 (30 FR 4083), FDA announced that a petition, now identified as CAP 5C0023, proposing the issuance of a regulation to provide for the safe use and certification of FD&C Yellow No. 5 as a color additive for foods, drugs, and cosmetics had been filed by Certified Color Industry Committee, c/o Hazelton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046 (now 9200 Leesburg Turnpike, Vienna, VA 22180). The petition was filed under section 706 of the act (21 U.S.C. 376).

Presently, FD&C Yellow No. 5 is permanently listed for use in food (21 CFR 74.705) and ingested drugs (21 CFR 74.1705) and is provisionally listed for use in externally applied drugs and in cosmetics generally (21 CFR 81.1(a)), subject to conditions under 21 CFR 81.27. The lakes of FD&C Yellow No. 5 are also provisionally listed in 21 CFR 81.1(a). The color additive is presently listed under the name 5-oxo-1-(*p*-sulfophenyl)-4-[(*p*-sulfophenyl)azo]-2-pyrazoline-3-carboxylic acid, trisodium salt. A final rule published in the **Federal Register** of February 22, 1966 (31 FR 3008) and revised May 8, 1969 (34 FR 7447), permanently listed FD&C Yellow No. 5 for use in food and in ingested drugs (confirmation of effective date: 34 FR 11542; July 12, 1969).

FDA permanently listed the color additive for these uses on the basis of available toxicological data from animal feeding studies. The agency found that the data, which were derived from feeding studies that conformed to then existing toxicological testing standards, were sufficient to establish the safety of these ingested uses. The agency concluded, however, that dermal toxicity studies were necessary before it could make a decision on the use of FD&C Yellow No. 5 in cosmetics and in externally applied drugs. The petitioner objected to FDA's decision not to permanentiy list FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs. FDA decided to continue the provisional listing of the color additive for these uses pending completion of dermal toxicity studies (34 FR 7447; May 8, 1969).

In the **Federal Register** of January 21, 1974 (39 FR 2358), FDA published a final rule permanently listing the color additive for use in external cosmetics (21 CFR 74.2705, formerly 21 CFR 8.7255). However, a manufacturer of color additives, a manufacturer of cosmetics, and a trade association filed timely objections to that order. These objections challenged FDA's decision not to permanently list the use of FD&C Yellow No. 5 in (1) ingested cosmetics; (2) hair straighteners, permanent wave preparations, and depilatories; and (3) externally applied drugs. One objection also challenged the agency's failure to permanently list the use of the lakes of FD&C Yellow No. 5.

The filing of objections automatically served to stay the effectiveness of the order (section 701(e)(2) of the act (21 U.S.C. 371(e)(2)). Therefore, FDA published a notice in the **Federal Register** of February 4, 1977 (42 FR 6805), announcing that the permanent listing of FD&C Yellow No. 5 for use in external cosmetics was stayed pending resolution of the objections. The agency now has sufficient information to conclude that the use of FD&C Yellow No. 5 in externally applied drugs and in cosmetics generally is safe. Therefore, the agency is now removing the stay of § 74.2705 (21 CFR 74.2705) and is revising the regulation to include the cosmetic and drug uses of the color additive that had not been included in the stayed regulation.

To establish permanent regulations for lakes, FDA proposed the listing of, and specifications for, lakes of permanently listed color additives in the **Federal Register** of May 11, 1965 (30 FR 6490). However, because no certified color additives were permanently listed in 1965, the agency did not issue a final rule on the proposal, and the provisional regulations for lakes under Parts 81 and 82 have remained in effect.

In the **Federal Register** of June 22, 1979 (44 FR 36411), FDA published a notice of intent to propose rules concerning lakes

of color additives. This notice discussed the general areas of concern in the development of a new proposal for the regulation of lakes. Although several color additives have been permanently listed under Part 74, the agency did not consider the permanent listing of their lakes to be appropriate because questions about the safety and use of the lakes had arisen. Because of the amount of time that had passed since the 1965 proposal, the agency concluded that a new proposal on lakes should be developed and published. Therefore, FDA withdrew its original proposal (44 FR 36411) and requested information for use in the development of a new proposal for the regulation of lakes.

The agency is deferring the issue of lakes for the reasons discussed in the notice of intent to propose rules published in the **Federal Register** of June 22, 1979 (44 FR 36411). Lakes of certified color additives, including FD&C Yellow No. 5, will be addressed in a future **Federal Register** publication.

III. Toxicological Testing of FD&C Yellow No. 5

In the **Federal Register** of September 23, 1976 (41 FR 41860) (Docket No. 76N-0366), FDA stated that the available toxicological studies are inadequate to support the permanent listing of several color additives, including FD&C Yellow No. 5. The agency explained that the studies were deficient in the following respects:

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.
2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.
3. In a number of the studies, an insufficient number of animals was reviewed histologically.
4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.
5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

The agency proposed that the continued provisional listing of several color additives, including FD&C Yellow No. 5, be conditioned upon at least one petitioner undertaking new chronic feeding studies for each of these color additives.

Regarding FD&C Yellow No. 5, FDA intended that the required chronic studies would provide evidence upon which to determine whether to list the color additive for use in externally applied drugs and in cosmetics generally. Additionally, the agency noted that these studies would serve to replace the generally antiquated and deficient studies that supported the permanent listing regulations then in effect for the color additive.

When the petitioner agreed to sponsor the required chronic toxicity studies for the color additive, FDA postponed the closing date for the provisional listing of FD&C Yellow No. 5 to January 31, 1981, in a notice published in the **Federal Register** of February 4, 1977 (44 FR 6992).

FDA later extended the closing date for completing the chronic toxicity studies and submitting data (March 27, 1981; 46 FR 18954). The current closing date for the provisional listing of the color additive is September 3, 1985 (50 FR 23294; June 3, 1985).

IV. Evaluation of the Safety of FD&C Yellow No. 5

A. Statutory Safety Requirements

Under section 706(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rept. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rept. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists. In addition, the Delaney Clause (section 706(b)(5)(B) of the act) provides that a color additive shall be deemed to be unsafe "if the additive is found by the Secretary to induce cancer when ingested by man or animal" (21 U.S.C. 376(b)(5)(B)(i)).

B. Results of Toxicology Studies

The agency has completed its evaluation of the color additive petition for FD&C Yellow No. 5, including two new chronic toxicity studies in rats and mice. The agency previously reviewed reports of several toxicity studies of FD&C Yellow No. 5 involving dogs, hamsters, rabbits, rats, and mice. The latter studies included acute oral toxicity studies; subchronic studies using dermal application and subcutaneous and intraperitoneal injection; chronic toxicity studies in which animals were exposed to the color additive through diet, skin application, and subcutaneous injection; and reproductive toxicity studies. These studies did not produce any evidence that the color additive would be unsafe for the petitioned uses. The data from dermal toxicity studies demonstrate that FD&C Yellow No. 5 is nonirritating when applied daily to either intact or abraded skin. Furthermore, FD&C Yellow No. 5 was not found to be carcinogenic upon biweekly application to the skin of mice over their lifetimes. As discussed above, FDA concluded, however, that the additional chronic toxicity studies were needed to provide data to permit the agency to make a final determination on the listing of FD&C Yellow No. 5.

The new studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity studies. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species tested (the rat) significantly increase the power of these tests for detecting dose-related effects. The studies were designed and conducted in full compliance with good

laboratory practice regulations and were subject to FDA inspection while they were being conducted.

Based on its evaluation of the results of the two new chronic toxicity studies, the agency has determined that FD&C Yellow No. 5 is not carcinogenic to Charles River albino rats or Charles River CD–1 mice after lifetime dietary exposures of 0.1, 1.0, 2.0, and 5.0 percent of the diet in rats and 0.5, 1.5, and 5.0 percent of the diet in mice.

To establish a maximum acceptable daily intake, the agency identified the highest no-adverse-effect level from each study. The agency has established no adverse effect levels at 2.0 percent (1 gram per kilogram body weight per day (g/kg/day)) in the diets of rats, 1.5 percent (2.25 g/kg/day) in the diet of mice, and 2.0 percent (0.50 g/kg/day) in dogs. Although the study in dogs showed no adverse effects at any level, the highest level fed was not as high as the no-adverse-effect levels in the rat and mouse studies. Therefore, based on the study in dogs and using appropriate safety factors (21 CFR 70.40), the agency has estimated a maximum acceptable daily intake for humans of approximately 5.0 mg/kg/day (or 300 milligrams per day for a 60–kg human).

C. Carcinogenic Constituents

During the safety review, the agency developed a new analytical methodology for examining the color additive for the presence of trace level impurities. Analyses by this new methodology found six carcinogenic impurities in commercial, certified batches of FD&C Yellow No. 5 (Ref. 1). The carcinogenic constituents that the agency detected are 4-aminoazobenzene, 4-aminobiphenyl, aniline, azobenzene, benzidine, and 1,3-dephenyltriazene. These impurities result from impurities in the starting materials used to manufacture FD&C Yellow No. 5 and from reactions involving these impurities during the manufacturing process (Ref. 2). The regulation set forth below establishes specifications that would limit the concentrations of all six of these impurities in future batches.

Because of its concerns about the carcinogenic impurities in FD&C Yellow No. 5, the agency has analyzed representative samples from 25 certified batches of the color additive (Ref. 1). The results, in parts per billion (ppb), of the analyses for the 6 carcinogenic impurities in these 25 batches are summarized in Table I.

TABLE I

Constituent	No. of batches (out of 25) containing detectable levels of impurity	Range of impurity concentrations, ppb	Average impurity level, ppb[a]
4-Aminoazobenzene	10	Less than 1[c]-431	26
4-Aminobiphenyl	19	Less than 1[c]-4[b]	2
Aniline	25	5-491	66
Azobenzene	6	Less than 2[c]-28	4.5
Benzidine	5	Less than 1[c]-13	1.5
1,3-Diphenyltriazene	2	Less than 2[c]-24	3.4

[a] Impurity concentrations were assumed to be at the detection limit when not detected. For example, the 15 batches that contained no detectable 4-aminozobenzene were assumed to contain 1 ppb of this impurity when calculating the average (arithmetic mean).

[b] The presence of 4-aminobiphenyl at a concentration above 1 ppb has not been confirmed. An unidentified impurity giving a response similar to that of 4-aminobiphenyl may have caused these estimated concentrations to be too high (see text).

[c] Detection limit.

The detection limit mentioned in the table is a visible detection limit, i.e., the approximate concentration of the impurity that causes a response on the chromatogram that is visible above the background. This limit is lower than the concentration that will produce a response that can be quantitated reliably as determined by statistical analysis. The agency is continuing to develop methodology with the goal of improving quantitation of these impurities at lower concentrations.

The concentrations listed in Table I for 4-aminobiphenyl may be exaggerated. In follow-up investigations to confirm the constituent identities, the agency discovered an impurity that interfered with the 4-aminobiphenyl response. This impurity tended to exaggerate the levels of 4-aminobiphenyl that were actually present in the additive. Using a procedure modified to remove the interference, the agency reanalyzed the samples from the 10 batches of FD&C Yellow No. 5 that, in the original survey, were found to contain 5 ppb or more of 4-aminobiphenyl. On reanalysis, FDA found that the 4-aminobiphenyl levels for these samples, which originally had been measured at from 5 to 20 ppb, were actually less than 5 ppb. The reanalyzed values for the 10 samples were used in calculating the values for 4-aminobiphenyl in Table I. Also, for purposes of constructing Table I, the agency assigned a value of 1 ppb to samples in which 4-aminobiphenyl was not detected. Also, for those samples that were not reanalyzed (15 samples), the agency retained the original values of 1 to 4 ppb, even though these values are likely to be exaggerated because of interference during the analysis.

As can be seen from the table, only aniline was present at detectable levels in all batches analyzed. FDA used the actual levels of this impurity that it detected to calculate the average level of aniline present among the batches of FD&C Yellow No 5.

The agency cannot determine whether the other five carcinogenic impurities were present in concentrations nearly equal to the detection limit or far below the detection limit. To avoid underestimating their presence, the agency has assumed their concentration to be at the visible detection limit whenever they could not be detected. Thus, for the purpose of calculating an average concentration, the agency has assumed benzidine, 4-aminobiphenyl, and 4-aminoazobenzene to be present at 1 ppb and azobenzene and 1,3-diphenyltriazene to be present at 2 ppb whenever they were reported as not detected.

D. Prior Actions by FDA

Even though appropriate testing of FD&C Yellow No. 5 did not show it to be a carcinogen, the agency still had to consider whether to list this color additive in light of the fact that it may contain these six carcinogenic impurities even though aniline was the only compound that could be detected in all batches.

In the past, FDA has terminated the provisional listing of several color additives that contained or were suspected to contain a carcinogenic impurity. (See the D&C Green No. 5 final rule published in the **Federal Register** of June 4, 1982 (47 FR 24278, 24280).) However, the agency no longer believes that it must refuse to list a color additive simply because it contains or is expected to contain a carcinogenic impurity.

As explained in the D&C Green No. 6 final rule (47 FR 14135, 14141–14142, April 2, 1982), the agency has concluded that even if a color additive contains a carcinogenic impurity, the provisions of section 706(b)(5)(B) of the act do not apply unless the color additive as a whole is found to cause cancer. The agency is confident that it possesses the capacity (through the use of extrapolation procedures) to assess adequately the upper limit of risk presented by the use of a color additive that has not been shown to be a carcinogen but that does contain a carcinogenic impurity. The estimate of the risk may be exaggerated because the extrapolation models used are designed to estimate the maximum risk. For this

reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use. (FDA has also explained the basis for this approach in the advance notice of proposed rulemaking on its policy for regulating carcinogenic chemicals in food and color additives published in the **Federal Register** of April 2, 1982 (47 FR 14464).)

The agency has examined the risk associated with drug and cosmetic uses of D&C Green No. 6, D&C Green No. 5, D&C Red No. 6, and D&C Red No. 7 (47 FR 57681; December 28, 1982), which contain minor amounts of *p*-toluidine. None of these color additives had been shown to be carcinogenic by appropriate bioassays. FDA concluded that the use of each of these color additives in drugs and cosmetics is safe. The agency is using the same approach for assessing the safety of the use of FD&C Yellow No. 5 that it used in its review of these other color additives.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which, as explained above, contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list D&C Green No. 5, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulations.

Because FD&C Yellow No. 5 has not been shown to cause cancer, the anticancer clause does not apply to it. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive, and has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedure used has two aspects: (1) assessment of the probable exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable human exposure.

V. Exposure to Carcinogenic Impurities in FD&C Yellow No. 5

Although the current petition is for the use of FD&C Yellow No. 5 only in externally applied drugs and in cosmetics generally, the agency has estimated the exposure to the carcinogenic impurities that may be in FD&C Yellow No. 5 that would result from all of the permanently and provisionally listed uses of this color additive. The maximum risk from exposure to FD&C Yellow No. 5 estimated in this document is, thus, the incremental risk from all uses of the color additive, not just those uses subject to this rule.

FDA certified an average of 1.5 million pounds of FD&C Yellow No. 5 and 15 thousand pounds of D&C Yellow No. 5 lakes per year from 1978 through 1982. Lakes of FD&C Yellow No. 5 typically are 20 to 25 percent FD&C Yellow No. 5 and 75 to 80 percent lake substrate (Ref. 3). FD&C Yellow No. 5 lakes are made from certified batches of FD&C Yellow No. 5. D&C Yellow No. 5 lakes may be made from batches of the color additive that have not been certified by FDA.

Based on certified poundage data for the last 14 years, the agency projects certification of approximately 1.7 million pounds per year of FD&C Yellow No. 5 and its lakes by 1990 (Ref. 3). Per capita exposure to 1.7 million pounds per year of the color additive is 3.4 grams per year or 9.2 mg/day, if all is used by the entire U.S. population.

The agency has considered the types of products that contain FD&C Yellow No. 5 and the likely exposure to the color additive for a high user of such products. The agency has concluded that, averaged over a lifetime, a high user of such products could ingest as much as 45 mg/day, and could be exposed to 9 mg/day from dermal applications. (Ref. 3 explains in detail the basis for these estimates.)

In adopting specifications for FD&C Yellow No. 5, FDA has considered the concentrations of the carcinogenic impurities that were present in the 25 certified batches of the color additive that the agency recently surveyed.

The agency developed "tentative working specifications" by identifying a concentration (in round numbers) for each impurity consistent with current good manufacturing practice, as evidenced by the 25 batches. These levels approximate the levels of these carcinogenic impurities that were in the sample tested in the chronic toxicity studies.

FDA then estimated the maximum carcinogenic risk attributable to each impurity to evaluate whether the "tentative working specifications" were adequate. For those impurities with the greatest carcinogenic potencies, the agency revised the specifications downward to the lowest level, given current knowledge, that can be practicably produced and enforced. The agency is adopting these specifications, which are listed in the first column of Table II, in § 74.2705(b) (21 CFR 74.2705(b)).

A comparison of these specifications and the average impurity levels obtained by analyses of 25 certified batches, as shown in Table I, reveals that in most cases the average (arithmetic mean) impurity level has been far below the specifications that FDA is adopting.

Table II gives the estimated exposure of individuals to the impurities if each batch of the color additive contained each impurity at the maximum level allowed by the specifications. The per capita exposure (second column of Table II) is calculated by multiplying the per capita exposure to FD&C Yellow No. 5 described previously (9.2 mg/day) by the specification for each impurity. The high user exposure (column 3) is similarly calculated by multiplying the high user exposure (45 mg/day by ingestion) by each specification. The agency believes that systemic exposure to these impurities from dermal application is negligible compared to ingestion because the great majority of exposure to this color additive results from its ingested uses, and because only a small fraction of a dermally applied product is likely to be absorbed.

TABLE II.—ESTIMATED IMPURITY EXPOSURE

Constituent	Specification (ppb)	Per capita exposure (ng/day) [1]	High user exposure (ng/day)
4-Aminoazobenzene	75	0.7	3 (dermal=0.7).
4-Aminobiphenyl	[2] 5	0.046	0.2.
Aniline	100	0.9	4.5.
Azobenzene	40	0.37	1.8.
Benzidine	[2] 1	0.009	0.045.
1,3-Diphenyltriazene	40	0.37	1.8 (dermal=0.4).

[1] ng=nanograms (1 billionth of a gram).
[2] The quantitation limit for 4-aminobiphenyl and benzidine is 5 ppb, but their presence can be visualized at 1 ppb (Ref. 1).

Two of the impurities have been shown to be carcinogenic not only when ingested but also when applied externally. In such instances, the agency has also estimated the dermal exposure alone. The agency then separately estimated the risks from all systemic exposure and from dermal exposure alone. FDA based its estimates of risk from dermal exposure on the skin painting studies and on the high user external exposure to FD&C Yellow No. 5 (9 mg/day) (Ref. 3).

VI. Risk Extrapolations

The second part of the evaluation of the risk presented by the presence of the impurities is an extrapolation from the actual compound-related incidence of tumors found in animal bioassays under conditions of exaggerated exposure to the conditions of probable exposure for humans.

The agency has used estimates of carcinogenic potency and estimates of exposures to the carcinogenic impurities for high users of FD&C Yellow No. 5 (with all carcinogenic impurities at the maximum concentrations allowed by the specifications) to estimate risks for exposure to each impurity. The agency then summed these risks to derive the maximum upper bound risk associated with lifetime exposure to FD&C Yellow No. 5.

The agency searched the scientific literature for evidence on the carcinogenicity of the impurities found in FD&C Yellow No. 5. If more than one study found one of these impurities to be carcinogenic, the agency identified the study that was most suitable to estimate risk. While, in general, these studies were not designed to estimate risk and were often deficient under current standards, they are the only studies available and can not be ignored. Also, the reports did not always provide all the information necessary for a risk estimate. The agency has thus attempted to make assumptions and corrections that would provide estimates that are reasonable while not underestimating the risk. These assumptions and corrections are discussed more fully in the discussions of each constituent.

4-Aminoazobenzene

The agency has evaluated reports showing that 4-aminoazobenzene is carcinogenic in the diet of rats (Refs. 4 and 5), and that it is carcinogenic when applied dermally to rats (Ref. 6). The agency has developed a risk estimate from each of these studies.

A study implicating 4-aminoazobenzene as a carcinogen by dietary administration to Wistar rats was reported by Kirby et al. (Refs. 4 and 5). The study reported that 7 of the 16 animals in the treated group were found to have liver cell neoplasms after a total of 120 weeks. Six rats in this group displayed papillomas of the stomach. No information is available to determine whether any of the individual rats had neoplasms in both the liver and the stomach. Although the dose was allowed to vary throughout the experiment, the agency calculated the average dose over 120 weeks to be 0.25 percent in the diet (Ref. 7).

A skin painting study applying 1.0 milliliter (mL) of a 0.2 percent acetone solution containing 4-aminoazobenzene (corresponding to a dose of 2.0 mg of 4-aminoazobenzene per application) to the skin twice weekly was performed on six male albino rats as a part of a larger study utilizing a number of azo compounds (Ref. 6). All six male rats in the treatment group displayed skin neoplasms after 123 weeks compared to none in the control group.

The agency has estimated that the lifetime risk of cancer from all systemic exposure to 4-aminoazobenzene (ingested and absorbed through the skin) is less than 5 in 10 billion (Refs. 7, 8). The data indicate, however, that 4-aminoazobenzene may be a more potent carcinogenic at the site of application to the skin than when absorbed systemically. The agency has estimated that the lifetime risk of skin cancer from dermal application is less than 1 in 100 million (Refs. 7, 8). Because the risk estimate for dermally applied products is larger than for ingested products, FDA is using this higher estimate to evaluate total risk.

4-Aminobiphenyl

A number of studies in different species have been performed on 4-aminobiphenyl. The agency has chosen a dog study reported both by Block et al. and by Rippe et al. for quantitative risk assessment because the data on this study yield a higher risk estimate than data from other studies (Ref. 9, 10).

In this study, 24 pure-bred female beagle dogs were administered 4-aminobiphenyl orally, by capsule, at a dosage level of 5 mg/kg body weight for 5 days a week. Cystoscopic examinations were made routinely starting at 16 months and up to 41 months after commencement of treatment. Diagnoses at 24 months showed that 22 of 24 treated dogs had bladder papillomas. Because this incidence is so high, data at later times show essentially the same incidence. Data at earlier times show a lower incidence, proportional to the lesser exposure time. The agency concludes that data obtained at 24 months are the most reliable for risk assessment because, among other reasons, more complete histopathology was performed at this time (Ref. 10).

Under circumstances in which lifetime risk must be estimated from studies that are performed for less than a lifetime, the data must be corrected to account for the fact that the animals were at risk for less than a lifetime. Typically, tumor incidence has been thought to be proportional to some power of time (Ref. 11). The agency believes that in the absence of specific data, it is reasonable to make adjustments based on a model that uses the third power of the time exposed (Refs. 10, 11).

Because 24 months represent approximately one-fifth of the lifetime of a beagle dog, the agency has corrected for the rapid induction of these neoplasms in the calculation of lifetime risk. Extrapolating directly from the data and making a correction for less than lifetime exposure, the agency estimates that the lifetime risk of cancer from systemic exposure to 4-aminobiphenyl in products containing FD&C Yellow No. 5 is less than 1 in 10 million (Refs. 8, 10).

Aniline

Data reported by the National Cancer Institute (NCI) demonstrated that aniline was carcinogenic to the spleen of Fischer 344 rats (Ref. 12). This finding has subsequently been verified by a dietary study performed by the Chemical Industry Institute of Toxicology (CIIT) using the same strain of rat (Ref. 13). FDA used data from the CIIT study to estimate that the lifetime risk of cancer from systemic exposure to aniline in products containing FD&C Yellow No. 5 is less than 5 in 100 billion (Refs. 8, 14).

Azobenzene

In an NCI-sponsored bioassay reported in 1979, azobenzene induced a dose-related increase in the incidence of sarcomas of the abdominal cavity, particularly the spleen, in both sexes of Fischer 344 rats (Ref. 15). Three groups of animals (0, 200, and 400 parts per million (ppm) in the diet) per sex were used in the study. From this study, the agency estimates that systemic exposure to azobenzene in products containing FD&C Yellow No. 5 presents a lifetime risk of less than 2 in 10 billion (Refs. 8, 16).

Benzidine

FDA used a human epidemiology study by Zavon (Ref. 17) and a study performed by Rinde and Troll in the Rhesus monkey (Ref. 18) as the basis for a quantitative risk assessment on benzidine.

Zavon attempted to obtain good data on exposure to benzidine by analyzing the urine of workers in a plant that manufactures this substance. The workers were monitored until a number of them were diagnosed as having bladder neoplasms. Urine levels of benzidine in workers were measured before each work shift, after each work shift, and on every Monday morning. Average levels were: before work, 0.01 mg/liter (L); after work, 0.04 mg/L; and on Monday morning before work, somewhat below 0.005 mg/L.

No controlled study with the administration of benzidine and the concomitant measurement of benzidine in the urine in humans has been performed. Thus, the conversion from urine concentration to total exposure cannot be made from human data alone. However, the Rinde and Troll study

related ingestion of benzidine to amounts of benzidine and monoacetylbenzidine in the urine of rheaus monkeys. The agency believes it is reasonable to use this study to relate urine concentration to exposure for humans (Ref. 19). This procedure yields a higher risk estimate than if the risk was estimated solely from an animal feeding study and thus is less likely to underestimate risk.

In the Rinde and Troll study, benzidine was administered orally to Rhesus monkeys, and the 72-hour urine collection was analyzed for benzidine and monoacetylbenzidine. In two trails the amount of benzidine and monoacetylbenzidine excreated in the urine was 1.4 percent and 1.5 percent of the initial input. The agency used these data, and applied a safety factor of two to compensate for uncertainties, to estimate that the amount of benzidine and monoacetylbenzidine excreted in the urine of humans is approximately 3 percent of that consumed. The agency then calculated that the average human worker in the Zavon study was exposed to approximately 0.8 mg benzidine per work day.

Based on these two studies the agency estimates that systemic exposure to benzidine from products containing FD&C Yellow No. 5 presents a lifetime risk of less than 3 in 10 million (Refs. 8, 19).

1,3-Diphenyltriazene

The agency has evaluated reports showing that 1,3-diphenyltriazene is carcinogenic in the diet, and that it is carcinogenic when applied dermally. A study performed by Otsuka (Ref. 22), while deficient in certain aspects, showed that 1,3-diphenyltriazene produced forestomach tumors in mice upon dietary exposure. The compound was administered in the diet at a concentration of 0.04 percent for 483 days. Although this dietary study is quite old and was terminated after 16 months, the agency believes that it is usable if corrected for less than lifetime exposure. Assuming the average lifetime of a mouse is 24 months, the agency has corrected for less than lifetime exposure by assuming the risk of cancer increases as the third power of the time exposed (Refs. 11, 21). Therefore, the agency has used a correction factor of 3.4, i.e., (24 months/16 months) ^{3}, which increases the estimated risk.

Using this correction, the agency estimates that systemic exposure to 1,3-diphenyltriazene from products containing FD&C Yellow No. 5 presents a lifetime risk of less than 2 in a billion (Refs. 8, 21).

A lifetime skin painting study using 1,3-diphenyltriazene on mouse skin was performed by Kirby (Ref. 22). The skin study involved a thrice weekly application of a 5 percent solution of the test compound in acetone. In 16 mice surviving more than 300 days, 3 developed squamous cell papilloma, and 3 developed squamous cell carcinoma. One mouse that developed a carcinoma could not be identified as part of this experiment or a parallel experiment. The agency has assumed that this mouse was part of this experiment so as not to underestimate risk. As was often the case in the 1940's, when this study was conducted, the amount of solution applied to the skin of the animals was not accurately measured and thus not reported for this experiment. The failure to measure and to report this information creates problems in conducting a quantitative risk assessment. However, in later years, the standard protocol for these kinds of studies in mice became the application of 0.20 mL of solution to the area of the skin. Because the agency does not know that as much as 0.20 mL was applied, it has made a more conservative assumption that 0.10 mL was used to estimate the risk. Using this procedure, the agency estimates that dermal exposure to 1,3-diphenyltriazene from products containing FD&C Yellow No. 5 presents a lifetime risk of less than 4 in 100 billion (Refs. 8, 21).

VII. Cumulative Risk Estimates

This action represents the first time the agency has set specifications for more than one carcinogenic constituent in the same color additive. Thus, in evaluating the safety of the additive, the agency had to consider the most appropriate way to evaluate the risk from consuming small amounts of several carcinogenic agents simultaneously.

The Office of Science and Technology Policy discussed the issue of exposure to multiple carcinogenic agents in a document entitled "Chemical Carcinogens; A Review of the Science and Its Associated Principles" (50 FR 10371, 10394; March 14, 1985) as follows:

Since people are exposed to many different agents at the different times in different sequences, the effect of multiple agents on carcinogenesis is of major concern. However there is little information of general import in the field. Models for interaction are generally limited by lack of information on dose-response curves for carcinogens in the area of interest. The great number of permutations of possible agents and doses makes understanding interaction of multiple agents very difficult.

In general, the action of two or more agents can be additive (if the agents are given in a dose range where the biological response is a linear function of dose) or multiplicative (if the response is a simple exponential response to dose), synergistic (greather than expected) or antagonistic (less than expected).

The agency knows of no method whereby potential multiplicative, synergistic, or antagonistic interactions can be incorporated into a generalized risk assessment process. Furthermore, at the dose levels under consideration (far below those having measurable pharmacologic or physiologic activity), the agency sees no reason to consider synergistic or antagonistic interactions. When one extrapolates carcinogenicity data linearly downward to very low doses, one is, in effect, assuming that the molecules of the carcinogens are acting independently, and that no interactions occur. Thus, if the probability of developing cancer from one substance is independent of the probability of developing cancer from another substance, then the probability of developing cancer from either substance may be obtained from summing the individual probabilities. Therefore, in the absence of specific information on the interactions among the carcinogenic impurities, the agency believes that, operationally, the risks incurred from the presence of multiple carcinogenic impurities in a color/food additive can be considered independent, and that the estimated risks should be summed.

The individual risk estimates discussed earlier show that 4-aminobiphenyl and benzidine are, by far, the most potent of the carcinogens present in the additive. Table III shows the total upper bound risk, estimated by summing the risk estimate from each carcinogenic impurity when present at the highest level, consistent with specifications, to be 4 in 10 million.

TABLE III.—UPPER BOUND RISK ESTIMATES BASED ON SPECIFICATIONS FOR CARCINOGENIC IMPURITIES IN FD&C YELLOW NO. 5

Constituent	Lifetime cancer risk
4-Aminoazobenzene	0.00000001 (1×10^{-8}).
4-Aminobiphenyl	0.0000001 (1×10^{-7}).
Aniline	0.00000000004 (4×10^{-11}).
Azobenzene	0.0000000002 (2×10^{-10}).
Benzidine	0.0000003 (3×10^{-7}).
1,3-Diphenyltriazene	0.000000002 (2×10^{-9}).
Sum [1]	0.0000004 (4×10^{-7}).

[1] In summing risk estimates, numbers have been rounded off to the nearest significant figure.

The agency emphasizes that these upper bound risk estimates are worst case estimates that are used to assure that there is a reasonable certainty that use of an additive will not cause harm. They are not intended to predict an actual risk. Consequently, several assumptions used for the estimate tend

to overestimate rather than underestimate risk. For example, the linear model used to extrapolate risk to low dose exposure is a conservative model. It is used to generate an upper bound estimate of an unknown risk.

Furthermore, the agency's risk estimates are based on the assumption that all carcinogenic impurities are present at the maximum concentrations allowed by the regulation. In reality, any batch with any impurity concentration above a specification would be rejected while batches with lower concentrations would be allowed. Therefore, unless all batches of certified color additive have impurity concentrations exactly at the specification limits, the average concentration of each impurity will be lower than the maximum allowed.

This fact is exemplified in Table I which shows that the average concentration of four of the impurities was well below the concentration specified in the regulation, even though particular batches did exceed these specifications. Moreover, the average level of one impurity, benzidine, was above the specification only because of one batch, which would not be certified under the new regulation, and because the agency has assumed that undetected benzidine is present at the detection limit of the analytic method. (Actually, benzidine could not be detected in 20 of 25 batches).

Finally, the agency points out that FD&C Yellow No. 5 did not induce cancer in the recent carcinogenicity studies in rats and mice at very high dietary levels (5 percent), much higher than human dietary exposure.

Public Citizen Health Research Group (HRG), 2000 P St. NW., Washington, DC 20036, in a sub,ission dated December 17, 1984, petitioned FDA to ban 10 food, drug, or cosmetic dyes, including FD&C Yellow No. 5. With regard to FD&C Yellow No. 5, HRG cited the recent long-term rat and mouse feeding studies discussed in this document, other older animal feeding studies in the scientific literature, allergenic effects, chromosomal damage, and the presence of carcinogenic impurities to support their claim that use of FD&C Yellow No. 5 is unsafe.

The agency denied the HRG petition by letter dated June 21, 1985. That response includes a detailed discussion of FDA's findings relative to FD&C Yellow No. 5 and is incorporated herein by reference.

To summarize its findings, the agency disagreed with HRG's conclusion that FD&C Yellow No. 5 should be banned. HRG asserted that in the recent rat and mouse studies various treatment groups displayed: Decreased weight gain; increased incidence of lymphocytic lymphoma; increased incidence in thyroid tumors; and increased incidence of endometrial polpys. However, the only one of these effects that the agency finds to be treatment-related is a decreased weight gain in the high-dose treated rats. FDA considered this effect in determining the no observed effect level. FDA does not agree that the other effects cited by HRG are treatment-related because the incidences were either not significantly different from that in the controls or the incidences were not increased in the highest dose group.

HRG also cited earlier published studies that they claim showed an increase in lung tumors in mice and an increase in mammary fibroadenomas in rats. FDA finds that the cited study in mice was a very poor study from which it cannot draw reliable conclusions. FDA does not consider mammary fibroadenomas in the rat study to be treatment-related because a dose-response relationship was not seen. Furthermore, the claimed effects were not seen in the recent tests in rats and mice submitted as part of this petition. The reports of chromosomal aberrations in selected in vitro tests do not negate the rsults demonstrating safety in long-term animal feeding studies because lifetime whole animal studies are more relevant to carcinogenic potential than are short-term in vitro tests.

The agency announced its conclusions regarding allergic-type effects of FD&C Yellow No. 5 several years ago (44 FR 37212; June 26, 1979) and required special labeling for products containing this color additive. The safety concerns arising from carcinogenic impurites are discussed more fully in this document. In sum, the agency concludes that the data cited by HRG with respect to FD&C Yellow No. 5 are not sufficient to preclude the permanent listing on this color additive.

The six carcinogenic impurities found in FD&C Yellow No. 5 are likely to be present in other color additives also. Therefore, simultaneous exposure to other color additivies containing these impurities presents a potential risk beyond that resulting from FD&C Yellow No. 5. The agency has considered the potential presence of these impurities in other color additives as part of its evaluation of FD&C Yellow No. 5. The agency cannot, however, estimate the potential risk from these impurities in all other additives at this time, for several reasons.

Two of the additives expected to contain some or all of these impurities, D&C Red No. 33 and FD&C Yellow No. 6, are currently provisionally listed and under review. Exposure to these impurities from these two color additives will depend on whether these color additives are permanently listed and, if so, what specifications the agency sets for these additivies. Thus, the agency cannot make reasonable estimates of exposure to the impurities in these additives until all remaining issues affecting decisions on these additivities are resolved.

Furthermore, the agency only recently developed the analytical methodology that detected these impurities at the part-per-billion level. The agency has only applied this methodology to those additives on which a decision on permanent listing is pending. Thus, the agency does not yet have reliable data on the level of human exposure, if any, to these impurities from permanently listed additives not under current review.

Nevertheless, the agency believes that the maximum risk to consumers from the use of FD&C Yellow No. 5, as discussed earlier, is sufficiently low that it can conclude that the use of batches of FD&C Yellow No. 5 that meet the specifications adopted by this rule is safe. The agency will review any risk resulting from exposure to these impurities in other color additives, and will take whatever regulatory action is needed to protect the public health, when sufficient information is available for an appropriate decision.

References

The following references have been placed on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

1a. Memorandum, "Determination of Aromatic Amines, Diphenyltriazene and Azobenzene in Commercial Samples," CAP 5C0023, November 3, 1983.

1b. Memorandum, "4-Aminobiphenyl in FD&C Yellow No. 5," CAP 5C0023, November 1, 1984.

2. Memorandum, "FD&C Yellow No. 5 Chemistry Issues Related to Listing," CAP 5C0023, April 28, 1983.

3. Troxell, T. C., "Memorandum for the Record," Color Additive Petition, CAP 5C0023, February 17, 1984.

4. Kirby, A. H. M., et al., "Studies in Carcinogenesis with Azo Compounds," *Cancer Research*, 7:333, 1947.

5. Kirby, A. H. M., et al., "The Induction of Liver Tumors by 4-aminoazobenzene and its N,N-Dimethyl Derivative in Rats on a Restricted Diet," *Journal of Pathology and Bacteriology*, 59:1–18, 1947.

6. Fare, G., "Rat Skin Carcinogenesis by Topical Applications of Some Azo Dyes," *Cancer Research*, 26:2406, 1966.

7. Quantitative Risk Assessment Committee, Memorandum, "Report of the Committee on 4-Aminoazobenzene (Dietary and Skin Exposure)", CAP 5C0023, December 20, 1983.
8. Quantitative Risk Assessment Committee, Memorandum, "Upper Limit Risk from Carcinogenic Impurities in FD&C Yellow No. 5," CAP 5C0023, August 28, 1985.
9a. Block, N. L., et al., "The Initiation, Process and Diagnosis of Dog Bladder Cancer Induced by 4-Aminobiphenyl," *Investigative Urology*, 16:50–54, 1978.
9b. Rippe, D. F., et al., "Urinary Bladder Carcinogenesis in Dog: Preliminary Studies on Cellular Immunity," *Transplantation Proceedings*, 7:495–501, 1975.
10. Quantitative Risk Assessment Committee, Memorandum, "Report of the Committee on 4-Aminobiphenyl", CAP 5C0023, December 20, 1983.
11. Druckrey, H., "Quantitative Aspects in Chemical Carcinogenesis," U.I.C.C. Monograph Series, 7:60–78 (1967).
12. "National Cancer Institute, Bioassay of Aniline Hydrochloride for Possible Carcinogenicity," NCI Technical Report No. 130, NCI–CG–TR–130, U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, 1978.
13. Chemical Industry Institute of Toxicology, Research Triangle Park, NC, "104 Week Chronic Toxicity Study in Rats: Aniline Hydrochloride," Final Report, January 4, 1982.
14. Quantitative Risk Assessment Committee, Memorandum, "Committee Report on Aniline," CAP 5C0023, December 20, 1983.
15. National Cancer Institute, "Bioassay of Azobenzene for Possible Carcinogenicity," NCI Technical Report No. 154, NCI–CG–TR–154, U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, 1979.
16. Quantitative Risk Assessment Committee, Memorandum, "Committee Report on Azobenzene," CAP 5C0023, December 20, 1983.
17. Zavon, M. R., et al., "Benzidine Exposure as a Cause of Bladder Tumors," *Archives of Environmental Health*, 27:1–7, 1973.
18. Rinde, E. and W. Troll, "Metabolic Reduction of Benzidine Azo Dyes to Benzidine in the Rhesus Monkey," *Journal of the National Cancer Institute*, 55:181–182, 1975.
19. Quantitative Risk Assessment Committee, Memorandum, "Committee Report on Benzidine," CAP 5C0023, December 20, 1983.
20. Otsuka, I., "Uber die Experimentelle Papillomerzeugung im Vormagen der Mausen durch Diozoaminobenzol," *Gann*, 29:209–214, 1935.
21. Quantitative Risk Assessment Committee, Memorandum, "Committee Report on 1-3-Diphenyltriazene (Dietary and Dermal Exposure)," CAP 5C0023, December 20, 1983.
22. Kirby, A. H. M., et al., "Further Experiments in Mice With p-Diazoaminobenzene," *British Journal of Cancer*, 2:290–294, 1948.

Conclusions

The agency concludes that FD&C Yellow No. 5 is safe for general use in cosmetics and for use in externally applied drugs, and that certification is necessary for the protection of the public health. Therefore, the agency is amending §§ 74.1705 and 74.2705 to permit these uses. This action satisfies the objections that stayed § 74.2705. Therefore, the agency is removing the stay of that regulation.

The final chronic toxicity study reports, interim reports, reports on dermal testing, and the agency's toxicology evaluations of these studies supporting the safety of the color additive for uses involving ingestion and dermal application are on file at the Dockets Management Branch (address above). They may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

The agency is describing the color additive in this regulation according to the current Chemical Abstracts nomenclature, which differs somewhat from the nomenclature FDA previously used.

The agency is establishing new chemical specifications for these listings that identify the color additive more precisely than those specifications currently in § 74.705. Published elsewhere in this issue of the Federal Register is a proposal to amend the identity and specifications for FD&C Yellow No. 5 in § 74.705 to make them consistent with the identity and specifications in this rule.

The agency concludes that it is necessary to include in the listing regulations for FD&C Yellow No. 5 a brief description of its manufacturing process to ensure the safety of the color additive. FDA has included that description to define as closely as possible the color additive that has been tested and shown to be safe. The agency is doing so because use of a different manufacturing process is likely to produce different impurities that have not been considered in establishing specifications for this color additive. The agency is not able at this time to set specifications that would control the presence of all such impurities. FDA is willing to consider petitions for alternative manufacturing processes, but those petitions should contain evidence that demonstrates that those processes will not produce impurities that will make use of the color additive unsafe.

The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for this color additive will provide an adequate assurance of safety until suitable specifications can be developed.

The agency knows of two manufacturing processes for FD&C Yellow No. 5, currently being used by industry, both of which are encompassed in the description in § 74.2705. Production of the color additive as specified will assure qualitatively similar batches and thus adequately assure the absence of harmful impurities resulting from changes in the manufacturing process.

The agency finds that because of the presence of six carcinogenic impurities, specifications for these impurities are necessary to protect the public health. Therefore, specifications as listed in Table II, column 2, of this preamble are included in the regulation.

FD&C Yellow No. 5 Lakes

To simplify the regulations pertaining to the FD&C Yellow No. 5 lake, the agency is removing the specific entry for the FD&C Yellow No. 5 lake from the table in § 81.1(a) because it is redundant. The FD&C Yellow No. 5 lake previously has been specifically cited as provisionally listed for use in foods in the first entry in the table in § 81.1(a). This specific entry was added to the table when FDA permanently listed the straight color additive for food and ingested drug use (34 FR 11542; July 12, 1969). Before that time, FDA provisionally listed the lakes of regulated FD&C colors for use in food, drugs, and cosmetics under the entry "Lakes (FD&C)" in the same table in § 81.1(a) (formerly § 8.501(a)). By including the separate entry for the FD&C Yellow No. 5 lake in the table, FDA intended to emphasize that while it had permanently listed the straight color additive for food use, the lake was still provisionally listed for that use. Upon the deletion of the separate entry for the FD&C Yellow No. 5 lake, the lake use of the color additive will remain provisionally listed under the general entry for FD&C lakes in § 81.1(a). The agency has announced its intention to establish permanent regulations for lakes of color additives and is currently assembling the information that is

needed to achieve that end (44 FR 36411: June 22, 1979).

The agency has determined under 21 CFR 25.24 (b)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by the following regulations may at any time on or before October 4, 1985 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provision of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

2. Part 74 is amended:

a. In § 74.1705 by revising paragraphs (a) and (b) to read as follows:

§ 74.1705 FD&C Yellow No. 5.

(a) *Identity and specifications.* (1) For ingested drugs, the color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of § 74.705(a)(1) and (b).

(2) For externally applied drugs, the color additive FD&C Yellow No. 5 shall conform in indentity and specifications to the requirements of § 74.2705(a) and (b).

(3) Color additive mixtures for drug use made with FD&C Yellow No. 5 may contain only those diluents that are suitable and are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Uses and restrictions.* FD&C Yellow No. 5 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

* * * * *

b. By revising § 74.2705 to read as follows:

§ 74.2705 FD&C Yellow No. 5.

(a) *Identity.* The color additive FD&C Yellow No. 5 is principally the trisodium salt of 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo]-1*H*-pyrazole-3-carboxylic acid (CAS Reg. No. 1934–21–0). To manufacture the additive, 4-aminobenzenesulfonic acid is diazotized using hydrochloric acid and sodium nitrite. The diazo compound is coupled with 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid. The resulting dye is precipitated as the sodium salt.

(b) *Specifications.* FD&C Yellow No. 5 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.
Water-insoluble matter, not more than 0.2 percent.
4,4'-[4,5-Dihydro-5-oxo-4-[(4-sulfophenyl)hydrazono]-1*H*-pyrazol-1,3-diyl]bis[benzenesulfonic acid], trisodium salt, not more than 1 percent.
4-[(4',5-Disulfo[1,1'-biphenyl]-2-yl)hydrazono]-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, tetrasodium salt, not more than 1 percent.
Ethyl or methyl 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)hydrazono]-1*H*-pyrazole-3-carboxylate, disodium salt, not more than 1 percent.
Sum of 4,5-dihydro-5-oxo-1-phenyl-4-[(4-sulfophenyl)azo]-1*H*-pyrazole-3-carboxylic acid, disodium salt, and 4,5-dihydro-5-oxo-4-(phenylazo)-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, disodium salt, not more than 0.5 percent.
4-Aminobenzenesulfonic acid, sodium salt, not more than 0.2 percent.
4,5-Dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, disodium salt, not more than 0.2 percent.
Ethyl or methyl 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylate, sodium salt, not more than 0.1 percent.
4,4'-(1-Triazene-1,3-diyl)bis[benzenesulfonic acid], disodium salt, not more than 0.05 percent.
4-Aminoazobenzene, not more than 75 parts per billion.
4-Aminobiphenyl, not more than 5 parts per billion.
Aniline, not more than 100 parts per billion.
Azobenzene, not more than 40 parts per billion.
Benzidine, not more than 1 part per billion.
1,3-Diphenyltriazene, not more than 40 parts per billion.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 87 percent.

(c) *Uses and restrictions.* FD&C Yellow No. 5 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of FD&C Yellow No. 5 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

3. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

4. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives,* by removing the entry for "FD&C Yellow No. 5" from the table in paragraph (a).

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing,* by removing the entry for "FD&C Yellow No. 5" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

5. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

6. Part 82 is amended by revising § 82.705 to read as follows:

§ 82.705 FD&C Yellow No. 5.

The color additive FD&C Yellow No. 5 shall conform in identify and specifications to the requirements of § 74.2705 (a) and (b) of this chapter.

Dated: August 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–21082 Filed 8–30–85; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of Certain Color Additives; Postponement of Closing Dates

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing dates for the use of nine provisionally listed color additives, FD&C Red No. 3 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 33, D&C Red No. 36, D&C Red No. 37, and D&C Orange No. 17. This postponement will permit the uninterrupted use of these color additives while (1) FDA receives and evaluates the report of a scientific review panel on six color additives (FD&C Red No. 3, D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17) and then takes final action on those additives; (2) the agency evaluates newly submitted information on the results of the chronic study on one color additive (FD&C Yellow No. 6); and (3) expert scientific review continues with respect to the evidence on two other color additives (D&C Red No. 33 and D&C Red No. 36), proponents of the use of these additives have an opportunity to submit additional evidence on their use, and FDA takes final action on these color additives.

DATES: Effective September 3, 1985, the new closing dates for FD&C Red No. 3 and its lakes will be September 3, 1986; for D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Yellow No. 6 will be June 6, 1986; for D&C Red No. 33 and D&C Red No. 36 will be March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under Title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86–618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The agency's discretion in issuing such postponements is limited in only two respects: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." *McIlwain* v. *Hayes*, 690 F.2d 1041, 1047 (D.C. Cir. 1982).

In the **Federal Register** of June 28, 1985 (50 FR 26377), FDA proposed to postpone the closing date for 9 (FD&C Red No. 3 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 33, D&C Red No. 36, D&C Red No. 37, and D&C Orange No. 17) of the 11 color additives that remain on the provisional list. (As for the other two additives, FDA is permanently listing one, FD&C Yellow No. 5, elsewhere in this issue of the **Federal Register**, and the closing date for the other, FD&C Blue No. 2, is postponed indefinitely pending the outcome of an administrative hearing on the permanent listing of that additive.) FDA proposed this postponement after a series of short extensions of the provisional listings of these nine additives because it had become clear to the agency that appropriate resolution of the complex issues presented by the uses of these additives would require additional time.

In response to the proposal, FDA received approximately 40 comments from farmers, farm cooperatives, food processors, unions, State legislators, public interest groups, and trade associations. These comments are summarized below.

FDA has carefully considered these comments and has also considered whether, in light of these comments, the extensions that it has proposed are appropriate under the standards set forth in *McIlwain* v. *Hayes*. The conclusions that the agency has reached follow.

II. General Comments

A. Authority To Extend the Provisional List

1. One comment asserted that "25 years after the enactment of the Color Additive amendments," FDA "has no legal authority to use the provisional list to sanction the continued sale of color additives." The comment stated that FDA must either find these color additives to be safe or not permit their use in foods, cosmetics, and drugs. Another comment stated that continued provisional listing "makes a mockery" of permanent listing.

FDA finds no merit in these comments. As noted in the proposal, as scientific sophistication has increased and testing methodology has become more refined, new and increasingly complex issues have been raised concerning the provisionally listed additives.

Less than 3 years ago, in *McIlwain* v. *Hayes, supra*, 690 F.2d at 1047, the Court of Appeals specifically rejected the argument that the passage of time had deprived the agency of its authority to list color additives provisionally. The court noted that the transitional provisions of the Color Additive Amendments set no limit on the number of extensions of the provisional list that the Commissioner may grant and no time limit upon provisional listings. *Id.* at 1046. Consequently, the court found that FDA had authority to extend the provisional list even though 22 years had passed since the passage of the Color Additive Amendments. *Id.* at 1047.

Thus, based on the *McIlwain* decision, FDA can continue to extend the provisional listing of a color additive so long as it finds that continued use of the additive is consistent with the public health, and that the scientific investigations necessary for a decision on the additive, or the analysis of those investigations, are going forward in good faith and will be completed as soon as reasonably practicable. Because the agency has determined that it can make these findings for each of the color additives at issue, FDA has authority to adopt the extensions of the provisional list that it is announcing in this final rule.

2. A comment from a public interest group asserted that to extend the provisional list again, without proof of the safety of the additives, would put the public at unnecessary risk.

FDA disagrees with this comment. As stated above, to postpone the

provisional listing of a color additive, FDA must find that the postponement is consistent with the public health. *McIlwain* v. *Hayes, supra*, 690 F.2d at 1047. Thus, protection of the public health is one of the agency's specific concerns in deciding whether to extent the provisional list.

The purpose of provisional listing is to allow continued use of a color additive while interested persons gather evidence on the issue of whether use of that additive is safe. Until definitive evidence on that issue is available, the agency can continue to list an additive provisionally so long as the testing that is available on the color additive does not show that it presents a hazard to the public. See FDA's response to petition of Public Citizen Health Research Group for termination of provisional listing for 10 color additives, Docket No. 84P-0429, p. 13 (June 21, 1985). (A copy of this response has been filed with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857, in the record of the present proceeding.)

FDA has reviewed all of the evidence available on each of the color additives that are the subject of this rulemaking and has found that none of them presents a hazard requiring an immediate cessation of their use. Therefore, the public is being appropriately protected.

B. De Minimis and the Delaney Clause

3. The statutory provisions governing permanent listing of color additives state that a color additive shall be deemed to be unsafe if it has been shown to cause cancer in appropriate testing (21 U.S.C. 376(b)(5)(B)). In the proposal, however, the agency stated: "If the agency were to treat extremely small carcinogenic risks as being *'de minimis,'* that is, as being of no regulatory significance, it could [permanently] list a carcinogenic color additive if it found that the risk from its use was *de minimis*, and that, in all other respects, there was a reasonable certainty of no harm from the use of the additive" (50 FR 26379). This statement was the subject of much public comment. FDA received five comments that encouraged the agency to apply the *de minimis* concept. These comments all argued that the statutory language, legislative history, and case law support an interpretation of 21 U.S.C. 376(b)(5)(B) that does not require FDA to ban color additives that present a *de minimis* risk of cancer. One comment argued that substances that pose no greater than a one in one million lifetime cancer risk present a *de minimis* risk and are safe. This comment also argued that the agency could permanently list eight of the nine color additives at issue on the ground that the carcinogenic risk they present, if any, is *de minimis*.

On the other hand, one comment argued that the suggestion that a *de minimis* risk assessment might be an appropriate basis on which to permit permanent listing of a color additive is inconsistent with the legislative intent of the Federal Food, Drug, and Cosmetic Act (the act) and its historical interpretation by FDA. That comment argued that under the Delaney Clause, "only risk-free, non-cancer causing color additives can be permitted in the American marketplace." A second comment also urged the agency to reject the *de minimis* concept.

FDA has not made a definitive determination about the application of the Delaney Clause to the color additives at issue here. However, as it has indicated in the proposal and in the agency's response to Public Citizen Health Research Group's petition, the agency believes that the law would support the treatment of certain situations arguably covered by that provision as *de minimis*.

The courts have made it clear that the concept of *"de minimis,"* which is based on the common understanding that the law does not concern itself with trifles, may appropriately be applied to situations like those in question here. As the United States Court of Appeals for the District of Columbia Circuit explained in *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360-361 (D.C. Cir. 1979): "Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value."

The legislative history of the Color Additive Amendments shows that Congress was not being extraordinarily rigid in adopting the Delaney Clause, and that it clearly contemplated that those administering that provision would have discretion to implement it in a reasonable way. Both in the Senate (see 106 Congressional Record 15381 (July 1, 1960)) and in the House (see 106 Congressional Record 14372 (June 25, 1960)), statements were made that the Delaney Clause should be applied in accord with the rule of reason. Moreover, the concept of *de minimis* has been applied by the courts to the regulation of carcinogenic or potentially carcinogenic substances regulated by FDA. See, e.g., *Monsanto* v. *Kennedy*, 613 F.2d 947 (D.C. Cir. 1979). Thus, it is clear that FDA does have the option to use the *de minimis* concept in interpreting the Delaney Clause. (FDA has discussed this issue at greater length in its response to the Public Citizen Health Research Group petition and in two documents (Reply Memorandum in Support of Federal Defendants' Motion to Dismiss and Memorandum in Support of Federal Defendants' Motion for Summary Judgment) that it filed in pending litigation on the provisional list, *Public Citizen* v. *Dept. of Health and Human Services*, Civil Action No. 85-0209 (D.D.C.). FDA incorporates those discussions herein by reference and has included copies of those documents in the record of this proceeding.)

FDA has not made a determination about whether it would be appropriate to invoke the *de minimis* concept with respect to the color additives at issue here because it believes that such a determination must await resolution of the factual circumstances in which the concept may be applied. Such scientific factual resolution is necessary so that the agency can fully judge the significance of applying the *de minimis* concept to the facts before it. Therefore, the agency has not made a determination about what level of risk, if any, is *de minimis*, or, as explained below, whether any of the color additives at issue can be approved on the basis, at least in part, of the *de minimis* concept.

C. Amount of Color Certified

4. One comment argued that in considering the total amount of color additives to which the population is exposed, it is erroneous to add the poundage of lakes and dyes together. The comment asserted that because lakes are made from certified dyes, the amount of dye certified gives the total exposure to color.

The agency's proposal to extend the closing date for provisionally listed color additives did not address the issue of exposure calculations for these color additives. The comment appears to respond to the Commissioner's reply to the petition submitted by the Public Citizen Health Research Group. In its petition, Public Citizen estimated the exposure to provisionally listed color additives used in food and the total exposure to provisionally listed color additives.

In his response to the petition, the Commissioner did not contest the figures cited by Public Citizen, which were apparently based on the agency's certification poundage for these color additives, including lakes. The Commissioner did note that FD&C color additives are used not only in food but

also in drugs and cosmetics, so that certification poundage for an FD&C color additive does not equal the poundage actually used in food. Public Citizen's estimates of exposure to FD&C Red No. 3, FD&C Yellow No. 5, and FD&C Yellow No. 6 were based on the amount of color certified and did not count the poundage from lakes twice.

However, in estimating total exposure to the provisionally listed D&C color additives, Public Citizen did add the total amount of color certified to the amount of lakes used. This was necessary because D&C lakes are not required to be made from certified D&C colors.

Estimating exposure in this way would lead to an overstatement of the total exposure to the straight color additive, unless the substrata of the lakes is subtracted from the total weight. Public Citizen failed to make this subtraction and FDA, as the comment correctly points out, failed to correct Public Citizen's estimate in replying to the petition, because the agency felt that such a correction would not have significantly altered the thrust of Public Citizen's argument.

FDA wishes to assure the public that when it calculates exposure to color additives as part of a safety evaluation, it does so correctly. Although the agency does include the contribution from D&C lakes in its computations, it factors out the substratum weight before arriving at an exposure estimate.

5. The comment also argued that it is misleading to compare, as FDA did in its response to the Public Citizen Health Research Group, the amount of color additives certified in 1974 with the amount certified in 1984. That comparison shows a 42 percent growth. The comment claimed that if the pounds certified each year between 1975 and 1984 were averaged, the result would be 5.3 million pounds per year for that period. According to the comment, that number is exactly the poundage certified in 1975 and approximately the poundage that the comment projected would be certified in 1985. The comment claimed that, thus, there really had not been an increase in the amount of color additives certified each year since 1974.

The agency has reevaluated the certification poundage for FD&C color additives from 1974 to 1985. The figures cited in the comment are correct; however, the figure for 1976 (4.998 million pounds) represents five quarters rather than four because of a change in the fiscal year from July 1 to October 1. The agency agrees that the data do not show an increase of 42 percent in the amount of color additive certified. However, the agency does not agree that there has been no growth in color additive certification in the past 10 years. If one looks at the 5-year averages over this period, the 5-year average increases from 4.929 million pounds (1975–1979, 5¼ years) to 5.340 million pounds (1979–1983). This represents about a 10 to 15 percent increase over that timespan.

II. Color Additives That Are Subject to Review by the Scientific Review Panel

6. In the proposal, FDA stated that treatment-related increases in the incidence of tumors were found in chronic testing for six of the provisionally listed color additives, but that questions had been raised about the significance of these results. The agency stated that it had formed a color additive scientific review panel (the panel) to look into these questions and proposed to extend the provisional listing of these color additives to allow the panel to do its work. The agency received 33 comments about these 6 color additives.

A. D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, and D&C Orange No. 17

7. A comment from the petitioner for these color additives argued that the data currently before FDA support the permanent listing of these additives. This comment argued that the quantitative risk assessments that have been conducted on the uses of these additives show that none of them poses a significant risk of human cancer, and that therefore they should be permanently listed under a *de minimis* interpretation of the Delaney Clause.

FDA is unable to agree with this comment. As discussed in the proposal, questions have been raised that create doubts about whether a valid risk assessment can be performed on the basis of the chronic testing that has been done on these color additives. See 50 FR 26379. The Commissioner created the panel to address these issues. Because the panel has not completed its work, the questions about the risk assessments that the petitioner submitted remain. Therefore, the agency is unable to act on the permanent listing of these color additives at this time.

8. The comment argued in the alternative that FDA's proposal to extend the provisional list to permit evaluation of the data on these five color additives by the panel represents a rational exercise of the agency's authority under the Color Additive Amendments. The comment asserted that the panel's evaluation will help the agency to resolve the issues on the uses of these color additives. However, the agency also received two comments that argued that because these additives had been shown to be carcinogens, they should be banned.

With respect to the latter comments, as discussed in paragraph 3 in this preamble, FDA believes that an interpretation of the act is possible that does not require the agency to ban color additives that have been shown to cause cancer in animals, if the risk associated with the use of such additives is essentially negligible. Therefore, FDA does not accept these comments.

The Commissioner has reviewed the proposed extension under the standards established in *McIlwain* v. *Hayes, supra*, 690 F.2d at 1047. He has reexamined the evidence on these color additives and has confirmed his conclusion that their continued provisional use for 9 months is consistent with the public health. The Commissioner has also concluded that the review of the scientific evidence on these color additives is going forward in good faith. The panel has prepared a preliminary draft report, and it presented an oral report to the Commissioner in June. The panel has now sent its draft report to 49 scientists around the country for review. The Commissioner expects to receive the final report of the panel this fall.

Once the panel completes its report, the Commissioner will review it and decide how the agency will proceed with regard to these additives. Documents setting forth the agency's conclusions about the safety of these additives (announcing further action, permanent listing, or removal of the additives from the provisional list) will then be prepared for publication in the **Federal Register**. The Commissioner concludes that allowing 9 months for completion of this process is reasonable.

Therefore, the Commissioner finds that an extension of the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, and D&C Orange No. 17 until June 6, 1986, fully complies with the standards in *McIlwain* v. *Hayes, supra*.

9. The petitioner for these color additives stated in its comment that it had initiated new testing of D&C Red No. 9, D&C Red No. 19, and D&C Orange No. 17. It stated that these studies include efforts to prepare pure colors for research purposes, to determine oral bioavailability of the pure color and its metabolites, and to compare the short-term toxicity of the purified colors with the toxicities generally shown in the tests of the commercial color additives. The comment stated that these studies provided an additional basis for

extending the provisional listings of these color additives.

The agency is aware that the petitioner has asserted that it has initiated new studies on D&C Red No. 9, D&C Red No. 19, and D&C Orange No. 17. The details of the protocols and the rationale for these studies have not been submitted to the agency. Consequently, the agency is not aware of how these studies could contribute to an appropriate resolution of the issues raised with respect to these color additives. Therefore, on the basis of available information, the agency is unable to agree with the comment's assertion that the initiation of these studies provides an additional basis for extending the provisional listing of these color additives.

B. FD&C Red No. 3

10. Comments from three trade associations asserted that the evidence before the agency on FD&C Red No. 3 establishes the safety of the use of this color additive. These comments reviewed the results of recently conducted studies that were designed to explore whether the tumors observed in the chronic study of this color additive were the result of hormonal stimulation rather than of the direct action of FD&C Red No. 3. Among these studies were two short-term studies in rats, and in vitro study, pharmacokinetic studies, and a study of the effects of FD&C Red No. 3 on humans.

The comments asserted that these studies suggest that the tumors observed in the chronic rat study resulted from a hormonal mechanism that was indirectly mediated by FD&C Red No. 3; that there is a threshold for this effect; that the compound is not mutagenic and does not accumulate in the thyroid; and that when consumed by humans, nearly all of the administered compound is excreted in the feces. The comments asserted that the data demonstrate that FD&C Red No. 3 is safe, and that its provisionally listed uses should be permanently listed.

FDA is unable to agree with these comments. The agency's initial review of the information from these studies indicated that they do not provide a sufficient basis upon which to draw a definite conclusion on whether FD&C Red No. 3 is a secondary carcinogen. This initial review raised questions about whether the submission actually supported the sponsor's hypothesis that there was a hormonal mechanism of tumor induction. The agency has not been able to complete its evaluation of these studies because much of the raw data from them was not submitted to FDA until July 25, 1985. Moreover, on July 25, 1985, the sponsor also submitted two additional studies that address the issue of a possible secondary mechanism. The agency has not yet completed its evaluation of these new studies. Thus, at least at the present time, FDA is unable to find that the evidence before the agency on FD&C Red No. 3 establishes the safety of the use of this color additive.

11. One trade association commented that even if FDA concludes that FD&C Red No. 3 does not act by a secondary mechanism, FDA can permanently list this color additive for cosmetic uses based on the quantitative risk assessment that this trade association performed and the application of the *de minimis* concept to the results.

FDA disagrees. The risk assessment that this trade association has submitted is subject to many of the questions that have been raised about the risk assessments on the five color additives discussed above. See response to Public Citizen Health Research Group petition, p. 20. Because of these questions, the Commissioner referred the risk assessment on FD&C Red No. 3 to the panel for review. Thus, the Commissioner concludes that it would be inappropriate for the agency to take any action on the basis of the risk assessment at this time. Moreover, as discussed in paragraph 3 of this preamble, FDA has not made a definitive determination about the appropriateness or applicability of the *de minimis* concept.

12. This trade association also argued in its comment that FDA should permanently list the cosmetic uses of FD&C Red No. 3 without regard to the secondary mechanism issue because any risk from the cosmetic uses of this additive would be *de minimis* against the background of its permanently listed food uses. The comment argued that such action would be consistent with FDA's lead acetate decision (45 FR 72122; October 30, 1980).

FDA does not agree that the lead acetate decision is directly applicable in all respects to the immediate case at this time. In the lead acetate decision, FDA pointed out that its conclusion was "based upon the unusual combination of scientific facts peculiar to lead acetate in hair dyes" (45 FR 72115). Among the unique factors in the lead acetate case were that lead is ubiquitous in the environment, and that humans normally have lead in their blood (45 FR 72113). FDA determined that the amount of human lead absorption from the use of lead acetate in hair dyes would have no discernible effect on the level of lead in human blood (45 FR 72114). The agency is not able to make these findings for FD&C Red No. 3.

13. The three trade associations, in the alternative, all supported FDA's proposal to extend the provisional listing of FD&C Red No. 3, so that the panel could consider the evidence on the mechanism of action of this additive. There were 28 other comments that also supported this proposed action. Two comments opposed this proposal, stating that FD&C Red No. 3 has been shown to be a carcinogen.

FDA rejects the latter two comments for the same reasons that, in paragraph 8 of this preamble, it rejected the arguments that it terminate the provisional listing of the five other color additives. Moreover, questions about the mechanism of action of RD&C Red No. 3 remain to be resolved.

The Commissioner has reviewed the proposed extension under the *McIlwain* standards. He has concluded that a 1-year extension of the provisional list will ensure that the review of the data on FD&C Red No. 3 is completed as quickly as reasonably practicable. Such an extension will allow time for the agency to complete its review of the data and of the new studies that were recently submitted. It will also allow the panel to review the results of the scientific investigations of this color additive and to report to the agency on its findings. The Commissioner considers review by the panel to be necessary before he can decide whether the petitioners have demonstrated that this additive works by a secondary mechanism; whether they have shown that there is a safe level of use for this additive (and, if so, what that level is); and whether, if they have not done so, new studies of FD&C Red No. 3 are necessary. The 1-year extension will allow the agency time to review the panel report and the other evidence on this color additive and to take appropriate action.

In addition, the Commissioner has reviewed the evidence on this color additive and confirmed his conclusion that continued use of FD&C Red No. 3 for its provisionally listed uses for 1 year is consistent with the public health. Therefore, FDA is adopting a final rule extending the provisional listing of this additive until September 3, 1986.

14. Two trade associations commented that until FDA heard from the panel, it would be premature to evaluate whether further chronic testing of FD&C Red No. 3 is necessary to establish a secondary mechanism. Both comments urged that if the agency should come to believe that such testing is necessary, it should propose that

testing in a separate rulemaking. One trade association stated that if the agency should conclude than an additional study on FD&C Red No. 3 is necessary, the association will seriously consider sponsoring study.

FDA agrees that it would be premature to require a new chronic study on FD&C Red No. 3. The agency advises, however, that if, after hearing from the panel and completing its own review, it appears that such a study is necessary, it will move as quickly as possible to propose to require such a study, even if there is a significant amount of time left before the September 3, 1986, closing date.

IV. The Color Additive About Which Additional Information Is Being Developed—FD&C Yellow No. 6.

15. In the proposal, FDA explained that it had not completed its review of the scientific investigations on FD&C Yellow No. 6. The agency reported that rare tumors had been found in the kidneys of female rats fed the color additive in a chronic study, but that agency scientists have doubts as to whether this effect was actually caused by the color additive. The agency stated that to clarify this issue, it had asked the petitioner to prepare and submit additional kidney slides. It proposed to extend the provisional listing of FD&C Yellow No. 6 for 9 months to give itself an opportunity to review and to evaluate these slides and the other data on this additive. The agency stated that it also needed time to evaluate the carcinogenic impurities that may be present in this color additive (50 FR 26380.

FDA received six comments on its proposed action.

16. One comment asserted that FD&C Yellow No. 6 has been shown to be an animal carcinogen.

FDA does not agree with this comment. Although there was a suggestion of a dose-related increase of relatively rare tumors in the kidneys of Charles River CD rats tested with this additive, the agency has not yet confirmed that these tumors are compound-related. The agency has completed an initial review of the additional kidney slides that it received at the time the proposal was published and has found a higher incidence of proliferative-type lesions in the kidneys of the treated than in the control rats. However, because an unexpectedly high incidence of proliferative lesions was found in the controls on reexamination, the agency believes that there is reason to question the significance of this observation. Therefore, the agency finds that additional review of the evidence on this color additive is necessary before a decision on its safety can appropriately be made.

17. This comment also asserted that FD&C Yellow No. 6 is an allergen.

The agency has investigated the two studies cited by the comment and has concluded that these studies do not provide a basis for finding that FD&C Yellow No. 6 is an allergen. The studies included a very limited number of subjects, and these subjects had complicating medical conditions. The agency is, however, attempting to locate any additional scientific articles relating to the allergenicity of FD&C Yellow No. 6 to determine whether the available data support a finding that FD&C Yellow No. 6 is an allergen.

FDA's review of the possible allergenicity of FD&C Yellow No. 6 is separate from its review of the petition for permanent listing of this color additive. If the agency determines that sufficient data exist to demonstrate the allergenicity of FD&C Yellow No. 6 for a portion of the population, other options may be considered. For example, the agency could propose labeling requirements for this color additive similar to those for FD&C Yellow No. 5. Such labeling requirements could apply to the use of the color additive regardless of whether it is provisionally or permanently listed.

18. FDA received four comments that supported the proposed extension of the provisional listing of this color additive and two that opposed it.

The Commissioner has reviewed the proposed extension under the *McIlwain* standards. FDA received the new kidney slides from the petitioner in June, and agency scientists are already well into their review. After all necessary reviews are complete, the agency will make decisions about the significance of their findings. In addition, the agency will make decisions about the carcinogenic impurities found in this additive. The latter decisions will be made more difficult by the fact that FD&C Yellow No. 6 shares some impurities with FD&C Yellow No. 5. When FDA has decided whether the use of this color additive is safe, it will prepare a **Federal Register** document announcing its decision.

Based on these facts, the Commissioner believes that FDA's review of the scientific investigations on FD&C Yellow No. 6 is going forward in good faith, and that a 9-month extension of the provisional listing of this additive will ensure that that review is completed as soon as reasonably practicable. In addition, based on his review of the evidence presently before FDA on FD&C Yellow No. 6, the Commissioner has confirmed his conclusion that continued provisional use of this color additive for 9 months, under its current conditions of use, is consistent with the public health. Therefore, FDA is extending the closing date for FD&C Yellow No. 6 until June 3, 1986.

V. Color Additives for Which FDA Proposed Further Study

19. In the proposal, FDA reported that the chronic testing of D&C Red No. 33 and D&C Red No. 36 did not reveal a carcinogenic effect in the animals in which they were tested, but that for both color additives there were a few uncommon tumors and numerous lesions of the spleen that are rare but not neoplastic. The agency stated that these proliferative effects indicated that there was a similarity between these color additives and certain other compounds, such as D&C Red No. 9 (which is presently before the panel), which have indicated carcinogenic effects. The agency also reported that a panel of experts from the National Toxicology Program (NTP) had examined the data on D&C Red No. 33 in conjunction with the data on D&C Red No. 9 and agreed with agency scientists that there is a clear relationship between the two color additives that provides a basis for concern about the possible carcinogenicity of D&C Red No. 33 (50 FR 26381). FDA received several comments that addressed the NTP review.

20. In the proposal, FDA stated that the NTP panel suggested that there might be some short-term testing that could be done to resolve the question of the possible carcinogenicity of D&C Red No. 33, but that it was not clear to FDA whether the NTP panel had any type of short-term testing specifically in mind. The agency stated that it had contacted NTP to resolve this question (50 FR 26381). FDA received one comment that asked that FDA announce NTP's response as quickly as possible.

In July, the agency was advised by a representative of NTP that the NTP panel had not recommended that further research on D&C Red No. 33 include short-term studies (Memorandum dated July 16, 1985, to Director, NTP, from Assistant to the Director, "Comments on NTP Peer Review Panel Evaluation of the Carcinogenicity Data on D and C Red No. 33"). Therefore, FDA concludes that its statement in the proposal was in error, and that there was no recommendation by NTP of short-term studies.

21. One comment from a trade association asserted that the NTP panel

had concluded that D&C Red No. 33 was not a carcinogen.

This comment does not accurately characterize the NTP's conclusions. The NTP panel's report concludes that while the quantitative evidence was insufficient to demonstrate a carcinogenic response to treatment, the qualitative observations revealed a treatment-related toxic effect on the spleen that was similar to the toxic effects produced by known splenic carcinogens among the other aromatic azo compounds. The NTP panel stated that further research is needed to develop an understanding of the mechanism of the toxic action of this family of compounds in the spleen of rats.

22. Two comments stated that the NTP panel found that the maximum tolerated dose had been exceeded in the rat bioassay of D&C Red No. 33.

FDA has reviewed the transcript of the NTP panel's deliberations. The agency believes that the sense of the NTP panel's discussion is that while the high dose in the rat study may have exceeded the maximum tolerated dose, the study nonetheless provided meaningful results.

23. FDA received two comments that argued that the currently available data on D&C Red No. 33 and D&C Red No. 36 are adequate to justify their permanent listing. One comment argued that because the chronic testing of both additives did not reveal a carcinogenic effect, FDA approval of these additives is appropriate.

FDA disagrees with these comments. The Color Additive Amendments require that the petitioner demonstrate the safety of a color additive to justify its permanent listing. Because the evidence as currently interpreted on these color additives provides a basis for concern about possible carcinogenicity that has not been adequately resolved, FDA finds that permanent listing of D&C Red No. 33 and D&C Red No. 36 is not appropriate at this time.

24. Two comments argued that even if there is a need for additional studies of D&C Red No. 33 and D&C Red No. 36, a new bioassay is not necessary. One comment said that because the concern about these color additives is their splenic toxicity in male Sprague-Dawley rats, there is no reason to conduct a full lifetime study, with attendant evaluation of all tissues and organs. Both comments asserted that the NTP panel rejected the need for new chronic studies of these additives in a different strain of rat.

The summary minutes (p. 4) of the NTP meeting show that the panel did not reject the need for another cancer study. The NTP panel felt that such a study would be useful, but that its focus should be on the mechanism of splenic effects. The NTP panel recommended that further research be done to gain a better understanding of "the mechanisms of toxic action." The NTP panel pointed out that a neoplastic response is one phase of a toxic response. An investigation of the toxic response in this situation would mean an investigation of the neoplastic response and therefore would be likely to require a long-term study, although not necessarily of the conventional bioassay type.

25. The comments suggested alternatives to chronic testing. One comment suggested calculating a risk assessment based on the comparative toxicity of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Sprague-Dawley rats. This trade association also stated that it had begun to explore the possibility of conducting studies designed to elucidate the mechanism of splenic tumor development associated with monoazo compounds such as D&C Red No. 33 and D&C Red No. 36. These comments also suggested that to permit further consideration of the scientific evaluations and studies that are necessary on D&C Red No. 33 and D&C Red No. 36, FDA should extend the provisional listing of these color additives for 1 year, until September 3, 1986. FDA also received two comments that urged the agency to take these additives off the provisional list. One of these comments said the petitioner would have an opportunity to submit data even if the color additives were no longer provisionally listed.

FDA has carefully considered these comments. The agency believes that a risk assessment based on the comparative toxicity of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 may be possible. If the splenic toxicity associated with the use of these additives is produced by their principal color components, it should be possible to predict, within reasonable limits, the potency of these color additives. Insight into the relative potency of these additives would enable the agency to make a determination about the safety of D&C Red No. 33 and D&C Red No. 36 without new long-term studies on these additives. Because the Color Additive Amendments enjoin the Commissioner to reach a decision on the provisional list as soon as reasonably practicable, he has decided to pursue the approach suggested by the comment rather than require new long-term studies. Therefore, this final rule extends the provisional listing of D&C Red No. 33 and D&C Red No. 36 for 18 months, until March 3, 1987, rather than the 5 years that the agency proposed (50 FR 26382) or the 1 year that the comments requested.

FDA is unable to proceed immediately to conduct a comparative risk assessment because questions have been raised about whether a relative potency determination can be made. If the splenic toxicity of these additives or the observed carcinogenicity of D&C Red No. 9 were likely to be caused by an impurity in any of these additives, available evidence may not be adequate to determine whether that impurity is a common ingredient. Consequently, a determination of relative potency would not be possible.

The agency believes that resolution of the questions about the feasibility of determining relative potency is likely to derive from two sources. First, the panel is currently reviewing the toxicity of D&C Red No. 9. Consequently, its report should provide important insights. In addition, after the agency has received the panel's report on D&C Red No. 9, the Commissioner will arrange for expert review that will address specifically whether a determination of the relative potency of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 is possible.

The Commissioner invites interested parties to submit skin penetration studies and any other information relevant to the issue of relative risk as quickly as possible. The Commissioner is committed to meeting the March 3, 1987, closing date for these color additives.

The Commissioner has considered whether this extension meets the standards set forth in *McIlwain* v. *Hayes*, 690 F.2d at 1047, and concludes that it does. To complete its evaluation of the studies on D&C Red No. 33 and D&C Red No. 36 and reach a decision on these additives, the agency must hear from the panel on D&C Red No. 9, receive the results of the expert review, consider these reports and all other available data, and prepare an appropriate **Federal Register** document. Consequently, the Commissioner believes that 18 months is as soon as a decision on D&C Red No. 33 and D&C Red No. 36 can practicably be made. The Commissioner also finds that continuing to permit the provisionally listed uses of D&C Red No. 33 and D&C Red No. 36 for 18 months is consistent with the public health.

The Commissioner advises that if at any time before March 3, 1987, he concludes that a risk assessment based on the comparative toxicity of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 is not possible, he will notify the

public of that fact and announce what action he will take with regard to these color additives.

VI. Environmental and Economic Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined by Executive Order 12291.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* in paragraph (a) by revising the closing date for "FD&C Yellow No. 6" to read "June 6, 1986" and by revising the closing date for "FD&C Red No. 3" to read "September 3, 1986" and in paragraph (b) by revising the closing dates for "D&C Orange No. 17," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 19," and "D&C Red No. 37" to read "June 6, 1986" and by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" to read "March 3, 1987."

3. In § 81.27 by removing paragraph (e) and by revising the introductory text of paragraph (d), to read as follows:

§ 81.27 Conditions of provisional listing.

* * * * *

(d) The closing dates and dates for final reports for the following 10 color additives are postponed in accordance with the following list while chronic toxicity feeding studies are conducted and evaluated and subject to compliance with the requirements of this paragraph:

	Final report due	Closing date
D&C Orange No. 17		June 6, 1986.
D&C Red No. 3		Sept 3, 1986.
D&C Red No. 8		June 6, 1986.
D&C Red No. 9		Do.
D&C Red No. 19		Do.
D&C Red No. 33		Mar. 3, 1987.
D&C Red No. 36		Do.
D&C Red No. 37		June 6, 1986.
FD&C Yellow No. 6		Do.
FD&C Blue No. 2		Date of final decision on permanent listing.

* * * * *

Dated: August 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–21081 Filed 8–30–85; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Yellow No. 5 and Its Lakes; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Yellow No. 5 for use in coloring cosmetics generally and externally applied drugs and of its lakes for use in coloring food and ingested drugs. The new closing date will be November 5, 1985. This brief postponement will provide time for the receipt and evaluation of any objections submitted in response to the final rule, published elsewhere in this issue of the Federal Register, approving the petition for the listing of FD&C Yellow No. 5 in cosmetics generally and in externally applied drugs and also continuing the provisional listing of its lakes.

DATES: Effective September 3, 1985, the new closing date for FD&C Yellow No. 5 and its lakes will be November 5, 1985.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 3, 1985 (50 FR 23294), FDA established the current closing date of September 3, 1985, for the provisional listing of FD&C Yellow No. 5 and of its lakes. The agency extended the closing date until September 3, 1985, to permit consideration of the scientific and policy aspects of the data concerning the safety of its provisionally listed uses. The agency had previously extended the closing date for FD&C Yellow No. 5 and its lakes on several occasions. For a full procedural history of the provisional listing of this color additive, see 48 FR 45760.

After reviewing and evaluating the data, the agency has concluded that FD&C Yellow No. 5 is safe for use in coloring cosmetics and externally applied drugs. Therefore, elsewhere in this issue of the Federal Register, FDA is publishing a final rule that lists FD&C Yellow No. 5 for these uses. That rule also continues the provisional listing of the lakes of this additive. FDA is also publishing elsewhere in this issue of the Federal Register a proposed rule that would establish a new identity and a uniform set of specifications for all uses of FD&C Yellow No. 5 because the final rule that FDA is publishing establishes a new identity and new specifications for this color additive in 21 CFR 74.2705.

This brief postponement will provide sufficient time for receipt and evaluation of objections submitted in response to the final rule that lists FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs.

Because of the shortness of time until the September 3, 1985, closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of FD&C Yellow No. 5 and its lakes until November 5, 1985. Therefore, in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being issued as a final rule and is being made effective on September 3, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the transitional provisions of the Color Additive Amendments of 1960 and under authority delegated to the

Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "FD&C Yellow No. 5" in paragraph (a) to read "November 5, 1985."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "FD&C Yellow No. 5" in paragraph (d) to read "November 5, 1985."

Dated: August 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–21083 Filed 8–30–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 155

[DoD Directive 5220.6]

Defense Industrial Personnel Security Clearance Review Program

AGENCY: Office of Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This part is revised and reissued to (1) reflect organizational changes in the Department, (2) simplify the language contained in the existing rule, (3) incorporate the Equal Access to Justice (5 U.S.C. 504), standard in the section pertaining to reimbursement for lost earnings, and (4) establish the Adjudication Policy for security clearance determinations under this rule.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense, August 12, 1985, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Brown, Director, Directorate for Industrial Security Clearance Review, 4019 Wilson Blvd., Suite 101, Arlington, VA 22203, telephone (202) 696–4598.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense published the last edition of this directive in FR Doc. 76–13745 appearing in the **Federal Register** on May 12, 1976 (41 FR 19303). It is now revised and incorporates the changes described in the **SUMMARY** above. While publication of this notice of revision is not required under the Administrative Procedures Act, 5 U.S.C. 553(a), notice is provided voluntarily by the Department of Defense.

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. This rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 155

Administrative practice and procedure, Business and industry, Classified information, Security clearance.

Accordingly, 32 CFR is amended by revising Part 155, reading as follows:

PART 155—DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE REVIEW PROGRAM

Sec.

155.1 Purpose.
155.2 Applicability and scope.
155.3 Definitions.
155.4 Policy.
155.5 Responsibilities.
155.6 Procedures.
155.7 Additional procedural guidance.
155.8 Adjudication policy.

Authority: 5 U.S.C. 504, E.O. 10865, 3 CFR, 1959–1963 COMP., p. 398.

§ 155.1 Purpose.

This part has been revised to update policy, the criteria, and procedures of the Defense Industrial Personnel Security Clearance Review Program under E.O. 10865.

§ 155.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) By mutual agreement also extends to other Federal agencies that include:

(1) Department of Agriculture.
(2) Department of Commerce.
(3) Department of Interior.
(4) Department of Justice.
(5) Department of Labor.
(6) Department of State.
(7) Department of Transportation.
(8) Department of Treasury.
(9) Environmental Protection Agency.
(10) Federal Emergency Management Agency.
(11) Federal Reserve System.
(12) General Accounting Office.
(13) General Services Administration.
(14) National Aeronautics and Space Administration.
(15) National Science Foundation.
(16) Small Business Administration.
(17) United States Arms Control and Disarmament Agency.
(18) United States Information Agency.

(c) Applies to cases in which the Defense Industrial Security Clearance Office (DISCO) cannot affirmatively determine that it is clearly consistent with the national interest to grant or continue a security clearance for access to classified information by persons employed by U.S. industry, or to U.S. citizens who are direct-hire employees or selectees for positions with NATO and who require Certificates of Security Clearance in connection with direct employment by agencies of NATO, or to Red Cross or United Service Organizations (USO) employees nominated for assignment with the Military Services overseas. These cases must be referred to the Directorate for Industrial Security Clearance Review (DISCR) for action under this Directive.

(d) Does not apply to cases in which a security clearance is withdrawn for administrative reasons with no finding of prejudice to a later determination as to whether the grant or continuance of applicant's security clearance would be clearly consistent with the national interest, or to cases in which an interim security clearance is withdrawn during an investigation.

(e) Provides a program which may be extended to other cases at the direction of the Deputy Under Secretary of Defense for Policy, or designee.

§ 155.3 Definitions.

Addiction. Psychological or physical dependency to the point of compulsive use.

Appeal Board. A panel designated by the General Counsel, DoD, or designee to make final determinations in cases which are appealed.

Applicant. A person in industry who requires a security clearance for access to classified information and any U.S. citizen who is a direct-hire employee or selectee for a position with NATO and who requires NATO Certificates of Security Clearance, security assurances

for access to U.S or foreign classified information, or Red Cross or USO personnel nominated for assignment with the Military Services overseas. The term applicant does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such agencies in response to a request from NATO.

Cannabis. The intoxicating products of the hemp plant, Cannabis Sativa, including but not limited to marijuana, hashish, and hashish oil.

Dangerous Drug. Any of the nonnarcotic drugs which are habit forming or have a potential for abuse because of their stimulant, depressant or hallucinogenic effect.

Experimental Abuse. Abuse occurring not more than a few times for reasons of curiosity, peer pressure, or other similar reasons.

Narcotic. Opium and opium derivatives or synthetic substitutes.

Occasional Abuse. Recurrent but infrequent abuse of drugs; no consistent pattern of drug abuse.

Physical Dependence. The adaptive alteration in the body produced by the prolonged use of a psychoactive substance, which results in withdrawal symptoms when the substance's use is stopped.

Psychological Dependency. The craving for the pleasurable mental or emotional effects of a psychoactive substance and the desire for this drug-induced state in preference to the normal state such that repeated use is seen as necessary for well-being.

Regular Abuse. Drug abuse on a frequent recurrent basis to the point of habituation.

§ 155.4 Policy.

It is the policy of the Department of Defense that all proceedings under this Directive shall be conducted in a fair and impartial manner, and that any determination authorizing a security clearance for access to classified information shall be based only upon a finding that to do so is clearly consistent with the national interest. Normally, a security clearance shall not be denied or revoked without full compliance with all applicable due process of law requirements, namely, (a) Notice to the individual of the specific reasons for the action; (b) Affording the individual an opportunity to respond; (c) Notifying the individual of the right to a hearing and the opportunity to cross-examine persons providing adverse information; and (d) Notice of appeal procedures.

§ 155.5 Responsibilities.

(a) *The Under Secretary of Defense for Policy (USD(P))*, or designee, shall issue investigative policies for this program, is designated the authority to issue changes to the adjudication policy, and shall be responsible for overall policy guidance and oversight.

(b) The *General Counsel, Department of Defense (GC, DoD), or designee*, shall:

(1) Administer the program established by this Part.

(2) Determine the organization and composition of the requisite staff and offices.

(3) Issue guidance and instructions, as needed, to fulfill these responsibilities.

(4) Designate attorneys to be Examiners assigned to DISCR to conduct hearings and to reach clearance determinations.

(5) Designate attorneys to be members of the Appeal Board.

(6) Issue invitational travel orders to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Approve or disapprove claims for reimbursement for loss of earnings resulting from actions under this Part.

(c) The *Director, Directorate for Industrial Security Clearance Review*, under the direction of the General Counsel, DoD, or designee, shall:

(1) Manage the program established by this Part.

(2) Maintain all DISCR records.

(3) Issue guidance and instructions, as needed, to fulfill those responsibilities.

(d) *Heads of DoD Components* shall provide, from resources available to the designated DoD Component, financing, personnel and personnel spaces, office facilities, and related administrative support.

(e) *The Director, Defense Investigative Service* shall provide direction and supervision to DISCO in order to assure that cases qualifying under this part are referred promptly to DISCR as required, and that notices of determination by DISCR are acted upon by DISCO without delay.

§ 155.6 Procedures.

(a) Any applicant, as defined in § 155.3 of this part, shall be investigated in accordance with the standards set forth in DoD 5200.2–R [1] and DoD 5220.22–R.[1]

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

(b) An applicant is required to give, and to authorize others to give full, frank, and truthful answers to relevant questions needed by DISCR to reach a security clearance determination. The applicant may elect on constitutional or other grounds not to comply. However, refusal or failure to furnish or authorize the providing of relevant information needed by DISCR at any stage in the investigation or adjudicative process may preclude DISCR from reaching the finding required by § 155.6(c). In this case, any security clearance in effect shall be administratively suspended by the Director, DISCR, and any other processing action shall be discontinued. Resumption of case processing may be approved by the General Counsel, DoD, or designee, only upon showing of good cause by the applicant.

(c) Each personnel security determination must be a fair and impartial overall commonsense decision based upon a consideration of all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of security clearance under this Part may only be done upon and a finding that to do so is clearly consistent with the national interest.

(d) Each personnel security determination shall include consideration of the following factors:

(1) The nature and seriousness of the facts, circumstances or conduct;

(2) The circumstances surrounding the conduct;

(3) The frequency and recency of the conduct;

(4) The age of the indiyidual;

(5) The motivation of the individual, or the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved;

(6) The absence or presence of positive evidence of rehabilitation; and

(7) To the extent that it can be estimated, the probability that the facts, conduct or circumstances will or will not continue or recur in the future.

(e) The criteria for determining eligibility for clearance under the standard shall include, but not be limited to the following:

(1) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist,

anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(3) Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(4) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or conbination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(5) Unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

(6) Performing or attempting to perform one's duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(7) Disregard of public law, Statutes, Executive Orders or Regulations including violation of security regulations or practices.

(8) Criminal or dishonest conduct or acts of sexual preversion.

(9) Acts of omission or commission that indicate poor judgment, unrealiability or untrustworthiness.

(10) Any illness, including any mental condition, which, in the opinion of competent medical authority, may cause significant defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(11) Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (i) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or (ii) any other circumstances that could cause the applicant to be vulnerable.

(12) Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

(13) Habitual or episodic use of intoxicants to excess.

(14) Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug.

(15) Any knowing and willful falsification, cover-up, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Depatment of Defense or any other Federal agency.

(16) Failing or refusing to answer or to authorize others to answer questions or provide information required by a congressional committee, court or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability, and judgment.

(f) The adjudication policy included in § 155.8 is binding in determining whether a person is eligible for access to classified information or assignment to sensitive duties.

(g) Whenever there is sufficient information to provide a reasonable basis for concluding that an applicant's continued access to classified information could endanger the national interest, the existing security clearance will be suspended by the Deputy Under Secretary of Defense for Policy (DUSD(P)), or designee, with the concurrence of the General Counsel, DoD (GC, DoD), or designee, pending a final determination under this Part. However, in those instances where the threat to the national interest is clearly direct and imminent, the Director, DISCR, and the Director, Defense Investigative Service, are authorized to take emergency measures to suspend an existing security clearance, after consultation with the Office of the DUSD(P) and the Office of the GC, DoD. Suspension action under this Part will not be taken for punitive purposes.

(h) Records compiled in the regular course of business or other physical evidence other than investigative reports, relating to a controverted issue, which, because they are classified, may not be inspected by the applicant, may be received and considered, provided the GC, DoD, has (1) made a preliminary determination that such evidence appears to be material, and (2) determines that failure to receive and consider such evidence would be substantially harmful to the national security.

(i) A written or oral statement adverse to the applicant on a controverted issue may be received and considered without affording an opportunity to cross-examine the person making the statement only in either of the following circumstances:

(1) If the Head of the Department, or designee, supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his or her identity would be substantially harmful to the national interest.

(2) If the GC, DoD has preliminarily determined that the statement concerned appears to be reliable and material, and has determined that failure to receive and consider such statement would be substantially harmful to the national security, and that the person who furnished the information cannot appear to testify (i) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (ii) due to some other cause determined by the Secretary of Defense, or when appropriate, by the agency head to be good and sufficient.

(j) Whenever evidence is received under § 155.6 (h) or (i), the applicant will be furnished with as comprehensive and detailed a summary of the information as the national security permits. The Examiner may make a determination either favorable or unfavorable to the applicant based on such evidence, but any final determination adverse to the applicant shall be made only by the Secretary of Defense or the agency head, based on a personal review of the case.

(k) Nothing contained in this Part shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another department or agency to deny or revoke a security clearance when the security of the nation so requires. Such a determination shall be conclusive. This authority may be exercised only when it has been determined that the provisions of this Part cannot be invoked consistent with the national security.

§ 155.7 Additional procedural guidance.

(a) When the Defense Industrial Security Clearance Office (DISCO) cannot affirmatively find that it would

be clearly consistent with the national interest to grant or continue a security clearance the case shall be referred promptly to the Directorate for Industrial Security Clearance Review (DISCR) with a statement explaining the basis for referral.

(b) Upon referral, DISCR shall make a determination promptly whether to grant or continue clearance, to issue a Statement of Reasons as to why it is not clearly consistent with the national interest to do so, or to take whatever interim actions, such as (1) to direct further investigation, (2) to propound written interrogatories to the applicant or other persons with relevant information, (3) to require the applicant to undergo a medical evaluation by a DoD Psychiatric Consultant, or (4) to interview the applicant in order to reach a final determination.

(c) A security clearance shall not be denied or revoked unless the applicant has been provided with a written Statement of Reasons. The Statement of Reasons shall be as detailed and comprehensive as the national security permits. A letter of instructions with the Statement of Reasons also shall explain the applicant's right to have a hearing conducted and the consequences for failure to respond within the prescribed time frame.

(d) To be entitled to a hearing the applicant first must have submitted a written answer to the Statement of Reasons under oath or affirmation which shall admit or deny each listed allegation. A general denial or other similar answer is not sufficient. The answer must be specific and must be submitted to DISCR within 20 days of the receipt of the Statement of Reasons. Requests for a reasonable extension may be submitted to the Director, DISCR.

(e) When an applicant answers a Statement of Reasons as prescribed and a hearing is not requested by the applicant or by counsel (hereafter called Department Counsel) assigned to DISCR to present the case against the applicant, the determination will be made by the Examiner and will be based upon a review of the file of all relevant material which could be adduced at a hearing. The applicant will be given a reasonable time in which to submit documentary information in rebuttal, or to explain adverse information in the file.

(f) If the applicant does not answer the Statement of Reasons or fails to submit a responsive answer, the Director, DISCR, shall discontinue processing of the case, deny issuance of the requested clearance and shall direct DISCO to administratively suspend any clearance held by the applicant. However, should a review of applicant's answer to the Statement of Reasons indicate that all allegations are unfounded, the Director, DISCR, will take action as appropriate under the circumstances. The applicant shall be notified in writing by the Director, DISCR, if either of the above actions are taken.

(g) If the applicant answers the Statement of Reasons in writing and specifically requests a hearing, the applicant may appear in person with or without counsel or a personal representative. The applicant shall have a reasonable time to prepare his or her case. At the hearing, the applicant may present evidence on his or her behalf and, as a general rule, may cross-examine adverse witnesses, either orally or in writing. Hearings shall be conducted in the United States except for good cause based upon a petition to be filed by the applicant, or for NATO security clearance cases.

(h) The Examiner assigned to hear the case may require a prehearing conference, may rule on procedural issues to expedite the proceedings and shall conduct the proceedings in an orderly manner. Discovery by the applicant is limited to documentary material in DISCR files. Hearings will be closed to spectators except upon mutual agreement of applicant and Department Counsel.

(i) Parties to the proceeding shall serve each other with a copy of any pleading or communication at the time of submission to the Examiner hearing the case.

(j) Upon the failure of the applicant or applicant's counsel to appear or proceed in a timely and orderly fashion, the proceeding shall be discontinued and the case referred to the Director, DISCR, for appropriate action to discontinue all case processing, to administratively suspend any security clearance held by the applicant, and to deny any pending clearance request.

(k) Department Counsel is responsible for producing witnesses and information relied upon by DISCR to establish those facts alleged in the Statement of Reasons which have been controverted. The Statement of Reasons may be amended at the hearing by the Examiner, upon motion by the Department Counsel or the applicant to make it conform to the information or evidence presented. When such amendments are made, the Examiner may grant applicant's request for such additional time as the Examiner may deem appropriate to answer such amendments and to present evidence or information thereto.

(l) Applicants shall be notified in writing at least 15 days in advance of the time and place of the hearing. A continuance shall be granted only for good cause.

(m) The Examiner hearing the case shall notify the applicant and all witnesses testifying that 18 U.S.C. 1001 is applicable.

(n) Relevant and material oral, documentary, or other evidence may be received and technical rules of evidence shall be relaxed to permit the development of a full record. The Federal Rules of Evidence shall serve only as a guide.

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered, subject to rebuttal without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the agency head concerned, to safeguard classified information within industry pursuant to Executive Order 10865.

(p) A transcript shall be made of the hearing. The applicant, and Department Counsel will be furnished one copy each of the transcript, less the exhibits, without cost.

(q) The Examiner hearing the case shall make written findings for or against the applicant with respect to each allegation in the Statement of Reasons and shall provide reasons in support of the findings normally within 30 days following the close of the hearing record. The Examiner shall make a determination under the standard of whether or not it is clearly consistent with the national interest to grant or continue the applicant's eligibility for access to classified information. The applicant and Department Counsel shall each be provided a copy of the determination. In cases when evidence is received under § 155.6 (h) and (i), of this Part, the Examiner's written determination may require deletions in the interest of national security.

(r) The applicant or Department Counsel may appeal the Examiner's determination by filing a written Notice of Appeal within 20 days after the date of the determination. The Notice of Appeal merely signifies the intention to file an appeal. The appeal itself must be in writing and must be filed within 60 days after the date of the Examiner's determination. A written reply may be filed by the other party in the case within 30 days of receipt of the copy of the written appeal.

(s) The written appeal must state the specific issues raised on appeal, must cite relevant portions of the case record supporting the issues, and must state the reasons why the determination should be reversed. Consideration of an appeal shall be limited to information in the case record and the issues raised in the written appeal and written reply thereto. The Appeal Board may take action with respect to matters of law raised by the parties to ensure that the Examiner's ruling(s) were not arbitrary or capricious. Factual findings shall not be disturbed on appeal if such findings are supported by credible evidence and are not contrary to law. No new testimony or evidence shall be considered.

(t) The Appeal Board shall determine whether or not the determination made by the Examiner should be affirmed or returned to the Examiner with instructions for further action.

(u) The written determination of the Appeal Board shall be issued promptly following the filing of briefs. The Appeal Board decision is final except in cases where evidence was received under § 155.6 (h) or (i) of this part, in which case a final adverse determination only may be made by the Secretary of Defense or agency head based upon a personal review of the case. The applicant and Department Counsel shall each be provided a copy of the Appeal Board determination. The applicant's copy may require deletions in the interest of national security when evidence was received under § 155.6 (h) or (i) of this part.

(v) In cases where a security clearance is subsequently granted by DISCR after suspension, denial or revocation, an applicant may petition for reimbursement of loss of earnings resulting directly from the suspension, revocation, or denial of clearance. The petition for reimbursement must include as an attachment the written determination of the Examiner or the Appeal Board. The General Counsel, DoD (GC, DoD), or designee, will review the petition and determine (1) whether, in fairness, the Petitioner is to be reimbursed, and (2) the monetary amount of reimbursement.

(w) Claims for reimbursement must be filed with the GC, DoD, or designee, within one year after the date the claim arises. Reimbursement is not authorized in cases where the GC, DoD, or designee, finds that the Department of Defense was justified in taking the initial action to suspend, deny or revoke the security clearance.

(x) The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or denial, and the interim earnings, subject to reasonable efforts on the part of the applicant to mitigate any loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failure to act. Reimbursement is not authorized for loss of merit raises and general increases, loss of employment opportunities, counsel's fees and other costs relating to the industrial security clearance proceeding.

(y) Approval of claims by the Department of Defense will be forwarded to the agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any further claim against the United States or Federal agency, or any of its officers or employees.

(z) Reinstatement of a clearance that has been administratively suspended and resumption of case processing after failure or refusal of the applicant or attorney to provide requested information, or to proceed in a timely and orderly manner, or to respond to a Statement of Reasons, only shall be made upon request submitted by the applicant and upon a showing of good cause. Requests should be submitted to the Director, DISCR. All such requests only can be approved by the GC, DoD, or designee.

§ 155.8 Adjudication policy.

(a) *Financial Irresponsibility*—The basis is failure to meet just and avoidable financial obligations voluntarily incurred.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) History of bad debts and unmanageable indebtedness.

(ii) Recent bankruptcy with continuing financial problems.

(iii) Indebtedness aggravated or caused by gambling, alcohol, drug abuse, or mental or emotional defects.

(iv) A history or pattern of writing checks not covered by sufficient funds.

(v) Unfavorable judgments, liens, or repossessions.

(vi) Deceit or deception, embezzlement, or change of address without advising creditors.

(vii) Applicant's indifference to financial obligations or a stated intention not to meet these obligations in the future.

(viii) Financial mismanagement or irresponsible expenditures that exceed income or other assets.

(2) The Mitigating Factors are:

(i) Systematic efforts to satisfy creditors.

(ii) Favorable change in financial habits.

(iii) Stable employment record and favorable references.

(iv) Circumstances beyond the individual's control contributing to indebtedness; e.g., major illness, debilitation, decrease or cutoff of income, and indebtedness due to court order.

(v) Business-related bankruptcy.

(b) *Criminal Conduct*—The basis is any criminal violation of a federal, state, or local law.

When it is determined that an applicant for a security clearance, or a person holding a clearance, has been convicted of, or admits to conduct which would constitute, a felony under federal or state law, the clearance of such person shall be denied or revoked unless it is determined by the Under Secretary of Defense for Policy, with the concurrence of the General Counsel of the Department of Defense, that there are compelling national security reasons to grant or continue such clearance. All other types of involvement in criminal activities shall be evaluated in accordance with the criteria set forth below.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Criminal conduct:

(A) An established pattern of criminal conduct.

(B) Failure to complete a rehabilitation program resulting from disposition of a criminal proceeding.

(C) Criminal conduct that it is so recent in time as to preclude a determination that recurrence is unlikely.

(D) Close and continuing association with persons known to be involved in criminal activities.

(E) Criminal conduct indicative of a serious mental aberration, lack of remorse, or insufficient probability of rehabilitative success.

(F) Disposition.

(*1*) Conviction.

(*2*) Disposition on a legal issue not going to the merits of the crime.

(*3*) Arrest or indictment pending trial.

(ii) *Arrest Record.* In evaluating an arrest record, information that indicates that the individual was acquitted, that the charges were dropped or the subject of a stet or nolle prosequi, that the record was expunged, or that the case was dismissed due to error not going to the merits does not necessarily negate the security significance of the arrest. Personnel security determinations are to be made on the basis of all available information concerning a person's

conduct and actions rather than the legal outcome of a criminal proceeding.

(2) The Mitigating Factors (where there has been no conviction or admission) are:

(i) Immaturity of the individual at the time of the offense.

(ii) Extenuating circumstances of the offense.

(iii) Circumstances indicating that the actual offense was less serious than the offense charged.

(iv) Isolated nature of the conduct.

(v) Conduct occurring only in the distant past (such as, more than 5 years in the past) in the absence of subsequent criminal conduct.

(vi) Transitory conditions contributing to the conduct (such as, divorce action, death in the family) in the absence of subsequent criminal conduct.

(c) *Sexual Misconduct*—The basis is sexual behavior that makes applicable the guidance for criminal misconduct or mental or emotional illness, or which indicates that the applicant may be subjected to coercion, pressure, or influence to act contrary to the interests of the United States or which suggests recklessness, irresponsibility, or poor judgment.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) The misconduct has been recent or frequent.

(ii) The applicant indicates explicitly or implicitly an intention to repeat the misconduct.

(iii) The applicant appears to be susceptible to blackmail.

(iv) The misconduct involves:

(A) Open or public behavior;

(B) A person under the age of 18;

(C) Inducement or coercion by force or intimidation of another person;

(D) Prostitution;

(E) Sexual harassment.

(2) The Mitigating Factors are:

(i) Sexual misconduct on a limited number of occasions during or preceding adolescence, with no evidence of subsequent misconduct, and clear indication that the individual has no intention of participating in sexual misconduct in the future.

(ii) Activity occurred more than 3 years ago.

(iii) Subject does not appear to be susceptible to blackmail.

(iv) The applicant was a minor involved in an incestuous relationship.

(d) *Mental or Emotional Illness*—The basis is an abnormal mental condition that may cause a significant defect in the judgment or reliability of the individual concerned.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Conduct reflecting abnormal behavior indicative of mental illness even though there is no confirming medical history.

(ii) Refusal by the individual concerned to furnish medical information or to allow medical information to be obtained for the purpose of determining the significance of bizarre behavior or conduct.

(iii) Documented spouse or child abuse.

(iv) Diagnosis by competent medical authority that an earlier incapacitating mental illness is of a type that has a high incidence of recurrence even though the individual concerned currently manifests no symptoms of mental or emotional illness.

(2) The Mitigating Factors are:

(i) No evidence of a psychotic condition for the past 20 years, a serious or disabling neurotic disorder for the past 10 years, or a serious character or personality disorder for the past 10 years.

(ii) Medical records and physician interview reflect that the person's illness or condition has not caused a significant defect in judgment or reliability.

(iii) The factor(s) causing the mental condition have been rectified.

(iv) Testimony of medical authority that continued maintenance of prescribed medication is likely to preclude recurrence of a condition effecting a significant defect in judgment or reliability.

(e) *Hostage and Foreign Connections*—The basis of an applicant who has immediate family members or other persons to whom he or she is bonded by affection or obligation residing in a communist country or other countries currently hostile to the United States. These countries are of two categories: *Category I.* Countries which, based on current assessment of the U.S. Intelligence Community, possess an intelligence organization with a demonstrated capability of recruiting and exploiting U.S. personnel for intelligence purposes, and *Category II.* Countries which, although having national intelligence objectives inimical to the United States do not have the capability of exploiting U.S. personnel for intelligence purposes or have not undertaken to target U.S. personnel for such purposes.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Residence of a member of immediate family or a person to whom the individual is bound by affection or obligation in a Category I country.

(ii) Travel, correspondence, or financial aid to Category I or Category II countries on a regular basis without satisfactory explanation.

(iii) Dating or cohabiting with a foreign national from a Category I country.

(2) The Mitigating Factors are:

(i) Individual has a member of his or her immediate family or person to whom they are bound by affection or obligation in a Category II country.

(ii) Individual's personal or financial interest in the U.S. appears sufficient to counter any potential pressure that might be brought to bear, such as, home owner with strong civic and community ties.

(f) *Subversive Activity*—The basis is unlawfully advocating or practicing the commission of acts of force or violence to either prevent others from exercising their rights under the Constitution or laws of the United States, or to overthrow or alter the form of Government of the United States by unconstitutional means. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons that support the above-cited activities.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Organization is one which has been characterized by the Department of Justice as one which meets the above-cited criteria.

(ii) Participation in acts that involve force or violence to prevent others from exercising their rights under the Constitution or to overthrow or alter the form of government of the United States.

(iii) Monetary contributions, service, or other support of the organization with the intent of furthering the unlawful objectives of the organization.

(iv) Deliberate misrepresentation of association with the organization.

(v) Evidence of continuing sympathy with the unlawful aims and objectives of the organization.

(vi) Holding a position of major doctrinal or managerial influence in the organization.

(2) The Mitigating Factors are:

(i) Lack of understanding of the unlawful aims or objectives of the organization.

(ii) Staleness of affiliation or activity.

(iii) Temporary affiliation out of curiosity or academic interest.

(iv) Sympathy or support limited to the stated, lawful objectives of the organization.

(v) Immaturity at the time of conduct.

(g) *Alcohol Abuse*—The basis is the consumption of alcohol on an episodic or recurring basis that results in impairment of the individual's ability to perform assigned duties or to adequately safeguard classified information.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Use of alcohol which results in behavior that adversely affects a person's judgment, reliability or discretion.

(ii) Repeated alcohol-related incidents.

(iii) Alcohol consumption resulting in the deterioration of the individual's physical health, as determined by competent medical authority.

(2) The Mitigating Factors are:

(i) Successfully undergoing recognized treatment program or completion of such a program.

(ii) Individual has discontinued alcohol abuse for at least 2 years.

(h) *Drug Abuse*—The basis is the illegal or improper use of any psychoactive substance to include any narcotic, dangerous drug or cannabis.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Experimental abuse of any narcotic or dangerous drug within the last 3 years.

(ii) Occasional abuse of any narcotic or dangerous drug within the last 3 years.

(iii) Regular abuse or addition to any narcotic or dangerous drug within the last 5 years.

(iv) Regular abuse of cannabis within the last 12 months.

(v) Illegal trafficking, cultivation, processing, manufacture, sale, distribution or purchase of any narcotic, dangerous drug, or cannabis whether or not the individual was arrested for such activity.

(vi) Information that the individual intends to continue to use (regardless of frequency) any narcotic, dangerous drug, or cannabis.

(2) The Mitigating Factors are:

(i) Individual has abstained from the illegal or improper use of any narcotic or dangerous drug for at least 3 years and:

(A) Appears to have a stable lifestyle, including a satisfactory employment record; and

(B) States that he or she will not use narcotics or dangerous drugs in the future.

(ii) Experimental abuse of narcotics or dangerous drugs occurred more than 12 months ago, there is no subsequent indication of drug abuse, and the individual has stated intention not to abuse such drugs in the future.

(iii) Abuse of cannabis occurred more than 12 months ago and the individual has indicated intention not to use or possess cannabis in the future.

(iv) Experimental or occasional abuse of cannabis within the past 12 months provided the individual has:

(A) Not evidenced any indications of physical or psychological dependence;

(B) Has had not more than one drug-related arrest within the past 2 years; and

(C) Has a stable lifestyle, including a satisfactory employment record.

(i) *Security Violations*—The basis is failure to comply with policies and procedures established for the purpose of safeguarding classified information.

(1) The factors which may be considered in determining whether to deny or revoke a clearance are:

(i) Intentional disclosure of classified information to unauthorized persons.

(ii) Deliberate disregard of security regulations which results in the compromise of classified information.

(iii) Recent deliberate violations of security regulations, such as, taking classified information home or carrying classified while in a travel status without proper authorization.

(iv) Nondeliberate security violations which indicate a pattern of negligence or carelessness.

(2) The Mitigating Factors are:

(i) Violation of security procedures was caused or contributed to by an improper or inadequate security briefing.

(ii) Individual is personally responsible for a large volume of classified information and the violation was administrative in nature, such as inaccurate entry on document log or certificate of destruction.

Dated: August 28, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21021 Filed 9-3-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2891-1]

Approval and Promulgation of Implementation Plans; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Today's notice takes final action to incorporate into the California State Implementation Plan (SIP) two items related to a motor vehicle inspection and maintenance (I/M) program in the Fresno County portion of the San Joaquin Valley Air Basin. The first item is a request by Fresno County for the State to implement an I/M program and the second item is an I/M implementation schedule for Fresno. Today's approval of these two items means that the 1979 ozone (O_3) and carbon monoxide (CO) plans for Fresno County are no longer disapproved and that there is no longer a prohibition on the construction of major new or modified stationary sources of hydrocarbons (HC) and CO in Fresno County.

Today's notice also removes a condition of approval on the 1979 O_3 plan for Ventura County and on the 1979 O_3 and CO plans for the San Diego, San Francisco Bay Area and South Coast Air Basins, and the Sacramento Metropolitan Area. The fulfilled condition concerns implementation of an I/M program according to schedule.

DATE: This action is effective on September 4, 1985.

ADDRESSES: A copy of the revision approved in this notice is available at the following locations and EPA's Region 9 office in San Francisco:

The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C.

Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460

California Air Resources Board, State Implementation Plan Section, 1131 "S" Street, Sacramento, CA 95812

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93721

FOR FURTHER INFORMATION CONTACT: John Ong, Air Programs Branch (A-2-3), Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7635, FTS: 454-7635.

SUPPLEMENTARY INFORMATION:

Background

The 1977 Clean Air Act Amendments (CAA) required states to submit to EPA State Implementation Plan (SIP) revisions by January 1, 1979 for all areas designated nonattainment under section 107 of the CAA. These SIP revisions or nonattainment area plans (NAPs) were to insure attainment of the National Ambient Air Quality Standards (NAAQS) by December 31, 1982. For areas that demonstrated they could not attain the ozone (O_3) or carbon monoxide (CO) standards by the 1982 deadline, even with the implementation of all reasonably available control measures, section 172(a)(2) of the CAA allowed EPA to extend the attainment deadline to December 31, 1987.

States that received an extension of the 1982 O_3 or CO deadline were required by section 172(b)(11)(B) to submit specific measures in the 1979 NAP. One such measure is a schedule to implement a vehicle emission control inspection and maintenance (I/M) program. Other I/M measures required by section 172(b) include evidence of legal authority to implement and enforce the program, commitments to implement, and commitments to achieve a minimum level of program effectiveness. Six urban areas in California requested and received extensions for attaining the O_3 and/or CO standards beyond December 31, 1982: the Fresno County portion of the San Joaquin Valley Air Basin, the Sacramento Metropolitan Area portion of the Sacramento Valley Air Basin, the San Diego Air Basin, the San Francisco Bay Area Air Basin, the South Coast Air Basin, and the Ventura County portion of the South Central Coast Air Basin.

On July 2, 1979, pursuant to CAA section 110(a)(2)(i), an automatic prohibition on the construction of major new or modified stationary sources of HC and CO became effective in this six areas because the NAPs for these areas had not been fully or conditionally approved. EPA could not approve the NAPs for the six areas because the NAPs lacked evidence of legal authority to implement and enforce an I/M program, and because the NAPs failed to include a schedule to implement an I/M program.

On September 17, 1982 the California Air Resources Board (ARB) submitted to EPA a revision to the California SIP which included evidence of legal authority to implement an I/M program and an implementation schedule. On February 3, 1983 [48 FR 5074] EPA proposed to take action on the schedule to implement. On July 26, 1983 the ARB submitted another I/M revision to the SIP which updated the schedule to implement and included locally adopted resolutions requesting the State to implement the I/M program in five of the required six urban areas. The Fresno County APCD did not request implementation in the July 26, 1983 submittal.

On November 25, 1983 [48 FR 53115] EPA took final action to conditionally approve the 1979 O_3 and CO NAPs for the Sacramento Nonattainment Area, the San Diego Air Basin, the San Francisco Bay Area Air Basin, and the South Coast Air Basin. The notice also conditionally approved the O_3 NAP for the Ventura County Nonattainment Area. All of the above NAPs were approved on the condition that the California motor vehicle I/M program would be implemented according to the schedule submitted on July 26, 1983. The November 25, 1983 notice had the effect of removing the construction ban in the above five areas. The November 25 notice did not take final action on the O_3 and CO NAPs for Fresno since Fresno had not yet required the State to implement an I/M program in Fresno County. Both the February 3, 1983 proposed notice and the November 25, 1983 final notice and their respective Technical Support Documents (TSD's) should be used as references in reviewing today's action.

EPA Evaluation

On June 11, 1984 the California ARB submitted to EPA for incorporation into the California SIP evidence of Fresno's request that the State implement an I/M program. A schedule of implementation was also submitted. EPA has reviewed California's June 11, 1984 submittal and has determined that it should be approved. The request to implement needs to be incorporated into the SIP in order to make this local commitment to the I/M program federally enforceable. The request to implement is approvable as it completes the process of providing legal authority to operate an I/M program in Fresno County. The schedule of implementation, which lists October, 1984 as the start-up date for the I/M program, is approvable because the program has in fact commenced.

EPA's approval of the June 11, 1984 submittal removes the major deficiencies of the 1979 O_3 and CO NAPs for Fresno County. Therefore, today's notice takes final action to approve the 1979 O_3 and CO plans for Fresno County. Approval of these plans lifts the ban on the construction of major new or modified stationary sources of HC and CO in Fresno County which has been in effect since July 2, 1979.

EPA also is removing the condition of approval on the 1979 O_3 NAP for Ventura County and on the 1979 O_3 and CO NAPs for the San Diego, San Francisco Bay Area, and South Coast Air Basins and the Sacramento Metropolitan Area. This condition requires implementation of the I/M program according to the schedule submitted on July 26, 1983. The start-up date listed on the July 26 schedule is March, 1984. This condition is no longer germane to attainment of the standards since the I/M program is underway in all of the above five urban areas.

EPA Action

Based on EPA's review of the SIP revision submitted on June 11, 1984 and the status of the vehicle I/M program in California, EPA takes final action to:

1. Incorporate the following revisions submitted on June 11, 1984 into the California SIP under Section 110 of the CAA: (a) California ARB Executive Order G–125–46; (b) the schedule to implement I/M in Fresno County and; (c) the request by Fresno County that the State of California implement an I/M program in Fresno County.

2. Approve, as meeting the Part D requirements of the CAA, the schedule to implement an I/M program in Fresno and the request by Fresno County that the State of California implement an I/M program in Fresno County.

3. Approve the 1979 nonattainment area plans for the Fresno County portion of the San Joaquin Valley Air Basin for O_3 and CO. This action removes the prohibition on the construction of major new or modified stationary sources of HC and CO in Fresno County.

4. Remove the condition of approval on the following plans requiring the State to implement an I/M program according to the revised schedule submitted on July 26, 1983: the Sacramento Metropolitan Area portion of the Sacramento Valley Air Basin, the San Diego Air Basin, the San Francisco Bay Area Air Basin and the South Coast Air Basin for O_3 and CO, and the Ventura County portion of the South Central Coast Air Basin for O_3.

Regulatory Process

EPA has determined that good cause exists (see Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B)) to take final action without providing prior notice and opportunity to comment. Such prior notice and opportunity to comment is unnecessary because an I/M program is already in operation in the required six areas in California.

Also, since the O_3 and CO SIPs for the six I/M areas in California are now

approvable and continued application of the construction ban in those areas is now unnecessary, EPA finds that good cause exists for making this action effective immediately (see Administrative Procedure Act, 5 U.S.C. 553(d)(3)). Therefore, this action is effective on the date of publication of this notice.

Under section 307(b)(1) of the act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 1985. This action may not be challenged later in proceedings to enforce its requirements. (see 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. [See 46 FR 8709].

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Dated: August 23, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 paragraph (c) is amended by adding paragraph (161) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(161) Revisions to the ozone and carbon monoxide nonattainment area plans for the Fresno County portion of the San Joaquin Valley Air Basin were submitted by the Governor on June 11, 1984.

(i) Incorporation by reference.

(A) State of California Air Resources Board Executive Order G–125–46 adopted May 11, 1984.

(B) Letters from the County of Fresno to the Bureau of Automotive Repair dated March 14, 1984 and February 14, 1984 requesting implementation of an I/M program in Fresno County.

(C) County of Fresno Resolution File Number 18-13 adopted February 14, 1984.

(D) Schedule to implement I/M in Fresno County, adopted on February 14, 1984.

* * * * *

(ii) Additional Information. The State submitted no additional information.

3. Section 52.223 paragraph (b) is amended by revising paragraph (5)(viii) to read as follows:

§ 52.223 Approval status.

* * * * *

(b) * * *

(5) * * *

(viii) Fresno County for O_3, CO, and TSP.

* * * * *

4. Section 52.232 paragraph (a) is amended by removing and reserving paragraph (14) as follows:

§ 52.232 Part D conditional approvals.

(a) * * *

(14) [Reserved].

* * * * *

5. Section 52.237 paragraph (a) is amended by removing and reserving paragraph (3) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(3) [Reserved].

* * * * *

[FR Doc. 85–21030 Filed 9–3–85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW–6–FRL–2891–3]

Texas; Notice of State Legislative Changes to the State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final Authorization for the State's Hazardous Waste Management Program.

SUMMARY: Texas received Final Authorization under the Resource Conservation and Recovery Act (RCRA) on December 12, 1984. The Sixty-Ninth Legislature for the State of Texas recently enacted legislation reorganizing the Texas Department of Water Resources, responsible for the Industrial Waste Management Program, renaming it the Texas Water Commission and, in addition, transferring to the Texas Water Commission from the Texas Department of Health the administration of the Municipal Hazardous Waste Program. The Environmental Protection Agency (EPA) is providing notice of these impending changes which will become effective under State law on September 1, 1985, and the EPA's and the State's plan regarding compliance with 40 CFR Part 271.21 (b) and (c).

EFFECTIVE DATE: September 4, 1985.

ADDRESSES: Copies of the State legislation and a draft of the State's program revision are available for public inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the following locations:

U.S. Environmental Protection Agency, Library, 28th Floor, Interfirst Two Building, 1201 Elm Street, Dallas, Texas 75270, Telephone (214) 767–7341

Texas Water Commission, Library, Fifth Floor, Stephen F. Austin State Office Building, 1700 North Congress, Austin, Texas 78711, Telephone (512) 463–7834

U.S. EPA Headquarters, Library (PM211A), 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 382–5926.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section 6AW–HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2645.

SUPPLEMENTARY INFORMATION: On December 26, 1984, the State of Texas received authorization pursuant to section 3006 of RCRA to operate the State's hazardous waste program in lieu of the federal program in Texas (49 FR 48300). On March 26, 1985, EPA published a notice of clarification (50 FR 11658) stating that the state was not authorized to implement the requirements and prohibitions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98–616, November 8, 1984).

The application submitted by the State for Final Authorization described a program which is to be jointly operated by two state agencies: The Texas Department of Water Resources (TDWR), having jurisdiction over Industrial Waste Management, and the Texas Department of Health (TDH), having jurisdiction over Municipal Hazardous Waste Management.

The Sixty-Ninth Texas legislature enacted legislation (Senate Bill 249) transferring jurisdiction for all municipal hazardous waste management from the Texas Department of Health to the Texas Water Commission. This transfer is effective September 1, 1985. In addition, Senate Bill 249 provides organizational changes to the TDWR

and remains the agency the Texas Water Commission (TWC).

All duties, authorities and responsibilities held by the TDWR continue to be held by the TWC. Section 10.004(f) of Senate Bill 249 provides that the reorganization of the TDWR into the TWC does not affect or impair any act done, bonds authorized or issued, or penalty that has accrued or that exists under the authority of the TDWR as it existed before the effective date of Senate Bill 249, and those bonds, obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, cancelled, revoked, repealed, or abolished under the Water Code or other state laws.

It is anticipated that the TWC will be making name change revisions in its Industrial Waste Program shortly and submitting these revisions to EPA. At a later date, there will also be some substantive revisions necessitated by Senate Bill 249, House Bill 1867, and House Bill 2358. The revisions of the industrial waste program made as a result of the reorganization and renaming of the TDWR do not fall within the ambit of 40 CFR 271.21(c). This section states that whenever there is a transfer of all or part of a program from an approved state agency to another state agency, the new agency is not authorized to administer the program until approved by EPA under 40 CFR § 271.21(b). EPA does not view the reorganization of the TDWR into the TWC with the attendant savings clause of section 10.004(f) of Senate Bill 249 as a transfer within the purview of 40 CFR 271.21(c). Thus, the authorized industrial hazardous waste program will continue in the State of Texas without interruption.

There is no provision, however, in Senate Bill 249 continuing in effect the Municipal Hazardous Waste program after September 1, 1985. the statute is quite clear that, after September 1, 1985, authority for the regulation of Municipal Hazardous Waste lies with the TWC and all TDH Municipal Hazardous Waste authority ceases. Therefore, EPA does consider the transfer of the Municipal Hazardous Waste program from the TDH to the TWC to fall within the meaning of 40 CFR 271.21(c).

Since the TDH authority ceases and the TWC authority for municipal hazardous waste is not authorized until approved by EPA, there will be a lapse in authority to operate a RCRA program for municipal hazardous waste in Texas until the TWC is authorized by EPA for this program. In order to minimize any significant impact this lapse of authority would have on the program, EPA and the State have committed to an aggressive plan of action to keep the lapse time as short as possible.

The Governor of Texas, in a letter received by EPA on August 22, 1985, has affirmed the State's intention to move quickly in amending the authorized State Program to reflect the transfer of responsibilities. The State has made these further commitments: The TWC will adopt, on an emergency basis, Municipal Hazardous Waste Regulations on September 3, 1985 (the first work day after the transfer goes into effect.) The TWC will submit an official request for a revision to the State's authorized program which reflects the transfer of authority from the TDH to the TWC. Such revision will include amendments to the Memorandum of Agreement, the Attorney General's Statement, the Program Description and the municipal hazardous waste management regulations and will be submitted within the first two weeks of September, 1985.

On August 19, 1985, the TDWR, as predecessor agency to the TWC, submitted, a draft of proposed changes to the State's program reflecting the revision of the program to include municipal hazardous waste. EPA has reviewed this draft revision and is satisfied that, if adopted substantially as submitted, the revision would be approvable.

Upon receipt of the official submittal, EPA will then expedite the review and approval process. If the submittal is approvable, EPA intends to publish an Interim Final Rule as close to September 30, 1985, as possible, effective upon publication, approving the State's authorization. Such Interim Rule would be published as soon as practicable to attempt to restrict the lapse time. It would provide for a subsequent comment period and opportunity for hearing.

If the revision submitted by the State is not substantially the same as the draft and is not approvable under 40 CFR 271.21, EPA will institute proceedings under 40 CFR 271.23 to withdraw authorization of the State's program.

We wish to clarify how we anticipate that issues related to the Municipal Hazardous Waste Program will be handled during the interim between September 1, 1985, and the authorization of the TWC for the Municipal Hazardous Waste Program. EPA, pursuant to authority under section 7003 of RCRA, may pursue any action concerning municipal hazardous waste which is causing an imminent and substantial endangerment to the public health or the environment. The TWC, of course, will be able to take municipal enforcement actions under State law (to be effective September 3, 1985). In addition, the TWC has agreed to not issue permits to Municipal Hazardous Waste Management Facilities during this interim period. In this way, questions regarding the validity of such permits will be avoided. The interim period is expected to be of such short duration that the suspension of the issuance of permits to these facilities should not be burdensome to the regulated community. Other work on the processing of these permits, up to but not including the issuance of draft permits, will continue.

EPA and the State of Texas are committed to maintaining the smooth operation of the State's Hazardous Waste Management Program through this revision process. EPA feels that restricting the gap in the authorized program to the shortest period of time is in the best interest of EPA, the State, the regulated community and the general public.

List of Subjects in 40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority to sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 2912(a), 6926, 6974(b) and EPA delegations 8–7.

Dated: August 23, 1985.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 85–21029 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–534; RM–4635]

FM Broadcast Station in Aiea, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots Class C Channel 300 to Aiea, Hawaii, in response to a petition filed by Starlight Broadcasting Corporation.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Aiea, Hawaii), MM Docket 84–534, RM–4635.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rulemaking*, 49 FR 24411, published June 13, 1984, in response to a petition filed by Starlight Broadcasting Corporation ("petitioner"), proposing the allotment of Channel 300 to Aiea, Hawaii, as its first FM service. Supporting comments were filed by the petitioner, restating its interest in the channel.

2. We believe that the public interest would be served by the provision of a first FM allotment to Aiea. Channel 300 can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. Accordingly, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Aiea, HI	300

4. The window period for filing applications will open September, 27, 1985, and close on October 28, 1985.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles G. Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–21035 Filed 9–3–85; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 84–721; RM–4731]

FM Broadcast Station in Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 240A to Barstow, California, as that community's second local FM service, in response to an expression of interest filed on behalf of Mrs. Margaret Tucker.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Allotments FM Broadcast Stations (Barstow, California), MM Docket No. 84–721, RM–4731.

Adopted: August 13, 1985.
Released: August 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 30759, published August 1, 1984, issued in response to a petition filed by D.L. Developments ("petitioner"), requesting the allotment of Channel 240A to Barstow, California, as that community's second local FM service.

2. Our records reveal that the petitioner failed to file comments in support of the proposal. However, supporting comments were filed on behalf of Mrs. Margaret Tucker, stating her intention to apply for the channel. On the basis of that expression of interest, we shall allot Channel 240A to Barstow.

3. As indicated in the *Notice*, Channel 240A can be allotted to Barstow in conformity with the applicable minimum distance separation requirements of § 73.207 of the Commission's Rules. Additionally, since the proposed allotment is within 320 kilometers (199 miles) of the common U.S.-Mexican border, the concurrence of the Mexican Government was obtained.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in aections 4(i), 5(c)(l), 303 (g), and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 30, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Barstow, CA	232A and 240A

5. It is further ordered, that this proceeding is terminated.

6. The window for filing applications on Channel 240A at Barstow will open on October 1, 1985 and close on October 30, 1985.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–21033 Filed 9–3–85; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[CC Docket No. 81–343]

CC Facilities To Meet Pacific Telecommunications Needs During the Period 1981–1995

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Adopts long-term facilities planning for the Pacific Ocean Region for the 1987–1995 time period. The Commission finds that a fiber-optic transpacific cable as early as 1988 is in the public interest. Further, the Commission adopts a loading

methodology for the 1987–1991 time period allowing AT&T 8% flexibility in 1988 and 4% per year for the years 1989–1991.

EFFECTIVE DATE: September 4, 1985.

ADDRESS: Federal Communication, Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, International Policy Division, Common Carrier Bureau, Federal, Communications Commission, Washington, DC 20554, (202) 632–4047.

Second Report and Order

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet pacific Telecommunications needs during the period 1981–1995: CC Docket No. 81–343.

Adopted: August 7, 1985.

Released: August 22, 1985.

By the Commission.

Table of Contents

		Paragraphs
I.	Introduction	1–11
	A. Current Facilities	4–6
	B. The NOI and Proposed Facility Plans	7–11
II.	Discussion	12–86
	A. Demand, Capacity and Demand Flexibility	12–16
	B. New Technology	17–19
	C. Intermodal and Intramodal Competition	20–23
	D. Service Quality	24–60
	1. Path Diversity	25–27
	2. Restoration	28–32
	3. Media Diversity	33–35
	4. Loading	36–60
	E. Cost Analysis	61–66
	F. Technological Risk	67–69
	G. Correspondent Acceptance	70–71
	H. National Security	72–76
	I. U.S. Industrial Interests	77–79
	J. Other Issues	80–86
III.	Summary and Final Conclusion	87
IV.	Ordering Clauses	88–92

I. Introduction

1. This Report and Order concludes the second phase (Phase II) of the major facilities planning process in the Pacific Ocean Region (POR). This second phase was initiated on November 21, 1983 with a Notice of Inquiry (NOI).[1] This was followed by a Further Notice of Proposed Rulemaking (Further Notice) released on March 28, 1985.[2] The second phase of this proceeding focuses on facilities needs in the POR during the 1987–1995 time period and particularly the need for and timing of a fiber optic transpacific cable.[3]

2. In response to the Further Notice, the American Telephone & Telegraph Company (AT&T), Hawaiian Telephone Company (HTC), GTE Sprint, Satellite Business Systems (SBS), ITT World Communications (ITTWC), RCA Global Communications (RCA), MCI International (MCII), and FTCC filed on April 12, 1985 updated country-by-country forecasts for the POR for the period 1987–1995. April 22, 1985 AT&T and Comsat filed circuit distribution (loading) plans for a number of facility proposals with varying designs ready-for-service dates. Comsat's submission was based upon a balanced loading methodology, while AT&T used a methodology it calls Modified Economic Loading. Comments were filed on May 6, 1985 by AT&T, Comsat, MCII, GTE Sprint, State of Hawaii (Hawaii), HTC, ITIWC, Department of Defense (DoD), Simplex Wire and Cable Company (Simplex), RCA, the National Telecommunications and Information Administration (NTIA), and SBS. Reply comments were filed by AT&T, Comsat MCII, ITIWC, NTIA, DoD, Simplex, Hawaii, and GTE Sprint on May 17, 1985.[4]

3. In considering facilities planning questions we analyze a number of factors in order to determine the need for, design and timing of any proposed facility or group of facilities. These factors include demand, the introduction of a new technology, the development of intermodal and intramodal competition, service quality, cost, technological risk, correspondent acceptance, U.S. industrial interests and national security. We believe that a balancing of the factors identified above support the introduction of a fiber optic cable in the Pacific Ocean Region as early as 1988. Thus, we affirm our tentative conclusion that the public interest is best served by the introduction of a fiber optic cable, and particularly the cable described in Plan II–A (Mod. 4), as early as 1988. Below we: (a) Identify the current facilities in the region; (b) summarize the NOI and the facility plans submitted in response to the NOI; and (c) analyze the relevant issues. For each issue we will review our tentative conclusion set forth in the Further Notice, summarize the comments received on the issue and then reach conclusions. After discussing all the issues we will then indicate our final conclusions as to the need for and timing of a fiber optic transpacific cable.

A. Current Facilities

4. Commercial communications between the United States and other countries in the POR are carried via INTELSAT satellites and carried-owned submarine cables. Currently, approximately 70% of POR traffic to or from the United States is routed over INTELSAT satellites and 30% is routed over submarine cables. Satellite capacity is made available by INTELSAT to the U.S. signatory to INTELSAT, Comsat, and is leased by Comsat to the various U.S. carriers. Alternatively, submarine cables are owned by the U.S. carriers themselves in partnership with their foreign correspondents.[5] Japan, Australia, the Philippines, Korea, Taiwan, and Hong Kong account for approximately 80% of all U.S.–POR traffic, while Japan, Australia and the Philippines account for over 50% of the traffic. There are ten jurisdictions in the region that are currently served only by satellite for U.S. traffic.[6]

---

[1] Pacific Planning (Notice of Inquiry, Phase II), FCC No. 83–515 (released November 21, 1983).

[2] Pacific Planning (Further Notice of Proposed Rulemaking, Phase II), FCC No. 85–121 (released March 28, 1985).

[3] Phase I of this docket focused on facility needs for the POR for the 1982–1986 time period. *See*, Pacific Planning (Report and Order, Phase I) 47 FR 57040 (December 22, 1982). The first phase of this proceeding focused on issues involving the Australian-New Zealand-Canada submarine cable (ANZCAN). We approved U.S. carrier participation in ANZCAN with a mix of permanent (ownership) and temporary indefeasible right of user (IRU) interests. At that time we envisioned that the short term IRUs held by U.S. carriers in the Canada to Hawaii segment of the cable would terminate in the late 1980's, at which time the traffic would be routed over a fiber optic Haw-4. Additionally, we concluded that an analog Haw-4/TPC–3 in the late 1980's was not in the public interest.

[4] On April 29, 1985 Comsat filed a Request for Inspection of Records under the Freedom of Information Act (FOIA), requesting country-by-country traffic forecasts and loading data submitted by AT&T for which AT&T had requested confidential treatment. Accompanying Comsat's FOIA request was a Motion for Extension of Time to file comments in this docket. On May 5, 1985 we denied the request for an extension of time, stating that if Comsat's FOIA request was ultimately granted we would establish a revised pleading cycle. On May 16, 1985 we granted Comsat's FOIA request. In a separate order we stated that additional comments would be due no later than seven days after the documents Comsat requested were made available for inspection, and that additional reply comments would be due fourteen days after the documents were made available. By letter dated May 22, 1985, AT&T indicated its willingness to make the requested information available. The information was thereafter made public on May 23, 1985. On May 30, 1985 Comsat filed further comments and on June 6, 1985 AT&T filed further replies.

[5] International communications in countries other than the United States are generally controlled by a government agency. These agencies are known as Post, Telephone and Telegraph administrations (PTTs) and usually have a monopoly over the provision of telecommunication services in the given country.

[6] The jurisdictions in the region served solely by satellite are: Brunei, Peoples Republic of China,

Continued

5. Satellite capacity in the POR currently consists of an INTELSAT IV–A Primary satellite and an INTELSAT IV–A Operational Spare.[7] In early 1986 both the INTELSAT IV–A Primary and Operational Spare will reach the end of their useful lives and will be replaced with INTELSAT V satellites. In 1987 the INTELSAT V Primary is scheduled to be replaced by an INTELSAT V–A satellite and the INTELSAT V Operational Spare will become solely a spare satellite. Additionally in 1987 an INTELSAT V–A may be placed in the region as the Major Path satellite.[8] In 1991 the Primary and Spare are scheduled to be replaced by INTELSAT VI (or INTELSAT VI follow-on) satellites. The Major Path satellite is scheduled to be replaced by an INTELSAT VI (or INTELSAT VI follow-on) satellite in 1993.

6. There are currently two transpacific cable systems (TPC–1 and TPC–2) serving the region from Hawaii. Hawaii and the U.S. Mainland are connected by three major cables (Haw 1, 2, and 3). With the exception of service to Australia, Fiji and New Zealand, via the ANZCAN cable, all other cables providing voice service to the region from the U.S. are saturated. Also, only limited growth remains to carry non-voice traffic over IRC owned cable circuits. Further, many of the major cable systems in the POR will reach the end of their design life during the planning period. Most notably, TPC–1 is scheduled to reach the end of its design life in 1989.[9]

B. The NOI and Proposed Facility Plans

7. The task in the phase II NOI was to obtain the necessary planning information and to compile as complete a record as possible with respect to facilities requirements and alternatives for the region during the planning period. We stated in the NOI that we would consider all available transmission media and viable technological designs as well as methods for circuit multiplication. Additionally, the issues of facilities use and restoration of service were also identified for consideration. Finally, the need for as well as the timing and configuration of the proposed fiber optic TRANSPAC–3 (TPC–3) cable were particularly raised as issues.[10]

8. After the release of the NOI, alternative facilities plans and traffic forecasts were submitted and evaluated by the United States International Service Carriers (USISCs),[11] Comsat and other interested parties.[12] In its filings, AT&T indicated that the USISCs and their foreign correspondents favored a fiber optic TPC–3 in 1988. Additionally, AT&T stated that international comity is an essential element of facility planning and must be considered in any facility decisions. GTE Sprint also favored the introduction of TPC–3 in 1988, but cautioned that the circuit forecasts supplied by the carriers should be viewed only as a rough guage of needed facilities and that there should be flexibility for new carriers to acquire additional circuits in the future. Comsat stated that the Commission must examine closely the need for and timing of any additional facilities during the planning period. Comsat also favored the development of a Master Plan for facilities utilization. The State of Hawaii asked us to examine closely the need for and revenue requirements associated with any new facility. Further, Hawaii urged us not to authorize any new facilities on the basis of international comity unless those facilities are actually required to meet demand forecasts. Finally, DoD stressed that national defense and security interests require a Guam landing for the TPC–3 cable.

9. In response to the NOI, four different plans were submitted for the introduction of a fiber optic cable into the region, two by the USISCs and two by Comsat. The plan preferred by the USISCs is Plan II–A (Mod. 4). Under this plan a cable would link the U.S. Mainland and Hawaii to Japan and Guam via an underwater branching unit near Guam. Additional cable systems would then be deployed from Japan to Korea to Hong Kong, to the Philippines and back to Guam, creating a ring configuration. Additionally, a branch would be deployed under this plan from the Philippines to Taiwan (see Appendix 1 for diagram). Plan II–A (Mod. 4) calls for the U.S. to Japan, U.S. to Guam and Guam to the Philippines cables to be ready for service in 1988, with the rest of TPC–3 to be operational in 1990 or later. The total first cost of Plan II–A (Mod. 4) is approximately $733 million.[13] AT&T's share is almost 44%, or approximately $320 million. The cost in 1988 dollars is approximately $980 million assuming a 6% inflation rate. AT&T's share in 1988 dollars is approximately $425 million.

10. The USISCs' secondary proposal, Plan III Modified, would link the U.S. Mainland with Hawaii and Japan. Additional cable systems would then be deployed from Japan to Korea, to the Philippines and to Hong Kong with a connecting cable from Taiwan to the Philippines. There is no provision for a Guam landing in this plan, and the total cable is of a non-ring design (see Appendix 2 for diagram). The total first cost of this plan is $588 million with a ready-for-service date of 1988 for all but the Philippines-Taiwan cable, which would be operational in 1994. AT&T's share is approximately $225 million. In 1988 dollars the total cost and AT&T's share are $786 million and $300 million, respectively.

11. Comsat's two plans are identical to those of the USISCs with one major difference. Comsat Plan IA is based upon Plan II–A (Mod. 4) but with a ready-for-service date of 1991 rather than 1988. Plan 2A is the same as Plan III Modified but again with a ready for service date of 1991 rather than 1988.

II. Discussion

A. Demand, Capacity and Demand Flexibility

12. In the Further Notice we stated, "there is little question that satellites committed to the region for East-West traffic when equipped with circuit multiplication techniques can handle the projected traffic and any unanticipated increase in traffic volume without the introduction of a lightguide cable system until at least 1991." Assuming the deployment of a Major Path satellite in 1987 as currently scheduled and the use

---

French Polynesia, Marshall Islands, Micronesia, New Caledonia, Tonga, American Samoa, Saipan and Western Samoa.

[7] Both the primary and spare satellites are used to carry traffic in an Operational and Operational Spare configuration. However, the total traffic carried on the two satellites does not exceed the capacity of either satellite. The advantage of such a configuration is that path diversity is increased.

[8] Under a Major Path configuration, both the Primary and Major Path satellites are used to carry traffic; the Spare is solely a reserve satellite, although it may be used to provide pre-emptible services.

[9] COMPAC was taken out of service in 1984. Other cables reaching the end of their design life during the planning period are: HAW–1 (when Haw–4 is put into service), HAW–2 (1989), SEACOM–1 (1987), SEACOM–2 (1990).

[10] Throughout this order, the use of the term TPC–3 designates the entire group of cable facilities encompassed by Plan II–A (Mod. 4) or Plan III (Modified).

[11] The USISCs include AT&T, the International Record Carriers (IRCs) and other service providers including MCII and GTE Sprint.

[12] Comments to our NOI were filed on January 4, 1984 by the State of Hawaii, GTE Sprint and Comsat. Joint comments were filed by the following USISCs: American Telephone and Telegraph Co. (AT&T), Hawaiian Telephone Co. (HTC), FTC Communications (FTCC), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCA), TRT Telecommunications Corporation (TRT), The Western Union Telegraph Company (WU), and Western Union International, Inc. (WUI). Reply comments were filed on January 18, 1984 by AT&T, Comsat, State of Hawaii, GTE Sprint, RCA, ITTWC, and the Department of Defense (DoD).

[13] First cost is the capital investment associated with a new facility. The USISCs computed first cost in 1983 dollars.

of circuit multiplication techniques, the total satellite capacity in the region available for U.S.-POR traffic will be about 17,500 circuits, while total U.S.-POR demand, even in 1991, is forecasted to be less than 15,000 circuits. Of course, with existing cable capacity, the total capacity available for U.S.-POR traffic is even greater. Thus, we found that despite a lack of cable capacity in the region, there is no need for the TPC–3 cable on a purely demand basis until at least 1991 if INTELSAT's satellite deployment plans do not change.

13. While not directly disputing our finding of sufficient gross capacity in the region until at least 1991, most commenters argued that gross capacity alone is not determinative of the need for the cable in 1988. AT&T and others argued that cable and satellite circuits are not always fungible and that an unfilled demand exists for cable circuits regardless of adequate gross capacity. SBS stated that the digital capacity of TPC–3 is needed given the growth of Integrated Services Digital Networks (ISDNs). TPC–3, according to SBS, would prevent double satellite hops as more of the domestic portion of traffic is routed over satellite. ITTWC commented that 80% of its circuit needs for the POR are for private line services and that customers using private lines prefer cable facilities over satellite facilities. AT&T indicated that stated demand forecasts in the proceeding are conservative and that due to such factors as greater reliability and security, reduced absolute delay, and lower interference and error rates, a lightguide cable may be preferred by customers over existing analog cables and satellites, thus spurring growth in excess of that forecasted.

14. Both Comsat and the State of Hawaii, in their comments, stated that the Commission in the Future Notice failed to give adequate weight to the elements of demand and the efficient use of facilities in our decision-making process. Hawaii argued that facilities decisions have traditionally been based overwhelmingly on demand considerations. Comsat asserted that under balanced loading TPC–3 will be only 20% utilized in 1995. Both indicated that if a ratepayer supported TPC–3 was not required on a demand basis until 1991, it should not be built until that time.

15. In its reply comments AT&T argued that excess satellite capacity is not the fault of customers, the USISCs or foreign correspondents, and that the cable should not be delayed merely because INTELSAT has chosen to construct larger than necessary satellites. Further, it argued that Comsat's 20% load figure for TPC–3 in 1995 is incorrect because it fails to take into account the needs of USISCs other than AT&T as well as those of purely foreign users. Comsat, in its reply, questioned whether the stated demand forecasts are all that conservative given the fact that the submitted forecasts translate into a compound growth of 18.1% per year for eleven years.

16. The analysis found in the NPRM that existing and planned capacity would be sufficient to handle forecasted demand through 1991 assumed the introduction of INTELSAT–VA satellites into the POR in 1987 as the Primary and Major Path satellites, the retention of an INTELSAT–V satellite as the spare, and the use of CFDM and 64 Kbps TDMA/DSI. It is now less clear that these assumptions are valid. Specifically, the INTELSAT–VA satellites earmarked for POR use will be transferred to the POR from the Indian Ocean Region (IOR). This transfer is scheduled to occur when INTELSAT–VI satellites are launched into the Indian Ocean Region for Primary and Space satellite roles. It now appears that the INTELSAT–VI satellites may not be placed in the IOR until 1988 and perhaps as late as 1989. Thus, the redeployment of the INTELSAT–VA satellites into the POR could also take place as late as 1989. These delays are attributable to a variety of factors including manufacturing delays, satellite design modifications and availability of launch vehicles. Also, it is less clear that a Major Path satellite will be placed in the POR. Launch or satellite failures, demand and service requirements and other factors may cause INTELSAT to alter its plans to place (or when to place) a Major Path satellite in the region. Further, only two of the INTELSAT–VA satellites and none of the INTELSAT–VI satellites have been launched. Thus, there is a possibility that launch or operational failures could impact eventual deployment of INTELSAT–VA satellites into the POR. Finally, it is not clear that all Signatories will meet their earth station equipment implementation schedules to install advanced modulation equipment as scheduled. Depending on the satellite configuration employed by INTELSAT and the rate of advanced modulation equipment installation by the region's Signatories, available satellite capacity for 1988 could range from 4350 to 17,500 circuits. Satellite demand in 1988, without a TPC–3, is forecasted to be 6450 circuits. Thus, while the INTELSAT–VA satellites may be deployed in the POR in 1987 as the Primary and Major Path satellites, there is a real possibility that these satellites will not be deployed as previously assumed and that a demand requirement for TPC–3 as early as 1988 may materialize. We also note that satellite and cable circuits are not necessarily fungible for private line and data services, particularly those for which security is essential and for which the lowest possible interference and error rates are required. Because most of the cables in the region are saturated, TPC–3 may be necessary to fulfill the explicit demand for cable circuits for these types of services. While it is not impossible that on purely a demand basis a ready for service date of 1991 would still be appropriate, the number of planning variables and our preference to avoid service disruptions caused by saturated facilities lead us to conclude that a TPC–3 as early as 1988 to satisfy forecasted demand would be in the public interest.

B. New Technology

17. The introduction of a lightguide cable system in the POR would introduce digital, fiber optic submarine cable technology into the region for the first time. Such a cable would, at some future date, become part of a globally interconnected digital network. Thus, in the Future Notice we tentatively found that the introduction of a new technology into the region at the earliest practical date (as early as 1988) would be in the public interest.

18. Many of the commenters supporting a TPC–3 in 1988 cited the new technology it would introduce as support. AT&T and ITTWC cited a number of factors including reduced noise, error and absolute delay as support for their belief that a lightguide cable is better suited than satellite for certain services such as high speed data. The State of Hawaii argued that innovative and technologically sophisticated facilities are desirable only if they provide users with services they need at rates they can afford. Comsat commented that digital services already exist, via satellite, to all points in the region and that International Business Service (IBS), a satellite delivered data service, will be available in the region in 1987. Further, Comsat pointed out that due to a lack of digital connecting cables, digital cable services would be available to only Japan, Guam and the Philippines in 1988.

19. There is no doubt that world communications are rapidly becoming digitalized. The planned TPC–3 cable would clearly become an integral part of a worldwide digital communications

network. At the same time we believe that satellites can offer most, if not all, services to be offered on TPC–3. However, due to reduced noise, error and absolute delay relative to satellite, there may be some services such as high speed data which are slightly better suited to cable than to satellite. Additionally it appears that many private line customers prefer cable to satellite, and may prefer fiber optic to analog cables. We believe that customers should, to the maximum extent practicable, have a choice of transmission medium. It is true that the TPC–3 cable will initially serve only a limited number of points. However, as TPC–3 is completed and connecting cables are built, it will quickly grow to serve the bulk of the Pacific Ocean Region effectively and efficiently. We therefore conclude that a fiber optic cable as early as 1988 would promote technological development and customer choice.

C. Intermodal and Intramodal Competition

20. In the Further Notice we tentatively concluded that the introduction of TPC–3 will increase intermodal competition, thus promoting efficiency and creating a downward pressure on rates. Additionally, we tentatively concluded that intramodel competition will be increased because carriers preferring cable technology will have additional capacity to provide competing services.

21. Most of the commenters discussing intermodal competition supported our tentative finding that such competition would be increased with the introduction of TPC–3 in 1988. Of note was AT&T's comment that if TPC–3 is deferred until 1991, 90% of the POR traffic will be on satellite by the year 1990. However, both the State of Hawaii and Comsat argued that intermodal competition will not be improved with the introduction of TPC–3 in 1988. Hawaii, in its reply comments, stated that it fails to see "how this benefit [intermodal competition] can be effectively realized in light of the involvement of foreign correspondents, the existence of loading requirements and the fact that satellite facility plans are already fixed through 1991." Comsat argued that a TPC–3 in 1988 would threaten the continuation of cost-effective service on all except non-cable routes, thus creating a barrier to intermodal competition. Further, Comsat stated that because satellite planning is fixed through 1991, any traffic diverted from satellites during this period will have the effect of driving up rates.[14]

22. We continue to believe that intermodal competition will be increased with the introduction of TPC–3. Currently, over 70% of all traffic in the POR is routed over satellite, and all growth, with the exception of traffic to Australia and New Zealand, must be placed over satellite circuits. With the introduction of TPC–3, submarine cables will once again become a competitor for new traffic growth in the region. While there is no question that the existence of foreign correspondents and loading, diversity and restoration considerations may limit the degree of intermodal competition that can currently be introduced into the market,[15] the introduction of a third transpacific cable will achieve significant movement toward a more competitive facilities marketplace. We do not believe that the introduction of TPC–3 will threaten cost-effective satellite service. As Comsat itself has stated, the initial reach of the cable will be limited to only relatively few landing points.[16] Thus, until the full cable system is built, Comsat will continue to carry all growth traffic to most POR markets and a substantial percentage of growth traffic to all POR markets. Additionally, the Commission will continue its loading policies to insure a reasonable use of facilities.

23. There was almost no discussion of intramodal competition in the comments that were filed. We continue to believe, however, that intramodal competition will be increased with the introduction of TPC–3. This is because those carriers desiring cable circuits but presently unable to obtain them will have them available for use. Therefore, we conclude that a fiber optic cable in the POR would increase both intermodal and intramodal competition, and that the public interest would be furthered by the introduction of such competition at the earliest possible date.

D. Service Quality

24. We tentatively concluded in the Further Notice that a transpacific cable based upon Plan II–A (Mod. 4) would be most advantageous from a service quality and reliability standpoint. In discussing service quality there are a number of factors to be examined, including path diversity, restoration, media diversity and loading. We discuss each of these in detail below.

25. *Path Diversity.* Path diversity concerns the number of independent routes that carry traffic to a given correspondent. Path diversity is closely related to the ability to restore circuits in case of a facility failure. The more facilities serving a given location the better the ability to restore one that fails. In the Further Notice we tentatively found that a TPC–3 as early as 1988 with a ring configuration would enhance path diversity by adding another major route to the two satellite (primary and operational spare or primary and major path) and three cable paths (TPC–1, TPC–2 and ANZCAN) already serving the POR.

26. Comsat, in its comments, argued that path diversity is improved from 1986–1990 even if TPC–3 is delayed until 1991. Both Comsat and AT&T used as a measure of path diversity the percentage of traffic that is carried on the most used path to a given country. For the five largest correspondents, Comsat calculated that traffic on a given path never exceeds 50%, and the percentage of traffic carried on the largest path decreases for Australia, Japan, Korea, the Philippines and Taiwan from 1986 to 1990 even without the introduction of TPC–3. AT&T in its reply comments argued that path diversity with TPC–3 in 1988 is better than with TPC–3 in 1991 until 1994 at which time they reach the same level of diversity. Further, AT&T commented that path diversity is at least 12% better to Japan, Korea, the Philippines and Taiwan if TPC–3 is constructed in 1988 and not delayed until 1991. ITTWC agreed with out tentative finding that TPC–3 in 1988 would increase path diversity, and stated that a ring configuration would be preferable from a path diversity standpoint.

27. An increase in path diversity is frequently the natural consequence of the introduction of another facility into the region. While it may be true that path diversity will increase without a fiber optic TPC–3 until 1991, we find based on the filings of AT&T and Comsat that path diversity will increase even more with a TPC–3 in 1988.[17] We

[14] Comsat indicates that its space segment revenue requirement, in the short run, is not affected by changes in satellite demand. Thus, Comsat argues, if the demand for satellite circuits declines, the revenue requirement will simply be spread across fewer circuits resulting in a higher per circuit charge.

[15] While perhaps limiting the degree of intermodal competition, loading guidelines also assure the reasonable use of satellite facilities by recognizing Comsat's (and INTELSAT's) dependence on AT&T traffic and AT&T's bias toward cable, unrelated to relative efficiencies.

[16] We must note, however, that the cable is scheduled to serve Japan and the Philippines, two of the largest POR markets, in 1988.

[17] However, the routing of too much traffic on any one path (cable or satellite) does not promote diversity, although such routing may be beneficial for other reasons.

therefore conclude that TPC–3 as early as 1988 will result in a beneficial increase in path diversity.

28. *Restoration.* Restoration pertains to the ability to maintain service if a facility outage should occur. The issue presents itself in two ways. The first is the degree to which a TPC–3 would enhance the restoration of other facilities in the POR. In the Further Notice we tentatively found that, because a lightguide cable would be able to restore TPC–1, TPC–2 and also satellite services (on a geographically limited basis), a TPC–3 would enhance the restoration of existing facilities.

29. The second restoration issue pertains to how TPC–3 itself would be restored in case of failure. Plan III Modified would be restored completely by satellite as would Plan II–A (Mod. 4) east of the branching unit. However, the ring configuration of Plan II–A (Mod. 4) would allow it to be self-restoring west of the branching unit.[18] In the Further Notice we found this self-restoring capability to be a significant advantage.

30. Many of the parties supporting the introduction of TPC–3 in 1988 cited the self-restoring capabilities of Plan II–A (Mod. 4) as one of its major benefits. Comsat, however, questioned how restoration capability is improved given the fact that there is currently 100% restoration capability in the region via satellite. Further, Comsat pointed out that restoration of TPC–1 and TPC–2 by TPC–3 would require analog to digital conversion equipment, the cost of which is unknown.

31. We continue to believe that restoration capability will be improved in the region with the introduction of a transpacific lightguide cable based upon Plan II–A (Mod. 4) in 1988. Such a cable offers a number of restoration advantages. Foremost, the ring design would allow the cable to be self-restoring, in part or in whole, west of the branching unit. We consider this to be a major advantage because it will allow greater flexibility than satellite restoration alone can offer. Further, if as several commenters stated, there are a number of services that can be offered over a fiber optic cable that cannot be offered over satellite circuits, then the self-restoring capability becomes a critical feature because it will represent the only means of restoring those cable-only services. We also consider TPC–3's ability to restore digital satellite services, albeit on a geographically limited basis, to add more flexibility to restoration planning. Finally, although conversion equipment would be necessary, the use of a fiber optic TPC–3 to restore the analog TPC–1 and TPC–2 cables is a useful restoration option.

32. We asked, in the Further Notice, not only for the USISCs to present specific plans as to how TPC–3 would be restored but specifically whether a TPC–4 will be needed at some future date substantially for restoration purposes. No party anticipated a TPC–4 primarily for restoration purposes. Thus, given the high reliability claims for TPC–3 espoused by various parties, as well as the ability of satellites to restore all, or nearly all, TPC–3 traffic, we do not now anticipate a need for a ratepayer supported TPC–4 which is not substantially justified on demand forecasts.

33. *Media Diversity.* In the Further Notice we tentatively found that media diversity would generally be enhanced by the introduction of a fiber optic transpacific cable. While we took no position on what a preferable cable/satellite ratio would be, we noted that approximately 70% of all traffic and almost all growth traffic is currently routed over satellite. We found that a fiber optic TPC–3 would especially enhance media diversity because high speed data and other wideband services that are currently available only over satellite circuits could be carried over it.

34. There was a general lack of discussion in the filings regarding media diversity. ITTWC and GTE Sprint supported the Commission's tentative findings with respect to media diversity. Comsat, on the other hand, questioned whether a slight increase in media diversity warrants the building of a very expensive cable facility.

35. We confirm our finding that media diversity is increased with the introduction of TPC–3. Comsat's own figures show that in 1990 for the four largest correspondents to be served by TPC–3, media diversity is at least 24% better with the cable in service in 1988 rather than 1991.[19] We find this to be a significant improvement. Thus, improved media diversity would be achieved by a TPC–3 as early as 1988.

36. *Loading.* Circuit distribution (loading) is the method by which the Commission directs the placement of U.S. traffic on the different media to assure the reasonable use of both satellite and cable facilities and the development of intermodal competition.[20] A loading methodology promotes the efficient use of satellite and cable facilities in the region. While we expect that as competition develops in the POR, AT&T's incentives will increasingly be driven by economic efficiency, a loading plan now offsets AT&T's present incentives to use cable rather than satellite circuits. The imposition of a loading methodology also recognizes the great reliance that Comsat (until recently limited to being a carrier's carrier) and INTELSAT place an AT&T for traffic and revenues. Thus, a loading methodology assures that Comsat receives an adequate amount of traffic from AT&T, which is not only the largest U.S. carrier in the region but also the largest owner of cable facilities.

37. To date a balanced loading methodology has been used for the placement of AT&T's IMTS circuits in the POR. Balanced loading is a feature of the master plan formulated by AT&T and Comsat under general guidelines established by the Commission in this proceedings.[21] Under such a plan, traffic growth is divided among available cable and satellite paths on a country-by-country basis.[22] Since the existing East-West cables other than ANZCAN are basically saturated, almost all traffic growth in the region has been placed on satellite. However, once TPC/3 is ready for service, both cable and satellite capacity will be available to carry growth traffic. It is at this time that a loading methodology becomes operationally and financially important.

38. In the Further Notice we expressed our desire to move away from a prescribed loading methodology. We stated, however, that we cannot rely on market forces alone to drive circuit activation decisions until such time as effective carrier and facility competition exists. As this point has not yet been reached, we stated that it would be best to develop a loading policy concurrently with our long-range facilities planning for the region. This will allow those building and investing in POR facilities

[18] The actual restoration capability west of the branching unit would be determined by the amount of idle capacity existing at the time of the failure within the ring.

[19] Comsat uses the percentage of traffic on satellite to a given country as an index of media diversity. Thus, the percentage of traffic over satellite to Japan in 1990, for example, is 58% with TPC–3 in 1988 and 82% if TPC–3 is delayed until 1991.

[20] For a detailed description of loading issues *see*, Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1985–1995 Period (Second Report and Order), FCC No. 85– , released August . . [North Atlantic Loading Report and Order]

[21] Pacific Planning *supra* note 3, 47 FR at 57045–46.

[22] Presently, AT&T and HTC are the only carriers subject to the loading standards of the master plan. All other carriers have complete loading flexibility since they use relatively few circuits, their circuit choices are subject to customer choice or their service offerings are subject to significant competitive pressures. (HTC's private line circuits are also exempted from specific loading methodology.)

to make reasoned and knowledgeable choices. We set forth, in the Further Notice, a number of possible loading options. These included a continuation of balanced loading under a master plan, a phase-in plan moving away from balanced loading under a master plan, as well as the NTIA plan.[23] We indicated an inclination to continue the existing exemption from any methodology for providers of record services, and to extend this exemption to new entrants and IMTS providers other than AT&T. Thus, any methodology would apply only to AT&T.

39. A large number of the comments we received dealt with the issue of loading at some length. The comments generally revolved around which carriers and services should be subject to loading, what loading methodology the Commission should adopt, and how long the Commission should continue to be involved in loading decisions. Additionally, Comsat questioned whether the Commission has sufficient information to reach any conclusions as to loading in the region.

40. All those commenting on the issue were in agreement that any loading methodology that we adopt should apply only to AT&T. There was some disagreement, however, as to which of AT&T's service offerings should be subject to loading. ITTWC argued that, based upon AT&T's greater resources and possible anti-competitive pricing, all of AT&T's services should be subject to loading. AT&T replied that because non-IMTS services are competitive, loading should apply only to IMTS. GTE Sprint suggested, and MCII agreed, that AT&T's 800 Service-Overseas should be subject to loading guidelines since AT&T is the only provider of this service and the service uses the IMTS network.

41. Five basic loading methodologies for AT&T's IMTS circuits were put forward in the comments: modified economic loading by AT&T, the NTIA plan, a multi-tier plan by GTE Sprint, a nine year transitional phase-in plan by ITTWC and a continuation of balanced loading by Comsat.

42. AT&T put forth a loading plan it calls "modified economic loading." This methodology, according to AT&T, compares "the economic per-circuit costs to the carriers, *i.e.*, the projected tariff charge for a satellite circuit, and the comparable annual carrying costs for a cable circuit." AT&T also stated that there will be no off-loading of satellite circuits, and that a reasonable level of media diversity will be maintained. Further, under the AT&T plan, any shortfall or excess in traffic will be apportioned between cable and satellite based upon their relative distribution percentages in the loading plan for the year. Finally, AT&T stated that any loading guidelines should end at year-end 1990.

43. With respect to AT&T's loading plan, Comsat stated that it had serious reservations about modified economic loading. It argued that this would amount to a three year freeze on satellite usage growth, and that a 5–6% per year decline in relative satellite usage under modified economic loading would be unreasonable. Finally, Comsat stated that loading guidelines should not automatically end at year-end 1990. Rather, Comsat argued that loading should extend through 1995 because the full fiber optic network will not be established until the mid-1990's and because the large cable circuit capacities that will be available in the region make loading even more important.

44. ITTWC proposed a nine year transition methodology. Its plan calls for five years of balanced loading after which overall loading flexibility would gradually be increased by up to 2% per year. According to ITTWC, this would allow AT&T to route approximately 60% of all growth traffic over cable circuits during the planning period and would result in a 49/51 cable/satellite ratio in 1995. ITTWC argued that a transition period avoids drastic usage alterations, prevents off loading and protects existing investments. ITTWC also stated that it believed that loading should not automatically end at year-end 1990, but rather when the Commission finds that sufficient competition has developed in the international marketplace.

45. AT&T stated that ITTWC's nine year transitional period was too long and "represents an artificial restraint that benefits competitors at the expense of AT&T." NTIA argued that 2% per year loading flexibility would not make the market more competitive but would merely exchange one ratio (70/30) for another (51/49).

46. GTE Sprint supported a two-tier loading plan. This approach was first suggested by the Commission in the Notice of Proposed Rulemaking on North Atlantic loading.[24] Under this methodology more loading flexibility would be granted for AT&T's traffic to those countries that have entered into multiple operating agreements for IMTS service. In this way, GTE Sprint argued, PTTs will be encouraged to grant operating agreements to IMTS providers other than AT&T. Specifically, GTE Sprint proposes that AT&T be granted as an upper tier, 2% per year loading flexibility for those countries in which IMTS competition exists.[25] GTE Sprint proposed that balanced loading would apply to those countries without IMTS competition as a lower tier.

47. AT&T argued that a two-tier plan such as the one supported by GTE Sprint is likely to be counterproductive by hardening opposition to competition among foreign countries, is of limited flexibility, and is likely to be unfair to those countries with small traffic volumes which have less incentive to deal with more than one U.S. carrier. MCII called GTE Sprint's plan "unabashedly self-serving." Further, MCII pointed out that in addition to MCII, AT&T and Comsat opposed a similar proposal in the North Atlantic.[26] MCII argued that multiple suppliers do not necessarily equal effective competition, and that operating agreements are best left to negotiation between carriers and their foreign correspondents. Finally, Comsat and AT&T agreed that any loading methodology adopted should be applied to all countries.

48. The NTIA loading proposal attempts to simulate a market without facility biases. It requires the Commission to determine annually the relative revenue requirement for cable and satellite circuits in a particular region on a per circuit basis and then use these numbers to determine loading requirements in a cost effective manner. In theory, under the NTIA plan the more efficient medium will be given a larger share of the traffic in the region. NTIA stated that it would not be opposed to an interim loading plan of 2% per year while the Commission is developing a cost-based methodology to implement its proposal.

49. AT&T stated that the NTIA loading proposal is comparable to an economic loading approach. However, AT&T argued that the NTIA plan would

---

[23] *See* paragraph 48, *infra*, for a discussion of the NTIA plan.

[24] *See*, North Atlantic Planning (Further Notice of Proposed Rulemaking), FCC 85–178, released April 22, 1985.

[25] GTE Sprint proposes that the trigger mechanism for allowing AT&T greater loading flexibility should be that "the country in question must sign operating agreements with the major International MTS competitors." It proposed that presently, GTE Sprint and MCII should be considered major competitors and that the Commission could adopt standards to designate other carriers as major competitors.

[26] In the North Atlantic Loading proceeding AT&T characterized the two-tier methodology as "unworkable" and likely to lead to unfair consequences, especially for countries with small traffic streams. Comsat argued that the burden of new entrants would be placed on it. Further, Comsat stated that the two-tier methodology suffers from severe definitional problems.

result in a "regulatory quagmire" involving elaborate Commission involvement and limited loading flexibility. Comsat stated that it still has doubts about the NTIA proposal and that it should be subject to further review and refinement.

50. Comsat argued here, as in the North Atlantic, that balanced loading is the best methodology to use for loading circuits. Comsat stated that balanced loading yields service reliability benefits and apportions the risk of excess capacity evenly between cable and satellite. AT&T argued that balanced loading does not give it sufficient flexibility and also does not decrease at a fast enough rate the high cable-satellite circuit distribution gap that currently exists in the POR. It has also been argued that balanced loading does not encourage Comsat or INTELSAT to be cost efficient and that it does not encourage intermodal competition.

51. The issues surrounding loading are extensively discussed in the Report and Order, adopted today, which discusses loading policies for the North Atlantic region. In that proceeding we determined that loading guidelines will only be prescribed for circuits used by AT&T to provide U.S.-CEPT message telephone and allowed AT&T up to 2% per year flexibility in its placement of these circuits on either cable or satellite facilities for the period 1986–1988. This approach would permit AT&T to route approximately 63% of all growth traffic over cable. Any loading methodology adopted must take into account the specific facts and conditions that exist in the region. Thus, the exact methodology found to be appropriate in the North Atlantic region may not necessarily be appropriate in the POR. Among the important differences between the regions are traffic levels, Commission acceptance for the 1982–1986 period of a carrier-proposed master plan in lieu of government-mandated requirements, and as well as the difference in the level of carrier and facility competition that currently exists.

52. The loading policy we adopt today for the POR applies only to circuits used by AT&T to provide IMTS and 800 Service-Overseas.[27] We have concluded that it is not necessary to include in any loading prescription circuits used to provide record services, circuits used by new entrants to provide service, or circuits used by any carrier other than AT&T to provide IMTS, because of the relatively small number of circuits involved, the ability in many instances of the user to designate the medium, and the competitiveness of many of these services. *See*, North Atlantic Loading Report and Order at paragraphs 42–47. AT&T accounts for a large majority of the total circuits used in the region. For example, it is forecasted that in 1987 AT&T will use over 75% of the U.S.-POR circuits. Additionally, AT&T's IMTS accounts for almost all of its circuit use. Thus, until such time as a marketplace mechanism is sufficiently developed to distribute U.S.-POR IMTS circuits, it remains necessary for the Commission to require a loading methodology that insures efficient use of all facilities. Further, we believe it is appropriate to include AT&T's 800 Service-Overseas in any loading plan since the service is provided over the same switched network as IMTS.[28]

53. Until such time as there is adequate carrier and facility competition in the region it will be necessary for the Commission to require a loading methodology. Thus, we will not set an automatic ending date for loading as AT&T suggests. At the same time, however, we recognize that international telecommunications industry is now in the midst of a transition period toward a more competitive environment. For this reason the loading plan we adopt today runs for five years from January 1, 1987 through year-end 1991. The timeframe for the initial loading guidelines in both regions do not necessarily bear any relationship to the overall time period that loading guidelines will be in force. Prior to year-end 1991 we will revisit the loading issue to determine what loading approach, if any, is required for the duration of the planning period.[29]

54. *Balanced Loading.* We believe that balanced loading will not be the most desirable methodology for use in the POR. It is true that balanced loading is a predictable and automatic loading technique that requires little active Commission involvement. It does not, however, create the proper economic incentives for Comsat, INTELSAT or foreign administrations. We are not persuaded that guaranteeing Comsat a traffic share of 59% or more throughout the period (as would be done under balanced loading) provides strong enough incentive to Comsat and INTELSAT to plan, build and operate efficient and cost effective facilities. It may also not encourage Comsat to enter the IMTS market or to compete more vigorously for IMTS traffic. Further, a balanced loading plan provides no incentives to foreign administrations to enter into operating agreements with additional U.S.–IMTS carriers. Thus, we do not now adopt a balanced loading methodology for circuit distributions in the POR during the 1987–1991 time period.

55. *NTIA Plan.* We believe that the NTIA cost-based circuit distribution methodology could provide a number of benefits including the development of a competitive, unbiased facilities marketplace. We retain our concern, however, that the NTIA proposal is not fully defined, that it could require a substantial and continued level of Commission involvement in loading decisions and that it could complicate facilities planning by the carriers, their correspondents, Comsat and INTELSAT. *See*, North Atlantic Report and Order at paragraphs 52–56. Thus, we cannot conclude now that NTIA's plan be adopted for loading decisions in the region during the 1987–1991 period.

56. *GTE Sprint Multi-tier Plan.* We conclude that we should not adopt a multi-tier loading methodology for the POR. While we are concerned about the slow progress being made in the POR in the acquisition of operating agreements, a multi-tier approach is more complex and may require more Commission involvement in loading decisions than the phase-in methodology we are adopting. Further, the multi-tier proposal remains ill-defined in many respects. Areas of concern include the handling of countries with small traffic streams, what the correct trigger mechanism should be as well as the correct definition of the lower and higher tiers. For these reasons we are not convinced that it is the best approach for the POR at the present time. However, as the loading guidelines to be used will expire prior to the end of the planning period and will be revisited prior to year-end 1991, the multi-tiered loading methodology may be further studied at a later date.

57. *Modified Economic Loading.* AT&T proposed a plan which it states is based upon the relative costs of satellite and cable circuit use. AT&T has provided us with no showing of how the plan was actually derived. Thus, while we assume this plan to be AT&T's preferred loading methodology, we attach no other significance to it. We believe that in a non-competitive

[27] Any reference to AT&T's IMTS in the discussion of loading shall apply to AT&T's 800 Service-Overseas as well, and the circuits used for 800 Service-Overseas may be aggregated with the IMTS circuits. The loading policy prescribed here shall be employed by AT&T as of January 1, 1987.

[28] We are exempting AT&T's private line service from loading because it is subject to the same marketplace distribution mechanisms as are other carriers providing leased channels. *See*, North Atlantic Report and Order at paragraph 44.

[29] We retain, of course, the ability to modify the timeframe or the methodology we are adopting if circumstances warrant.

marketplace, the AT&T plan may not provide the most efficient and cost effective use of facilities in the region. Further, although POR traffic streams are not as large as those in the North Atlantic, AT&T's proposal may result in an upward pressure on Comsat's rates, and would adversely affect the development of intermodal competition.[30] Thus, we do not adopt modified economic loading as the loading plan for the region for the 1987–1991 period.

58. *ITTWC Phase-in Plan.* The phase-in plan put forth by ITTWC has a number of drawbacks. Foremost among these is that the phase-in time period may be too long and the flexibility gained may be too slight. Phase-in plans in general, however, are attractive as they provide an orderly transition from balanced loading to a loading plan with increased flexibility. Thus, the loading plan we adopt today for the POR is similar to that adopted in the North Atlantic.

59. While we believe that a gradual phase-in of loading flexibility is useful in the POR, we have made adjustments in the exact mechanics of the phase-in plan to fit the unique facts of the region. The most important difference between the North Atlantic and Pacific regions for loading purposes is the way in which the different media are currently loaded. In the North Atlantic the current cable/satellite ratio is 48/52. Thus, in the North Atlantic we adopted a plan allowing 2% flexibility per year for three years. In the Pacific the ratio is currently 30/70 changing to approximately 24/76 in 1987. Thus, we are adopting for years two through five, a regional plan allowing 8% flexibility in 1988 and then 4% for the next three years.[31] This allows an average about 65% of all traffic growth to be routed over cable for the years 1988–1991 and results in a more balanced cable/satellite ratio of 44/56 in 1991.[32]

60. We allow a large percentage of flexibility in 1988 as it is the first year TPC–3 will be ready for service and the loading ratio at that date will be highly favorable to satellite interests. Also, while 8% flexibility appears to be a large change, it actually is very close to the levels that would be reached under either AT&T or Comsat's preferred plans for that year. There is no evidence that the loading plan we are adopting will have a detrimental effect on Comsat, INTELSAT or ratepayers.[33]

E. Cost Analysis

61. In the Further Notice we tentatively concluded that delaying the cable until 1991 could result in lower international rates for users stemming from a lower overall revenue requirement which users are required to support.[34] We were unable to determine exactly how much would be saved through deferral, although in response to the NOI the USISCs and Comsat, using different methodologies, approximated the savings to be $33 million and $120 million, respectively, over the planning period. We also reached no conclusion as to the total service costs associated with the various facility plans put forth by the parties. We determined that none of the costing methodologies used by AT&T or Comsat accurately reflected costs.

62. AT&T and Comsat, in their comments and reply comments in response to the Further Notice, discussed at great length the issue of cost. Comsat indicated that deferral would result in a savings of $193 million in 1988 dollars. AT&T, in its reply comments, pointed out that Comsat omitted a number of costs associated with delay, including higher construction costs due to inflation, the continued use of ANZCAN circuits, and lost transiting revenues.[35] AT&T found that if the cable is delayed until 1991, there will be additional costs of $365 million. Additionally, AT&T took issue with Comsat's cost estimates for added satellite use if the cable were delayed. Due to the operational preference of not off-loading traffic from one medium to another, AT&T argued that any traffic routed over satellites due to delay of the cable would remain on satellite at least until the end of the planning period, resulting in higher expenses until at least 1995.

63. Simplex stated that the Commission's tentative finding of lower costs to the ratepayer if the cable is delayed is "correct in an abstract, theoretical sense [but] it is oversimplified and not useful in the present context." Simplex argued that there was no evidence that costs will decrease over time, especially when inflation is factored in. ITTWC commented that TPC–3 could give its customers lower rates because the per circuit costs of TPC–3 are lower than TPC–1 or TPC–2 and it will have more circuits in TPC–3 than in TPC–1 or TPC–2. ITTWC stated, using a composite rate methodology, that this could result in the average cost per POR circuit being reduced, which could result in lower rates to the consumer. The State of Hawaii urged that no transpacific cable be authorized until it has been shown to be cost effective. This has not been done, Hawaii argued, since there has

---

[30] *See*, North Atlantic Loading Report and Order. In that proceeding we employed a methodology to attempt to calculate the effect that various loading schemes would have. We found there that, if Comsat's space segment revenue requirement is fixed, the fewer circuits that are placed on satellite the higher the space segment charge per circuit. For the POR we estimate that the revenue decrease for Comsat from using modified economic loading as compared with balanced loading, assuming a constant bundled space segment charge of $1060 per circuit per month, would be almost $12 million through 1991. (*See*, Appendix 3). In terms of rates, we do not believe that the number of circuits in this region are so great as to have an unreasonable or traumatic impact on Comsat's actual global rates. Nevertheless, on a regional basis the traffic diversion and rate/revenue differentials are not inconsequential and support our conclusion to adopt a phase-in proposal less severe than the one proposed by AT&T.

[31] Under any loading plan approximately 76% of all traffic will be placed on satellite in 1987 because TPC–3 will not yet be in service so that there will be no cable capacity (other than ANZCAN) on which AT&T will be able to load any quantity of traffic. The loading plan we are adopting gives the following year-by-year cable/satellite ratios: 1987: 24/76; 1988: 32/68; 1989: 36/64; 1990: 40/60; 1991: 44/56. We will require AT&T, as well as all other U.S. TPC–3 co-owners, to file a regional loading plan for the 1987–1991 period with its Section 214 application to build TPC–3, based upon its most recent traffic forecasts and in conformance with this loading methodology. Further, we shall require all U.S. TPC–3 co-owners to retain traffic loading data on a country-by-country basis for the 1987–1991 period. Such data may be requested by the Commission during its consideration of future loading policies. Finally, all U.S. TPC–3 co-owners shall also file country-by-country loading plans for the TPC–3 facility with their Section 214 application so that we may authorize both the building of the cable and the activation of the circuits therein.

[32] The yearly flexibility will be cumulative in nature. As in the North Atlantic, we will not allow deloading of circuits once they have been activated on a particular transmission medium.

[33] For the five year period, we estimate that the revenue difference for Comsat from using the phase-in plan rather than balanced loading, assuming a constant bundled space segment charge of $1060 per month per circuit, would be approximately $5.5 million. This is less than fifty percent of the difference between balanced loading and modified economic loading. (*See*, Appendix 3).

[34] Rates to customers are established to recover, in a fair and reasonable way, a specific overall revenue requirement. A revenue requirement is made up of two factors—the return on investment, and expenses (including taxes and depreciation). The return on investment of a carrier consists of a certain allowed percentage (rate of return) applied to the net book value of the facilities owned by that carrier which are used and useful in the provision of communication services. For example, if AT&T's share of the proposed TPC–3 cable is $425 million (of a total of approximately $980 million), the associated revenue requirement would be about $100 million. This includes a return on investment of about $54 million (12.75% × $425 million) and about $46 million in taxes and other expenses. Thus, if Comsat's revenue requirement is relatively fixed and a TPC–3 would be added to AT&T's rate base and reflected in AT&T's revenue requirement, then the total revenue requirement which ratepayers must support is increased upon the introduction of TPC–3 (or any other new facility).

[35] AT&T estimated the costs due to the continued use of ANZCAN circuits to be $33 million and foregone transiting revenues to be $12 million if the cable is delayed until 1991.

been no showing of revenue requirements or per circuit costs associated with the cable.

64. There are two basic questions that must be answered concerning the cost of the cable. First, what are the costs which ratepayers would be required to support? Second, are there significant cost savings to be gained or additional costs to be incurred by delaying the cable until 1991?

65. There is no question that the proposed transpacific cable is an expensive undertaking. TPC–3 will cost approximately $980 million in 1988 dollars, with AT&T's share being approximately $425 million. As indicated in footnote 33, this results in a theoretical added overall revenue requirement for AT&T (return on investment plus taxes and expenses) of approximately $100 million for the first year the entire cable is in place. Of course, this figure would be partially offset by lower ownership expenses in the ANZCAN North cable, by reduced satellite lease expenses, and by transiting revenues paid by foreign administrations employing U.S. domestic facilities to carry traffic to an from TPC–3. AT&T estimates these costs and revenues to be about $101 million for the years 1988–1990, or $34 million per year (AT&T Reply Comments, at 12).[36] We cannot determine exactly what effect the added revenue requirement will have on rates, because, for a variety or reasons, an estimated increased revenue requirement may or may not be reflected in rates. If TPC–3 stimulates substantial demand for services beyond what it would be otherwise, then rates need not increase. Also, AT&T might be unable or unwilling to earn a 12.75% return on this investment. Finally, because international costs and revenues are aggregated on a worldwide basis, circumstances in other regions affecting unrelated facilities may have a considerable impact. Thus, if we view the figures in the record as establishing a maximum, rather than an actual revenue impact, the building of TPC–3 may increase AT&T's revenue requirement by as much as $66 to $85 million per year in 1988 through 1990 ($100 million per year reduced by $34 to $15 million in savings).

66. The other question revolves around the cost savings or additional costs if the cable is delayed until 1991. AT&T, Comsat and others have argued vigorously as to the extent of any savings or additional costs due to delay. AT&T's total estimate of $365 million in increased costs due to delay appears overstated (see note 35, *supra*). However, at a minimum there will be savings of ANZCAN costs ($33 million) as well as an increase in transiting revenues ($12 million) if the cable is built in 1988 rather than 1991. Thus, total added costs (and lost revenues) if the cable is delayed until 1991, excluding satellite leases, may be $45 million or more.[37] On the other hand, it is possible that the cost of optical fiber cable may decline as manufacturers improve their processes and as demand for this product increases. Thus, the cost of physical cable may be lower if construction is delayed. From the foregoing analysis, we can conclude generally that some savings to ratepayers would result from a delay of the TPC–3 cable from 1988 to 1991. However, these savings are not likely to be so dramatic as to outweigh the advantages, recited here, of activating the cable in 1988.

F. Technological Risk

67. In the Further Notice we tentatively concluded that the introduction of TPC–3 in 1988 posed no technological risk to service. This was based upon our belief that there will be sufficient satellite capacity in the region throughout the planning period so that no communications would be threatened if the cable were to perform below expectations. However, we also considered the possibility of potential benefits to be gained by delaying implementation of TPC–3 until 1991, including gaining experience with TAT–8 prior to introduction of fiber optic technology in the POR.

68. ITTWC argued that the technological risk of TPC–3 in 1988 is "de minimis." AT&T felt that there is no need to wait to gain experience from TAT–8 before proceeding to construct TPC–3. Rather, AT&T argued that the "knowledge and experience gained on other systems installed prior to TAT–8 will aid in minimizing technological risk." Further, according to AT&T, waiting to gain experience from TAT–8 would delay TPC–3 until about 1993. In its reply comments, Comsat took issue with this statement, stating that waiting for TAT–8 would delay TPC–3 only until 1991.

69. We continue to believe that any technological risk stemming from a transpacific cable in 1988 is slight. While waiting to gain experience from TAT–8 certainly would not be harmful from a technological point of view, it is not necessary to delay the TPC–3 for technological reasons. Because a great deal of experience has been (or will shortly be) gained from other fiber optic cable projects, and because ample satellite capacity exists in the region, we find that there is no substantial justification to delay implementation of TPC–3 based upon technological risk.

G. Correspondent Acceptance

70. We tentatively found in the Further Notice that our foreign correspondents preferred Plan II–A (Mod. 4) with a ready-for-service date of 1988. We noted the long and extensive analysis of facilities needs by the USISCs and their foreign correspondents that led to the joint preference for Plan II–A (Mod. 4) in 1988.

71. Those commenters, including RCA and ITTWC, discussing international comity agreed with our tentative conclusion that Plan II–A (Mod. 4) is the plan most acceptable to our foreign correspondents. Our decisions, of course, are not decided solely by the needs and desires of our foreign correspondents. However, international comity remains an important factor in our decision making process. Thus, we conclude that from the standpoint of correspondent acceptance, Plan II–A (Mod. 4) is preferred.

H. National Security

72. Throughout this phase of the proceeding, DoD and NTIA have expressed their desire for a Guam landing point for defense, security and commercial reasons. The Further Notice reached no conclusion as to the advisability of including a Guam landing point in the plans for any transpacific cable we might approve. We asked parties to comment on the advisability of a Guam landing and whether the added costs of a Guam landing would place an unnecessary and unjustified burden on ratepayers. Further, we asked

[36] There is some question about the extent of savings from discontinued satellite circuit usage. In addition to the savings on satellite circuits from 1988–1990 ($56 million), AT&T claims additional savings through 1995 of $181 million (Reply Comments, at 11–12). This calculation was not based on the loading methodology we adopt here; accordingly, we cannot credit it. Furthermore, if Comsat's revenue requirement is fixed, then, although the number of circuits that AT&T leases from Comsat may decline, the per circuit cost paid by AT&T for satellite circuits may increase, and the total satellite lease costs paid by AT&T to Comsat would remain relatively constant. There are too many unknown variables at this time, such as the cost of future satellite systems, the growth in demand for satellite circuits throughout the Pacific Basin, and INTELSAT pricing strategies, to predict accurately the net savings to AT&T in satellite lease expenses. *See* footnote 14.

[37] As noted by Simplex, *supra* para. 63, there will be efficiencies produced if TPC–3 is manufactured immediately after TAT–8. If a delay occurs, then it is likely that manufacturing plants will have to be shut down in the interim, resulting in expenses when they are restarted. There is no evidence in the record indicating precisely the amount of such expenses.

for comments on whether the Commission should impose a special rate designed to recover the cost of a Guam landing.

73. No party filing comments was opposed to including a Guam landing for TPC–3. Most of the comments deferred to the expertise of DoD in national security matters. The fact that a Guam landing would give the U.S. a controlled point of entry into the POR and provide a transiting point for U.S. users were among the benefits cited by NTIA. In addition to national security, AT&T felt that a Guam landing is justified because it improves the quality and reliability of systems west of Guam, allows for digital interconnectivity to the Philippines and the South Pacific, and is commercially valuable to the U.S. cable industry. Comsat, however, questioned the need for another transmission path to Guam in 1988, given the low circuit usage to that point. It stated that two cable paths (TPC–1 and 2) and two satellite paths are sufficient until at least 1991. Hawaii also felt that a Guam landing could reasonably be delayed until 1991.

74. ITTWC, which supported a Guam landing, was the only party that supported a special charge to recover the costs of a Guam landing. ITTWC felt such a charge was justified given the small number of circuits DoD requires.[38] A number of parties, in arguing against a special charge, pointed to the widespread commercial benefits a Guam landing would provide. HTC argued that no special rate was needed because a Guam landing offers "sufficiently generalized benefits that they should be paid in a generalized way." Further, HTC stated that a special rate for Guam cable service would distort cable-satellite competition while a special rate for both cable and satellite service to Guam might cause bypass and lessen the chance of cost recovery. DoD stated that a "special" U.S. government contribution to the cost of a Guam landing would set a bad precedent for future projects. AT&T took no position on the issue of a special charge, except to note that tariff charges have never been made a condition of a cable authorization. A number of parties took issue with our estimate of the costs added by a Guam landing. NTIA put the cost at $16.5 million, while AT&T estimated the cost to be $20 million.

75. We find that a Guam landing is in the public interest. A major factor in this determination is the national security considerations discussed by DoD. However, there appear to be additional factors that support the inclusion of a Guam landing in TPC–3. These include service quality and reliability considerations, transiting and interconnection possibilities, and the advantages to U.S. carriers of having the midpoint of the cable further west.

76. We also conclude that a special rate for service to Guam is not justified. We are convinced that there are sufficient generalized service benefits to make a special rate unnecessary. These benefits include increased service reliability and quality, transiting and interconnection with future cable systems in the region, and a U.S. controlled landing point in the POR. Thus, we conclude that a Guam landing should be included in TPC–3 without a special rate.

I. U.S. Industrial Interests

77. Pursuant to the draft Construction and Maintenance Agreement, U.S. companies will construct the Haw-4 cable as well as the portion of TPC–3 from Hawaii to the branching unit. This represents a total of 5,115 miles or 71.5% of the total cable length and 72.5% of the contract award ($430 million).[39] Japanese companies will construct the remaining 2,034 miles from the branching unit to Guam and Japan. We reached no tentative conclusion in the Further Notice as to the effect delay would have on U.S. industrial interests. We did, however, state that the building of TPC–3 in 1988 "is of considerable value and importance to U.S. manufacturers." Nevertheless, we indicated that delay could have a greater negative effect on U.S. interests if the cable were being competitively bid (which it was not) rather than arising from a negotiated agreement between U.S. firms and their foreign correspondents (which it was).

78. Simplex, as the major U.S. manufacturer (with AT&T) of TPC–3, filed comments and replies that discussed the harm perceived if we delayed the cable until 1991. Simplex stated that the U.S. currently has a significant industrial advantage, and that a two or three year delay could erode that lead because as the demand for coaxial submarine cables declines, countries such as England, France and Japan are turning to fiber optic technology. AT&T argued that a delay would harm U.S. industrial interests because it would require shutting down manufacturing facilities after TAT–8 is completed and then later restarting them. Comsat argued that there has been no showing made of any U.S. loss due to delay. Comsat reasoned that Haw-4 will be U.S. built whenever the cable is constructed, and that given the high planned U.S. usage of TPC–3, any negotiated agreement for the rest of the cable should be favorable to U.S. interests. Finally, Comsat felt it was doubtful that foreign know-how would catch up with that of the U.S. Hawaii, in its replay comments, asserted that U.S. interests would benefit by waiting until some experience with TAT–8 is gained.

79. There is no question that the current draft Construction and Maintenance Agreement is favorable to U.S. interests. It is difficult to gauge exactly what effect a delay would have on the way in which construction of the cable is apportioned. It seems safe to say, however, that U.S. industrial interests would not likely be in a more advantageous position if the cable is delayed. The question, then, is what are the chances that these interests will be in a worse position if the cable is build in 1991 instead of 1988. Given the speed with which other countries are developing the capacity to manufacture fiber optic cable, the prospect of U.S. interests building less of the cable if it is delayed appears to be real even if the project is not competitively bid. Thus, we conclude that U.S. industrial interests are best served if TPC–3 is deployed in 1988 rather than 1991.

J. Other Issues

80. *Further Bifurcation of the Process.* In the Further Notice we found that the plans and traffic forecasts submitted by the parties gave us sufficient information to enable us to recommend facility plans for the entire 1987–1995 time period. Thus, we tentatively conclude that there is no need to bifurcate the process further, and that the INTELSAT V, V–A and VI satellites as well as a fiber optic TPC–3 are the appropriate planned facilities for the POR of the 1987–1995 time period. Comsat stated that it felt that the issue of bifurcation should be held in abeyance until the timing of TPC–3 is settled. As no party has any strong objection to our tentative conclusion against bifurcation of the process, we affirm that tentative conclusion.

81. *Master Loading Plan.* As we are adopting a regional loading methodology, it is not necessary for AT&T to file a Master Loading Plan on a country-by-country basis. However, we will require AT&T to file with its section 214 application to construct TPC–3, a regional loading plan, based upon its most recent traffic forecasts, for the

[38] DoD anticipates leasing less than 200 TPC–3 circuits by 1995 and only a few dozen by 1991.

[39] AT&T has also been awarded the construction contract for the Guam-Philippines cable, valued at approximately $107 million. The remaining cables in the TPC–3 system have not yet been procured.

1987–1991 time period in conformance with the loading methodology we are adopting.

82. *Warranty Provisions.* In its comments, ITTWC asked the Commission to investigate the warrenty provisions contained in the TPC–3 Construction and Maintenance Agreement. Specifically, ITTWC questioned why the warranty term for the negotiated TPC–3 is two years while the warranty term for the competitively bid TAT–8 is ten years. MCII and GTE Sprint, in their reply comments, echoed ITTWC's concerns.

83. The Commission is of course concerned with the quality and dependability of the proposed transpacific cable. However, we view the differing warranty terms, not as a reflection of inferior quality of TPC–3, but rather as an outcome of two different procurement processes. Additionally, there may be reasons such as greater distance, ocean depth, currents and water pressure to have a shorter warranty period for TPC–3 than TAT–8.

84. *State of Hawaii.* The State of Hawaii raised a number of issues relating to the use of TPC–3 as it relates to the states. Specifically, Hawaii urged the Commission to investigate allegedly discriminatory rates charged to Hawaiian ratepayers and asked that circuit allocations for services to Hawaii argued that there has been no analysis of how the proposed TPC–3 would affect domestic rates or services. We do not find Hawaii's arguments to be germane to this proceeding. Specifically, Hawaii's charges relating to discriminatory pricing by GTE are more properly raised in a rate proceeding.[40] Further, as TPC–3 is intended to provide almost exclusively international services, we do not find it necessary to inquire into the effect that it will have on domestic services. Further, any carrier wishing to use TPC–3 for international services will be required to file a section 214 application which will be thoroughly considered whether in separate or combined actions.

85. *Purchase of IRUs.* SBS asks that we insure that owners of the cable system make available IRU interests on the same terms as has previously been done in the Atlantic. In the Atlantic we ordered that "when a given applicant seeks to acquire or transfer an ownership or IRU interest in TAT–8 capacity, the reimbursement it receives shall be on the basis of depreciated original cost (or the prorated accumulated cost of such circuit if the system is not then operational) or in conformance with such policy as the Commission may develop in the future regarding the price at which IRU's will be made available." *See,* American Telephone & Telegraph Company, *et al.* (TAT–8 order), FCC 84–240, released June 8, 1984. We find no reason not to apply the same policy to transfers or sales of IRU interests in TPC–3. Further, capacity in TPC–3 should be made available to non-carriers in conformance with the policies developed in the Commission's proceeding in CC Docket *83–1230, International Communications Policies,* FCC 85–369, released August — , 1985.

86. *AT&T's use of facilities.* ITTWC in its filings voiced its concern that AT&T not have an advantage over other carriers serving the non-IMTS market by placing this traffic entirely over new, low-cost facilities. While it is true that AT&T could achieve a pricing advantage over its competitors if it did place its less competitive IMTS traffic over older, higher cost facilities and its more competitive non-IMTS services over newer, lower cost facilites, AT&T likely will use a cross section of its available facilities for all of its service offerings. In any event this argument is highly speculative and does not dictate any action in this proceeding.

III. Summary and Final Conclusions

87. Traditionally, a number of significant factors are weighed in the facilities planning process. TPC–3 incorporates the most advanced technology and will become a vital link in worldwide communications. It also fosters greater intermodal and intramodal competition. TPC–3, particularly the carriers' preferred ring design cable, will also offer greater restoration flexibility as well as improved media and path diversity, is preferred by our carriers' foreign correspondents, satisfies the national security requirements of DoD, and raises no significant technological risks. We also cannot overlook the fact that the Construction and Maintenance Agreement, as it is currently drafted, is quite favorable to U.S. industrial interests. We cannot be assured of such favorable treatment if the cable is delayed until 1991. Finally, a TPC–3 as early as 1988 insures that there will be sufficient capacity in the region to meet demands needs if, by choice or necessity, satellite deployment plans are altered.[41] Thus, we find, on balance, that such a cable with a ring design as proposed in Plan II–A (Mod. 4) and with a ready-for-service date as early as 1988 is in the public interest.[42]

IV. Ordering Clauses

88. Accordingly, it is ordered, pursuant to section 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976) that we adopt the following policy guidelines for the Pacific Ocean Region:

(1) We find that a transpacific, fiber optic cable, Plan II–A (Mod. 4), with a ready for service date as early as 1988 is in the public interest.

(2) We find that the public interest would be served by the adoption of the phase-in loading methodology as set forth above.

89. It is further ordered, that all U.S. TPC–3 co-owners shall file with their section 214 application to build TPC–3 a regional loading plan, based upon their most recent traffic forecasts, for the 1987–1991 time period in conformance with the loading policies as set forth above. All U.S. TPC–3 co-owners shall also, file country-by-country loading plans for the TPC–3 facility with their section 214 application.[43] Additionally, all U.S. TPC–3 co-owners shall retain traffic loading data on a country-by-country basis for the 1987–1991 period.

90. Pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. §§ 605, it is ordered, that sections 603 and 604 for the Act do not apply because the circuit distribution policies adopted herein is a rule of particular applicability to the American Telephone and Telegraph Company and is, hence, not subject to the Regulatory Flexibility Act.

---

[40] Many of the issues Hawaii raises have been discussed at length in other proceedings. *See,* Integration of Rates and Services, 61 FCC 2d 380 (1976), *recon.* 65 FCC 2d 324 (1977); Establishment of Domestic Communications—Satellite Facilities, 35 FCC 2d 844 (1972).

[41] Even if there is a lack of an overall IMTS demend requirement for a TCP–3 in 1988, a balancing of the factors still leads us to conclude that a ready-for-service date as early as 1988 is in the public interest.

[42] While it is not our preferred plan, we also find that the public interest would be served if the U.S. carriers and their foreign correspondents chose to build Plan III Modified with a ready-for-service date as early as 1988.

[43] This filing will permit a section 214 authorization to both build the cable and activate the circuits therein consistent with the submitted plans. Activations not consistent with the submitted plans would require separate authorization.

91. It is further ordered that CC Docket 81–343 remains open for additional proceedings upon further order of the Commission.

92. It is further ordered that the Secretary of the Commission shall cause this Second Report and Order to be published in the **Federal Register** and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

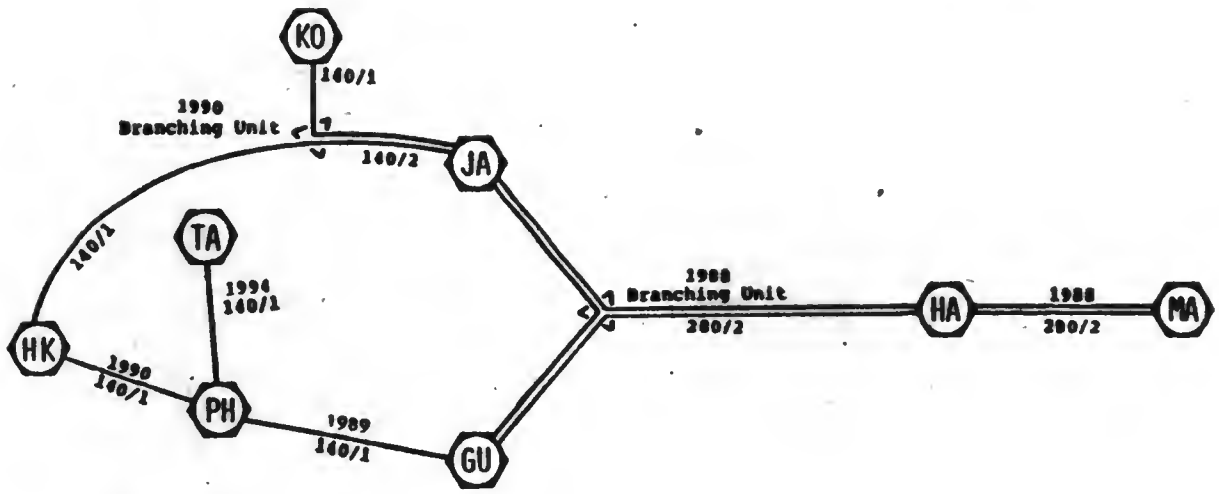
Federal Communications Commission.

William J. Tricarico,

Secretary.

BILLING CODE 6712-01-M

APPENDIX 1

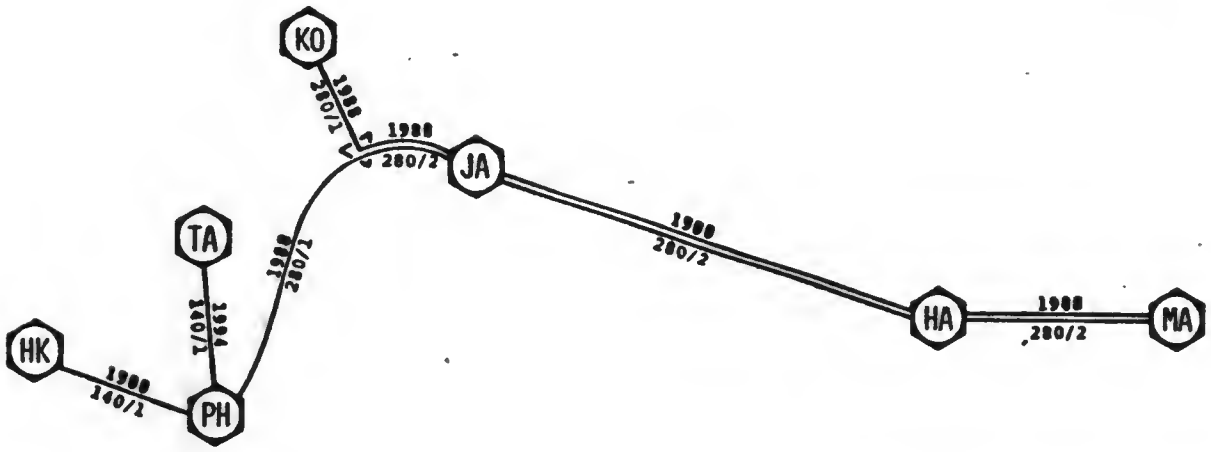


LEGEND

GU = Guam
HA = Hawaii
HK = Hong Kong
JA = Japan
KO = Korea
MA = U.S. Mainland
PH = Philippines
TA = Taiwan

PLAN II-A MOD (4)

APPENDIX 2



LEGEND

HA = Hawaii
HK = Hong Kong
JA = Japan
KO = Korea
MA = U.S. Mainland
PH = Philippines
TA = Taiwan

PLAN III MODIFIED

APPENDIX 3

COMPARISON OF THE APPLICATION OF CIRCUIT DISTRIBUTION GUIDELINES TO AT&T'S U.S.-PACIFIC MTS TRAFFIC

YEAR	1987		1988		1989		1990		1991		
AT&T FORECAST	5784		6888		8128		9592		11298		
BALANCED LOADING											
	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	24	76	31	69	34	66	39	61	41	59	
No. of Cable/Sat. Cir.	1384	4400	2133	4755	2796	5332	3768	5824	4655	6643	
No. of Cable/Sat. Cir. Added			749	355	663	577	972	492	887	819	
AT&T PROPOSAL (MODIFIED ECONOMIC LOADING)											
	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	24	76	32	68	37	63	43	57	46	54	
No. of Cable/Sat. Cir.	1384	4400	2211	4677	2991	5137	4138	5454	5207	6091	
No. of Cable/Sat. Cir. Added			827	277	780	460	1147	317	1069	637	
Sat. Cir. Year Difference Compared to Balanced Loading				-39		-136.5		-282.5		-461	TOTAL -919
Revenue Difference Compared to Balanced Loading COMSAT	-$ M			-$0.50M		-$1.74M		-$3.59M		-$5.86M	-$11.69M
INTELSAT	-$ M			-$0.40M		-$1.28M		-$2.64M		-$4.31M	-$ 8.63M
4 PERCENT INCREASED FLEXIBILITY PER YEAR											
	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	24	76	32	68	36	64	40	60	44	56	
No. of Cable/Sat. Cir.	1384	4400	2211	4677	2926	5202	3837	5755	4971	6327	
No. of Cable/Sat. Cir. Added			827	277	715	525	911	553	1134	572	
Sat. Cir. Year Difference Compared to Balanced Loading				-39		-104		-99.5		-192.5	TOTAL -435
Revenue Difference Compared to Balanced Loading COMSAT	-$ M			-$0.50M		-$1.32M		-$1.27M		-$2.45M	-$ 5.54M
INTELSAT	-$ M			-$0.40M		-$0.97M		-$0.93M		-$1.80M	-$ 4.1M

[FR Doc. 85-21044 Filed 9-3-85; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

Federal Acquisition Regulation; Certification of Commercial Pricing; Meeting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting with representatives of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council.

SUMMARY: In response to the interim rule published on July 3, 1985 (50 FR 27560) (48 CFR Part 15), a substantial number of comments were received. The Councils have drafted a final rule after considering all of these comments and the draft final rule accommodates many of these comments. However, some of the comments raised issues upon which more specific information would be helpful.

This notice requests comments on those issues and announces a public meeting with representatives of the Councils.

DATE: The public meeting will be held from 10 a.m. until 12 noon on Tuesday, September 10, 1985.

ADDRESS: The meeting will be held at the GSA Auditorium, 1st floor, GSA Central Office, 18th and F Streets NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, DASD(P)DARS c/o (M&RS)/RE, Room 3D139, Pentagon, Washington, D.C. 20301–3062, telephone (202) 697–7768 or Harry Rosinski, Deputy Director, Office of Federal Acquisition and Regulatory Policy, Office of Acquisition Policy, Room 4030, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone (202) 523–4746.

SUPPLEMENTARY INFORMATION: The issues raised are as follows:

1. It has been alleged that the Paperwork Reduction Act submission to OMB did not accurately estimate the administrative burden which the interim rule will impose on industry. What additional data should be considered in estimating the burden?

2. It has also been alleged that the determination under the Regulatory Flexibility Act that the interim rule will not have a significant effect on a substantial number of small entities was not valid. What specific information should the Councils consider in formulating and adopting a final rule on this subject?

3. Some comments suggested that there are certain types of sales that should not be considered "to the public" for purposes of complying with the new statutory requirements for commercial pricing certificates. If so, what types of sales should qualify, why should the final rule exclude them, and how can they be defined in a manner that is fair to industry, yet faithful to the Congressional intent with regard to commercial pricing? Two specific categories that commenters suggested for exclusion are: (a) Sales to subsidiaries, affiliates, parent companies, and branches of the same business entity; and (b) sales to original equipment manufacturers, dealers and remarketers.

4. Depending on price fluctuations and market conditions, the interim rule allows the contracting officer to vary the length of time for which an offeror/contractor must certify that the item offered to the Government has not been sold to the public at a lower price. Some comments asserted that this flexibility imposes additional, and perhaps unwarranted, burdens on industry. If this is true, what types of additional reporting systems must an offeror/contractor construct to accommodate varying time periods? Is there a single time period that would simplify reporting systems, yet provide sales data for comparison purposes that is both relevant and faithful to the general policy that the Government should not purchase items of supply offered for sale to the public at a price that exceeds the lowest price at which such items are sold by the contractor unless the price difference is clearly justified by the seller?

5. In requiring contractors to retain certain sales records for three years, it has been alleged that the interim rule burdens industry more than other retention periods which are currently mandatory. If so, how does the three year period and the types of sales records which must be retained vary from current business practices or from standards imposed by the Internal Revenue Service or other governmental instrumentalities?

The public meeting will be held from 10:00 a.m. until 12 noon on Tuesday, September 10, 1985 at the GSA Auditorium, 1st floor, GSA Central Office, 18th and F Streets NW., Washington, D.C. A draft of the final coverage will be available for review by September 3, 1985. Copies can be obtained from Charles W. Lloyd, DAR Council Office, 1211 South Fern Street, Arlington, Virginia or The FAR Secretariat, Room 4041, GSA Building, 18th and F Streets NW., Washington, D.C.

Owen L. Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 85–21022 Filed 9–3–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant such amendments. The modifications will ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, may refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: October 4, 1985.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Main Interior Building, 18th and C Streets, NW, Room 2343, Washington, D.C. 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains the provisions that govern hunting on national wildlife refuges. Hunting is regulated on refuges for three basic reasons: (1) To properly manage the wildlife resource, (2) to protect other refuge values, and (3) to ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is an adequate way of meeting these objectives. On other refuges, it is necessary for the Service to issue hunting regulations that

supplement State regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations are issued only at the time of, or after the determination and publication of, the opening of a wildlife refuge to migratory game bird, upland game, or big game hunting. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. On September 19, 1984, at 49 FR 37736, the Service codified refuge-specific regulations for migratory game bird, upland game, and big game hunting. Subsequent rulemakings at 49 FR 38642, 49 FR 37093, 49 FR 43549, 49 FR 50049, and 50 FR 34478 corrected, amended, or added to these regulations.

The Service reviews refuge hunting programs annually to determine if modifications in the regulations governing individual refuge hunts are necessary. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant that refuge-specific hunting regulations be modified, relaxed, or made more stringent. This ensures the continued compatibility of hunting with the purposes for which individual refuges were established and, to the extent practical, makes refuge hunting programs consistent with State regulations. This rule will amend and supplement certain refuge-specific regulations in 50 CFR 32.12, 32.22, and 32.32, which pertain to migratory game bird, upland game, and big game hunting, respectively. The rule was published as a proposal on June 4, 1985, at 50 FR 23470.

The wording of several of the regulations published in the June 4 rule has been changed for clarity. Several regulations have also been modified to correct the descriptions of areas in which hunting activities on individual refuges will be permitted. Regulations contained in the present rule for migratory game bird hunting at Missisquoi National Wildlife Refuge (NWR) differ somewhat from those published in the June 4 proposed rule. These differences reflect changes made as a result of public comments received on the refuge's draft environmental assessment for its migratory bird hunting program. The revised environmental assessment and corresponding Finding of No Significant Impact were completed after the proposed rule was published. The changes will better protect the waterfowl resource and improve hunter safety.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received during the 30-day comment period for the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments were received from one organization in response to the proposed rulemaking. Substantive issues raised are outlined and responded to below:

Issue: Because State regulations will govern all aspects of the hunting programs not covered in the proposed rule, the rule will illegally transfer authority for managing Federal lands to the States, thereby violatiing the Refuge Administration Act.

Service Response: The Service disagrees with this comment for two reasons.

First, it is untrue that State regulations will govern all aspects of refuge hunting programs not covered in the proposed rule. The rule only contains regulations for refuges where hunting regulations needed to be amended. If refuge hunting regulations required no changes, they were not listed in the rule. Second, the rule will not transfer Service authority for managing national wildlife refuges to the States. Refuges are opened to hunting and hunting is managed in accordance with the authority of the Secretary of the Interior under the Refuge Administration Act and the Refuge Recreation Act. Once the Secretary has made the mandated determinations under these authorities, it is Department policy to conduct hunting within the framework of State laws and regulations and to impose additional requirements, where necessary, as refuge-specific regulations. This policy is clearly stated in 50 CFR 32.2(d): "Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulations." Under the regulations that will govern these hunts, the Service maintains its authority to enforce all State and Federal game regulations on national wildlife refuges.

Issue: The Service did not make an annual compatibility determination for each refuge hunting program, thereby violating the Refuge Administration Act and Refuge Recreation Act.

Service Response: All refuge hunting programs and regulations are reviewed annually to ensure their continued compatibility and consistency with refuge purposes.

Issue: The determinations required under 50 CFR 31.1 and 31.2 have not been made.

Service Response: 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting hunting on refuges is set forth in 50 CFR Part 32. This rule involves the policy and regulations set forth in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest.

Issue: Hunting on national wildlife refuges is illegal under the Refuge Administration Act and Refuge Recreation Act because it is incompatible with the legal responsibilities of the Refuge System to preserve, protect, and enhance wildlife.

Service Response: The Service believes that the statement that hunting on refuges is illegal is without statutory foundation. The Refuge Recreation Act states that the Secretary is authorized to administer refuges for public recreation. The Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, the Service believes that Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with the primary purposes of a refuge. This was affirmed in the decision in The Humane Society of the United States v. Morton, Civil Action No. 3627 (D. D.C. 1973), where the court found that hunting on Great Swamp, Eastern Neck, and Chincoteague NWRs was a valid and legal form of public recreation on these refuges. The compatibility provision applies to the purposes of individual refuges, not to the purposes of the entire Refuge System. As stated above, refuge hunting programs and regulations are reviewed annually to ensure their continued compatibility with individual refuge purposes.

Issue: The proposed hunting regulations violate the Endangered Species Act because the necessary determinations have not been made to ensure that the regulations will not adversely affect endangered and threatened species.

Service Response: When refuge hunting plans are developed, consideration is given to the potential impacts upon any endangered or threatened species that might use the refuges involved. Where necessary, the

Service prepares section 7 analyses, thereby complying with the Endangered Species Act. These analyses are examined annually to ensure continued compliance with the Act. Hunting programs are developed to minimize any potential adverse impacts on endangered and threatened species and, when needed, refuge-specific regulations are used to ensure that the hunting programs will not affect threatened or endangered species. The programs are administered by wildlife professionals who have the responsibility to conserve endangered and threatened species.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, and public recreation, accommodations and access, when he determines that such uses are compatible with the major purposes for which the areas were established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge-specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the affected refuges were established. Initial compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the hunting plans are developed, and the determinations required by these Acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The amendments to the codified refuge-specific hunting regulations will make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Hunter surveys	1018-0044
Special use permits	1018-0046
Hunter reservation/permit application/blind assignment	1018-0047

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when hunting plans are developed, and determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes made by this rulemaking will not substantially alter the existing uses to the refuges involved. Section 7 evaluations and/or consultations for the refuges included in this rule indicated that neither existing nor amended hunting regulations will jeopardize the continued existence of any endangered or threatened species.

Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters. This information may also be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico and Tennessee.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 221-3536.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700,

Newton Corner, Massachusetts 02158; Telephone (617) 965–5100.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 234–4608.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State hunting regulations. There are no refuge-specific hunting regulations for these refuges).

Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3542.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C., is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National wildlife refuge system, Wildlife, Wildlife refuges.

PART 32—[AMENDED]

Accordingly, Part 32 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 46 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 703, 704, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 167; E.O. 1014 (January 26, 1909).

2. Section 32.12 is amended by revising paragraph (d)(1)(v)(C); adding a new paragraph (d)(1)(v)(D); revising paragraph (e)(1)(v); adding new paragraphs (e)(1)(vi) and (e)(1)(vii); revising paragraph (e)(3)(v); adding new paragraphs (e)(3)(vi) and (e)(3)(vii); adding new paragraphs (f)(4)(iii) and (f)(4)(vi); revising paragraphs (h)(1) and (h)(2); revising paragraph (i)(2); adding a new paragraph (i)(3)(vii); revising paragraph (j)(2); revising paragraph (n); revising paragraphs (q)(1) through (q)(3) and paragraphs (q)(4)(vi) through (q)(4)(viii); adding a new paragraph (q)(4)(ix); revising paragraph (s)(2); revising paragraph (v)(2) through (v)(4) and paragraph (v)(6); revising paragraphs (x)(1) and (x)(3); redesignating paragraph (x)(9) as paragraph (x)(10); adding a new paragraph (x)(9); revising paragraph (aa) in its entirety; revising paragraphs (cc)(1) and (cc)(2); revising paragraph (ii); revising paragraph (jj)(2)(i) revising paragraph (ll)(1)(ii); revising paragraph (mm)(1)(iii); adding a new paragraph (mm)(1)(vi); revising paragraph (oo); revising paragraph (pp); and adding a new paragraph (qq)(8)(iv) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(d) * * *

(1) *Cibola National Wildlife Refuge.*

* * *

(v) * * *

(C) During the goose season, the Hart Mine Marsh Area is closed to hunting until noon.

(D) Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh Area.

(e) * * *

(1) *Felsenthal National Wildlife Refuge.* * * *

(v) Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

(vi) Firearms must be unloaded when transported or in refuge campgrounds.

(vii) Dogs are permitted.

* * * * *

(3) *Overflow National Wildlife Refuge.* * * *

(v) Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

(vi) Firearms must be unloaded when transported or in refuge campgrounds.

(vii) Dogs are permitted.

* * * * *

(f) * * *

(4) *Kern National Wildlife Refuge.*

* * *

(iii) Hunters may not possess more than 25 shells while in the field.

(iv) Hunters must park in assigned lots.

* * * * *

(h) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting except on the South Upland Hunting Area.

(ii) Hunting of waterfowl and coots is permitted on the South Waterfowl Area, the West Waterfowl Area, and the Young Waterfowlers, Area.

(iii) Only snow geese may be taken on th Snow Goose Area.

(iv) Hunting is permitted only from designated sites, except on the South Upland Hunting Area and the Snow Goose Area.

(v) The maximum number of hunters permitted per blind is as follows: West Waterfowl and Snow Goose Areas—4; South Waterfowl Area)—3; Young Waterfowlers Area—2.

(vi) The possession of a loaded shotgun while outside a blind or designated site is not permitted unless actively pursuing crippled birds.

(vii) Waterfowl hunters may not use or possess more than 15 shells per day on the West and Young Waterfowlers Hunt Areas.

(viii) Waterfowl hunters must use and possess shells containing only steel shot.

(ix) Hunting is not permitted from March 1 through August 31.

(2) *Prime Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Only waterfowl and coots may be taken on the Waterfowl and Young Waterfowlers Hunting Areas.

(iii) Only mourning doves, common snipe, and woodcock may be taken on the North Hunting Area.

(iv) Access to the waterfowl hunt area is by boat only.

(v) Except on the North Hunting Area, hunting is permitted from designated blinds only, with a maximum of three hunters per blind.

(vi) The possession of a loaded shotgun while outside of a blind is not permitted unless actively pursuing crippled birds.

(vii) Waterfowl hunters must use and possess shells containing only steel shot.

(viii) Hunters using the Young Waterfowlers Hunting Area may not use or possess more than 25 shells per day.

(ix) Hunting is not permitted from March 1 through August 31.

(i) * * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of ducks, moorhens, woodcock, rails, coots, and snipe only is permitted on the Levy County portion of the refuge.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Hunting is not permitted on the Levy County portion of the refuge during the muzzleloading gun deer hunt.

(v) Only temporary blinds are permitted.

(vi) Decoys must be removed from the refuge following each day's hunt.

(vii) Hunters must use and be in possession only of shells containing steel shot.

(3) *Loxahatchee National Wildlife Refuge.* * * *

(vii) Decoys and other personal property must be removed from the hunting area following each day's hunt.

* * * * *

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.*

* * *

(2) Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon during the State waterfowl hunting season.

* * * * *

(n) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is only permitted on the Big Timber Division, the Bear Creek Unit of the Gardner Division, and Turkey and Otter Islands.

(2) Only temporary wood or brush blinds are permitted.

(3) Blinds cannot be locked or otherwise sealed against public entry.

(4) Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.

* * * * *

(q) * * *

(1) *Bogue Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

(2) *D'Arbonne National Wildlife Refuge.* Hunting of ducks, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted until noon each day.

(ii) Boats, decoys, and non-native blind materials must be removed from the refuge following each day's hunt.

(3) *Delta National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of ducks, geese, and coots is permitted only on Wednesdays, Thursdays, Saturdays, and Sundays until noon during the State duck season.

(ii) Hunting is not permitted during that portion of the State goose season that extends beyond the State duck season.

(iii) Blinds and decoys must be removed from the refuge following each day's hunt.

(iv) Snipe, rails, and gallinules may only be taken during the State duck season.

(4) *Lacassine National Wildlife Refuge.* * * *

(vi) Blinds must be spaced at least 150 yards apart.

(vii) Decoys and blinds must be removed from the refuge following each day's hunt.

(viii) Hunting is not permitted during that portion of the State goose season that extends beyond the State duck season.

(ix) Access into the marsh and ponds is by foot or boat only. Motorized boats may be used only in canals and bayous.

* * * * *

(s) * * *

(2) *Parker River National Wildlife Refuge.* Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and possess shells containing only steel shot.

(iii) Hunters may not use or possess more than 25 shells per day.

(iv) Hunters using Area B must set out a minimum of six waterfowl decoys and hunt within 50 yards of these decoys.

* * * * *

(v) * * *

(2) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe, and woodcock is permitted on disignated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

(v) Dove hunting is permitted during the first two Saturdays of the State season, and the remainder of the first segment and the entire second segment of the season.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

* * * * *

(6) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot while duck and/or coot hunting.

(iv) Only portable and temporary blinds may be used.

* * * * *

(x) * * *

(1) *Benton Lake National Wildlife Refuge.* Hunting of ducks, geese, tundra swans, and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Only nonmotorized boats are permitted.

(ii) Waterfowl hunting is not permitted after November 30.

* * * * *

(3) *Bowdoin National Wildlife Refuge.* Hunting of waterfowl, coots, sandhill cranes, and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

* * * * *

(9) *Medicine Lake National Wildlife Refuge.* Hunting of ducks, geese, snipe, and doves is permitted on designated areas of the refuge.

(10) *Red Rocks Lake National Wildlife Refuge.* * * *

* * * * *

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl, and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters must use and possess shells containing only steel shot according to State regulation.

(2) All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent and pit blinds are not permitted.

(3) Waterfowl hunters may not use or possess more than 25 shells per day in Hunting Areas A, B, and C in the Barnegat Division and in Hunting Unit 1 in the Brigantine Division.

(4) In Hunting Area B of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. Access is by boat only. A minimum of six decoys per site is required.

(5) In Hunting Area C of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. A permit is required on opening days, Saturdays, and holidays.

(6) Use of Hunting Unit 3 of the Brigantine Division is restricted to certified Young Waterfowl Program trainees from the close of the first portion of the split duck season through the second Saturday of the second protion of the split duck season.

* * * * *

(cc) * * *

(1) *Iroquois National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Completion of the State waterfowl identification course is reuired.

(iii) Hunting is not permitted from March 1 through September 30.

(iv) Waterfowl hunters must use and possess shells containing only steel shot.

(v) Waterfowl hunters may not use or possess more than 15 shells per day.

(vi) Waterfowl hunters must provide and use a minimum of six decoys per hunter.

(vii) Waterfowl hunting is permitted from designated stands only, with a maximum of three hunters per stand.

(viii) Hunting must occur within 50 feet of a stand marker, unless actively pursuing crippled birds.

(2) *Montezuma National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Completion of the State waterfowl identification course is required.

(iii) Hunters must use and possess shells containing only steel shot.

(iv) Hunters may not use or possess more than 25 shells per day.

(v) Hunting parties are limited to a maximum of two hunters per group.

(vi) Motorless boats are required.

* * * * *

(ii) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is permitted on the refuge from September 1 through the end of February.

(2) Waterfowl hunters must use and possess shells containing only steel shot.

(3) Only motorless boats are permitted for waterfowl hunting. Boats and decoys must be removed from the refuge at the end of each day's hunt.

(jj) * * *

(2) *Carolina Sandhills National Wildlife Refuge.* * * *

(i) Dove and woodcock hunting is permitted only when the seasons for these species coincide with the State quail season.

* * * * *

(ll) * * *

(1) *Cross Creeks National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Saturdays and Sundays during the regular duck season.

* * * * *

(mm) * * *

(1) *Anahuac National Wildlife Refuge.* * * *

(iii) Hunting is permitted until noon.

* * * * *

(vi) The refuge unit formerly known as the Pace Tract is open to hunting every day of the early teal season and regular waterfowl season.

* * * * *

(oo) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required to hunt in the Patrick Marsh-Charcoal Creek Controlled Hunding Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

(2) Hunters may not use or possess more than 25 shells per day on the Patrick Marsh-Charcoal Creek Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

(3) Boats are required for access to the permit areas.

(4) Hunters within the Patrick Marsh Controlled Hunting Area and the Junior Waterfowl Area must provide and use a minimum of six decoys and hunt within 50 feet of these decoys.

(5) Hunters within the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area and the Maquam Swamp Hunting Area must hunt with one retriever per hunting party of up to two hunters per party.

(6) No permanent blind construction or blind staking is allowed in the Delta Lakeshore Hunting Area, the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area, and the Maquam Swamp Hunting Area.

(7) Hunters must use and posses shells containing only steel shot.

(pp) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required on the non-guided public hunting area.

(2) Compartments 1 to 4 are reserved for guided hunting only, with refuge-designated commercial guides.

(3) Public hunting is permitted only within 50 feet of a designated blind site, unless actively pursuing crippled birds.

(4) Permanent and pit blinds are not permitted, except in Compartments 1 to 4.

(5) Blind sites are limited to one party of hunters, with a maximum of four hunters per party.

(qq) * * *

(8) *Willapa National Wildlife Refuge.* * * *

(iv) Hunters may not use or possess more than 10 shells per day on the Riekkola Unit.

* * * * *

3. Section 32.22 is amended by revising paragraphs (a)(4)(ii) through (a)(4)(iv); revising paragraphs (d)(2)(ii) and (d)(2)(iii); adding new paragraphs (d)(2)(v) and (d)(2)(vi); revising paragraphs (d)(4)(ii) and (d)(4)(iii); adding new paragraphs (d)(4)(v) and (d)(4)(vi); revising paragraphs (d)(6)(ii) and (d)(6)(iii); revising paragraphs (g)(1) and (g)(2); revising paragraphs (h)(2) and (h)(3)(ii); revising paragraphs (l)(1) and (l)(2); revising paragraph (o)(3); revising paragraphs (q)(4) and (q)(6)(i); revising paragraphs (v)(2) through (v)(4) and paragraphs (v)(6) and (v)(7)(iv); revising paragraph (y)(1); revising paragraph (aa)(1)(i); revising paragraphs (bb)(1)(i) and (bb)(2); revising paragraph (cc)(2)(i);

adding a new paragraph (cc)(2)(iv) revising paragraph (dd)(1); redesignating paragraphs (ff)(9) and (ff)(10) as paragraphs (ff)(10) and (ff)(11), respectively; adding a new paragraph (ff)(9); adding a new paragraph (hh)(2)(iii); revising paragraph (hh)(3)(iv); adding a new paragraph (hh)(4)(iii); revising paragraphs (jj)(1) and (jj)(2); revising paragraph (kk)(2); and revising paragraphs (mm) as follows:

§ 32.22 Refuge-specific regulations; upland game.

(a) * * *

(4) *Wheeler National Wildlife Refuge.* * * *

(ii) Hunting of squirrel is permitted during the first two weeks of the State season only.

(iii) Hunting of raccoon and opossum is permitted during the last 28 days of the State season only.

(iv) Hunting of rabbits is permitted during the last two weeks of the State season only.

* * * * *

(d) * * *

(2) *Felsenthal National Wildlife Refuge.* * * *

(ii) Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through Jaunary 31, except that it is not permittted during the refuge deer gun and muzzleloader hunts.

(iii) Hunting of raccoon and opossum is permitted only during the first five days and last five days of the State season.

* * * * *

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Squirrel and rabbit hunting with dogs is permitted beginning January 1.

* * * * *

(4) *Overflow National Wildlife Refuge.* * * *

(ii) Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through January 31, except that it is not permitted during the refuge deer gun and mussleloader hunts.

(iii) Hunting of raccoon and opossum is permitted only during the first five days and last days of the State season.

* * * * *

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Squirrel and rabbit hunting with dogs is permitted beginning January 1.

* * * * *

(6) *White River National Wildlife Refuge.* * * *

(ii) Hunting of squirrel and rabbit is permitted from the first Saturday in October through October 31. Squirrel and rabbit may also be taken when their respective State seasons coincide with refuge deer archery and waterfowl hunts, but they must be taken with weapons legal for those hunts.

(iii) Hunting of raccoon and opossum is permitted for six days starting on the first Monday in December.

* * * * *

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the South Upland Hunting Area.

(ii) Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

(iii) Hunting is not permitted from March 1 through August 31.

(2) *Prime Hook National Wildlife Refuge.* Hunting of rabbit, squirrel, quail, and pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the North Hunting Area.

(ii) Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

(iii) Hunting is not permitted from March 1 through August 31.

(h) * * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of squirrel, quail, rabbit, and armadillo only is permitted on the Levy County portion of the refuge from the day after the State general deer gun season ends through the last day of the State squirrel season.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Dogs are permitted for quail hunting only.

(3) *St. Marks National Wildlife Refuge.* * * *

(ii) Hunting is permitted beginning the third Friday in December through the last Sunday in January except on Christmas and New Year's Day.

* * * * *

(i) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber and Gardner Divisions, and Turkey and Otter Islands.

(2) Hunting is permitted on the Bear Creek Unit of the Gardner Division during Illinois seasons. On the remainder of the Gardner Division, only squirrel hunting is permitted from the opening of the State season through September 30.

* * * * *

(o) * * *

(3) *Quivira National Wildlife Refuge.* Hunting of pheasant, bobwhite quail, squirrel, and rabbit is permitted on designated areas of the refuge.

* * * * *

(q) * * *

(4) *Delta National Wildlife Refuge.* Hunting of rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from the day after the waterfowl season closes though the remainder of the State season.

(ii) Only shotguns are permitted.

(iii) Dogs are permitted.

* * * * *

(6) *Upper Ouachita National Wildlife Refuge.* * * *

(i) Hunting of raccoon and opossum is permitted only during January.

* * * * *

(v) * * *

(2) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted during the entire State season, but the use of dogs for rabbit hunting is permitted only after the last day of the State deer season.

* * * * *

(6) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted from the opening of the State season through December 15.

(iii) Hunting of rabbit is permitted from the opening of the State season through December 15 without dogs and during February with dogs.

(7) *Yazoo National Wildlife Refuge.*

* * *

(iv) Hunting of raccoon and opossum is permitted on four consecutive nights beginning the fourth Wednesday in January.

* * * * *

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge.

* * * * *

(aa) * * *

(1) *Bitter Lake National Wildlife Refuge.* * * *

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the waterfowl season.

* * * * *

(bb) * * *

(1) *Iroquois National Wildlife Refuge.*

* * *

(i) Permits are required for night hunting of furbearers.

(2) *Montezuma National Wildlife Refuge.* Hunting of gray squirrel, cottontail rabbit, raccoon, and fox is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoons.

(ii) Hunting is permitted from the third Sunday in December through the close of the respective State seasons.

(iii) Shotguns only are permitted, except that .22 caliber firearms may be used to take raccoon.

(cc) * * *

(2) *Pee Dee National Wildlife Refuge.*

* * *

(i) Hunting of squirrel is permitted from the first day of the State season through the first Friday in November, except during any gun deer hunts.

* * * * *

(iv) Hunting of raccoon and opossum is permitted from the first day of the State season through the first Friday in November, except during any gun deer hunts.

(dd) * * *

(1) *Arrowwood National Wildlife Refuge.* Hunting of pheasant, grouse, Hungarian partridge, rabbit, and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the State deer gun season through the regular State late upland game season.

* * * * *

(ff) * * *

(9) *Sheldon National Wildlife Refuge.* Hunting of quail, grouse, and partridge is permitted on designated areas of the refuge.

(10) *Umatilla National Wildlife Refuge.* * * *

(11) *William L. Finley National Wildlife Refuge.* * * *

* * * * *

(hh) * * *

(2) *Carolina Sandhills National Wildlife Refuge.* * * *

(iii) Hunting of quail and rabbit is permitted only from the beginning of the State season to December 31.

(3) *Santee National Wildlife Refuge.*

* * *

(iv) Hunting of raccoon and opossum is permitted during the last ten days of the State season only.

(4) *Savannah National Wildlife Refuge.* * * *

(iii) Hunters must wear a minimum of 500 square inches of fluorescent orange colored material above the waistline.

* * * * *

(jj) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted during the first two weeks of the State season.

(2) *Hatchie National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Small game hunting is not permitted during the refuge deer archery and gun hunting season.

* * * * *

(kk) * * *

(2) *Hagerman National Wildlife Refuge.* Hunting of squirrel, rabbit, and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the hunt area.

(ii) Only shotguns and bows and arrows are permitted.

(iii) Upland game hunting is not permitted during the regular State waterfowl season.

* * * * *

(mm) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

(2) Hunting is not permitted from January 1 through August 31.

* * * * *

4. Section 32.32 is amended by revising paragraph (a)(1)(iii); revising paragraphs (d)(2) and (d)(4); revising paragraphs (g)(1) and (g)(2); revising paragraph (h)(2)(iii); adding a new paragraph (h)(2)(v); revising paragraphs (h)(3) and (h)(5)(iii) through (h)(5)(vi); adding new paragraphs (h)(5)(viii) through (h)(5)(x); revising paragraphs (h)(6)(ii) and (h)(6)(iv); adding new paragraphs (h)(6)(v) through (h)(6)(viii); revising paragraphs (i)(4)(ii) through (i)(4)(iv); adding new paragraphs (i)(4)(vii) and (i)(4)(viii); revising paragraph (i)(5) introductory text; revising paragraph (j)(4); adding a new paragraph (j)(5); revising paragraph (n); adding new paragraphs (r)(1)(iii) and (r)(1)(iv); revising paragraph (r)(2); redesignating paragraphs (r)(4) through (r)(6) as (r)(5) through (r)(7), respectively; adding a new paragraph (r)(4); revising paragraph (t)(2); revising paragraphs (u)(1) and (u)(2); revising paragraphs (x)(2)(i) and (x)(2)(iii); adding a new paragraph (x)(2)(v); revising paragraphs (x)(3), (x)(4)(i), (x)(4)(ii), (x)(6)(i), and (x)(6)(ii); adding a new paragraph (x)(6)(v); revising paragraphs (x)(7)(iv) and (x)(7)(viii); revising paragraph (y)(1)(i); revising paragraph (aa)(1); revising paragraph (cc); revising paragraph (ee)(2); revising paragraphs (ff)(1), (ff)(2), and (ff)(3)(ii); adding new paragraphs (ff)(3)(v) and (ff)(3)(vi); adding a new paragraph (gg)(10)(iii); revising paragraph (gg)(13); redesignating paragraph (ii)(4) as paragraph (ii)(5); adding a new paragraph (ii)(4); revising paragraph (ll)(1); revising paragraph (mm)(1)(i); revising paragraph (mm)(2); revising paragraph (pp); and revising paragraphs (qq)(2) through (qq)(4) as follows:

§ 32.32 Refuge-specific regulations; big game.

(a) * * *

(1) *Choctaw National Wildlife Refuge.*

* * *

(iii) Hunting is permitted from the opening day of the State season through December 1.

* * * * *

(d) * * *

(2) *Felsenthal National Wildlife Refuge.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted only from the opening day of the State season through January 31, except by special permit during quota gun deer hunts.

(iii) Muzzleloader hunting is permitted during the last consecutive Friday and Saturday in October only.

(iv) Modern gun hunting is permitted during the State Thanksgiving Holiday hunt only.

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Feral hogs may be taken during daylight hours of any refuge hunt with weapons legal for that hunt.

* * * * *

(4) *Overflow National Wildlife Refuge.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted only from the opening day of the State season through January 31, except by special permit during quota gun deer hunts.

(iii) Muzzleloader hunting is permitted during the last consecutive Friday and Saturday in October only.

(iv) Modern gun hunting is permitted during the State Thanksgiving Holiday hunt only.

(v) Firearms must be unloaded when transported or in refuge campgrounds.

(vi) Feral hogs may be taken during daylight hours of any refuge hunt with weapons legal for that hunt.

* * * * *

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A permit is required on the Regular and Headquarters Deer Hunt Areas.

(ii) Hunting on the Headquarters Deer Hunt Area must be from designated stands only, unless actively tracking or retrieving wounded deer.

(iii) Only portable tree stands may be used and must be removed from the refuge each day.

(2) *Prime Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting on Area A must be from designated stands only, unless actively tracking or retrieving wounded deer.

(iii) Hunting Areas A and B and the North Hunting Area are open to shotgun and muzzleloader hunting.

(iv) Archery hunting is permitted on the North Hunting Area only.

(v) Archery hunting is not permitted during the October primitive weapons season.

(vi) Only portable tree stands may be used and must be removed from the refuge each day.

(h) * * *

(2) *Lake Woodruff National Wildlife Refuge.* * * *

(iii) Two four-day blackpowder hunts are permitted beginning on the first and third Thursdays following the close of the archery hunt.

* * * * *

(v) Hunters must wear a visible outer garment of daylight fluorescent orange material.

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting on the Dixie County portion of the refuge will be in accordance with State regulations for the Perpetual Wildlife Management Area.

(ii) Hunting of white-tailed deer and feral hogs only is permitted on the Levy County portion of the refuge beginning the third Saturday in November and extending through the second Sunday in December, except on Thanksgiving.

(iii) Permits are required for hunting on the Levy County portion of the refuge.

(iv) Hunters must wear a visible outer garment of daylight fluorescent orange material.

* * * * *

(5) *St. Marks National Wildlife Refuge.* * * *

(iii) Only bearded turkeys may be taken.

(iv) Antlerless deer may not be taken on the Panacea Unit of the refuge during the archery hunt.

(v) A bucks-only deer, turkey, and hog hunt using bows and arrows and/or muzzleloaders is permitted for three consecutive days beginning the third Friday in November.

(vi) Two three-day bucks-only deer, hog, and turkey hunts are permitted on consecutive weekends beginning on the fourth Friday in November.

* * * * *

(viii) A hogs-only hunt is permitted for three consecutive days beginning the second Friday in December.

(ix) Turkey hunting is permitted for ten consecutive days beginning on the fourth Friday in March.

(x) Hunters must wear a visible outer garment of daylight fluorescent orange material.

(6) *St. Vincent National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for three consecutive days beginning on Thurday of the first full week in November.

* * * * *

(iv) A primitive weapons hunt is permitted for three consecutive days beginning on the second Thursday in December and for three consecutive days beginning on the last Thursday of the State modern gun season.

(v) Two deer of either sex may be taken during each hunt.

(vi) One turkey of either sex may be taken during the archery hunt and the December primitive weapon hunt.

(vii) During the archery and primitive weapon hunts, hunters must remain on their stands from one-half hour before sunrise to 9:00 a.m.

(viii) Hunters must wear a visible outer garmet of daylight fluorescent orange material during the primitive weapons hunt.

(i) * * *

(4) *Piedmont National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for 16 consecutive days beginning on the last Saturday in September.

(iii) Primitive weapons hunting of deer is permitted for three consecutive days beginning on the Thursday following the opening of the State deer firearms season. Deer taken on this hunt must have three or more points on one side or must be anterless.

(iv) A bucks-only deer hunt is permitted for three consecutive days beginning two weeks after the opening of the refuge primitive weapons hunt.

* * * * *

(vii) A general gun deer hunt is permitted on the two Saturdays following the bucks-only deer hunt and on the first Saturday in December.

(viii) Checking of bagged game is required.

(5) *Wassaw National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.*

* * *

(4) Hunters must wear a minimum of 500 square inches of fluorescent orange colored material above the waistline.

(5) Two deer may be taken. Deer may be of either sex.

* * * * *

(n) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division during part of the November firearms season only. Hunting is permitted from 6:30 a.m. to 3:00 p.m. A refuge permit is required.

(2) Archery hunting is permitted on the Bear Creek Unit of the Gardner Division. Archery hunting is permitted on the remainder of the Gardner Division during part of the Illinois archery deer season only. A refuge permit is required.

(3) Hunting is permitted on the Big Timber Division and on Turkey and Otter Islands during the State season.

* * * * *

(r) * * *

(1) *Bogue Chitto National Wildlife Refuge.* * * *

(iii) Bucks-only deer gun hunting is permitted on six consecutive days beginning the fourth Saturday of November.

(iv) Either-sex deer gun hunting is permitted on three consecutive days beginning on the Friday after Thanksgiving.

(2) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted.

(ii) Muzzleloader hunting for deer (bucks only) and unmarked feral hogs is permitted from January 2 through January 20.

(iii) Checking of bagged game is required.

* * * * *

(4) *Delta National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted from the opening of the State season through October 31.

(ii) Only portable stands are permitted and they must be removed from the refuge after each day's hunt.

(5) *Lacassine National Wildlife Refuge.* * * *

(6) *Tensas River National Wildlife Refuge.* * * *

(7) *Upper Ouachita National Wildlife Refuge.* * * *

* * * * *

(t) * * *

(2) *Rachel Carson National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotgun and archery hunting are permitted.

(u) *Maryland*—(1) *Blackwater National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Handguns and breech-loading rifles are not permitted.

(iii) In the headquarters hunt area, hunters must remain within 30 feet of their stand, unless actively tracking or retrieving wounded deer.

(2) *Eastern Neck National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only one deer of either sex may be taken.

(iii) Only archery, shotgun, and muzzleloader hunting is permitted.

(iv) Loaded weapons are not permitted in parking areas or on blacktopped roads.

* * * * *

(x) * * *

(2) *Hillside National Wildlife Refuge.* * * *

(i) Permits are required.

* * * * *

(iii) General gun deer hunting is permitted on the third Thursday of December.

* * * * *

(v) Muzzleloader deer hunting is permitted for eight consecutive days beginning the first Saturday of the State season.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(4) *Morgan Brake National Wildlife Refuge.* * * *

(i) Only archery and primitive weapons hunting are permitted.

(ii) Permits are required.

* * * * *

(6) *Panther Swamp National Wildlife Refuge.* * * *

(i) Permits are required.

(ii) The youth deer hunt is permitted on the first day of the State either-sex deer season.

* * * * *

(v) General gun hunting for deer is permitted from the beginning of the State season through November 30 and from December 24 through December 31.

(7) *Yazoo National Wildlife Refuge.* * * *

(iv) Muzzleloader deer hunting is permitted during the first five days of the State season excluding Sunday and Monday.

* * * * *

(viii) Bag limits are one bearded turkey, and one deer for all deer gun hunts.

* * * * *

(y) * * *

(1) *Mingo National Wildlife Refuge.* * * *

(i) Only archery and primitive weapons hunting are permitted.

* * * * *

(aa) * * *

(1) *Crescent Lake National Wildlife Refuge.* Hunting of white-tailed deer, mule deer, and pronghorn antelope is permitted on designated areas of the refuge subject to the following condition: Checking of bagged game is required.

* * * * *

(cc) *New Jersey—Great Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters must comply with State laws governing special deer permit hunts.

(2) All hunters must attend the refuge hunter orientation and show proof of completion of a refuge firearms proficiency test before hunting.

* * * * *

(ee) * * *

(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(ff) * * *

(1) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.

(iii) Dogs are not permitted.

(2) *Mackay Island National Wildlife Refuge.* Hunting of deer is permitted on

designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery and shotgun hunting are permitted.

(iii) Dogs are not permitted.

(iv) Shotgun hunters must hunt from designated stands.

(3) *Pee Dee National Wildlife Refuge.* * * *

(ii) Muzzleloader hunting is permitted the first Tuesday of the State (Anson County) muzzleloader gun season.

* * * * *

(v) Youth gun hunting is permitted on the first Saturday of the State (Anson County) gun season. During the youth deer hunt, only persons 15 years and under may carry, handle, or discharge firearms.

(vi) Gun hunting is permitted on the second Monday, Tuesday, Friday, and Saturday of the State (Anson County) gun season.

* * * * *

(gg) * * *

(10) *Lostwood National Wildlife Refuge.* * * *

(iii) Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

* * * * *

(13) *Upper Souris National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(ii) * * *

(4) *Sheldon National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.

(5) *William L. Finley National Wildlife Refuge.* * * *

* * * * *

(ll) * * *

(1) *Locreek National Wildlife Refuge.* Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(mm) * * *

(1) *Cross Creeks National Wildlife Refuge.* * * *

(i) Archery hunting is permitted during the first two weeks of the State archery season.

* * * * *

(2) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the firearms deer hunt and turkey hunt.

(ii) Checking of bagged deer taken during the firearms hunt is required.

(iii) Gun hunting is permitted on two consecutive days beginning on the fourth Saturday in October. One deer may be taken. Deer may be of either sex.

(iv) Archery hunting is permitted for the first 16 days of the State season. Two deer may be taken. Deer may be of either sex.

* * * * *

(pp) *Vermont—Missiquoi National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotguns may be used on that part of the refuge east of the Missisquoi River during the State regular season.

(qq) * * *

(2) *Chincoteague National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Shotgun hunters must use rifled slugs only.

(iii) Dogs are not permitted.

(3) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) One deer of either sex may be taken.

(iii) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.

(iv) Dogs are not permitted.

(4) *Presquile National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) One deer of either sex may be taken.

(iii) Dogs are not permitted.

(iv) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.

(v) Shotgun hunters must remain on their assigned stand unless tracking or retrieving a wounded deer.

(vi) Archers must remain on their assigned stand from ½ hours before sunrise to 10:00 a.m., after which time they may hunt anywhere within the hunt area.

* * * * *

Dated: August 19, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21036 Filed 9-3-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 40146-4171]

Foreign Fishing; Groundfish of the Gulf of Alaska; and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for Groundfish of the Gulf of Alaska, and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing those FMPs. The intended effect is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; optimum yields (OYs) for such species are established by the FMP for Groundfish of the Gulf of Alaska. These FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at §§ 611.92 and 611.93 and Parts 672 and 675. The TACs and OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under §§ 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1985 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director,

Alaska Region, NMFS (Regional Director) to fishermen and processors in September 1984. The Regional Director completed another survey in May 1985. The results of that survey indicate that more than half of the U.S. fisheries (except the Gulf of Alaska JVP fisheries) will occur during the second half of the year; therefore it is impossible to determine at this time what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen and the reapportionment of any DAH to TALFF would be inappropriate. Reapportionment of DAH and any reserves not released by this action will be considered at a later date.

1. Bering Sea and Aleutian Islands Area

As soon as practicable after April 1, June 1, and August 1, or on other dates as are determined appropriate, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year and apportions to TALFF the remaining portion of the reserve. When the initial DAH and TALFF for 1985 were established (50 FR 11369, March 21, 1985), DAH and TALFF were supplemented with 31,890 mt from the initial 300,000-mt reserve, thereby reducing the reserve to 268,110 mt. The April inseason adjustment (50 FR 19946, May 13, 1985) supplemented DAH and TALFF by an additional 134,055 mt from the reserve, reducing it to 134,055 mt. The June inseason adjustment (50 FR 26213, June 25, 1985) supplemented DAH and TALFF by an additional 111,035 mt from the reserve, reducing it to 23,020 mt. This action supplements TALFF by an additional 6,440 mt from the reserve, reducing it to 16,580 mt. The changes are summarized in Table 1.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TOTAL ALLOWABLE CATCH

Species	Figure	Current specification	This action	Revised specification
Pacific cod				
(TAC=220,000;	DAP	100,000		100,000
EY=347,400).	JVP	63,190		63,190
	TALFF	47,680	+6,440	54,120
Pacific ocean perch				
(Aleutians Area only).	DAP	3,300	−200	3,100
(TAC=3,800;	JVP	340	+200	540
EY=11,400)	TALFF	160		16
Total (includes other species not affected by this action)				
(TAC=2,000,000)	DAP	141,910	−200	141,710
	JVP	682,915	+200	683,115
	Reserve.	23,000	−6,440	16,580
	TALFF	1,152,155	+6,440	1,158,595

Apportionments Within DAH

To provide for bycatches in joint venture fisheries in the Aleutian Islands area, 200 mt of Pacific ocean perch (POP) DAP is transferred to POP JVP. Based on the May industry survey and reports of catch to date, it is found that these fish will not be processed by U.S. processors in 1985.

Apportionments to TALFF

An amount of Pacific cod of 6,440 mt is transferred from the reserve to TALFF. Based on the May industry survey and reports of catch to date, it is found that these fish will not be taken by U.S. fishermen during 1985.

2. Gulf of Alaska

Apportionments to DAH and TALFF will be considered at a later date.

Comments and Responses

In accordance with §§ 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska ground fish. One comment was received.

Comment: In the Bering Sea/Aleutians, the DAP and JVP for Pacific cod are sufficient; therefore, reserves should be allocated to the Pacific cod TALFF.

Response: The recommendation of the North Pacific Fishery Management Council, based on industry agreements, was to allow a 35,000-mt directed foreign longline fishery on Pacific cod in the Bering Sea Aleutian Islands area. This action increases the Pacific cod TALFF to 54,120 mt, which allows for that 35,000 mt plus sufficient bycatch for the foreign trawl fisheries.

The Regional Director has determined that 19,120 mt is necessary to provide a minimal bycatch of Pacific cod in the target trawl species currently in TALFF.

Classification

This action is taken under §§ 611.92 and 611.93 and Parts 672 and 675, and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulation regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Parts 672 and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: August 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-21057 Filed 8-29-85; 3:54 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 661

[Docket No. 50717-5123]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces an inseason adjustment in the number of allowable fishing days per week in the ocean recreational salmon fishery from the Queets River to Leadbetter Point, Washington. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Washington Department of Fisheries (WDF) and the Pacific Fishery Management Council, that an increase to seven fishing days per week is necessary to allow the recreational fishery an opportunity to harvest its quotas of chinook and coho salmon before the season ending date of September 19, 1985. The intent of this action is to promote orderly management of the recreational salmon fishery.

DATE: Modification of allowable fishing days per week in the ocean recreational salmon fisheries from the Queets River to Leadbetter Point, Washington, is effective at 0001 hours Pacific Daylight Time (PDT), August 30, 1985, until modified superseded, or rescinded. Comments will be accepted until September 13, 1985.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115. The information upon which this notice is based is available for public inspection from 8:00 a.m. to 4:30 p.m. weekdays at the Northwest Regional Office, NMFS, Building 1, 7600 Sand Point Way, NE, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: Final regulations to implement the framework amendment to the fishery management plan for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California were published in the **Federal Register** on October 31, 1984 (49 FR 43679). * * Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). These regulations specify that five days of fishing per week, Sunday through Thursday, are allowed in the ocean recreational salmon fishery from the U.S.-Canada border to Cape Falcon, Oregon.

An emergency regulation was promulgated on August 7, 1985 (50 FR 31848) to allow inseason adjustments to the fishing week in one or more subareas between the U.S.-Canada border and the U.S.-Mexico border based on evaluation of catch and effort rates to be conducted at the end of the third and sixth weeks of the fishery. The sixth week of the recreational fishery from the Queets River to Leadbetter Point, Washington, ended on August 10, 1985.

Recreational landings in the subarea from the Queets River to Leadbetter Point, Washington, through August 11, 1985, totaled 12,925 chinook (55 percent of quota) and 43,689 coho (59 percent of quota). Although the scheduled season is about half over, catch and effort have traditionally fallen off sharply after the Labor Day weekend. An increase to seven fishing days per week is necessary, therefore, to allow this recreational fishery an opportunity to harvest its quotas of chinook and coho salmon before the season ending date of September 19, 1985.

Consideration has been given to salmon abundance, recreational quotas, catch and effort to date by all fishery participants, the average daily catch per fisherman, and predicted recreational fishing effort to the end of the scheduled season in this subarea. The Secretary has determined that this adjustment to the number of allowable fishing days per week is consistent with ocean escapement goals, conservation of the salmon resource, adjudicated Indian fishing rights, and the allocation schedule in the framework amendment. Further, the Secretary has determined that this inseason action is necessary to provide an opportunity for the receational fishery to harvest its allocated quotas of chinook and coho salmon.

Classification

The WDF has taken action consistent with this notice in State waters adjacent to the FCZ from the Queets River to Leadbetter Point, Washington.

Time does not permit a comment period prior to the date these management measures must be in effect. Comments will be accepted until September 13, 1985.

This action is taken under authority of 50 CFR Part 661 and complies with Executive Order 12291. As provided under § 661.23(e), all information relevant to this notice has been complied in aggregate form and is available for public review at the above address.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–21058 Filed 8–29–85; 3:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 171
Wednesday, September 4, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in California; Proposed Amendment of Pear Commodity Committee Districts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reallocate the membership on the Pear Commodity Committee and re-group certain districts, for purposes of representation, within the production area. The changes reflect the relative quantity of pears shipped from the respective representation areas. This action was unanimously recommended by the Pear Commodity Committee established under this order.

DATES:

Comments due: Comments must be postmarked by September 19, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule is issued under Marketing Order No. 917, regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Pear Commodity Committee, and upon other available information.

Under this order, the production area is divided into districts for purposes of representation on the committee. The number of members from each district and the grouping of the districts are based, insofar as practicable, upon the proportionate quantity of pears shipped from the respective districts during the preceding three fiscal years. Section 917.35(g) of the order authorizes the Pear Commodity Committee, with the approval of the Secretary, to redefine the districts into which the production area is divided or to change the representation in any area. Any such changes are to be based, so far as practicable, upon the proportionate quantity of fruit shipped from the respective representation area during the three preceding fiscal periods.

The production area is currently divided into six areas for purposes of grower representation on the 13-member Pear Commodity Committee. The proposal would reduce the number of representation areas to five by combining the Placer-Colfax District and El Dorado District with the representation area covering the balance of the State. Membership from the combined area would be reduced from two members to one member. The proposal would also increase from five to six the number of members representing the Lake District.

The reason for this proposal is to more accurately align the districts in accordance with the proportionate quantity of pears shipped. During the three year period (1982–84) pear shipments totaled 11,263 cars. During that period the Lake District accounted for 5,203 cars or 46 percent of the total. The Placer-Colfax and El Dorado districts together with the Tehachapi and Little Rock areas, which are the principal producing areas in the balance of the State, accounted for less than 5 percent of total fresh shipments during the specified period. For this reason it would be appropriate to realign the districts as proposed.

List of Subjects in 7 CFR Part 917

Marketing agreement and orders, California, Pears.

PART 917—[AMENDED]

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–774.

2. The proposal is to amend § 917.121 by revising paragraphs (c), (d), and (e) to read as follows:

§ 917.121 Changes in nomination of Pear Commodity Committee members.

* * * * *

(c) Lake District, six nominees.

(d) Mendocino District and North Bay District, two nominees.

(e) Place-Colfax District and El Dorado District, and all of the production area not included in paragraphs (a) through (d) of this section, one nominee.

Dated: August 21, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–20336 Filed 9–3–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 920

Kiwifruit Grown in California; Proposed Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The proposal would essentially require kiwifruit shipped after January 14 of any fiscal year to be reinspected prior to shipment if the fruit is not shipped within 14 days of the date when inspection was made. It is designed to provide for orderly marketing of kiwifruit for the benefit of producers and consumers.

DATE: Comments must be postmarked by September 19, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and will be made available for public

inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated as "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule is issued under the marketing agreement and Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on the recommendations of the Kiwifruit Administrative Committee (hereinafter referred to as the "committee") and other available information.

The Kiwifruit Administrative Committee met on June 15, and unanimously recommended inspection requirements of the 1985–1986 season. The proposal would require that kiwifruit inspected and certified as meeting applicable grade, size, quality or maturity requirements prior to January 1 of each year shall not be shipped later than January 14, unless such kiwifruit is reinspected for condition (e.g. bruising, decay, ripeness). The proposal would also require that kiwifruit inspected and certified on or after January 1 of each year and not shipped within 14 days following the date of inspection shall be reinspected for condition prior to shipment. This proposal is in accordance with § 920.55(b) of the order which provides that the committee may, with the approval of the Secretary, establish a period prior to shipment during which inspection must be performed.

The kiwifruit harvest is expected to begin about October 1, 1985. Kiwifruit packed at the beginning of the season may be stored for several months without appreciable deterioration in quality. However, as the season progresses the condition of kiwifruit held in storage tends to deteriorate. The committee reports that by January 1 kiwifruit which is not shipped within 14 days of the date of inspection should be reinspected for condition to assure shipment of good quality fruit to consumers.

The proposed inspection requirements recognize the fact that kiwifruit are perishable and it is likely that kiwifruit which is inspected prior to storage will undergo changes in condition when the fruit is removed from storage. The committee has recommended establishment of a maximum time for which an inspection certificate is valid. The proposed requirements would apply to shipments of kiwifruit whenever quality regulations are in effect pursuant to § 920.52 or § 920.53 of the order.

The proposed rule provides a 15-day comment period. All comments postmarked within this period will be considered prior to the issuance of any final rule.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

PART 920—[AMENDED]

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The proposal is to add a new § 920.155 to read as follows:

§ 920.155 Inspection requirement.

Any kiwifruit which is inspected and certified as meeting grade, size, quality or maturity requirements in effect pursuant to § 920.52 or § 920.53 prior to January 1 of each fiscal year, as defined in § 920.7, and not shipped by January 14 of such fiscal year shall be reinspected prior to shipment. Any kiwifruit which is inspected and certified on or after January 1 of each fiscal year and not shipped within 14 days following the date of inspection shall be reinspected prior to shipment. Any kiwifruit which is reinspected must be certified as meeting grade, size, quality or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Dated: August 28, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–21017 Filed 9–3–85; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR PART 1135

[Docket No. AO–380–A5]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking

SUMMARY: This hearing is being held to consider serveral proposals to amend the Southwestern Idaho-Eastern Oregon milk order. The principal proposals would reduce the pooling standards for distributing plants and supply plants, and relax diversion limits and "touch-base" requirements for producer milk. Proponent contends that the modifications are needed to reflect changed marketing conditions.

DATE: The hearing will convene at 9:30 a.m., on October 16, 1985.

ADDRESS: The hearing will be held at The State House Inn, Majestic Room, 981 Grove, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at The State House Inn, Majestic Room, 981 Grove, Boise, Idaho 83702, beginning at 9:30 a.m., on October 16, 1985, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, to hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is

independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects In 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1135 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674)).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agricuture.

Proposed by Dairymen's Creamery Association, Inc.

Proposal No. 1

Revise § 1135.7(a)(2) to change the minimum route disposition requirment for pool distributing plants from 40 percent to 25 percent.

Proposal No. 2

Revise § 1135.7(b) to change the minimum percentage of recipts a supply plant is required to transfer to pool distributing plants from 40 percent to 25 percent, and to delete the language "including producer milk diverted from the plant by the plant operator but".

Proposal No. 3

Revise § 1135.(f)(2) to change the requirement that a dairy farmer's milk must be phyically received at a pool plant for one day's production in each of the months of September through February in order to be eligible for unlimited diversions to a requirement that one day's production must be physically received at a pool plant for three consecutive months on a one-time basis. It the producer's milk were not associated with the market for 60 consecutive days, his milk would have to be requalifed.

Proposal No. 4

Revise § 1135.13(f)(3) to increase the maximum percentage of a cooperative's milk that may be diverted to nonpool plants from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

Proposal No. 5

Revise § 1135.13(f)(4) and § 1135.13(f)(5) to conform with Proposal No. 4.

Proposal No. 6

Continue the suspension of Paragraphs (f)(2) and (f)(3) in § 1135.13 until this proceeding is completed. Paragraph (f)(2) requires that one day's production of each dairy farmer be physically received at a pool plant during each month of September through February. Paragraph (f)(3) limits the amount of a cooperative's total milk supply that may be moved directly from farms to nonpool plants and still be priced under the order.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 7

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Frank Sheckarski, P.O. Box 23606, Portland, Oregon 97223, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision process are prohibited from discussing the merits of the hearing on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Southwestern Idaho-Eastern Oregon Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on August 29, 1985.

James C. Handley,

Administrator.

[FR Doc. 85–21055 Filed 9–3–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–29–AD]

Airworthiness Directives; Mooney Models M20 and M20A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Mooney Models M20 and M20A airplanes which would supersede AD 76–15–01, Amendment 39–2873. The AD currently requires certain inspections of the wooden wing and empennage structure. Subsequent to the issuance of AD 76–15–01, the FAA has determined that these existing wooden structure inspection requirements need to be expanded. The proposed AD would require more detailed repetitive inspections and proof load testing of the wooden primary structure and repair or replacement as necessary thereby precluding structural failure.

DATES: Comments must be received on or before December 9, 1985.

Compliance: As prescribed in the body of the proposed AD.

ADDRESSES: Mooney Service Bulletin (S/B) M20–170A, dated February 24, 1969, S/B M20–29, dated December 4, 1957, and S/B M20–67, dated February 15, 1960, may be obtained from Mooney Aircraft Corporation, Post Office Box, 72, Kerrville, TX 78028 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–29–AD, Room 1558, 601 East 12th Street, Kansas City, MO 64106. Comments may be inspected at Room 1558 between 7:30 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Garry D. Sills, Aerospace Engineer, Airplanes Certification Branch, ASW–150, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101; Telephone (817) 877–2073.

SUPPLEMENTARY INFORMATION:

Comments Invited:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and emergency aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Discussion

AD 76–15–01, applicable to Mooney Models M20 and M20A airplanes, requires certain inspections of the wooden wing and empennage structure. Subsequent to the issuance of AD 76–15–01, the FAA learned of an accident involving wing structural separation on a wooden Mooney Model M20A airplane. This accident resulted in two fatalities. The results of the investigation of this accident indicate in part, that undetected deterioration of the wood structure may have contributed to the accident. The bonded and glued type of construction used on Mooney Models M20 and M20A airplanes results in an airplane structure that is difficult to inspect. In addition, structural deterioration can result in a critical safety hazard if not detected and repaired. Accordingly, the FAA has determined that more detailed inspections of the empennage and wing structures, wooden intercostals, flap-hinge brackets and aileron hinge brackets are essential for the safe operation of these airplanes. The inspection and proof loading proposed in this AD would supersede and expand the requirements of AD 76–15–01. The reporting requirement of the proposed AD has been cleared by OMB No. 2120 1156.

There are approximately 352 privately owned airplanes affected by the proposed AD. The average cost of compliance with proposed requirements for initial inspections is estimated to be $1,200 per airplane, for a total cost of $492,800 to the private sector.

Therefore, I certify that this action (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Mooney Aircraft Corporation: Applies to Models M20 and M20A (all serial numbers) airplanes certificated in any category.

Compliance: As indicated in the body of the AD.

To preclude structural failure due to deteriorated wooden structures, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD and each 12 calendar months thereafter, accomplish the visual and nondestructive inspections, and proof load tests specified in paragraphs (d), (e), and (f) of this AD and, prior to further flight, repair all discrepancies found.

(b) Within the next six calendar months after accomplishment of the inspections required by paragraph (a) of this AD and each 12 calendar months thereafter, accomplish the visual inspections specified in paragraph (g) of this AD and, prior to further flight, repair all discrepancies found.

(c) The initial inspections required by paragraph (a) of this AD are not required if the requirements of AD 76–15–01 have been accomplished within the 12 calendar months preceding the effective date of this AD. The repetitive 12 month calendar inspections specified in paragraph (a) of this AD are required at 12 month intervals from accomplishment of AD 76–15–01.

(d) On airplanes not equipped with an all-metal empennage, visually inspect and modify the empennage and supporting structure as follows:

(1) Apply proof loads to the vertical fin spar as shown in Figure 1 of this AD. Apply the load to the right side and then to the left side. Apply proof loads to the rudder hinges of the fin as shown in Figure 3 of this AD. Apply hinge proof loads to the right side and then to the left side.

(2) Apply the proof loads to the vertical fin spar and rudder hinges as shown in Figures 1 and 3 of this AD. Apply the loads in one direction only during each 12 month inspection cycle by applying the loads to the right side at the end of the first interval and to the left side at the end of the second interval and alternating load direction similarly thereafter.

(3) If the empennage fails during the proof loading specified in paragraphs (d)(1) or (d)(2) of this AD, prior to further flight replace the wood empennage with an all-metal empennage in accordance with the instructions contained in Mooney Service Bulletin (S/B) Kit M20–170–1. The empennage is considered to have failed when complete separation of the vertical fin from the horizontal stabilizer occurs, if fin spar cracks occur, if any hinge separates or loosens from the fin, if other wood failures occur, if glue joint failures occur, or if permanent deformation occurs as shown in Figure 2 of this AD.

(4) If fin failure did not occur during the proof load application specified in paragraphs (d)(1) and (d)(2) of this AD, prior to further flights:

(i) Modify the vertical fin in accordance with paragraphs IB and IC of Mooney S/B M20–170A, dated February 24, 1969, unless previously accomplished.

(ii) Inspect the empennage in accordance with Mooney S/B M20–170A, dated February 24, 1969, Part IA and Part II, and repair all defects found.

(5) The inspection and modification requirements of paragraphs (d)(1) through (d)(4) above are not required on airplanes modified with all-metal empennage installed per Mooney S/B Kit M20–170–1.

(e) Visually inspect and proof load test the wing as follows:

(1) Remove the wing to fuselage fairings and fillets.

(2) Remove all the wing and center sections access doors and panels. (Refer to Figure 5 of Mooney Service Bulletin M20–170A.)

(3) Remove the sealing tape at the wing-fuselage joint.

(4) Inspect the areas around the fittings for evidence of deterioration or joint separation and prior to further flight, repair all defects found.

(5) Remove the rear seat and auxiliary fuel tank for access to the wing center section.

(6) Disconnect and remove the wing flaps and ailerons.

(7) Inspect the flap and aileron attach bolts, bearings, bushings, and hinge fitting attach bolts and bushings, for evidence of rust,

corrosion, and wear, and prior to further flight, repair or replace all defective parts.

(8) Visually inspect the wood end-grain surrounding bolt holes for evidence of rust, discoloration, deterioration, and evidence of moisture accumulation at the trailing edges of the wings and prior to further flight, repair all defects found.

(9) Drain and remove the wing fuel tanks for access to the wing center section.

(10) Test the wooden intercostals that support the flap hinge brackets by applying proof loads to the flap wing support brackets as shown in Figure 4 of this AD. Apply the loads perpendicular to the wing chord plane.

(11) Test the conditions of the rear spar at the points where the aileron is attached by applying proof loads to the aileron hinge support brackets as shown in Figure 4 of this AD. Apply these loads perpendicular to the wing chord plane.

(12) If any relative motion of the tested components is observed during the tests specified in paragraphs (e)(11) and (e)(10) above, investigate further and prior to further flight repair all defects found.

(f) Nondestructively test the wing as follows:

(1) Visually inspect the rear stub spar for glue bond separations, water stains, and wood rot. If these inspections identify any questionable areas in which possible deterioration may exist in the concealed spar caps, prior to further flight determine the condition of the internal spruce core in accordance with paragraph (f)(9) of this AD and repair all defects found. See Note 1 of this AD.

(2) Visually inspect the main spar from the fuselage out to wing station 59.25 for glue bond separations, water stains, and wood rot. If these inspections identify any questionable areas in which possible deterioration may exist in the concealed spruce caps, prior to further flight determine the condition of the internal spruce core in accordance with paragraph (f)(9) of this AD and repair all defects found. See Note 1 of this AD.

(3) Visually inspect the accessible interior of the wing using a flashlight and mirror for wood decay, water and/or wood stains, pooled dust/dirt which may indicate evidence of previous standing water, rust or corrosion on metallic surfaces, wood discoloration, and detectable moisture. Prior to further flight repair all defects found. See Note 1 of this AD.

(4) Inspect the exterior surfaces of the wing, including the wheel well, for the following and prior to further flight repair all defects found. See Note 1 of this AD.

(i) Indications that the wood immediately below the fabric is soft or contains excessive moisture (i.e., swollen). Soft wood may be located and/or confirmed by depressing the wing's surface in the vicinity of the area in question with a rounded, blunt instrument and comparing its hardness to that of good wood. Note that any areas being compared must have identical substructure.

(ii) Indications that the fabric/paint is delaminating from the wood surface (bubbles, discoloration, boils, soft spots and other surface flaws).

(Ii) Cracks or breaks in the paint which could allow water to enter the wing.

(iv) Any other exterior damage which would allow water to penetrate the fabric/paint barrier and enter the wood.

(5) Inspect all drain holes on the bottom of the wing to ensure they are completely open and free of burrs and/or pieces of fabric, and prior to further flight, repair all defects found.

(6) Visually inspect the fuel scupper areas for sealant condition between between scupper boxes and wing structure. Prior to further flight repair any defects found.

(7) Visually inspect aileron and flap fabric in accordance with Mooney S/B M20–29, dated December 4, 1957 and prior to further flight repair any defects found.

(8) Visually inspect the main landing gear wheel well area in accordance with Mooney S/B M20–67, dated February 15, 1960, and prior to further flight repair any defects found.

(9) If the inspections specified in paragraphs (f)(1) and (f)(2) of this AD identify any questionable areas, test these areas by using one or more of the following; and prior to further flight repair any defects found:

(i) Test for soft/decayed wood with a sharp probe such as an awl or sharp pocket knife.

(ii) Tests for moisture content may be made by using a suitable resistance type moisture meter (Model G–2 Delmhorst Instrument Company, 607 Cedar Street, Boontown, New Jersey 07005) or equivalent. Moisture contents exceeding approximately 25% are excessive and indicate failure of the coverings and coatings to protect the wood structure from contacting and absorbing moisture.

(iii) To determine if the spars have decay near the top and/or bottom surface, drill a ¼ inch diameter hole in the wing skin (⅛ inch deep maximum outboard of WS 148 or ⅛ inch deep maximum inboard of WS 148) to gain access to the wing spar flange/cap. Caution: Do not penetrate spruce wing flange/cap material and do not drill the wing skin inboard of WS 23. Holes outboard of WS 23 may be drilled by using a ¼ inch drill bit sharpened so that its point angle is very flat and using a stop which prevents it from penetrating to a depth greater than the thickness of the wing skin. Test the drill bit on a separate piece of plywood to insure that it cuts clean and penetrates the proper amount. Inspect the spruce spar material for soft/decayed wood visually and with a sharp probe such as an awl or sharp pocket knife. If the visual/probing inspection indicates the spruce spar material is good, the ¼ inch diameter holes drilled in the wing skin must be suitably filled using either an epoxy adhesive/filler or by fabricating a hard wood plug and gluing it into the hole in the wing skin using a water resistant adhesive. Apply fabric patches over the plugged holes in accordance with Part III of Mooney Service Bulletin No. M20–170A.

(g) Inspect the wing and empennage as follows and prior to further flight repair all defects found:

(1) Inspect the emennage in accordance with Part IIA of Mooney S/B M20–170A, dated February 24, 1969.

(2) Inspect the wing in accordance with Mooney S/B M20–170A, dated February 24, 1969, Part III items 8, 9, and 10.

(3) If wood or glue joint deterioration is detected during the above inspections, accomplish additional inspections in accordance with Mooney S/B M20–170A, dated February 24, 1969, Parts IA, II, and III.

(h) If significant structural repair of the wing main spar and stub spar, or any area of the emennage is found necessary as a result of the inspections and tests of the preceding paragraphs, contact Mooney Aircraft Corporation, Post Office Box 72, Kerrville, TX 78028; Telephone (512) 896–6000, the local Mooney Aircraft Repair Center, or FAA Airplane Certification Office, ASW–150, before proceeding further. Do not attempt to design primary structural repairs for the wing or empennage without consulting Mooney Aeronautical Structural Engineers and FAA Aircraft Certification Office, ASW–150.

(i) Within 30 days after accomplishment of any inspection required by this AD report in writing all defects found as a result of the requirements and inspections of this AD to the Manager, Airplane Certification Branch, ASW–150, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101; Telephone (817) 877–2073. This report should include the dates of the inspection, the airplane serial number and registration number, owner's name and address, is the airplane equipped with a wooden or metal empennage, and a brief summary of the inspection results. Negative findings must also be reported. (Reporting approved by the Office of Management and Budget under OMB No. 2021–1156).

(j) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, FAA, Southwest Region, Post Office Box 1689, Forth Worth, TX 76101; Telephone (817) 877–2073.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mooney Aircraft Corporation, Post Office, Box 72, Kerrville, TX 78208, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

Note 1.—The surface features described in the paragraphs of this AD may be accentuated by illuminating the surface with a light source at a shallow angle. The following technique may be used by an experienced inspector to detect soft and/or decayed wood in the wing spars. Tap the wing directly above and below the spars with a small rounded blunt instrument approximately the size of a small pocket knife. Start at the outboard end and move inboard, listening to the sound generated by the wing. The sound quality will change slowly. If the change is abrupt or if the sound is not resilient, the wood directly below the surface may have decay.

Note 2.—Shelter—Owners and operators are encouraged to shelter the airplanes, to keep the airplane out of rain storms, and to protect the fabric surface from the harmful and deteriorating effects of the sun.

Note 3.—Maintenance—Owners and operators are encouraged to be selective in who performs maintenance on their aircraft. Only personnel extremely experienced in wood aircraft inspection and repair should be contacted.

Note 4.—The inspection intervals required by this AD differ from the inspection intervals shown in Mooney Service Bulletin No. M20–170A.

Note 5.—Repairs to primary and secondary structure may be accomplished with reference to:

(A) FAA AC 43–13–1A: Acceptable Methods, Techniques and Practices AIRCRAFT INSPECTION AND REPAIR, Department of Transportation, Federal Aviation Agency 1972; availble through the Government Printing Office.

(B) ANC–18: Design of Wood Aircraft Structures, Chapter 4, Detail Structural Design Munitions Board Aircraft Committee June, 1951.

(C) Mooney Aircraft Corporation Engineering Drawings; the specific drawings required will depend on the affected structural components.

(D) Mooney Service Bulletin M20–170A dated February 24, 1969. Contact your Authorized Mooney Service Center or the listed FAA contact for assistance.

This AD supersedes AD 76–15–01, Amendment 39–2673.

Issued in Kansas City, MO, on August 26, 1985.

Donald J. Schneider,

Acting Director, Central Region.

BILLING CODE 4910–13–M

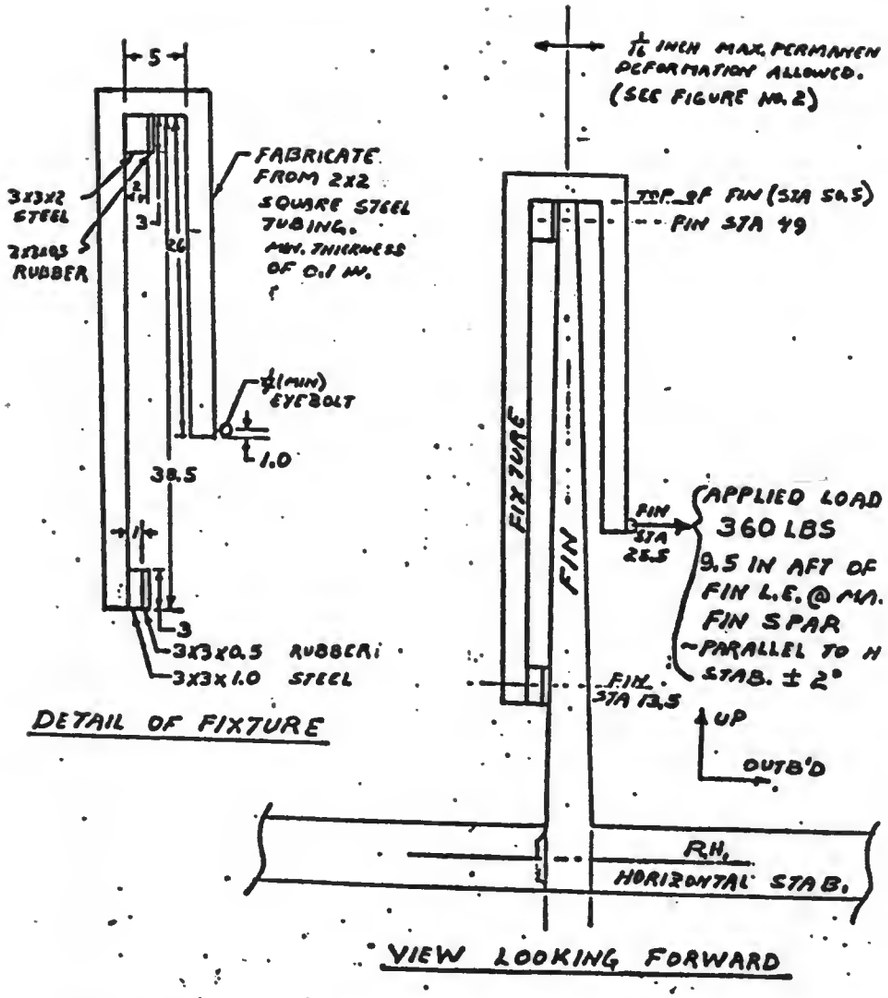


FIGURE NO. 1 - APPLICATION OF FIN SIDE PROOF LOAD ON MAIN SPAR

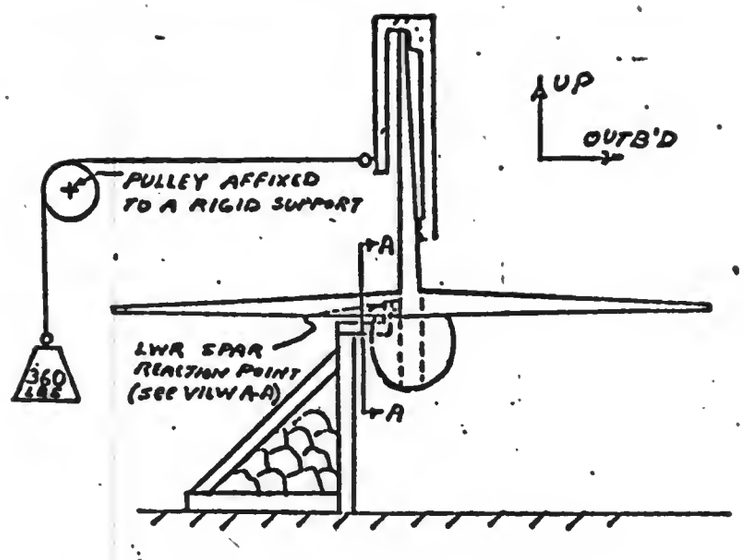
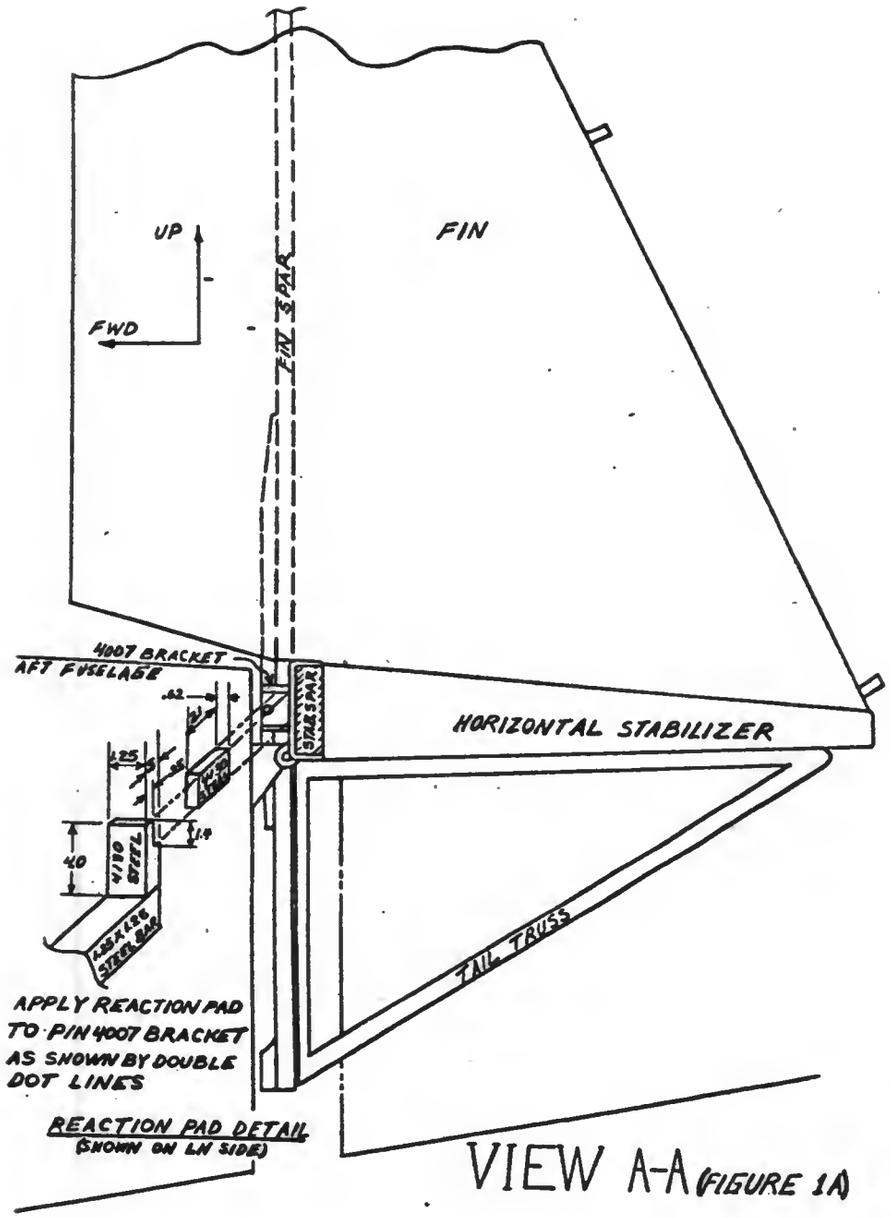


FIGURE 1A

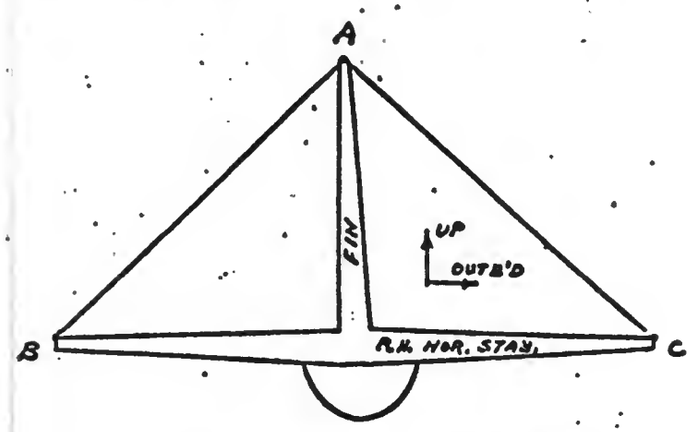
RECOMMENDED FIN PROOF LOAD METHOD (INCLUDING LOWER RESTRAINT)



VIEW A-A (FIGURE 1A)

NOTES:

1. MARK A POINT 'A' ON THE FIN TIP
2. MARK POINTS 'B' AND 'C' ON THE HORIZONTAL STAB. TIPS
3. MEASURE THE DISTANCES 'AB' AND 'AC' BEFORE AND AFTER APPLICATION OF LOADS SHOWN BY FIG. NO. 1
4. IF THE DISTANCE 'AB' MEASURED AFTER LOAD APPLICATION VARIES BY MORE THAN $\frac{1}{16}$ INCH FROM THE DISTANCE 'AB' MEASURED BEFORE LOAD APPLICATION, FAILURE IS CONSIDERED TO HAVE OCCURRED. A VARIATION OF MORE THAN $\frac{1}{16}$ INCH IN THE TWO 'AC' MEASUREMENTS ALSO CONSTITUTES FAILURE



VIEW LOOKING FORWARD

FIGURE NO. 2 - FIN PERMANENT DEFORMATION LIMITS

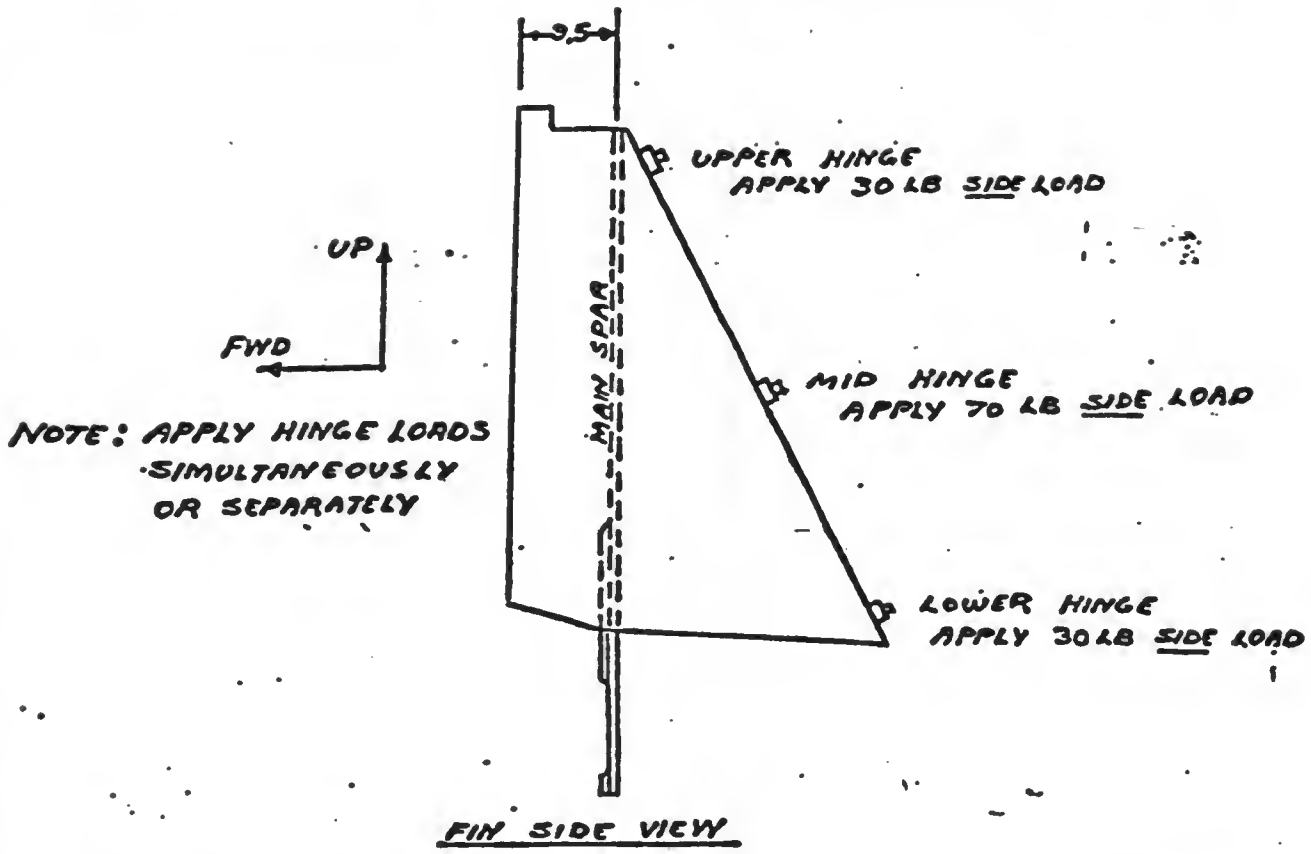
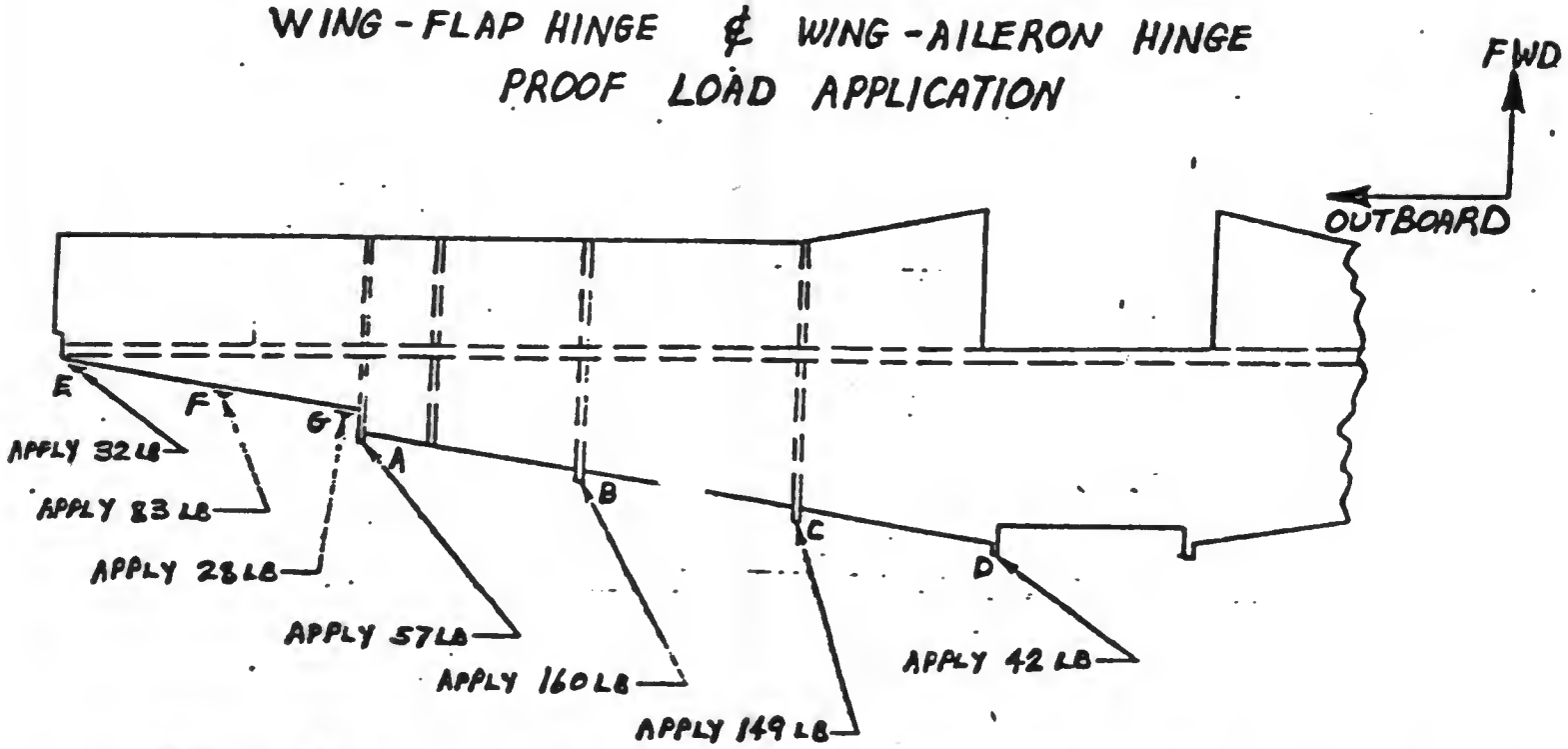


FIGURE NO. 3 - FIN-RUDDER HINGE SIDE PROOF LOAD APPLICATION

FIGURE NO 4
WING - FLAP HINGE & WING - AILERON HINGE
PROOF LOAD APPLICATION



NOTE: 1. APPLY LOADS ONE AT A TIME PERPENDICULAR TO WING
2. HINGES A, B, C, + D ARE FLAP HINGES
3. HINGES E, F, + G ARE AILERON HINGES

[FR Doc. 20980 Filed 9-3-85; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 83-ANE-15]

Airworthiness Directives; Rolls-Royce, Limited, Spey 555-15, -15H, -15N, and -15P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would impose reduced retirement life for all stage 12 high pressure compressor disks, stage 12 high pressure compressor rotor seals, and low pressure compressor drive shafts (Pre-Mod. 4927) on Rolls-Royce, Limited, Spey 555-15, -15H, -15N, and -15P turbofan engines in accordance with Rolls-Royce Mandatory Service Bulletin (SB) No. Sp72-969, Revision 1. The proposed AD is prompted by a recalculation of the maximum approved cyclic life using current in-service flight cycle profiles. This recalculation has shown a requirement to reduce the maximum cyclic life of these components due to a reduction in low cycle fatigue capabilities.

DATES: Comments must be received on or before November 15, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-ANE-15, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 83-ANE-15.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

The applicable SB may be obtained from the Service Manager, Spey Engine, Rolls-Royce, Limited, East Kilbride, Glasgow G74 4PY, Scotland. A copy of the SB is contained in Rules Docket No. 83-ANE-15, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steeves, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive park, Burlington, Massachusetts 01803; telephone (617) 273-7097.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 83-ANE-15". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the maximum approved cyclic lives of all stage 12 high pressure compressor disks, stage 12 high pressure compressor rotor seals, and low pressure compressor drive shafts (Pre-Mod. 4927) must be reduced due to a recalculation of low cycle fatigue capabilities using current in-service flight cycle profiles. Since this condition exists on all Spey 555-15, -15H, -15N, and -15P engines, the proposed AD would require the removal of these disks, seals, and drive shafts from service, in accordance with Rolls-Royce Mandatory SB Number Sp72-969, Revision 1.

Conclusion

The FAA has determined that this proposed regulation involves 76 Spey 555-15, -15H, -15N, and -15P engines and the approximate cost for each engine is $511.00. This would result in an increase in engine operating cost of only $0.03 per flight. It has also been determined that a substantial number of small entities are not affected, as these engines are installed in the Fokker F28 aircraft. All of these aircraft are operated by large entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (14 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant ecomonic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39, § 39.13, of the Federal Aviation Regulations (FAR) as follows:

1. The Authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

Rolls-Royce Limited: Applies to all Rolls-Royce Spey 555-15, -15H, -15N, and -15P turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the stage 12 high pressure compressor disk, stage 12 high pressure compressor rotor seal, and low pressure compressor drive shaft (Pre-Mod. 4927), accomplish the following:

Remove from service, at or before the maximum permissible cyclic lives (flights), in accordance with the following schedule:

CYCLIC LIVES

Part description	Modification	A [1] Number of Flights	B [1] Number of Flights	C [1] Number of Flights	D [1] Number of Flights	E [1] Number of Flights	F [1] Number of Flights
High Pressure Compressor Stage 12 Rotor Disk and Seal.	....	13,800	15,600	17,600	19,700	22,100	17300
Low Pressure Compressor Rotor Drive Shaft.	Pre-Mod 4927..	10 800	10,800	11,500	12,600	14,400	11,200

[1] Note.—Cyclic lives for each component are for flight profiles as denoted by A through F and defined below:

For engines with no N_2 monitoring:

A. Full throttle (Mk. 555–15 or 15N) or rated (Mk. 555–15H or P).

Takeoff procedures giving 101% N_2 on 100% of occasions.

For engines with N_2 monitoring:

B. Where 85% of takeoffs do not exceed 100% N_2

C. Where 85% of takeoffs do not exceed 99% N_2

D. Where 85% of takeoffs do not exceed 98% N_2

E. Where 85% of takeoffs do not exceed 97% N_2

F. Datum profile, average 99.5% N_2

Remove the affected components in accordance with Rolls-Royce Mandatory SB Number Sp72–969, Revision 1, dated May, 1984, at or before accumulation of the maximum cyclic lives listed above.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified in this document.

Issued in Burlington, Massachusetts, on August 23, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–20981 Filed 9–3–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–ANE–25]

Airworthiness Directives; Rolls-Royce Limited RB211–535E4 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require initial and repetitive inspections of the outer combustion case for cracks on Rolls-Royce RB211–535E4 engines in accordance with Rolls-Royce Service Bulletin (SB) RB211–72–7775. The proposed AD is needed to prevent an uncontained burst of the outer combustion case which can result from cracks that originate in the stage 6 high compressor bleed soleplate weld.

DATES: Comments must be received on or before November 15, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–ANE–25, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room No. 311 at the above address.

Comments delivered must be marked: Docket No. 85–ANE–25.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable SB may be obtained for Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the SB is contained in Rules Docket No. 85–ANE–25 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85–ANE–25." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that cracks originating in the weld at the stage 6 high compressor bleed soleplate of the outer combustion case on Rolls-Royce RB211–535E4 turbofan engines can result in an uncontained engine failure. Cracking in the soleplate weld results from higher than predicted loads on the soleplate due to relative motion between the engine and the airframe. One failure has occurred of a combustion outer case during endurance cyclic rig testing. A crack initiated in the soleplate weld and propagated rearwards along the weld. At a distance of about 9 inches, the crack became critical and propagated axially in both fore and aft directions to ultimate failure. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive inspections of combustion cases as specified in Rolls-Royce SB RB211–72–7775, dated June 28, 1985, on Rolls-Royce RB211–535E4 turbofan engines.

Conclusion

The FAA had determined that this proposed regulation involves 32 Rolls-Royce RB211–535E4 turbofan engines at an approximate total cost of 200 dollars per year per engine. Less than 11 small entities will be affected by this proposed regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and

(3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A

copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

Rolls-Royce Limited: Applies to Rolls-Royce RB211-535E4 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained outer combustion case burst, accomplish the following:

Inspect for cracks all outer combustion cases which do not incorporate the requirements of Rolls-Royce SB RB211-72-8045, in accordance with the procedures of Rolls-Royce SB RB211-72-7775, dated June-28, 1985, or FAA approved equivalent, within the next 50 flight cycles after the effective date of this AD or before 1,500 flight cycles since new, whichever occurs later. Repetitive inspection thereafter is required at intervals varying from 50 to 500 flight cycles as specified in the Acceptance Criteria of SB RB211-72-7775, dated June 28, 1985.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 may adjust the compliance time specified in this AD.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on August 22, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-20984 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ANE-17]

Airworthiness Directives; Rolls-Royce Limited RB211-22B, -535C, and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require the removal from service of certain stage 1 and 2 high compressor disk assemblies on Rolls-Royce RB211-22B, -535C, and -524 series engines in accordance with Rolls-Royce Alert Service Bulletin (SB) RB211-72-A7774. The proposed AD is needed to prevent an uncontained stage 1 high compressor disk burst which can result from material defects that were induced by manufacturing process deviations.

DATES: Comments must be received on or before November 15, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-ANE-17, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room No. 311 at the above address.

Comments delivered must be marked: Docket No. 85-ANE-17.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room No. 311, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the SB is contained in Rules Docket No. 85-ANE-17 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-ANE-17." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the failure of certain stage 1 high compressor disks on certain Rolls-Royce RB211-22B, -535C, and -524 series turbofan engines can result in an uncontained engine failure. One disk failed in service, at 3188 flight cycles, and liberated pieces which penetrated the engine case and engine cowl. This failure was precipitated by manufacturing process deviations which contributed to a reduction of the low cycle fatigue life of the disk. Since this condition is likely to exist on other engines of the same type design, the proposed AD would require removal of suspect disks from service as specified in Rolls-Royce Alert SB RB211-72-A7774, dated June 21, 1985, on Rolls-Royce RB211-22B, 535C, and RB211-524B, -524C, and -524D series turbofan engines.

Conclusion

The FAA has determined that this proposed regulation involves 176 Rolls-Royce RB211-22B, -535C and -524 series turbofan engines at an approximate total cost of 5.2 million dollars. Less than 11 small entities will be affected by this proposed regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

Rolls-Royce Limited: Applies to Rolls-Royce RB211-22B, RB211-535C, and RB211-524B, -524C, and -524D series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained stage 1 high compressor disk burst, accomplish the following:

Remove the specified serial number stage 1 and 2 high compressor disk assemblies from service in accordance with the serial number lists and compliance schedules specified in Rolls-Royce Alert Service Bulletin (SB) RB211-72-A7774, dated June 21, 1985, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through and FAA maintenance inspector, the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on August 22, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-20985 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-AGL-17]

Proposed Alteration of Transition Area; Watertown, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Watertown, Wisconsin, transition area to accommodate a new NDB Runway 5 instrument approach procedure to Watertown Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 10, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-17, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new NDB Runway 5 instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 0.5 mile radius expansion of the existing transition area.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Watertown Wisconsin.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Watertown, WI

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Watertown Municipal Airport (lat. 43°10'15" N., long. 88°43'20"W.)

Issued in Des Plaines, IL on August 13, 1985.

Edward J. Phillips,

Acting Director, Great Lakes Region.

[FR Doc. 85–20982 Filed 9–3–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 82

[Docket No. 85N–0323]

FD&C Yellow No. 5

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the identity and specifications for FD&C Yellow No. 5, which is listed for use in food and in ingested drugs. This action would establish a uniform identity and set of specifications for all regulated uses of this color additive. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule that would establish a new identity and new specifications for FD&C Yellow No. 5 in § 74.2705 (21 CFR 74.2705). The new identity and new specifications describe the color additive more precisely and control undesired impurities more completely than do those currently listed in § 74.705 (21 CFR 74.705).

DATE: Comments by November 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Background

FDA established the identity and specifications for FD&C Yellow No. 5 in 1966 when it permanently listed the color additive for use in foods (21 CFR 74.705) and in ingested drugs (21 CFR 74.1705) (see 31 FR 3008; February 22, 1966). However, during the recent safety review of the provisionally listed uses of FD&C Yellow No. 5, it became evident that continued safe use of the additive would require the adoption of a new identity, which includes a new chemical name and manufacturing method, and new specifications for this color additive. These changes are necessary to control the formation and presence of undesired contaminants in the color additive. A final rule permanently listing the provisional uses of FD&C Yellow No. 5 is published elsewhere in this issue of the **Federal Register**. The discussion in that final rule is referenced as further background for this proposal.

II. Specifications

The new specifications for FD&C Yellow No. 5 for use in externally applied drugs (§ 74.1705) and in cosmetics generally (§74.2705) are based on the results of analyses that are more specific and more sensitive than those that were used in establishing the specifications in § 74.705. Thus, revised § 74.2705 contains specifications for specific intermediates instead of a general specification for "uncombined intermediates," and it also includes a limitation on six recently identified carcinogenic impurities. (For a thorough discussion of the presence of these carcinogenic impurities, see the final rule published elsewhere in this issue of the **Federal Register**.)

The agency now proposes to establish these new specifications as the single set of specifications for all regulated uses of FD&C Yellow No. 5. Because the agency has found carcinogenic impurities in previously certified commercial batches of FD&C Yellow No. 5, it has concluded that specifications for these carcinogenic impurities are necessary to assure the safe use of the color additive in foods and ingested drugs, as well as in cosmetics and externally applied drugs.

Therefore, FDA is proposing to revise the specifications presently listed in §74.705(b) to conform to those listed in § 74.2705(b) of the final rule published elsewhere in this issue of the **Federal Register**.

III. Identity

The revised regulation (§ 74.2705) also includes a new identity for FD&C Yellow No. 5. The identity consists of the new chemical name of the additive and a brief general description of the process by which the additive is manufactured.

FDA has changed the chemical name of FD&C Yellow No. 5 merely to make it consistent with modern Chemical Abstracts Service Registry guidelines for naming chemical compounds.

FDA has included the manufacturing method in the identity of this color additive because the impurities that result from the manufacturing process are likely to change if that process changes. The proposed specifications for FD&C Yellow No. 5 cover the impurities that are likely to result from the manufacturing processes for this color additive that are currently in use. The agency knows of two current manufacturing processes for this additive, and both are encompassed in the description that the agency is proposing. Thus, all known producers of

FD&C Yellow No. 5 produce the color additive in accordance with the manufacturing processes described in this proposed regulation.

Therefore, the agency is proposing to revise § 74.705(a) to include the new chemical name of FD&C Yellow No. 5 and a brief description of the manufacturing processes for this color additive. FDA is willing to consider petitions for alternative processes. Such petitions should contain evidence that demonstrates that the processes will not produce impurities that will make use of the color additive unsafe.

FDA is also proposing to revise §§ 74.1705, 74.2705, and 82.705 so that all sections of the regulations for FD&C Yellow No. 5 reference the same paragraphs listing the identity and specifications for this additive.

The agency has determined under 21 CFR 25.24(a)(9) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Although this action is exempt from Executive Order 12291, the agency has analyzed the economic effects of this proposal and has determined that it will not result in a major rule as defined by that Order. The agency has estimated the economic cost arising from this proposal to be less than $200,000. This increase in cost in primarily due to the incremental cost of using purer starting materials in the production of FD&C Yellow No. 5.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities, including small businesses, and has determined that no significant economic impact on a substantial number of small entities would derive from this action. While some manufacturers of FD&C Yellow No. 5 may be considered small, the agency does not believe that the cost impact is of sufficient size to be considered significant.

The evidence supporting these findings are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

Interested persons may, on or before November 4, 1985, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 74 and 82 be amended as follows:

1. The authority citation for 21 CFR Parts 74 and 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

2. In Part 74:

a. Subpart A is amended in § 74.705 by revising paragraphs (a)(1) and (b) to read as follows:

§ 74.705 FD&C Yellow No. 5.

(a) *Identity.* (1) The color additive FD&C Yellow No. 5 is principally the trisodium salt of 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo]-1*H*-pyrazole-3-carboxylic acid (CAS Reg. No. 1934–21–0). To manufacture the additive, 4-aminobenzenesulfonic acid is diazotized using hydrochloric acid and sodium nitrite. The diazo compound is coupled with 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid. The resulting dye is precipitated as the sodium salt.

* * * * *

(b) *Specifications.* FD&C Yellow No. 5 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water-insoluble matter, not more than 0.2 percent.

4,4'-[4,5-Dihydro-5-oxo-4-[(4-sulfophenyl)hydrazono]-1*H*-pyrazol-1,3-diyl]bis[benzenesulfonic acid], trisodium salt, not more than 1 percent.

4-[(4',5-Disulfo[1,1'-biphenyl]-2-yl)hydrazono]-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, tetrasodium salt, not more than 1 percent.

Ethyl or methyl 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl]hydrazono]-1*H*-pyrazole-3-carboxylate, disodium salt, not more than 1 percent.

Sum of 4,5-dihydro-5-oxo-1-phenyl-4-[(4-sulfophenyl)azo]-1*H*-pyrazole-3-carboxylic acid, disodium salt, and 4,5-dihydro-5-oxo-4-(phenylazo)-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, disodium salt, not more than 0.5 percent.

4-Aminobenzenesulfonic acid, sodium salt, not more than 0.2 percent.

4,5-Dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylic acid, disodium salt, not more than 0.2 percent.

Ethyl or methyl 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1*H*-pyrazole-3-carboxylate, sodium salt, not more than 0.1 percent.

4,4'-(1-Triazene-1,3-diyl)bis[benzenesulfonic acid], disodium salt, not more than 0.05 percent.

4-Aminoazobenzene, not more than 75 parts per billion.

4-Aminobiphenyl, not more than 5 parts per billion.

Aniline, not more than 100 parts per billion.

Azobenzene, not more than 40 parts per billion.

Benzidine, not more than 1 part per billion.

1,3-Diphenyltriazene, not more than 40 parts per billion.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 15 parts per million.

Total color, not less than 87 percent.

* * * * *

b. Subpart B is amended in § 74.1705 by revising paragraph (a) to read as follows:

§ 74.1705 FD&C Yellow No. 5.

(a) *Identity and specifications.* (1) The color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of § 74.705 (a)(1) and (b).

(2) Color additive mixtures for drug use made with FD&C Yellow No. 5 may contain only those diluents that are suitable and are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

* * * * *

c. Subpart C is amended in § 74.2705 by revising paragrapl. (a) to read as follows:

§ 74.2705 FD&C Yellow No. 5.

(a) *Identity and specifications.* The color additive FD&C Yellow No. 5 shall conform in identity and specifications to

the requirements of § 74.705 (a)(1) and (b).

* * * * *

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. In Part 82, Subpart B is amended by revising § 82.705 to read as follows:

§ 82.705 FD&C Yellow No. 5.

The color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of § 74.705 (a)(1) and (b) of this chapter.

Dated: August 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-21080 Filed 8-30-85; 8:45 am]

BILLING CODE 4160-01-M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service for Federal Agencies

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: These proposed regulations will make merchandise return service available to Federal agencies.

The purpose of the merchandise return is to offer a means by which a parcel can be returned to a Federal agency with postage paid by the agency. This proposal is intended to improve accountability for penalty mail and also provide agencies an alternative to First-Class business reply rates when paying postage on returned parcels.

DATE: Comments must be received on or before October 4, 1985.

ADDRESS: Written comments should be sent or delivered to Manager, Official Mail Accounting Branch, Room 8621, Department of the Controller, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–5215. Copies of all written comments received will be available for public inspection and photocopying at the above address between 9 a.m. and 4 p.m., Monday through Friday, in Room 8621.

FOR FURTHER INFORMATION CONTACT: Margaret H. Munro (202) 245–5001.

SUPPLEMENTARY INFORMATION: Present penalty mail requlations require Federal agencies to use business reply mail when having matter returned to the agency from a private individual, organization or company. If an agency desires to have mail matter returned at other than First-class rates, then special arrangements must be made with the Manager, Official Mail Accounting Branch, U.S. Postal Service, Washington, DC 20260-5215. Special procedures must be established by the agency to maintain an accurate record of all matter returned to the agency coverd by the special agreement.

Establishment of penalty mail merchandise return procedures will eliminate the need for special agreements for fourth-class matter and will provide a standard decentralized method for paying postage on returned matter at other than First-Class rates. It will eliminate the need for an agency to maintain actual records of matter returned under a special agreement. The procedures developed parallel the merchandise return system for commercial mailers. The penalty merchandise return procedures are important to agencies which are on total direct accountability or intend to adopt total direct accountability. Several large agencies adopting total direct accountability have requested development of penalty merchandise return regulations.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc-13, 1973 cc-14.

PART 137—OFFICIAL MAIL

2. Revise 137.276a and f and add new 137.276h to read as follows:

.276 Penalty Reply Mail.

a. *Restriction to Approved Formats.* Agencies may distribute penalty envelopes, cards, cartons, or labels to any person, concern, or organization from whom or through whom official matter is desired by: (1) Using the penalty business reply format provided by 137.276g; (2) using the penalty metered reply format provided by 137.276d; (3) affixing penalty mail adhesive stamps or using penalty mail stamped stationery as provided in 137.276e; (4) using the penalty merchandise return label as provided in 137.267h; or (5) following the special services reply procedures in 137.267f. Standard penalty indicium envelopes, cards, cartons, and labels described in 137.272 may not be distributed for reply purposes except as provided in 137.276f. or when used to return matter to the Bureau of the Census as provided in 137.276b.

* * * * *

f. *Penalty Special Services Reply Mail.* Agencies may distribute penalty envelopes, cards, cartons or labels for return with a special service, by using the standard penalty indicium format in 137.272a. Prior written approval is required from the Manager, Official Mail Accounting Branch. (*Exception:* An authorized merchandise return permit holder may have merchandise return matter insured in accordance with 137.276h(4).) Requests to use this procedure must be submitted in writing to the Manager, Official Mail Accounting Branch, Room 8621, Department of the Controller, USPS Headquarters, Washington, DC 20260–5215. Such requests must include: (1) The service desired; (2) the post offices to which the mail will be returned; and (3) the proposed procedures to determine actual volume and postage due. Return envelopes, cards, cartons, or labels distributed under this provision must have the desired special service preprinted on them.

* * * * *

h. *Penalty Merchandise Return.*

(1) *Description.* Merchandise return service allows a merchandise return permit holder to authorize individuals and organizations to send First-Class (Priority), third-, and fourth-class parcels to the permit holder. The permit holder pays the return postage and fees. (See 919.)

(2) *Application.* (a) An agency must apply by letter to the Manager, Official Mail Accounting Branch, for authorization to use merchandise return labels. A single permit number will be assigned to each agency unless the agency requests multiple numbers.

(b) An agency authorized to use merchandise return service must submit Form 3625, *Merchandise Return Permit Application,* with a copy of the authorization letter from Manager, Official Mail Accounting Branch, to each post office where parcels will be returned. In addition the agency must furnish the local post office the name, address, and telephone number of a contact person for the agency.

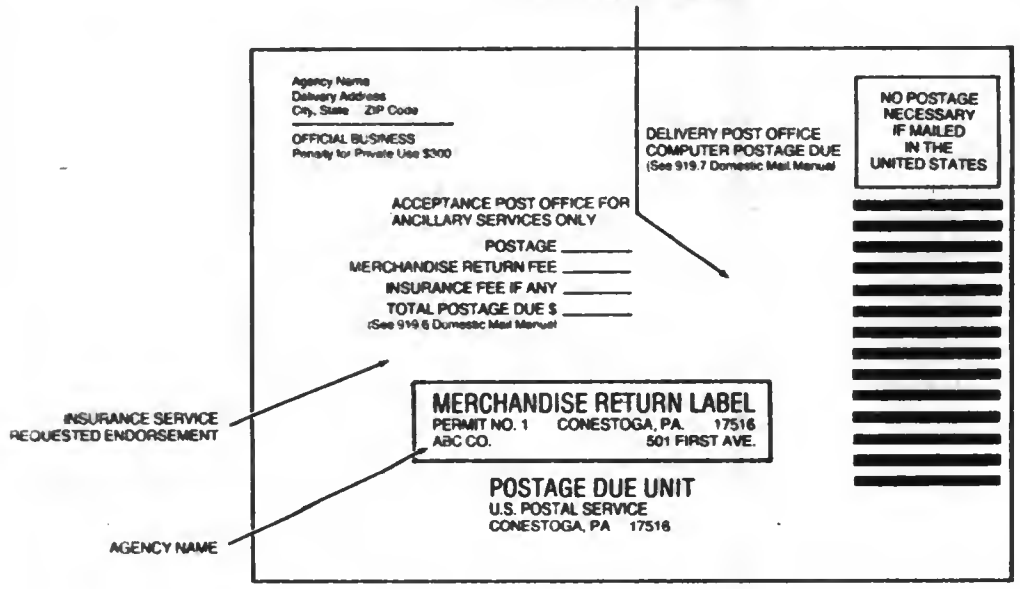
(c) The agency must renew the license by December 31 each year by providing

the post office with a renewal request letter that contains up-to-date local contact information for the agency and the annual fee payment in accordance with (5)c.

(3) *Label Format.* The one-part merchandise return label available for use by Federal Government agencies must bear the address of one of the authorized agencies listed in 137.252 or one of their components. The label must be printed in the format required by 919.4 with the following exceptions:

(a) The phrases "Official Business" and "Penalty for Private Use, $300" must be printed immediately below the return address and above the class of service requested in the upper left corner of the label.

(b) The name of the post office required to appear in the "Merchandise Return Label" legend must be the same as the post office to which the matter has been authorized to be returned.



(4) *Special Services—Insurance.*

(a) *Only the permit holder may request that the mail piece be insured.*

(b) Indemnity under Penalty Mail Merchandise Return is limited to $50. Items requiring insurance greater than $50 may not be mailed under the Penalty Mail Merchandise Return procedures.

(c) Items requiring insurance must have the following information preprinted on the Merchandise Return Label. It may not be typewritten, handwritten, or rubber stamped.

"Insurance Desired by Shipper *$(value)*"

(5) *Payment of Postage and Fees.* (a) Agencies will be charged an annual merchandise return permit fee of $50 for each post office where merchandise return matter is returned.

(b) The amount to be paid for penalty mail merchandise return matter is the appropriate postage for the class of service requested plus a fee of 30 cents per parcel. The insurance fee is additional where applicable.

(c) Postage and fees including the annual permit fee will be paid either by postage meter strip, penalty mail stamps, or cash to the post office(s) authorized to process merchandise return matter.

(6) *Cancellation of permit.* A permit may be cancelled by the Manager, Official Mail Accounting Branch for any violation of postal regulations including:

(a) Refusal to accept and pay the required charges for merchandise return offered for delivery.

(b) Distributing merchandise return labels which do not conform to Postal Service specifications.

(c) Failure to renew permit in accordance with 137.276h(2)(c).

(7) *Receipt of Parcels After Cancellation of Permit.* When a permit is cancelled, parcels received after the cancellation will be treated in accordance with 919.233a and b.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published, if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-21046 Filed 9-3-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[PP 4E3125/P374; FRL-2890-6]

Pesticide Tolerance for N,N-Diethyl-2-(1-Naphthalenyloxy) Propionamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide (napropamide) in or on the raw agricultural commodity pomegranates. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E3125/P374], must be received on or before October 4, 1985.

ADDRESS:

By mail, submit written comments to: Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public

inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3125 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide in or on the raw agricultural commodity pomegranates at 0.1 part per million (ppm). The petitioner proposed that use of the herbicide napropamide on pomegranates be limited to use west of the Rocky Mountains only based on the geographic representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address given above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include an acute oral rat study with an LD_{50} greater than 5 grams (g)/kilogram (kg); a 90-day rat feeding study with a no-observed-effect level (NOEL) of 25 mg/kg/day; a 90-day dog feeding study with a NOEL of 40 mg/kg/day; a 2-year rat feeding study with a NOEL of 30 mg/kg/day, negative for oncogenic effects at 100 mg/kg (highest dose tested); a 2-year mouse feeding study with a NOEL of 30 mg/kg/day, negative for oncogenic effects at 100 mg/kg (highest dose tested); a 3-generation rat reproduction study with a NOEL of 30 mg/kg/day; a rabbit teratology study with a NOEL of 400 mg/kg/day; a rabbit teratology study with a NOEL of 200 mg/kg/day; and three mutagenicity studies (rec-assay, host mediated, and Ames test), all negative for mutagenic effects. A chronic toxicity study of at least 12 months duration in a non-rodent is currently lacking but desirable.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 30 mg/kg, or 600 ppm) and using a 100-fold safety factor, is calculated to be 0.3 mg/kg of bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 18.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0195 mg/day; the current action for pomegranates will increase the TMRC by 0.00005 mg/day, 0.26 percent. Published and pending tolerances utilize 0.11 percent of the ADI; the current action will utilize an additional 0.0003 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Three are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry or eggs. The Agency concludes that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document number, [PP 4E3125/P374]. All written comments filed in response to this petition will be available in the Information on Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Managment and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 21, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.328 is amended by designating the current paragraph and list of tolerances as paragaph (a) and adding a new paragraph (b) to read as follows:

§ 180.328 N,N-Diethyl-2-(1-napthalenyloxy) propionamide; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration are established for residues of the herbicide *N, N*-diethy,–2-(1-naptha-lenyloxy) propionamide in or on the following raw agricultural commodities:

Commodities	Parts per million
Pomegranates	0.1

[FR Doc. 85–20923 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–258; RM–5013]

FM Broadcast Station in Lebanon, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of J.T. Parker Broadcasting Corporation, proposes the allotment of

Channel 263A to Lebanon, Virginia, as that community's first FM service.

DATES: Comments must be filed on or before October 21, 1985, and reply comments on or before November 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Lebanon, Virginia) MM Docket No. 85–258, RM–5013.

Adopted: August 13, 1985.
Released: August 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by J.T. Parker Broadcasting Corporation ("petitioner"), licensee of Station WLRV(AM), Lebanon, Virginia, as that community's first FM service. Petitioner has stated its intention to apply for the channel.

2. The channel can be allotted consistent with the Commission's minimum distance separation requirements provided a site restriction of 1.8 kilometers (1.1 miles) east of Lebanon is imposed to avoid short spacing to Station WSGS–FM, Channel 266, Hazard, Kentucky.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed allotment could provide a first FM service to Lebanon, Virginia, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Lebanon, Virginia		263A

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 21, 1985, and reply comments on or before November 5, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Mitch Sandidge, Vice President & Secretary, J.T. Parker Broadcasting Corp., 212 Amity Drive, Bristol, TN 37620.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-21034 Filed 9-3-85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 171
Wednesday, September 4, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-342]

Southwest Boll Weevil Eradication Program; Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Availability and Finding of No Significant Impact.

SUMMARY: The Animal and Plant Health Inspection Service has prepared an environmental assessment for the boll weevil eradication program in Arizona, California, and northern Mexico. On the basis of the assessment, the Animal and Plant Health Inspection Service has determined that no significant adverse effect on the environment will result from implementation of the selected alternative. Therefore, an environmental impact statement (EIS) on this program will not be prepared.

ADDRESS: A copy of the environmental assessment may be obtained from Michael Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The environmental assessment is available for public inspection at this same address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil *Anthonomus grandis* (Boheman) is an introduced pest from Mexico which entered the United States near Brownsville, Texas, in approximately 1982 spreading throughout a region known as the cotton belt by 1922. This area includes all or part of 13 states extending from west Texas to Virginia in which approximately 11 million acres of cotton are grown. As the boll weevil moved through the cotton belt, it inflicted damage exceeding that caused by any other cotton pest and currently is the most important agricultural pest in the United States. It costs cotton producers and the U.S. economy 200 to 300 million dollars annually in losses and control costs.

Until recently, the area of the cotton belt west of New Mexico has been considered free of the boll weevil. Each season since 1982 has seen an increase in boll weevil populations, damage, and subsequent pesticide applications.

The goals of the projects are to eliminate the boll weevil from cotton in areas targeted for eradication in Arizona, California, and northern Mexico, and to establish and maintain a buffer area in Arizona to protect the eradicated area.

Sites targeted for eradication during the 1985 and 1986 crop seasons are irrigated desert cotton fields, consisting of 71,000 acres in Arizona, 58,000 acres in California, and 175,000 acres in portions of northern Mexico contiguous with the U.S. border.

A number of alternatives were considered in selecting the recommended course of action:

(1) *No action to eradicate*—reliance upon whatever measures individual growers initiate.

(2) *Optimum pest management*—a coordinated program using insecticides in which the goal is to attempt to keep the boll weevil at levels below which they cause economic damage.

(3) *Zone eradication*—a coordinated program in which the Animal and Plant Health Inspection Service (APHIS) has lead responsibility for program execution in cooperation with State regulatory agencies and Sanidad Vegetal in Mexico. The eradication effort consists of legally mandated plowdown and planting dates within the program area to achieve a minimum 60 day host-free period. All fields in the program area will be set with traps to identify situations where control actions are necessary. Based on trapping surveys, organophosporous insecticides will be applied to prevent a reproductive population from establishing itself in the field. The following insecticides will be used on a selective basis: malathion, azinphosmethyl, propoxur (as a killing agent in the traps) or Pencap M®.

APHIS has selected alternative three (3) because it appears that this is the only alternative that would successfully and quickly eradicate boll weevils with the least cost. Alternative 1 is not feasible since it would not achieve the stated goal and would continue to result in great economic loss to cotton products and pose a threat to 1 million unifested acres in the San Joaquin Valley. Alternative 2 is not feasible since it doesn't totally eliminate the boll weevil problem and will significantly increase production costs. Insecticides used to control the boll weevil destroy many natural enemies of other cotton pests. This in turn often results in higher crop losses and even more intensive use of insecticides to protect cotton from these secondary pests.

APHIS, after considering the cumulative effects of the implementation of the selected alternative, has concluded that there will be no primary, secondary, or cumulative adverse effects on the quality of the human environment based on the specifications for insecticide usage.

The environmental assessment evaluated the uniqueness or rareness of resources being affected and concluded that the selected alternative will not have an effect on the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the habitats of such species.

This action has been reviewed under the requirements of the National Environmental Policy Act as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR Parts 1500-1508), and the APHIS Guidelines concerning Implementation of NEPA Procedures.

Done at Washington, D.C., this 29th day of August, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-21016 Filed 9-3-85; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Transfer of Jurisdiction of Certain National Forest System Lands in California to the Department of the Interior and Adjustment of the Boundaries of the National Forests

Pursuant to direction and authority for the Secretary of Agriculture contained in section 105 of the California Wilderness Act of 1984 (98 Stat. 1626), and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Natural Resources and Environment, administrative jurisdiction of the following described National Forest System lands is hereby transferred to the Secretary of the Interior for administration as part of the National Park System.

The following described National Forest System lands are added to the National Park System:

Sequoia National Forest, California

National Forest System lands depicted on a map entitled "Jennie Lakes Additions, Kings Canyon National Park-Proposed," dated March 1983 and further described as follows:

Mount Diablo Base Meridian

T. 14 S., R. 29 E.,
Portion section 31.
T. 15 S., R. 29 E.,
Portions of sections 4, 5, 6, 7, 8, and 18.

The area described aggregates 1,675 acres, more or less.

Effective on the date of publication of this notice, the above described lands are deemed to be a part of the Kings Canyon National Park.

The exterior boundary of the Sequioa National Forest is hereby adjusted to exclude the area described and to be administered as a part of the National Park System.

Stanislaus National Forest, California

National Forest System lands at Crocker Ridge described as follows: All that land lying easterly of a line beginning at the existing Yosemite National Park boundary and running three hundred feet west of and parallel to the center line of the park road, designated as State Highway 120, also known as the New Big Oak Flat Road, within section 34, T. 1 S., R. 19 E., and within sections 4, 9, and 10 T. 2 S., R. 19 E., Mount Diablo Meridian. The area described aggregates 253 acres, more or less.

National Forest System lands depicted on a map entitled "McCauley Ranch Addition, Yosemite National Park," dated December 1982 and numbered 80,021 and more particularly described as follows:

Mount Diablo Base Meridian

T. 3. S., R. 20 E.,
Sec. 4, E½E½NE¼SW¼, SE¼SE¼, NW¼SE¼, E½SE¼SW¼, and NE¼SW¼SE¼; section 9, NE¼NE¼, E½E½NW¼NE¼, NE¼NE¼SW¼NE¼, NW¼NW¼SE¼NE¼, E½NW¼SE¼NE¼, and E½SE¼NE¼.

The area described aggregates 185 acres, more or less.

Effective on the date of publication of this notice, the above described lands are deemed to be a part of the Yosemite National Park.

The exterior boundary of the Stanislaus National Forest is hereby adjusted to exclude the area described and to be administered as a part of the National Park System.

Copies of maps depicting the boundary revisions are on file and available for public inspection in the offices of the Chief of the Forest Service, Department of Agriculture, the Director of the National Park Service, Department of the Interior, and appropriate field offices.

Dated: August 20, 1985.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 85-21024 Filed 9-3-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 12:30 noon on September 12, 1985, at the Holiday Inn, 210 South Dubuque Street, Swans B Room, Iowa City, Iowa. The purpose of the meeting is to continue program planning for fiscal year 1985 and 1986, and to discuss the possibility of a series of community forums to determine the status of civil rights in Iowa.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph Scott, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 28, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20979 Filed 9-3-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-084]

Spun Acrylic Yarn From Italy; Final Results of Administrative Review of Antidumping Duty Order and Revocation in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order and revocation in part.

SUMMARY: On July 13, 1984, the Department of Commerce published the preliminary results of its administrative review, tentative determination to revoke with respect to one firm, and intent to revoke with respect to a combination of firms, on the antidumping duty order on spun acrylic yarn from Italy. The review covers seven of the sixteen known manufacturers and/or exporters of this merchandise to the United States, and generally the period April 1, 1982, through March 31, 1983. For the firms covered by the intent to revoke, Lanificio DiNervesa Della Battaglia/Gaston Investments, Inc., the review covers up to February 24, 1983, the date of our tentative determination to revoke the order with respect to that combination.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. At the request of one manufactuer, we held a public hearing on August 27, 1984.

As a result of our review of the comments received, and after correcting certain errors in our preliminary results, we have changed the margin for that one manufacturer. We made no changes in the final results of review for the other companies from those presented in our preliminary results.

We also determined that there were no shipments of this merchandise to the United States by Fraver S.P.A. during the period April 1, 1983, through July 13, 1984, the date of the tentative determination to revoke the order with respect to that firm. We advised all interested parties that there were no shipments by Fraver and we provided an additonal opprtuntity to comment. We recieved no comments. Accordingly, these final results cover up to July 13, 1984, for Fraver, and we revoke the antidumping duty order on spun acrylic yarn from Italy with respect to Fraver and Lanificio DiNervesa Della Battaglia/Gaston Investments, Inc.

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 2030; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 7771) a tenative determination to revoke in part the antidumping duty order on spun acrylic yarn from Italy (45 FR 23684, April 8, 1980), with respect to Lanificio DiNevesa Della Battaglia S.P.A./Gaston Investments, Inc. On July 13, 1984, the Department published in the **Federal Register** (49 FR 28593) the preliminary results of its administrative review of the order, tentative determination to revoke with respect to Fraver S.P.A., and intent to revoke with respect to DiNervesa/Gaston. The Department has now completed that administrative review.

Scope of the Rreview

Imports covered by the review are shipments of worsted-spun acrylic, plied yarn for machine knitting, excluding four-ply craft yarn and certain brushed yarns. Such merchandise is currently classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated.

The review covers seven of the sixteen known manufacturers and/or exporters of Italian spun acrylic yarn to the United States and generally the period April 1, 1982, through March 31, 1983. For DiNervesa/Gaston, the review covers up to February 24, 1983, the date of our tentative determination to revoke the order with respect to that combination of firms. The Department has also determined that there were no shipments of this merchandise to the United States by Fraver S.P.A. during the period April 1, 1983, through July 13, 1984, the date of our tentative determination to revoke the order with respect to Fraver.

Analysis of comments received

We gave interested parties an opportunity to submit oral or written comments on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. At the request of one respondent, International Fibre Industries Ltd. ("IFI"), we held a public hearing on August 27, 1984.

The Department provided interested parties further preliminary results for Fraver, for the period up to the date of the tentative determination to revoke with respect to that firm, and gave interested parties an additional opportunity to comment. We received no comments on the supplemental review of fraver.

Comment 1: IFI contends that the Department has overstated the costs of fabrication in its calculation of the constructed value of IFI's merchandise. As a consequence, we have also overstated the amount for general expenses and profit, since those amounts are based upon statutory minimum percentages of the costs of materials and fabrication, and of materials, fabrication and general expenses, respectively.

IFI claims that, while the cost of materials should be equal to the amount IFI paid to its fiber supplier for the raw fiber, the cost of fabrication should be equal to the fabrication costs actually incurred by IFI's unrelated spinner subcontractor, DiNervesa. The fabrication costs should not be the amount IFI paid DiNervesa, including DiNervesa's general expenses and profit. To the extent that one might perceive in IFI's claim contradictory treatment of acquired materials costs and subcontracted fabrication costs, IFI argues that there is a legitimate distinction where the subcontract spinner is responsible for the final act of fabrication.

Department's Position: The practice of purchasing materials and of sub-contracting fabrication to an independent spinner are parallel business activities. Section 773(e)(1) of the Tariff Act suggests no reason for us to distinguish between acquired materials and acquired fabrication in calculating constructed value. The correct cost of materials is IFI's cost of purchasing the material inputs from an unrelated supplier, even though that cost includes the selling, general and administrative expenses and the profit of the materials supplier. Likewise, the costs of fabrication to IFI are the spinning charges its pays to its unrelated subcontract spinner, even though such charges also include the selling, general and administrative expenses and the profit of the fabrication supplier. We do not find IFI's final processor distinction to be persuasive.

Comment 2: IFI argues that the Department's calculation of foreign market value erroneously included an adjustment for differences in circumstances of sale based upon the credit terms IFI offers on sales to purchasers in the United States. IFI incurs no actual expenses in extending credit to its U.S. purchasers because the terms it secures from its materials suppliers and its subcontract spinner allow IFI to receive payment from its customers at or about the time it pays the production costs. IFI therefore does not need to borrow funds to finance its extension of credit to purchasers. Further, if IFI's purchasers do not pay in time to cover IFI's production costs, IFI invoices its purchasers for all of the carrying charges IFI incurs by its extending credit beyond the routine payment period.

IFI further contends that, if we nevertheless persist in quantifying an imputed expense for credit on sales to the United States based on what it would cost IFI to finance receivables until IFI is paid, then we should consider the portion of constructed value for general expenses to include a selling expense equivalent to the cost of extending credit on the U.S. sales, and thus no adjustment for differences would be necessary or appropriate.

Department's Position: When, as here, purchase price is the basis of a producer's United States price, differences in circumstance of sale are accounted for by adjustment to foreign market value. Even when constructed value is the basis for foreign market value, such constructed value is subject to circumstance-of-sale adjustments. Any adjustment to foreign market value for differences in credit terms is an adjustment for the difference in the terms of sale extended by the seller of the finished product in the two markets, not for the differences between the terms extended to the producer in the production phase and the terms extended by the producer. Adjustments for differences in circumstances of sale are, by definition, limited to consideration of a seller's marketing practices and are unaffected by conditions affecting production.

Many manufacturers do not finance receivables in direct relation to the credit terms they offer, but instead rely

upon a variety of cash flow management techniques. However, to quantify equitably and consistently the effects of the different credit terms that a seller offers, we consider all receivables to be financed, at a company's experienced short-term interest rate, for the period of delayed payment. In the absence of a company's individual interest rate experience with short-term debt, we rely, as we did here, on the prevailing prime rate.

Because IFI has no home market selling experience, no portion of the calculated general expense element of constructed value can reasonably be considered attributable to a directly-related selling expense derived from home market credit terms. Therefore, to adjust constructed value for the difference in this circumstance of sale, we added to constructed value the entire amount of the expense included in the U.S. price.

In our preliminary results, we in fact neglected to make any circumstance-of-sale adjustment for IFI's imputed credit terms on its U.S. sales. We also did not account for carrying charges IFI invoiced to its purchasers for their payment beyond the scheduled payment date. We have now made the circumstance-of-sale adjustment, but we have not included any period of delayed payment for which IFI assessed its customers financing charges.

Comment 3: IFI contends that the Department erred in calculating the materials cost element of constructed value by applying a percentage spinning loss factor in excess of that actually experienced by IFI's subcontractor in producing the spun yarn. In addition, IFI claims that the actual loss factor should be reduced by the amount of credits that IFI received from DiNervesa's sales of the waste material.

Department's Position: In its response to our questionnaire, IFI reported its loss experience as a range of loss factors, but calculated amounts attributable to spinning losses by applying the lowest factor in the range. In our preliminary results, we applied the loss factor at the upper limit of the range. We erroneously applied that factor to the spinning charge rather than to the materials cost, but we have corrected that error in these final results. IFI did not report its actual average loss experience, nor mention credits for recovered waste, until after the publication of our preliminary results. Because of the late submission of this additional data, and because our chosen factor originated in the response, we did not consider the late data. We will examine this issue in our next requested administrative review, and if this data can be verified satisfactorily, we will calculate IFI's material costs accordingly.

Final Results of Review and Revocation in Part

Based on our analysis of the comments received, and our correction of certain errors in our preliminary results, we have changed the margin for Lanificio DiNervesa Della Battaglia S.p.A./International Fibre Industries Ltd. In addition, we have determined that Fraver S.p.A. had no shipments of this merchandise to the United States up to July 13, 1984. We determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Lanificio DiNervesa Della Battaglia S.p.A./Gaston Investments, Inc	4/1/82-2/24/83	0
Lanificio DiNervesa Della Battaglia S.p.A./International Fibre Industries, Ltd	4/1/82-3/31/83	4.92
Cofise S.p.A	4/1/82-3/31/83	1.35
Babyfil S.A.S	4/1/82-3/31/83	48.05
Maglificio Varianini	4/1/82-3/31/83	[1]48.05
Orlandi Filature S.p.A	4/1/82-3/31/83	[1]48.05
Fraver S.p.A	4/1/82-7/13/84	[1]48.05

[1] No shipments during the period.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Lanificio DiNervesa Della Battaglia S.p.A./ Gaston Investments, Inc. or by Fraver S.p.A. Accordingly, we revoke in part the antidumping duty order on spun acrylic yarn from Italy. This revocation in part applies to all unliquidated entries of this merchandise manufactured and exported by DiNervesa/Gaston entered, or withdrawn from warehouse, for consumption on or after February 24, 1983, and by Fraver on or after July 13, 1984.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each firm directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those remaining firms. For any future entries from a new exporter not covered by this or prior reviews, whose first shipments of Italian spun acrylic yarn occurred after March 31, 1983, and who is unrelated to any covered firm, a cash deposit of 4.92 percent shall be required. These deposit requirements are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: August 27, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21069 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-JS-M

[C-791-007]

Certain Steel Products From South Africa; Final Results of Changed Circumstances, Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances, administrative review and revocation of countervailing duty order.

SUMMARY: On July 8, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain steel products from South Africa and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opprtunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Philip Otterness or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of

Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 27837) the preliminary results of its changed circumstances administrative review of the countervailing duty order on certain steel products from South Africa (47 FR 39379, September 7, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, galvanized carbon steel sheet, hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on certain steel products from South Africa and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain steel products from South Africa effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain steel products from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and SS 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 27, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded or drawn, or cold-formed or cold-finished carbon angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire pods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. *The term "hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the "as cast" condition or processed only through primary mill hot rolling are not included.

3. The term *"hot-rolled carbon steel sheet"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped, whether or not pickled, and whether or not painted or varnished; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness and over 12 inches in width as currently provided for in items 607.6610, 607.6710 through 607.6740, 607.8320, 607.8342, or 607.9400 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 607.6610 AND 607.8320).*

4. The term *"cold-rolled carbon steel sheet"* covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped, whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).*

5. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

6. The term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, and not coated or plated with metal, as currently provided in items 606.8310, 606.8330, or 606.8350 of the TSUSA.

7. The term *"hot-rolled alloy steel bars"* covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, as currently provided for in item 606.9700 of the TSUSA.

8. The term *"cold-formed carbon steel bars"* covers cold-formed carbon steel

products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of TSUSA. Cold-formed carbon steel bars does not include cold-rolled carbon steel products cut to length, of any cross-sectional dimension less than 0.703 inch in maximum cross-sectional dimension, or if of rectangular cross section, not over 0.25 inch in the thickness and not over 0.50 inch in width.

[FR Doc. 85-21067, Filed 9-3-85; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The dates and times cited in the agenda (published August 9, 1985, at 50 FR 32251) for public meetings of the Caribbean Fishery Management Council and its Administrative Subcommittee have been changed. The Council will convene its public meeting on September 25–26, 1985, (instead of on September 4–5) at 9 a.m. on September 25, and adjourn at 5 p.m.; reconvene at 9 a.m. on September 26, and adjourn at approximately noon. The Council's Administrative Subcommittee will convene its public meeting on September 24, (instead of September 3) at 2 p.m. and will adjourn at 5 p.m. All other information remains unchanged. For further information contact the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce building, Hato Rey, Puerto Rico 00918; telphone: (809) 753–4926.

Dated: August 29, 1985.

Richard B. Roe,

Director, Office of Protected Species and Hobitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–21085 Filed 9–3–85; 8:45 am]
BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Notice of Opportunity for Participation by Interested Persons in Public Commission Meeting

On Wednesday, September 18, 1985, at 2 p.m. E.D.T. the Commodity Futures Trading Commission will conduct an open public meeting at its headquarters in Washington, D.C., concerning the applications of Monex International Ltd. and of First Asset Corporation (formerly American Coin Exchange, Inc.) seeking registration with the Commission as a leverage transaction merchant as well as applications from these firms for registration of certain leverage commodities. *See* Commission Rules 3.17 and 31.6, 17 CFR 3.17 and 31.6 (1985). This is to give notice that the Commission has determined to hold this meeting in order to provide interested persons with an opportunity to participate in the Commission's consideration of these matters through oral presentations made at the meeting.

Specifically, the Commission has adopted the following procedures to implement its determination to permit interested persons to present oral statements at its September 18 meeting concerning the above-described matters: Oral statements on behalf of any single person or entity shall be presented by a single individual and shall be limited to ten minutes in duration. Any person desiring to present an oral statement at the meeting shall request in writing the opportunity to do so. That written request shall be addressed to the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, D.C. 20581, must be received by that Office on or before September 12, 1985, and shall identify the individual desiring to make an oral presentation as well as the person or entity on whose behalf the statement would be made. This written request shall be followed by the submission to the Commission of the written text of the statement which the interested person wishes to present at the Commission meeting. The submission must be received by the Commission's Office of the Secretariat on or before September 16, 1985. Persons who have made timely submissions of written requests and the texts of proposed oral presentations will subsequently be notified by the Office of the Secretariat concerning whether their request to make an oral presentation at the Commission meeting has been granted or denied. Whether such requests are granted or denied, the Commission's intends to give consideration to the written texts of all proposed oral presentations which have been timely submitted.

For further information, interested persons should contact Jean A. Webb, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 at (202) 254–6314.

Issued by the Commission in Washington, D.C. on August 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–21211 Filed 9–3–85; 8:45 am]
BILLING CODE 6351-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 18 October 1985 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, DC.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Activities.

Linda M. Lawson,

Alternate QSD Federal Register Liaison Officer, Department of Defense.

August 27, 1985.

[FR Doc. 85–21006 Filed 9–3–85; 8:45 am]
BILLING CODE 3810-01-M

DoD-University Forum; Working Group on Engineering and Science Education Advisory Committee; Meeting

SUMMARY: The Working Group on Engineering and Science Education of the DoD-University Forum will meet in open session on September 23, 1985, from 2:00 p.m. until 5:30 p.m. and on September 24, 1985, from 9:00 a.m. until 4:00 p.m., at the Hyatt Regency Hotel, Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

The purpose of the meeting is to discuss DoD plans for the University Research Initiative proposed in the President's budget submission for FY 86.

Public attendance will be accommodated as space permits. Public attendees should telephone Mr. Edward Blake of the DoD Office of Research and Laboratory Management, (202) 694–0205 by close of business, September 18, 1985, to be advised of the meeting room and seating availability.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1985.

[FR Doc. 85–21005 Filed 9–3–85; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session, in Washington, D.C., on October 2 and 3, 1985.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on October 2 and 3, the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1985.

[FR Doc. 85–21004 Filed 9–3–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Noncompeting Continuation Grants for Rehabilitation Engineering Centers for Fiscal Year 1986

Applications are invited for noncompeting continuation awards for Fiscal Year 1986 for the Rehabilitation Engineering Center program administered by the National Institute of Handicapped Research.

Authority for this program is contained in section 204(b)(2) of the Rehabilitation Act of 1973 as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(b)(2)).

Under this program, awards are issued to States and public or private agencies and organizations, including institutions of higher education.

The purpose of the awards is to provide continuation support for Rehabilitation Engineering Centers supported by the National Institute of Handicapped Research.

Closing date for transmittal of applications: To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered no later than October 15, 1985.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building No. 3, 7th and D Streets, SW. Washington, DC 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Available funds: At this time, the amount of the Fiscal Year 1986 appropriation for the National Institute of Handicapped Research is undetermined. Approximately $8,000,000 is currently expected to be available for noncompeting continuation grants and cooperative agreements under the Rehabilitation Engineering Center program in Fiscal Year 1986. Approximately 16 awards are expected to be made; the awards will vary in size, with an approximate range of $150,000 to $600,000, depending on the scope of the individual grant.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Only current grantees are eligible to apply. Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grants under this notice.

Applications must be prepared and submitted in accordance with the instructions and forms included in application packages. Applicants are urged not to submit information that is not requested.

However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations. The Secretary urges that applicants limit the number of pages in their applications as stated in the application kit.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable regulations: The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 353).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, DC 20202. Telephone (202) 732–1182; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: August 29, 1985.

Joan Standlee,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85-21048 Filed 9-3-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Noncompeting Continuation Grants for Research and Demonstration Projects and Knowledge Dissemination and Utilization Projects for Fiscal Year 1986

Applications are invited for noncompeting continuation awards for Fiscal Year 1986 for two research programs administered by the National Institute of Handicapped Research.

Authority for these programs is contained in sections 204(a) and 204(b) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and Pub. L. 98-221 (29 U.S.C. 762(a) and 762(b)).

Under these programs, awards are issued to States and public or private agencies and organizations, including institutions of higher education.

The purpose of the awards is to provide continuation support for Research and Demonstration Projects and Knowledge Dissemination and Utilization Projects.

Closing date for transmittal of applications: To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered no later than 90 days prior to the end of the current budget period or 30 days from the date of this notice, whichever is later.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW, Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mailed receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building No. 3, 7th and D Streets, SW, Washington, DC 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Available funds: At this time, the amount of the Fiscal Year 1986 appropriation for the National Institute of Handicapped Research is undetermined. Approximately $2,280,000 is currently expected to be available for noncompeting continuation grants and cooperative agreements in Fiscal Year 1986 under the Research and Demonstration Projects and Knowledge Dissemination and Utilization Projects programs. Approximately 14 awards are expected to be made; the awards will vary in size, with an approximate range of $75,000 to $500,000, depending on the scope of the individual grant.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Only current grantees are eligible to apply. Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grants under this notice.

Applications must be prepared and submitted in accordance with the instructions and forms included in application packages. Applicants are urged not to submit information that is not requested.

However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations. The Secretary urges that applicants limit the number of pages in their applications as stated in the application kit.

(Approved by the Office of Management and Budget under Control Number 1820-0027).

Applicable regulations: The following regulations are applicable to these programs:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350, 351, and 355).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW, Washington, DC 20202. Telephone (202) 732-1182; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

(29 U.S.C. 760-762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: August 29, 1985.

Joan Standlee,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85-21049 Filed 9-3-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Noncompeting Continuation Grants for Rehabilitation Research and Training Centers for Fiscal Year 1986

Applications are invited for noncompeting continuation awards for Fiscal Year 1986 for the Research and Training Center program administered by the National Institute of Handicapped Research.

Authority for this program is contained in section 204(b)(1) of the Rehabilitation Act of 1973 as amended by Pub. L. 95-602 and Pub. L. 98-221 (29 U.S.C. 762(b)(1)).

Under this program, awards are issued to States and public or private agencies and organizations, including institutions of higher education.

The purpose of the awards is to provide continuation support for Research and Training Centers supported by the National Institute of Handicapped Research.

Closing date for transmittal of applications: To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered no later than October 4, 1985 for those Research and Training Centers whose continuation award dates are between

December 30, 1985 and February 28, 1986. Applications for those Centers whose continuation award dates are from March 1, 1986 through April 1, 1986 are due no later than November 16, 1985. Applications are due no later than February 28, 1986 for those Centers whose continuation award dates fall between April 2, 1986 and August 1, 1986. Continuation applications from all other Centers are due at least 90 days before the continuation award date but no later than June 30, 1986.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building ±3, 7th and D Streets, SW, Washington, DC 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available funds: At this time, the amount of the Fiscal Year 1986 appropriation for the National Institute of Handicapped Research is undetermined. Approximately $16,700,000 is currently expected to be available for noncompeting continuation grants and cooperative agreements under the Research and Training Center program in Fiscal Year 1986. Approximately 33 awards are expected to be made; the awards will vary in size, with an approximate range of $150,000 to $600,000, depending on the scope of the individual grant.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Only current grantees are eligible to apply. Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grants under this notice.

Applications must be prepared and submitted in accordance with the instructions and forms included in application packages. Applicants are urged not to submit information that is not requested.

However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations. The Secretary urges that applicants limit the number of pages in their applications as stated in the application kit.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable regulations: The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 352).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW, Washington, DC 20202. Telephone (202) 732–1182; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: August 29, 1985.

Joan Standlee,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85–21050 Filed 9–3–85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Innovation Grants for Fiscal Year 1986

Applications are invited for new projects for Innovation Grants for Fiscal Year 1986 under the National Institute of Handicapped Research.

Authority for this program is contained in section 204(b)(13) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(b)(13)).

Closing date for transmittal of applications: Applications for new awards will be accepted beginning October 1, 1985, however all applications must be mailed by July 1, 1986. NIHR intends to award funds under this program through grants or cooperative agreements. The National Institute of Handicapped Research (NIHR) may convene peer review panels and award grants from time to time during the year, so that applicants may submit applications at any time up to the closing date. Potential applicants should be aware that all funds in this program could be awarded before the final closing date. Therefore, potential applicants are advised to consider the merits of submitting an application early, rather than at the closing date. However, early submission does not necessarily commit the Department of Education to review or fund any applications before the final closing date.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133C, 400 Maryland Avenue, SW, Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not acept either of the folowing as proof

of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: NIHR expects to fund approximately eight Innovation Grants at a maximum amount of $50,000 per grant. These grants will be for a period of one year. NIHR has reserved $400,000 to fund grants under this program. However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Program information: In Pub. L. 98-221, the 1984 amendments to the Rehabilitation Act, Congress established a program of small grants (maximum $50,000 funding level), in order to: test new concepts and innovative ideas; demonstrate research results of high potential benefits; purchase and evaluate prototype aids and devices; develop unique rehabilitation training curricula; and respond to the special initiatives of the Director of NIHR. This provision was implemented for the first time in Fiscal Year 1985. The regulations for this program were published in the **Federal Register** on April 26, 1985 at 50 FR 16672-16677.

These grants are for the purpose of conducting research, demonstrations, planning and feasibility studies, curriculum development projects, evaluation of aids and devices, unique programs to disseminate research findings or define the state-of-the-art in specific problem areas, and evaluations of techniques or programs related to the vocational and general rehabilitation of disabled individuals, especially the most severely handicapped. These grants may be used to investigate problems and solutions related to disabled persons of all ages and with all types of disabilities.

Application forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070-2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, DC 20202 (Attention: Peer Review Unit), Telephone (202) 732-1207. Deaf and hearing impaired individuals may call (202) 732-1198 for TTY services. Requests should refer to applications for Innovation Grants, 84.133C.

Applications must be prepared and submitted in acordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary suggests that applicants limit the number of pages in their applications to 20 pages for the project narrative and 50 pages for the total application.

(Approved by the Office of Management and Budget under Control Number 1820-0027.)

Applicable regulations: The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 358).

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW, Washington, DC 20202. Telephone (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

(29 U.S.C. 760-762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: August 29, 1985.

John Standlee,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85-21051 Filed 9-3-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

National Direct Student Loan College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Filing the Fiscal-Operations Report and Application to Participate

AGENCY: Department of Education.

ACTION: Notice of Closing Data for Filing the Fiscal-Operations Report and Application to Participate in the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1986 funds—for use in the 1986-87 award year—under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs. Under these programs, the Secretary allocates funds to institutons for students who need financial aid to meet the cost of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the NDSL, CWS and SEOG programs through a notice the Federal Register.

The Secretary further gives notice that an institution that had a NDSL fund or expended CWS or SEOG funds during the 1984-85 award year is required to report its program expenditures as of June 30, 1985, to the Secretary.

The NDSL, CWS, and SEOG programs are authorized by Parts E, C, and Subpart A-2, respectively, of title IV of the Higher Education Act of 1965. (20 U.S.C. 1087aa-1087ii; 42 U.S.C. 2751-2756b; and 20 U.S.C. 1070b-1070b-3)

Closing Date: In order to ensure consideration for 1986-87 funds, an institution must submit the 1984-85 Fiscal-Operations Report and the 1986-87 Application to Participate in the National Direct Student Loan, Supplemental Educational Opportunity Grant, and College Work-Study Programs (FISAP-OMB No. 1840-0073) by October 4, 1985.

FISAPs Delivered by Mail: A FISAP sent by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, 400 Maryland Avenue, SW., (Room 4621, Regional Office Building 3), Washington, D.C. 20202.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

DISAPs Delivered by Hand: A FISAP that is hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, 7th and D Streets, SW., Room 4621, Regional Office Building 3, Washington, D.C. The Campus-Based Programs Branch will accept hand-delivered FISAPS between 8:00 a.m. and 4:30 p.m. daily (Washington, D.C. time), except Saturdays, Sundays and Federal holidays. A FISAP that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

FISAP Information: FISAPs were mailed by the program office in mid-July. An institution must prepare and submit its FISAP in accordance with the instructions included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs:

National Direct Student Loan—34 CFR Parts 674 and 668.

College Work-Study—34 CFR Parts 675 and 668.

Supplemental Educational Opportunity Grant—34 CFR Parts 676 and 668.

FURTHER INFORMATION: For further information, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3), Washington, D.C. 20202, Telephone (202) 245–2432.

(20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Nos. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: August 29, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–21089 Filed 9–3–85; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–419; FRL–2890–3]

Pesticide Tolerance Petitions; Nor-Am Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–419] and the petition number, attention Product Manager (PM) named in each petition, at the following address.

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to : Information Services Section (TS–757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM–23, Richard Mountfort.	Rm. 237, CM#2 (703–557–1830).	EPA 1921 Jefferson Davis Hwy, Arlington, VA 22202
PM–25 Robert Taylor.	Rm. 245, CM#2 (703–557–1800).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings

1. *PP 5F3285.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495 Wilmington, DE 19803. Proposes amending 40 CFR 180.402 by establishing a tolerance for the combined residues of the herbicide diethatyl ethyl and its metabolites (free and bound) determinable as the *N*-acetyl *N*-(2,6-diethylphenyl) glycine derivative in or on the commodity soybeans at 0.20 part per million (ppm). The proposed analytical method for determining residues is gas chromatography. (PM–23)

2. *PP 5F3288.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the herbicide methyl (2-(4-((3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate (haloxyfop-methyl), and its metabolite, 2-(4-((3-chloro-5-(trifluoro-methyl)pyridinyl)oxy)phenoxy) propanoic acid (haloxyfop), free and conjugated, all expressed as haloxyfop, in or on certain commodities as follows:

Commodities	Part per million (ppm)
Eggs	0.01
Fat, meat, meat byproducts (mbyp), and liver of cattle, goats, hogs, horses and sheep	.01
Kidney, of cattle, goats, hogs, horses and sheep	.05
Milk	.01
Poultry, fat	.05

Commodities	Part per million (ppm)
Poultry, liver	.1
Poultry, meat, and mbyp	.01
Soybeans	.5

The proposed analytical method for determining residues is gas chromatography using an electron capture detector. (PM–23)

II. Amended Petition

PP 4F3127. E.I. duPont de Nemours & Co., Inc., Wilmington, DE 19898. EPA issued a notice, published in the Federal Register of December 5, 1984 (49 FR 47556) which announced that E.I. duPont de Nemours & Co. had submitted pesticide petition 4F3127 to the Agency proposing to amend 40 CFR 180 by establishing tolerances for residues of the herbicide metsulfuron methyl, (methyl-2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate) in or on the commodities as follows:

Commodities	Part per million (ppm)
Barley and wheat grain	0.05
Fat, meat and mbyp (except liver and kidney) of cattle, goats, hogs, horses and sheep	.1
Green forage of barley and wheat	5.0
Milk	.05
Kidney and liver of cattle, goats, hogs, horses and sheep	.1
Straw of barley and wheat	.1

E.I. duPont de Nemours & Co., Inc. has amended the petition by adding the commodities barley hay and wheat hay at 20.0 ppm.

The proposed analytical method for determining residues is liquid chromatography using an ultra violet detector and reversed-phase liquid chromatography (RPLC). (PM–25).

Authority: 21 U.S.C. 346a.

Dated: August 23, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–20929 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–240065; FRL–2890–4]

State Registrations of Pesticides; Alabama et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registrations of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 25 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Owen Beeder, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

Office location and telephone number: Room 726A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7116).

SUPPLEMENTARY INFORMATION: This notice lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May 1985. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 85 0004. Dow. Chemical Co. Registration is for Telone II Soil Fumigant to be used on soybeans to control nematodes. June 11, 1985.

EPA SLN No. AL 85 0006. Chevron Chemical Co. Registration is for Triforine EC to be used on plants to control entomosporium leaf spot disease. May 2, 1985.

EPA SLN No. AL 85 0007. Shell Chemical Co. Registration is for Phosdrin 4EC Insecticide to be used on watercress to control aphids. May 17, 1985.

Arkansas

EPA SLN No. AR 85 0003. Y–Tex Corp. Registration is for Max-Con Insecticide Ear Tag to be used on beef and dairy cattle to control flies and spinose ear ticks. May 30, 1985.

EPA SLN No. AL 85 0004. ICI Americas, Inc. Registration is for Gramoxone Paraquat Herbicide to be used on alfalfa to control weeds between cuttings. May 30, 1985.

California

EPA SLN No. CA 85 0007. Mobay Chemical Corp. Registration is for Nemacur 3 Emulsifiable to be used on citrus (grapefruits lemons, limes, oranges, and tangarines) to control nematodes. February 14, 1985.

EPA SLN No. CA 85 0008. Degesch America, Inc. Registration is for Degesch Magtoxin Fillet-Prepac to be used on food and feed processing equipment and conveyers to control confused flour beetles and red flour beetles. February 14, 1985.

EPA SLN No. CA 85 0039. Lassen County Dept. of Agriculture. Registration is for Rodent Bait Diphacinone Treated Grain (0.005%) to be used on borrows and runways to control rats, mice, and ground squirrels. June 11, 1985.

EPA SLN No. CA 85 0042. Butte County Agricultural Commissioner. Registration is for Sevin 5 Bait to be used on no-till rice to control armyworms and tomato hornworms. May 2, 1985.

EPA SLN No. CA 85 0043. Pest Detection/Emergency Projects. Calif. Dept. of Food and Agriculture. Registration is for Methyl Bromide, Metho-O-Gas 100, Terr-O-Gas 100, and Metho-O-Gas to be used on nursery stock to control Japanese beetles and West Indian sugar cane borers. June 12, 1985.

EPA SLN No. CA 85 0045. Sutter County. Registration is for Sevana Bird Repellant to be used on wild rice to control blackbirds and cowbirds. June 12, 1985.

EPA SLN No. CA 85 0046. Santa Clara County Health Dept. Registration is for Diphacinone to be used in Santa Clara County to control rats. June 27, 1985.

EPA SLN No. CA 85 0047. Kern County Agric. Commissioner. Registration is for Prowl Herbicide to be used on jojoba to control annual grasses and weeds. June 12, 1985.

Delaware

EPA SLN No. DE 85 0002. Chevron Chemical Co. Registration is for Orthene 755 Soluble Powder to be used on nonbell-type peppers to control aphids. May 30, 1985.

Florida

EPA SLN No. FL 85 0004. The Land, Epcot Center. Registration is for JMS Stylet-Oil to be used on crops grown in the Land, Epcot Center, to mitigate aphid transmission of plant viruses. June 12, 1985.

Georgia

EPA SLN No. GA 85 0002. The Shell Oil Co. Registration is for Biorin Water Miscible Insecticide to be used on pecan shade trees to control black pecan aphids, fallow pecan aphids, pecan leaf phylloxeras, fall webworms, and walnut datana. June 12, 1985.

Hawaii

EPA SLN No. HI 85 0001. The Dow Chemical Co. Registration is for Dursban TC Termiticide Concentrate to be used in crawl space construction, utility poles, and fences to control subterranean termites. July 2, 1985.

Idaho

EPA SLN No. ID 85 0005. FMC Corp. Registration is for Dimethoate 267 to be used on grass seed crops to control aphids, thrips, winter grain mites, and plant bugs. May 9, 1985.

EPA SLN No. ID 85 0006. American Cyanamid Co. Registration is for Counter Systemic Insecticide-Nematicide to be used on sugar beets at planting to suppress sugar beet cyst nematodes. May 9, 1985.

EPA SLN No. ID 85 0007. The Chas. H. Lilly Co. Registration is for Lilly/Miller Lawn Insect Spray to be used on broccoli, brussels sprouts, cabbage, cauliflower, and Chinese cabbage to control root maggots. May 30, 1985.

EPA SLN No. ID 85 0008. E.I. Du Pont De Nemours & Co., Inc. Registration is for Du Pont Benlate PNW Fungicide to be used on barley to control pseudocercosporella foot rot. May 30, 1985.

EPA SLN No. ID 85 0009. Wilbur-Ellis Co. Registration is for Red-Top Dimethoate 2.67 to be used on lentils to control aphids and lygus. June 11, 1985.

Michigan

EPA SLN No. MI 85 0003. E.I. DuPont de Nemours & Co. Registration is for DuPont Vydate L Insecticide/Nematicide to be used on mint to control nematodes. July 27, 1985.

EPA SLN No. MI 85 0004. ICI Americas, Inc. Registration is for Gramoxone Paraquat Herbicide to be used on alfalfa to control weeds. July 27, 1985.

EPA SLN No. MI 85 0005. ICI Americas, Inc. Registration is for Gramoxone Paraquat to be used on asparagus to control weeds. June 27, 1985.

EPA SLN No. MI 85 0006. Dow Chemical U.S.A. Registration is for Lorsban 4E to be used on dry bulb onions to control onion maggots. June 27, 1985.

Missouri

EPA SLN No. MS 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on asparagus, cotton, alfalfa, corn, lettuce, melons, peppers, sorghum, sugar beets, tomatoes, safflower, sunflowers, barley, and wheat to control emerged annual broadleaf weeds and grasses. May 9, 1985.

Montana

EPA SLN No. MT 85 0002. American Cyanamid Co. Registration is for Counter Systemic Insecticide Nematicide to be used on sugar beets at planting to suppress sugar beet cyst nematodes. May 30, 1985.

EPA SLN No. MT 85 0004. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on lands used for planting crops to control cheatgrass (downy brome, chess), kochia, Russian thistle, volunteer wheat, and barley. June 11, 1985.

Nebraska

EPA SLN No. NE 85 0001. Magna Corp. Registration is for Magnacide H Herbicide to be used on irrigation canals to control submersed and floating weeds and algae. May 9, 1985.

Nevada

EPA SLN No. NV 85 0004. Uniroyal, Inc. Registration is for Maintain CF 125 to be used on ornamental olive trees for fruit prevention. June 12, 1985.

EPA SLN No. NV 85 0003. Leffingwell. Registration is for Maintain GF 125 to be used on trees, shrubs, and vines to control grasses and broadleaf weeds. June 12, 1985.

New Jersey

EPA SLN No. NJ 85 0003. New Jersey Dept. of Agriculture. Registration is for carboxide to be used on beekeeping equipment to control honey bee disease. February 7, 1985.

New Mexico

EPA SLN No. NM 85 0001. Chevron Chemical Co. Registration is for Ortho Paraquat Plus to be used on alfalfa to control weeds between cuttings. January 16, 1985.

EPA SLN No. NM 85 0004. Ciba Geigy Corp. Registration is for Dual 8E Herbicide to be used on chili peppers to control annual grasses and broadleaf weeds. June 11, 1985.

EPA SLN No. NM 85 0005. ICC Americas, Inc. Registration is for Gramoxone Paraquat Herbicide to be used on alfalfa to control weeds between cuttings. June 12, 1985.

North Carolina

EPA SLN No. NC 85 0004. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on field corn to control witchweeds. June 11, 1985.

North Dakota

EPA SLN No. ND 85 0003. American Cyanamid Co. Registration is for Prowl Herbicide to be used on no-till sunflowers to control weeds. May 30, 1983.

Oklahoma

EPA SLN No. ND 85 0001. Degesch America Co. Registration is for Degesch Magtoxin Pellets-Prepac to be used on bins, silos, holding tanks, food and feed-processing equipment, and conveyers to control confused flour beetles and red flour beetles. January 16, 1985.

EPA SLN No. OK 85 0002. Chevron Chemical Co. Registration is for Diquat Herbicide-H/A to be used on Bermudagrass in lawns, parks, and golf courses to suppress emerged annual broadleaf and grassy weeds, little barley, annual bluegrass, bromes, buttercups, and Carolina geraniums. February 1, 1985.

EPA SLN No. OK 85 0003. Y-Tex Corp. Registration is for Max-Con Insecticide Ear Tag to be used on beef and dairy cattle to control flies, Gulf Coast ticks, and lice. May 9, 1985.

EPA SLN No. OK 85 0004. Ciba-Geigy Corp. Registration is for D.Z.N. Diazinon 14G to be used on container-grown ornamental nursery stock to control carrot beetle (*Bothymus gibbosus*) larva. May 30, 1985.

Oregon

EPA SLN No. OR 85 0001. Pacific Bulb Growers Assn. Registration is for Furlow/Budnip to be used in field-grown Easter lilies to control flower buds and to reduce the occurrence of *Botrytis* disease caused by decaying flowers. February 1, 1985.

EPA SLN No. OR 85 0002. U.S. Fish and Wildlife Service. Registration is for Compound DRC–1339 98% Concentrate to be used on the Malheur National Wildlife Reserve where sandhill cranes nest and forage to control common ravens. February 1, 1985.

EPA SLN No. OR 85 0021. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on dormant

cottonwood plantings to control weeds. May 10, 1985.

EPA SLN No. OR 85 0022. E.I. DuPont de Nemours & Co. Registration is for DuPont Benlate PNW Fungicide to be used on barley to control pseudocercosporella foot rot. May 2, 1985.

EPA SLN No. OR 85 0023. Pacific Bulb Growers Assn. Registration is for Karmec Herbicide to be used on field-grown Easter lilies to control annual broadleaf and grassy weeds. May 10, 1985.

EPA SLN No. OR 85 0024. FMC Corp. Registration is for Furadan 4 Flowable to be used on grapes to control black vine weevils. May 10, 1985.

EPA SLN No. OR 85 0025. Shell Chemical Co. Registration is for Bladex 80W to be used on field corn to control sandbur, johnsongrass seedlings, fall panicum, and witchgrass. May 10, 1985.

EPA SLN No. OR 85 0026. Shell Chemical Co. Registration is for Bladex 4L to be used on field corn to control sandbur, johnsongrass seedlings, fall panicum, and witchgrass. May 10, 1985.

EPA SLN No. OR 85 0027. ICI Americas, Inc. Registration is for Gramoxone Paraquat Herbicide Mint to be used on dormant mint to control emerged annual broadleaf weeds and grasses. May 17, 1985.

EPA SLN No. OR 85 0028. J.R. Simplot Co. Registration is for Dimethoate 2.67 EC to be used on lentils to control aphids and lygus bugs. May 30, 1985.

EPA SLN No. OR 85 0029. Union Oil Co. of California. Registration is for N-TAC Herbicide to be used on onions, trees, vineyards, and alfalfa to control weeds. May 30, 1985.

EPA SLN No. OR 85 0030. Wilbur-Ellis Co. Registration is for Red-Top Dimethoate 2/67 EC to be used on lentils to control aphids and lygus bugs. June 12, 1985.

EPA SLN No. OR 85 0031. Dow Chemical Co. Registration is for Lorsban 4E Insecticide to be used on radishes to control garden symphylans and cutworms. June 12, 1985.

EPA SLN No. OR 85 0032. Dow Chemical Co. Registration is for Lorsban 4E Insecticide to be used on clover grown for seed to control garden symphlyans, armyworms, aphids, weevils, lygus, and spittlebugs. June 12, 1985.

EPA SLN No. OR 85 0033. FMC Corp. Registration is for Diazinon 3 Dust to be used on houses and buildings to control cockroaches, ants, silverfish, carpet beetles, spiders, and scorpions. June 12, 1985.

Pennsylvania

EPA SLN No. PA 85 0001. Pennwalt Corp. Registration is for Agclor to be used on apples, asparagus, cabbage, carrots, cauliflower, celery, cherries, cucumbers, lettuce, mushrooms, nectarines, onions, peaches, pears, peppers, potatoes, prunes, quinces, and radishes after harvest to control organisms causing decay. February 25, 1985.

EPA SLN No. PA 85 0003. Shell Chemical Co. Registration is for Phosdrin 4EC Insecticide to be used on watercress to control aphids. May 9, 1985.

Rhode Island

EPA SLN No. RI 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on alfalfa to control weeds between cuttings. June 12, 1985.

EPA SLN No. RI 85 0002. Abbott Laboratories. Registration is for Vectobac-AS Biological Mosquito and Blackfly Larvacide to be used on trickle filter system of sewage filter plants against sewer filter flies. July 2, 1985.

EPA SLN No. RI 85 0003. ICI Americas, Inc. Registration is for Gramoxone Paraquat to be used on alfalfa to control weeds between cuttings. July 3, 1985.

Tennessee

EPA SLN No. TN 85 0002. Pennwalt Corp. Registration is for Aquathol 'K' Aquatic Herbicide to be used on irrigation and drainage canals, ponds, and lakes to control aquatic weeds. May 30, 1985.

EPA SLN No. TN 85 0003. Velsicol Chemical Corp. Registration is for Banvel Herbicide to be used on grain sorghum (milo) to control broadleaf weeds. June 13, 1985.

Texas

EPA SLN No. TX 85 0010. Agricultural Div.-Ciba Geigy Corp. Registration is for AAtrex herbicide to be used on Bermudagrass on country roads and rights-of-way to control annual weeds. May 17, 1985.

Washington

EPA SLN No. WA 85 0019. Patterson Green Up Co. Registration is for 5% Diazinon Crawling Insect Control Granules to be used on home lawns and turf to control European crane flies (leather jackets). May 2, 1985.

EPA SLN No. WA 85 0021. Union Carbide Agricultural Products Co., Inc. Registration is for Weedar 64 Broadleaf Herbicide to be used on irrigation and drainage ditches, roadsides, fence rows, and general industrial areas to control broadleaf weeds and brush. May 2, 1985.

EPA SLN No. WA 85 0022. Wilbur Ellis Co. Registration is for Red-Top Spray Sulfur to be used on spearmint to control powdery mildew. May 2, 1985.

EPA SLN No. WA 85 0023. Rohm and Haas Co. Registration is for Goal 1.8E Herbicide to be used on dormant cottonwood plantings to control broadleaf weeds. May 2, 1985.

EPA SLN No. WA 85 0024. ICI Americas, Inc. Registration is for Gramoxone Paraquat Herbicide to be used on dormant mint to suppress emerged annual broadleaf weeds and grasses. May 9, 1985.

EPA SLN No. WA 85 0025. Dow Chemical Co. Registration is for Lorsban 4E Insecticide to be used on carrots grown for seed to control cutworms and lygus bugs. May 17, 1985.

EPA SLN No. WA 85 0026. J.R. Simplot Co. Registration is for Dimethoate 2.67 EC to be used on lentils to control aphids and lygus bugs. May 30, 1985.

EPA SLN No. WA 85 0027. Wilbur-Ellis Co. Registration is for Red-Top Dimethoate 2.67 EC to be used on lentils to control aphids and lygus bugs. May 30, 1985.

EPA SLN No. WA 85 0028. Shell Chemical Co. Registration is for Bladex 80W Herbicide to be used on field corn to control grasses and weeds. May 30, 1985.

EPA SLN No. WA 85 0033. Chevron Chemical Co. Registration is for Ortho Diquat to be used on potatoes for desiccation of potato plants for harvest. July 3, 1985.

West Virginia

EPA SLN No. WV 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat+Plus to be used on watercress to control aphids. April 2, 1985.

EPA SLN No. WV 85 0002. Shell Chemical Co. Registration is for Phosdrin 4 EC Insecticide to be used on watercress to control aphids. May 30, 1985.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: August 20, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-20988 Filed 9-3-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66124; FRL-2890-5]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: October 4, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
77-14	Solvit Chemical Company Space Spray Insecticide Synergised Pyrethrum Type	Solvit Chemical Co., Inc., 7001 Raywood Rd., Madison, WI 53713	Mar. 6, 1969.
106-33	Epilaph Aerosol for Insects	Brulin and Co., Inc., 2929 Martindale Ave., Indianapolis, IN 46205	June 16, 1954.
106-48	Brulin's Formula No. 200	do	Sept. 24, 1974.
134-52	Cattle Louse Powder	Hess and Clark, Inc., 7th and Orange St., Ashland, OH 44805	May 21, 1971.
134-61	Pyranone Dairy Aerosol	do	Jan. 26, 1974.
148-838	De-Pester Premium Malathion E-5	Thompson-Hayward Chemical Co., 5200 Speaker Rd., Kansas City, KS 66110	June 6, 1968.
148-1136	De-Pester Vaporizer Concentrate 2.4-0.3	do	Feb. 27, 1974.
148-1176	S-339 Solution	do	Dec. 4, 1974.
148-1181	S-475 Solution	do	Feb. 28, 1975.
148-1184	S-674 Solution	do	Mar. 6, 1975.
148-1185	S-681 Solution	do	Feb. 14, 1975.
148-1186	S-699 Solution	do	Apr. 21, 1975.
148-1188	S-745 Solution	do	Jan. 25, 1975.
148-1190	S-747 Solution	do	Jan. 22, 1975.
239-23	Ortho Bug-Geta Pellets	Chevron Chemical Co., Ortho Division, 940 Hensley St., Richmond, CA 94801	Feb. 9, 1966.
239-57	Ortho Instant Blue-Stone	do	June 1, 1965.
239-61	Sodite Grape Spray	do	Mar. 27, 1963.
239-74	Metag Agricultural Bait (Pellets)	do	Apr. 30, 1958.
239-269	Ortho Arsenical Weed Killer	do	July 18, 1955.
239-561	Metag-XX Agricultural Bait (Pellets)	do	Oct. 18, 1951.
239-612	Ortho Methoxychlor 50 Wettable	do	June 24, 1952.
239-625	Ortho Fly Spray	do	June 24, 1952.
239-778	Ortho Fly Killer Dry Bait	do	Sept. 17, 1954.
239-848	Ortho Karathane 1 Dust	do	Jan. 27, 1956.
239-914	Ortho Perthane 10 Dust	do	Dec. 10, 1956.
239-1241	Ortho C-B Weed Killer	do	Oct. 31, 1958.
239-1262	Orthocide Karathane 50-6 Wettable	do	Jan. 6, 1959.
239-1365	Ortho Perthane 4 Emulsive	do	June 5, 1957.
239-1540	Orthocide Malathion-Methoxychlor 65-1.5-10 Seed Protectant	do	July 15, 1960.
239-1632	Ortho Fly Spray 101	do	June 10, 1963.
239-1880	Ortho Maneb 80 Fungicide	do	Feb. 6, 1964.
239-1883	Ortho Methoxychlor 2 Emulsive	do	Feb. 20, 1964.
239-2200	Ortho Dibrom Kelthane Phaltan 3-3-7.5 Dust	do	Aug. 16, 1966.
239-2261	Ortho Yard and Patio Insect Fogger	do	June 6, 1968.
239-2311	Orthocide Dibrom Kelthane 5-4-4 Dust	do	June 29, 1970.
239-2313	Ortho Dormant Peach Disease Control	do	Apr. 6, 1970.
239-2355	Orthocide Methoxychlor 65-5 Seed Protectant	do	Apr. 15, 1971.
239-2362	Ortho Lawn Food Plus	do	June 4, 1971.
239-2379	Ortho Yard and Patio Fogger	do	Nov. 5, 1971.
239-2405	Orthocide Maneb 30-30 Seed Protectant	do	Nov. 28, 1972.
239-2409	Ortho Difolatan Methoxychlor 70-5 Seed Protectant	do	Mar. 30, 1973.
257-136	Vitazone Tick and Flea Killer	Cello Chemical Co., 1354 Old Post Rd., Havre de Grace, MD 21078	Mar. 11, 1958.
257-195	OSHI Disinfectant Germicidal and Fungicidal Conc	do	Feb. 15, 1962.
407-310	Pyrenone All-Purpose Spray	Imperial Chemical Co., Inc., P.O. Box 423, Shenandoah, IA 51601	Nov. 30, 1971.
527-75	D-D Disinfectant Deodorant	Midland Laboratories, Inc., a Division of Rochester Germicide Co., P.O. Box 5196, Des Moines, IA 50306.	Feb. 7, 1968.
572-62	Rockland Penta-Penn Wood Preservative	Rockland Chemical Co., P.O. Box 204, Caldwell, NJ 07006	Apr. 11, 1961.
572-96	Rockland Creosote	do	Apr. 27, 1961.
572-100	Rockland Penta Concentrate	do	July 11, 1961.
572-121	Rockland Horse Spray Pressurized	do	Nov. 2, 1962.
572-124	Rockland Residual Fly Spray	do	Dec. 17, 1962.
572-132	I.B.A. Residual Fly Spray	do	June 24, 1963.
572-196	Rockland Ready "Sponge-On"	do	Feb. 12, 1968.
572-284	Rockland Residual Fly Spray	do	Apr. 23, 1975.
595-203	Perthane Malathion Dust No. 64	Haviland Agricultural Chemical Co., 1845 Sterling NW., Grand Rapids, MI 49502.	July 11, 1960.
595-223	Haviland Methoxychlor Elm Spray	do	Oct. 15, 1965.
595-317	3% Methoxychlor 5% Copper Dust	do	Sept. 7, 1971.
602-135	Purina Roach and Ant Killer	Ralston-Purina Co., Checkerboard Square, 835 S. 8th St., St. Louis, MO 63188.	Feb. 7, 1968.
602-157	Purina Yard and Patio Fog	do	Nov. 16, 1969.
602-177	Purina Ravap Insecticide	do	Jan. 22, 1971.
602-213	Purina Liquid Fly Larvicide	do	May 2, 1972.

Registration No.	Product name	Registrant	Date registered
602-264	Purina Fly Larvicide	....do	May 4, 1972.
604-24	Hammond's Slug Shot All-Purpose Insecticide/Fungicide Dust Rotenone .75%	Hammond Paint and Chemical Inc., P.O. Box 292, Westwood, MA 02090	Sept. 23, 1948.
642-126	Aphis-Mildew Spray	Thompson Chemicals Corp., 23529 S. Figueroa St., Wilmington, CA 90744	Apr. 14, 1958.
642-155	Gard-Chem Aphis-Mildew Spray	....do	Apr. 11, 1963.
642-197	Karathane Fungicide Spary	....do	Apr. 13, 1967.
827-178	Agrico Pre-Emergence Crabgrass Control	Agrico Chemical Co., Division of Continental Oil Co., P.O. Box 346, Memphis, TN 38101.	Jan. 3, 1962.
869-128	Green Light Aspon Lawn Chinch Bug Killer	Green Light Co., P.O. Box 17985, San Antonio, TX 78217	May 31, 1972.
904-137	Pratt Flowable Sevin	Pratt-Gabriel Division Miller Chemical and Fertilizer Corp., 204 21st Ave., Patterson, NJ 07509.	Feb. 18, 1985.
904-196	Pratt Turf Insect Spray	....do	June 8, 1972.
904-369	Gabriel Methoxychlor 25E	....do	Mar. 2, 1967.
904-390	Methoxychlor 50% Wettable Powder	....do	Aug. 19, 1968.
904-393	Methoxychlor 10% Granular	....do	Sept. 11, 1968.
904-394	Methoxychlor 20% Oil Concentrate	....do	Sept. 16, 1968.
904-403	Gabriel Methoxychlor-DDVP Emulsifiable Concentrate	....do	Aug. 15, 1968.
912-29	Co-op Backrubber Oil with Ciodrin 1%	Farmers Union Central Exchange, P.O. Box 43089, St. Paul, MN 55164	July 1, 1963.
912-39	Co-op 20-20-12 Systemic T	....do	May 20, 1968.
912-40	Cenex 9-23-30 Systemic D Fertilizer Plus Insecticide	....do	Sept. 25, 1968.
912-42	Cenex 9-23-30 Systemic D	....do	Dec. 6, 1968.
912-43	Cenex 9-23-30 Systemic D Fertilizer Plus	....do	Do.
912-55	Greenhouse Brand Rose Dust	....do	Jan. 20, 1972.
912-58	Greenhouse Fruit Spray	....do	Jan. 28, 1972.
912-60	Greenhouse Tomato and Garden Dust	....do	Nov. 9, 1972.
912-75	Greenhouse Brand Simazine 4G	....do	Apr. 12, 1973.
962-340	Lacco White Arsenic	Los Angeles Chemical Co., 4545 Ardine St., Southgate, CA 90280	Jan. 23, 1968.
1021-423	Pyrocide Aerosol Mix #1589	McLaughlin Gormley King Co., 1715 SE. Fifth St., Minneapolis, MN 55414	Apr. 29, 1958.
1021-486	Pyrocide Pressurized Pet Spray Mix #5569	....do	Feb. 6, 1959.
1021-509	Pyrocide Aerosol Mix #1857	....do	May 2, 1958.
1021-585	Pyrocide Aerosol Mix #5849	....do	Jan. 8, 1960.
1021-634	Pyrocide Pressurized Pet Spray Mix #6042	....do	Apr. 27, 1961.
1021-831	Pyrocide Aerosol Mix #6621	....do	Aug. 20, 1965.
1021-890	Pyrocide Aerosol Mix #1533	....do	Jan. 11, 1967.
1021-1002	Pyrocide Pressurized Plant Spray #5898	....do	Sept. 25, 1968.
1021-1158	Pyrocide Pet Concentrate Spray #7058	....do	May 21, 1971.
1057-47	Purifex Disinfectant Spray	C.B. Dolge Co., P.O. Box 1515 Rochester, NY 14603	Mar. 3, 1964.
1145-137	Bovinol Backrubber Oil	The Cropmate Co.; 320 Embassy Plaza Omaha, NE 68114	May 21, 1971.
1193-26	Wonderful 707 Formula Insect Bomb	707 Company 1530 Stillwell Ave. New York, NY 10461	Jan. 15, 1957.
1193-35	707 House and Garden Insect Bomb	....do	July 14, 1958.
1193-61	707 Jack Pot Formula	....do	July 10, 1979.
1269-47	D.P. 116 Dairy Sanitizer	Dewitt Chemical Co.; P.O. Box 343, Atlanta, GA 30301	Dec. 14, 1962.
1269-86	Dewitt Formula 2056 Concentrated Insecticide	....do	May 5, 1967.
1269-101	Dewitt Fogger Municipal Spray	....do	Mar. 5, 1969.
1270-37	Zeposector Concentrated Insecticide	Zep Manufacturing Co., P.O. Box 2015, 1310 Seaboard Industrial Blvd., NW., Atlanta, GA 30301.	Jan. 31, 1957.
1270-46	Zep Formula Super Insecticide	....do	Oct. 22, 1958.
1270-70	Zep-Lac 46 Dairy Sanitizer	....do	Nov. 1, 1963.
1270-121	Zep-O-Fog Municipal Spray	....do	Mar. 5, 1969.
1339-163	Cotton States Vapona-2EM	Cotton States Chemical Co., 116 Wassan St., P.O. Box 157 West Monroe, LA 71291.	Oct. 28, 1961.
1348-185	Selco Ciodrin Dairy and Livestock Spray	Selco Supply Co., 650 O St., Greeley, CO 80631	July 18, 1963.
1677-40	Soilax Sanitizing Carpet Shampoo	Economics Laboratory, Inc., Osborn Bldg., St. Paul, MN 55102	July 2, 1973.
1677-55	Thermo-San Liquid	....do	Sept. 7, 1972.
1677-68	Tykor Klor-EZe	....do	Aug. 8, 1950.
1677-69	Kora Gard	....do	Feb. 4, 1955.
1677-71	Klor-10 Concentrated Liquid Bactericide and Disinfectant	....do	Sept. 7, 1972.
1677-72	Tykor Dynogen-an Iodophor	....do	Do.
1696-36	Super Metrocide Industrial Insecticide	Metro Products Co., 4720 Frederick Drive, SW., Atlanta, GA 30336	July 8, 1980.
1750-29	Roach Spray	Best Maintenance Supply co., 1922 E. 7th Place, Los Angeles, CA 90021	Jan. 27, 1958.
1842-154	Die Beetle Garden and Truck Crop Dust	Triangle Chemical Co., P.O. Box 4528, Macon, GA 31208	Apr. 28, 1961.
1927-55	No-Vex Professional Aerosol Insect Killer	Terminix International, Inc., P.O. Box 17167, Memphis, TN 38117	Apr. 22, 1964.
1990-16	Co-op Methoxychlor Emulsifiable Concentrate	Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116	June 8, 1955.
1990-131	Co-op Household Insecticide	....do	May 12, 1960.
1990-144	Co-op Economy Backrubber Oil	....do	Sept. 21, 1961.
1990-165	Co-op Ciodrin Insectcide Emulsifiable Concentrate	....do	Apr. 18, 1963.
1990-167	Co-op Ciodrin Insectcide Dairy and Stock Spray and Backrubber	....do	May 24, 1963.
1990-186	Co-op Louse Killer Granular	....do	Jan. 8, 1964.
1990-324	Co-op Alfa-Cide	....do	Apr. 18, 1968.
1990-325	Co-op Powdered Standard Lead Arsenate	....do	July 18, 1968.
1990-328	Co-op Korlan 24E Insecticide	....do	Aug. 13, 1968.
1990-374	Co-op Dairy Insecticide	....do	May 13, 1974.
1990-396	Techne Dairy Spray	....do	Aug. 28, 1950.
1990-410	Woodbury Grain Surface Spray	....do	Mar. 20, 1957.
1990-417	Pyrenone Wheat Protectant	....do	Oct. 15, 1957.
1990-418	Sure Death Brand Powdered Standard Lead Arsenate	....do	Jan. 17, 1957.
1990-441	Woodbury's Vaprin	....do	July 26, 1963.
1990-445	Sure Death Brand Oiler Insecticide	....do	Jan. 10, 1964.
1990-447	Woodbury's Louse	....do	Feb. 13, 1964.
1990-455	Thiodan 2E Emulsifiable Liquid	....do	July 11, 1968.
1990-481	Sure Death Brand M-M-4	....do	Mar. 18, 1968.
1990-484	Woodbury Water Soluble Rocon Kills Rats and Mice	....do	June 28, 1968.
1990-490	Sure Death Brand Insect X	....do	Aug. 19, 1968.
1990-493	Woodbury's Dairy Dust	....do	Sept. 28, 1968.
1990-500	Cattle Dust Bag 3% Ciodrin Insecticide	....do	Feb. 7, 1972.
1990-507	Pyrethrin Insecticide Pressurized Dairy Insecticide	....do	May 13, 1974.
2337-23	Sh-Boom Bug Spray	DeMert and Dougherty, Inc., 5000 W. 41st St., Chicago, IL 60650	Apr. 28, 1955.
2337-57	DeMert Fog-A-Yard	....do	Mar. 18, 1968.
2382-15	Parid Spray	Carson Chemicals, Inc., P.O. Box 466, New Castle, IN 47362	Apr. 18, 1957.
2749-219	Trifluralin 4EC Herbicide	Aceto Agricultural Chemical Corp., 126-02 Northern Blvd., Flushing, NY 11368	Nov. 14, 1973.
2749-294	Trifluralin Technical Herbicide	....do	Jan. 1, 1973.
3442-584	USS Vertagreen Lawn Fertilizer 5-10-5 and Chinch Bug Killer	U.S.S. Agri-Chemicals, Inc., Division of U.S. Steel, P.O. Box 1685, Atlanta, GA 30301.	Dec. 7, 1965.
3442-758	Patterson Root and Crown Rot Control	....do	May 4, 1964.

Registration No.	Product name	Registrant	Date registered
3635-83	Oxford Perma Kill Brand Liquid Insecticide	Oxford Chemicals, Inc., P.O. Box 80202, Atlanta, GA 30366	Apr. 7, 1966.
3640-10	No. 33 Insecticide	Stearns Chemical Corp., 4200 Sycamore Ave., Madison, WI 53704	Apr. 8, 1958.
3640-11	No. 66 Insecticide	....do	Do.
3640-12	Diazinon Residual Insecticide	....do	Apr. 15, 1958.
3640-70	Stearns Insect Bomb	....do	Aug. 6, 1974.
4584-46	Flipo Pet Spray	Gem, Inc., #1 Gem Blvd., Byhalia, MS 38611	May 1, 1963.
4584-50	Aerocos Fly and Mosquito Spray	....do	Apr. 4, 1966.
4584-54	Space Spray Insecticide	....do	Aug. 18, 1966.
4584-55	Aerocos Residual Insect Spray	....do	Nov. 4, 1966.
4584-62	Aerocos Flying Insect Killer	....do	May 29, 1968.
4584-63	Aerocos House and Garden Insect Killer	....do	Do.
4584-73	Aerocos D-Trans Flying Insect Killer	....do	June 16, 1971.
4591-37	Lynde Kor-cide Mist Spray	Lynde Chemical Co., 3040 East Hennepin Ave., Minneapolis, MN 55413	June 19, 1963.
4591-39	Lynde Kilo Farm Spray	....do	Mar. 27, 1964.
4591-50	Lynde Beta Cide A Ready	....do	June 5, 1968.
4591-51	Lynde Bay Cide Concentrated Fogging Insecticide Contains Baytex and Lethane.	....do	Do.
4704-35	Magic Circle Industrial Spray Emulsifiable Concentrate	J. C. Erlich Chemical Co., Inc., 800 Hiesters Lane, Reading, PA 19605	Oct. 18, 1973.
4867-11	Stephenson 25% Malathion Wettable Powder	Stephenson Chemical Co., Inc., P.O. Box 87166, College Park, GA 30337	Nov. 9, 1956.
4867-73	Stephenson Chemicals ANTU 20%	....do	Sept. 21, 1961.
4867-122	Drop-Tox Potency Spray	....do	July 1, 1966.
4867-143	Stephenson Chemicals Rose and Floral Dust	....do	Jan. 18, 1971.
4867-153	Stephenson Chemicals Tomato Dust	....do	Jan. 20, 1972.
4867-169	Stephenson Chemicals Big D Concentrate	....do	Apr. 23, 1973.
5011-183	Carmel Food Protectant Formula F-104	Carmel Chemical Corp., P.O. Box 406, Westfield, IN 46074	Mar. 5, 1970.
5002-49	Kwik Kill Fly Krystals	Hub States Corp., 2002 N. Illinois St., Indianapolis, IN 46202	Mar. 11, 1969.
5002-51	Di-Phos E	....do	Apr. 2, 1968.
6129-7	Blitz Fog No. 5 Thermalized Insecticide	McGraw Edison Co., 1701 W. Golf Rd., 1 Continental Towers, Rolling Meadows, IL 60008.	Apr. 24, 1972.
6186-6	Concentrated Insecticide	Damon Chemical Co., Inc., P.O. Box 480, Alliance, OH 44601	June 7, 1960.
6186-7	Fogg-R Insecticide	....do	June 9, 1960.
6186-10	Fogg-R Non-Toxic Extra Concentrated	....do	Aug. 17, 1962.
6528-1	H and H Kilo 8	Hamblet and Hayes Co., Colonial Rd., Salem, MA 01970	Jan. 15, 1960.
6528-3	Kilo H	....do	May 12, 1970.
6720-63	Chinch Bug Spray Insecticide	Southern Mill Creek Products Co., Inc., P.O. Box 1066, Tampa, FL 33601	Sept. 2, 1966.
6720-66	X-Cel Chinch Bug Granules	....do	Oct. 8, 1969.
6720-96	SMCP Trithion EM-6	....do	Mar. 31, 1970.
6754-15	Professional Malathion Fly Bait with DDVP	Dettlebach Pesticide Corp., 4111 Peachtree Rd., Atlanta, GA 30319	Apr. 11, 1962.
6754-17	Professional 57% Malathion W.E.	....do	Apr. 16, 1962.
6754-27	Professional Orkin Concentrate 399	....do	Apr. 26, 1964.
6754-60	Orkin Special Fog Spray	....do	Sept. 24, 1956.
6754-62	Professional Orkin Special Formula-R-33 DD Grade Insect Powder	....do	Apr. 30, 1957.
6962-7	End-Sect Insect Killer	Madison-Bionics 11250 W. Addison St., Franklin Park, IL 60131	June 23, 1964.
6962-8	In-Cide Concentrated Insecticide	....do	July 1, 1964.
6962-10	Strafe Insecticide	....do	July 7, 1964.
7122-21	Di-Ron O.S	Archem Corp., 1514 Eleventh St., Portsmouth, OH 45662	Oct. 20, 1961.
7122-22	Di-Ron WE	....do	Do.
7122-36	Guardian Super 606 Insecticide	....do	Mar. 4, 1966.
7122-46	Guardian Herkol 14WE	....do	May 6, 1966.
7455-3	Superswest Pest-O-Kill	Agricultural Products Division, International Multifoods Corp., 1200 Multifoods Bldg., Minneapolis, MN 55402.	May 28, 1964.
7701-15	A Sure Hospital Disinfectant Deodorant	Chemical Specialties, Inc., 149 W. Trigg Ave., Memphis, TN 38106	Aug. 31, 1967.
7701-22	Chem-Spec Hospital Strength Disinfectant Deodorant	....do	Nov. 13, 1967.
7943-7	Lawn Life Crabgrass Preventer	Federal Chemical Co., Cranbury, NJ 08512	Mar. 11, 1964.
8006-8	Easy Dairy Oil Contains Clodrin	Easy Chemical and Mfg. Co., Inc., Route 1, Seward, NE 68434	Aug. 6, 1971.
8123-19	Rat Bait	Frank Miller and Sons, Inc., 13613 S. Emerald Ave., Chicago, IL 60627	Feb. 19, 1969.
9648-42	M-40 Algaecide	Clow Corp., Water Management Division, 400 Auburn Ave., Pontiac, MI 48058	May 26, 1972.
9964-1	H and H Products Pentalite Wood Preservative Clear	Hanline Brothers, Inc., 200 S. Franklintown Rd., Baltimore, MD 21223	Dec. 15, 1967.
10120-7	Vivo Carf Powerful Hospital Disinfectant Long Lasting Deodorizer	Carfect Laboratories, P.O. Box 47645, Atlanta, GA 30340	Jan. 6, 1968.
10228-8	Rockwood Brand Perthane 4 E.C.	Rockwood Chemical Co., P.O. Box 34, Brawley, CA 92217	Mar. 24, 1969.
10228-9	Rockwood Brand Malathion Perthane Dust No. 4-10	....do	Apr. 16, 1969.
10233-4	Fleegard Shampoo	Akin Labs 413 East Ogden Ave., Downers Grove, IL 60515	Sept. 1, 1961.
10233-5	Fleegard Pet Dip		Do.
10416-1	Deneco Tek-Tex (Chlralde)	Dr. Leonard F. Abramson, 3431 East Superior St., Duluth, MN 55802	Nov. 17, 1967.
10455-2	Indoor/Outdoor Dog Repellent	Puppy Palace Enterprises, Inc., 35 South Letitia St., Philadelphia, PA 19106	Apr. 28, 1969.
10455-6	Mint Disinfectant	....do	Dec. 28, 1971.
10607-31	Misty Hospital Disinfectant and Deodorant	Amrep, Inc., 990 Industrial Park Drive, Marietta GA 30062	Feb. 27, 1973.
10666-1	Moth Gard	Eaton Labs, Division of Jetronic Industries, Inc., 5th St., and Michigan Ave., Lansdale, PA 19446.	Feb 10, 1971.
13601-15	Trichlorfon Technical	Intrachem S.A. "Le Grebe" 34 Quai de Cologny, 1223 Geneva, Switzerland	May 24, 1972.
13601-16	Malathion Technical	....do	Jan 3, 1973.
38110-1	Max-Min Fly Control Mineral with Rabon® Oral Larvicide	Southeastern Minerals, Inc., P.O. Box 506, Bainbridge, GA 31717	Apr. 16, 1979.
38110-2	Super Mol 7.76 Fly Control Premix	....do	Aug. 26, 1976.
38110-3	Super Mol Fly Control Mineral Mix	....do	Aug. 31, 1976.
40300-2	Sho-Spray	Mainpro, Inc., P.O. Box 5206, Irving, TX 75062	Apr. 6, 1983.
40831-120	Chlorobenzilate Technical	Falls Chemical Co., P.O. Box 6323, Great Falls, MT 59406	Apr. 16, 1973.
40940-1	Chlordane 72% E.C.	Lextron, Inc., P.O. Box BB, Greeley, CO 80632	Apr. 9, 1969.
40940-11	Helena Animal Health 3% Clodrin Dust	....do	Apr. 26, 1974.
40940-12	Clodrin and Vapona Insecticide	....do	Jan. 6, 1975.
40940-15	Clodrin and Vapona Insecticide E.C.	....do	Apr. 24, 1974.
52237-1	Death-O-Cide Cockroach and Ant Killer	Death-O-Cide Products, P.O. Box 142, Leroy, AL 36548	June 1, 1964.

The Agency has agreed that each cancellation shall be effective (October 4, 1985) unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply is exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing

stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP–66124]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Room. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136d.

Dated: August 23, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85–20927 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00212; FRL 2890–8]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Ground-water Protection and Disposal (WC/GPD) of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, September 23 and Tuesday, September 24, 1985, beginning at 8:30 a.m. each day and concluding by 4:30 p.m., Tuesday, September 24.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA. 22202 (703–486–1234).

FOR FURTHER INFORMATION CONTACT:

By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 1115 Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7096).

SUPPLEMENTARY INFORMATION: This will be the second meeting of the Working Committee on Ground-water Protection and Disposal (WC/GPD), established pursuant to EPA's grant to the Association of American Pesticide Control Officials, which established SFIREG. The purpose of the WC/GPD is to consider pesticide-related aspects of ground-water protection and disposal of pesticide waste, excess pesticides and used pesticide containers, and to make recommendations, through the full SFIREG, regarding Agency policies in these key areas. The meeting of the Working Committee will be concerned with the following topics:

1. Disposal of rinsate resulting from washing of aircraft.
2. FIFRA–RCRA interface.
3. Status of Office of Pesticide Programs (OPP) action plan for implementation of OPP-Office of Solid Waste agreement to work together on questions of pesticide disposal.
4. Underground storage of pesticide rinsate.
5. Survey of State pesticide disposal concerns.
6. Summary of July 30–31 Cincinnati meeting on disposal technology research needs.
7. Status of Office of Drinking Water (ODW)–OPP National Drinking Water Survey.
8. Status of FY '85 supplementary funding for State ground-water protection programs.
9. Status report on OPP regulatory actions concerning ground-water protection.
10. Status of educational efforts by USDA–EX to protect ground-water.
11. Other topics as appropriate.

Dated: August 16, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85–20925 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–50–M

[A–9–FRL–2891–6]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Thermal Power Company (EPA Project Number NC 84–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 20, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR § 52.21 to the applicant named above. The PSD permit grants approval to construct a 25-megawatt geothermal-electric power plant, to be located in Bear Canyon, Lake County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: H_2S at 2.0 lbs./hr.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Matt Haber (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8209, FTS 454–8209.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of the Stretford process, hydrogen peroxide/catalyst to treat condensate, and turbine bypass.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1985.

Dated: August 23, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85–21028 Filed 9–3–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1535]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 28, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Denver, Colorado) (MM Docket No. 83–385, RM–4292 & MM Docket No. 83–1023, RM–4475).

Filed by: Colby M. May, Attorney for Trinity Broadcasting of Denver, Inc., on 8–7–85.

Subject: Amendment of Part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VEC's) to Maintain Pools of

Questions for Amateur Operator Examinations. (PR Docket No. 85-196).
Filed by: Robert A. Scupp. (WB5YYX) on 8-19-85.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85-21037, Filed 9-3-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancshares of Loyal, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancshares of Loyal, Inc.*, Loyal, Wisconsin; to become a bank holding company by acquiring 97.8 percent of the voting shares of Citizens State Bank of Loyal, Loyal, Wisconsin.

2. *The Indiana National Corporation*, Indianapolis, Indiana; to merge with Lowell National Bancrop, Lowell, Indiana, thereby indirectly acquiring Lowell National Bank, Lowell, Indiana.

3. *Tri City Bankshares Corporation*, Oak Creek, Wisconsin; to acquire 2.8 percent of the voting shares of First National Bank of Eagle River, Eagle River, Wisconsin.

Board of Governors of the Federal Reserve System, August 28, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-21013 Filed 9-3-85; 8:45 am]
BILLING CODE 6210-01-M

Manufacturers Hanover Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to acquire certain receivables of Amhoist Creditcorp., Minneapolis, Minnesota; thereby engaging in making commercial finance loans.

Board of Governors of the Federal Reserve System, August 28, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-21014, Filed 9-3-85; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement; Hepatitis B Vaccine Trial Follow-Up; Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for continuation of Hepatitis B Vaccine Trial Followup. The Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)), as amended.

The San Francisco Department of Health, San Francisco, California, Howard Brown Memorial Clinic, Chicago, Illinois, and Denver Department of Health & Hospitals, Denver, Colorado, were participants in the original CDC multicenter Hepatitis B Virus (HBV) vaccine trial in homosexual men and have continued to follow recipients. The objectives relate specifically to followup of recipients of vaccine in the original multicenter trial.

During Fiscal Year 1986, it is expected that approximately $104,000 will be available for this project. From this amount, three awards will be made from competing continuation applications for HBV vaccine trial followup ranging from approximately $28,000 to $39,000 with the average award being $35,000. No new applications are being accepted in Fiscal Year 1986 for any of the above funds.

Awards will be for a 2-year project period with annual budget periods. Funding estimates outlined above may vary and are subject to change due to budgetary uncertainties.

Applications are subject to the review requirements of the National Health Planning and Resources Development Act of 1974, as amended, and Executive Order 12372 (60-day review). Information may be obtained from the individuals listed below:

FOR FURTHER INFORMATION CONTACT:
Technical:
Dr. Stephen Hadler, Hepatitis Branch, Center for Infectious Diseases, Centers for Disease Control,

Atlanta, GA 30333, Telephone: (404) 321-2346 or FTS 236-2346

Business:

Nancy Bridger, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, GA 30305, Telephone: (404) 262-6575 or FTS 236-6575

Dated: August 23, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-21011 Filed 9-3-85; 8:45 am]

BILLING CODE 4160-18-M

Open Meeting; Pediatric Screening for Lead Poisoning and Iron Proficiency Utilizing Protoporphyrin Assays

The Centers for Disease Control and the Health Resources and Services Administration will bring together a group of experts to exchange information concerning issues and problems relating to the use of protoporphyrin tests to detect lead poisoning and iron deficiency among children. Quality control, instrumentation, standardization, calibration, and standards will be topics of interest to the group. The discussions of the working group will be open to the public, limited only by the space available.

Date: September 9-10, 1985.

Time: 9:30 am—4:30 pm.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 9-09-85; Room B (3rd Floor), 9-10-85: Room 17-09A (17th Floor).

Additional information may be obtained from: James M. Simpson, Division of Environmental Hazards and Health Effects, Center for Environmental Health, Centers for Disease Control, Atlantia, Georgia 30333, Telephones: FTS: 236-4191, Commercial: (404) 452-4191.

Dated: August 29, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-20627 Filed 9-3-85; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 85F-0376]

American Enka Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Enka Co. has filed a petition proposing that the food additive regulations be amended to provide for an increase in the weight percent of polymer units derived from ethylene terephthalate in ethylene terephthalate-isophthalate copolymers.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3871) has been filed by American Enka Co., Enka, NC 28728, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for an increase in the weight percent of polymer units derived from ethylene terephthalate in ethylene terephthalate-isophthalate copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: August 23, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-21001 Filed 9-3-85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

Correction

In FR Doc. 85-19154, beginning on page 32640, in the issue of Tuesday, August 13, 1985, make the following corrections:

1. On page 32640, third column, second complete paragraph, the sixth line should read: "public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever".

2. On page 32641, first column, fifth line, insert the word "an" between "make" and "oral".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Health Maintenance Organization; Qualification of Entities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be federally qualified health maintenance organizations (HMOs).

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Associate Director for Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4106.

SUPPLEMENTARY INFORMATION: Regulations (42 CFR 110.805(d)) issued under Title XIII of the Public Health Service Act (the Act) require that a list and description of all newly qualified HMOs be published on a periodic basis in the Federal Register. This notice is an accumulation of information regarding those HMOs that have been qualified since the last such list was published on March 5, 1985. There are three categories of qualified HMOs: operational, transitionally qualified, and preoperational (see 42 CFR 110.802 and 110.803). This list includes HMOs that have changed from one category to another.

The following entities have been determined to be qualified HMOs under section 1310(d) of the Act (42 U.S.C. 300e-9(d)):

Operational Qualified Health Maintenance Organizations: 42 CFR 110.803(a)

1. Physicians Association of Clackamas County (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 18600 S.E. McLoughlin Boulevard, Gladstone, Oregon 97027. On March 29,1979, Physicians Association of Clackamas County was approved as a transitionally qualified HMO (see 42 CFR 110.803(b)). On June 3, 1985, Physicians Association of Clackamas County was officially notified that it had successfully completed its transitional phase and was deemed to be an operational qualified HMO. The service area comprises Clackamas County, Oregon.

Effective date: January 1, 1985.

2. HealthAmerica Corporation of Texas (Medical Group Model, see section 1310(b)(1) of the Act), 4499 Medical Drive, Suite 230, San Antonio, Texas 78229. On January 1, 1985, HealthAmerica Corporation of Texas (HACT), a wholly-owned, for-profit subsidiary of HealthAmerica Corporation, agreed to purchase the assets and assume the liabilities of the not-for-profit Good Health Plus, Inc. (GHP), a federally qualified HMO. Subsequently, HAC-T was approved for Federal qualification, and the qualification for GHP was voluntarily relinquished. The service area comprises Bexar County, Texas, including the city of San Antonio.

Date of qualification: January 1, 1985.

3. CIGNA Healthplan of Shreveport and Bossier (Medical Group Model, see section 1310(b)(1) of the Act), 3007 Knight Street, Suite 250, Shreveport, Louisiana 71105. The service area comprises the following zip codes in the following parishes in Louisiana:

Bossier Parish

71006 71010 71037 71051 71060 71061 71067 71110 71111 71112 71113 71141 71149 71171

Caddo Parish

71009 71033 71047 71101 71103 71104 71105 71106 71107 71108 71109 71115 71118 71119 71129 71130 71146 71161 71162 71163 71164 71165 71166 71167 71168 71169 71120

Desoto Parish

71078

Date of Qualification: January 14, 1985.

Subsequntly, the approved service area was expanded to include 7 additional zip codes in Caddo and Webster Parishes as follows:

Caddo Parish

71004 71029 71043 71082

Webster Parish

71023 71055 71073

Effective date: March 1, 1985.

4. United Medical Plan of Texas, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 11271 Richmond Avenue, Building "H", Suite 101, Houston, Texas 77082. The service area comprises the following zip codes in Houston, Texas:

77001–77009 77011–77099 77201 77205–77209 77211 77215 77216 77218 77248 77272 77277 77327 77338 77365 77373 77375 77401 77411 77413 77429 77450 77459 77469 77471 77474 77477 77301 77302 77303 77304 77305 77380 77381 77385 77386 77387 77478 77481 77484 77485 77501 77502 77503 77506 77511 77520 77530 77532 77536 77539 77546 77547 77562 77565 77568 77571 77573 77578 77581 77586 77587 77590 77598

Date of qualification: January 14, 1985.

5. Florida Health Care Plan, Inc. (Staff Model, see section 1310(b)(1) of the Act), 350 Clyde Morris Boulevard, Daytona Beach, Florida 32014. On October 1, 1984, the for-profit entity, Florida Health Care Plan, Inc. (FHCP) agreed to purchase the assets and assume the liabilities of the not-for-profit Central Health Care Plan, Inc. (CHCP), a federally qualified HMO. FHCP began operation as an HMO on October 1, 1984. Subsequently, FHCP was approved for Federal Qualification, and the qualification for CHCP was voluntarily relinquished. The service area comprises Volusia County, Florida.

Date of qualification: January 16, 1985.

6. Health Options, Inc. (Medical Group Model, see section 1310(b)(1) of the Act), 4348 Southpoint Boulevard, Suite 101, Jacksonville, Florida 32216. The service area comprises Baker, Clay, Duval, Nassau, and St. John's Counties in Florida.

Date of qualification: January 28, 1985.

7. Share Health Plan of Nebraska, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 600 Blackstone Centre, 302 South 36th Street, Omaha, Nebraska 68131. The service area comprises the following zip codes in the following counties in Nebraska and Iowa:

Nebraska

Washington County

68002 68008 68023 68029 68034 68068

Sarpy County

68005 68028 68046 68054 68056 68059 68113 68123 68128 68129 68133 68136 68138 68139 68140 68147

Douglas County

68007 68010 68022 68064 68069 68101 68102 68103 68104 68105 68106 68107 68108 68109 68110 68111 68112 68114 68115 68116 68117 68118 68119 68120 68121 68122 68124 68125 68126 68127 68130 68131 68132 68134 68135 68137 68142 68144 68145 68146 68152 68154 68155 68157 68164

Iowa

Pottawattamie County

51501 51502 51510 51521 51525 51526 51536 51542 51548 51549 51553 51559 51560 51575 51576 51577

Date of qualification: February 4, 1985.

8. Maxicare Ohio, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 801 B West Eighth Street, Suite 111, Cincinnati, Ohio 45203. The service area comprises Dearborn County in Indiana; Boone, Campbell, Gallatin, Grant, Kenton, and Pendelton Counties in Kentucky; Butler, Clermont, Hamilton, and Warren Counties in Ohio; and following zip codes in the Greater Cincinnati Area:

41001 41005 41006 41007 41009 41011 41014 41015 41016 41017 41018 41030 41033 41035 41040 41042 41043 41046 41048 41051 41053 41059 41063 41071 41073 41074 41075 41076 41080 41085 41091 41092 41094 41095 45001 45002 45003 45004 45005 45011 45013 45014 45015 45030 45032 45033 45034 45036 45039 45040 45041 45042 45050 45051 45052 45053 45054 45055 45056 45061 45063 45064 45065 45066 45067 45068 45069 45102 45103 45106 45107 45108 45111 45112 45113 45119 45120 45122 45130 45140 45145 45147 45150 45152 45153 45156 45157 45158 45160 45162 45163 45174 45178 45201 45202 45203 45204 45205 45206 45207 45208 45209 45210 45211 45212 45213 45214 45215 45216 45217 45218 45219 45220 45221 45223 45224 45225 45226 45227 45228 45229 45230 45231 45232 45233 45236 45237 45238 45239 45240 45241 45242 45243 45244 45245 45246 45247 45275 47001 47018 47022 47025 47032 47040 47041 47060

Date of qualification: February 20, 1985.

9. Virginia Health Maintenance Organization/dba HMO Plus (Medical Group Model, see section 1310(b)(1) of the Act), 5511 Staples Mill Road, Richmond, Virginia 23228. The service area comprises the cities of Norfolk, Virginia Beach, Chesapeake, and Portsmouth in Virginia.

Date of qualification: February 22, 1985.

10. Health Plan of Nevada, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 801 South Rancho Drive, Suite A4, Las Vegas, Nevada 89106. On December 31, 1984, Health Plan of Nevada, Ltd., a for-profit federally qualified HMO comprising two regional components, became Health Plan of Nevada, Inc., and a wholly-owned subsidiary corporation of Sierra Health Services, Inc. Subsequently, Health Plan of Nevada, Inc. was approved for Federal qualification, and the qualification of Health Plan of Nevada, Ltd. was voluntarily relinquished. The service area for the Las Vegas regional component comprises Clark County, Nevada. The service area for the Reno regional component comprises the following zip codes in Nevada:

Carson City

89701,89710

Reno

89501–89507 89509–89513 89515, 89520, 89523

Sparks

89431, 89439, 89442

Other

89403, 89408, 89410, 89411, 89413, 89450, 89423, 89428, 89429, 89449, 89439, 89440, 89442, 89448

Date of qualification: February 25, 1985.

11. Lovelace Health Plan, Inc. (Medical Group Model, see section

1310(b)(1) of the Act), 5400 Gibson Boulevard, S.E., Albuquerque, New Mexico 87108. On February 28, 1985, Lovelace Health Plan, Inc. (LHPI), a for-profit HMO, was notified that it had been approved for Federal qualification. LHPI had been created to assume the assets and liabilities and to continue the business operations of Lovelace Health Plan (LHP), a not-for-profit federally qualified HMO. At the time that LHPI became federally qualified, the qualification of LHP was voluntarily relinquished. The service area comprises Bernalillo County, New Mexico, and the following zip codes in portions of Sandoval, Torrance, and Valencia Counties, New Mexico:

87002 87004 87008 87031 87035 87041 87047 87048 87059 87101–87125 87174 87184 87185 87190 87191 87192 87194–87198

Date of qualification: March 1, 1985.

12. Share Health Plan of Illinois, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 500 Park Boulevard, Suite 285, Itasca, Illinois 60143. The service area comprises Cook and Dupage Counties in Illinois, and the following zip codes in the following counties in Illinois:

DeKalb County

60152 60178

Grundy County

60416 60447 60450

Kone County

60102 60103 60109 60110 60118 60119 60120 60134 60136 60140 60144 60151 60152 60170 60174 60177 60178 60182 60183 60184 60185 60187 60190 60505 60506 60510 60538 60539, 60540, 60542, 60554, 60555

Kankakee County

60418 60901 60914 60915 60940 60950 60954

Kendoll County

60505 60512 60538 60540 60543 60544 60554 60560

Lake County

60002 60010 60020 60030 60031 60041 60042 60044 60045 60048 60060 60064 60073 60075 60081 60083 60084 60085 60088 60096 60099 60535

McHenry County

60010 60013 60014 60021 60034 60042 60050 60071 60072 60080 60081 60097 60098 60102 60152 60180

Will County

60401 60408 60410 60416 60417 60418 60421 60423 60435 60436 60442 60447 60449 60466 60468 60544 60950

Date of qualification: March 1, 1985.

13. Health Dimensions, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 1720 Louisiana Avenue, N.E., Suite 200, Albuquerque, New Mexico 87110. The service area comprises the following zip codes in the following counties in New Mexico:

Bernalillo County

87102, 87104–87118, 87121–87123—Albuquerque
87059—Tijeras
87008—Cedar Crest
87114—Alameda, Paradise Hills
87022—Isleta
87047—Sandia Park

Sandoval County

87004—Bernalillo
87124—Rio Rancho
87001—Algodones
87048—Corrales
87043—Placitas

Valencia County

87031—Las Lunas
87006—Bosque
87002—Belen
87060—Tome
87042—Peralta

Sante Fe County

87501—Sante Fe
87501—Nambe
87567—Santa Cruz
87010—Cerillos

Rio Arriba County

87532—Espanola

Los Alamos County

87544—Los Alamos

Date of qualification: March 13, 1985.

14. HealthAmerica Virginia, L.P. (Staff Model, see section 1310(b)(1) of the Act), 839 Poplar Hall, Norfolk, Virginia 23502. The service area comprises Gloucester, James City, and York Counties in Virginia, and the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Sufflok, Virginia Beach, and Williamsburg in Virginia.

Date of qualification: March 15, 1985.

15. HealthAmerica Corporation of California (Individual Practice Associaiton Model, see section 1310(b)(2)(A) of the Act), 828 San Pablo Avenue, Albany, California 94706. On March 13, 1985, HealthAmerica Corporation of California (HAC–C), a wholly-owned for-profit subsidiary of HealthAmerica Corporation, was notified that it had been approved as a federally qualified HMO. HAC–C had assumed the assets and liabilities of the Northern California Institute for Medical Services, Inc. (NCIMS), a not-for-profit federally qualified HMO. At the moment HAC–C became qualified, the qualification for NCIMS was voluntarily relinquished. The service area comprises San Francisco County, California; the cities of Alameda, Albany, Berkeley, Canyon, Castro Valley, El Cerrito, El Sobrante, Emeryville, Kensington, Lafayette, Moraga, Oakland, Orinda, Piedmont, Pinole, Richmond, San Leandro, San Lorenzo and San Pablo in California; and the following zip codes in San Mateo County, California:

94002, 94005, 94014–94021, 94025, 94030, 94037, 94038, 94044, 94060, 94061–94066, 94074, 94080, 94401–94404.

Date of qualification: March 15, 1985.

16. Midwest Foundation Independent Physicians Association/dba ChoiceCare (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 5th and Vine Streets, Cincinnati, Ohio 45202. The service area comprises Brown, Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio.

A regional component in Northern Kentucky was qualified at the same time. Its service area comprises Boone, Campbell, Grant, Kenton, and Pendleton Counties in Kentucky.

Date of qualification: March 26, 1985.

17. MetroHealth, Inc. (Staff Model, see section 1310(b)(1) of the Act), 931 East 86th Street, Suite 200, Indianapolis, Indiana 46240. On January 28, 1985, the for-profit entity, MetroHealth, Inc., purchased the assets and assumed the liabilities of the not-for-profit MetroHealth, Inc., a federally qualified HMO. Subsequently, the for-profit MetroHealth, Inc. was approved as a federally qualified HMO, and the qualification for the not-for-profit MetroHealth, Inc. was voluntarily relinquished. The service area comprises the following counties in Indiana:

Marion
Hendricks
Boone
Hamilton
Hancock
Johnson
Morgan (but excluding Ashland, Ray, and Baker Townships)
Shelby (but excluding Union, Liberty, Shelby, Washington and Noble Townships)
Madison (but excluding Duck Creek, Boone, Van Buron, Pipe Creek, Monroe, Jackson, Lafayette, and Richland Townships)

Date of qualification: March 27, 1985.

18. HMO Great Lakes (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), One Transam Plaza Drive, Suite 150, Oakbrook Terrace, Illinois 60148. The service area comprises Cook, Dupage, Kane, Lake, McHenry, and Will Counties in Illinois.

Date of qualification: April 2, 1985.

19. Maxicare Louisiana, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), Two Lakeway Center, 3850 North Causeway Boulevard, Metairie, Louisiana 70002. The service area comprises Orleans Parish, Louisiana,

and the following zip codes in Louisiana:

70001 70002 70003 70004 70005 70006 70030 70032 70036 70037 70039 70040 70042 70043 70046 70047 70049 70051 70053 70054 70057 70058 70059 70062 70063 70065 70067 70068 70070 70072 70073 70075 70079 70080 70084 70085 70087 70090 70092 70094 70121 70123 70129 70130 70131 70140 70141 70142 70143 70145 70146 70148 70149 70150 70151 70152 70153 70154 70156 70157 70158 70159 70160 70161 70162 70172 70174 70175 70176 70177 70178 70179 70181 70182 70183 70184 70185 70186 70189 70190 70195 70355 70371 70373 70374 70401 70402 70403 70404 70420 70431 70433 70434 70437 70445 70447 70448 70449 70452 70454 70455 70458 70459 70460 70461 70463 70464

Date of qualification: April 9, 1985.

20. Health Care Plus, Inc./Oklahoma (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 7701 East Kellogg, Suite 300, Wichita, Kansas 67207. The service area comprises Cleveland and Oklahoma Counties in Oklahoma.

Date of qualification: April 15, 1985.

21. Ocean State Master Health Plan, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 339 Eddy Street, Providence, Rhode Island 02903. The service area comprises the entire state of Rhode Island and the following zip codes in Massachusetts:

Town	County	Zip Code
Attleboro	Bristol	02703
N. Attleboro	Bristol	02760–02763
Plainville	Norfolk	02762
Seekonk	Bristol	02771
Wrentham	Norfolk	02093
Foxboro	Norfolk	02720–02726
Bellingham	Norfolk	02019
Blackstone	Worcester	01504
Uxbridge	Worcester	01569

Date of qualification: April 23, 1985.

22. The Philadelphia Health Plan, Inc. (Medical Group Model, see section 1310(b)(1) of the Act), 1760 Market Street, Philadelphia, Pennsylvania 19103. On February 28, 1985, Hancock/Dikewood Services, Inc., a for-profit corporation, agreed to purchase the assets and assume the liabilities of The Philadelphia Health Plan, Inc., a not-for-profit federally qualified HMO. Hancock/Dikewood Services, Inc. was then renamed The Philadelphia Health Plan, Inc., and approved for Federal qualification as a for-profit HMO. The qualification of the former, not-for-profit corporation, The Philadelphia Health Plan, Inc., was voluntarily relinquished. The service area comprises Philadelphia County, Pennsylvania and the following cities and towns, by county, in Pennsylvania:

Bucks County

Bensalem, Bristol, Langhorne, Lower Makefield, Lower Southampton, Middletown, Newton, Northampton, Tullytown, Upper Southampton, Warminster, Warrington and Yardley

Chester County

Charlestown, East Goshen, East Pikeland, East Vincent, East Whiteland, Easttown, Malvern, Phoenixville, Schuylkill, Spring City, Tredyffrin, West Chester, West Goshen, West Pikeland, West Vincent, West Whiteland and Willistown

Delaware County

Adam, Clifton Heights, Collingdale, Colwyn, Darby, East Lansdowne, Eddystone, Folcroft, Glenolden, Haverford, Lansdowne, Nether Providence, Norwood, Prospect Park, Radnor, Ridley, Ridley Park, Sharon Hill, Springfield, Swarthmore, Tinicum, and Upper Darby

Montgomery County

Abington, Ambler, Bryn Athyn, Cheltenham, Collegville, Conshohocken, East Norriton, Harsham, Hatboro, Lansdale, Lower Gwynedd, Lower Merion, Lower Moreland, Lower Providence, Montgomery, Narbert, Norristown, North Wales, Perkiomen, Plymouth, Skippack, Springfield, Upper Dublin, Upper Gwynedd, Upper Merion, Upper Moreland, Upper Providence, West Conshohocken, West Norriton, Whitemarsh, and Whitpain and Worcester;

and the following cities and towns, by county, in New Jersey:

Burlington County

Cinnaminson, Delran, Maple Shade, Moorestown, Palmyra, Riverside and Riverton.

Camden County

Audobon, Brooklawn, Camden, Cherry Hill, Collingswood, Gloucester, Haddon Heights, Haddon Township, Haddonfield, Merchantville, Mt. Ephraim, Oaklyn, Pennsauken and West Collingswood.

Gloucester County

Greenwich, National Park, Paulsboro, West Deptford and Westville.

Date of qualification: April 26, 1985.

23. New Mexico Health Plan, Inc. (Director Contract Model, see section 1310(b)(2)(B) of the Act), 4501 Indian School Road, Suite B, Albuquerque, New Mexico 87110. The service area comprises the following zip codes in the following counties in New Mexico:

Bernalillo County

87008 87013 87022 87047–8 87059 87101–2 87104–6 87108–25 87148 87154 87174 87184–5 87190–2 87194–8

Sandoval County

87001 87004 87041 87043 87048 87052

Santa Fe County

87010 87015

Torrance County

87035 87056–7 87061

Valencia County

87002 87006 87023 87031 87042 87060 87062

Date of qualification: April 29, 1985.

24. Ochsner Health Plan (Medical Group Model, see section 1310(b)(1) of the Act), 1514 Jefferson Highway, New Orleans, Louisiana 70121. The service area comprises Orleans, Jefferson, St. Bernard, St. Charles, and St. John the Baptist Parishes in Louisian and the following zip codes in the following parishes in Louisiana:

La Fourche Parish

70301 70345 70354 70355 70357 70371 70373 70374 70394

Plaquemines Parish

70037 70040 70042 70046 70081 70085 70092

St. James Parish

70052 70071

St. Tammony Parish

70411 70420 70431 70433 70437 70445 70447 70448 70452 70457 70458 70459 70460 70463 70464

Tangipahoa Parish

70401 70421 70422 70442 70446 70451 70454 70455 70465 70466

Terrebonne Parish

70352 70356 70359 70360 70395

Date of qualification: April 29, 1985.

25. Whittaker Health Services of Pennsylvania (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 3 Gateway Center, 6 South, Pittsburgh, Pennsylvania 15222. The service area comprises Alleghany County, Pennsylvania.

Date of qualification: April 29, 1985.

26. HealthAmerica HMO Corporation (Staff Model, see section 1310(b)(1) of the Act), 5701 West Sunrise Boulevard, Plantation, Florida 33313. On November 15, 1984, HealthAmerica HMO Corporation, a for-profit corporation and a wholly-owned subsidiary of HealthAmerica Corporation of Delaware, assumed the assets and liabilities of HealthCare of Broward, Inc., a not-for-profit federally qualified HMO. Subsequently, HealthAmerica HMO Corporation was approved for Federal qualification and the qualification of HealthCare of Broward, Inc. was voluntarily relinquished. The service are comprises Broward County, Florida and the following zip codes in the following counties in Florida:

Dade County

33056 33169 33179 33180

Palm Beach County

33428 33431–33434 33444–33446

Date of qualification: April 30, 1985.

27. Av-Med of California, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 3508 Dale Road, Suite C, Modesto, California 95356. The service area comprises Stanislaus County, California and the following zip codes in Merced and San Joaquin Counties in California:

Merced County

95303 95304 95312 95315 95322 95324 95334 95374

San Joaquin County

95328 95230 95231 95330 95336 95366 95376

Date of qualification: May 1, 1985. (Achieved preoperational qualification on April 23, 1985.)

28. HealthAmerica Louisiana Partners, L.P. (Medical Group Model, see section 1310(b)(1) of the Act), Suite 4150, One Shell Square, New Orleans, Louisiana 70139. The service area comprises Orleans Parish, Louisiana and the following zip codes in Louisiana:

70001 70002 70003 70004 70005 70009 70010 70011 70032 70033 70036 70037 70041 70043 70044 70047 70053 70054 70055 70058 70059 70062 70063 70064 70065 70067 70068 70072 70073 70075 70078 70079 70085 70092 70094 70112 70113 70114 70115 70116 70117 70118 70119 70121 70122 70123 70124 70125 70126 70127 70128 70129 70130 70131 70139 70140 70141 70146 70150 70151 70152 70153 70154 70156 70157 70158 70160 70161 70172 70174 70175 70176 70177 70178 70179 70181 70182 70183 70184 70185 70186 70189 70190 70195 70433 70434 70445 70457 70458 70457 70458 70459 70460 70461

Date of qualification: May 15, 1985.

29. Optima Health Plan (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 18 Koger Executive Center, Suite 118, Norfolk, Virginia 23502. The service area comprises the communities of Virginia Beach, Chesapeake, Portsmouth, and Norfolk in Virginia.

Date of qualification: May 30, 1985.

30. HealthAmerica Maryland, L.P. (Staff Model, see section 1310(b)(1) of the Act), Suite 1100, One South Calvert Street, Baltimore, Maryland 21202. The service area comprises the following zip codes in Maryland:

Anne Arundel County

20755 20794 21012 21032 21054 21056 21061 21076 21077 21090 21106 21113 21114 21122 21140 21144 21146 21401 21402 21403 21404 21405

Baltimore County

21013 21019 21020 21021 21022 21023 21027 21030 21031 21051 21052 21055 21057 21071 21082 21087 21092 21093 21111 21117 21120 21128 21131 21133 21136 21152 21153 21155 21156 21161 21162 21163 21204 21207 21208 21219 21220 21221 21222 21227 21228 21234 21236 21237

Baltimore City

21201 21202 21205 21206 21209 21210 21211 21212 21213 21214 21215 21216 21217 21218 21223 21224 21225 21226 21229 21230 21231 21239

Carroll County

21048 21074 21080 21102 21127 21735 21784

Harford County

21014 21018 21047 21050 21084 21085 21101 21154

Howard County

20701 20810 20863 21029 21036 21043 21044 21045 21046 21104 21150 21723 21794

Date of qualification: May 31, 1985.

31. Samaritan Health Plan Cooperative (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act, 2040 West Wisconsin Avenue, Suite 354, Milwaukee, Wisconsin 53233. On August 2, 1982, Samaritan Health Plan Cooperative was approved as a transitionally qualified HMO (see 42 CFR 110.603(b)). On June 27, 1985, Samaritan Health Plan Cooperative was officially notified that it had successfully completed its transitional phase and was deemed to be an operational qualified HMO. The service area comprises Milwaukee County, Wisconsin, and the following zip codes in the following counties in Wisconsin:

Ozaukee County

53012 53024 53074 53092

Waukesha County

53005 53007 53051 53072 53122 53151 53186

Washington County

53022

Effective date: June 27, 1985.

32 Independence Health Plan of Kentucky (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 870 Corporate Drive, Suite 402, Lexington, Kentucky 40503. The service area comprises the following counties in Kentucky:

Anderson
Bourbon
Boyle
Clark
Estill
Fayette
Franklin
Garrard
Harrison
Henry
Jessamine
Lincoln
Madison
Mercer
Montgomery
Nicholas
Powell
Scott
Shelby
Spencer
Woodford

Date of qualification: June 27, 1985.

Transitionally Qualified Health Maintenance Organizations; 42 CFR 110.603(b)

33. Personal Care HMO, Inc. (Medical Group Model, see section 1310(b)(1) of the Act), 1402 West University Avenue, Urbana, Illinois 61801. The service area comprises Champaign, DeWitt, Douglas, Edgar, Ford, Piatt, and Vermilion Counties in Illinois, and the following zip codes in the following counties in Illinois:

Iroquois County

60918 60924 60926 60928 60930 60938 60939 60948 60953 60955 60966 60968 60970 60973 60974

Livingston County

60921 61739 61741 61775

McLean County

61720 61722 61724 61728 61731 61752 61770

Date of qualification: March 4, 1985.

34. Bay State Health Care, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 101 Main Street, Cambridge, Massachusetts 02142. The service area comprises Essex, Norfolk, and Suffolk Counties in Massachusetts; the towns of Harvard and Southboro in Worcester County, Massachusetts; Bristol County, Massachusetts, except for the municipalities of Acushnet, Dartmouth, Fall River, Fairhaven, New Bedford, Somerset, Swansee and Westport; Middlesex County, Massachusetts, except for the towns of Ashby and Townsend; and Plymouth County, Massachusetts, except for the municipalities of Carver, Kingston, Lakeville, Marion, Mattapoisett, Middleboro, Plymouth, Plympton, Rochester and Wareham.

Date of qualification: April 1, 1985.

35. Whittaker Health Services/Health First (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 909 Glenrock Road, Suite D. Norfolk, Virginia 23502. The service area comprises the following zip codes in Isle of Wight County, Virginia: 23314, 23315, 23397, 23430, 23487, and 23898; and the following zip codes in the following independent cities in Virginia:

Portsmouth

23701 23702 23703 23704 23705 23707 23708 23709

Chesapeake

23320 23321 23322 23323 23324 23325

Norfolk

23501 23502 23503 23504 23505 23507 23508 23509 23510 23511 23513 23517 23518 23520 23521 23523

Virginia Beach

23451 23452 23453 23454 23455 23456 23457 23459 23460 23461 23462 23464

Suffolk

23432 23433 23434 23435 23437 23438

Date of qualification: May 31, 1985.

Preoperational Qualified Health Maintenance Organizations; 42 CFR 110.603(c)

36. BESTCARE, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 9400 S.W. Barnes Road, Suite 307, Portland, Oregon 97225. The service area comprises Clark County in Washington; Clackamus, Mutnomah, and Washington Counties in Oregon; and the following zip codes in Yamhill County, Oregon:

97132 97201–97223 97225 97227 97229 97230 97231 97232 97236 97238 97242 97266 97268

Date of qualification: February 28, 1985.

Qualified Regional Components: 42 CFR 110.603(e)

37. HealthAmerica Corporation of Pennsylvania/Camp Hill (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of HealthAmerica Corporation of Pennsylvania, Pittsburgh, Pennsylvania 15222. The service area comprises Adams, Cumberland, Dauphin, Lebanon, Perry, and York Counties in Pennsylvania.

Date of qualification: January 2, 1985.

38. Sanus Texas Health Plan, Inc./Fort Worth (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of Sanus Texas Health Plan, Inc., Irving, Texas 75063. The service area comprises Johnson, Parker, and Tarrant Counties in Texas.

Date of qualification: February 9, 1985.

39. West Michigan Health Care Network/West Shore (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of West Michigan Health Care Network, Grand Rapids, Michigan 49506. The service area comprises the following townships, by county, in Michigan:

Muskegon County: All townships except Casnovia and Holton

Newaygo County: The Township of Troy

Oceana County: All townships except Greenwood

Ottawa County: The Townships of Crockery, Grand Haven, Polkton, Robinson, and Spring Lake

Date of qualification: February 21, 1985.

40. Island Care/Oahu (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Island Care, Lihue, Hawaii 96766. The service area comprises Honolulu County, Hawaii.

Date of qualification: March 4, 1985.

41. HealthPlus of Michigan/North (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of HealthPlus of Michigan, Flint, Michigan 48507. The service area comprises Bay, Gratiot, Isabella, Midland, Saginaw, and Tuscola Counties in Michigan.

Date of qualification: March 11, 1985.

42. HealthPlus of Michigan/South (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of HealthPlus of Michigan, Flint, Michigan 48507. The service area comprises Oakland, Macomb, and Wayne Counties in Michigan.

Date of qualification: March 11, 1985.

43. HealthPlus of Michigan/West (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of HealthPlus of Michigan, Flint, Michigan 48507. The service area comprises Livingston and Washtenaw Counties in Michigan.

Date of qualification: March 11, 1985.

44. Bay Pacific Health Plan/Marin (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Bay Pacific Health Plan, San Bruno, California 94066. The service area comprises Marin County, California.

Date of qualification: March 14, 1985.

45. Av-Med Health Plan, Inc./Palm Beach (individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Av-Med Health Plan, Inc., Miami, Florida, 33156. The service area comprises Palm Beach County, Florida.

Date of qualification: March 18, 1985.

46. International Medical Centers, Inc./Broward (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of International Medical Centers, Inc., Miami, Florida 33169. The service area comprises Broward County, Florida.

Date of qualification: March 27, 1985.

47. International Medical Centers, Inc./Palm Beach (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of International Medical Centers, Inc., Miami, Florida 33169. The service area comprises Palm Beach County, Florida.

Date of qualification: March 27, 1985.

48. International Medical Centers, Inc./Tampa Bay (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of International Medical Centers, Inc., Miami, Florida 33169. The service area comprises Hillsborough, Pasco, and Pinellas Counties in Florida.

Date of qualification: March 27, 1985.

49. MultiGroup Health Plan/Nashua (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of MultiGroup Health Plan, Wellesley, Massachusetts 02181. The service area comprises the following cities and towns in New Hampshire:

Amherst	Lyndenborough
Atkinson	Manchester
Bedford	Mason
Brookline	Merrimack
Derry	Milford
East Kingdom	Mount Vernon
Exeter	Nashua
Greenville	Newton
Hampstead	Plaistow
Hampton	Pelham
Hollis	Salem
Hudson	Seabrook
Kensington	South Hampton
Kingston	Wilton
Litchfield	Windham
Londonderry	

Date of qualification: March 25, 1985.

50. MultiGroup Health Plan/Williamstown (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of MultiGroup Health Plan, Wellesley, Massachusetts 02181. The service area comprises the following cities and towns in Massachusetts, Vermont, and New York:

Massachusetts

Adams	Monroe
Cheshire	New Ashford
Claremont	North Adams
Clarksburg	Pittsfield
Dalton	Rowe
Florida	Savoy
Hancock	Williamstown
Hawley	Windsor
Lanesborough	

Vermont

Bennington	Readsboro
Pownal	

New York

Stanford	N. Petersburg
Petersburg	

Date of qualification: March 27, 1985.

51. HMO Kansas, Inc./Central Kansas (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO Kansas, Inc., Topeka, Kansas 66601. The service area comprises Barton, Pawnee, Reno, and Rice Counties in Kansas.

Date of qualification: April 29, 1985.

52. HMO Kansas, Inc./Kaw Valley (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO Kansas, Inc., Topeka, Kansas 66601. The service area comprises Douglas County, Kansas, and zip codes 66054, 66066,

66066, 66096, and 66097 in Jefferson County, Kansas.

Date of qualification: April 29, 1985.

53. HMO Kansas, Inc./Northcentral Kansas (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO Kansas, Inc., Topeka, Kansas 66601. The service area comprises Dickinson, Ellsworth, Geary, Ottawa, Pottawatomie, Riley, and Saline Counties in Kansas, and zip codes 67445 and 67466 in Cloud County, Kansas.

Date of qualification: April 29, 1985.

54. HMO Kansas, Inc./Southcentral Kansas (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO Kansas, Inc., Topeka, Kansas 66601. The service area comprises Cowley County, Kansas.

Date of qualification: April 29, 1985.

55. HMO Kansas, Inc./Tricounty (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO Kansas, Inc., Topeka, Kansas 66601. The service area comprises Harvey, Marion, and McPherson Counties in Kansas.

Date of qualification: April 29, 1985.

56. TAKECARE Prepaid Health Service of Oklahoma, Inc./Oklahoma City (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of TAKECARE Prepaid Health Service of Oklahoma, Inc., Tulsa, Oklahoma 74135. The service area comprises the following zip codes in the following counties in Oklahoma:

Cnnodion County

73036 73064 73078 73090 73099

Cleveland County

73019 73026 73027 73068 73069 73070 73071

Grady County

73059 73089

Lincoln County

74855 74881

McClain County

73010 73065

Oklahoma County

73007 73008 73020 73034 73045 73049 73054 73066 73083 73084 73097 73101–73160 73165 73169 73173 73179

Pottawatomie County

74801, 74838, 74857, 74873

Date of qualification: May 3, 1985.

57. HMO of Florida, Inc./Tampa (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of HMO of Florida, Inc., Jacksonville, Florida 32216. The service area comprises Hillsborough, Pasco, and Pinellas Counties in Florida.

Date of qualification: June 1, 1985. (Achieved preoperational qualification on May 20, 1985.)

58. Columbia Medical Plan, Inc./Annapolis, Maryland (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of Columbia Medical Plan, Inc., Columbia, Maryland 21044. The service areas comprises the following zip codes in Maryland.

20617 20711 20733 20751 20758 20764 20765 20769 20776 20778 20779 20780 20801 21012 21032 21035 21037 21056 21090 21106 21114 21140 21146 21225 21240 21401 21402 21403 21404 21405 21412 21619 21638 21658 21666

Date of qualification: June 4, 1985.

59. Prudential Health Care Plan, Inc./Charlotte, North Carolina (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of Prudential Health Care Plan, Inc., Roseland, New Jersey 07068. The service area comprises Cabbarus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties in North Carolina.

Date of qualification: June 4, 1985.

60. Capital Health Care, Inc./Corvallis, Oregon (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of Capital Health Care, Inc., Salem, Oregon 97309. The service area comprises the following zip codes in the following counties in Oregon:

Benton County

97324 97326 97330 97331 97333 97339 97370 97456

Linn County

97321 97327 97335 97348 97352 97355 97358 97360 97374 97377 97389 97446

Lincoln County

97357 97364 97366 97369 97376 97390 97391 97394 97398

Date of qualification: June 10, 1985.

61. Bay Pacific Health Plan/East Bay (Individual Practice Association Model, see Action 1310(b)(2)(A) of the Act), an operational qualified regional component of Bay Pacific Health Plan, San Bruno, California 94066. The service area comprises Alameda and Contra Costa Counties in California.

Date of qualification: June 11, 1985.

62. Foundation Health Plan/Binghamton, New York (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Health Services Medical Corporation of Central New York, Baldwinsville, New York 13027. The service area comprises the following zip codes in New York and Pennsylvania:

New York

13730	Afton	13802	Maine
13732	Apalachin	13803	Marathon
13733	Bainbridge	13804	Masonville
13734	Barton	13811	Newark Valley
13736	Berkshire	13812	Nichols
13737	Bible School Park	13813	Nineveh
13741	Brisben	13827	Owego
13743	Candor	13833	Port Crane
13744	Castle Creek	13835	Richford
13745	Chenango Bridge	13836	Sanitaria Springs
13746	Chenango Forks	13838	Sidney
13748	Conklin	13839	Sidney Center
13749	Corbettsville	13840	Smithboro
13754	Deposit	13845	Tioga Center
13755	Downsville	13848	Tunnel
13760	Endicott	13850	Vestal
13777	Glen Aubrey	13862	Whitney Point
13778	Greene	13863	Willett
13783	Hancock	13864	Willseyville
13784	Harford	13865	Windsor
13785	Harford Mills	13901	Binghamton
13787	Harpursville	13902	Binghamton
13790	Johnson City	13903	Binghamton
13794	Killawog	13904	Binghamton
13795	Kirkwood	13905	Binghamton
13797	Lisle		

Pennsylvania

18601	Athens	18830	Little Meadow
18812	Bracknoy	18834	New Milford
18813	Brooklyn	18848	Sayre
18821	Great Bend	18843	South Montrose
18822	Hallstead	18847	Susquehanna
18823	Harford	18851	Warren Center
18827	Lanesboro		

Date of qualification: June 14, 1985.

63. Kaiser Foundation Health Plan of North Carolina/Charlotte (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of Kaiser Foundation Health Plan of North Carolina, Raleigh, North Carolina 27625. The service area comprises the following zip codes in the following counties in North Carolina:

Cabarrus County

28025	Concord	28107	Midland
28075	Harrisburg	28124	Mt. Pleasant
28081	Kannapolis		

Catawba County

28673	Sherrils Ford	28682	Terrell

Gaston County

28052–thru 28054	Gastonia	28101	McAdenville
		28034	Dallas
28016	Bessemer City	28164	Stanely
28032	Cramerton	28077	High Schools
28012	Belmont	28006	Alexis
28098	Lowell	28120	Mt. Holly

Iredell County

28115	Morresville	28123	Mt. Mourne

Lincoln County

28033	Crouse	28060	Iron Station
28037	Denver	28092	Lincolnton

Mecklenburg County

28201–thru 28299	Charlotte	28105	Matthews
		28126	Newell
28031	Cornelius	28130	Paw Creek
28036	Davidson	28134	Pineville
28078	Huntersville		

Rowan County

28023	China Grove	28125	Mt. Ulla
28088	Landis		

Stanley County

28097	Locust	28129	Oakboro
28163	Stanfiled		

Union County

28110	Monroe	28173	Waxhaw
28079	Indian Trail	28174	Wingate
28108	Mineral Springs		

Date of qualification: June 17, 1985.

64. The HMO of New Jersey, Inc./North (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of The HMO of New Jersey, Inc., Princeton, New Jersey 08540. The service area comprises Bergen, Essex, Hudson, Morris, Passaic, Sussex, and Warren Counties in New Jersey.

Date of qualification: June 25, 1985.

65. HealthAmerica Corporation of Kentucky/Lexington (Staff Model, see section 1310(b)(1) of the Act), an operational qualified regional component of HealthAmerica Corporation of Kentucky, Louisville, Kentucky 40232. On October 18, 1982, HealthCare of Louisville, Inc./Lexington, now HealthAmerica Corporation of Kentucky/Lexington, was approved as a transitionally qualified HMO (see 42 CFR 110.603(b)). On June 27, 1985, HealthAmerica Corporation of Kentucky/Lexington was officially notified that it had completed its transitional phase and was deemed to be an operational qualified HMO. The service area comprises Fayette, WoodFord, Scott Bourbon, Clark, Madison, Jessamine, and Franklin Counties in Kentucky.

Effective date: June 27, 1985.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 4:30 p.m. on Tuesdays and Thursdays except for Federal holidays, in the Office of Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Department of Health and Human Services, Rm. 9–11 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: August 27, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–20940 Filed 9–3–85; 8:45 am]

BILLING CODE 4160–16–M

Social Security Administration

Dominican Republic; Finding Regarding Foreign Social Insurance or Pension System; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Finding Regarding Foreign Social Insurance or Pension System—Dominican Republic; Correction.

SUMMARY: This document corrects the effective date we determined the Dominican Republic has in effect a social insurance system that meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

FOR FURTHER INFORMATION CONTACT: Roy G. Hatch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–8122.

The following correction is made to FR Doc. 85–16490 appearing on page 28269 in the issue of July 11, 1985: On page 28269 in column three, in the paragraph beginning with the word "Accordingly", the date "1983" is corrected to read "1984".

Dated: August 27, 1985.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 85–21027 Filed 9–3–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meeting

As requried by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, dated December 2, 1980, Section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, October 8, 1985, in the conference room of the Alaska Department of Transportation and Public Facilities located at 4111 Aviation Avenue (Lake Hood), Anchorage, Alaska.

The tentative agenda will include Council consideration of:

—Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan,
—Denali National Park and Preserve General Management Plan,
—Wrangell/St. Elias National Park and Preserve General Management Plan,
—Gates of the Artic National Park and Preserve General Management Plan,
—Cape Krusenstern National Monument General Management Plan,
—Katmai National Park and Preserve General Management Plan,
—Aniakchak National Monument and Preserve General Management Plan,
—Noatak National Preserve General Management Plan,
—Bering Land Bridge National Preserve General Management Plan,
—Kobuk Valley National Park General Management Plan,
—Status of Management on the Tongass National Forest, ANILCA 706(b) Report—USDA Forest Service,
—Council Work Program 1985–86,
—Long Range Goals and Objectives 1985–90,
—Trespass Abatement Program Project Group Report,
—Stikine River Access Study Report, and
—Competitive, Special, or Recreational Events Project Group Report.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Federal CoChairman, P.O. Box 100120, Anchorage, AK 99510, (907) 272–3422. (FTS) 271–5485

State of Alaska, State CoChairman Designee, 2600 Denali Street, Suite 700, Anchorage, AK 99503 (907) 274–1581

The public is invited to attend.

Willian P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

August 28, 1985.

[FR Doc. 85–21086 Filed 9–3–85; 8:45 am]

BILLING CODE 4310–10–M

Advisory Council on Historic Preservation; SES Performance Review Board

AGENCY: Department of the Interior.

ACTION: Notice of SES Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individual who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES Performance Appraisal Plan for the Department has been adopted for use by the Council. The Performance Review Board will review the appraisal, award, and bonus

recommendations for the SES members of the Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective on September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mary D. Ellis, Personnel Officer, Office of the Secretary (PMOP–P), Department of the Interior, Washington, DC 20240, Telephone number: 343–6702.

The names of the members of the SES Performance Review Board are:

Mr. Bruce Blanchard (Career), Director, Office of Environmental Project Review, Department of the Interior
Mr. Richard H. Brown (Career), Director, Office of Environmental Quality, Department of Housing and Urban Development
Mr. Elliott Carroll, FAIA (Career) Executive Assistant to the Architect of the Capitol

Dated: August 27, 1985.

Joseph E. Doddridge Jr.,

Acting Principal Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 85–21012 Filed 9–3–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[CA 16639–A]

California; Exchange of Public and Private Lands in Riverside County

August 26, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Land Exchange Conveyance Document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire 6,700 acres of the preserve. Other State or Federal agencies will acquire the remaining portion of the preserve. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to the operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978–4815.

The United States issued an exchange conveyance document to The Nature Conservancy on July 31, 1985, for the following described public land under the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 8 S., R. 8 E.,
Sec. 22, W½NW¼NW¼, SW¼NW¼, W½NE¼SW¼, N½NW¼SW¼, SE¼NW¼SW¼, E½SW¼SW¼, W½SE¼SW¼, and SE¼SE¼SW¼;
Sec. 26, SW¼SW¼NE¼, S½SE¼NW¼, NW¼SW¼NW¼, S½SW¼NW¼, N½SW¼, N½SE¼, and N½SE¼SE¼.

Comprising 400.00 acres of public land.

In exchange for these lands, the United States acquired the following described land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 6 E.,
Sec. 2, Lots 1 and 6, N½NE¼SE¼, and SE¼NE¼SE¼;

Comprising 109.80 acres of non-Federal land.

The values of the public land and the non-Federal land in the exchange were equalized by a cash payment to the United States in the amount of $600.

At 10 a.m. on October 7, 1985, the non-Federal lands described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 7, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on October 7, 1985, the non-Federal lands described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85–21008 Filed 9–3–85; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Land Management/Forest Service Interchange Program; Intent To Prepare a Legislative Environmental Impact Statement

The Department of the Interior, Bureau of Land Management (BLM), and the Department of Agriculture, Forest Service (FS), will prepare a legislative environmental impact statement on a legislative proposal to transfer lands and minerals management responsibilities on certain areas between the two agencies. The goal of this interchange proposal are to enhance public service, improve efficiency of management of natural resources, and save agency costs.

A range of alternatives will be considered for the proposed action. Alternatives will range from those which would implement transfer of lands and minerals management authority on a National basis to a no action alternative, which is the continuation of current management under existing authorities. A discussion of alternatives considered by the two agencies but eliminated from detailed study will also be included in the document.

This legislative environmental impact statement will be prepared in accordance with the Council on Environmental Quality's regulation on proposals for legislation (40 CFR 1506.8). Consistent with this regulation, the legislative statement will be prepared in the same manner as a draft statement with no final statement and no formal period for public comments, as required for other environmental impact statements. Scoping is not required for legislative statements. However, the FS and BLM have had intensive public involvement on the interchange, including 30 formal public hearings. Comments gathered as a result of these efforts along with those received earlier in 85 public meetings and in letters from interested organizations and individuals will be considered in the environmental analysis and documentation.

The responsible officials are Donald P. Hodel, Secretary, Department of the Interior, and John R. Block, Secretary, Department of Agriculture. The legislative environmental impact statement should be available for filing with the Environmental Protection Agency and submitted to Congress by November 1985. Questions about the proposed action and environmental impact statement should be directed to

David Williams, Chief, Office of Planning and Environmental Coordination (202), Bureau of Land Management, 18th and C Streets, Room 906, Washington, DC 20240 (telephone 202–653–8824), or David E. Ketcham, Director of Environmental Coordination, Forest Service, P.O. Box 2417, Washington, DC 20013 (telephone 202–447–4708).

Dated: August 26, 1985.

James M. Parker,

Bureau of Land Management.

Dated: August 22, 1985.

F. Dale Robertson,

Associate Chief, Forest Service.

[FR Doc. 85–21079 Filed 9–3–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Burley District Grazing Advisory Board; Meeting and Agenda

Notice is given that the Burley District Grazing Advisory Board will meet on October 9, 1985.

The meeting will convene at 9:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Range improvement projects for fiscal year 1986; (2) Items of information: (a) Proposed "Public Rangelands Policy Amendments Act of 1985", (b) Proposed boundary and office location changes, (c) Grazing Advisory Board status, (d) 1985 District fire activities.

The meeting is open to the public. Interested persons may make oral statement to the Board beginning at 11:00 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public inspection during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

DATE: October 9, 1985.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: John Davis, Burley District Manager, (208) 678–5514.

John S. Davis,

District Manager.

[FR Doc. 85–21003 Filed 9–3–85; 8:45 am]

BILLING CODE 4310–GG–M

Guidelines for Implementation of Section 2(a)(2)(A) of the Act of February 25, 1920, as Amended (30 U.S.C. 201(a)(2)(A))

Correction

In FR Doc. 85–20609 beginning on page 35125 in the issue of Thursday, August 29, 1985 the heading should read as set forth above.

BILLING CODE 1505–01–M

Guidelines for Implementation of Section 2(d) of the Act of February 25, 1920, as Amended (30 U.S.C. 202a)

Correction

In FR Doc. 85–20610 beginning on page 35145, in the issue of Thursday, August 29, 1985 the heading should read as set forth above.

BILLING CODE 1505–01–M

[F–14823–A]

Alaska Native Claims Selection; Akiachuk, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Akiachuk, Limited for approximately 3.18 acres. The lands involved are in the vicinity of Akiachak, Alaska, located within U.S. Survey NO. 4479, Block 7, lot 1.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the THE TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until October 4, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–21031 Filed 9–3–85; 8:45 am]

BILLING CODE 4310–JA–M

[W–96702]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received an application from the Department of Energy to withdraw approximately 350 acres of public land near Riverton, Wyoming. The application involves a disposal site for radioactive wastes. This notice will segregate the land for a period of 2 years. During this period, the Department of Energy will prepare the necessary National Environmental Policy Act compliance documentation and justification for Secretarial consideration of the withdrawal application. The withdrawal is requested for a period of 5 years pending permanent Congerssional action.

DATE: Comments or requests for a public meeting should be received by December 3, 1985.

ADDRESS: Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, (307) 772–2089.

The Department of Energy proposes that the site described below be withdrawn for their exclusive use for construction of a proposed disposal site for residual radioactive wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7901:

Sixth Principal Meridian

T. 35 N., R. 94 W.,
Sec. 31, S½NE¼, S½N½NE¼, E½SE¼NW¼, SE¼NE¼NW¼, E½SW¼, SE¼.

The area described above contains approximately 350 acres in Fremont County, Wyoming.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and until construction is started. The segregative effect of this pending application will terminate years from the date of this publication unless final withdrawal action is taken or the application is terminated prior to that date. Notice of any action will be published in the **Federal Register.**

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal may present their views in writing to the State Director, Wyoming State Office.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on this proposed action must submit a written request for a hearing to the Wyoming State Director within 90 days from the date of this publication.

If it is determined that a public hearing should be held, notice of the time and place of the hearing will be published in the **Federal Register** at least 30 days prior to the hearing. The hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. The authorized officer will also undertake negotiations with the applicant agency to assure that the area sought is the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, and to reach an agreement on the concurrent management of the land and its resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on this application will be published in the **Federal Register.**

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: August 26, 1985.

Hillary A. Oden,

State Director.

[FR Doc. 85-21007 Filed 9-3-85; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Intention To Negotiate Concession Permit; Carteret Boat Tours, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Carteret Boat Tours, Inc., authorizing it to continue to provide a passenger ferry and jitney transportation service within Cape Lookout National Seashore for a period of four years from January 1, 1985, through December 31, 1988.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1984, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: July 3, 1985.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 85-21065 Filed 9-3-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30716]

Waterloo Railroad Company and Illinois Central Gulf Railroad Co.; Exchange of Properties; Exemption

Decided: August 26, 1985.

Waterloo Railroad Company (WRC) and Illinois Central Gulf Railroad Company (ICG) jointly filed a notice of exemption pursuant to 49 CFR 1180.2(d) concerning an agreement under which WRC, a wholly-owned subsidiary of ICG, will exchange all of its railroad properties in Iowa for a line of railroad presently owned by ICG in Mississippi. WRC will reincorporate so as to qualify to do business in Mississippi.

These transactions are within a corporate family and come within the class of transactions described in 49 CFR 1180.2(d)(3) and 49 CFR 1180.2(d)(6) which has been exempted from Commission regulation. The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction shall be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 1979.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21023 Filed 9-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30718]

Railroads; Missouri Pacific Railroad Co.; Trackage Rights; Southern Pacific Transportation Co.; Exemption

The City Public Service Board of San Antonio, TX (CPSB), will agree to assign to the Missouri Pacific Railroad Company (MP), CPSB's right ot operate over lines of the Southern Pacific Transportation Company (SP), from M.P. 238.6 to M.P. 237.0 on SP's Kerrville Branch, between M.P. 212.7 and M.P. 207.4 on SP's Del Rio Subdivision, and

from M.P. 5.8 to M.P. 12.6 on SP's San Antonio-Beeville Line to serve the J.T. Deely Power Plant, a distance of approximately 13.7 miles at and near San Antonio.

The trackage rights became effective on Augsut 21, 1985.

This Notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 28, 1985.

By the Commission,

James H. Bayne,

Secretary.

[FR Doc. 85-21084 Filed 9-3-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 18-85]

Privacy Act of 1974; Elimination of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Legal Counsel, Department of Justice is eliminating a system of records entitled "Citizen Mail Index, JUSTICE/OLC-002." The Office is eliminating the system because it has found that it does not process enough citizen correspondence to justify maintaining a citizen mail index. Accordingly, the system, as published in the **Federal Register** on September 30, 1977 (42 FR 53361), is removed from the Department's compilation of Privacy Act systems.

Dated: August 19, 1985.

Lawrence W. Wallace,

Assistant Attorney General for Administration.

[FR Doc. 85-21018 Filed 9-3-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 17-85]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Legal Counsel, Department of Justice, is amending its system of records entitled "Office of Legal Counsel Central File, JUSTICE/OLC-003" to reflect minor changes.

For administrative reasons, the system number identifier has been changed from "JUSTICE/OLC-003" to "JUSTICE/OLC-002." Other editorial changes have been italicized for public convienience. In addition, language that is no longer applicable has been removed.

The notice, which is reprinted below in its revised form, was last published in the **Federal Register** on November 17, 1980 (45 FR 75940).

Dated: August 19, 1985.

Lawrence W. Wallace,

Assistant Attorney General for Administration.

Justice/OLC-002

SYSTEM NAME:

Office of Legal Counsel Central File.

SYSTEM LOCATION:

U.S. Department of Justice, Office of Legal Counsel, 10th and Consititution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will permit retrieval of information concerning persons mentioned in the legal opinions, memoranda, correspondence, testimony and other writings of the Office of Legal Counsel. These will include:

(A) Addresses, authors and employees of the Office of Legal Counsel whose name appears in memoranda, opinions, correspondence, testimony and other writings of the Office;

(B) Individuals who are the subject of opinions, particularly on such subjects as conflict of interest, emoployee standards of conduct, and immigration;

(C) Attendees at meetings described in a memorandum included in the file;

(D) Litigants and judges identified in connection with reported court decisions and pending cases described in memoranda; and

(E) Other individuals identified in connection with questions presented to the Office of Legal Counsel for resolution or comment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of memoranda, correspondence, testimony and other writings of the Office of Legal Counsel from 1945 to the present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained pursuant to the responsibilities of the Office of Legal Counsel set forth in 28 CFR 0.25.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information *contained* in this system is provided to the following categories of users for the purposes stated:

(A) Access to the computerized files of the Office of Legal Counsel will be confined to employees of the Office of Legal Counsel and other employees of the Department of Justice with specific permission.

(B) With the approval of the agency that requested the opinion, selected recent opinions of the Office of Legal Counsel will be published for general use, but personal information about individuals will be deleted if release of that information would constitute a clearly unwarranted invasion of personal privacy;

(C) Unpublished opinions of the Office of Legal Counsel are ordinarily made available upon request to third parties consistent with the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The indices are maintained on 5 x 7 cards in a master subject-matter index on all Office of Legal Counsel memoranda, opinions, correspondence, testimony and other writings. In addition, to facilitate Freedom of Information Act/Privacy Act searches, an alphabetical assortment of cards has been established within the immigration and conflict of interest opinion indices which contain the names of individuals who are the subjects of these opinions. These are, in effect, cross-indices to a small portion of the Office of Legal Counsel's overall opinions that are otherwise indexed and retrieved according to subject matter. These indices are maintained to assist in the retrieval of opinions and memoranda from chronological files. However, because the system is undergoing gradual conversion to a computerized system to facilitate legal research, some opinions are also now stored on magnetic disks. Even though the software design creates the capability for name retrieval, the purpose of the design is to facilitate retrieval by legal subject matter and the Office of Legal Counsel will continue to utilize the system in this manner.

RETRIEVABILITY:

The alphabetical card index on conflict of interest and immigration opinions will be retrieved by name. In addition, while that information which has been entered into the computer to date may be retrieved by name, all information, except that on conflict of interest and immigration opinions, will ordinarily continue to be retrieved by legal subject matter since the Office seldom has need to focus on a name in legal research.

SAFEGUARDS:

Index cards and chronological files are kept in locked offices when unattended. Access is restricted to those personnel with a need to know.

The compilation of Office of Legal Counsel opinions available on magnetic tape is subject to two access limitations designed to insure that only authorized personnel of the Office of Legal Counsel have access. First, the opinions in the computer system can be retrieved only by those persons having a specified identification number, and numbers are assigned only to personnel of the Office of Legal Counsel. Second, there is an access code word in addition to the identification number required for access to the opinions, and the code word is made known only to the Office of Legal Counsel personnel.

During the period in which new opinions are being computerized an exception to these access restrictions is made so that the contracting assistant in the Justice Management Division who is overseeing the computerization also has access to the opinions.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Legal Counsel; U.S. Department of Justice; 10th and Constitution Avenue, NW.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Assistant Attorney General, Office of Legal Counsel, at the address above.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

General legal research sources and individuals and agencies requesting opinions from the Office of Legal Counsel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-21019 Filed 9-3-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 19-85]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Legal Counsel, Department of Justice, is amending its system of records entitled "Attorney Assignment Reports, JUSTICE/OLC-001" by revising the "Retention and disposal" section. The notice, which is reprinted below in its revised form, was last published in the **Federal Register** on September 30, 1977 (42 FR 53361.)

Dated: August 19, 1985.

Lawrence W. Wallace,

Assistant Attorney General for Administration.

JUSTICE/OLC-001

SYSTEM NAME:

Attorney Assignment Reports.

SYSTEM LOCATION:

Office of Legal Counsel; U.S. Department of Justice; 10th and Constitution Avenue, NW.; Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys employed in the Office of Legal Counsel, U.S. Department of Justice at the time each report was filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of memoranda addressed to the Assistant Attorney General by each staff attorney at periodic intervals listing current assignments. Some reports also list completed assignments, projected workload and anticipated leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the system is not used outside the Department except to advise Executive Branch agencies as to the identity of the attorney working on a specific assignment, when inquiry is made.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Assistant Attorney General, each of his Deputies, the Administrative Officer and the attorney who filed the report each have copies. Some are retained chronologically in file folders, some alphabetically in note books.

RETRIEVABILITY:

Information may be retrieved by name, alphabetically, or chronologically.

SAFEGUARDS:

Information is maintained in offices occupied during the day and locked at night.

RETENTION AND DISPOSAL:

The Assistant Attorney General's file is chronological and is maintained for three months. Attorneys may retain their copies indefinitely, others are kept for about two years and disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Office of Legal Counsel; U.S. Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Address inquiries to the System Manager, the Administrative Officer or the two Deputies at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system may be made in person or in writing, specifying the name of the attorney and the dates of reports requested.

CONTESTING RECORD PROCEDURES:

Any requests for correction should be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

Information is supplied by the attorneys employed by the Office of Legal Counsel on the date the report is filed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-21020 Filed 9-3-85; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committee; Meeting and Agenda

A special meeting of the committee on Occupational Safety and Health Statistics of the Labor Research Advisory Council will be held on October 2, 1985, at 1:00 p.m., in Room N-3437, A&B, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The agenda for the meeting is as follows:

Review of "Recordkeeping Guidelines for Occupational Injuries and Illnesses," during 90-day period for public comment on the guidelines published in the **Federal Register**.

The meeting is open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-0001.

Signed at Washington, D.C. this 26th day of August 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-21066 Filed 9-3-85; 8:45 am]
BILLING CODE 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; NRC Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 19, 1985-August 23, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to workers separations at the firm.

TA-W-15,920; NCR Corporation, Personnal Computer Div., Liberty, SC

TA-W-16,016; Bohemia, Inc., Auburn, CA

TA-W-15,911; Kellwood Co., Grenda, MS

TA-W-15,985; Standard-Coosa-Thatcher Co., Thatcher Plant, Chattanooga, TN

TA-W-15,985A; Standard-Coosa-Thatcher Co., Standard Plant, Chattanooga, TN

TA-W-15,985B; Standard-Coosa-Thatcher Co., National Plant, Rossville, GA

TA-W-16,091; Russel Williams Co., Mahony City, PA

TA-W-15,906; Avtex Fibers, Inc., Meadville, PA

In the following cases the investigation revealed the criterion (3) has not been met for the reasons specified.

TA-W-16,009; H.L. Balsinger, Inc., New Salem, PA

Aggregate U.S. imports of ammonium nitrate fuel oil are negligible.

TA-W-16,107; Mount Braddock Land Co., Mount Braddock, PA

Aggregate U.S. imports of bituminous coal are negligible.

TA-W-15,955; Atari, Inc., El Paso, TX

Layoffs due to changes in consumer demand not directly related to imports of like or competive products.

TA-W-15,951; Harman-Motive, Inc., Martinsville, IN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-15,907; Cooper Wiss, Newark, NJ

Separations from the subject firm were due to the transfer of fuctions to another domestic facility.

TA-W-15,849; Champion International Corp., Building Products Div., Plywood Plant, Seattle, WA

Aggregate U.S. imports of plywood did not increase as required for certification.

TA-W-15,988; Welland Chemical Inc., Newell, PA

Aggregate U.S. imports of nitric acid are negligible.

TA-W-16,022; Virginia Maid Hosiery Mills, Pulaski, VA

Aggregate U.S. imports of pantyhose are negligible.

TA-W-16,060; Centralab, Inc., El Paso, TX

Employment at the El Paso, TX facility is dependent on imported capacitors, imports cannot be considered to any adversely impacted workers within the meaning of the Trade Act of 1974.

TA-W-16,055; Transport, Inc., Grand Forks, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,020; Tube-Lok Products, Mattoon IL

Aggregate U.S. imports of rollover protection systems for construction equipment are negligible.

Affirmative Determinations

TA-W-15,939; Abex Corporation, Elyria, OH

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-15,884; George J. Meyer Manufacturing, Cudahy, WI

A certification was issued covering all workers of the firm separated on or after March 11, 1985.

TA-W-15,916; Damon International, Limited, Newberry, SC

A certification was issued covering all workers of the firm separated on or after March 28, 1984.

TA-W-15,969; Texaco, Inc., Amarillo, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,087; Joanola Fabrics, Elizabeth, NJ

A certification was issued covering all workers of the firm separated on or after May 20, 1984 and before October 30, 1984.

TA–W–15,973; White Stag Manufacturing Co., El Paso TX

A certification was issued covering all workers of the firm separated on or after April 15, 1984 and before December 31, 1984.

TA–W–15,944; Kayser-Roth Hosiery, Inc., Footware Div., Marietta, GA

A certification was issued covering all workers of the firm separated on or after February 1, 1985.

TA–W–15,869; Brandt Cabinet Works, Inc., Hagerstown, MD

A certification was issued covering all workers of the firm separated on or after March 11, 1984 and before February 1, 1985.

TA–W–16,011; Pico Products, Inc., Liverpool, NY

A certification was issued covering all workers of the firm separated on or after March 1, 1984 and before June 30, 1985.

TA–W–15,901; Waverly Sportswore, New York, NY

A certification was issued covering all workers of the firm separated on or after May 15, 1984 and before December 30, 1984.

TA–W–15,917; Enro Shirt Co., Woodruff, SC

A certification was issued covering all workers of the firm separated on or after September 1, 1984 and before August 1, 1985.

TA–W–15,922; Spielberg Manufacturing Co., Antonio, MO

A certification was issued covering all workers of the firm separated on or after March 27, 1984.

TA–W–15,843; Nutone Division of Scovill Corp., Cincinnoti, OH

A certification was issued covering all workers of the firm separated on or after March 6, 1984.

TA–W–16,039; Litton Microwave Cooking Products Div., Litton Industries, Minneapolis, NM

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA–W–16,008; Fleet Air Corp., Ephrata, PA

A certification was issued covering all workers of the firm separated on or after May 6, 1984.

TA–W–16,006; Bomer Bait Co., Gainesville, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1984.

TA–W–15,980; Espy Shoe, Inc., Lewiston, ME

A certification was issued covering all workers of the firm separated on or after April 24, 1984 and before December 2, 1984.

TA–W–15,913; Romany Ceramics, Inc., East Sparta, OH

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA–W–15,905; Alcan Aluminum Corp., Alcan Ingot & Recycling Div., Sebree, KY

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–15,912; North Shore Sportswear Co., Glen Cove, Long Island, NY

A certification was issued covering all workers of the firm separated on or after April 1, 1984.

TA–W–16,018; Perry Manufacturing Corp., Perryopolis, PA

A certification was issued covering all workers of the firm separated on or after July 1, 1984.

TA–W–16,043; Roosevelt Mills, Inc., Rockville, CT

A certification was issued covering all workers of the firm separated on or after November 1, 1984 and before May 1, 1985.

TA–W–15,889; Weyerhaeuser Co., Green Mountain Mill, Tautle, WA

A certification was issued covering all workers of the firm separated on or after March 12, 1984.

TA–W–15,890; Weyerhaeuser Co., Longview Woods, Longview Log Transportation Crew, Longview Finishing Mill, Longview, WA

A certification was issued covering all workers of the firm separated on or after March 12, 1984.

TA–W–15,925; U.S. Steel Corporation, Geneva Works, Provo, UT

A certification was issued covering all workers except those engaged in employment related to the production of steel plate separated on or after March 29, 1985.

TA–W–15,925A; U.S. Steel Corp., Pittsburg Works, Pittsburg, CA

A certification was issued covering all workers engaged in employment related to the production of tin plate separated on or after January 1, 1985 and all other employees of the Pittsburg Works separated from employment on or after March 29, 1985 are eligible for trade adjustment assistance.

I hereby certify that the aforementioned determinations were issued during the period August 19, 1985–August 23, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: August 27, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–21082 Filed 9–3–85; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; National Semi-Conductor et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 16, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 16, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 26th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
National Semi-Conductor (workers)	West Jordon, UT	8/14/85	8/7/85	TA-W-16,324	Semi-conductor ships, computer chips.
AT&T Network Systems (IBEW)	Columbus, OH	8/14/85	8/8/85	TA-W-16,325	Phone switch relays.
Avon Knitting Mills Inc. (ACTWU)	Fairview, NJ	8/14/85	8/7/85	TA-W-16,326	Rashel lace fabrics, knitting fabrics.
Beatty Machine & Manufacturing Co. (workers)	Hammond, IN	8/15/85	7/30/85	TA-W-16,327	Punch presses and major metal working equipment.
(The) Black & Decker Co., Inc. (UE)	Allentown, PA	8/22/85	8/19/85	TA-W-16,328	Household appliances.
Caterpillar Tractor Co. (UAW)	York, PA	8/21/85	8/14/85	TA-W-16,329	Component parts for heavy equipment.
Champion International Corp. (IWA)	McCloud, CA	8/15/85	8/12/85	TA-W-16,330	Plywood, lumber.
Cumberland Blouse, Inc. (workers)	Cumberland, MD	8/14/85	8/9/85	TA-W-16,331	Blouses & shorts.
Efka Plastics (ACTWU)	Bayonne, NJ	8/14/85	8/7/85	TA-W-16,332	Plastic tablecloths.
Grand Prix Sportswear, Inc. (workers)	Lindenhurst, NY	8/21/85	8/19/85	TA-W-16,333	Contractor of ladies skirts.
Mallory Timers Co. (workers)	Frankfort, IN	8/19/85	8/13/85	TA-W-16,334	Electrical timing devices.
Marathon Steel Co., Rolling Mill Division (USWA)	Tempe, AZ	8/14/85	8/5/85	TA-W-16,335	Rebar.
Consolidation Coal Co. (UMWA)	Greensboro, PA	8/6/85	8/2/85	TA-W-16,336	Metallurgical coal.
LTV Steel Company (USWA)	Beaver Falls, PA	8/14/85	8/9/85	TA-W-16,337	Auto parts, flat bars, shape bars.
Nu-Method Dyeing & Processing (ACTWU)	Union City, NJ	8/14/85	8/7/85	TA-W-16,338	Textile dyeing and finishing.
Penn Aluminum International (IUE)	Erie, PA	8/19/85	8/14/85	TA-W-16,339	Aluminum tubing—extrusion & fabrication.
Placerville Lumber Co. (Brotherhood of Carpenters)	Placerville, CA	7/29/85	7/25/85	TA-W-16,340	Lumber and other wood products.
Pioneer Ltd. Plant No. 2 (workers)	Lake City, SC	8/20/85	8/14/85	TA-W-16,341	Childrens clothing.
Rock Hall Manufacturing (ACTWU)	Rock Hall, MO	8/7/85	8/5/85	TA-W-16,342	Blouses—ladies.
Steven Apparel Manufacturing Co., Inc. (workers)	Hazleton, PA	8/22/85	8/1/85	TA-W-16,343	Ladies sportswear and jogging suits.
Storage Technology (workers)	Louisville, CO	8/20/85	8/16/85	TA-W-16,344	Printed circuit cards.
Trimfoot Shoe Co. (workers)	Farmington, MO	8/12/85	8/7/85	TA-W-16,345	Baby shoes, soft soles, walkers, and sneakers.
TRW, Inc., Resistive Products Division (company)	Boone, NC	8/19/85	8/14/85	TA-W-16,346	Resistors—home entertainment, computers, and auto.
TRW Inc., Resistive Products Division (company)	Newland, NC	8/19/85	8/14/85	TA-W-16,347	Do.
Data Products Corp. (workers)	Juncos, PR	7/31/85	6/28/85	TA-W-16,348	P.C boards.
United Technologies—Mostek Corp. (wkrs)	Colorado Springs, CO	8/20/85	8/15/85	TA-W-16,349	Integrated circuits.
Wito Chemical Corp. (OCAW)	Lawrenceville, IL	8/19/85	8/15/85	TA-W-16,350	Asphalt roofing products.

[FR Doc. 85-21061 Filed 9-3-85; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-16,120; 16,121; 16,122; 16,123]

Oneita Knitting Mills Andrews and Fingerville, SC; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on June 24, 1985 in response to worker petitions received on June 18, 1985 which were filed on behalf of workers at Oneita Knitting Mills, Andrews, South Carolina (TA-W-16,120); Oneita Knitting Mills, Fingerville, South Carolina (TA-W-16,121); Mars Bluff Industries, Florence, South Carolina (TA-W-16,122) and Hebron Textiles, Cades, South Carolina (TA-W-16,123).

The petitioner has requested that the petitions be withdrawn. Consequently, further investigation in these cases would serve no purposes; and the investigations have been terminated.

Signed at Washington, D.C., this 27th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-21063 Filed 9-3-85; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-16,134]

W.I. Forest Products, Thompson Falls, MT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1985 in response to a worker petition received on June 25, 1985 which was filed by the Lumber, Production and Industrial Workers on behalf of workers at W.I. Forest Products, Thompson Falls, Montana.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 27th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-21064 Filed 9-3-85; 8:45 am]
BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-144; Exemption Application No. D-5280 et al.]

Grant of Individual Exemptions; the McShane & Bowie Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The McShane & Bowie Profit Sharing Plan (the Plan) Located in Grand Rapids, Michigan

[Prohibited Transaction Exemption 85–144; Exemption Application No. D–5280]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of the lesser of $150,000 or 25% of the Plan's assets to McShane & Bowie, under the terms set forth in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1985 at 50 FR 27379.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Health Systems Group Retirement Plan and Trust (the Plan) Located in Vancouver, Washington

[Prohibited Transaction Exemption 85–145; Exemption Application No. D–5692]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the prior sale for cash of an undivided one-half interest in certain real property (the Property) by the Plan to the Seattle-First National Bank, a party in interest with respect to the Plan, provided that the price received was no less than the fair market value of the Property at the time the transaction was consummated.

For a more complete statement of the facts and representations supporting the Department's decisions to grant this exemption refer to the notice of proposed exemption published on July 14, 1985, at 50 FR 28663.

Effective Date: The effective date of the exemption is December 12, 1983.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Incline Glass, Inc. Money Purchase Pension Plan and Incline Glass, Inc. Defined Benefit Pension Plan (the Plans) Located in Incline Village, Nevada

[Prohibited Transaction Exemption 85–146; Exemption Application Nos. D–5945 and D–5946]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plans of a parcel of improved real property to Patrick and Ann Geary, parties in interest with respect to the Plans, provided that all terms of the transaction are at least equivalent to those which the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1985 at 50 FR 27857.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Jahn Refrigeration Company, Inc. Defined Benefit Plan & Trust (the Plan) Located in Yoakum, Texas

[Prohibited Transaction Exemption 85–147; Exemption Application No. D–6022]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of 20 units (the Units) of Shelter Properties III, a real estate limited partnership, to Rudolph Jahn, a 30% shareholder in Jahn Refrigeration Company, Inc., and the Plan trustee, for the net asset value of the Units.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1985 at 50 FR 27386.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

Big City Productions, Inc. Pension Trust (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 85–148; Exemption Application No. D–6029]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed series of loans (the Loans) of no more than twenty-five percent (25%) of the fair market value of the assets of the Plan as of the date of the Loans are made to Big City Productions, Inc., the employer and sponsor of the Plan, provided that the terms and conditions of the Loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (2) the guarantee of the Loans by Steven Steigman, a party in interest with respect to the Plan.

Temporary Nature of Exemption

The exemption is temporary and, will expire in ten years after the inception of the first of the Loans. Should the applicant wish to continue entering into loan transactions or to extend the maturity date of any existing Loans beyond the ten year period prescribed in this exemption, the applicant may submit another application for exemption relief.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1985 at 50 FR 27858.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Tony's Auto Parts, Inc. Money Purchase Pension Plan (the Pension Plan) and Tony's Auto Parts, Inc. Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans) Located in Marrero, LA

[Prohibited Transaction Exemption 85–149; Exemption Application Nos. D–6091 and D–6092]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to loans (the Loans) by the Pension Plan and the Profit Sharing Plan, not exceeding 25 percent of each Plan's assets, to Bertucci Properties, a party interest with respect to the Plans, provided the terms and conditions of the Loans are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1985 at 50 FR 27860.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfore Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–21053 Filed 9–3–85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Ad Hoc Group on Arts Education; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Ad Hoc Group on Arts Education to the National Council on the Arts will be held on September 19, 1985, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be FY 87 Guidelines for Art in Education.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 27, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–20998 Filed 9–3–85; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Meeting) of the National Council on the Arts will be held on September 19, 1985, from 9:30 a.m.–6:00 p.m. and on September 20, 1985, from 9:30 a.m.–5:00 p.m. in room 415 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be Visual Artists Fellowships, Visual Artists Organizations, Visual Artists Forums, Art in Public Places and the Five-Year Plan.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 27, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–20997 Filed 9–3–85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Issuance and Availability Draft NUREG–1030, Seismic Qualification of Equipment in Operating Nuclear Power Plants and Regulatory Analysis for Proposed Resolution of Unresolved Safety Issue A–46

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing for public comment a report entitled, "Seismic Qualification of Equipment in Operating Nuclear Power Plants," (DRAFT NUREG–1030) and a Regulatory Analysis document in support of the staff's proposed resolution of the NRC's Task A–46, "Seismic Qualification of Equipment in Operating Nuclear Power Plants." This issue was identified as an "Unresolved Safety Issue" in the 1980 Annual Report pursuant to section 210

of the Energy Reorganization Act of 1974.

The safety issue in Unresolved Safety Issue (USI) A–46 is the concern that the margins of safety provided by equipment in operating nuclear power plants under seismically induced loads may vary considerably, due to the significant changes in criteria and methods for seismic qualification of equipment which have been adopted since these plants were reviewed for their operating license. The objective of USI A–46 was to develop methods and/or acceptance criteria to assess the seismic capability of safety-related mechanical and electrical equipment in operating nuclear power plants, in lieu of requiring qualification to current licensing requirements as defined in Standard Review Plan Section 3.10, Regulatory Guide 1.100 and IEEE Standard-344/1975. Technical investigations completed under USI A–46 resulted in reducing the scope to only electrical and mechanical equipment required to bring the plant to a hot shutdown condition.

The NRC has concluded from its A–46 investigations (which included use of seismic experience data) that there are two principal areas of concern; the adequacy of equipment anchorages and supports; and the functional capability or inadvertent change of state of electrical relays during the strong shaking motion of an earthquake. It is therefore proposed that licensees of nuclear power plants that were not reviewed to current licensing requirements perform a seismic adequacy review of equipment needed for safe shutdown, with emphasis on equipment anchorages and supports and relay functional capability. Methods and procedures for such review are included in the proposed implementation plan.

Comments are being solicited from interested organizations, groups and individuals.The staff will evaluate the comments received, and address them as appropriate in the final documents.

Copies of the draft documents will be available after August 15, 1985. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C.; and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492–7536. Free single copies of the draft documents may be requested by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Comments should be forwarded in writing to Mr. Karl Kniel, Division of Safety Technology, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 by October 1, 1985.

Dated at Bethesda, Maryland this 23rd day of July, 1985.

For The Nuclear Regulatory Commission.

Themis P. Speis,

Director, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85–21054 Filed 9–3–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 19 and 20, 1985 in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on September 19, recess and reconvene at 8:00 a.m. on September 20. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The September 19 session and a portion of the September 20 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b (c)(1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin *approximately* 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on September 18. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

August 23, 1985.

[FR Doc. 85–21015 Filed 9–3–85; 8:45 am]

BILLING CODE 3170–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Resident fish substitutions preliminary Council decision.
- Resident fish productivity report.
- Losses information consultation.
- Contributions issue scoping.
- Basis issue scoping.
- Terms/responsibilities issue scoping.
- Other.
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

DATE: October 1, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the Council office's conference room 850 S. W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–21000 Filed 9–3–85; 8:45 am]

BILLING CODE 0000-00-M

Losses and Goals Advisory Committee: Meeting

AGENCY: Losses and Goals Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Losses informations consultation.
- Contributions issue scoping.
- Basis issue scoping.
- Terms/responsibilities issue scoping.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

DATE: September 26, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the Ramada Airport Inn, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–20999 Filed 9–3–85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22355]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

Foreign private issuers with total assets in excess of $3,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)] (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer: (1) Has made public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) has filed with a stock exchange on which its securities are traded and which was made public by such exchange; and/or (3) has distributed to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule to certain foreign issuers with securities quoted on NASDAQ (see Securities Exchange Act Release No. 20264, October 6, 1983). Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and currently quoted in NASDAQ were grandfathered indefinitely.[2] However, the exemption was extended to Canadian securities only until January 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities (see Securities Exchange Act Release No. 8066, April 28, 1967), the Commission indicated that from time to time it would issue lists containing those foreign issuers which have obtained exemptions from the registration provisions of Section 12(g) of the Act by providing the information specified in Rule 12g3–2(b). The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the attached list is available in the public files of the Commission. The attached list includes those foreign issuers which, as of July 31, 1985, appear to be current in submitting the information specified in Rule 12g3–2(b).

The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning certain foreign issuers may not be available in the United States. The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers. The Commission will continue to review activity in the markets for foreign securities to determine whether the present rules are achieving their purpose and whether further rules or rule revisions are necessary in the public interest or for the protection of investors.

Any questions regarding Rule 12g3–2 or the list included herein should be directed to Carl T. Bodolus or Martin Meyrowitz, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 272–3246). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272–7450.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

August 28, 1985.

Company	File No.	Country
ABO Oil Corp	82–961	Canada.
AGA	82–800	Sweden.
AHA Automotive Technologies Corp.	82–928	Canada
AMCA Resources, Ltd	82–434	Do.
ARC International Corp	82–710	Do.
ASEA AB	82–736	Sweden.
Abitibi Paper Co., Ltd.	82–80	Canada.
Acquest Enterprise Ltd	82–889	Do.
Adams Silver Resources Inc.	82–831	Do.
Afrikander Lease Ltd	82–245	South Africa.
Agnico-Eagle Mines Ltd	82–179	Canada.
Aiguebelle Resources Inc	82–745	Do.
Akzo, N.V	82–1016	Holland.
Albert Fisher Group, PLC	82–1020	United Kingdom.
Algoma Steel Corp. Ltd	82–99	Canada.
Allied-Lyons PLC	82–878	United Kingdom.
Alpha-Omega Resources Corp.	82–1051	Canada.
Amark Explorations	82–458	Do.
American Budgetel Inc	82–941	Do.
American Microlink Inc	82–908	Do.
Amhawk Resource Corp	82–742	Do.
Amstar Venture Corpo	82–814	Do.
Anchor Gold Corp	82–996	Do.
Anglo American Corp. of South Africa.	82–97	South Africa.
Anglo American Gold Investment Co., Ltd.	82–148	South Africa.
Applied Energy Inc	82–954	Canada.
Argus Corporation Ltd	82–920	Do.
Arivica Silver Mines	82–852	Do.
Arizona Silver Corp	82–418	Do.
Armeno Resources Inc	82–1027	Do.
Asitka Resource Corp	82–934	Do.
Atlas Copco AB	82–812	Sweden.
Australian Hydrocarbons N.L.	82–856	Australia.
Avalanche Industries Ltd	82–620	Canada.
B.A.T. Industries Ltd	82–33	United Kingdom.
B.D.C. Industries Corp	82–858	Canada.
B.T.R. PLC	82–896	United Kingdom.
Baker Gold Ltd	82–780	Canada.
Banbury Gold Mines Ltd	82–828	Do.

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States or subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)].

[2] Unless, of course, the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the requirements of the exemption.

Company	File No.	Country
Banco Espagnol de Credito	82-962	Spain.
Bank of Montreal	82-126	Canada.
Barr Resources Ltd	82-1047	Do.
Basic Resources S.A	82-203	Luxembourg.
Bass Strait Oil and Gas (Holdings) N.L.	82-931	Australia.
Beatrix Mines Ltd	82-1054	Soputh Africa.
Beauty Counselors International Inc.	82-725	Canada.
Beaver Resources Inc	82-436	Do.
Beecham Group P.L.C	82-22	United Kingdom.
Belgium Standard Ltd	82-668	Canada.
Bell Resources Ltd	82-919	Australia.
Belmont Resources Inc	82-686	Canada.
Best Resources Inc	82-979	Do.
Bishop Resources Development Ltd.	82-1005	Do.
Black Gold Oil & Gas Ltd	82-703	Do.
Black Jade Resources Ltd	82-901	Do.
Blue Circle Industries PLC	82-927	United Kingdom.
Bluesky Oil & Gas Ltd	82-473	Canada.
Blyvooruitzicht Gold Mining Co., Ltd.	82-69	South Africa.
Bond Corporation Holdings Ltd.	82-998	Australia.
Bowater Corporation P.L.C	82-3	United Kingdom.
Bowes Lyon Resources Ltd	82-974	Canada.
Brace Resources Ltd	82-1014	Do.
Bracken Mines Ltd	82-219	South Africa.
Brahma Resources Inc	82-1022	Canada.
Braiorne Resources Ltd	82-143	Do.
Brascan Ltd	82-4	Do.
Breakwater Resources Ltd	82-653	Do.
Brent Resources Group Ltd	82-321	Do.
Brican Resources Ltd	82-294	Do.
British Pacific Resources Inc.	82-965	Do.
Broken Hill Proprietary Co., Ltd.	82-81	Australia.
Buffelsfontein Gold Mining Co., Ltd.	82-302	South Africa.
Burmah Oil Co. Ltd	82-5	United Kingdom.
Butler Mountain Minerals Corp.	82-727	Canada.
C.T. Exploranda Ltd	82-782	Do.
Caara Ventures Inc	82-895	Do.
Canada Tungsten Mining Corp., Ltd.	82-290	Do.
Canadian Imperial Bank of Commerce.	82-103	Do.
Canadian Marconi Co	82-86	Do.
Canadian Pawnee Oil Corp	82-733	Do.
Canadian-United Minerals, Inc.	82-869	Do.
Canfic Resources Ltd	82-691	Do.
Canuck Resources Corp	82-942	Do.
Cape Range Oil N.L	82-623	Australia.
Carpets International PLC	82-943	United Kingdom.
Carr Boyd Minerals Ltd	82-1037	Australia.
Cater Energy, Inc	82-629	Canada.
Celanese Canada Ltd	82-171	Do.
Celebrity Energy Corp	82-810	Do.
Celico Resources Ltd	82-1033	Do.
Celtic Resources	82-999	Do.
Central Pacific Minerals Ltd	82-354	Australia.
Century Energy Corp	82-640	Do.
Challenger International Services Ltd.	82-369	Do.
Chancellor Energy Resources Inc.	82-487	Do.
Charlemagne Resources Ltd.	82-912	Do.
Charter Consolidated P.L.C	82-233	United Kingdom.
Charter Mining N.L	82-431	Australia.
Checkmate Resources Ltd	82-850	Canada.
Chutine Resources Ltd	82-867	Do.
Claremont Petroleum N.L	82-890	Australia.
Coats Patons PLC	82-966	United Kingdom.
Cochrane Oil & Gas Ltd	82-501	Canada.
Colby Resources Corp	82-417	Do.
Cominco Ltd	82-107	Do.
Computer Services Corp	82-781	Japan.
Concept Resources Ltd	82-405	Canada.
Concert Resources	82-1003	Do.
Condor Minerals and Energy Ltd.	82-830	Australia.
Conex Australia N.L	82-319	Do.
Conigas Mines Ltd	82-166	Canada.
Consolidated Bathurst Ltd	82-172	Do.
Consolidated Cinola Mines Ltd.	82-310	Do.
Consolidated Gold Fields P.L.C.	82-251	United Kingdom.
Consolidated Knobby Lake Mines Ltd.	82-336	Canada.
Consolidated Professor Mines Ltd.	82-625	Do.
Consort Energy Corp	82-993	Do.
Consumers Distributing Co., Ltd.	82-297	Do.
Continental Bank of Canada.	82-120	Do.
Continental Silver Corp	82-421	Do.
Coppers Resources N.L	82-444	Australia.
Copper Bounty Mines Ltd	82-694	Canada.
Copper Lake Explorations Ltd.	82-394	Do.
Cord Holdings Ltd	82-988	Australia.
Coronet Resources Ltd	82-1052	Canada.
Coseka Resources Ltd	82-295	Do.
Cosmos Resources Inc	82-1023	Do.
Cracow Gold Ltd	82-917	Australia.
Cruz Silver Mines Inc	82-987	Canada.
Crystal Mountain Resources Ltd.	82-1063	Do.
Cusac Industries Ltd	82-367	Do.
Cutlass Industries Corp	82-1012	Do.
CV Sportsmark International Inc.	82-593	Do.
Czar Resources Ltd	82-406	Do.
DRC Resources Corp	82-713	Do.
Dai'Ei Inc	82-230	Japan.
Daon Development Corp	82-344	Canada.
DeBeers Consolidated Mines, Ltd.	82-91	South Africa.
Deelkraal Gold Mining Co., Ltd.	82-246	Do.
Denison Mines Ltd	82-155	Canada.
Deutsche Bank A.G	82-334	Germany.
Dickenson Mines Ltd	82-8	Canada.
Discovery Gold Explorations Ltd.	82-1025	Do.
Discovery Mines Ltd	82-1046	Do.
Dofasco Ltd	82-114	Do.
Dominion Explorers Ltd	82-504	Do.
Domtar Inc	82-18	Do.
Doornfontein Gold Mining Co., Ltd.	82-213	South Africa.
D'Or Val Mines Ltd	82-740	Canada.
Dowty Group PLC	82-1006	United Kingdom.
Dresdner Bank A.G	82-229	Germany.
Driefontein Consolidated Ltd.	82-124	South Africa.
Dunlop Holdings PLC	82-985	United Kingdom.
Du Pont of Canada	82-19	Canada.
Durban Roodepoort Deep Ltd.	82-158	South Africa.
Durham Resources Inc	82-176	Canada.
Dynamar Energy Ltd	82-779	Do.
Dynamic Oil Ltd	82-702	Do.
Eagle Corp. Ltd	82-476	Australia.
East Daggafontein Mines Ltd.	82-42	South Africa.
East Rand Gold and Uranium Co., Ltd.	82-289	Do.
East Rand Proprietary Mines Ltd.	82-239	Do.
East West Resource Corp	82-787	Canada.
EdenRoc Mineral Corp	82-845	Do.
Egoli Consolidated Mines Ltd.	82-909	South Africa.
Ekaton Energy Ltd	82-1055	Canada.
El Dorado Systems (Canada) Ltd.	82-855	Do.
Elanderand Gold Mining Co., Ltd.	82-266	South Africa.
Electra North West Resources Ltd.	82-718	Canada.
Electrolux, A.B	82-1030	Sweden.
Emperor Mines Ltd	82-969	Australia.
Energex Minerals Ltd	82-403	Canada.
Energy Systems Holdings Ltd.	82-621	Hong Kong.
Epic Resources (B.C.) Ltd	82-1010	Canada.
Eridania Z.N., Sp.A	82-902	Italy.
Eureka Resources Inc	82-1031	Canada.
Expo Oil N.L	82-469	Australia.
Extotal Resources Inc	82-822	Canada.
FAI Insurance Group	82-1041	Australia.
F.M.G. Telecomputer Ltd	82-759	Canada.
Falconbridge Ltd	82-30	Do.
Fiat S.P.A	82-116	Italy.
Field Petroleum Corp	82-904	Canada.
Firan Corp	82-600	Do.
First Canadian Energy Corp	82-1034	Do.
First Pacific Holdings Ltd	82-836	Hong Kong.
First Western Communications Ltd.	82-964	Canada.
Fisons P.L.C	82-202	United Kingdom.
Fleck Resources Ltd	82-1048	Canada.
Flin Flon Mines Ltd	82-900	Do.
Flow Resources Ltd	82-709	Do.
Fort Knox Minerals Ltd	82-964	Do.
Foseco Minsep PLC	82-952	United Kingdom.
Free State Development & Investment Corp. Ltd.	82-296	Do.
Free State Geduld Mines Ltd.	82-40	South Africa.
Freeway Resources Ltd	82-402	Canada.
Fuji Photo Film Co., Ltd	82-78	Japan.
Futuriek Communications Inc.	82-973	Canada.
Gamin Resources Inc	82-1021	Do.
Genbel Investments Limited.	82-235	South Africa.
General American Technologies Inc.	82-588	Canada.
General Mining Union Corp. Ltd.	82-311	South Africa.
Genex Resources Inc	82-808	Canada.
Geometals N.L	82-388	Australia.
Geotech Resources Inc	82-1026	Canada.
Gladiator Resources Ltd	82-975	Do.
Glamis Gold Ltd	82-989	Do.
Glaxo Holdings Ltd	82-10	United Kingdom.
Gold Fields of South Africa Ltd.	82-204	South Africa.
Gold Standard Resources Inc.	82-994	Canada.
Goldale Investments Ltd	82-987	Do.
Goldbrae Developments Ltd.	82-987	Do.
Golden Hope Resources Inc.	82-955	Do.
Golden Lion Resources	82-936	Do.
Golden News Resources Inc.	82-956	Do.
Golden North Resources Corp.	82-343	Do.
Golden Rim Resources	82-957	Do.
Golden Sceptre Resources Ltd.	82-754	Do.
Goldrich Resources Inc	82-618	Do.
Goldstream Resources Ltd	82-1059	Do.
Goldwinn Resources Ltd	82-555	Do.
Goliath Gold Mines Ltd	82-741	Do.
Gordon Resources Ltd	82-577	Do.
Grandma Lee's Inc	82-542	Do.
Grandview Resources Inc	82-971	Do.
Grants Patch Mining, Ltd	82-951	Australia.
Great Eastern Mines Ltd	82-732	Do.
Great Pacific Resources Ltd.	82-948	Canada.
Greenwell Resources Corp	82-825	Do.
Grootvlei Proprietary Mines Ltd.	82-222	South Africa.
Guardian Resource Corp	82-857	Canada.
Guest, Keen and Nettlefolds PLC.	82-1042	United Kingdom.
Gulf Canada Ltd	82-101	Canada.
H.M.C. Australasia N.L	82-874	Australia.
H.T.R. Industries Inc	82-872	Canada.
Hanson Trust PLC	82-824	United Kingdom.
Harlin Resources Ltd	82-907	Canada.
Harmony Gold Mining Co., Ltd.	82-236	South Africa.
Hartogen Energy Ltd	82-587	Australia.
Harvard Securities Ltd	82-1002	United Kingdom.
High Level Resources Ltd	82-1035	Canada.
Highveld Steel & Vanadium Corp. Ltd.	82-586	South Afric.
Highwood Resources Ltd	82-450	Canada.
Hill Minerals N.L	82-1038	Australia.
Hillside Energy Corp	82-936	Canada.
Hokuriku Bank, Ltd. (The)	82-1045	Japan.
Hong Kong and Shanghai Banking Corp.	82-683	Hong Kong.
Hong Kong Land Company Ltd. (The).	82-881	Do.
Ican Resources Ltd	82-801	Canada.
Ice Station Resources Ltd	82-827	Do.
Imasco Ltd	82-118	Do.
Impala Platinum Holdings Ltd.	82-359	South Africa.
Imperial Group P.L.C	82-316	United Kingdom.
Imperial Metals Corp	82-1032	Canada.
Indian Gold Resources Ltd	82-995	Do.
Indian River Resources Inc	82-997	Do.
Ingot Resources Ltd	82-990	Do.
Interaction Resources Ltd	82-705	Do.

Company	File No.	Country
Inter-Globe Resources Ltd	82-257	Do.
International Damascus Resources Ltd.	82-521	Do.
International H.R.S. Industries Inc.	82-250	Do
International March Resources Ltd.	82-467	Do
International Megaline Resources Ltd.	82-439	Do
International Mining Corp., N.L.	82-813	Australia
International Westward Development.	82-426	Canada
Interstrat Resources Inc	82-708	Do
Investors Group	82-13	Do.
Iron Horse Resources Corp.	82-1028	Do.
Irwin Toy Ltd	82-626	Do.
Isuzu Motors Ltd	82-772	Japan.
Jaguar PLC	82-921	United Kingdom
James Hardie Industries Ltd.	82-972	Australia
Japan Air Lines	82-122	Japan.
Jarvis Resources Ltd	82-962	Canada
Joutel Resources Ltd.	82-502	Do.
K.W. Resources Ltd.	82-1024	Do
Kaaba Resources Inc	82-1049	Do.
Kalabara Mining N.L	82-774	Australia
Kerr Addison Mining Ltd	82-14	Canada.
Kettle River Resources Ltd.	82-666	Do.
King Solomon Resources Ltd.	82-859	Do
Kinross Mines Ltd	82-220	South Africa
Kirin Brewery Co., Ltd	82-188	Japan.
Kitchener Mining N.L	82-967	Australia.
Klopf Gold Mines Co., Ltd	82-205	South Africa
Knie Resources Inc.	82-695	Canada.
La Luz Mines Ltd	82-237	Do.
Lac Minerals Ltd.	82-198	Do.
Lacana Mining Corp.	82-265	Do.
Lake Shore Mines Ltd	82-15	Do.
Lancaster Resources Corp	82-862	Do.
Lathwell Resources Ltd.	82-865	Do.
Lear Oil & Gas Corp.	82-873	Do.
Lennard Oil	82-290	Australia.
Lenora Explorations Ltd	82-837	Canada.
Leslie Gold Mines Ltd	82-223	South Africa
Libanon Gold Mining Co., Ltd.	82-215	Do.
Liberty-Bell Mines Inc	82-958	Canada
Lincoln Resources Inc	82-349	Do.
Loadmaster Systems, Inc.	82-916	Do.
Lode Resources Corp	82-1004	Do.
Lodestar Energy Inc.	82-573	Do.
Logan Mines Ltd	82-911	Do.
Logo Resources Ltd	82-407	Do.
Lonrho P.L.C.	82-191	United Kingdom.
Loyalist Resources Ltd.	82-914	Canada.
Lydenburg Platinum Ltd.	82-312	South Africa
M. I. M. Holdings Ltd	82-173	Australia.
M. T. D. (Mangula) Ltd	82-903	Zimbabwe.
Mac-Am Resources Corp	82-605	Canada
MacLean-Hunter Ltd	82-485	Do.
Madre Mining Ltd	82-529	Do.
Magnet Group Ltd.	82-299	Australia
Magnus Resources Ltd	82-1065	Canada.
Majestic Resources Corp	82-721	Do.
Majesty Resources Corp.	82-674	Do.
Malartic Hygrade Gold Mines (Canada).	82-687	Do
Mandusa Resources Ltd	82-1062	Do.
Marietta Resources Corp	82-1040	Do.
Marievale Consolidated Mines Ltd.	82-224	South Africa
Mariner Explorations Inc	82-886	Canada.
Markway Resources Ltd.	82-427	Do.
Marshall Minerals Corp	82-722	Do.
Maverick Mountain Resources Ltd.	82-1017	Do.
Media Videotek Corp	82-925	Do.
Mentor Exploration & Development Co. Ltd.	82-178	Do.
Meridian Oil N.L	82-397	Australia.
Merland Explorations Ltd	82-595	Canada.
Metal Box PLC	82-991	United Kingdom.
Metoil Resources Ltd.	82-940	Canada.
Midland Energy Corp	82-1050	Do.
Migent Software Corp.	82-668	Do.
Minerals and Resources Corp.	82-206	Bermuda.
Minerex Resources Ltd	82-946	Canada.
Mistral Resources Ltd.	82-922	Do.
Monarch Petroleum N.L	82-339	Australia.
Mono Gold Mines, Inc.	82-1029	Canada.
Monte Christo Resources	82-785	Do.
Murgold Resources Inc	82-786	Do.
N. B. U. Mines Ltd	82-511	Do.
N. R. D. Mining Ltd	82-358	Do.
National Australia Bank	82-1015	Australia.
Neomar Resources Ltd	82-382	Canada.
New Alster Energy Ltd	82-960	Do.
New Frontier Petroleum Corp.	82-341	Do.
New Goldcore Ventures Ltd.	82-832	Do
Newfields Minerals Inc	82-1007	Do.
Newtec Industries Ltd.	82-926	Do.
Nimslo International Ltd	82-650	Bermuda.
Nissan Motor Co., Ltd	82-207	Japan.
Noble Mines & Oils Ltd.	82-509	Canada
Noramex Minerals Inc.	82-939	Do.
Noranda Mines Ltd	82-158	Do.
Nor-Quest Resources Ltd	82-374	Do.
North American Power Petroleums.	82-383	Do.
Northair Mines Ltd	82-305	Do.
Nothern Eagle Mines Ltd	82-892	Do.
Northern Energy Corp	82-764	Do.
Nowsco Well Service Ltd.	82-261	Do.
Nuspar Resources Ltd.	82-464	Do.
O.T. Industries Inc.	82-574	Do.
Oakwood Petroleums Ltd.	82-564	Do.
O'Brien Energy & Resources Ltd.	82-262	Do.
Ocelot Industries Inc.	82-331	Do.
Offshore Oil N.L	82-961	Australia.
Onoda Cement Co., Ltd	82-1057	Japan.
Orbex Minerals Ltd	82-479	Canada.
Oscar Resources Ltd.	82-847	Do.
Otter Exploration N.L	82-320	Australia.
Overseas Inns S.A	82-166	Luxembourg.
P. C. R. Industries Ltd.	82-856	Canada.
Pacific Minesearch Ltd	82-947	Do.
Pan American Energy Corp.	82-877	Do.
Pan Canadian Petroleum Ltd.	82-285	Do.
Paragon Resources Ltd.	82-386	Do.
Parkside Petroleum Inc	82-483	Do.
Pelsart Resources N.L	82-484	Australia.
Permian Resource Ltd	82-953	Canada.
Petro Energy Ltd	82-838	Australia.
Petrogulf Resources Ltd.	82-855	Do.
Petrox Energy & Minerals Corp.	82-798	Canada.
Philex Mining Ltd	82-136	Philippines.
Philip Morris Ltd	82-944	Australia.
Pilgrim Coal Corp	82-706	Canada.
Pinto Malartic Gold Mines Ltd.	82-915	Do.
Pioneer Metals Corp	82-1018	Do.
Pirates Gold Corp.	82-1060	Do.
Pola Resources Ltd	82-760	Do.
Power Corp. of Canada	82-137	Do.
Praire Pacific Energy Corp.	82-456	Do.
Preferred Resources Inc	82-906	Do.
President Brand Gold Mining Co., Ltd.	82-39	South Africa.
President Mines Ltd	82-959	Canada.
President Steyn Gold Mining Co., Ltd.	82-44	South Africa.
Quebec Explorers Corp., Ltd.	82-635	Canada.
Quebec Sturgeon River Mines Ltd.	82-186	Do.
Queen Margaret Gold Mines N.L.	82-414	Australia.
Questmont Mines Ltd	82-923	Canada.
Quinto Mining Corp	82-475	Do.
Racal Electronics P.L.C.	82-481	United Kingdom
Rainex Resoures Ltd	82-983	Canada.
Rainier Energy Resources Inc.	82-560	Do.
Ramm Venture Corp.	82-809	Do.
Rampart Resources Ltd	82-1058	Do.
Randfontein Estates Gold Mining Co.	82-267	South Africa.
Ravenroc Resources Ltd	82-493	Canada.
Raymac Oil Corp	82-802	Do.
Rayrock Resources Ltd.	82-378	Do.
Realsearch International	82-1064	Do.
Reba Resources Ltd.	82-977	Do.
Redwood Resources Inc.	82-606	Do.
Reed Stenhouse Companies Ltd.	82-254	Do.
Reg Resources Corp	82-864	Do.
Rich Lode Gold Corp.	82-876	Do.
Ridgecrest Resources Ltd	82-532	Do.
Rockspan Resources Ltd.	82-863	Do.
Rococco Resources Ltd.	82-715	Do.
Roddy Resources Ltd.	82-893	Do.
Rodeo Resources Ltd	82-1061	Do.
Rogers Cablesystems Inc	82-335	Do.
Rothmans International P.L.C.	82-84	United Kingdom
Royal Nedlloyd Group N.V.	82-1056	Netherlands.
Rule Resources Ltd.	82-841	Canada.
Ruskin Development Ltd.	82-648	Do.
Rustenburg Platinum Holdings Ltd.	82-241	South Africa.
S.K.F	82-139	Sweden.
Sainsbury, J., Ltd. PLC	82-913	United Kingdom
Samantha Exploration N.L	82-323	Australia.
Samson Exploration N.L.	82-401	Do.
Santa Sarita Mining Co., Ltd.	82-338	Canada.
Santos Ltd.	82-34	Australia.
Sanyo Electric Co., Ltd.	82-264	Japan.
Sasol Ltd	82-631	South Africa.
Saturn Energy & Resourcs Ltd.	82-613	Canada.
Saxton Industries Ltd.	82-790	Do.
Sceptre Resources Ltd.	82-387	Do.
Scheer Energy Development Corp.	82-333	Do.
Scintilore Explorations Ltd	82-792	Do.
Scottie Gold Mines Ltd.	82-351	Do.
Sears Holdings PLC	82-851	United Kingdom
Seastar Resource Corp.	82-863	Canada.
Senetek PLC	82-875	United Kingdom
Sequoia Resources Ltd.	82-1019	Canada.
Share Mines & Oils Ltd.	82-508	Do.
Sharon Energy Ltd.	82-530	Do.
Sheen Minerals Inc.	82-906	Do.
Shelter Oil & Gas Ltd	82-601	Do.
Sherritt Gordon Mines Ltd	82-29	Do.
Shiloh Resources Ltd	82-878	Do.
Siemens Aktiengesellschaft	82-73	Germany.
Sierra Nevada Gold Ltd	82-894	Canada.
Skelly Resources Ltd.	82-1000	Do.
So-Luminaire Systems Corp.	82-427	Do.
Sons of Gwalia, N.L.	82-1039	Australia.
South Africa Land & Exploration Co., Ltd.	82-59	South Africa.
South Roodeport Main Reef Areas Ltd.	82-930	Do.
Southern Pacific Petroleum N.L.	82-353	Australia.
Southern Resources Ltd	82-817	Do.
Sothern Star Resources Ltd.	82-1043	Canada.
Southern Ventures N.L.	82-880	Australia.
Southvaal Holdings Ltd	82-197	South Africa.
South-West Gold Corp	82-1044	Canada.
Spartan Capital Corp	82-160	Do.
Spirit Petroleum Corp	82-730	Do.
Spooner Mines and Oils Ltd.	82-112	Do.
St. Helena Gold Mines Ltd	82-232	South Africa.
Stallion Resources Ltd	82-807	Canada.
Stampede International Resources Ltd.	82-242	Do.
Starburst Energy Corp	82-775	Do.
Stateside Energy Corp	82-544	Do.
Stelco Inc	82-141	Do.
Stilfontein Gold Mining Co., Ltd.	82-301	South Africa.
Stralak Resources Ltd.	82-876	Canada.
Strata Energy Corp	82-714	Do.
Stray Horse Resources Inc.	82-474	Do.
Stryker Resources Ltd.	82-883	Do.
Sulpetro Ltd	82-665	Do.
Sun God Resources Ltd	82-929	Do.
Sutton Resources Ltd.	82-910	Do.
Svenska Cellulosa Aktiebolaget SCA.	82-763	Sweden.
Swan Resources Ltd	82-477	Australia.
Sydney Development Corp.	82-641	Canada.
Taro-Vit Chemical Industries Ltd.	82-210	Israel.
Tate & Lyle PLC	82-905	United Kingdom.
Teeshin Resources Ltd	82-891	Canada.
Telefonos de Mexico S.A.	82-332	Mexico.
Telstar Resource Corp.	82-701	Canada.
Terra Mines Ltd.	82-404	Do.
Terrex Resources N.L	82-846	Australia.
Teva Pharmaceutical Industries Ltd.	82-614	Israel.
Texcan Technology Corp.	82-945	Canada.
Thorn EMI Ltd.	82-373	United Kingdom.
Thrust Resources Inc	82-1009	Canada.
Tillicum Gold Mines Ltd.	82-815	Do.
Timminco Ltd	82-106	Do.

Company	File No.	Country
Titan Resources Ltd	82-773	Do.
Titleist Petroleums Ltd	82-666	Do.
Torheen Energy Corp	82-1001	Do.
Toronto Dominion Bank	82-142	Do.
Torrent Resources Ltd	82-981	Do.
Tournigan Mining Explorations.	82-328	Do.
Toyota Motor Co., Ltd	82-208	Japan.
Transcontinental Holdings Ltd.	82-950	Australia.
Transpacific Asbestos Inc	82-669	Canada.
Transvaal Consolidated Land & Exploration Co.	82-304	South Africa.
Trident Resources Inc	82-797	Canada.
Trinity Resources Ltd	82-610	Do.
Trojan Energy Corp	82-666	Do.
Troudor Resources Inc	82-666	Do.
Turner and Newall PLC	82-1011	United Kingdom.
Turner Energy & Resources Ltd.	82-659	Canada.
Tylex Resources Corp	82-1053	Do.
Ultramar PLC	82-871	United Kingdom.
Unisel Gold Mines Ltd	82-236	South Africa.
United Cambridge Mines Ltd.	82-748	Canada.
United Keno Hill Mines Ltd	82-81	Do.
United Leader Resources Inc.	82-577	Do.
United Reyore Gas Ltd	82-747	Do.
United Siscoe Mines Inc	82-194	Do.
Vaal Reefs Exploration and Mining Co., Ltd.	82-56	South Africa.
Valclair Resources	82-837	Canada.
Valhalla Energy Corp	82-960	Do.
Vanwinn Resources Corp	82-969	Do.
Velcro Industries N.V	82-145	Netherlands Antilles.
Venterpost Gold Mining Co., Ltd.	82-216	South Africa.
Ventora Resources Ltd	82-361	Canada.
Veronex Resources Ltd	82-364	Do.
Victoria Exploration N.L	82-322	Australia.
Viscount Resources Ltd	82-429	Canada.
Vlakfontein Gold Mining Co., Ltd.	82-217	South Africa.
Volvo	82-782	Sweden.
Vulcan Industrial Packaging Ltd.	82-300	Canada.
Waddy Lake Resources Inc	82-807	Do.
Walhalla Mining Co. N.L	82-1036	Australia.
Walhalla Resources Ltd	82-853	Do.
Walmont Precious Metals Corp.	82-694	Canada.
Warrior Resources Ltd	82-363	Do.
Wartsila (OY) AB	82-933	Finland.
Welkom Gold Mining Co., Ltd.	82-57	South Africa.
West Rand Consolidated Mines Ltd.	82-314	Do.
Westate Resources Inc	82-892	Canada.
Westbank Resources Inc	82-1008	Do.
Western Allenbee Oil & Gas Co., Ltd.	82-679	Do.
Western Areas Gold Mining Co., Ltd.	82-268	South Africa.
Western Deep Levels Ltd	82-58	Do.
Western Holdings Ltd	82-54	Do.
Western Pacific Energy Corp.	82-970	Canada.
Westfort Petroleums Ltd	82-308	Do.
Westlake Resources Inc	82-821	Do.
West-Mar Resources Ltd	82-751	Do.
Westwater Resources Ltd	82-1013	Do.
Wilenour Resources Ltd	82-69	Do.
Winkelhaak Mines Ltd	82-221	South Africa.
Woolworth Holdings PLC	82-968	United Kingdom.
Woolworths Ltd	82-670	Australia.
Wright Hargreaves Mines Ltd.	82-60	Canada.
Yellowknife Bear Resources Inc.	82-776	Do.
Zambia Copper Investments Ltd.	82-227	Bermuda.
Zanex Ltd	82-932	Australia.

[FR Doc. 85-21043 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23806; 70-7149]

North Holding Company; Proposed Acquisition of the Cleveland Electric Illuminating Company and the Toledo Edison Company

August 23, 1985.

North Holding Company ("North"), 1600 Huntington Building, Cleveland Ohio 44115, an Ohio corporation, has filed an application pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (the "Act"), requesting an order of the Commission approving its acquisition of all of the outstanding common stock of the Cleveland Electric Illuminating Company ("CEI"), and of the Toledo Edison Company ("TE").

North was incorporated under the laws of the State of Ohio on June 28, 1985. North was organized by CEI, an Ohio corporation, for the purpose of acquiring all of the issued and outstanding common stock, no par value, of CEI (the "CEI Common Stock"), and all of the issued and outstanding common stock, $5 par value, of TE (the "TE Common Stock"). North has organized two wholly owned subsidiaries (the "Merger Companies"), East Merger Company, an Ohio corportion ("East"), and West Merger Company, an Ohio corporation ("West"), for the purpose of merging with CEI and TE, respectively. North also intends to organize a service company, which will be an Ohio corporation and which will enter into system operational agreements concerning operations, construction, systems dispatch for CEI and TE, and such other matters as may be agreed upon between CEI, TE and North. North is not presently a holding company subject to the Act because it does not own or control or hold 10% of the outstanding voting securities of a "public utility company" within the meaning of section 2(a)(5) of the act. North does not intend to register as a holding company if the proposed transaction is consummated because it believes it will be entitled to an exemption under section 3(a)(1) of the Act since it and all of its public utility subsidiaries will be predominantly intrastate in character and will carry on their business substantially in a single State, Ohio, in which each of them is organized. North will file for such exemption immediately following the consummation of the proposed transactions pursuant to Rule 2 under the Act.

CEI was incorporated under the laws of the State of Ohio on September 29, 1892. It is engaged in the production, transmission, distribution, sale of electricity at retail and sale and purchase of electricity at wholesale, primarily in five counties of Northeast Ohio. CEI serves a population of approximately 1,850,000 persons.

TE was incorporated under the laws of the State of Ohio on July 11, 1901. It is engaged in the production, transmission, distribution, sale of electricity at retail and at wholesale and purchase of electricity at wholesale, in ten counties of Northeast Ohio. TE serves a population of approximately 750,000 persons.

CEI and TE have entered into an Agreement and Plan of Reorganization dated as of June 25, 1985 (the "Reorganization Agreement"). In accordance with the Organization Agreement and the agreements of merger to be entered into pursuant thereto (the "Merger agreements"), the holders of CEI Common Stock and the holders of TE Common Stock will be come holders of common stock of North ("North Common Stock"), and North will become the sole holder of CEI Common Stock and TE Common Stock. CEI and TE will each continue to operate as an "electric utility company" within the meaning of section 2(a)(3) of the Act, and their electric utilities operations will represent the predominant part of the business of the North system. The Reorganization Agreement and the Merger Agreements provide that at the effective time (as defined below) (a) East will be merged into CEI, all of the issued and outstanding shares of CEI Common Stock equal to the aggregate number of shares of CEI Common stock issued and outstanding immediately prior to the Effective Time will be converted into 1.11 shares of North Common Stock, and (b) West will be merged into TE, all of the issued and outstanding shares of West will be converted into and become that number of shares of TE Common stock equal to the aggregate number of shares of TE Common Stock issued and outstanding immediately prior to the Effective Time and each share of TE Common Stock issued and outstanding at the effective Time will be converted into one share of North Common Stock. All shares of North Common Stock outstanding immediately prior to the Effective Time owned by CEI and TE will be cancelled. The Merger Agreements provide that all other outstanding securities of CEI and TE shall be unaffected and remain outstanding after the Effective Time. The "Effective Time" will be the time when the Merger Agreements and other documents required under Ohio law

shall have been duly filed with the office of the Secretary of State of Ohio.

The Merger Agreement also provides that at the Effective Time the holders of CEI Common Stock and the holders of TE Common Stock will cease to have any rights as shareowners of CEI and TE, respectively, except for dissenters' rights. Any record holder of CEI Common Stock or TE Common Stock as of October 4, 1985 (the "Record Date") whose shares are not voted in favor of the adoption and approval of the Reorganization Agreement and the Merger Agreement is entitled, if the transactions contemplated by the Reorganization Agreement and the Merger Agreements are consummated, to be paid the fair cash value of the shares held by him or her on the Record Date, provided, among other things, that the shareowner serves a written demand upon the issuer of such shares, not later than ten days after the date on which the vote on the Reorganization Agreement and the respective Merger Agreement was taken at the meeting of the shareowners. After the Effective Time Certificates representing CEI Common Stock and TE Common Stock as to which dissenters' rights have not been exercised, will be exchangeable for certificates for shares of North Common Stock.

The Reorganization Agreement and the Merger Agreements will be submitted to a vote of common shareowners at special meetings of shareowners of CEI and TE, respectively, after a solicitation of proxies made pursuant to Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended. Pursuant to the Ohio General Corporation Law, the affirmative vote of the holders of 66⅔% of the outstanding shares of CEI Common Stock and TE Common stock, respectively, is required to approve and adopt the Reorganization Agreement and the respective Merger Agreements. Adoption of the Reorganization Agreement and the Merger Agreements by the holders of CEI Common Stock and the holders of TE Common Stock will also constitute approval by such holder of:

(i) The Article of Incorporation of North (including the authorized capital of North which will consist of 150,000,000 shares of common stock, without par value, and 5,000,000 shares of serial preferred stock, without par value, and the eilmination of any preemptive rights as to both the common stock and the serial preferred stock) that will be in effect as of the Effective Time; and

(ii) The Regulations of North (including a provision for the indemnification of any director or officer or any former director or officer of North against expenses, including attorney's fees, judgments, fine and amount paid in settlement, actually and reasonably incurred by him or her by reason of the fact that he or she is or was a director or officer of North in connection with any threatened, pending or completed action, suit or proceeding to the full extent and according to the procedures and requirements set forth in any applicable law as the same may be in effect from time to time) that will be in effect as of the Effective Time.

The Boards of Directors of CEI and TE approved the Reorganization Agreement and the transactions contemplated thereby on June 25, 1985. Prior to such approval, Morgan Stanley & Co. and Merrill Lynch Capital Markets, Merrill Lynch, Pierce, Fenner & Smith each delivered written opinions that the exchange ratios provided for in the Reorganization Agreement and the Merger Agreements are fair, from a financial point of view, to the shareowners of CEI Common Stock and TE Common Stock, respectively.

The Boards of Directors and managements of CEI and TE represent that the proposed transaction will better enable them to achieve more reliable service to customers at costs lower than would otherwise be the case and more favorable results for investors; that the consolidated companies will have increased financial stability and strength due to the pooling of their common stock equity; that the proposed transactions will enable CEI and TE to achieve savings and efficiencies by consolidating their management, manpower and technical expertise; and that the proposed transactions also will enable the consolidated companies to achieve operating savings by the increased coordination of the economic use of their facilities through the implementation of an equitable program of capacity rationalization, joint economic dispatch of electricity and the intergrated operation coordinated maintenance of generating facilities.

The fees, commissions and expenses to be paid or incurred by CEI, North and TE in connection with the proposed transaction, including the reorganization, merger, solicitation of proxies, registration under the Securities Act of 1933, as amended, and other related matters are estimated to be $3,672,266, which includes legal fees of $1,465,000. In the event the transactions are consummated investment bankers will be paid an additional $6,294,000.

The applicants state that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 19, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on North at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for a hearing must identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-21039 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22357; File No. SR-MSE-85-5]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to a Reduction in Order Exposure Time

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1985, the Midwest Stock Exchange, Inc. ("MSE"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposed to reduce the time frame between the time a market order is entered into Midwest's Guaranteed Execution System (MAX) and the time it is automatically executed from 30 to 15 seconds ("order exposure time"). The 30 second time frame was established with

the implementation of the MAX System.[1] The MSE is proposing to amend its procedures on a one year pilot basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The MSE's MAX system establishes the price at which a MAX market order will be executed at the time of order entry. The system, however, currently will not automatically execute the order until 30 seconds has elapsed. This allows the specialist time to expose the order to the market and obtain a better execution if available. Any changes to the best bid and offer during the order exposure time could cause the trade to print on the consolidated tape at a price outside the market. Reducing the order exposure time from 30 to 15 seconds will lessen the chance for a trade to be reported outside the market, but still allow time for the specialist to expose the order to the market.

(2) *Statutory Basis.* The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in that it is designed to facilitate the prompt and accurate reporting of transactions on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission understands that MAX orders on the MSE will continue to be subject to all MSE rules governing the conduct of its auction market. In this regard, the Commission expects that MAX orders will be executed pursuant to the MSE's rules governing the priority of bids and offers on the floor (*e.g.*, MSE Article XX, Rule 17). The Commission, however, believes the proposed reduction of MAX's exposure period theoretically could diminish opportunity for MAX orders to interact with interest on the MSE floor. For this reason, the Commission believes that approval of the proposed rule change on a pilot basis is appropriate. In this regard, the Commission will be conducting discussions with the MSE during the course of the pilot to assess the effect of the 15 second exposure period.[2]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the MSE's reduction of order exposure time from 30 to 15 seconds will be implemented on a one year pilot basis, and is similar to the pilot program already implemented by the PSE for its SCOREX system. In addition, the Commission will continue to monitor the MSE pilot, in conjunction with its assessment of the PSE's pilot, in order to assess the appropriateness of a 15 second order exposure period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1985.

It is therefore ordered pursuant to section 19(b)(2) of the Act, that the proposed rule change above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21040 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

August 27, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ICM Property Investors
Common Stock, $1.00 Par Value (File No. 7-8582)
Sunshine Mining Co.
Cumulative Redeemable Preferred (File No. 7-8583)
Universal Development Corporation
Depository Receipts (File No. 7-8584)
Foothill Group, Inc.

[1] *See* Securities Exchange Act Release No. 18742, 47 FR 22438, (May 24, 1982) (SR-MSE-82-5); and Securities Exchange Act. Release No. 19629, 48 FR 14105, (April 1, 1983) (MSE-83-3).

[2] Last year, the Pacific Stock Exchange, Inc. ("PSE") implemented a one year pilot to decrease the time during which a specialist may remove an order from its securities communication, order routing, and execution system ("SCOREX") for manual execution from a 30 second exposure time to 15 seconds. *See* Securities Exchange Act Release No. 2139, September 17, 1984; 49 FR 57199 (September 21, 1984.) The PSE stated that if a specialist elects to remove an order from the systems for manual execution, the specialist will be obligated to provide a price which is at least as good as the price assigned by the system at the time the order is removed. The Commission noted in its order that it would be conducting discussions with the PSE during the one year pilot program to assess the effect of the 15 second exposure period.

Class A Common Stock, No Par Value (File No. 7–8585)
Nord Resources Corp.
Common Stock, $0.01 Par Value (File No. 7–8586)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 18, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with The Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Folllowing this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–21041 Filed 9–3–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 27, 1985.

The above named national securities exchange bas filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Staley Continental Inc.
Common Stock, $.01 Par Value (File No. 7–8587)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 18, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenace of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–21042 Filed 9–3–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14694; 812–5887]

Allied Capital Corp. et al.; Application for an Order Granting Exemptions Permitting the Proposed Transactions

August 28, 1985.

Notice is hereby given that Allied Capital Corporation ("Allied"), 1625 Eye Street, NW., Washington, D.C. 20006, a registered, close-end, internally-managed investment company, Allied Advisory, Inc. ("Advisory"), a District of Columbia corporation wholly-owned by Allied, Allied Management Partners ("Management Partners") and Allied Venture Partnership ("Venture Fund"), both entities proposed to be organized as District of Columbia limited partnerships, and George C. Williams, David Gladstone, and Jonathan J. Ledecky ("Individual Applicants"), officers of Allied, (collectively all of the above referred to hereinafter as, "Applicants"), filed an application on July 2, 1984, and amendments thereto on June 4, July 12, and August 19, 1985, for an order of the Commission, pursuant to Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 12(d)(1) and 17(a), and permitting, pursuant to Section 17(d) and Rule 17d–1 thereunder, to the extent necessary, the establishment of and participation by Applicants and certain other affiliates in a venture capital limited partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicants state that Allied, originally organized in 1958 as a small business investment company ("SBIC"), is now a holding company over 95% of the assets of which consist of all of the outstanding capital stock of the following four subsidiaries, each of which is also registered under the Act as a closed-end management investment company: Allied Investment Corporation ("Investment"), licensed by the Small Business Administration ("SBA") as an SBIC under the Small Business Investment Company Act of 1958 ("SBI Act"); Allied Financial Corporation, licensed by the SBA as an SBIC under the SBI Act to operate under section 301(d) thereof as a company engaged primarily in making loans to qualified small business enterprises owned by disadvantaged persons (together with Investment, "SBIC Subsidiaries"); Allied Lending Corporation, a participating lender in the SBA's guaranteed lending program under section 7(a) of the SBI Act; and Allied Development Corporation, a recognized lender under the business and industrial loan program of the Farmers Home Administration.

Applicants represent that Allied's SBIC Subsidiaries are principally engaged in the business of making venture capital type investments, principally in the form of loans with equity features, in small business concerns as contemplated by and defined in the SBI Act. Applicants state that, as a matter of prudence, Allied's board of directors rarely approves a commitment of its resources in a single transaction of more than about $500,000 ("Prudential Limit") while transactions in which Allied becomes involved are increasingly larger than the Prudential Limit. As a result, the application indicates that Allied invites the participation of other venture capital institutional investors in any proposed investment transaction originated by it which is in excess of the Prudential Limit, and where Allied would be precluded from consummating such larger transaction unless outside participation were obtained; similarly, Allied is frequently invited to participate in venture capital transactions originated by others. Applicants state that the board of directors of Allied has concluded that the capital base limitation, as well as the limitations on its investment flexibility described in the application, can best be overcome through the organization of and institutional placement of participations in a venture capital limited partnership.

Applicants propose to organize the Venture Fund as a limited partnership. The general partner would be Management Partners, which would contribute 1% of the Venture Fund's capital; the limited partners would be institutions and other accredited investors who would contribute to the Venture Fund not less than about

$1,000,000 each and not more than $40,000,000 nor less than $30,000,000 in the aggregate. Applicants state that Management Partners, would also be organized as a limited partnership; its general partner would be Advisory, with a 50% participation in Management Partners' capital, income, gains and losses, and the limited partners would be the Individual Applicants with the other 50% participation in Management Partners' capital, income, gains and losses.

The application indicates that Advisory would also act as the Venture Fund's investment adviser and, as such, it would be paid quarterly an advisory fee equal to the sum of its expenses directly allocable to the Venture Fund plus the portion of its general expenses (net of fees received) equal to the ratio of the value of the Venture Fund's assets to the sum of the value of the consolidated assets of Allied and the value of the assets of the Venture Fund, but not in excess of 2.5% per annum, cumulatively, of the aggregate capital contributed to the Venture Fund. Applicants state that for Advisory to fund its proposed capital contribution to Management Partners so as to enable the latter to fund its proposed capital contribution to the Venture Fund, Allied would be required to invest from $51,515 (50% of 1% of $30,303,030) to $202,020 (50% of 1% of $40,404,040) of fresh capital into Advisory.

Applicants represent that the Venture Fund's partnership agreement will provide that all net investment income would be allocated and distributed to the partners in accordance with their capital contributions (99% to the limited partners and 1% to the general partners once the Venture Fund is fully capitalized); cash proceeds from the disposition of investments would be distributed in accordance with an order of priority that would permit the limited partners to recover their investment before any distribution of proceeds from the disposition of investments will be made to the general partner. Thereafter disposition proceeds would be distributed 80% to the limited partners and 20% to the general partner. Applicants further state that net gains from the disposition of investments in any year would be allocated to the accounts of the partners pro rata to their capital contributions to the extent that the capital account of any partner is, or as a result of that year's distributions would become, negative, and thereafter in the same proportions as are made that year's distributions. Any net realized losses would be allocated to the accounts of the partners pro rata to their capital contributions to the extent that the capital account of any partner is, after giving effect to that year's distributions, positive, and thereafter to the general partner.

Applicants state that three institutional shareholders of Allied (two of which are "affiliates" of Allied by reason of their, or their affiliates', holding more than 5% of Allied's outstanding shares) will each participate in the Venture Fund as limited partners. Applicants also state that a number of directors and officers of Allied including Individual Applicants will form a separate partnership ("Directors' Partnership") for the purpose of investing in the Venture Fund as a limited partner with an aggregate committed capital contribution of approximately $1,000,000. Applicants indicate that the Venture Fund will have an advisory committee composed of senior management personnel of the Venture Fund's institutional limited partners (excluding representatives of those which are also shareholders of Allied).

Applicants represent that the Venture Fund's investments will be essentially of the same nature as the investments made by Allied; furthermore, it is contemplated that the Venture Fund would in most cases co-participate in investments with Allied. Applicants also represent that the board of directors of Allied, which is identical in composition to the board of directors of Advisory, would have substantial discretion in the allocation of investment opportunities between Allied on the one hand and the Venture Fund on the other. Applicant proposes, however, that such discretion be constrained by the following rules: (i) The board of directors will determine in the first instance the extent to which Allied and the Venture Fund combined will participate in any investment opportunity originated by Allied and the extent to which participations therein will be offered to others, or to which Allied and the Venture Fund combined will participate in investment opportunities originated by others in which Allied is invited to participate; (ii) all investment opportunities which involve straight debt instruments only will be allocated exclusively to an Allied investment company subsidiary; (iii) in principle, any investment involving an equity feature, if undertaken, would be allocated to the Venture Fund and to Allied in equal shares; (iv) where the magnitude of the proposed investment is such that half of it would exceed Allied's then applicable Prudential Limit, a relatively larger portion of the investment may be allocated to the Venture Fund, up to its limit for exposure in a single risk (normally about $1,000,000, and in no event more than 5% of the Venture Fund's contributed capital); (v) in those few situations where the current return component of the investment is relatively low or nonexistent and the equity component is relatively greater, the board of directors may give consideration to Allied's yield requirements and, based on such consideration, allocate a relatively greater share, or all, of such investment to the Venture Fund and a relatively smaller share, or none, to Allied. Investments allocated exclusively to the Venture Fund would not, however, exceed approximately 20% of the Venture Fund's assets; (vi) conversely, in those few situations where the current return component of the investment is relatively high and the equity component is relatively less, the board of directors may give consideration to the principal investment objective of the Venture Fund to achieve long-term capital appreciation and, based on such consideration, allocate a relatively greater share, or all, of the investment to Allied; (vii) situations may arise, although they are not expected to arise frequently, in which the issuer of the investment does not come within the technical SBI Act definition of a small business concern. In that event, the investment, if considered desirable, would be allocated exclusively to the Venture Fund. Any investment of this type would be subject to the 20% limit referred to in (v); (viii) once the Venture Fund has become fully invested, no investments will any longer be allocated to the Venture Fund; (ix) there will not be allocated to the Venture Fund any participation in an investment in an entity in which Allied, but not the Venture Fund, has previously invested without the approval of the Venture Fund's advisory committee; (x) the basis of participation, including timing and price, on which the Venture Fund participates in the proposed investment shall be identical to the basis of participation of Allied. For this purpose, the payment to Advisory by any participant in the transaction other than the Venture Fund, Allied or any subsidiary of Allied of any reasonable fee shall not be considered as differentiating the basis of the Partnership's participation from that of Allied; (xi) Allied and the Venture Fund will exercise any warrants, conversion privilege, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by

both Allied and the Venture Fund in a transaction in which they both participated, only at the same time and in amounts proportionate to their respective holdings of such rights; (xii) Allied and the Venture Fund will see, exchange, or otherwise dispose of an interest in any security of a class held by both Allied and the Venture Fund as a result of a transaction in which they both participated only at the same time and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by Allied or the Venture Fund is made in such market.

Applicants represent that any decision to allocate any equity-type investment opportunity between Allied and the Venture Fund otherwise than in equal shares, to the extent permitted by the foregoing rules, or to make any disposition of any security held by both, would be made by a majority of Allied's board of directors, including a majority of Allied's directors who have no personal interest in the Venture Fund. Applicants further represent that the board of directors would, *inter alia*, record any such decision in its minutes and would preserve in its records, for such periods as records are required to be maintained under section 31(a) of the Act, the basis on which such decision was made.

Applicants state that the Management Partners and the Venture Fund would be considered to be investment companies for purposes of section 12(d)(1) of the Act; therefore, the acquisition by Allied Advisory of its general partnership interest in Management Partners and Management Partners' acquisition of its general partnership interest in the Venture Fund would violate section 12(d)(1) of the Act. Accordingly, Applicants seek an exemption from that Section, pursuant to section 6(c) of the Act, to permit Allied to invest not more than $202,020 in the common shares of Advisory; Advisory to invest such amount in the general partnership interest of Management Partners; and Management Partners to invest no more than $404,040 in the general partnership interest of the Venture Fund.

Applicants have also requested relief, pursuant to section 17(b) of the Act, from the provisions of section 17(a) to permit Allied's investment in Advisory and Advisory's investment in Management Partners. Moreover, Applicants have sought approval under section 17(d) of the Act and Rule 17d–1 thereunder to permit certain joint transactions, including the advisory agreement between Advisory and the Venture Fund, the investments by the Individual Applicants in Management Partners, the investment by the Directors' Partnership in the Venture Fund, the investments by Allied affiliates as limited partners in the Venture Fund, and the co-investments by Allied and the Venture Fund.

Applicants submit that under the terms and conditions proposed it is appropriate to grant the requested relief to permit the creation and operation of the Venture Fund as described in the application. Applicants further submit that the granting of the requested exemptions will benefit shareholders because, in light of the profit potential for Allied compared with the small and limited risk to which it would be exposed, the proposed program, including the expense sharing arrangements in Advisory and the profit allocation to Management Partners, would be highly advantageous to those shareholders. Applicants state that Allied's exposure would be limited to its capital contribution or a maximum of $202,020 out of Allied's consolidated assets of approximately $56,592,000. Applicants further assert that since Management Partners will share in certain profits of the Venture Fund disproportionately to its capital contribution and Advisory would receive 50% of such profits, Allied's return on its small investment could be very substantial.

Applicants state that by permitting the Individual Applicants to purchase a 50% limited partner interest in Management Partners, on a basis exactly equal, in monetary terms, to the investment made by Advisory, the controlled company of Allied, the Venture Fund would permit them to share to the extent of 10% in the realized capital gains of the Venture Fund. Applicants concede that, because of their potential participation, through Management Partners, in gains achieved on the Venture Fund's investments, Individual Applicants may be subject to potential conflicts of interest. Applicants contend, however, that the potential for conflicts of interest will be mitigated by the following conditions: (i) Allied will undertake not to authorize or award any stock options beyond those authorized under its presently effective stock option plan; (ii) Applicants undertake that at least annually, Allied's board of directors will review the interest in the equity of Allied, including shareholdings and holdings of theretofore issued stock options, of those of its executives who participate in the profits of the Venture Fund, with a view to assuring, through the issuance of additional stock options, that the executives' interest in Allied is commensurate, to the maximum possible extent, with their interest in the Venture Fund. Finally, Applicants assert that any disproportionate allocation of investment opportunities and any disposition of investments must be approved by Allied directors who have no interest in the Venture Fund.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–21071 Filed 9–3–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23805; 70–7120]

Metropolitan Edison Co.; Supplemental Notice of Proposal To Finance Pollution Control Facilities

August 26, 1985.

Metropolitan Edison Company, ("Met–ED"), 2800 Pottsville Pike, Muhlenberg Township, Pennsylvania 19605, a subsidiary of General Public Utilities ("GPU"), a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50 (a)(5) thereunder.

On July 31, 1985 a notice ("HCAR No. 23778") was issued by the Commission in this proceeding stating that Met-Ed proposes to issue an aggregate of up to $35,000,000 principal amount of its first mortgage bonds ("New Bonds") to the Northampton County Industrial Development Authority ("Authority"). The New Bonds will be delivered to the Authority in satisfaction of Met-Ed's obligation to pay the purchase price of certain pollution control facilities

presently being constructed in connection with the Portland electric generating station.

It was stated by Met-Ed that the Authority Bonds would have a term of 30 years. Met-Ed has now amended this term to not less than 10 nor more than 30 years, subject to earlier redemption, retirement, or repurchase upon the occurrence of certain events. The Authority Bonds will be subject to optional redemption by the Authority, at the direction of Met-Ed, in whole or in part. If the Authority Bonds have a term of 10 years, such optional redemption may occur on and after September 1, 1990. If the Authority Bonds have a term of 30 years, such optional redemption may occur on and after September 1, 1995.

The amended application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 17, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21072 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22364; File No. SR-MSE-85-8]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Stock Exchange, Inc., Relating to the Procedure for Bids and Offers on "Issued" Basis

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1985, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XX, Rule 10 of the Rules of the Midwest Stock Exchange is hereby amended as follows: Additions italicized—[Deletions Bracketed]

Procedure for Bids and Offers on "Issued" Basis

Rule 10. Bids and offers in stocks admitted to dealings on an "issued" basis shall be made only as follows, and may be made simultaneously as essentially different propositions, but when made without stated conditions shall be considered to be "regular way":

"Cash"

(a) "Cash" i.e., for delivery on the day of the contract;

"Regular Way"

(b) "Regular way" i.e., for delivery on the fifth full business day following the day of the contact;

"Seller's Option"

(c) "Seller's option," i.e., for delivery within the time specified in the option, which time shall not be less than six (*6*) full business days nor more than *sixty (60)* [30] days following the [date] *day* of the contract; except that the Exchange may provide otherwise in specific issues of stocks or classes of stocks[;]. [and except that],

"Next Day"

(d) *"Next Day," i.e., for delivery on the next business day following the day of the contract. For purposes hereof, "next day" may also include deliveries within the time specified in the contract which time may include either the second, third or fourth full business day following the day of the contract.*

O[o]n the second, third, fourth and fifth full business days preceding the final day for subscription, bids and offers in rights to subscribe shall be made only "next day," i.e., for delivery on the next business day following the [date] *day* of the contract and shall be made only for "cash" on the day preceding the final day for subscription except as otherwise designated by the Committee on Floor Procedure[;].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to codify the current MSE policy of allowing trades to be effected on the MSE floor for settlement periods other than "cash", "regular way" or "seller's option".

The current rule 10 provides that contracts resulting from transactions effected on the MSE floor may be settled in one of three ways. First, the transaction may be settled for "cash", which indicates that delivery occurs on the day of the contract. Second, the transaction may be settled "regular way," which indicates that delivery will occur on the fifth full business day following the day of the contract. Third, the transaction may be settled "seller's option," which indicates that delivery will occur within the time period specified in the option, which time shall be no less than 6 full business days nor more than 30 days following the day of the contract.

Rule 10 also contains an exception providing for "next day" settlement (for delivery on the day following the day of the contract) for contracts in rights on the second, third, fourth and fifth full business days preceding the final day for subscription, and for "cash" settlement on the day immediately preceding the final day for subscription.

The proposed changes are the result of requests made to the MSE by several members and member organizations, to provide greater flexibility for trades with settlement periods other than the traditional periods cited in existing Rule 10.

Particular interest has been expressed in "next day" settlement and settlement occuring on the second, third and fourth business days following the day of the contract in respect to "Issued" securities and not merely subscription rights. These same members and member organizations believe that additional settlement periods are becoming more useful in furthering the investment objectives of certain of their customers. In the past MSE's policy was to allow

these type of trades on an exception basis only.

With increased emphasis on sophisticated trading programs conducted by certain institutional investors, and the fact that other exchanges currently allow or are proposing to allow additional settlement periods, the MSE believes that it is appropriate at this time to provide in its rules additional time periods during which trades effected on the MSE may settle as a matter of course.

In addition, the proposed rule changes would expand the permissible "seller's option" period from 30 days to 60 days. This expanded period will also provide members and member organizations with greater flexibility in developing their investment strategies and is consistent with other exchanges' "seller's option" rules.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it helps remove an impediment to a free and open market and will also "foster cooperation and coordination with persons engaged in settling and facilitating transactions in securities."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21073 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22368; File No. SR-MSRB-85-18]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Membership on the Board

The Municipal Securities Rulemaking Board on August 16, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing amendments to rule A-3 relating to membership on the Board (hereafter referred to as the "proposed rule change"), as follows: *

Rule A-3. Membership on the Board

(a) Through (b) No change.

(c) Nomination and Election of Members.

(i) Members shall be nominated and elected in accordance with the procedures specified by this rule. All members of the Board shall be elected for terms of three years, so that the terms of office of one-third of the whole Board shall expire each year. The terms of office of all members of the Board shall commence on October 1 of the year in which elected and shall terminate on September 30 of the year in which their terms expire. No member of the Board [, other than a public representative elected to fill a vacancy on the Board who has served for less than 18 months,] may succeed himself in office and no broker-dealer representative or bank representative may be succeeded in office by any person associated with the municipal securities broker or municipal securities dealer with which such member was associated at the expiration of his term.

(ii) through (x) No change.

(d) No change.

(e) Vacancies. Vacancies on the Board shall be filled by vote of the members of the Board, subject to the Commission's power of approval referred to in paragraph (c) of this rule with respect to public representatives. [Except as provided in subparagraph (c)(i) of this rule,] Any person so elected to fill a vacancy shall serve for the term, or any unexpired portion of the term, for which such person's predecessor was elected. For purposes of this rule, the term "vacancies on the Board" shall include any vacancy resulting from the resignation of any person duly elected to the Board prior to the commencement of his or her term.

(f) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The 15 initial members of the Board were appointed by the Securities and Exchange Commission, pursuant to section 15B(b)(1) of the Act, for two-year terms ending September 4, 1977. In 1977, pursuant to a Congressional mandate to establish procedures for the nomination and election of future members, the Board adopted rule A-3 which provided, in part, that five of the initial Board members were to serve a total of three

* [Brackets] indicate deletions.

years and five others were to serve a total of four years. With respect to the nomination of new members, rule A–3 stated that members of the Board shall be elected for terms of three years and that no member of the Board may succeed himself in office. In 1982, the Board, with Commission approval, amended rule A–3 to provide an exception from this provision for public members filling a vacancy on the Board who have served for less than eighteen months.

The Board continues to believe, as it did in 1982, that the familiarization period for public members can be a lengthy one before such members are sufficiently familiar with the regulatory process and the issues which the Board must address. With three years of experience with the current provisions of rule A–3, however, the Board now believes that other factors weigh against the retention of the reelection provision. The Board is concerned that any member who serves for longer than a three year term may be viewed as having more knowledge and experience in Board matters than the other members. While this may not, in fact, be true, the Board believes that even an appearance of one Board member having a special influence over Board deliberations may upset the balance on the Board prescribed in Section 15B of the Act and undermine the collegiality of the Board. Moreover, the Board believes it may not reasonably expect any Board member to commit the personal and professional time and resources necessary to participate actively in the Board's rulemaking process for over a three year period. Since public members are not even associated with the municipal securities industry, an expectation that such individual should devote additional time to Board activities appears to be inappropriate. Thus, the Board has concluded that this reelection provision should be deleted.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(B) of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Section 15B(b)(2)(I) establishes the Board's general authority to adopt rules relating to the operation and administration of the Board. Section 15B(b)(2)(B) of the Exchange Act authorizes the Board to establish fair procedures for the nomination and election of members of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board, therefore, believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

August 28, 1985.

[FR Doc. 85–21074 Filed 9–3–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22361; File No. SR–OCC–85–14]

Self-Regulatory Organizations; Options Clearing Corp.; Proposed Rule Change

The Options Clearing Corporation ("OCC") on August 22, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to authorize OCC to issue, clear and settle standardized options on the European Currency Unit ("ECU"),[1] which have been proposed for trading by two securities exchanges.[2] The Commission is publishing this notice to solicit public comment on the proposal.

OCC's proposal would make several amendments to OCC By-Law Article XV to accommodate ECU options. Several definitions in Section 1 would be amended. Specifically, the term "foreign currency" now would include the ECU. ECUs would be added to the list of underlying foreign currencies for purposes of calculating premiums. Belgium would be designated the "country of origin" for ECUs. The definition of "foreign government restrictions" would be amended to include restrictions imposed by the European Economic Community. Finally, the "unit of trading" for ECU options would be set at 62,500 ECUs.

OCC By-Law Article XV, section 4 authorizing OCC adjustments to the terms of OCC foreign currency options in extraordinary events, would be amended to enable OCC to adjust the terms of ECU options if the monetary authorities of the European Economic Community issue a new currency to replace the ECU, or if those authorities officially alter the ECU exchange rate or characteristics. The proposal states further that OCC will adjust ECU options terms only in exceptional cases when OCC's Securities Committee determines that fairness to holders and writers of ECU options requires it. OCC will not adjust ECU options to reflect periodic adjustments to the weight or identity of the ECU's component currencies.[3]

---

[1] The ECU is the monetary unit of the European Monetary System, representing a weighted average of the currencies of specified members of the European Economic Community. OCC's proposal would adopt this definition in OCC By-Law Article XV, Section 1.

[2] *See* File Nos. SR–PHLX–85–10 and SR–PSE–85–16, proposing to trade ECU options on the Philadelphia Stock Exchange and the Pacific Stock Exchange, respectively.

[3] The European Economic Community's monetary authorities review the ECU's composition every five years or more frequently if there is a particularly

Continued

OCC's proposal also would add an Interpretation and Policy to OCC's By-Law Article XV, section 4. That Interpretation and Policy would state that OCC normally will not adjust the terms of any foreign currency option in response to devaluations or revaluations of the underlying foreign currency. OCC represents in its filing that the proposed Interpretation and Policy incorporates a long-standing policy which already is included in OCC's foreign currency options disclosure documents.

Finally, OCC's proposal states that ECU option exercises would be settled like other foreign currency option exercises, with foreign currency deliveries generally in the country of origin. Thus, because the proposal designates Belgium as the country of origin for the ECU, OCC under OCC Rule 1606 will deliver ECUs (for settlement of ECU option exercises) to the Receiving Clearing Member's bank in Belgium, with deliveries only on days Belgian banks are open for business. Alternatively, the Receiving Clearing Member could establish a "multi-currency account" in another country in accordance with OCC Rule 1607.

OCC believes that the proposal is consistent with the Act in general, and with Section 17A of the Act in particular, because it facilitates the prompt and accurate clearance and settlement of ECU options. OCC states that the proposal does so by applying to ECU options substantially the same clearing system and rules currently in use by OCC for other foreign currency options. That system, in OCC's view, already has been proven safe and efficient.

OCC requested accelerated approval of its proposal to the extent necessary to allow OCC to issue, clear and settle ECU options at the latest by the time the Commission approves any exchange proposal to trade ECU options. OCC believes that accelerated approval would be justified because the proposal merely would implement any Commission approved program for trading ECU options, applying to ECU options OCC's existing clearance and settlement procedures.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC and at OCC's principal office.

large movement in a component currency, or if there is a change in European Economic Community membership.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission invites public comment on the proposal. Comments should refer to File No. SR-OCC-85-14. Please file six copies of comments with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, by September 25, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 27, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21078 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22360; File Nos. SR-PCC-85-03 and SR-PSDTC-85-04]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co.; Order Approving Proposed Rule Change

Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") (together, "PCC/PSDTC") on June 3, 1985, submitted proposed rule changes to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. Amendments to the proposals were filed on July 2, 1985. Notice of the proposal was published in the **Federal Register** on July 23, 1985 (50 FR 30039). The Commission received no public comment on the proposal. This Order approves the proposal.

PCC/PSDTC's proposed rule changes, as amended, require bank participants to provide PCC/PSDTC with quarterly financial statements already filed with the banks' respective state or federal banking authorities.[1] PCC/PSDTC currently require financial reports from broker-dealer participants, but not bank participants. Under the proposals, bank participants will be required to file with PCC/PSDTC quarterly balance sheets, income statements and statements of changes in equity capital.[2]

[1] Because PCC/PSDTC bank participants already prepare these reports and file them with appropriate state or federal regulatory authorities, PCC/PSDTC believe that the submission of these reports to PCC/PSDTC would not impose any significant additional regulatory or administrative burdens on bank participants.

[2] PCC/PSDTC are authorized to require participants to provide information relating to their financial condition under PCC Rule II, Section 4(b); PCC Rule XIII, Section 2; PSDTC Rule 2, Section 4(b); and PSDTC Rule 10, Section 2. These provisions also generally require PCC/PSDTC to hold that information in the same degree of confidence as may be required by law or the rules and regulations of the appropriate regulatory body having jurisdiction over PCC/PSDTC or the member or applicant.

PCC/PSDTC believe that the proposals are consistent with Section 17A of the Act because they would enable PCC/PSDTC to improve their monitoring processes and therefore would facilitate PCC/PSDTC's safeguarding of securities and funds. More specifically, PCC/PSDTC believe that requiring bank participants to submit quarterly financial reports will enable PCC/PSDTC to improve their evaluation of the financial risks faced by PCC/PSDTC and their participants.

For the following reasons, the Commission believes that the proposals are consistent with the Act and should be approved. The Commission believes that clearing agencies must gain as much information as possible, consistent with sections 17A(b)(3)(F) and 17A(b)(4)(B) of the Act, about the financial and operational status of each applicant and participant, including information concerning business activities outside the clearing agency environment and changes in business mix.

One way clearing agencies can improve their applicant evaluation and participant monitoring programs is by enhancing their information collection mechanisms. Indeed, some clearing agencies have taken important steps in this direction. For example, the National Securities Clearing Corporation ("NSCC") and PCC have adopted, among other things, extensive "Standards of Financial Responsibility and Operational Capability" (the "Standards"), which essentially set out the clearing agencies' membership qualification guidelines.[3] The clearing agencies have tailored the Standards to fit their respective systems, participant communities and information disclosure concepts. While the Standards generally require information disclosure on an exception basis, they also require some periodic disclosure of specific information. The Commission recognizes that clearing agency use of both information collection methods help to ensure against unreasonable financial exposure from participant default. Those methods, however, must be fair and narrowly focused. Moreover, they must not impose on applicants and

[3] *See* File Nos. SR-NSCC-82-5 and 82-13 (approved respectively in Securities Exchange Act Release Nos. 18744 (May 17, 1982), 47 FR 22265 (May 21, 1982) and 19191 (October 29, 1982), 47 FR 50597 (November 8, 1982)); and SR-PCC-82-7 (approved in Securities Exchange Act Release No. 20286 (October 14, 1983), 48 FR 48732 (October 20, 1983)).

participants unnecessary or unreasonable reporting burdens.[4]

The Commission agrees with PCC/PSDTC that the proposals meet these tests. They are fair because all bank participants would be required to file periodic financial reports. Indeed, now all PCC/PSDTC participants will be required to file appropriate financial reports. The proposals are narrowly focused because they specifically and unambiguously identify each item that must be disclosed and reported to PCC/PSDTC. Finally, the proposals do not create unreasonable or unnecessary reporting burdens. The proposals merely require bank participants to forward to PCC/PSDTC copies of information already compiled and prepared to comply with existing state and federal bank regulatory requirements. Yet, without the proposals, PCC/PSDTC would be unable to obtain the reported information.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act in that the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in PCC/PSDTC's custody or control or for which they are resonsible.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that PCC/PSDTC's proposed rule changes (SR-PCC-85-3 and SR-PSDTC-85-4) be, and they hereby are, approved.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

Dated: August 27, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21075 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22365; File No. SR-PSE-85-22]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc., Relating to Member Organizations' Fidelity Coverage

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1985, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Rules of the Board of Governors of the Exchange currently require all PSE member firms to maintain brokers' blanket bonds and fidelity bonds which provide specified dollar amounts of coverage for their respective partners, officers and employees. The Exchange is proposing to amend its bonding requirements by adopting new sections 7 and 8 of PSE Rule IX and rescinding the existing language of those sections.

The proposed new sections 7 and 8 of Exchange Rule IX would: (i) eliminate the Exchange's existing bonding requirements with respect to organizations which do not do business with the public or clear transactions for other members, and which are not subject to the bonding requirements of another self-regulatory organization; (ii) eliminate the separate categories of "brokers' blanket bond" and "fidelity bond" and require PSE member organizations to maintain fidelity bond coverage only; (iii) require that fidelity bond coverage extend to limited partners who are also employees, to outside organizations which provide electronic data processing services and to the handling of United States Government securities in bearer form; and (iv) revise the schedule of required minimum coverage amounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The majority of PSE member organizations are also members of one or more other self-regulatory organizations, and thus are also subject to those organizations' respective bond coverage requirements. The proposed amendment of PSE Rule IX, sections 7 and 8, will exempt from the Exchange's bonding requirements a member organization which belongs to another self-regulatory organization which has been designated by the Commission as the member's examining authority. This exemption will relieve such member organizations from possible duplicative costs and administrative burdens. The bonding requirements would also not be applicable to member organizations which neither transact business with the public nor clear transactions for other Exchange members or member organizations. The PSE does not believe that it is necessary to require such organizations to be covered by fidelity bonds. Furthermore, other national securities exchanges generally do not require members with similarly limited business activities to maintain fidelity bond coverage.

The other proposed amendments to Exchange Rule IX, sections 7 and 8, with respect to the nature and amounts of required coverage, are consistent with the rules and practices of other self-regulatory organizations.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is intended to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest, and is not designed to permit unfair discrimination between brokers or dealers who are members of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will have any effect on competition which is not necessary or appropriate in furtherance of the Act.

(C) Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

---

[4] The Commission encourages those clearing agencies that have not yet improved their applicant evaluation and participant monitoring programs to evaluate the effectiveness of those programs and to file with the Commission appropriate rule proposals under 19(b) of the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21077 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

August 28, 1985.

The above named national securities exchange has filed application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Southwest Airlines Company
Common Stock, $1.00 Par Value (File No. 7-8588)

Archer-Daniels-Midland Company
Common Stock, No Par Value (File No. 7-8589)

Harris Corporation
Common Stock, $1.00 Par Value (File No. 7-8590)

GCA Corporation
Common Stock, $1.625 Par Value (File No. 7-8591)

Computervision Corporation
Common Stock, $0.05 Par Value (File No. 7-8592)

Hitachi, Ltd.
American Depositary Receipts (File No. 7-8593)

First Boston, Inc.
Common Stock, $1.2/3 Par Value (File No. 7-8594)

Freeport MacMoran Gold Company
Common Stock, $0.10 Par Value (File No. 7-8595)

Giant Yellowknife Mines
Common Stock, No Par Value (File No. 7-8596)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 19, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21076 Filed 9-3-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Waldo County, ME

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway and cargo port facility on Sears Island in Waldo County, Maine. A two-lane highway connecting US Route 1, in the Town of Searsport, to Sears Island is a part of the overall project.

FOR FURTHER INFORMATION CONTACT: William D. Richardson, Division Administrator, Federal Highway Administration, Room 614, Edmund S. Muskie Federal Building, 40 Western Avenue, Augusta, Maine 04330, Telephone (207) 622-8487.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Maine Department of Transportation will prepare an environmental impact statement (EIS) for a proposed project to construct a marine dry cargo terminal on the west shore of Sears Island, Town of Searsport, Maine. An Environmental Assessment has previously been prepared for the project. The project would include a marginal wharf up to 420,000 square feet (9.6 acres) with berthing for up to two ships, plus both highway and rail facilities. Shore support facilities on the island will encompass approximately 40 acres and consist of: on-site primary roads, parking areas, an administrative and maintenance building and on-site water and sewer systems.

An integral part of this project, approximately 2.3 miles of highway would be built from the intersection of Island Road and U.S. Route 1 proceeding south across a gravel bar connecting Kidder Point with the northern tip of Sears Island and terminating at the cargo terminal site. Accompanying the access highway would be a railroad spur. Construction of the road and railway access to the cargo terminal will require that a causeway (approximately 1,200 linear feet) be built across the gravel bar connecting the island with the mainland. The construction of the causeway would permit uninterrupted access by road to the island; present

access by road is restricted to periods of mid to low tide when the gravel bar is exposed.

Alternatives considered include: (1) Taking no action; (2) Alternative off-island sites; (3) offshore pier with northern access; (4) offshore pier with central access; and (5) a marginal wharf.

A formal scoping meeting will be held at a time and place to be determined later.

Comments from Federal, State, and local agencies will be solicited during the early coordination process. Public notice will be given of the time and place of any public information meetings to be held in conjunction with the project. The draft EIS will be made available for public and agency review and comment. An opportunity will be provided for a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 26, 1985.

William D. Richardson,

Division Administrator, Augusta, Maine.

[FR Doc. 85-21010 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-22-M

[Docket 38978]

Braniff International Airways Employee Protection Program Investigation; Second Prehearing Conference

Notice is hereby given that a second prehearing conference in the above-entitled matter is assigned to be held on September 26, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590, before the undersigned administrative law judge.

Dated at Washington, D.C., August 29, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85-21087 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

NHTSA Rulemaking, Research and Enforcement Programs; Meeting to Inform Public and Automobile Industry

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on October 16, 1985, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by October 1, 1985. If sufficient time is available, questions received after the October 1, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 1, 1985, and the issues to be discussed will be mailed to interested persons on October 9, 1985, and will be available at the meeting.

ADDRESS: Questions for the October 16, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, MI.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on October 16, 1985. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, MI. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on August 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-21088 Filed 9-3-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Senior Executive Service; Performance Review Board

ACTION: This notice lists the membership of the Office of the Secretary Performance Review Board (PRB), superseding the list published in 49 FR 29893, July 24, 1984, in accordance with 5 U.S.C. 4313(c)(4).

Scope: This notice applies to all components within the Office of the Secretary, except the Legal Division.

Purpose: The purpose of the Board is to review performance appraisals, ratings, recommendations for performance awards, and other personnel actions, and to make recommendations to the appointing authority, who is the Deputy Secretary or his designee.

Composition of PRB: Each session of the Performance Review Board will be attended by the Chairperson or his designee and at least two of the members listed below. The Board will be composed of more than 50 percent career appointees in cases involving the appraisal of an SES career appointee. The names and titles of the PRB members are as follows:

Chairperson, John F. W. Rogers, Assistant Secretary (Management)
Paul Bateman, Deputy Treasurer of the United States
George N. Carlson, Director, Office of Tax Analysis
Francis X. Cavanaugh, Director, Office of Government Finance and Market Analysis
Paul H. Cooksey, Deputy Assistant Secretary (Administration)
Robert A. Cornell, Deputy Assistant Secretary (Trade and Investment Policy)
Stephen J. Entin, Deputy Assistant Secretary (Economic Forecasting)
Millicent A. Feller, Deputy Assistant Secretary (Legislative Affairs)
Jon M. Gaaserud, Senior Policy Advisor (Economic Anaysis)
Richard Greenstein, Director, Office of Information Resources Management
Michael F. Hill, Director, Office of Revenue Sharing
Michael R. Hill, Deputy Inspector General
Manuel H. Johnson, Jr., Assistant Secretary (Economic Policy)
Arthur W. Long, Senior National Intelligence Advisor
David C. Mulford, Assistant Secretary (International Affairs)

S.F. Timothy Mullen, Director, Office of Administrative Programs
Robert P. Newcomb, Deputy (Regulatory, Trade and Tariff Affairs) to Assistant Secretary (Enforcement & Operations)
John J. Niehenke, Deputy Assistant Secretary (Federal Finance)
Katherine D. Ortega, Treasurer of the United States
David D. Queen, Deputy Assistant Secretary (Enforcement)
Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)
Margaret D. Tutwiler, Assistant Secretary (Public Affairs and Public Liaison)
D. Edward Wilson, Jr., Deputy Assistant Secretary (Departmental Management).

FOR FURTHER INFORMATION CONTACT:
Philip E. Carolan, Executive Secretary, PRB, Room 1306, Main Treasury Building, 15th & Pennsylvania Avenue NW., Washington, D.C. 20220. Telephone: (202) 566-5468.

This notice does not meet the Department's criteria for significant regulations.

John F.W. Rogers,
Assistant Secretary (Management).

[FR Doc. 85-21028 Filed 9-3-85; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 171
Wednesday, September 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Deposit Insurance Corporation	1
Mississippi River Commission	2, 3, 4, 5

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:25 p.m. on Wednesday, August 28, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Cardwell State Bank, Cardwell, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Wednesday, August 28, 1985; (2) accept the bid for the transaction submitted by Merchants and Planters Bank of Hornersville, Missouri, Hornersville, Missouri, an insured State nonmember bank; (3) approve the application of Merchants and Planters Bank of Hornersville, Missouri, Hornersville, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Cardwell State Bank, Cardwell, Missouri, and for consent to establish the sole office of Cardwell State Bank as a facility of Merchants and Planters Bank of Hornersville, Missouri; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Missouri Delta Bank, Hayti, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Wednesday, August 28, 1985; (2) accept the bid for the transaction submitted by Bank of Hayti, Hayti, Missouri, an insured State nonmember bank; (3) approve the application of Bank of Hayti, Hayti, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Missouri Delta Bank, Hayti, Missouri, and for consent to establish the sole office of Missouri Delta Bank as a branch of Bank of Hayti; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 29, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21135 Filed 8-30-85; 11:19 am]

BILLING CODE 6714-01-M

2

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 23, 1985.

PLACE: On board MV MISSISSIPPI at foot of Eight Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistont, Mississippi River Commission.

[FR Doc. 85-21213 Filed 8-30-85; 8:45 am]

BILLING CODE 3710-GX-M

3

MISSISSIPPI RIVER COMMISSION

TIME AND PLACE: 9:00 a.m., September 24, 1985.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Note.—This document was originally published in the issue of August 26, 1985 at 50 FR 34579. It is reprinted in this issue for public inspection purposes.

Roger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85-20413 Filed 8-30-85; 4:52 pm]

BILLING CODE 3710-GX-M

4

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 25, 1985.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistont, Mississippi River Commission.

[FR Doc. 85-21214 Filed 8-30-85; 4:25 pm]

BILLING CODE 3710-GX-M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 27, 1985.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Projects and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Contol, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85–21215 Filed 8–30–85; 4:52 pm

BILLING CODE 3710-GX-M

Federal Register

Wednesday
September 4, 1985

Part II

Department of Health and Human Services

Office of Human Development Services

Fiscal Year 1986 Coordinated Discretionary Funds Program; Availability of Funds and Request For Applications; Announcement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS-86-1]

FY 1986 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of availablity of funds and request for applications under the Office of Human Development Services' Coordinated Discretionary Funds Program.

SUMMARY: The Office of Human Development Services (HDS) announces the beginning of its Coordinated Discretionary Fund Program for Fiscal Year 1986.

Funding for HDS grants and cooperative agreements is authorized by legislation governing the discretionary programs of its constituent program administrations—the Administration for Children, Youth and Families (ACYF); the Administration on Developmental Disabilities (ADD); the Administration on Aging (AoA); and the Administration for Native Americans (ANA). This year, HDS is also embarking on a joint discretionary funding venture with the Work Incentive Program (WIN), a program jointly administered by HHS and the Department of Labor.

This program announcement consists of four parts. Part I provides background information, discusses the purpose of the HDS Coordinated Discretionary Funds Program, lists funding authorities, and briefly describes the application process. Part II describes the programmatic priorities under which HDS solicits applications for funding for projects. Part III describes in detail the application process. Part IV provides guidance on how to prepare and submit an application. All of the forms necessary to submit an application are published as part of this announcement following Part IV.

DATE: The closing date for receipt of applications under this announcement is November 20, 1985.

Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201. Attn: HDS–86–1.

HDS contract point: Department of Health and Human Services, HDS/OPD Division of Research and Demonstration, 200 Independence Ave., SW., Room 724–F, Washington, DC 20201. Telephone (202) 755–4633

Part I. Preamble

A: Goals of the Office of Human Development Services

The four program areas in the Office of Human Development Services, though varied, share a common mission: to reduce dependency and increase self-sufficiency among our most vulnerable citizens. Accomplishing this mission not only reduces the demand for services but makes it possible for more Americans to live independent lives. The enabling legislation for each HDS program makes it clear that the services funded are a means to an end. The Coordinated Discretionary Program must be viewed in the same way.

The goals of the Office of Human Development Services have not changed in four years. In order to be considered for funding under the CDP, each applicant must describe activities that contribute to meeting the goals of HDS. These goals are:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need;
- To improve the effectiveness and efficiency of State, local and tribally-administered human services.

These goals provide the framework for meeting the challenges presented by the changing environment of human services. The environment is changing in dramatic ways. Public resources are no longer being expended at a rapid pace and without forethought. We have left an era when the trend was to assign to the Federal government an ever-increasing responsibility for identifying the needs for social services and for designing programs to meet those needs. Public policy now articulates that decisions are best made at the level of government closest to the people, by elected State and local officials and those who manage at the State and local levels, whether they are elected officials, voluntary organizations, schools or religious organizations.

B. Findings from a Symposium on Social Services in the Year 2000

In order to promote HDS goals and better focus innovation from the Coordinated Discretionary Funds Program on the needs of the future, HDS recently sponsored a symposium to analyze the probable impact of current trends on social services in the year 2000.

Some of the most significant factors which are anticipated to shape American society during the next fifteen years include:

1. Future trends suggest a period of good overall economic growth. Favorable factors include: (1) Gains in productivity as the capital-to-labor ratio increases with added investment; (2) a maturing population with the baby-boom generation moving into its highest producing, highest consuming years; (3) moderation in inflation as unit labor costs grow at a slower pace and food and oil prices remain relatively stable; (4) reduced demographic contributions to unemployment as the labor force grows more slowly and the number of youth declines; and (5) the technological push for new products and processes both in manufacturing and services.

2. There will continue to be dramatic changes in the age group configuration of the population as the baby-boom and baby-bust generations grow older. The number of young children under the age of ten will swell through the early 1990s as the baby-boom produces its delayed progeny. The number of teenagers will drop through the mid-1990s. The huge baby-boom generation will move through its middle years into the prime working and family life stages. At the present time, older persons are the fastest-growing sector of our population, and the oldest among them (those 85+) are increasing even more rapidly. In the mid-1990s, the young-old group (65–74) will grow more slowly and actually decline slightly as the Great Depression babies reach that age, but the old-old (75+) will continue to increase at a rapid pace.

3. Black, Hispanic and Native American population growth rates will be substantially higher than the rest of the population, increasing their proportion to the total.

4. The maturing of the baby-boom generation will usher in a new family-oriented era, but both family and household structures will be more diverse than in the past. The number of female family heads will continue to increase, as a result of high divorce rates (though possibly plateauing) and out-of-wedlock births. "Blended" families will be widespread. The Census Bureau forecasts that 59 percent of the children born during the early 1980s may expect to live with only one parent for at least a year before the age of eighteen, and 35 percent will live with a stepparent at some time. At least half of all children in married-couple families can expect to have two employed parents.

5. The income of two-person elderly households will continue to outpace that of other age groups as a plateauing of gains in Social Security is more than offset by the increased prevalence of private pensisons. However, income support for aged single females and widows will continue to be a concern.

These are trends that necessitate a re-thinking on the part of all human services practitioners. In response to these trends of good overall economic growth, the continual changes in the age group configuration of the population, Black, Hispanic and Native American population growth rates, and the reconfiguration of the American family, HDS seeks, in this announcement, approaches that begin to invest in strategies to prevent future dependency and to assure maximum opportunities for self-sufficiency for HDS populations between now and the year 2000.

C. Mission of the Coordinated Discretionary Program

The Coordinated Discretionary Program is the major research and demonstration effort of the Office of Human Development Services. Through this program, HDS, in concert with not-for-profit, voluntary, and philanthropic organizations and local communities, attempts to analyze trends and anticipate the social issues that will become paramount in the future; improve the effectiveness and efficiency of the human services by developing new techniques and approaches to deal with social issues; and develop alternatives to traditional social services approaches.

We have seen and funded projects which were innovative and had far-reaching effects. It is time now to evaluate what has worked and to successfully disseminate the substantive and evaluative data to other communities so that the process of replication can begin on a wide-scale basis. There is no longer a need to fund projects that have already been funded to produce outcomes that we already know do not work. If, on the other hand, there are projects that do work in one community, they should be shared with other communities looking for the same solutions or outcomes.

The most successful projects, both in terms of outcome and federal financial participation, have been those based on a partnership among organizations, communities, school districts or localities which are committed to sharing and bringing to fruition a human services project that fulfills the HDS goals and is self-sustaining at the end of the Federal funding period.

An innovation that was developed in one part of the country is sometimes difficult to implement in another geographic area because each community has its own economic, social and cultural issues. Nevertheless, there are a good number of innovations in the field of human services that can be implemented in many communities without significant redesign for local conditions.

The concept of "franchising" has been demonstrated for decades in the private sector. Franchising is valuable because of its simplicity: what works well in one part of the country will probably work well in other places. Building on private sector approaches, HDS is interested this year in the concept of "franchising" human services innovations, that is, developing low-cost packages that help many communities replicate innovations that were developed elsewhere.

When a new approach in human services is transferred from one location to another, an important step is developing the documentation that captures the "essence" of the innovation. To facilitate transfer to other locations, the germ of the innovation must be separated from the personalities of the people and institutions involved in the original project. The successful capture—in a report, a videotape, in training materials, etc.—of the essence of the innovation can often create a "bandwagon" effect as more human services practitioners find out about it, leading to implementation in more locations.

Model approaches must be carefully chosen, and some modifications and adaptations must usually be made to fit different economic and social conditions.

Model approaches in human services are identified by results and by the approach taken in carrying out the project. Good models in the human services are those that have a direct client impact on reducing dependency, at a reasonable cost. Other features may include the presence of a long-range funding base for continuation of the project after Federal funding ends; involvement of private sector organizations; impact on a relatively large service population; and significant use of matching funds from sources other than the Federal government for such purposes as staff travel. Many innovative models that are suitable for replication have been identified in the priority area description in this announcement.

When a good model has been identified, it should be replicated. By replication we mean taking an innovative idea that was developed in one community and applying it to the population in another community that has the same or similar problem. Replication can also mean taking an approach that was developed to serve one population and adapting it to serve a different service population, in the same community or elsewhere.

In those priority areas that mention franchising or the replication of model approaches, an applicant may serve as an intermediary to market an innovation to more than one community, or a community that wishes to implement an innovation may apply on its own or may serve as an intermediary.

Replication that involves implementing an innovation in only one additional site at a relatively high cost is not a priority under this year's announcement, but may be considered if materials are developed that will permit further replication in other sites. Replication to several sites at moderate cost is more favorable. Franchising takes this concept a step further, and involves the development of materials that will allow communities nationwide to implement innovations without additional support. *Franchising is the most favored option among a range of replication techniques.*

Another objective of the Office of Human Development Services is to encourage partnerships between the public and private sectors in the provision of human services to those who need them most. State and local public agencies, and especially non-profit private human services agencies should make efforts to obtain the support of local philanthropic foundations, corporations and businesses. Such support is usually provided by local institutions in response to pressing local needs, and may be more flexible than that provided by an organization such as the Federal government that must respond to other agendas.

HDS would like to increase the role played by private philanthropic organizations—especially national and community foundations. Many foundations have concentrated on a particular aspect of human services and have made important contributions to the body of knowledge. HDS has entered into agreements with foundations nationwide to begin a partnership in developing new responses to social issues.

Where foundations are interested in participating with HDS in funding specific projects in this announcement, the priority area descriptions reflect the

names of the foundations involved. An example is priority area 2.3.A, Placement Prevention, for which the Edna McConnell Clark Foundation and HDS will join in the review, selection and consideration for funding of several projects aimed at strengthening families and the prevention of unnecessary foster care or other out of home placement. The funding mechanics for priority areas in which foundations will participate will follow the same procedures as all other applications under this announcement, except for applications made under priority area 5.2, Announcements by Foundations.

In priority area 5.2, where several foundations have already announced or will soon be announcing priorities of national scope that closely resemble HDS priorities, Federal staff will participate (through the foundation's process) in the selection of grantees.

Following this flexible approach, we expect that this year's diversity of public-private partnerships, as reflected in our work with foundations, will yield the benefit of better-targeted, community-based and community-supported projects. Applicants are advised that HDS plans to share applications with foundations in order to determine the potential for partnerships.

D. Focus on Dissemination/Utilization of Proven Techniques and Models

There exists in the human services field a vast amount of research, demonstrations and experience that has yet to be successfully transferred to the practitioner and policymaker and utilized for the benefit of HDS target populations. The wide gap between knowledge and practice in human services continues to grow. New knowledge from research, demonstrations, evaluations, training and technical assistance is unevenly applied. From the local to the national level, inadequate knowledge transfer, utilization and application activities are increasingly recognized as major issue areas.

The "state of the art" is different for different social issues. In some areas, we are still involved in basic research. In others, we are demonstrating the effectiveness of new ideas. However, HDS is concerned that many demonstrations that have proven effective have not been adopted nationwide simply because human services practitioners are not aware of them.

Dissemination and utilization of proven innovations is a focus under the Coordinated Discretionary Program for Fiscal Year 1986. Since most means of dissemination take the form of pamphlets, brochures, manuals, reports, films or periodicals, guidelines for the preparation of publications appear in Part III of this announcement.

E. Statutory Authorities

The individual statutory authorities under which grants and cooperative agreements will be awarded through the HDS Coordinated Discretionary Funds program are as follows:

- Head Start: Head Start Act, Subchapter B of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, as amended (42 U.S.C. 9831 et seq.);
- Child Welfare Services: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272 (42 U.S.C. 626); section 426 of the Social Security Act, as amended, including the Child Welfare Services Training Grants Program (42 U.S.C. 5620);
- Runaway Youth Program: Runaway and Homeless Youth Act, as amended, Pub. L. 96–509 (42 U.S.C. 5701 et seq.);
- Child Abuse: Child Abuse Prevention and Treatment Act, Pub. L. 93–247, as amended (42 U.S.C. 5101 et seq.);
- Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, Pub. L. 95–266 (42 U.S.C. 5101 et seq.);
- Native Americans: Native American Programs Act of 1974, as amended, Pub. L. 93–644 (42 U.S.C. 2991 et. seq.) Funding for projects conducted by Indian tribes and tribal organizations, however, is not limited to this statutory authority. They may apply in any priority area except those where eligibility requirements are restricted. Those priority areas that may be of particular interest are noted here for ease of reference: 1.2, 2.3.C, 2.3.E., 2.3.F, 2.3.H, 6.3 and 6.4;
- Small Business Innovation Development Act of 1982, Pub. L. 97–219, amended section 9 of the Small Business Act (15 U.S.C. 631 et seq.);
- Developmental Disabilities Special Projects: Developmental Disabilities Act of 1984, Part E—Special Project Grants, section 62, Pub. L. 98–527 (42 U.S.C. 6000 et seq.);
- Social Services Research and Demonstrations: section 1110 of the Social Security Act, as amended;
- Older Americans: Training, Research and Discretionary Projects and Programs: Title IV of the Older Americans Act, as amended, Pub. L. 89–73 (42 U.S.C. 3031–3035e);
- Work Incentive Program: Title IV, Part C, section 441 of the Social Security Act (42 U.S.C. 641).

F. Fiscal Year 1986 HDS Coordinated Discretionary Funds Program (CDP) Process

In a departure from our practice of previous years, the Coordinated Discretionary Funds Program process for FY 1986 will consist of a one-stage full application. Applications are limited to 20 doubled-spaced pages, and must relate to the selection criteria established for review of applications.

In addition to the change to a one stage process, the format and evaluative criteria have also been simplified. The specific changes are indicated in Part III and should be reviewed thoroughly.

Several priority areas in this year's announcement permit applicants to propose projects of two or three year duration, although applicants should be aware that continuation of funding beyond the first budget period is contingent on the availability of funds. In multi-year projects, the budget periods are twelve months per year. That is, a three-year project would have three budget periods of twelve months each for a total of 36 months.

Project duration under most priority areas, however, is limited to a single budget period. In the case of projects that are limited to a single budget period, that budget period is normally twelve months, but may, in certain circumstances, be up to seventeen months.

The budget for a project with a single budget period should be for the total amount planned for the project through its, completion, and the amount of Federal funding may not exceed $200,000 per budget period unless otherwise noted in the priority area description. The cover form for the application (Standard Form 424) should reflect the amount requested for the first budget period for multi-year projects, or the total amount requested for projects with a single budget period.

As required by the Child Abuse Prevention and Treatment Act, we have published in the **Federal Register** a notice of HDS proposed child abuse and neglect research priority areas for FY 1986 (50 FR 32769, August 14, 1985). We are in the process of receiving comments on the proposed priority areas. If the comments recommend significant new areas of research, HDS will consider publishing a new discretionary grant announcement in order to fund additional priority areas.

Part II. Priority Areas

The following is a list of the FY 1986 priority areas:

I. Social and Economic Development Strategies to Increase Family and Individual Self-Sufficiency and Independence

Area 1: Promotion of Economic Independence of Individuals

Topic 1.1: Opportunities in Employment for Individuals with Developmental Disabilities
- 1.1.A State Developmental Disabilities Council Employment Activities
- 1.1.B Stimulating Private Sector Job Commitments
- 1.1.C Exemplary Employment Models

Topic 1.2 Preparing Youth for Self-Sufficient Living
- 1.2.A Community Forums and Replication
- 1.2.B Approaches to Keep Youth in School
- 1.2.C School Drop-outs and Potential Drop-outs

Topic 1.3 Improving the Employment Potential of WIN Registrants
- 1.3.A WIN-HDS Coordination—Job Opportunities
- 1.3.B Hard-to-Place WIN Registrants
- 1.3.C Innovations for WIN Teenage Parents

Area 2: Support for Families and Community-Based Care

Topic 2.1: Child Development
- 2.1.A Prevention of Developmental Delays
- 2.1.B Models to Assist Teenage Mothers and Prevention of Child Abuse
- 2.1.C Community Groups
- 2.1.D Transition of Head Start Students to Public Schools
- 2.1.E Stimulating Community College Involvement in Competency Based Child Development Associate (CDA) Training for Family Day Care Providers

Topic 2.2: Adolescents and Youth
- 2.2.A Improving Shelter Staff Capacity to Deal with Problems of Alcohol Abuse among Runaway and Homeless Youth
- 2.2.B Self-sufficiency for Older Adolescents Served by the Public Child Welfare System
- 2.2.C Utilization of Successful Self-sufficiency Program Models for Older Homeless Youth

Topic 2.3: Child Welfare/Adoption Opportunities
- 2.3.A Placement Prevention
- 2.3.B Placement Prevention Training
- 2.3.C Grants to States to Increase the Number of Adoptive Placements of Special Needs Children
- 2.3.D Eliminating Unnecessary Delays in Moving Appropriate Children into the Adoption Process
- 2.3.E Post placement and Post Adoption Services for Special Needs Children and Their Families
- 2.3.F Collaborative Support of Special Needs Adoption by Unions, Sororities, Fraternities, Service Organizations and National Indian Organizations
- 2.3.G Therapeutic Foster Homes
- 2.3.H Indian Child Welfare/Preventive Services
- 2.3.I Adapting Foster Parent Training Materials to Address the Needs of Near-Emancipated Youth
- 2.3.J State Consortium on Special Needs Adoption

Topic 2.4: Child Abuse and Neglect
- 2.4.A Research on Reporting Practices in Child Abuse and Neglect
- 2.4.B Research on Central Registry Operations in Child Abuse and Neglect
- 2.4.C Use of Volunteers to Prevent Child Abuse
- 2.4.D Child Sexual Abuse by Women
- 2.4.E Research on Male Victims of Sexual Abuse
- 2.4.F Child/Youth Abuse and Neglect within Institutions
- 2.4.G Research on Emotional Maltreatment
- 2.4.H Pre-Service (Academic and Field Work Preparation) and In-Service Training for Professionals in Child Abuse and Neglect
- 2.4.I Specialized Treatment Training Teams
- 2.4.J Coordinated System Response to Abuse in Out-of-Home Child Care Settings
- 2.4.K Children's Court Appearances
- 2.4.L Recruitment of Volunteers to Serve as Court-Appointed Special Advocates
- 2.4.M Court Appointed Special Advocates: Dissemination of Best Models
- 2.4.N Research on Child Protective Services Screening Decisions and Substantiation

Topic 2.5: Supports to Strengthen Families
- 2.5.A Reunification of Families
- 2.5.B Corporate Partnership Efforts to Strengthen Families
- 2.5.C Strengthening Transient Families through Public-Private-Voluntary Partnerships
- 2.5.D Supports for Families with a Developmentally Disabled Family Member
- 2.5.E Family Day Care

Topic 2.6: Dissemination of Material on Self-sufficiency

Area 3: Promotion of Housing Alternotives and Living Arrangements

Topic 3.1: Living Arrangements for Individuals with Developmental Disabilities

Area 4: Preparation for an Aging Society

- Topic 4.1: Planning for Later Life
- Topic 4.2: Future Needs, Programs and Personnel Requirements
- Topic 4.3: Aging Manpower Studies
- Topic 4.4: Service Delivery Implications for Suburbia
- Topic 4.5: Preparing Major Social Institutions for an Aging Society

Area 5: Foundations/HDS Partnerships

- 5.1: Challenge Grants to Community Foundations
- 5.2: Announcements by Foundations

II. Effectiveness and Efficiency of State and Locally Administered Social Services

Area 6: Strengthening the Functioning of State and Local Agencies and Tribal Governments

Topic 6.1: Management and Planning
- 6.1.A Models for Using Results Oriented Management
- 6.1.B Develop and Disseminate Information on Innovative Planning Models

Topic 6.2: Programs for the Aging
- 6.2.A Collaboration Efforts to Promote Systems Change to Improve the Lives of Older Americans
- 6.2.B Statewide Elder Abuse Preventive Efforts
- 6.2.C Legal Assistance for Older Persons
- 6.2.D Increasing Minority Elderly Access to Services

Topic 6.3: Programs for Native Americans
- 6.3.A Improvement of Effectiveness and Efficiency of Tribal Governments and Native American Organizations
- 6.3.B Demonstrations for Tribal and Urban Native American Community Development Technology Transfer

Topic 6.4: Demonstrations to Improve the Effectiveness of State Protection and Advocacy Systems for the Developmentally Disabled

Area 7: Improving the Management of Human Services

Topic 7.1: Reducing Foster Care Entry/Reentry Rates

Topic 7.2: Evaluation
- 7.2.A Evaluation Syntheses
- 7.2.B Integration of Evaluation Components in the Management Systems of State and Areas Agencies on Aging

Topic 7.3: Use of Modern Technology in Aging Services

Topic 7.4: Manpower Utilization in Human Services Agencies

Area 8: Child Welfore Services Training

Topic 8.1. Child Welfare Practitioner Training
Topic 8.2. State Training Assistance Projects
Topic 8.3. Child Welfare Traineeship Projects
Topic 8.4. Indian Child Welfare Training Projects

Area 9. Education, Awareness, and Training in Aging

Topic 9.1 Professional Training Programs
- 9.1.A Statewide Short-Term Training and Continuing Education for Professionals
- 9.1.B Aging Content in Professional Academic Training
- 9.1.C Development of New Aging Training Programs

Topic 9.2. Minority Training and Development

Topic 9.3. Dissemination of Information to Caregivers

Area 10: Transfer of International Innovotions

Area 11: Small Business Innovation Research Program

A description of HDS's specific interests under each of these priority areas is presented below.

I. SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIES TO INCREASE FAMILY AND INDIVIDUAL SELF-SUFFICIENCY AND INDEPENDENCE

The role of the Federal government in addressing social issues is to adopt and implement national policies or programs

aimed at promoting economic growth and prosperity, thereby reducing the need for human services. Every citizen who is able to participate in the economy should have the opportunity to seek and find employment, thereby becoming self-sufficient and free of dependency on publicly-supported services and assistance.

Human services, where they are necessary, should supplement assistance from family resources and the private sector, and be targeted on those most in need of help. They should also stimulate increased opportunities for HDS populations to become employed, and assist those who are unable to be employed to become more self-sufficient through participation in the family or community care arrangements. Social services should, in most cases, be an interim supplement to an individual's efforts toward self-sufficiency. They should be used in the absence of, rather than as a substitute for, adequate family and community resources.

Human services must also have a strong preventive effect. In order to achieve long-term effectiveness, human service interventions to assist an individual or family should result in a reduced likelihood of future need for services. HDS has emphasized a broader approach by stressing primary prevention (preventing a condition from occurring), and early interventions to ameliorate the effects of a condition.

Where publicly-funded services are necessary, they should be provided in accord with locally-developed social and economic development strategies. Such strategies serve to assist the growth of stable, diversified local economies, thereby providing jobs and reducing dependency. Social and economic development strategies should recognize that the community, the family and the individuals are primarily responsible for determining their own needs and for achieving their goals. Policies based on these premises have the greatest likelihood for effecting permanent, beneficial changes in the lives of individuals Americans.

Area 1: Promotion of Economic Independence of Individuals

Topic 1.1: Opportunities in Employment for Individuals with Developmental Disabilities

On November 28, 1983, President Reagan proclaimed the years 1983–1992 as "The Decade of the Disabled Person" and simultaneously announced a nationwide employment initiative for the developmentally disabled to be coordinated by the Office of Human Development Services.

Recognizing that the most meaningful source of employment for disabled persons is in the private sector, energy has been directed at finding ways to involve major industry groups and trade associations. Strategies and activities have been designed to inform private employers of the capabilities, productivity and conscientiousness of persons with developmental disabilities.

Results of the Employment Initiative include the placement of 25,000 persons with developmental disabilities in competitive employment in 1984. The gross annual earnings of these individuals were estimated to exceed $107 million. Tax contributions by these employees, estimated reductions in transfer payments, and estimated savings in costs for alternative programs were projected to be approximately $135 million annually. A goal of 50,000 jobs has been set for 1985, and 75,000 jobs for 1986, as HDS works to diversify the opportunities and tap into new employment avenues for persons with developmental disabilities.

1.1.A State Developmental Disabilities Council Employment Activities

The Developmental Disabilities Assistance and Bill of Rights Act of 1984 (Pub. L. 98–527) recognizes the importance of employment as a means of achieving independence, productivity and integration into the community by persons with developmental disabilities. "Employment-Related Activities" was added to the Act as a mandated service priority area. This legislation mandates that State Developmental Disabilities Council plans include "the provision of employment related activities among the priority services" after Fiscal Year 1986.

In support of this mandate, HDS is seeking applications from State Developmental Disabilities Planning Councils which will facilitate the development and implementation of strategies for effective *systemic* change within their State.

Such strategies should provide for the cooperation and involvement of key State agencies such as the Governor's Planning Council, Vocational Education, Employment Security, and the State MR/DD agency. In addition, the application should outline an approach for ensuring that persons with developmental disabilities have the active support of State agency resources in securing appropriate job training, placement in competitive employment and follow-along services as necessary. Evidence of commitment to participate by other State Agencies must be included in the proposal. States whose applications commit to goals for the employment of individuals with developmental disabilities will receive special consideration. Such employment goals should be in addition to the national goals of 50,000 and 75,000 new placements in 1985 and 1986, respectively.

Applications under this priority area will only be accepted from State Developmental Disabilities Councils and will be limited to $100,000. State Councils are encouraged to work with other potential funding sources, such as local foundations, corporations, and their own basic State grants to augment these funds. HDS will accept applications for multi-year projects not to exceed two years.

1.1.B Stimulating Private Sector Job Commitments

The Association for Retarded Citizens of the United States estimated that 75% of all adults with developmental disabilities could be fully self-supporting given appropriate training and opportunities. Another 10–15% could be partially self-supporting under these conditions. In order to realize these figures, we must expand private sector job opportunities for persons with developmental disabilities in a variety of industries, creating new approaches to marketing and placing persons in meaningful jobs.

To date, major trade associations in such areas as the hospital industry, nursing homes, restaurants, hotels and motels, banks and savings and loans, and horticulture have endorsed our Employment Initiative.

Many national networks of employing industries (National Restaurant Association, National Council for Therapy and Rehabilitation through Horticulture, American Hospital Association, Marriott Corporation, etc.) have joined in a collaborative effort with HDS to stimulate the placement of developmentally disabled workers in jobs.

Four models which have demonstrated success in providing opportunities for persons with severe disabilities to participate in work are the benchwork model, the mobile crew, the enclave, and supported jobs (Bellamy et al., in press). Components within each model typically include (1) real work environments, (2) sequential task breakdown, (3) financial incentives, (4) intensive supervision, (5) peer support and (6) counseling/case management. Current data indicate that employment of individuals with developmental disabilities can be achieved for

considerably less than $5,000 per placement.

HDS is seeking the transfer of this knowledge to previously untapped businesses and industries toward the goal of "productivity" for developmentally disabled citizens. Demonstrations will be supported which assist employing industries, small businesses and professional organizations to utilize existing models in generating commitments to hiring the developmentally disabled within their networks. Proposals should feature new dissemination strategies which make available to the private sector information about the many incentives for and benefits of employing the developmentally disabled.

There are no eligibility restrictions for applications in this priority area. However, applicants should be aware that funding under the Developmental Disabilities statutory authority is available for non-profit organizations and public agencies only. HDS will accept applications for multi-year projects not to exceed two years.

1.1.C Exemplary Employment Models

The previous priority area described HDS's intended support for strategies to involve networks of employers in the employment of persons with developmental disabilities within their industries. One of the barriers to the employment of the developmentally disabled in the past has been that these individuals sometimes were unprepared for the transition from sheltered work or residence in community-based care to the world of competitive employment with its attendant responsibilities. HDS is interested in supporting the development of models that help developmentally disabled individuals prepare for and adapt to competitive employment. Such models may be adopted by employers participating in projects under the previous priority area.

Exemplary models for the on-site training and employment of developmentally disabled workers have been successfully developed in recent years. While surveys show that the majority of developmentally disabled workers take entry-level positions in the areas of food service, housekeeping, and grounds and building maintenance, one out of nine employees has taken less traditional jobs such as computer programmers, printers, tax examiners, test technicians and taxi cab drivers (Kiernan, 1985).

HDS is interested in supporting further replication, dissemination, and franchising of effective models for the placement of developmentally disabled workers in a range of paying jobs based on proven techniques, materials and approaches. Of particular interest are models utilizing corporation-endorsed work seetings. Some examples, and contact references, include:

Harbor Regional Center. A joint effort of Harbor Regional Center and TRW, Inc., has provided training of individuals with developmental disabilities for employment in assembling electronic components in the aerospace industry. A job trainer, using state-of-the-art systematic training techniques, provided instruction in both technical skills and appropriate behavior at actual industry work stations. As a result of the 8–10 week training program, graduates are now employed in the electronics industry at a salary of $5.50 per hour; half of them were hired by TRW. Thorough, systematic task breakdown facilitated the training process, as did after hours support and counseling. Project results have been disseminated through workshops, presentations at employment conferences, journal articles and a training manual.

For more information, contact: Marion Brooks, Harbor Regional Center, 21321 Hawthorne Boulevard, Torrance, CA 90503 (213) 540–1711.

Maine Medical Center/Hospital Industries Project. A successful project using the supported jobs model, in which individuals with developmental disabilities work alongside non-disabled individuals yet receive additional supervison, is the Hospital Industries Project which began at Maine Medical Center in Portland over three years ago and now operates in six hospitals throughout New England. The project has trained and evaluated 112 individuals since its inception, and one-third of these individuals now have full-time jobs working in a hospital.

The trainees are integrated into the existing work force, in order to experience the totality of the job. They receive a paycheck, benefits, a uniform, and an ID, and are expected to work on all three of the hospital shifts in order to go through the same cycles as their peers. The training occurs in a variety of areas which prepare the individual for competitive work. These include food service, housekeeping, linen service, printing, clerical services and more.

For more information, contact: Richard Balser, MA Medical Center, 22 Bramhall Street, Portland, Maine 04102 (207) 871–2343.

Stepping Stones Growth Center. Two model mobile work crew projects developed at the Stepping Stones Growth Center are Boatworks, which trains developmentally disabled adults to clean and maintain pleasure boats, and CleanSweep, which is a janitorial and grounds maintenance program for the same population. The goals of these programs are provision of relevant training in a real work setting on state-of-the-art equipment and competitive employment of the trainees.

Instruction is provided by vocational instructors; crew size is limited to six trainees. In addition to actual work techniques, trainees learn good work habits and the social skills needed to interact with the public.

For more information, contact: Maria Distler, Stepping Stones Growth Center, 1720 Adeline Street, Oakland, CA 943607 (415) 834–3990.

Interested applicants should determine which model would be most appropriate to franchise or replicate in their community. Adaptations and refinements are acceptable as long as the primary features of the model are utilized. New projects should, however, build upon existing models and supplement basic designs with new program components which test the model in new settings in communities with other resources and new mix of services. Also included should be a report which describes problems and successes encountered in franchising or replicating the model.

There are no eligibility restrictions for applications in this priority area. However, applicants should be aware that funding under the Developmental Disabilities statutory authority is available only for non-profit organizations and public agencies. HDS will accept applications for multi-year projects not to exceed two years.

Topic 1.2: Preparing Youth for Self-Sufficient Living

In recent years, many favorable trends have emerged for the general population of children and youth. These trends include a drop in overall mortality rates of children and youth, a decrease in substance abuse, a decrease in the teen age birth rate (although the number of teen pregnancies and births remains high), and a halt in the downward trend in Scholastic Aptitude Test (SAT) scores.

However, these favorable trends disappear if we examine the same indicators for disadvantaged youth in the inner cities and among the rural poor. For this population, we find serious problems, including:

(a) A high infant mortality rate;

(b) A high rate of school dropouts;

(c) A high incidence of teenage pregnancy;

(d) An unemployment rate of approximately 40% among black and other minority youth; and,

(e) A lower rate of achievement on standardized tests (low enough to disqualify 26% of blacks and 20% of Hispanics who sign up for enlistment in the armed services).

For many disadvantaged inner-city and rural poor youth, dropping out of high school in sometimes an indicator of the beginning of lifelong dependency. Too often, dropping out of school means unemployment, public support or participation in the underground economy. But even for those who graduate from school, particularly in urban areas, many are not employable because of functional illiteracy, and/or behavioral and attitudinal problems.

Employers cite three reasons for not hiring disadvantaged youth: (a) Lack of basic educational achievement; (b) improper attitudes and unacceptable behavior; and (c) lack of job skills.

Educational skills remain the responsibility of the school systems, with reinforcement by families. But behavioral problems, which are a parental and community responsibility, also contribute to school dropout and joblessness. Many employers have indicated that they are willing to be responsible for job skill development if the parents and schools can assure job ready behavior and basic educational attainment.

Many models or prototypes have been developed and used successfully to address the problem of youth who are "at risk" in terms of their capacity to take care of themselves without public assistance. Adolescents might be labelled "at risk" who are pregnant or teenage parents, are delinquents, come from broken or blended families, live in porverty, are homeless and/or have emotional or social adjustment problems. Discussed below are four successful intervention models. Additional information about these models may be obtained by telephoning (202) 755–4633.

Cities in Schools: This model, sponsored by a number of organizations including the ARCO Foundation and the U.S. Department of Justice, addresses the problems of urban youth by coordinating both educational and human services to "at risk" youth and their families through public/private partnerships. This model for integrated human services delivery, which is cited as an effective approach for addressing the problems of dropouts and school violence, is being replicated in 15 cities across the country.

Operation Success: This project is State-funded and administered by the Federation of Employment and Guidance Services (FEGS) in several New York City high schools. Its purpose is to encourage youth to stay in school and to get school dropouts to complete their high school education by offering a Graduate Equivalency Diploma (GED), job training, job placement assistance and helping them with personal and family problems.

House of UMOJA: This program provides disadvantaged, troubled or "at-risk" youth with training, employment and entrepreneurship development within a residential community structure which can also stimulate economic development and create new jobs for other youth. Employment services are supplemented by comprehensive support services, including GED preparation and psychological counseling. Umoja is being partially supported by the Eisenhower Foundation in cooperation with other foundations in replicating this model around the country.

Project Redirection: This innovative model, developed under the auspices of the Manpower Demonstration Research Corporation in cooperation with the Ford Foundation, addresses the unique needs of adolescents who are pregnant or have children by offering a comprehensive set of services, including educational, health, employability and family planning services. The purpose of the program is to enable these teenagers to continue their schooling, to acquire employment-related skills, to delay subsequent pregnacy and ultimately to achieve personal and economic self-sufficiency.

In the priority areas that follow, priority consideration will be given to approaches that are comprehensive, that build on existing knowledge, and that are targeted on communities with a high incidence of disadvantaged and minority children and youth.

HDS is particularly interested in promoting existing successful approaches, including (but not limited to) the ones described above, to implement them in other communities. Replication or franchising strategies must be based on use of existing community resources, including volunteers and private sector experience.

1.2.A Community Forums and Replication

Of particular interest is the development of holistic, community-wide responses to the issue of preparing youth for social and economic self-sufficiency. One of the problems in developing community-wide responses is the lack of mechanisms for reaching agreement on alternative solutions.

The Domestic Policy Association, supported by the Kettering Foundation, sponsors innovative forums designed to help communities discuss issues that have local and national significance.

The "National Issues Forums" are held around the country each year to bring citizens in their local communities together to help themselves understand their differences and find common ground on shared topics.

The forums provide concerned individuals with a vehicle for discussing specific issues and for working toward acceptable solutions. Approximately two hundred communities currently participate in this process of discussing three current domestic policy issues each year.

One of the three issues for 1986 is "The Welfare State: Its Past and Future." Since the issue of youth self-sufficiency is an important component of any discussion of the welfare state, the Domestic Policy Association has agreed to integrate the youth self-sufficiency issue into the discussion of welfare policy.

The Domestic Policy Association will provide assistance for integrating youth self-sufficiency with the community forums. HDS will provide small seed grants, for up to 17 months, for initial participation in the forums and follow-up activities after the forum is completed. HDS will support the development of local initiatives in 3 or 4 cities with populations between 100,000 and 500,000.

Successful implementation of community forums is considered Phase I. At the end of Phase I, HDS will accept applications from organizations which participated in the first phase, and competitively consider awards for a phase II effort, which would involve a specific community effort to improve the capacity of local youth for self-sufficiency. A phase II effort would replicate one of the successful models described above, or other approaches identified in the community forums. The Phase II effort would be limited to coordinating activities to implement the findings of the community forum. The project must address the personal, educational and employment needs of "at-risk" youth.

Proposals for funding for the first phase must address the following:

1. Priority consideration will be given to geographic areas that are members of the Domestic Policy Association network, although other cities may be considered. The listing of cities in the Domestic Policy Association network

may be obtained from the Domestic Policy Association in Dayton, OH (513/434–7300).

2. The applicant organization must be capable of establishing partnerships for integrating the delivery of corporate, community and social services for "at-risk" youth and their families at local education sites. Commitments from the local government, local education agency, local organizations (including churches, unions, various nonprofit public and private agencies, and service providers) and corporations should be reflected by 1–2 sentence statements.

3. The applicant must propose how it will move from phase I, the forums, to phase II, the implementation of change in its community.

4. The application should describe how the project will utilize various media, including public and cable television.

HDS and the Kettering Foundation, in cooperation with the Domestic Policy Association, will cooperatively participate in funding this topic. The grant period for this priority area is limited to one year.

If the conditions described above are met, there are not further eligibility restrictions for applications under this priority area.

1.2.B Approaches To Keep Youth in School

HDS is concerned about negative attitudes and unreasonably low expectations among disadvantaged inner-city and rural poor children and youth. In many inner-city high schools more than 50% of the entering freshman class do not expect to graduate.

If these attitudes and expectations are to be changed, recent child development literature indicates that efforts should be made during the early adolescent years, which represent an opportunity for development similar to the early childhood years. Special efforts among disadvantaged high school freshmen, before negative perceptions of the future become ingrained, may help raise their long-term expectation about completing high school, beginning a career, and independently raising a family.

This priority area is intended to provide funds for the development of models which address the problems of younger youth (ages 12 to 15), especially those problems that might cause youth to drop out of school.

Projects should be comprehensive and must include known successful features from current practice and past demonstration projects. Innovations proven effective by these and other projects include:

(a) Involvement of accountable community leaders to help implement changes within the schools which focus on keeping youth in school;

(b) Involvement of parents, volunteer tutors, student mentors or counselors from community agencies and mentors from the private sector;

(c) Co-location of social services and clinical health services in schools;

(d) Professional and peer self help for students who "act out" antisocial feelings, or who are truants or are suspended from school; and

(e) Exposure to private sector job opportunities, internship, or guaranteed jobs at graduation.

Although projects should serve all adolescents and their families, special emphasis should be given to: (a) Pregnant and parenting teens; (b) youth in families where there is severe family malfunction; (c) homeless youth; and (d) youth in foster care. Proposed projects must have an evaluation component that measures project outcomes including reductions in school dropout rates and changes in student expectations about their future.

Projects should demonstrate the ability to develop an identifiable organization that will sustain the project after grant funding has terminated. Applications proposing multi-year demonstrations, not to exceed three years, will be accepted for this priority area.

The June Burnett Institute of the San Diego State University Foundation will participate in the review selection and will consider funding of one West Coast proposal that involves an inner-city community with a high proportion of minorities, including Hispanics, in this priority area. Other foundations and/or communities are encouraged to develop proposals focused on their own communities.

1.2.C School Drop-outs and Potential Drop-outs

In the inner cities and among the rural poor, rates of school dropouts among older disadvantaged youth (ages 16 to 19) are increasing, as are teen pregnancy rates. At the same time, functional literacy levels are decreasing among this population.

School systems are responsible for providing a basic education, but cannot be held solely responsible for finding solutions to complex situations that reflect personal, family, socio-cultural, and economic factors within the environment. There are also too many students and school dropouts who distrust the schools and other social institutions that normally support the transition to adulthood and self-sufficiency.

Youth must have basic reading, writing and math skills before employers will offer jobs or training. Acquiring these skills is even more important for youth who have dropped out of school before obtaining a high school diploma.

Proposed approaches should motivate youth toward employment while providing necessary education. Such an approach requires the involvement of parents and community institutions. Although both at risk males and females are of concern, a priority in this area is prevention of high school drop-out due to teen pregnancy.

For those teenage parents who have already dropped out, prevention of second pregnancies is critical since continued dependence on assistance becomes more likely if a teenager has a second child. Male responsibility in preparing for future parenting contributions, both personal and financial, is seen as an important component to this area.

In approximately one-third of adolescent pregnancies, the prospective parents form their own families. Therefore, proposed projects should focus on traditional family formation as an alternative approach for achieving both male and female responsibility.

Applications under this priority area should describe cooperative efforts that involve the youth, their parents, the schools, appropriate social and religious institutions, the private sector, interested volunteers and community leaders.

The goal would be to assure that drop-outs and those at immediate risk of school drop out have alternative arrangements to complete their education and ultimately secure gainful employment. Projects should assure the provision of well-coordinated and comprehensive services, using the resources of a variety of public and private agencies.

Proposed projects must show how social service agencies and youth crisis centers will be incorporated into the project network. Projects should promote better coordination of social services and activities under the Job Training Partnership Act (especially the Private Industry Councils) for this target group. Priority must be given to involving the private sector in providing job placements for youth served by the project.

The Eisenhower Foundation, in cooperation with other foundations, will participate in the review and consideration of funding of applications

under this topic, as well as in the provision of technical assistance to assure that all projects build on what has been learned from past research and experience.

HDS will consider applications to extend innovations for which the infrastructure is already in place and which hold exceptional promise.

Applications must include a sound plan for evaluating program outcomes and disseminating the results.

HDS encourages submissions from applicants which have communicated with and identified private sector funders (including PICs) who are interested in financial partnerships with HDS above and beyond the match required in this announcement. The Eisenhower Foundation can be contracted in Washington, DC to help borker such public-private partnerships.

Applications should described how projects will continue at the end of Federal funding. HDS will accept applications for multi-year demonstrations not to exceed three years. If the conditions described above are met, there are no further eligibility restrictions for applications under this priority area.

Topic 1.3 Improve the Employment Potential of WIN Registrants

Priority area descriptions under this topic concern a cooperative effort by HDS and the Work Incentive Program (WIN) to help regular WIN State agencies find unsubsidized jobs for WIN registrants. The purpose of these priority areas is to assist States in the development of innovative programs aimed at strengthening the capacity of WIN registrants to achieve or maintain self-sufficiency. Projects funded under this announcement should be evaluated to identify successful innovations for statewide implementation. Proposed projects must address new approaches to the delivery of training/employment activities and related support services.

Grant funds are not intended to fund service programs or to provide a source of supplemental funds for current regular WIN State program activities. We are especially interested in using these funds to assist State WIN agencies in reaching out to populations, such as families with children under the age of six years, who are currently underserved or unserved by the WIN program.

Applicants, which must be regular WIN State agencies, should develop demonstration applications in one of the three priority areas described below. Applications reflecting private sector involvement and public-private partnership will be given priority consideration in the review of applications. Federal project costs are not to exceed $50,000.

1.3.A WIN–HDS Coordination—Job Opportunities

Three projects will involve the training of WIN registrants for employment opportunities in Head Start programs, day,care centers, in-home day care, after-school day care, senior citizen centers, and other community programs serving the aged, developmentally disabled, and Native Americans. The training to be provided can involve institutional training, on-the-job training, public service employment or any combination of these components.

The project must be focused on "real jobs", that is, at the end of the training, the trainee will be placed in an unsubsidized job with a salary equal to the prevailing rate in the community for that particular job type, or minimum wage level, whichever is higher.

The scope of projects funded under this priority area may include recruitment of employers; development of innovative training programs that accelerate learning; development of skills enabling individuals to do a range of jobs within the above-noted facilities; social services to help the person become prepared for employment; follow up reviews to help with job adjustment and rentention; and plans for dissemination of the model to other WIN programs.

Eligibility under this priority area is restricted to regular WIN State agencies.

1.3.B Hard-to-Place WIN Registrants

Some States have a number of WIN registrants who are in an "Unassigned Recipients" pool. These generally are persons who require more intensive training to become prepared for employment.

HDS is interested in projects to help this group of marginally-employable persons to develop employment related skills to their maximum capacity, and to overcome behavioral, physical, or educational handicaps that deter gainful employment.

WIN registrants in these projects are expected to be placed in unsubsidized employment jobs at end of the training period with a salary equal to the prevailing rate in the community for what particular job type or the minimum wage level, whichever is higher.

HDS is particularly interested in the development of strategies for local WIN agencies to use to assist transient families to find permanent housing, to obtain employment and to develop the social skills to enable them to manage a household. These families are often housed in "welfare hotels" because they have no permanent residence when they apply for assistance. These families must have applied for Aid to Families with Dependent Children (AFDC) or be WIN registrants.

Eligibility under this priority area is restricted to regular WIN State agencies.

1.3.C Innovations for WIN Teenage Parents

WIN has a very large population of teenage mothers who have not finished high school. We are interested in innovative approaches to training and development of jobs for these individuals that will: (a) Combine both training and supportive educational programs as part of the high school program; (b) begin working with the teenage mothers in their final year of high school to provide training and supportive services in job recruitment, job search and job placement activities and/or; (c) reinforce the need for continued parental responsibility while working. These activities should result in the individual WIN registrant moving into unsubsidized employment at the completion of high school with a salary equal to the prevailing rate in the community for that particular job type of the minimum wage level, whichever is higher.

HDS is also interested in projects that provide outreach to teenage fathers for employment assistance to assure present or future child support.

We expect that projects funded under this priority area will make extensive use of available findings from research that point the way to work with this group and "pilot test" a project based on recent research in this area.

Applications under this priority area are restricted to regular WIN State agencies.

Area 2: Support for Families and Community-Based Care

Topic 2.1: Child Development

Applicants interested in applying for funding under priority areas 2.1.A, 2.1.B or 2.1.C are encouraged to adapt approaches developed under the Parent Aide program sponsored by the National Center on Child Abuse and Neglect (NCCAN). Projects funded by NCCAN have shown that Parent Aides can reduce child abuse and neglect in families at high risk of requiring placement of children. Parent Aides are individuals who form relationships with families to assist them in coping with the problems and responsibilities of child-rearing. Community-based

programs coordinating volunteer parenting consultants, interns, and aides provide in-home support services to pregnant women with identified risk for parenting problems and families at high risk of requiring placement of a child in foster care. Further information about the Parent Aide program may be obtained by writing to the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013 or telephoning (301) 251–5157.

2.1.A Prevention of Developmental Delays

When children do not progress as fast as other children their age in such areas as motor coordination, cognition and language development, they are said to be "developmentally delayed." Developmental delays are common to children raised in poverty. Among disadvantaged groups, those at high risk of having developmentally delayed. children include parents who have acute or chronic psychiatric disorders, who suffer from substance abuse, debilitating physical disabilities, or other problems stemming from inadequate environmental conditions.

Developmental delays are especially severe among inner city and rural children with teen age parents. Studies show that even with the advantage of Head Start programs, some of these children "drop out" before completing high school, indicating learning and motivation problems existing at a very esqly age that are not behmg solued by traditional intervention methods.

Proposals are invited from applicants that will utilize the best available methods to identify children at risk of developmental delays and to promote early childhood development for children 0–6 in a circumscribed area, through a variety of existing programs.

Particular efforts should be planned to find the most hard-to-reach children in order to lessen the degree and likelihood of developmental delays, with priority given to screening program to identify very young children (aged 2 and below) for whom early intervention would be beneficial.

Improved and comprehensive approaches in impoverished rural areas or inner city neighborhoods are to be promoted through networks of existing child care providers and social services agencies. The network should include as many of the following components as possible:

- Training in child development, nutrition, health and safety for child care staff, mothers and grandmothers;
- Junior and Senior high school students recruited as interns for child care facilities;
- Therapeutic day care centers for infants and toddlers as well as preschool children 3–6 for children whose home environment is very poor. Professional staff, trainees and interns will work with these children to prevent, lessen, or overcome developmental delays;
- A Head Start program;
- High schools with a credit course in early childhood development and internship experience in Head Start or other child care facilities;
- Grandparents and available neighborhood mothers and fathers as volunteers;
- A preschool assessment with referral to appropriate preventive services within the network for all neighborhood children under age six; and
- Home Visiting Services—supervised by public health nurses—employing community-based trainees.

Applicants will be responsible for organizing these components to facilitate neighborhood child development networks. Successful applicants must show a broad commitment to these innovations encompassing home day care providers, parents, schools, health departments, employers, volunteers, churches and other related groups in the community.

Involvement with Parent Aide programs is also essential. Parent Aides are individuals, often parents themselves, trained volunteers or paraprofessionals in the field of child welfare, who form relationships with families to help them cope with the problems and responsibilities of child-rearing. Further information about Parent Aide programs may be obtained by writing to the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013 or telephoning (301) 251–5157.

Projects also need to build on existing systems and should show plans toward becoming self-sufficient after grant funding is terminated. The applicant should be prepared to serve as a model for national replication in communities with similar problems.

Multi-year projects in 2 or 3 communities will be funded, for a project period not to exceed three years.

The Howard Heinz Endowment will consider joint funding with HDS for one project on this subject, selected from the greater Pittsburgh, Pa., area. The focus of this project will be to serve children from ages 0 to 4 from high-risk families.

The Harris Foundation will consider participating jointly with HDS in one project selected within the State of Illinois. The focus of this project will be to serve children 0 to 6 years of age.

2.1.B Models To Assist Teenage Mothers and Prevention of Child Abuse

Premature parenthood impacts not only the teen mother, but also her family, the teen father, and most significantly, the child. Teenagers are becoming parents at an increasingly earlier age. Teenagers now account for 16% of all live births and 22% of the low birth-weight babies.

Babies born to teenage mothers have a higher rate of infant mortality and greater incidence of developmental delays and abuse and neglect. These young mothers lack parenting skills and adequate knowledge of child growth and development. Early intervention with this high risk population is needed in order to reduce the potential for child abuse and neglect, as well as minimize the number of resultant foster care placements for the children of teenage mothers.

For the teen mother, early parenthood often results in less education, multiple and closely spaced pregnancies, and poverty. Young fathers either have to meet the financial responsibilities of parenthood, or deal with rejection by the young mother and/or her family.

The purpose of this priority area is:

(1) To replicate successful models for helping teenager parents in low income communities and inner city neighborhoods become more effective in their parenting roles, ensuring that they and their children receive needed medical and social services, and that the developmental needs of the children are met; and

(2) The development of prevention programs, support services and methods to disseminate child abuse and neglect prevention materials through Statewide and large metropolitan health agencies.

Certain components appear to be central to effective intervention with pregnant and parenting teens and their children. These key components include: strong family involvement (including the fathers, grandparents and extended family); opportunities for parental learning about child development; activities for positive parent/child interaction; and, access to resource centers, volunteers, and individuals to help link these families to existing community resources.

HDS is particularly interested in approaches to assist teenage mothers who are pregnant for the first time, and in building relationships between adolescents involved in pre- and post-natal clinics and public health nurses, visiting nurses, and/or homemakers who are also service providers. Parent aides should be included as a critical resource in working with these teenagers.

The family is an essential factor for most human service activities, having primary responsibility for the care of all its members. Therefore, projects emphasizing or enhancing the role of the family in the support of the teen parent are particularly encouraged.

Also of major importance is the encouragement of the teen father to meet his social and financial responsibilities to the child and to the mother of his child. Special consideration will be given to applicants who involve the child protective services agency in planning and implementing these prevention activities and who show promise of continuing programs when Federal funds end.

Involvement with Parent Aide programs is also essential. Parent Aides are individuals, often parents themselves, trained volunteers or paraprofessionals in the field of child welfare, who form relationships with families to help them cope with the problems and responsibilities of child-rearing. Further information about Parent Aide programs may be obtained by writing to the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013 or telephoning (301) 251–5157.

HDS anticipates awarding approximately ten 24-month projects having a value not to exceed $75,000 per project, per year. If the conditions described above are met, there are no further restrictions on eligibility for applications in this priority area.

2.1.C Community Groups

As noted elsewhere in this announcement, there are increasing numbers of examples where extended family members, neighbors and other indigenous persons are becoming involved as role models, instructors or helping in other ways to redirect school dropouts, teach teen parents parenting skills or staff parent/child centers. As part of its mission to replicate or franchise effective approaches to reduce dependency, HDS is seeking proven models of programs where indigenous community groups are actively involved in helping strengthen at risk individuals and families, particularly those living in low income or inner-city neighborhoods.

HDS plans to fund three projects designed to replicate self-help programs operated by neighborhood associations, parent/student organizations, mothers groups or other informal indigenous groups actively involved in helping adolescent parents, school dropouts or unemployed youth.

The projects can be funded for up to 24 months for a maximum of $24,000 per project, per year. Priority for funding will be given to projects that require a minimum of professional staff effort and offer the greatest promise for easy replication. There are no eligibility restrictions for applications in this priority area.

2.1.D Transition of Head Start Students to Public Schools

Previous studies under the Head Start developmental continuity initiative have found that making the transition from a preschool program to a public school program is frequently a period of high stress for both children and parents, due hn oeqt to she kaqger class size and different roles and approaches of the two kinds of programs. Insufficient attention has been paid to noting the similarities and differences of the two systems and to assisting parents to serve as links, giving continuity to the child during this critical time. Pilot efforts to facilitate transition of children with handicaps has shown that attention needs to be paid to assisting staff in planning ahead for transition and in understanding each other's system, including the differences in staffing patterns and emphasis on child development and academic work.

Demonstrations of locally-designed ways to reduce the stress of transition and help children succeed are needed. Applications should address the need for assistance in transition of all Head Start children, including those with handicaps or at risk of abuse or neglect.

Proposals should address the following issues:

- Involving parents actively in planning, carrying out and assessing the transition activities.
- Increasing first-hand contact between the two systems, including the year before the children make the transition.
- Improving information-sharing procedures and increasing parent input in describing the children's interests, motivations and learning styles, along with any special problems or needs.
- Reviewing record-keeping procedures to see if common record items or processes could be designed to facilitate transition. Developing better understanding of the expectations of the public school for children entering from Head Start, ("survival skills"), particularly for children with special needs.
- Developing information and support resources for parents who formerly had dental care and other social services and health care provided and now will need to learn to access resources more independently. A special focus should be contacts with other parents already in the public school system.
- Increasing awareness of cultural and ethnic differences which may exist among children making the transition and their families which the school may not be aware of.
- Developing ways to assure that the transition assistance activities which prove to be effective are continued by the school and Head Start which demonstrated them after the discretionary grant period.

Special attention should be paid to developing information on costs involved and amount of volunteer time and in-kind contributions which were needed to operate the project, developing an assessment of the satisfaction with the activities by Head Start and public school staffs and parents and development of a final report which would contain narrative descriptions of strategies tried, both successful and unsuccessful, and cost and satisfaction information, at a minimum.

Under this priority area, eligible applicants include local Head Start Programs, or public schools or PTAs in the same geographic area as a participating Head Start program. Applications should reflect close collaboration, joint planning and an equal partnership, with commitments from both the school and Head Start, and with specific provisions for parent involvement.

HDS anticipates funding approximately fourteen 24-month projects having a value not to exceed $12,000 per project, per year. The mix of funded projects will represent geographic, cultural, and ethnic diversity.

2.1.E Stimulating Community College Involvement in Competency-Based Child Development Associate (CDA) Training for Family Day Care Providers

Family day care represents 90% of the child care arrangements made for preschool children outside of their own home. Most family day care providers are unlicensed and untrained. Currently, there is very little training available to this segment of the child care community. In the Fall of 1985, there will be available a Child Development Associate (CDA) Competency Standards and Assessment System for Family Day Care Providers. Therefore, HDS wants to stimulate two year community colleges to train family day care providers based on the CDA competencies and to prepare these candidates for the successful completion of the assessment process and award of the credential by the CDA national body.

Applicants will be expected to initiate new or adapt their current curriculum for family day care providers to meet the specific requirements for CDA training for this child care population. These requirements include the CDA competencies, 50% field work, evening courses (rather than day), college credit for all work completed satisfactorily and the use of the adapted curriculum with 15–20 family day care providers leading to successful assessment and CDA credential at the end of the 18 months. Successful applicants will disseminate findings at local and State levels and participants in three meetings of all successful applicants under this priority area.

Eligibility under this priority area is restricted to two-year community colleges with prior involvement in training in the area of early childhood education or child care. HDS anticipates funding approximately fifteen 17-month projects having a total value not to exceed $49,500 per project.

Topic 2.2: Adolescents and Youth

2.2.A Improving Shelter Staff Capacity to Deal with Problems of Alcohol Abuse among Runaway and Homeless Youth

Shelters for runaway and homeless youth are encountering disruptive behavior by adolescents due to alcohol abuse. The counseling and other assistance that is provided has tended to focus on the primary problems that are being experienced by these adolescents and to ignore the prevalent secondary problem posed by alcohol abuse. By providing earlier and more focused attention to this problem area, it is hoped that alcoholic dependency and abuse can be reduced and the resultant delinquent behavior avoided in the short-term while longer term treatment continues.

HDS seeks to develop models for the provision of early intervention services related to the prevention and treatment of alcohol abuse within shelters for runaway and homeless youth. Partnerships between runaway and homeless youth shelters and community-based programs on alcohol abuse prevention need to be developed that adapt treatment models and help provide shelter staff with the capability, knowledge and skills to deal with this problem, which shelters report as being prevalent in the youth population that they serve. Consideration should be given to the involvement of adolescents in the design of these programs.

While it is hoped that such programs would have wide applications to other settings, the principal issue is how shelters can increase their capacity to deal with this problem among the runaway and homeless youth served by the shelters.

HDS anticipates funding approximately 7–8 15-month projects having a total value not to exceed $65,000 per project. Eligibility under this priority area is restricted to shelters for runaway and homeless youth or coordinated networks of shelters in collaboration with mental health service providers and alcoholic treatment programs.

2.2.B Self-sufficiency for Older Adolescents Served by the Public Child Welfare System

An increasing number of young people are "aging out" of the foster care system. In 1983, approximately 18,000 young people moved from foster care into self-sufficiency. Many of these youth had been in foster family homes or institutions for extended periods and frequently lack rudimentary knowledge of finding a job, finding a place to live, managing money, health care, nutrition and the other necessities of living self-sufficiently.

Policy and program strategies, involving both service providers and foster parents, are needed to assure that youth in foster care receive the preparation and training that is required for them to live independently. Some States are establishing requirements that programs providing residential care to youth 15 years of age or older must add a self-sufficiency skills training component to their service design; additional efforts, however, need to be undertaken in this area.

Proposals should provide evidence of establishing and/or revising policies and programs which address the needs of older adolescents preparing to live self-sufficiently upon leaving foster care.

Emphasis should be placed on developing and implementing policies and programs; maintaining linkages with foster families and biological families; establishment of self-help groups and networks; and transitional social service support from the agency particularly during the early stages (12 months) following transition from foster care status to self-sufficiency.

Since HDS has, in recent years, funded a number of demonstrations in this area, we are particularly interested in projects that focus on the dissemination of proven approaches, or in projects that expand the knowledge base.

HDS anticipates funding approximately five 12 to 17 month projects having a total value not to exceed $60,000 per project. Applications should describe how the project will continue self-sufficiently at the end of the Federal funding period. Eligibility under this priority area is restricted to State child welfare agencies or local child welfare agencies located in large metropolitan areas.

2.2.C Utilization of Successful Self-sufficiency Program Models for Older Homeless Youth

Over the past few years HDS has supported the development of several models which have proven effective in preparing older homeless youth for self-sufficiency, and is interested in "franchising" these models to other communities. These models, and contact references, are:

Nassau County Youth Board. The Nassau County Youth Board project is a government structural model. The Nassau County Youth Board subcontracted with three community based organizations to provide case management type services to young people moving from institutional or residential settings back to their communities. Case management workers working with local agency councils (comprised upper level managers of departments or agencies involved with youth services) and through service agreements established with private residential referral sources (such as group residences), assisted youth in housing placement and the development of self-sufficiency.

Case workers receive referrals from a variety of sources prior to a youth's discharge from an institution. Workers develop a needs based case plan in consultation with the youth and his or her family and make appropriate referrals to local agencies or institutions for assistance. The major goals of the project are to reduce recidivism, reduce runaway/homeless episodes, reduce unemployment, and reduce difficulties in school re-entery and the school drop-out rate.

For more information contact: Lawrence F. Murray, Nassau County Youth Board, 222 Willis Avenue, Mineola, NY 11501, (516) 535–5868.

Bridge Over Troubled Waters. The Bridge House is an self-sufficient living facility model connected to a multi-service agency for runaway, throwaway, and homeless youth. Its purpose is to demonstrate that 16 and 17 year old youth, who could not return home and who were at risk for involvement in street life, could benefit from a residential, self-sufficient living arrangement through multi-supportive services.

The Bridge provided youth with a six-eight month residency in a supervised,

supportive, yet "independence-oriented" environment.

Client profiles were documented and maintained, data were collected on services received, and a series of research tools were administered with both project participants and a control group to determine levels of change, increased stability, and the learning of socially acceptable behavior patterns. Major demonstration aspects, to promote client independence and behavior change, included a cadre of highly skilled project staff, house resident counselors and volunteers, and education and employment requirements for all residents.

For more information contact: Sister Barbara Whelan, Executive Director, 147 Tremont Street, Boston, MA 02111, (617) 423–9575.

Starting Over Youth Resources Center. Starting Over is an self-sufficiency skills center model. Its goals is to help youth prevent a long-term dependency on social services and train them for constructive self-sufficient living. Youth between the ages of 16 and-a-half to 18 who are in the custody or care of the state are accepted into the program for up to twelve months. They are trained in home care, money management, social interaction and job attainment skills. Education, counseling and advocacy services are offered in an atmosphere of intensive peer and staff group support.

During the first three months of the program, clients are required to reside in the homelike facility. At the end of that period, a client may move into a self-sufficient living situation, if appropriate; and continue training and receiving services.

For further information contact: Kris Mayne, 6201 Belcrest Road, Hyattsville, MD 20782, (301) 779–1946.

Advocate Home Network, New Life Youth Services, Inc. The Advocate Home Network is an extended network of citizen-staff members within a defined community who each provide residential care for one or more young people in their own homes. As part of a service network of staff members, each Advocate provides a specific set of resources to all clients residing within the Network.

The specific services provided by each Advocate are based on the skills of the Advocate, the specific needs of the Network residents and the needs of the Network as a community-based organization. The services may include, but are not limited to: Educational, vocational, medical, legal, recreation and entrepreneurial skills.

The flexibility of the Network concept enables it to provide for the special needs of a variety of high risk target populations while offering a range of services including emergency shelter care, long-term care and extended follow-up services to the youth and families served. This service concept is a viable alternative to foster care, particularly for older (15–18) adolescents. The Network concept provides an excellent means through which we can engage the community to provide cost effective and humane care for high risk youth.

For further information, contact: Robert Mecum, P.O. Box 27035, Cincinnati, Ohio 45227, telephone (513) 561–0100.

Interested applicants should determine which model would be most appropriate to replicate in their community. Applicants should also refer to the description of the concept of "franchising" described in the preamble to this announcement.

Adaptations and refinements are acceptable as long as the primary features of the model are utilized. New projects should, however, build upon existing models and supplement basic designs with new program components which test the model in new settings in communities with other resources and new mix of services. Also included should be a report which specifically documents the process of transferring the model so that in the future others who are interested will have guidance.

HDS anticipates funding approximately 7–8 24 month projects having a value not to exceed $100,000 per project, per year. Applications are invited from or in concert with community foundations that are interested in effecting transfer to their communities and when necessary developing franchising materials to further promote transfers. There are no specific eligibility requirements for applications under this priority area.

Topic 2.3: Child Welfare/Adoption Opportunities

2.3.A Placement Prevention

Under the Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, all States must provide services designed to prevent removal of children from their families. Although the passage and implementation of Pub. L. 96–272 with its legislative mandate to prevent, wherever possible, the removal of children from their families has reduced the number of children in foster care, over a quarter of a million children continue in publicly funded foster care in the United States. Children in out-of-home placement, particularly those in institutional placement, continue to be a large and costly segment of the population served by child welfare agencies.

Organizational and administrative structures and State and local financing practices appear to be barriers in shifting service provision from child placement focused to family centered services. Inadequate assessment of families and inadequate provision of appropriate family based services are the consequences.

Therefore HDS seeks to assist States in implementing demonstrations and successful models to overcome organizational, financial and administrative barriers which inhibit full use of appropriate alternatives to out-of-home placement. Applicants should draw on successful practices used by others to identify children who are at imminent risk of removal from their homes and serve them through enabling their families to provide acceptable protection and care.

While most States have pilot projects, or placement prevention programs in some metropolitan areas, less than 25% are statewide. We are particularly interested in encouraging States to provide preventive services programs on a statewide basis in State-administered, Programs. For County-administered, State-supervised programs applications may be submitted for less than a State-wide program.

Proposals should address one or more of the following issues:

(1) Services coordination to promote effective management of resources and delivery of services to families. In addressing issues of organization, applicants should describe how they will assure a family-based rather than placement-based approach to service delivery. Attention should be directed to critical points of decision regarding allocation of resources, e.g., emergency response, assessment of family needs, crisis intervention, case planning, and provision and coordination of appropriate services. HDS is interested in creative approaches to both family assessment and decision making that will support staff in changing historic practices which encouraged out-of-home placement.

(2) Promotion of adequate financing of family-based programs through increased flexibility in the use of funds, and the demonstration of cost effectiveness and program efficiency benefits when funding shifts are made from placement to in home services. State and local financing of effective placement services to at risk children and their families are impeded for a number of reasons including the ongoing financial support for traditional placement alternatives, the allocation of funding for preventive approaches and the concern about

increasing total costs unless family based services can be limited to families at imminent risk of unnecessary placement.

(3) Demonstrations from rural consortia of counties or other rural regional structures, working in cooperation with the State foster care agency, for purposes of developing prevention and family-based program across county lines.

Applications from such consortia should specify needs and resources including the development of natural helping networks, use of existing professionals such as school counselors, community mental health centers, State public health, agricultural extension and other such groups in planning and implementing a coordinated service system.

The purpose of funding under this priority area is developmental only; funds may not be used for the provision of services.

State or large metropolitan child welfare agencies, or a single rural county on behalf of a rural consortia of counties, are eligible to apply. County or voluntary agenices are eligible to develop innovative models if they demonstrate significant public agency support.

The Edna McConnell Clark Foundation will participate with HDS in the review and selection of projects under this priority area and will consider shared funding with HDS of $125,000 to $250,000 for each of 2 years with the amount of funding dependent upon the extent of population covered.

2.3.B Placement Prevention Training

Professionals in the judicial system, law enforcement and child welfare agencies are most often called upon to participate in determining the appropriate level of services required and/or whether to remove a child from his or her home. Frequently, because of lack of training, they are ill-prepared to distinguish between those children who may be safely served in their own families and those requiring placement. When in doubt, they often bow to administrative and public pressure and proceed with placement.

Projects considered for funding will provide, either jointly or separately, training to the above professionals in creative service options and better assessment skills which would help make sound placement versus non-placement judgements.

Another area of consideration will focus on applicants that can demonstrate an ability to work effectively with appropriate State Courts in sponsoring training supported by all levels of the judicial system related to meeting the statutory requirement that "reasonable efforts" be made to prevent placement.

Applications will be accepted from voluntary or public organizations including institutions such as schools of law or partnerships between schools of law and social work that can clearly demonstrate relationships with court administration at the State or local level. Applicants should demonstrate an awareness and use of appropriate existing resource materials for such training. Priority will be given to those projects proposing to train the largest number of professionals.

HDS anticipates funding approximately two 17-month projects having a total value not to exceed $200,000 per project.

The Edna McConnell Clark Foundation will participate with HDS in the review and selection of proposals in the priority area and will consider shared funding with HDS.

2.3.C Grants to States to Increase the Number of Adoptive Placements of Special Needs Children

There continue to be barriers to adoption for a significant number of children with special needs, especially minority and developmentally disabled children. These barriers include inadequate and/or ineffective recruitment methods, inadequate staff training, and poor coordination and cooperation between foster care and adoption social services components. The Adoption Opportunities Program has developed extensive resources including training materials for adoptive parents and adoption staff and program models related to recruitment, public service announcements, and private sector involvement in adoption which have been widely disseminated. States and communities should use these resources and information to increase their capacity to place special needs children, including Indian children utilizing Indian Child Welfare Act preferences, in adoptive homes.

Issues which applicants must address include:

- The applicant must propose a specific increase in the number of children to be adopted above those adopted in the most recent year for which statistics are available.
- The applicant must document how it will make permanent any improvement in the system which results from the grant.
- The applicant must certify that if it receives a grant, it can begin operation promptly, without unnecessary delays because of internal requirements for receiving funds.
- The applicant must identify additional title IV–B funds to add to the State contribution for the effort, in addition to the discretionary matching requirement of 25%.
- The applicant must work closely with the State Developmental Disabilities Council, University Affiliated Facility, voluntary agencies, parent groups, minority organizations and other interested agencies and organizations.

HDS anticipates funding approximately seventeen 17-month projects having a total value not to exceed $50,000 per project. This is the third year of the program and eligibility is limited to the following States which have not previously received grants: Alaska, Arkansas, Delaware, Hawaii, Idaho, Lousisiana, Michigan, Mississippi, Nevada, New Mexico, North Dakota, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wyoming.

2.3.D Eliminating Unneccessary Delays in Moving Appropriate Children into the Adoption Process

Many children remain in foster care too long because the child welfare agencies and court systems do not move them promptly or effectively through decision making processes which lead to the identification of those children for whom adoption is appropriate.

Among the barriers which contribute to this delay are:

- Insufficient staff attention and inadequate administrative procedures to determine and document whether reunification of these children is possible;
- Lack of contact between foster care and adoption staffs which would promote prompt movement of these children through termination procedures;
- Court staff and judges who still think that some children are not adoptable and who will not free children unless a family has been identified;
- Backlogs in the legal systems for obtaining the termination of parental rights which can tie up potentially adoptable children for years.

In addition, many of the older children who have potential for adoption have family ties and are reluctant to relinquish their family names and relationships. Likewise, parents are often reluctant to relinquish parental rights if they would be unable to maintain contact with these older children.

Applications are requested which will address means to expedite the decision making process for children for whom adoption is appropriate, but who are not yet free for adoption, as follows:

• Identify agency, judicial, court and other barriers to prompt termination of parental rights, for appropriate children, as well as proposed solutions;

• Address the need for agencies to streamline and clarify implementation of procedures for determining whether children can be returned to their families or whether they should be moved into adoption;

• Develop more effective working relationships between foster care and adoption staffs so as to encourage more prompt and responsive decision making about children;

• Address the problem of freeing children for whom family ties are important.

Applicants can address any one of these areas or systematically address all of them. Other barriers which impede the movement of appropriate children from foster care into the adoption process may be also addressed.

Emphasis should be placed on providing resources and approaches to these problems which can be replicated and on developing materials which will assist in this replication.

HDS anticipates funding approximately three 17 month projects having a value not to exceed $65,000 per project, per year. There are no eligibility restrictions for projects under this area.

2.3.E Post Placement and Post Adoption Services for Special Needs Children and Their Families

Post placement and post adoption services are often necessary to support adoptive placements of children with special needs. Children who qualify as special needs children are frequently suffering the effects of very difficult or deprived-life circumstances and are also dealing with the complexities of adjusting to adoption. For children who have been adopted as adolescents, the problems are even more frequent and more intense. There are few models that specifically address the emotional needs of these children. Methods and materials focused specifically on adopted children with severe emotional problems, particularly those adopted as adolescents, are frequently needed as the number of adoptions of special needs children, including Indian children, increases.

Often the mental health professionals are unfamiliar with adoption, particularly of special needs children and do not understand how to work with adoptive families and children. Practical experience suggests that these adoptions are the most vulnerable to disruption or dissolution, and that in addition to counseling, peer support groups and respite care are valuable service support efforts.

Proposals in this priority area must address collaborative projects between mental health and social service agencies which impact a significant number of children and families in order to develop successful approaches and materials, and disseminate them nationwide.

Materials developed must be suitable for replication, with a plan for dissemination. The applicant must assure a close collaboration between appropriate services and adoption agencies.

HDS anticipates funding approximately two 17-month projects having a total value not to exceed $125,000 per project. There are no restrictions on eligibility for applications in this priority area.

2.3.F Collaborative Support of Special Needs Adoption by Unions, Sororities, Fraternities, Service Organizations and National Indian Organizations

During the past two years, several organizations received Federal grants to develop public/private cooperative efforts to increase public awareness and facilitate the adoption of special needs children. Children were featured in company newsletters, on posters and flyers in office buildings and other worksites. Their plight was presented at business meetings, churches, conferences and other special events. In addition, adoption benefits packages were developed to be used by corporations and manuals were developed to be used by various adoption groups and organizations who are interested in working with the corporate sector.

Over 40 companies provide employees with benefits to help them adopt children. An increasing number of companies and groups are using this approach as an opportunity to support their employees' interest in adoption. HDS seeks similar efforts to be undertaken by unions, fraternal groups, service organizations and national Indian organizations.

Proposals must include strategies by service organizations, unions, national Indian organizations, national professional and fraternal organizations and sororities for addressing the need to adopt special needs children. This will be accomplished by engaging their membership in the following activities:

• Provide special needs adoption information and education. This may include replication or adaptation of previously developed materials or the development of new materials;

• Develop, replicate or franchise programs for recruiting members as adoptive parents and for utilizing members as recruiters;

• Replicate, franchise or adapt previously developed materials for use by the group or develop new materials;

• Establish linkages between prospective adoptive families and adoption agencies so that prospective parents can move successfully through the adoption process.

Eligible applicants are the national officers of unions, sororities, fraternal groups, service organizations and national Indian organizations. Preference will be given to applicants who provide reasonable estimates of the number of children who will be targeted for adoption as a result of the project. HDS anticipates funding several 17 month projects having a total value not to exceed $25,000 per project.

2.3.G Therapeutic Foster Homes

Many foster children have behavioral and/or emotional problems because of a history of being abused or neglected and the instability of multiple foster placements. Further, the inclusion of status offenders, juvenile delinquents or ranaway and homeless youth in the child welfare population adds many older children with severe problems. Also, children with multiple handicaps and developmentally disabled children are sometimes candidates for foster care. Many of these youngsters end up in institutional care because States do not have enough specialized foster families and specialized support services.

In previous years, HDS support has helped to develop models for medical professionals, such as registered nurses, to be trained to provide therapeutic foster care. This priority area is intended to experiment with training non-professional foster parents to be capable of handling children with a range of adjustment problems in a way that would assist them to overcome their problems and learn more appropriate ways of behaving. These parents would in effect have a corrective or therapeutic relationship with the children beyond the usual foster parent-child relationship.

Proposals should address development of demonstrations, for (a) recruitment and training of specialized forster parents; (b) intake, screening and assignment of children; (c) involvement of the biological parents; (d) worker training and support; and, (e) utilization of other formal and informal community resources (including the courts, mental health agencies, mental retardation/

developmental disabilities agencies, University Affiliated Facilities, youth services agencies, volunteers, etc.).

Examination of costs and effectiveness of therapeutic foster homes in comparison with utilization of institutional care for this population of children should also be examined and addressed. Consideration should be given to the development of linking foster homes into networks which will allow for group support and respite among foster parents.

HDS anticipates funding approximately three 17-month projects having a total value not to exceed $200,000 per project. Eligibility to apply in this priority area is restricted to public State and county/metropolitan child welfare agencies; or, with the documented support of public agencies, private non-profit agencies, foster parent associations and community mental health agencies may apply.

2.3.H Indian Child Welfare/Preventive Services

Recent reviews of services provided to Indian children and families indicate that Indian families were most frequently taken to court. State agencies were frequently unable to develop and/or provide for home based services to Indian families which in turn led to a disproportionate placement of Indian children in out-of-home settings.

Tribes have also experienced difficulties in their ability to provide on-reservation preventive services due to jurisdictional issues, licensing requirements, and limited fiscal and community resources.

Tribal governments are encouraged to develop strategies and to work with States and counties to fully implement the provisions of the Indian Child Welfare Act of 1978 and the 1980 Adoption Assistance and Child Welfare Act in the development and administration of family-based preventive services.

Past joint efforts between HDS and the Interior Department's Bureau of Indian Affairs have resulted in the increased provision of some child welfare services. This priority area, however, focuses on the goal of prevention of out-of-home placements.

Decreased out-of-home placements of Indian children and increased Tribal, State and/or county administered home based child welfare services to Indian families are expected outcomes.

HDS will also support Tribal projects of a State-wide scope to facilitate cooperation among Indian organizations, Tribes, State social services agencies and local service providers. Models of successful resolution of Tribal/State Indian child welfare home based services are sought for replication.

Priority will be given to those applications which have been developed for preventive and home based services that involve all the entities necessary at all Tribal, State, local and other jurisdictional levels to promote the reunification of Indian families with their children and to reduce the out-of-home placement of Indian children.

Eligibility is limited to Tribal governments, but demonstrated involvement with and linkage to other relevant systems and services must be identified.

2.3.I Adapting Foster Parent Training Materials to Address the Needs of Near-Emancipated Youth

Adolescents who are in foster care face the identity and development issues of all teenagers, plus those associated with growing up in foster care, lacking a permanent family and extended family network, feelings of anger and futility about their situation, and anxiety about their future. Upon the age of majority (usually 18) these youth must manage their own living conditions, budgets, jobs, and social activities, with very little preparation. Very few foster parents are prepared emotionally or educationally to help those older youth to make this transition to self reliance. While a number of excellent materials exists for foster parents, virtually none address this critical problem.

Proposals should address development of training materials and approaches which can supplement existing foster parent training materials, to address the needs of foster parents parenting near-emancipated youth.

The materials should emphasize how foster parents can assist the development of linkages and support systems for teenagers and can help the adolescent maintain family ties. In addition, materials should help familiarize foster parests with the range of skills and resources that adolescents in foster care will need in order to successfully adapt to self-sufficient living. Proposals should include the testing and evaluating of materials.

HDS anticipates funding approximately two 17-month projects having a total value not to exceed $200,000 per project. There are no elgibility restrictions for applications in this priority area.

2.3.J State Consortium on Special Needs Adoption

Of the children residing in foster care who have a goal of adoption, many are legally free for adoption and have not yet been placed with adoptive families. Although States have varying definitions of special needs children, it is clear that the majority of children awaiting adoption have special needs and are difficult to place. Many of them have awaited adoption for years.

The purpose of this priority area is to assist States which have a large number of children awaiting adoption to significantly increase the rate at which these children are placed with adoptive families.

Three year grants of approximately $50,000–$60,000 will be made to six to ten States which have more than 750 children for whom adoption is the plan. All States receiving grants will participate in a consortium of States, the purpose of which is to share information on successful and effective practices and devise innovative strategies to increase the rate of adoptive placements of special needs children. Federal funding is designed to support each State's participation in consortium activities which will include:

- Goal setting for increasing the number of children to be placed with adoptive families;
- Data collection and analysis by the Consortium leader of the number of children awaiting adoption, characteristics, and outcomes. Consortium participants shall generate the necessary data to assess periodic progress toward the goal;
- Semi-annual meetings of consortium members;
- Sharing of information on successful policies and practices to consortium members and all other States.

One participating State, with a good record in the area of finding adoptive homes for special needs children, will serve as consortium leader and will receive an additional award of $25,000 for this activity. Applicants who wish to be considered as consortium leader should so indicate at the time of application.

HDS is interested in attracting the participation of a number of States with various levels of performance in finding adoptive homes for special needs children which have a significant number of children available for adoption. Therefore, eligibility is limited to those States which have 750 or more children for whom adoption is the plan. Documentation to support this must be provided in the applications.

Topic 2.4: Child Abuse and Neglect

2.4.A Research on Reporting Practices in Child Abuse and Neglect

A 1983 report by the American Humane Association (AHA) on the incidence of child abuse and neglect indicated a marked increase in the number of reports of child maltreatment (a 142% increase over 1976). Professional sources reported 48% of the maltreatment reports; 39% of the reports came from friends, neighbors, relatives and self; 11% were reported anonymously; and other sources reported two percent. However, the National Incidence Study (1981) found that professionals only reported to child protective services 21% of the maltreatment cases they identified.

Research of national scope is needed to examine the key factors related to reporting and non-reporting, and to analyze the reporting practices of various mandated reporting groups. Specific areas to be addressed include: who reports and why; operational definitions for child maltreatment actually used by various non-professional and professional groups; criteria actually used for deciding whether or not to report; what reporting procedures have been developed for the public and mandated professionals (i.e., educators, doctors, day care personnel); and the child maltreatment categories most likely to be reported by professionals and non-professionals.

HDS anticipates funding one 24-month project having a value not to exceed $200,000 per year. There are no eligibility restrictions for applications in this priority area.

2.4.B. Research on Central Registry Operations in Child Abuse and Neglect

Forty-two States have centralized registries for child abuse and neglect cases. The information kept in these records varies as do State rules on sealing, destruction, amendment, and access to and confidentiality of records. These rich data sources can be used to aid case identification and assessment, and to facilitate policy planning and program development. To date, this information has tended to be underutilized and insufficiently safeguarded.

Comprehensive research is needed to explore current central registry practices and procedures across the nation. Special attention should be directed to issues surrounding: Data utilization in prevention, case management, system improvements and research; accessibility by victim, family or perpetrator; expungement of records; data maintenance procedures; local agency and State planning agency use of data; and recommendations for more uniform practices in these areas.

HDS anticipates funding one 17-month project having a total value not to exceed $175,000. There are no eligibility restrictions for applications in this priority area.

2.4.C Use of Volunteers to Prevent Child Abuse

Infants and children who required medical intensive care services during the newborn period are at high risk of medical and social handicapping conditions, leading to an increased potential for child abuse and neglect. This vulnerable population includes premature, low birth weight, and serverely handicapped infants, the former being over-represented in births to adolescent mothers. About 60 percent of all infants born more than eight weeks prematurely have minor or major developmental needs. Ten percent have a major permanent handicap such as blindness, deafness, or cerebral palsy; and older infants have ever higher rates of developmental disabilities.

The purpose of this priority area is to promote the use of volunteer peer support groups to work with families of high-risk and severely disabled infants in hospital settings; to promote the use of health care professionals and trained volunteers to provide home visiting services to families with infants at risk of neglect; and to promote the use of trained volunteers by schools and/or child care centers to provide home visiting services to the homes of children at risk of abuse and neglect. Applicants must incorporate the most appropriate models of community organization and the use of volunteers.

HDS is particularly interested in identifying effective patterns of service delivery that incorporate the most appropriate community organizations, such as hospitals, clinics, health care professionals, schools, social agencies and the use of volunteers. HDS believes that this approach will benefit both the parent and the child and lead to improved functional status of medically high risk infants, better functioning parents and decreased involvement of Child Protective Service agencies.

Applications should address:

- The need for close collaboration between hospitals and community organizations in developing and implementing programs to meet the needs of children at risk and their families;
- The special needs of parents who have the fewest resources, such as the very young, those who have not had adequate prenatal care and those who lack stable relationships, education, adequate housing and income;
- The need to promote the development of the infant/child both directly and through improving the functioning of the family;
- The use of trained volunteers to work with hospitals, clinics, health care professionals, schools or child care centers to provide home visiting services to families with infants at risk of neglect and abuse.

In past years, HDS has funded several successful efforts in the area of perinatal prevention. The findings of these projects should be incorporated into any new proposed effort. Hospitals participating in these projects include, for example: St. Margaret's Hospital, Boston, MA; Sacred Heart Hospital, Pensacola, FL; Saint Joseph's Hospital, Wichita, KS; and Huntington Memorial Hospital, Pasadena, CA. Further information about these projects may be obtained by writing to the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013 or telephoning (301) 251–5157.

HDS anticipates funding 10 projects, not to exceed $20,000 each for a twelve month period. There are no eligibility restrictions for applications in this priority area.

2.4.D Child Sexual Abuse by Women

Just as it has been assumed until recently that boys were rarely sexually abused, so was it assumed that few women were perpetrators. However, researchers have begun to question whether this is the case.

While sexual abuse by females is less frequent than abuses committed by males, it does account for nearly 5% of abuses against girls and 20% of the abuses against boys (Finkelhor, 1984). Problems presented by female child sexual offenders have been ignored. A study to examine the scope of the female offender problem from definitional, prevention and treatment perspectives will be considered.

HDS anticipates funding approximately one 17-month project having a total value not to exceed $175,000 per project. There are no eligibility restrictions for applications in this priority area.

2.4.E Research on Male Victims of Sexual Abuse

Data suggest substantial underreporting nationwide of sexual abuses of male children. These cases differ from the classical model of the incestuous family (father/daughter incest based on martial breakdown and maternal abdication) and as a result

have often been overlooked (Finkelhor, 1984). However, an increase in the number of cases of abused boys, as high as one-third of case loads (Rogers, 1979; Seift, 1979), has underscored the need to better understand this problem.

Research is needed to investigate how sexual abuse of male children differs from abuse of females, specifically the nature of the abuse, who the abusers are, the extent to which abused male children are adolescent abusers of other children, and etiological information on adults who abuse male children.

HDS anticipates funding approximately two 17-month projects having a total value not to exceed $175,000 per project. There are no eligibility restrictions for applications in this priority area.

2.4.F Child/Youth Abuse and Neglect within Institutions

Several years ago prime time media exposures of the maltreatment of children and adolescents in residential care caused national concern about the plight of adolescents in these institutions. The National Center on Child Abuse and Neglect (NCCAN) has funded several demonstration projects to develop procedures and programs to respond to the actual or potential abuse and neglect of children and adolescents served in institutional settings.

This program priority is intended to address the need for the dissemination and replication of model programs in institutional facilities.

Applicants must implement approaches which provide for safe and secure care in residential facilities which serve children and adolescents. Involvement of the child's family, placement agency staff and citizens' review committees should be included. In addition, the children in care must have a specified procedure for filing complaints of maltreatment by institutional staff and personnel.

Preference will be given to applicants who demonstrate continuation of the program beyond Federal funding. Previously-funded program models will be made available for replication. Information about program models will be available upon request by writing the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013 or telephoning (301) 251–5157.

Eligibility to apply under this priority area is restricted to national and State associations of residential child care agencies and State programs in order to disseminate and replicate proven programs models that have led to protecting children from abuse and neglect while being cared for in residential (24 hour) institutions. HDS anticipates funding approximately three 36-month projects having a value not to exceed $100,000 per project, per year.

2.4.G Research on Emotional Maltreatment

Emotional maltreatment (mental injury or psychological abuse) is the form of child abuse and neglect which remains most difficult to define, identify, investigate and treat. The protection of these children and the treatment of these families requires intense involvement and a high level of therapeutic skill, although little guidance is available for those service providers who cope with this form of child abuse and neglect.

Recent research has made some progress in better defining emotional maltreatment (Garbarino, 1985). Further research is needed to assess the scope and nature of this problem and to identify special treatment approaches for children and adult/caretakers.

HDS anticipates funding approximately two 24-month projects having a value not to exceed $150,000 per project, per year. There are no eligibility restrictions for applications in this priority area.

2.4.H Pre-Service (Academic and Field Work Preparation) and In-Service Training for Professionals in Child Abuse and Neglect

Child abuse demands specialized legal, case management and treatment responses. The definition of child abuse and neglect has been expanded over the years to include sexual abuse and exploitation and abuse and neglect in and out of home care settings.

There has been an increase in numbers of reports and complexity of cases, such as those related to sexual abuse. Social workers, health and mental health personnel, law enforcement professionals and judges are now handling a variety of intra-familial and extra-familial cases without adequate specialized training and background.

There is a need for expanded pre-service academic training for professionals entering the human service field and continued in-service training for professionals already involved with child abuse and neglect cases. HDS is interested in receiving applications from organizations which provide this training. Institutions of higher education provide professional training but the changing nature of child abuse cases requires updating of curricula. Professional organizations of educational, medical and legal professionals and law enforcement officials, provide continuing education opportunities to their memberships.

Applicants must develop an approach to update existing child abuse and neglect training materials and integrate these materials into existing pre-service (academic) and in-service (continuing education) programs for professionals concerned with the care and treatment of abused and neglected children and their families.

HDS anticipates funding approximately fifteen 24-month projects having a value not to exceed $50,000 per project, per year. Eligibility to apply under this priority area is restricted to schools with established curricula for the preparation of medical and legal professionals, law enforcement officials and social services professionals, as well as major national and State professional organizations.

2.4.I: Specialized Treatment Training Teams

The reports of child sexual abuse cases are on the increase. Both in-home and out-of-home child sexual maltreatment cases have created media attention in many States during the last three years. Child sexual abuse cases pose particularly difficult treatment problems which require specialized approaches followed by intensive supervision and monitoring. Few communities are able to meet that need due to either or lack of treatment resources or appropriate methodologies to implement specialized programs. Applications are requested that propose using specialized treatment teams to provide services to children and families involved in child sexual abuse cases.

Applicants must develop approaches for the establishment of specialized treatment teams to serve as consultants to frontline workers involved with managing in-home and out-of-home child sexual abuse cases. The mitigation of organizational barriers, such as the difficulty in meeting statutory requirements for confidentiality and limited accessibility to data, must be achieved in order to focus efforts on treatment of and support for children and parents.

Preference will be given to applicants which demonstrates Statewide coverage or propose a method which will lead incrementally to Statewide coverage. Funds may be used for establishing a system to implement specialized training teams, developing the coordination process and procedures, training and other developmental costs. Salaries of specialized teams or ongoing service delivery costs are not to be included as a part of the grant.

HDS anticipates funding approximately ten 24-month projects having a value not to exceed $75,000 per project, per year. Eligibility is limited to State or local agencies.

2.4.J Coordinated System Response to Abuse in Out-of-Home Child Care Settings

During the last year, many reports of out-of-home child sexual maltreatment have come to the forefront. The investigation and management of these cases have been difficult because in many locations there are no policies or procedures for law enforcement officials or child protective service agencies to follow in responding to reports of out-of-home child care sexual abuse.

Poorly coordinated responses may result in additional trauma to the child-victim and family.

Child protective services staff are not trained to conduct criminal investigations and law enforcement agencies may not be familiar with the services or expertise offered by CPS and other community agencies. Demonstration projects are needed to gain experience and knowledge in this area.

Applications are requested that develop approaches which demonstrate colloboration and coordination between child protective service agencies and law enforcement offices in receiving reports of out-of-home child sexual maltreatment in out of home child care settings. Emphasis should be placed on minimizing the additional trauma to the child. Agreements should be developed with mental health clinics to provide services to the victim and the victim's parents at the time of the crisis. The prosecutor's office should be included in the coordinated services network since most child sexual abuse cases lead to court adjudication.

Preference will be given to those applicants which provide evidence of collaboration with and coordination among the various agencies involved in out-of-home child sexual abuse cases, such as child protective service agencies, licensing agencies, law enforcement agencies, mental health agencies, the prosecutor's office, and judges.

HDS anticipates funding approximately six 24-month projects having a value not to exceed $100,000 per project, per year. There are no special eligibility requirements for applications in this priority area.

2.4.K Children's Court Appearances

When child abusers are prosecuted, their child-victims are often the only witnesses available. Experts in the field say that the prosecutorial process is both difficult for judge and jury, and traumatizing to the child-victim. Preliminary research efforts have begun to analyze and document the effects of courtroom experiences on the child and to develop less traumatizing courtroom procedures.

However, HDS is now interested in supporting research that would examine the viability of children's testimony. This question, whether sworn testimony presented by children is sufficient to bring about a conviction, has been receiving increasing attention in the media and from defendant advocacy organizations. There is a need to focus on a variety of issues raised by this problem.

Research is needed to explore the ability of children to accurately recount events, children's suggestibility to falsification of events, jurors' views of children's credibility; and to develop means to strengthen children's credibility, improve documentation, and lessen the danger of case dismissal on a technicality.

HDS anticipates funding approximately three 36-month projects having a value not to exceed $150,000 per project, per year. There are no eligibility requirements for applications in this priority area.

2.4.L Recruitment of Volunteers to Serve as Court-Appointed Special Advocates

HDS will support projects through seed grants in new locations to assist local voluntary community organizations or coalitions of organizations to recruit, train and use volunteers as Court-Appointed Special Advocates (CASAs) or Guardians Ad Litem to determine and recommend to juvenile court judges which course of action is in the best interest of the child, based on the volunteer's independent investigation.

A CASA volunteer insures that every child has a permanent placement plan at the time of the judicial disposition and monitors the plan to make sure it is adhered to. CASAs serve as independent advocates for abused, neglected or dependent children, as well as children who are in custody of a public agency and who have been placed in foster care.

Applicants must show that the court desires to support the project and must also demonstrate the capacity to develop and implement appropriate training and to coordinate the program under the auspices of the court.

Applicants must show that efforts will be made to enlist volunteers who represent the racial or ethnic characteristics of the child population being served. Applicants must also show their willingness to work in partnership with the National CASA Association and the State task forces on permanency for children set up by the National Council of Juvenile and Family Court Judges with funding from the Office of Juvenile Justice and Delinquency Prevention of the Justice Department.

HDS anticipates funding several 36 month projects having a value not to exceed $20,000 dollars per project, each year. There are no eligibility restrictions for applications under this priority area.

2.4.M Court Appointed Special Advocates: Dissemination of Best Models

HDS in consultation with the Department of Justice has funded a number of projects that demonstrate how local voluntary community organizations or coalitions of organizations recruit, train and use volunteers as Court Appointed Special Advocates (CASAs) or Guardians Ad Litem to determine and recommend to juvenile court judges which course of action is in the best interest of the child based on the volunteers independent investigation.

Applications are requested that will identify the most effective and proven CASA models for the benefit of national organizations which are organizing and operating CASA programs. These models will be evaluated, documented and the findings disseminated nationally.

During the evaluation phase a number of issues need to be examined when evaluating the different CASA programs, such as: (1) Profile of the CASA volunteers; (2) how the training and recruitment of volunteers is conducted; (3) how the coordination between the court and child welfare services is handled; (4) the impact on child welfare services; (5) the kind of evaluation being used; (6) effectiveness of the coordination; and (7) methods of project management. Applications should describe how the models will be selected and how they will be promoted on a national basis.

HDS anticipates funding several 36 month projects having a value not to exceed $20,000 dollars per project, each year. There are no eligibility restrictions for projects under this priority area.

2.4.N Research on Child Protective Services Screening Decisions and Substantiation

A recent survey of the status of child protective services (CPS) showed that these agencies are experiencing

increases in both the number of referrals and the severity of cases. In most States, this situation has led to policies that allow staff to screen out cases without full investigation. While written screening policies do exist in many States, a survey of CPS administrators indicated that in practice these decisions are based primarily on worker and supervisor judgement (American Humane Association, 1983).

There seems to be a considerable gap between policy and practice with regard to substantiation in many States, and policy related to screening is virtually nonexistent. Of particular concern was the finding that while increased case volume does serve as a criterion for prioritization or substantiation, there was no evidence that specific rules are applied in the decision-making process.

While the 1983 AHA study researched policy issues regarding substantiation, it did not look into how the policies were or were not implemented and the consequences of implementation (or lack thereof) on the caseloads to be served. HDS is seeking applications to study the processes and problems involved in screening decisions as well as methods to improve screening techniques and subsequent substantiation.

Specific areas to be addressed are: the basis for selection of reports to be investigated; classification criteria for investigation and substantiation; the relationship between substantiation and reporting group; the relationship between substantiation and type of reported abuse; and the identification of methods to improve CPS screening and substantiation decisions.

HDS anticipates funding one 24-month project having a value not to exceed $200,000 per year. There are no eligibility restrictions for applications in this priority area.

Topic 2.5: Supports to Strengthen Families

2.5.A Reunification of Families

Many children are removed from the home for reasons of child abuse and neglect. Parents of these children are often too young or immature to exhibit adequate parenting skills, or they suffer from drug abuse or are mentally ill.

However, despite these deficiencies, parents or a single parent may be able to function in the adult world of work and other non-parenting activities. HDS seeks to develop models for promoting financial, social and emotional support from the biological parents of children in foster care.

Research and practice have documented that frequency of parental visiting and the consequent maintenance of the parent—child relationship is a crucial component of efforts to reunify children with their biological parents. However, for a variety of reasons, such visiting is often limited and infrequent. When it does take place, foster parents are often unable to respond positively and may view distressing effects on a child as harmful to the child.

Proposals should address the development of systematic approaches for increasing involvement of biological parents with their children in foster care, with a special emphasis on regular visitation and positive, supportive communication between the biological family and the foster family. HDS is also interested in developing models for financial support by parents of children in foster care. The use of volunteers as facilitators in this process should be included.

HDS anticipates funding approximately three 17-month projects having a total value not to exceed $100,000 per project. Eligibility to apply under this priority area is restricted to public and private voluntary agencies providing foster care or foster parent associations, with documented support of an agency.

2.5.B Corporate Partnership Efforts to Strengthen Families

The prevention of runaway behavior, family conflict and other factors which cause family dysfunction are areas of concern not only to HDS but to communities nationwide. Educational efforts and the provision of direct services have proven effective in reaching out to and assisting families experiencing such dysfunction.

Many corporations have played an important role in this area by providing support to employees and their families through efforts such as employee assistance programs, educational workshops, referral services, and third party payments for the delivery of direct services.

HDS is seeking partnership demonstrations between centers for runaway and homeless youth (or other service providers) and large and small corporations with existing or new employee assistance programs for the provision of educational and direct services around such issues as preventing runaway behavior, adolescent alcohol and drug abuse and adolescent abuse and neglect; and improving the parenting skills of parents with teenagers.

The services provided could include counseling, group therapy, in-home family services, information and referral, family support networks, and other types of assistance. Applications should address the development of direct service delivery, educational programs or a combination of both components to be added to an employee assistance program as well as an evaluation of the component(s) implemented in order to determine the interest in and the impact of the assistance provided. The specific issue(s) or area(s) to be addressed should also be included, together with the reason(s) for their selection.

Area of interest include, but are not limited to, adolescent abuse and neglect, suicide prevention, and adolescent alcohol and drug abuse. Strategies for working with small businesses (10–30 employees) where the likelihood of an organized employee assistance program is small are of particular interest.

HDS anticiaptes funding approximately eight 17-month projects having a total value not to exceed $75,000 per project. Eligibility to apply under this priority area is restricted to centers for runaway and homeless youth, coordinated networks of such centers or community-based youth service providers. In each case, there must be demonstrated collaboration with and commitment from a local business or corporation.

2.5.C Strengthening Transient Families through Public-Private-Voluntary Partnerships

The number of displaced and transient families without appropriate living accommodations who are having difficulty forming and maintaining households is increasing across the country. The public costs of assisting these families are excessive and the damage that family members experience is potentially destructive to the individuals involved.

One of the known public costs of family break-up among displaced families is foster care placement for the children. Although statistics are not readily available, some agencies report up to 20% of the foster care caseload is related to the lack of appropriate family living arrangements. There is a need to develop effective short and long term economic self-sufficiency strategies to assist transient or displaced families to break out of a cycle of dependency and dysfunctional life styles.

HDS seeks to identify community-based collaborative efforts to intervene in destructive patterns so that families remain intact and children and adults receive appropriate health, educational and social services geared to strengthening the family unit.

Applications must incorporate at least one of the approaches described below, with special emphasis on cooperation between the public and private-voluntary sectors:

(a) Promote local voluntary/public/private sector networking to identify strategies and assist in developing emergency services to stabilize displaced families, including the use of intergenerational and interdisciplinary strategies for working with displaced families, such as families "adopting" other families.

(b) Target areas with significant numbers of displaced families and use existing human services and community resources to demonstrate longer-term collaborative voluntary/public/private sector approaches to assist displaced families in becoming economically self-sufficient. For example, use the Head Start migrant program model to target preschool programs to a transient population for the purpose of identifying and addressing family needs.

(c) Coordinate and target existing or new preventive services critical to enhancing families' ability to develop and maintain households. Examples are: working with local housing authorities to generate or target affordable housing; assisting individuals in gaining access to appropriate support services in the community; working with the private sector in developing job exposure opportunities; and obtaining services to meet the special needs of children at risk of displacement.

(d) Work with the child welfare system to maintain children with their families and to improve pre-placement preventive services so that families can access the support needed.

(e) Encourage outreach services to help displaced families gain access to the human services and community resources that are available.

Only applications addressing problems of displaced families and their children will be considered for this priority area. The proposed projects may be multi-year demonstrations for a maximum of three years.

HDS is particularly interested in applications from community organizations which show support from community foundations, corporations, or voluntary organizations.

Applications should describe how projects will continue self-sufficiently at the end of Federal funding. HDS will accept applications for multi-year demonstrations not to exceed three years. If the conditions described above are met, there are no further eligibility restrictions for applications under this priority area.

2.5.D Supports for Families with a Developmentally Disabled Member

Although most developmentally disabled individuals reside with their families—placing tremendous pressure on those families—support services are more likely to be made available to developmentally disabled persons who reside in group homes or intermediate care facilities. HDS recognizes the need for a spectrum of support services to families who elect to maintain their developmentally disabled members at home, as a means of preventing erosion of the structure within which that care is provided.

As a result of publications developed under the UAF Networking Initiative for Services to Adults with Developmental Disabilities, the scope of services that forms the basis for family support has been more clearly identified. It includes, but is not limited to, training to assist parents in managing behavior and teaching socially beneficial skills, services to assist parents in care, training and integration of their developmentally disabled children (e.g., employment, transportation, recreation programs, counseling), respite care to allow parents some relief from the demanding tasks of caring for a developmentally disabled family member, and support groups to provide emotional and practical supports among parents.

HDS will support demonstrations which promote the reinforcement of the model of family-based care for the developmentally disabled. Programs addressing single support strategies, such as respite care, have been selected in past discretionary competitions. What is needed now are strong, well-conceived models incorporating multiple facets of the range of family support services.

HDS will accept applications for multi-year project periods not to exceed two years. There are no eligibility restrictions for applications in this priority area.

2.5.E Family Day Care

Family day care is a major source of child care in the United States, accounting for nearly forty percent of all care for children under the age of six. As the birth rate continues to rise for women of child bearing age in the labor force and these women return to their jobs soon after the birth of their children, the demand for family day care has increased.

HDS is interested in identifying effective approaches to providing family day care for those parents who prefer family day care and disseminating this information widely. These approaches should provide for an increase in the availability of family day care and improve the effectivenes and quality of family day care providers.

The development of networks has been an effective method to support family day care providers. A network provides common information and referral services for each provider in the network. Since the isolation experienced by family day care providers is a major problem, the network provides opportunities for them to meet to discuss mutual concerns and to provide peer support for each other. Networking can also increase their effectiveness by providing joint training both in the home and off site and by utilizing self-audits to assure that quality care is provided.

Other areas in which the network can assist the provider are with information to members on structuring the activity as a small business; health and liability insurance; equipment; group purchases of equipment; food or services to benefit from economies of scale; or back up support when the provider has an emergency and is unable to care for the children.

HDS has funded two projects in the past three years which have addressed networks of family day care providers. The findings of these projects should be considered in developing applications to identify good approaches for maximizing the availability of family day care:

- Child Care Dallas developed an employer-assisted family day care home system as a new approach to increase the availability of care for infants and toddlers. More information on this project may be obtained from Madeline Mandell, Executive Director of Child Care Dallas, 1499 Regal Row, Suite 400, Dallas, TX 75247 (214) 630–7911.
- The Governor's Commission for Children and Youth in Mississippi developed a family day care network which utilizes retired individuals as the care providers. More information on this project may be obtained from Neilly Hutchinson, Governor's Commission on Children and Youth, 301 W. Pearl Street, Jackson, MS 39203–3093 (601) 949–2000.

Applicants should refer to the description of the concept of "franchising" described in the preamble to this announcement. Applicants should determine which model would be most appropriate to replicate in their community or should propose other approaches which meet the purposes of this priority area. A total of five projects will be funded at $30,000 each per year for a project period of up to 24 months.

Topic 2.6: Dissemination of Moterial on Self-sufficiency

A pool of innovative program ideas has resulted from the numerous research and demonstration projects which have been funded by both foundations and HDS. However, these innovations have yet to be successfully transferred to the practitioner and policymaker and utilized for the benefit of needy target populations. The inadequate knowledge transfer, utilization and application activities are recognized as a major problem area and one where foundations and HDS can join together to create a greater impact.

HDS will cooperate with foundations in the dissemination and utilization of the most exemplary and successful programs for maintaining the elderly and the developmentally disabled in their own homes for as long as possible.

The Robert Wood Johnson Foundation is considering a national program to demonstrate whether a private market exists for a coordinated set of supportive services, such as shopping, housekeeping, companionship, home repair, and financial planning, that ultimately will pay for itself.

The Retirement Research Foundation has and continues to support multiple demonstration projects designed to keep older people in the community. The range of issues addressed include the organization and financing of long-term care, issues of guardianship and protective services delivery, coordinated delivery of homebound services and approaches to identification and care of abused elederly.

As a primary goal in its program for the elderly the Florence V. Burden Foundation wants to help older Americans remain in their homes. In the past, the Foundation has provided start-up funds for model programs in hospice care, at-home health care, respite care, foster care and shared housing. The Foundation has also invested in studies of home equity conversion and private insurance for long-term care. Currently, the Foundation is especially interested in protective services and financial management services which allow the elderly to remain in their homes through the least intrusive means.

The J. M. Foundation has extensive experience in the development of in-home care models and related rehabilitation services for the developmentally disabled. The Foundation's current priority is to encourage the implementation of these improved services in all communities.

During the FY 1985 Coordinated Discretionary Funds Program, HDS funded a number of projects under a priority area titled "Consumer-directed Preventive Services." These projects are focused on reducing inappropriate use of guardianship and care by encouraging consumers or their representative groups to develop life service plans that assure consumer choice in future arrangement for delivery and financing of social and protective services in advance of a life crisis. In addition, innovative programs have been funded by other Federal agencies such as the Health Care Financing Administration, the Veterans Administration, the National Institute on Aging, and the National Institute for Mental Health.

HDS seeks applicants to assist in the dissemination and utilization of exemplary community-based, in-home services projects, such as those described in the examples above. Successful applicants will have taken an eclectic approach in the dissemination and utilization activities which they propose.

It should incorporate the most appropriate promotional and marketing techniques. The applicant will be expected to work closely with participating foundations, HDS, national organizations and State and local community service networks which wish to take advantage of the latest innovations in community-based in-home services to assist the elderly and developmentally disabled to remain in their own homes.

The applicant will be expected to produce appropriate documents, hold workshops, provide forums, print newsletters and utilize state-of-the-art techniques in marketing to promote dissemination and utilization of successful programs. Applicants will serve as a technical assistance resource to local grantees within communities for the purpose of adapting practices to meet their needs.

The following foundations will consider cooperating with HDS and will consider jointly funding a single project from this area; Florence V. Burden; J. M.; Retirement Research; New York Community Trust; and Robert Wood Johnson. Proposed projects must show progress over a three-year period in moving toward self-sufficiency. The HDS and foundation share of the project cost will decrease each year with the expectation that the project will generate 100% of the required revenues in the fourth project year.

Area 3: Promotion of Housing Alternatives and Living Arrangements

Topic 3.1: Living Arrangements for Individuals with Developmental Disabilities

While substantial progress has been made in developing suitable community-based residential programs and in placing persons with developmental disabilities appropriately in these facilities, greater efforts are needed to promote the integration of persons with developmental disabilities into the community. Recent surveys on residential care for the developmentally disabled have shown that:

- Of the estimated 105,000 persons left in institutions today, most are severly and profoundly handicapped.
- 40% of residents in licensed residential facilities are mildly and moderately retarded, and potentially could move to less restrictive (and less costly) semi-independent or self-sufficient living programs.

Specific guidance on the topic of living arrangements for the developmentally disabled has also come from the recently published Pennhurst longitudinal study. Among its recommendations are:

- Development of smaller, more normal living arrangements for developmentally disabled individuals exiting from institutions.
- Improvement of working conditions, compensation and training of community residential service staff to cope with the needs of more seriously disabled persons.

Distinctive features of community-based residential living facilities vary along a number of dimensions including size, facility operator, level of supervision, staffing and nature of habilitation emphasized. Still to be developed are new, cost-effective models based on individual needs that fill gaps in the continuum of service options for people needing different levels of residential care. If the range of services offered does not truly meet the needs of consumers, then those individuals will not make maximum progress in a minimum amount of time. HDS is interested in research and demonstration projects which address each of several key issues. Topics on which proposals are sought include:

- While research findings suggest that the placement of mildly, moderately and severely retarded people in community-based settings is associated with the acquisition of adaptive behavior skills, it is not apparent that the same relationship holds for profoundly retarded people.

There is a dearth of evidence associating changes is adaptive behavior of profoundly retarded persons to smaller residential placements, as detailed in the recent UAF Technical Report, *Residential Services for Adults with Developmental Disabilities.* As opportunities are being made for profoundly retarded people in small community settings, data need to be developed to guide providers, decision-makers, program planners and administrators in evaluating and modifying existing programs and designing appropriate new ones.

• Semi-independent living programs (residents have their own living quarters with staff nearby in another unit) facilitate deinstitutionalization through their emphases on teaching specific skills to promote transition to more self-sufficient living. Furthermore, the efforts of States to move severely/profoundly impaired people into community settings with high levels of suppervision can be greatly assisted by moving mildly/moderately impaired individuals into less highly supervised settings, thus increasing the availability of existing community sites.

Demonstrations are needed to further explore the potential for developmentally disabled people to profit from semi-indepent living training programs and to foster the transition of the developmentally disabled through community programs from higher to lesser levels of supervision.

• In supported living arrangements, clients have their own homes or apartments and are responsible for their own day-to-day activities. Depending on the clients' needs, these programs provide training and counseling staff who provide assistance with problem solving, budgeting or crisis intervention. While it is evident from reports of State program agency personnel that there has been substantial growth in supported living, no data exist on the utilization of these programs nationally. To fill the void in our knowledge base in this area, research is needed to document the extent of utilization and level of success in existing programs, to explore needed modifications and to design new programs for nationwide replication.

• Changes in residential care in recent years indicate a strong growth trend for small group residences and a continuing decrease in the population of very large facilities. However, there is substantial variation among States in how and in what types of smaller group residences are developed and funded. A principal challenge to the continued evolution of group residences from large to small is the development of greater numbers of programs and the training of additional personnel to provide high quality services to severely/profoundly impaired people in community settings. There is a need for demonstrations of model practices and training programs to increase the capabilities of generic professionals (physicians, nurses, dentists, social workers, recreation specialists, policy analysts and others) to offer their services to developmentally disabled people in the community.

• Group homes, although a rapidly growing and popular alternative to institutionalization, are experiencing significant problems in a variety of areas, including administration and management. For example, group home residents have been found to return to institutions at a higher rate than that of persons in other residential alternatives. High staff turnover, maladaptive behavior among residents, and funding problems are also not infrequently associated with this mode of residential living. Projects are needed to explore ways in which group homes can be improved; to identify those administrative practices and organizational features which distinguish those most effective homes; and to determine the factors which contribute to the development of community living skills among residents.

There are no eligibility restrictions for applications in this priority area. HDS will accept applications for multi-year projects not to exceed three years.

Area 4: Preparation for an Aging Society

The rapid growth of our older population and the projection for its continued growth make it imperative that societal institutions, families, communities, and individuals prepare appropriately for an aging society. Such preparation must recognize and respond to the fact that older people are significant contributors to society as well as recipients of services when necessary. In order for our nation to prepare younger adults, they need to perceive aging as a lifelong process, understand the changing social, health, housing, and financial needs in older age, and develop the skills to prepare themselves, through lifelong planning, for the last decades of life. They also need to consider and prepare for their role as caregivers. Societal institutions need to adopt public policies that reflect the changing nature of our older population. Neighbors and communities need to respond to demographic changes.

HDS is interested in developing meaningful programs that will stimulate such preparation for an aging society.

Topic 4.1 Planning for Later Life

By the year 2025, it is projected that one of every four Americans will be 65 years or older. A number of things need to be done to prepare today's young and middle age adult population for extended active life spans, many years of which will be spent as an "older American." For example, people need information about the aging process and the options for their later years. They need to know the importance of appropriate advance personal planning, continued activity, and lifestyle adaptation to help them remain independent.

Adults, now in their thirties, forties and fifties, need to begin to plan for the social, health housing and financial needs of the sixth, seventh, eight and possibly ninth decade of their life. To do this, it is necessary to know what the different age groups today know about aging, what the gaps in knowledge are and what the best methods are to fill these gaps. Some research already exists in the former area but almost none exists in the methods to help adults prepare adequately for their later years.

Projects are solicited that identify ways to prepare adults in their thirties, forties and fifties to plan effectively for their social, health, housing and financial needs in later life. Projects should:

(1) Synthesize existing research and information, including the work being done by the National Academy of Sciences and a recent Louis Harris survey, regarding the age-related perceptions of the various age groups;

(2) Identify the gaps in knowledge that exist in today's various age groups regarding what actions they might resonably adopt in an early stage of live, to better prepare for their own aging;

(3) Develop and pilot test approaches for changing both the perceptions and behaviors of the differing age groups; and, finally,

(4) Develop innovative methods for the transfer of project findings. The pilot tests must be carried out only on a Statewide or large metropolitan area basis.

Projects in this priority area are limited to $200,000 per year for a maximum duration of 24 months. There are no eligibility restrictions for applications in this priority area.

Topic 4.2 Future Needs, Programs and Personnel Requirements

The Order American Act Amendments of 1984 authorize the Administration on Aging to establish

and maintain a demographic data base on the older population for the purpose of formulating public policy. Considerable effort has been made to gather and assess descriptive data on the characteristic of older persons and their needs. Extensive demographic information on the nation's older population has been derived from the 1980 census and surveys conducted by the Social Security Administration and the National Center for Health Statistics, among others.

Data on the characteristics of the elderly population also has been tabulated by State and local jurisdictions, and made available to State and Area Agencies on Aging. While these data are valuable, there is a need to demonstrate how they can be applied to the development of public policies for the benefit of older Americans in the future. Increased responsivencess by societal institutions over the coming decades to the aging or our society—its opportunities and challenges—depends upon knowledgeable public debate. That future policy agenda can be shaped significantly by accurate forecasting models and insightful analyses that are useful to decision-makers.

Applications are invited which will demonstrate ways to link available data on the elderly and predictive information on the future needs and benefits of an aging society to the formulation of public policies. Applications should undertake a comprehensive research effort resulting in a set monographs that:

(1) Analyze the effects of demographic, social, economic and other trends on the future status and needs of the older population over the next 25 years;

(2) assess the nature, scope and types of programs required to meet the predicted needs of the growing number and changing nature of the older population;

(3) Identify the kinds and number of personnel required to carry out such programs; and

(4) Examine the policy issues that must be dealt with in preparing for an aging society.

Projects in this priority area may request a maximum of $200,000 per year for a maximum duration of 24 months. There are no eligibility restrictions for applications in this priority area.

Topic 4.3. Aging Manpower Studies

The field of aging will continue to grow rapidly in the next 20 years as the number of older persons continues to increase. There is a need to ensure that adequate numbers of trained personnel are available to provide direct assistance, plan and coordinate a variety of services to the elderly in areas such as health, housing, mental health, income, transportation, nutrition, advocacy, information and referral, and education. AoA has an important role to play in designing and supporting appropriate training programs for personnel in aging. In assuming this rule, AoA needs to collect, analyze and maintain data on existing and future manpower needs in the field of aging.

Applications are solicited for manpower studies in the field of aging to answer several or all of the following questions, including:

(1) What do existing manpower studies of professional and paraprofessional fields show as the current and future need for personnel trained in aging;

(2) What are the current and future manpower needs in professional and paraprofessional fields where data are not presently available;

(3) How many graduates with special training in gerontology find full-time, appropriate level employment in the field of aging;

(4) How many current gerontology students intend to seek employment in the field of aging;

(5) In what agencies do persons trained in gerontology find employment;

(6) What job roles and responsibilities do persons trained in aging secure;

(7) For what amount of time do gerontology graduates who take jobs in the field of aging remain in the field; and

(8) How has training impacted on the work experiences of persons trained in gerontology.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Topic 4.4 Service Delivery Implications for Suburbia

During the last decade, the number of older people living in the suburbs has increased, while the number of older people living in central cities has declined. The growth of the older segment of the suburban population has touched every major region of America. Not surprisingly, Myers ("Aging in Place," 1982) found that older people prefer to remain in the homes in which they have lived for years. Myers' theories and demographers' forecasts call our attention to the potential planning and service delivery problems of an aging suburbia. Traditionally, service delivery systems in suburbia have addressed the needs of young families. However, due to emerging trends, questions about delivery of services to older persons in suburbia now need to be answered.

Applications are solicited which purpose to:

(1) Collect and analyze data on both the future potential needs of those older people who will remain in suburbia and the resources they offer to society;

(2) Propose strategies for assisting such older persons to remain independent as long as possible and for improving service delivery systems for the suburban elderly; and

(3) Develop innovative methods for the transfer and utilization of project findings which include the involvement of local officials.

Proposals should address questions such as: What implications do these trends pose for local governments? What impact will a large suburban elderly population have on service delivery systems, such as social services, transportation and health? What models of assistance can be identified or demonstrated? What impact does the high level of home ownership in suburbia and the potential for home equity conversion of these homes have on strategies for maintaining the independence of suburban older persons. Proposals should also be designed to determine how the nature and quality of services for today's suburban elderly can be improved to meet the needs of future elderly. Proposals should consider how churches, synagogues, libraries, schools, shopping centers, other community facilities, and older people themselves can assist future elderly suburbanites to maintain their independence. Finally, proposals should suggest ways to enhance the linkage between the aging network and elected policy-makers.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Topic 4.5 Preparing Major Social Institutions for an Aging Society

The growth of the elderly population is an unmistakable demographic phenomenon with profound implications. The population 60 and over is expected to increase approximately 27 percent and represent 17 percent of the U.S. population within the next 20 years. Insufficient attention has been accorded to helping major social institutions prepare for changes which will be brought about by the "graying" of American society.

Applications are solicited to launch Statewide public education campaigns

designed to sensitize appropriate major institutions in the State to the social, political and economic implications of an aging society. These campaigns should target on the media, colleges and universities, elected officials, professional organizations and any other public or private group or institution that play a role in the formulation of attitudes, policies and programs affecting older persons. The focus of these educational campaigns should be on the trends in the aging population, their probable impact on American society in the year 2000 and beyond, and the roles that institutions can play in order to have a positive impact on the lives of older Americans. Outcomes should emphasize program changes that will have lasting benefits for older persons as contributor to their communities as well as recipients of services. Each applicant for such a Statewide campaign must demonstrate that their State Agency on Aging has been involved in the design of the proposed campaign and will play an appropriate role in its implementation.

Projects in this priority area are limited to $200,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Area 5: Foundations/HDS Partnerships

In developing this year's Coordinated Discretionary Program announcement, HDS met with a number of foundations to discuss the potential for broadening the range of cooperative efforts in addressing areas of mutual interest. Foundation leaders responded positively to issues presented by HDS and shared ideas regarding priorities they were pursuing and recommended approaches that the Federal government should consider.

From this process emerged a flexible relationship in which foundation officials can participate in the review, selection, and management of grants and HDS staff can reciprocate in some of these same areas. Specific areas of mutual interest are reflected in previous sections of this announcement and foundations interested in particular priority areas have been identified.

5.1 Challenge Grants to Community Foundations

Community foundations are usually limited to making awards in specific cities, counties, or States. They are generally interested in "grassroots" community or neighborhood-focused efforts. HDS encourages proposals that reflect any of the foregoing priorities in this announcement or other topics of community interest, and is willing to match, on a 50/50 basis, four or five projects sponsored by community foundations.

Applications under this section may be accepted from foundations, or from potential grantees who have received assurances from community foundations that they are willing to participate. All applicants must agree that abstracts of their proposals are available for replication and distribution to foundations that may be interested in funding, cooperating with, or collaborating in areas of mutual interest.

5.2 Announcements by Foundations

Several foundations have either already made announcements or may be making announcements during the next year (August, 1985 through July, 1986) for projects of national scope that closely relate to priority areas that HDS is pursuing and are reflected in this **Federal Register** announcement. The projects and Foundations are:

1. National projects are being considered by the Robert Wood Johnson Foundation to improve access to supportive services for the frail elderly to help them remain in the community. HDS would agree to participate in the public housing component of the RWJ program by participating in the funding of 2 or 3 public housing sites. Funding would be made on a declining basis each year, with the goal of making the services self-sufficient at the end of the project period. This paragraph is included only to alert prospective applicants to a possible announcement by the Robert Wood Johnson Foundation. Applicants should not submit materials to or make inquiries of either the Robert Wood Johnson Foundation or HDS at this time.

2. The Dole Foundation provides modest sized grants for the purpose of promoting greater economic independence for persons with disabilities through competitive employment. Eligible projects should show measurable impact on employment at the community level. HDS may jointly fund 2 or 3 projects from this announcement that meet the Administration on Developmental Disabilities' as well as the Dole Foundation's priorities.

For further information contact: The Dole Foundation, 220 I Street, NE., Washington, DC 20002.

HDS and the foundations will consider jointly funding selected projects described above. However, the applications will be processed through the foundations and there is no need to send foundation application to HDS. For those projects seeking HDS participation in funding, HDS will need to know of an applicant's intent to apply to the foundation. Therefore, HDS requests that when such an application is submitted that HDS is notified by writing to Richard E. Shute, Director, Office of Program Development, Office of Human Development Services, Room 704E, 200 Independence Avenue, SW., Washington, DC 20201.

The notification should include applicant's name and address, project title, foundation name and subject of announcement.

II. EFFECTIVENESS AND EFFICIENCY OF STATE AND LOCALLY ADMINISTERED SOCIAL SERVICES

Area 6: Strengthening the Functioning of State and Local Agencies and Tribal Governments

Topic 6.1: Management and Planning

6.1.A Models for Using Results Oriented Management

There is an increasing emphasis among State, Tribal and local human service executives on the costs and benefits of social services. Management issues which are subsequently being raised include:

- Benefits of providing for identification of expected client outcomes;
- Collection of program performance and actual client outcome data;
- Utilization of these data as a tool for improving staff performance; and
- Communication to policy makers and the tax paying public of the results of programs paid for with tax dollars.

The technology for establishing client and program outcome indicators is well developed and the increased availability of micro-computers has greatly enhanced States' ability to collect and analyze data.

Although HDS funded two major demonstration projects in the area of results-oriented management in the past five years which helped to identify cost and practice implementation issues, further evidence is needed of the short and long term benefits and problems associated with the use of client outcome measures with particular emphasis on their utilization over time by decision makers. We are interested in determining whether such measures are useful to managers and policy-makers in the long run and whether their use improves service and client outcomes.

HDS will support demonstration grants to States and localities who have already begun implementation of client outcome or results-oriented management systems. HDS funds will

not be used for initial development of measures and data collections systems but rather for the purpose of strengthening and stimulating creative approaches to using the outcome data to improve service delivery to support management and executive level decision making, and for reporting to the public on the results of programs financed by their tax dollars. Support for consortiums of States and localities seeking to critique and improve currently existing systems would also be considered.

It is expected that projects funded will provide: (1) Successful models for the utilization of client outcome measures to improve services, decision-making, and public information; (2) case histories of the implementation and utilization process; (3) improve measures of client outcome in a variety of human service areas; and (4) a cadre of States and localities with experience in the utilization of client outcome measures to serve as a resource to others in the field.

Eligibility is restricted to State, Tribal governments and local agencies in this priority area.

6.1.B Develop and Disseminate Information on Innovative Planning Models

Past human services planning efforts have too often been characterized by the absence of a clear, effective relationship to management, decision-making, and service delivery. In these circumstances, even excellent technical or analytic activity has little chance of influencing policy.

Under the New Federalism, some legislative and most regulatory requirements for planning have been eliminated. As a result, State and local governments now have unprecedented flexibility to engage in planning that is meaningful to their particular needs and environment rather than merely complying with a Federal requirement.

In the past five years, instances of exemplary planning have emerged and have been documented in several HDS-sponsored research and demonstration efforts. Examples of exemplary planning include: the Negotiated Investment Strategy used by both the State of Connecticut and the city of Columbus, Ohio; State-level human services policy planning in Iowa, Utah, Vermont, New Hampshire, North Dakota, and Oklahoma, as well as local efforts in Pueblo, Colorado and Charlottesville, Virginia; developmental disabilities planning in Minnesota and South Carolina; and planning for aging programs in Wisconsin and by the Denver Council of Governments.

HDS has identified a number of issues in the emergence of exemplary human services planning efforts. These issues include, at a minimum: (1) The expansion of public agency staff planning capabilities through linkages with the private sector as well as with citizen groups; (2) the identification of innovative models of leadership for planning not tied solely to some of the more transient aspects of the situation, such as the charisma of one individual; (3) the creative and innovative use of techniques for data collection, analyses and presentation to enhance their utility to management for planning and policy purposes; and (4) the use of effective planning processes to help deal with controversial subjects so that management options can be proposed and policy decisions made.

Research efforts sponsored by HDS and others have documented several models of effective planning. There is now interest in disseminating these models and in transferring them to similar organizations at the State, Tribal and local level.

Options for dissemination include workshops, peer match, and links to existing networks. At a minimum, applications for dissemination must highlight models which demonstrate one or more of the following characteristics: employment of innovative analytic and data collection techniques, demonstration of sustained operation, expansion of planning beyond the traditional boundaries of categorical programs and actual use by management to make specific and important decisions.

In addition to dissemination, HDS is interested in the transfer of one or more particularly exemplary planning models or analytic techniques from one jurisdiction to another. Applications are particularly encouraged from consortia of State and local jurisdictions where there is a commitment to both transfer and receive the exemplary planning/analytic model.

Preference will be given to agencies with established responsibility for administering HDS programs and a demonstrated record in exemplary planning.

Topic 6.2: Programs for the Aging

6.2.A Collaborative Efforts to Promote Systems Change to Improve the Lives of Older Americans

Communities must be prepared to respond to the challenges ahead in view of the rapidly increasing numbers of persons 60 years of age and older. Those who work with and for older people must assess their programs to date and consider new, innovative and more effective approaches that will result in systems change at the community level designed to improve the circumstances of older persons, especially those in greatest economic and social need.

It is imperative that State and Area Agencies on Aging strengthen their leadership capacity to work together to broker and coordinate a wide array of services and activities on behalf of older persons. Equally important, partnerships need to be formed at the community level with other public and private sector organizations to promote systems change that will enhance the lives of older persons, stimulate cost-effectiveness of activities, and insure that older persons remain independent in the mainstream of American life. Many private sector entities, including businesses, corporations, non-profit organizations, religious groups, civic associations, voluntary organizations, foundations, and other groups, have resources and skills that could be directed toward improving services to older persons.

Applications are requested from State and Area Agencies on Aging that represent collaborative approaches among community agencies and organizations. Applications are to result in systems changes at the community level designed to improve the circumstances of older persons, especially those in greatest economic and social need. For the purposes of this announcement, systems changes include:

1. Improvement in service delivery mechanisms;
2. Joint planning between public and private agencies;
3. Community wide priority setting;
4. Collaborative allocation of resources; and
5. Integration of services for older persons with other human service systems in order to ensure greater access to services and more effective and efficient service delivery.

Highest priority will be given to proposals which:

1. Identify proposed systems changes and identify probable outcomes as a result of these changes against which the success of the project can be measured;
2. Show clear evidence of joint undertakings with public and private entities in order to improve significantly the circumstances of older persons, especially those in greatest economic and social need;
3. Propose a plan for the integration of aging services into the larger fabric of community life;

4. Show evidence of close working relationships between State and Area Agencies on Aging in the achievement of the objectives set forth in the proposals;

5. Build upon the strengths of informal supports, such as the family, friends, neighbors and others;

6. Demonstrate support from elected officials and relevant State and local agencies; and

7. Significantly involve older persons in planning and implementation.

The project period may be for up to 24 months. These awards are for one-time only projects and no project will be supported beyond 24 months. Notwithstanding the ceiling on project cost stated elsewhere in this announcement, applicants under this priority area may apply for a level of funds as may be commensurate with the scope of work of the proposed project. Applicants are expected to provide a minimum of 25% in matching funds for each proposed project. No awards under this priority area will be made to support solely the direct provision of services. Funds may not be used for building construction or renovation. In addition, projects which propose only an extension of services to older persons, even though justified, will not be considered for funding.

Applications are restricted to State and Area Agencies on Aging.

6.2.B Statewide Elder Abuse Prevention Efforts

Recent legislation at both Federal and State levels has placed increased emphasis on efforts to prevent elder abuse. To carry out their roles in the area of elder abuse prevention, it is clear that State and Area Agencies on Aging must act in close concert with adult protective services agencies, the courts, law enforcement officials, consumer protection agencies, and voluntary groups.

Applications are solicited for projects that demonstrate model collaborative Statewide efforts on elder abuse. Such model projects should include: (1) Collaboration among State and Area Agencies on Aging, adult protective services agencies, the courts, law enforcement officials, consumer protection agencies, and voluntary groups; (2) public awareness campaigns to recognize and prevent the abuse, neglect, and exploitation of older individuals; and (3) coordinated action for intervening and following up on such reports by referring to social service agencies and to the criminal justice system, where appropriate.

The application must be submitted as a collaborative effort among the participating agencies. One of the joint sponsors, however, should be designated as the formal applicant.

Projects in this priority area are limited to $150,000 per year for a maximum duration of 24 months. There are no eligibility restrictions for applications in this priority area.

6.2.C Legal Assistance for Older Persons

Older persons often are unaware that legal assistance is available to them or find that such assistance is inaccessible or unavailable. Lack of income, lack of knowledge, and lack of system coordination may contribute to this problem.

State and Area Agencies on Aging are responsible for coordinating programs developed by local legal assistance providers that give legal advice, consultation and related services to older persons, particularly those with the greatest economic or social needs. To assist the network of State and Area Agencies on Aging in carrying out this responsibility, the Administration on Aging solicits applications from legal service organizations with proven expertise in laws affecting the elderly and experience in the delivery of legal assistance to older persons. Such applications must propose effective plans for enhancing the availability of legal services to older persons in close coordination with the programs provided State and Area Agencies on Aging. It is also important that all such applications under this section demonstrate better ways of delivering legal services to older persons with the greatest economic or social needs.

Such legal assistance support activities shall include, but not be limited to case consultation; training; provision of substantive legal advice and assistance; and assistance in the design; implementation and administration of legal assistance delivery systems. Older recipients should be involved in project planning and implementation.

Applications are also solicited that demonstrate innovative and effective ways of delivering legal assistance to older individuals with the greatest social or economic needs.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

6.2.D Increasing Minority Elderly Access to Services

Under Title III of the Older Americans Act, a priority has been assigned to the provision of services "to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals . . . ". Recent reports from State and Area Agencies on Aging show a slight decline in Title III program participation rates for minority elderly. There are variations among minority elderly populations in participation rates, which need to be taken into account in developing solutions to the problem. In addition, a careful determination must be made as to whether lower minority participation rates are temporary phenomenons or long-range trends. Effective action to reverse the decline in minority participation rates needs to differentiate among the particular minority elderly groups, as well as enlist the cooperation of the appropriate minority elderly organizations and State and Area Agencies on Aging. Effective action must be based on the advice of minority elders themselves.

Applications are requested from organizations representing minority groups, working with State or Area Agencies on Aging, for model projects designed to better target services to minority elderly and to increase their access to Title III programs. Such models should differentiate among minority elderly populations in analyzing the causes of the recent decline in minority elderly participation; design steps to be carried out by State or Area Agencies on Aging to reverse that decline, including possible relocation of service sites; specify measurable outcomes, provide for an independent evaluation of the results of such action; and provide for a vigorous dissemination and utilization effort, should the model prove to be successful. Applications must demonstrate organizational partnerships that include State or Area Agencies on Aging and minority elders.

Projects in this priority area are limited to $200,000 per year for a maximum duration of 24 months. Applications in this priority area are restricted to organizations representing minority groups.

Topic 6.3: Programs for Native Americans

6.3.A Improvement of Effectiveness and Efficiency of Tribal Governments and Native American Organizations

The Tribal and Native American Cooperative Management Initiative (CMI) was initially focused on the administrative aspects of coordination of HDS grant programs. It is now time to move the CMI concept beyond HDS

grants to better coordination with other Federal programs outside of HDS. Model approaches are needed that will stimulate increased integration and coordination of all services and programs impacting on tribal communities.

The tribal government or Native American urban community is considered to be in the best position to weigh the trade-offs in deciding on the most appropriate local model for centralized planning and management.

Applications are requested from Tribal governments and Native American organizations that focus on CMI coordination techniques and to improve the coordination of resources across the multiple Federal programs. These techniques, taken together, should result in a more comprehensive service system which will involve a greater array of Federal programs.

Eligibility is restricted to Tribes and Native American organizations. Up to 16 grants will be awarded at $20,000 each on a one time basis to put the system in place.

6.3.B Demonstrations for Tribal and Urban Native American Community Development Technology Transfer

A variety of new conceptual frameworks are emerging in Tribal and urban Native American social and economic development strategies that will produce long-term results for self-sufficiency. These achievements have resulted in specific small business development ventures which need to be shared with other Native American entities.

Applications are requested for demonstrations for the technology transfer or the dissemination of results and findings, examples, and studies to all Native American entities of Tribal and urban community development ventures such as:

- using the methods of private development in small business finance, production, marketing, and management in Tribal communities and in urban corporations to achieve public purposes;
- Tribal and urban investment opportunities through professional assets management methodologies; creative strategies for generating private sector funds for capitalizing Tribal and urban community development projects for social and economic self-sufficiency;
- Specific applications of private sector investment community perspectives to Tribal and urban Native American development;
- Linkages and how to expand them with private sector firms which actively promote minority entrepreneurship;
- The benefits of franchising and specific Native American examples that will result in franchises; and,
- Innovative strategies and trends for the future in export trade and economic diversification, and strategies for competition in the Pacific Rim export market.

Preference will be given to applications which include measurable outcomes such as number of jobs or expected revenues. Applications under this priority area are restricted to Tribal governments and Native American organizations. However, they are encouraged to partner with other public and private sector entities in these applications.

Topic 6.4: Demonstrations to Improve the Effectiveness of the State Protection and Advocacy System for the Developmentally Disabled

The rapid expansion of State developmental disabilities protection and advocacy systems and the concurrent increase in their statutory responsibilities have created new problems as well as opportunities for these systems. The Developmental Disabilities Act of 1984 emphasizes protection and advocacy system responsibility to provide information and referral services, as well as making States responsible for providing additional powers to their Protection and Advocacy system for accessing and serving persons in institutions, ICF/MRs and other residential facilities.

With this new authority comes a need for increasingly sophisticated approaches to advocating for the most severely disabled and underserved members of the developmentally disabled population.

In keeping with a desire to meet new responsibilities, and as specified by the legislation, HDS is interested in demonstration projects which are designed to improve the effectiveness of the State protection and advocacy system. Emphasis will be placed on projects which expand or enhance services to persons who are multihandicapped or disadvantaged, including Native Americans, Native Hawaiians and other underserved groups. Demonstration projects with State protection and advocacy systems are sought which place high emphasis on dissemination and knowledge transfer, with particular emphasis placed on the use of expertise existing within the Protection and Advocacy system. HDS will accept applications for multi-year projects not to exceed two years.

Area 7: Improving Management of Human Services

Topic 7.1: Reducing Foster Care Entry/ Reentry Rates

Recently, there has been an indication that the national trend in the reduction of the number of children in foster care (under the care and custody of the State public child welfare agencies) is slowing. This changing trend appears to result from a situation in which the number of children who enter the foster care system exceed the number of those who leave the system during a given year. Because of a high rate of recidivism, the children who enter the foster care system are not necessarily first time entrants.

HDS is concerned about this trend, and therefore will support research concerning the rates of entry and reentry into the foster care system. The primary objective of this research effort is to develop an effective prevention strategy which could contribute to a reduction in the number of children entering the foster care system and a decline in the recidivism rate. HDS is also interested in assessing pre-placement preventive practices, especially through comparative analyses of current practices among States and counties in the U.S.

The research project would survey the possible sources of data (including VCIS and CWMSET), identify States with unusually high or low performance, and analyze the program and policy differences among States and localities that affect performance in the foster care area.

The study should look beyond quantitative performance numbers and consider other factors for protecting the interest of the child. For example, if the analysis shows that certain characteristics of the child or family involved tend to lead to a high rate of recidivism, a State or locality could concentrate its efforts to those most in need.

Topic 7.2: Evaluation

Over the past several years, many evaluation studies have produced results that have contributed to changes in program policies and operations. These evaluation studies have been sponsored or conducted not only by HDS, but also by other agencies of the Department of Health and Human Services, other Federal agencies, States and localities.

7.2.A Evaluation Syntheses

The focus of this year's announcement is on the synthesis of the results of

previous evaluation efforts around specific topical areas. These syntheses will analyze the various evaluations of a program or program-related area, summarizing the positive and/or negative findings, follow-up on how the results were implemented (or why not), which of the results are still candidates for implementation if they have not been implemented, and what types of additional evaluation studies should be done in the topical area, or in cross-cutting evaluations. HDS is particularly concerned that the topics chosen for synthesis reflect the needs of the people and organizations who use the evaluation and related research. Applications should therefore reflect a process for involving the executives who would be responsible for implementing changes indicated by evaluations in the choice of topics. The product of these topical syntheses should include detailed descriptions of the best practices of existing programs so that States, communities or organizations that want to start or improve one of their programs can use practices from proven projects.

Applications will be evaluated according to: (a) The process proposed for involving officials responsible for change in the choice of topics; (b) the importance of the topics chosen for synthesis; and, (c) the process proposed for implementing changes indicated by the synthesis.

7.2.B Integration of Evaluation Components in Management Systems of State and Area Agencies on Aging

HDS has funded a number of projects to design and test and implement evaluation systems. However, these systems and their findings have not been integrated into planning and management operations to influence policy, resource allocations, and other management decision processes.

For the purpose of application development under this priority area, evaluation is defined as the measurement of program performance (efficiency, effectiveness, and responsiveness), the making of comparisons based on these measurements, and the use of the resulting information in policy-making and program management.

Applications are requested which promote the integration of evaluation components into the management and leadership roles of State and Area Agencies on Aging in coordinating community-based service systems for older persons. Priority will be given to applications which demonstrate the use of previously tested evaluation models and adapt them to the planning and management of programs administered by the sponsoring State or Area Agencies on Aging. The use of tested evaluation models for automated management information systems may require adaptation of computer software to translate manual systems into computer language. Such limited software development, if necessary, could be included in the proposed application. After demonstrating the integration of evaluation components, proposed projects should include a major dissemination effort to transfer the demonstrated models to State and Area Agencies on Aging.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Topic 7.3: Use of Modern Technology in Aging Services

Management improvement among State and Area Agencies on Aging and service providers has been a priority concern of the Administration on Aging for several years. Assessment of the quality of management in aging programs suggests improvements in areas such as contracting, group purchasing, meal preparation and delivery, record keeping, eligibility determination, and site selection. Many proven management practices in the private sector have enhanced efficiency and effectiveness and have frequently resulted in increased service availability.

HDS has supported development and testing of a wide range of models, drawn from experience in both the public and private sectors, to improve various aspects of agency management. There have been multiple management information system projects relating to planning and decision support systems. Other management projects tested models for performance based contracting and use of group purchasing. These models are part of ongoing operations in many State and Area Agencies on Aging and service providers. There are many agencies, however, which need to make similar management improvements to carry out effectively their leadership roles. To encourage more widespread communication of the available knowledge, to stimulate replication of successful models and to expand creative applications of technology, there is a need for substantial transfer of management improvement strategies and models to State and Area Agencies on Aging and service providers.

HDS is interested in funding applications which propose innovative methods for transferring management improvement strategies and models from the private as well as the public sector to State and Area Agencies on Aging and service providers. Applications should provide for the dissemination of available knowledge, stimulate replication of successful models, and expand the use of creative applications of technology.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Topic 7.4: Manpower Utilization in Human Services Agencies

There are at least half a million professionals in public human services systems, and an unknown number of paraprofessionals and volunteers. With an increasing need to manage human services effectively and efficiently, it is important to determine how paraprofessionals and volunteers can be used to free professionals to perform those tasks that require their skills and to reduce overall manpower costs.

At present, there is relatively little information available about career patterns, education and experience and the impact of their backgrounds on the types of responsibilities workers assume. This need for basic research inhibits the ability of State and local human services agencies to identify the types of people that agencies should be recruiting, hiring and training for different types of positions. This makes it difficult for educational institutions to provide agencies with the types of graduates that they need to carry out their mandates or to develop in-service training programs that agencies can use for paraprofessionals and volunteers.

HDS is seeking a comparative analysis of the functions for which selected States use professionals paraprofessionals and volunteers in a variety of functions. The analytical work should result in recommendations about appropriate mixes of workers and division of responsibilities as well as the type of experience, skills or training that is most indicative of performing well in a human services agency.

There are no eligibility restrictions for applications in this priority area.

Area 8: Child Welfare Services Training

The proposed training should address specific child welfare issues that have been identified by State and local agencies as critical training needs, and should be designed to upgrade the knowledge and skills of workers

currently employed by child welfare agencies.

Eligibility is limited to public and private non-profit colleges and universities which are accredited by an appropriate accrediting authority.

Applicants for grants in priority areas 8.1, 8.2 or 8.4 must show evidence of State or local agency participation in the development and implementation of the training program.

An indirect cost rate of 8 percent or the direct costs (or the institution's actual indirect cost if less than 8 percent) is allowable under priority areas 8.1, 8.2 and 8.4. Budget requests that exceed the 8 percent indirect cost limitation will disallowed.

All applications submitted under this subpart area (except 8.3 and 8.4 Traineeships) should include funds to send at least one key person to one national meeting of all Child Welfare Training Grant Projects in Washington, DC.

Applicants must apply under 8.1, 8.2, 8.3 or 8.4, not under the general Area 8.

8.1 Child Welfare Practitioner Training

Practice-oriented in-service training projects designed to expand and improve the knowledge and skills of child welfare service providers and allied professional staff. Training will focus on critical child welfare needs and problems identified by State agencies, and may include training in the use of computer-assisted decision-support systems. HDS anticipates funding approximately ten 17-month projects having a total value not to exceed $105,000 per project.

8.2 State Training Assistance Projects

Training and technical assistance projects designed to strengthen or expand the capacity of State and local public agencies to provide on-going training and staff development activities for child welfare personnel. HDS anticipates funding approximately ten 17-month projects having a total value not to exceed $65,000 per project.

8.3 Child Welfare Traineeship Projects

Financial support of education and professional training for students pursuing graduate or undergraduate social work degrees in the field of child welfare. The curriculum may include training in the use of computer-assisted decision-support systems. HDS anticipates funding approximately twenty-five projects of up to 24 months having a value not to exceed $35,000 per project, per year. Traineeship grants may be used to provide student financial support (tuition and/or stipend) only. Funds cannot be used for direct or indirect costs of the applicant organization.

8.4 Indian Child Welfare Training Projects

Applicants interested in training projects, following the descriptions of priority areas 8.1, 8.2 and 8.3, specifically related to Indian Child Welfare Services should apply under the following specific priority areas: 8.4.A, Practitioner Training; 8.4.B, Tribal-State Training Assistance; and 8.4.C, Traineeship Projects.

HDS anticipates funding approximately ten projects under this topic. For the duration and value of the projects, see topics 8.1 through 8.3, as appropriate.

Area 9: Education, Awareness, and Training in Aging

9.1 Professional Training Programs

There are a wide variety of professionals and paraprofessionals occupations which significantly impact the lives of older people. The Administration on Aging seeks to expand the number of persons in those occupations that affect the elderly who have been properly trained to meet the unique and special needs of this segment of our population. This goal is especially important in light of the projected significant increase in the numbers of older persons in American society.

9.1.A Statewide Short-term Training and Continuing Education for Professionals

Short-term and continuing education and training opportunities must be available for persons currently working in occupations that significantly affect the elderly. With the continued growth of the elderly population, opportunities must be provided to continually upgrade job knowledge and skills that increase the capacity of these professionals and paraprofessionals to serve older people effectively and compassionately.

Applications are solicited from colleges, universities, State Units on Aging; State professional organizations, and other appropriate entities within a State to provide continuing education and short-term training on a *Statewide* basis for professionals and paraprofessionals whose work impacts on the lives of the elderly. Proposals must indicate which profession is being targeted and provide written documentation of support for such training from State associations representing that profession.

All training activities proposed should be the result of collaborative planning between the applicant organization and the appropriate State Agency on Aging.

Applications should provide information on how existing training materials will be used as well as appropriate new educational technologies. Applicants should propose high quality and cost-effective training programs that will have Statewide impact and contribute in a significant way to the development of a capacity for ongoing professional and paraprofessional training in the State.

Applications may not propose training for individuals for whom the State Agency on Aging has primary training responsibility as described under section 308(a)(1) of the Older Americans Act, i.e., "short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this Act." Priority will be given to those applications that propose a match which goes beyond that required elsewhere in this announcement.

Projects in this priority area are limited to $200,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

9.1.B Aging Content in Professional Academic Training

There is a need to include aging content in the academic schooling of students preparing for employment in those professions that impact on the elderly population such as physicians, nurses, lawyers, pharmacists, etc. Grants will be made to State professional associations, institutions of higher education, or State Units on Aging to support career education and training activities that are preparing students for professions which heavily impact the aging population within the State. Each application must propose a *Statewide*, comprehensive and coordinated approach to impacting on the targeted professional training in the State. In every case where the State Unit on Aging is not the applicant, there must be written evidence that the State Unit on Aging has been significantly involved in and supports the design of the training proposal.

The applicant must give evidence that the proposed activity is in response to documented needs for aging content in the professions targeted for training. In addition, priority will be given to applicants that identify and adapt existing aging education and training curricula to the needs of the program.

Applications must include a plan to collect and report information on students participating in the proposed program. The information to be collected and reported at the beginning and end of the project must include: (1) The number of students in the program; (2) demographic characteristics of the students including such factors as sex, race, average age and geographic background of students (i.e., urban or rural); (3) the types of courses and practical experiences; and, (4) upon graduation, for each student, employment secured, additional training planned, and other related plans.

Projects in this priority area are limited to $200,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

9.1.C Development of New Aging Training Programs

Applications are solicited from qualified agencies, organizations, colleges and universities with established programs in aging to broker new aging education and training programs among educational institutions on an HHS regional basis. Applicants receiving awards would be expected to encourage and influence educational institutions to adopt a multidisciplinary approach to gerontological education and training.

Applicants should indicate which colleges and universities will be targeted in the HHS Region for assistance under this effort. Applicants should demonstrate an understanding of the needs of these institutions in establishing aging education and training programs. Activities proposed could include meetings with Presidents, Vice-Presidents, Deans, and other key administrative and faculty members to encourage the incorporation of aging content into existing curricula.

The application should include a schedule of proposed events with key university officials to encourage, influence and secure aging training and other activities related to preparing for an aging society. Highest priority will be given to those applicants proposing to transfer existing knowledge and model curricula and indicate how existing model curricula and other related materials is providing assistance to the targeted institutions. Awards for this effort to broker aging education and training programs will be made on a one-time-only basis.

Projects in this priority area are limited to $100,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

9.2. Minority Training and Development

Over the years, AoA has attempted to stimulate opportunities for training and employment of minorities in placement of minorities in management positions in State and Area Agencies on Aging. AoA will continue to foster these opportunities.

Applications are solicited from State and Area Agencies on Aging or other appropriate agencies and organizations to participate in a program to place minority college graduates, with educational backgrounds in gerontology, for work as interns in positions which impact on older persons. Applicants should indicate the procedures to be utilized for recruiting and selecting interns.

Priority will be given to those applicants that demonstrate the strongest possibility of permanent placement within the Agency or in another aging-related position. In contrast to instructions elsewhere in this announcement, AoA will give priority to those applicants which exceed the required 25 percent program match.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Topic 9.3. Dissemination of Information to Caregivers

Most elderly persons in times of illness or frailty are cared for in their own homes by their families, neighbors or friends. These caregivers often need information to help them care for their older loved ones.

Applications are solicited to design and implement Statewide or large metropolitan areawide innovative knowledge transfer targeted on helping families, neighbors and friends care for frail and impaired older persons. Applicants may focus on such activities as the dissemination of specific materials; the conduct of educational forums; or the development and dissemination of innovative media materials. Priority will be given to those projects which focus on older persons as caregivers to their peers. Applicants are expected to fully involve relevant State or Area Agencies on Aging in all aspects of the project. Documentation of their involvement is required.

Projects in this priority area are limited to $150,000 for a maximum duration of 17 months. There are no eligibility restrictions for applications in this priority area.

Area 10: Transfer of International Innovations

While this country is a natural field for research and demonstration in the area of social services, we can still gain insights from other countries. Knowledge of social services in other countries, the programs, authorizations and governance, delivery systems, and innovations, can be beneficial to U.S. domestic programs. HDS seeks proposals which address the transfer of innovations for other countries.

The following factors are to be considered in proposing a transfer of an innovation from another country:

- Promise of contributing significantly to the achievement of one or more of the major HDS goals cited in Section I of the Preamble to this announcement and be of benefit to one or more of the HDS target groups which include Native Americans, the socially and economically needy elderly, the developmentally disabled, or at-risk children, youth and families.
- Be relevant to domestic research with the possibility of complementing ongoing or new U.S. projects.
- Relate to the U.S. commitment to its participation in international organizations, both governmental and non-governmental, and to United Nations-sponsored events, such as the International Youth Year 1985; follow-up to the World Assembly on Aging; and the United Nations' Decade of Disabled Persons.

Examples of areas which may receive support are: Access to services by the handicapped; children and youth at risk; community and in-home services for functionally impaired populations; innovative housing arrangements for the aged; intergenerational linkages; programs designed to reduce dependency, including work-related day care and in-home day care; self-help; social indicators; and social service coordination and management systems.

Federal funds awarded under this priority area cannot be used to support international travel. However, a portion of the non-Federal contribution from cooperating oranizations may be utilized for international travel.

There are no eligibility restrictions for applications in this priority area. However, HDS is interested in innovative models and is not interested in funding ongoing direct service projects which have been imported to the United States or exported to another country.

Area 11: Small Business Innovation Research Program

This priority area authorizes funding for small businesses under the appropriate statutory authorities for any of the priorities described in the preceding sections of this announcement. In addition, small businesses are encouraged to apply modern marketing techniques to determine if the marketing of products from previously funded HDS discretionary efforts can be profitable for small businesses. Emphasis should be placed on cost effective approaches for replication, such as franchising service delivery approaches.

The application should document the strategy for marketing the products to potential users as a means of disseminating the results of previous efforts. The strategy should include the following:

- Identification of innovative marketing techniques for bringing to the attention of the human services community, knowledge and practices that may be applied to the specific HDS program under which the project is being funded as well as other service delivery programs;
- Exploration of methods to establish linkages between organizations, practitioners and policymakers for the purpose of developing and maintaining a data base to be utilized in matching specific products with organizations that are the most likely consumers of these projects and which will benefit from their use;
- Identification of costs and other operating characteristics associated with conducting a marketing project, taking into account the wide range of target populations and special needs that are addressed by HDS and more specifically, the target populations addressed in this announcement.

Eligibility under this priority area is limited to organizations which meet the definition of a small business. A "small business" is an organization, including its affiliates, which is independently owned and operated for profit, it not dominant in its field of operation, and can further qualify under the following size standard: not more than 500 employees (full-time, part-time, temporary, or other) during the previous 12-month period in all affiliated firms owned or controlled by a single parent firm. Included are women-owned and minority and disadvantaged small businesses at least 51 percent owned or operated and controlled by such individuals.

At least two-thirds of each SBIR project must be carried out in the small business firm, and the primary employment of the principal investigator (or project director) must be with the firm at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the individual's working time is spent with the small business employer.

Applicants applying under this priority must formulate their proposals in accordance with the specifications outlined in the *SBIR Application for Financial Assistance.* Copies may be obtained by telephoning (202) 755-4633.

Part III. Application Process

A. Eligible Applicants

In general, any State, public or private nonprofit organization or agency may submit an application under this announcement. Some specific priority areas or topics included in this announcement may have more restrictive eligibility requirements (for example, priority area 1.1.A is limited to State Developmental Disabilities Councils). Where limitations exist, the eligible entities are identified in the priority area or topic description. Applications jointly developed by State, local and community-based social services agenices, foundations or universities are encouraged in order to promote comprehensive social services programs; in these cases, the lead organization must be an eligible applicant. "For-profit" organizations are eligible applicants for projects under Area 11, the Small Business Innovation Research program, as well as for certain projects funded under the authority of the Head Start Act, Native Americans Program Act and, in limited cases, the Older Americans Act. "For-profit" organizations may also participate as contractors under a grant to eligible applicants on all projects.

B. Available Funds

The availability of funds for FY 1986 and FY 1987 is dependent on passage of appropriations by the Congress. Based on the level of funding for FY 1986, HDS expects to award new grants and cooperative agreements during the second, third and fourth quarters of FY 1986. Subject to Congressional action on the FY 1986 budget, HDS may also award a limited number of grants under this announcement in the first and second quarters of FY 1987. Appropriate HDS discretionary funding authorities will be used to fund projects, and more than one authority may be used to fund some projects.

HDS expects to make approximately 300 new awards pursuant to this announcement. These awards may range from $10,000 to a maximum of $200,000 per budget period (except for applications under priority area 6.2.A), with a average award of $100,000. Actual awards may vary widely and eligible applicants requesting smaller awards are encouraged to apply. Projects of less than 12 months may also be submitted. Applicants should be aware that HDS receives 2,000 to 5,000 applications annually to its Coordinated Discretionary Funds Program. Of these, about 300 applicants received grant awards last year.

C. Grantee Share of the Project

At least 25% of the total cost of proposed projects must come from a source other than the Federal government (one dollar match for every three dollars requested from HDS) except: (1) In the case of projects funded under the Native Americans Act, where the grantee match must be 20% of the total cost of the proposed project (one dollar match for every four dollars requested from HDS); and (2) universities or other non-profit organizations which have a current institutional cost sharing agreement with HHS *and* propose to carry out a research project.

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred costs or third party in-kind contributions. HDS strongly encourages applicants to propose a grantee share which is more than 25% of the project costs or where the applicant proposes to match HDS grants, partially or fully, with cash contributions from non-Federal funding sources.

Applications proposing less than the 25% required match, unless exempted as stated above, will be considered unresponsive and will not be reviewed.

D. Application Process

Organizations wishing to compete for grants under this announcement must submit an application by November 20, 1985. Applications received in response to this announcement will be reviewed by Federal staff and non-Federal experts. Some applicants may be asked to submit additional information during the review process. Successful applicants may expect funding in the second, third and fourth quarters of FY 1986 or the first and second quarters of FY 1987.

1. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by

writing or telephoning: HDS/Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, D.C. 20201, Attention HDS–86–1, Telephone: (202) 755–4633.

2. Application Submission

One signed original and a minimum of two copies of the application must be submitted to: Department of Health and Human Services, HDS/Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, D.C. 20201; Attention HDS–86–1.

Priority Area

Submittal of *five additional copies* will expedite processing. However, there is no penalty for not submitting these additional copies.

3. Notification Under Executive Order 12372

This program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

A Single Point of Contact (SPOC) has been established in all States and territories except Alaska, Idaho and American Samoa. Applicants from these three areas need take no action regardind E.O. 12372. Applications for projects to be administered directly by Federally-recognized Tribes, as well as applications submitted under the SBIR program, are also exempt from the requirements of E.O. 12372. Further, applications funded under the Older Americans Act are exempt, although applications funded jointly through the Older Americans Act and another statutory authority must meet the requirements of E.O. 12372. Where applicable, applicants must submit the required material to their SPOCs to obtain their comments for consideration by HDS as part of the application review and award process.

SPOCs, State processes or directly affected State, areawide, regional and local officials and entities have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Applicants should contact their State Single Point of Contact or State Process as soon as possible to alert them of the prospective application and receive instructions regarding the process. The Department will notify the State of any application received which has no indication that the State Process had an opportunity to review it. Therefore, it is imperative that the applicant submit the required materials to the SPOC and *indicate this submital on the SF 424, item 22a.*

SPOCs will submit their comments directly to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201 Attn: HDS–86–1.

A list of the Single Point of Contact or State Process for each State or territory is included at the end of this announcement.

4. Notification of State Developmental Disabilities Councils

A copy of the application must be submitted to the State Developmental Disabilities Council for its review and comment when individuals with developmental disabilities who reside in that State are included as a target population of the proposed project. A listing of the Councils may be obtained by calling (202) 755–4633. This requirement is in addition to the SPOC notification required by E.O. 12372.

5. Small Business Innovation Research Program Applicants

Applicants under Area 11, Small Business Innovation Research (SBIR) program, must develop their applications in accordance with the specifications outlined in the *SBIR Application for Financial Assistance.* Applications under the SBIR program will be evaluated for conformity to the instructions and criteria contained in that document, which may differ from the information which follows.

6. Application Consideration

Applications that conform to the requirements of this program announcement will be reviewed competitively against the evaluation criteria specified in Part III, F.2 of this announcement and evaluated by Federal officials and qualified persons from outside of the Federal government. The results of the review will assist the Assistant Secretary and Program Commissioners, and other members of the HDS Senior Staff in considering competing applications. Senior Staff may also take into account comments from Federal Regional and Headquarters program staff offices. In addition, comments may be obtained from foundations, appropriate specialists and constituents inside and outside of the Federal government.

The Assistant Secretary for Human Development Services, Program Commissioners and other members of the HDS Senior Staff will determine the action to be taken on each application. The Older Americans Act places certain responsibilities upon, and authority in, the Commissioner on Aging which affects the role of the Administration on Aging in implementing this program announcement. All such requirements will be met through actions which conform to the mandates of the Act.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. The one exception to this practice is for applications submitted under the Small Business Innovation Research program, Area 11.

7. Funding Limitations on Indirect Costs

Applicants should be aware that for training projects there is a limitation on indirect costs to eight percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower.

E. Special Considerations for Funding

Within the limits of available Federal funds, HDS Executive Staff make financial assistance awards consistent with the purposes of the statutory authorities governing the HDS Coordinated Discretionary Funds Program and this announcement. In making these decisions, *preference will be given to projects that propose the innovative use of volunteers or involve the private sector.* To the extent possible, final decisions will reflect the equitable distribution of assistance among the States, geographical areas of the nation, and rural and urban areas.

F. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming applications will then be reviewed and evaluated competitively.

1. Screening Requirements

In order for an application to be in conformance, it must meet T3all of the following requirements:

(a) *Number of copies:* An original signed application and two copies must be submitted. Five additional copies are optional but will expedite processing.

(b) *Length:* The narrative portion of the application *must not exceed twenty double-spaced pages* (or ten single-spaced pages) typewritten on one side of the paper only. The capability statement must not exceed two double-

spaced pages or one single-spaced typewritten page.

(c) *Standard Form 424:* The application must include an SF 424, page 1 *and* Part III, Sections B and E, completed according to the instructions set forth in Part IV, C. of this announcement

(d) *Multiple Submittals:* A project can only be proposed once under this announcement. Mutliple submittals of the same—or essentially the same—project under different priority areas will be assigned to a single priority area.

(e) *Eligibility:* The applicant must be an eligible entity as defined in the first section of this Part or as defined in the specific priority area descriptions in this announcement.

(f) *HDS Priorities:* The concept or project embodied in the application must specifically address a topic or priority area as stated in the announcement and indicated on the SF 424, page 1, item 6b.

(g) *HDS Populations:* The application must clearly target one or more HDS populations: the elderly; children, youth and families; Native Americans; the poor; and the developmentally disabled. A definitive listing of HDS target populations is found at the end of Part IV.

(h) *Non-Federal Contribution (Match):* A non-Federal contribution of at least 25% of the total project costs (one dollar for every three dollars requested from HDS) must be proposed, except in the case of projects funded under the Native Americans Act where the grantee match must be 20% of the total cost of the proposed project (one dollar for every four dollars requested from HDS), or in the case of research projects proposed by universities or other non-profit organizations that have a current cost sharing agreement with HHS.

(i) *Cost:* Unless allowed under the priority area for which the application is being submitted (for example, priority area 6.2.A), proposed projects requesting more than $200,000 per budget period in Federal funds will be deemed nonconforming.

UNDER NO CIRCUMSTANCES WILL APPLICATIONS THAT DO NOT MEET THESE SCREENING REQUIREMENTS BE REFERRED TO REVIEW PANELS.

2. Evaluations Criteria

Applications which pass the screening will be reviewed by at least three individuals. These reviewers will be primarily experts from outside the Federal government. Reviewers will score the applications, basing their scoring decisions on the following criteria:

a. Need for the Project: 20 points. The application clearly describes, in concrete terms, the social problem or situation that prompts the applicant to propose a project. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also describes how the proposed project builds upon previous work, how it advances the state of knowledge from a national perspective and how it addresses a priority need identified in this announcement.

b. Expected Outcomes and Innovativeness: 15 points. The proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products are specified and the expected benefits for HDS target groups and human service providers delineated. Outcomes as opposed to process measures are emphasized. A significant improvement upon, or important departure from, existing practices and previous related work in the field of human services is proposed.

For projects in which the major activity is replication of successful model(s) and innovativeness is difficult to establish, the focus is on the identification of the most appropriate model(s) given the expected outcomes and the implementation of the model(s). Factors such as cost of replication, client impact, long range funding and documentation of the model are considered when replicating a model or technique. Where appropriate, evaluation plans and procedures are described in detail and are capable of measuring the degree to which project objectives have been accomplished.

c. Project Methodology: 25 points. The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: (1) Hypotheses to be tested (if appropriate); (2) concise and clear statement of goals and measurable objectives; (3) what the project will do; (4) how the project will be conducted; (5) data to be collected (including specification of data sources); (6) plan for data analysis; and (7) milestones in the progress of the project. A detailed discussion is provided on how the approach proposed will accomplish the project objectives. The applicant describes in detail the approach to replication or franchising, where appropriate. Whenever possible, innovative use is made of volunteers and the private sector is involved.

d. Level of Effort: 20 points. The resources that will be needed to conduct the project are specified, including personnel, time, funds and facilities. The staff (of other personnel resources) are qualified and the team has the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly links responsibilities to project tasks. The project's costs are reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations is clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) of the total of the Federal funds required and of the sources of outside support that will be used to meet the matching requirement is included. The funds (Federal and from other sources) are specified for each budget period.

e. Utilization and Dissemination: 20 points. The application describes the methods the project will use to share its experiences and findings with the field of human services in general and specifically, with agencies or organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings using Federal and non-federal resources are described. The specific audiences to whom the products will be addressed are identified. All applicants requesting funds for the dissemination of information through publications have submitted evidence of the following:

1. Clear statement of purpose;

2. Clear statement of utility (how recipients are expected to use the publication);

3. Evidence that the publication is not duplicative of another public or private sector publication;

4. Clear description of the intended audience (who would benefit from such a publication);

5. Description of an economical, practical and achievable distribution plan for getting the product into the hands of the intended audience; and,

6. Detail of production costs.

These evaluation criteria correspond to the outline for the narrative section of the application and the descriptions of the five criteria above should be used in developing the program narrative.

G. Closing Date for Receipt of Applications

The closing date for submittal of applications under this program announcement is November 20, 1985. Applications must be mailed or hand delivered to: HDS/Division of Research and Demonstration, 200 Independence Avenue, SW.—Room 724–F,

Washington, D.C. 20201 Attention HDS–86–1.

Priority Area———————————

Hand delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Sent on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

HDS may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or eartquakes, when there is widespread disruption of the mails or when HDS determines an extension to be in the best interest of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

Part IV. Instructions for Completing Applications

A. Application Package

In order to expedite the processing of applications, we request that you *adhere to the following instructions explicitly.* Each application submission must include:

1. An original and a minimum of two copies of the application (See Section B below). While an original and two copies are required, *five additional copies would facilitate processing.* However, no applicant will be penalized for submitting only the three required copies. Each copy should be stapled securely (front and back if necessary) in the upper left corner. The original copy of the application must have an original signature in item 23 on page 1 of the SF 424. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. Three extra copies of page 1 of SF 424, each stapled to a copy of the summary description, apart from the copies of the application required above.

3. Do not include a self-addressed, stamped acknowledgement card. All applicants will be automatically notified of receipt and of the identification number assigned to their application. This number and the priority area must be referred to in *All* subsequent communication with HDS concerning the application. If acknowledgement is not received within eight weeks after the deadline date, please notify HDS by telephone (202) 755–4633.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HDS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants should be advised that HDS staff can not release pre-decisional information relative to an application other than that it has been received and that it is going through the review process. Unnecessary inquiries delay the award process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

B. Content of Application

Each copy of the application *must* contain an SF 424, completed in accordance with the following instructions:

1. Page 1, the cover page of the application;

2. Part II, Project Approval Information;

3. Part III, Budget Information, Section B (Budget Categories) and Section E (Budget Estimates for Federal Funds Needed for Balance of the Project);

4. Summary description;

5. Part IV, Program Narrative, which should be no more than twenty double-spaced or ten pages single-spaced pages and typewritten on one side of the paper only. In addition, an organizational capability statement, no more than two double-spaced typewritten pages or one single-spaced page, should be included; and

6. Part V, Assurances.

C. Preparing the Application

The SF 424 has been reprinted for your convenience. We suggest that you reproduce it and type your application on the copy. Prepare your application in accordance with the following instructions:

1. SF 424, page 1: Complete item numbers 4, 5, 6b, 7, 8, 10, 12, 13, 15, 16, 22 and 23 only. Specific instructions are as follows:

Items 1–3. Leave blank.

Item 4.a. Enter the name of applicant organization ONLY, for example, "University of Utah". DO NOT include the name of the principal investigator or project director on this line. Do not include the word "The" in front of the organization's name.

Item 4.b. Enter the unit within the organization that will actually carry out the project, for example, "College of Human Ecology". If 4.a and 4.b are the same, leave 4.b blank.

Item 4.c–4.g Self explanatory.

Item 4.h. Enter the name and telephone number of a person who can respond to questions about the application.

Item 5. Enter the employer identification number of the applicant organization as assigned by the Internal Revenue Service.

Item 6.a. Leave blank.

Item 6.b. Enter the three digit number (for example, 1.1.A) of the priority area under which the application is being submitted. When a three digit number is not provided (for example, topic 3.1), enter the two digit number for the topic or area. If more than one priority area is listed, HDS will disregard all but the first one listed.

Item 7. The title should be no more than 200 characters long. It should be typed in four lines of 50 characters each. The title should first identify the type of service or services and the target population or populations. Included in the announcement at the end of Part IV are lists of HDS suggested services and target populations. Item 7 also asks for a summary description of the project using Section IV. In place of Section IV, use a separate sheet of 8½ × 11 plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4.a and the priority area as shown in item 6.b. The summary description may not exceed 200 words. However, only the first 800 characters, ten lines of eighty characters each, will be put into a computer data base. It should also be specific and tightly written. It should describe the objectives of the project, the approaches to be used, and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos). Remember, this summary description is limited to 200 words. This information, in conjunction

with the information on the SF 424, becomes the project's "abstract".

Item 8. Self-explanatory with the exception of 8.e, "City", which includes a town, township, or other municipality.

Item 9. Leave blank.

Item 10. Enter specific number of persons to be directly benefited or served during the life of the project. This number should be substantiated in the application's Program Narrative.

Item 11. Leave blank.

Items 12.a–12.f Enter the budget for (1) the total period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. 12.a– Enter the amount of Federal funds requested. 12.b–12.e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. These items (12.b–12.e) are considered "matching funds". In item 12.f, enter the sum of items 12.a–12.e.

Item 13.a. Enter the number of the Congressional district where the principal office is located.

Item 13.b. Enter the number of the Congressional district(s) where the project will be located. If State-wide, a several state effort or nationwide, enter "00".

Item 14. Leave blank.

Item 15. Enter the desirable start date for the project, beginning on or after March 15, 1986.

Item 16. Enter the estimated number of months to complete the project after Federal funds are available. Projects are generally for 12 months, 24 months or 36 months or for the duration specified in the topic or priority area description.

Items 17.–21. Leave blank.

Item 22a. Enter the date the application was submitted to the Single Point of Contact (SPOC) selected from the attached listing.

Item 22b. Check the appropriate box if not covered by E.O. 12372.

Items 23a. and b. Self-explanatory.

Items 24–33. Leave blank.

2. SF 424, Part II: Negative answers will not require an explanation unless HDS requests more information at a later date. All "yes" answers must be explained on a separate page in accordance with these instructions.

Item 1. Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2. Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3. Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4. Show whether the approved comprehensive plan is State, local or regional; or, is none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5. Show the population residing or working on the Federal installation who will benefit from this project. Federally recognized Indian reservations are not "Federal installations".

Item 6. Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7. Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8. State the number of individuals, families, businesses or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9. Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another source.

3. SF 424, Part III—Budget Information: We have deleted Sections A, C, D and F under Part III. Sections B and E have been reprinted at the end of the announcement.

a. Section B—Budget categories. This budget covers (1) the total project period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. It should relate to item 12.a, proposed Federal funding, on the SF 424, page 1. The amount of Federal funds requested for the second or third year of a project is to be specified in Part III, Section E, Budget Estimate of Federal Funds Needed for Balance of Project.

Under the column title "CDP", enter under column (1) the total rquirements for Federal funds by object class category and the total Federal funds requested for the proposed project. Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74 and the HDS Grants Administration Manual. A budget justification should be included when it is necessary to explain fully and justify major items, as indicated below.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide a break-down of amounts and percentages that comprise fringe benefit costs.

Travel—6c: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs.

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence.

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than those included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.). and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other." Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying the name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and break-down or costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs, (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none." This line should be used only when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency. If the rate has recently (within the past 90 days) been approved, please enclose a copy of the agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments (as defined in 45 CFR Part 74), the reimbursement of indirect costs will be limited to the lesser of the negotiated indirect cost rate or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. It should be noted that when an indirect cost rate is requested, these costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6(i) and 6(j).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature and source of income in the Program Narrative.

b. SECTION E—BUDGET ESTIMATE OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT. This section should only be completed if the total project period exceeds 17 months.

Total—Line 20: Enter the estimated required Federal funds for the second budget period (months 13 through 24) under (b) first and for the third budget period (months 25 through 36) under (c) second opposite "CDP".

4. SF 424, Part IV, Program Narrative

Describe the project you propose in response to this announcement. Your narrative (20 pages typed double-spaced, or ten pages typed single-spaced maximum, on 8½" × 11" plain white bond with 1" margins on both sides) should provide information on how the application meets the evaluation criteria in Part III. Reproductions of larger size paper, reduced to meet the size requirement, are not acceptable. We strongly suggest that you follow these format and page limitations:

a. Need for the Project (5 pages typed double-spaced). The application should clearly describe, in concrete terms, the social problem or situation that prompts the applicant to propose a project. The need for the project should be discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also should describe how the proposed project would build upon previous work, advance the state of knowledge from a national perspective and address a priority need identified in this announcement.

b. Expected Outcomes and Innovativeness (2 pages double-spaced maximum). The program narrative should describe how the proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products should be specified and the expected benefits for HDS target groups and human service providers delineated. Outcomes as opposed to process measures should be emphasized. A significant improvement upon, or important departure from, existing practices and previous related work in the field of human services should be proposed.

For projects in which the major activity is replication of successful model(s) and innovativeness is difficult to establish, the focus should be on the identification of the most appropriate model(s) given the expected outcomes and the implementation of the model(s). Factors such as cost of replication, client impact, long range funding and documentation of the model should be considered when replicating a model or technique. Where appropriate, evaluation plans and procedures should be described in detail and should be capable of measuring the degree to which project objectives have been accomplished.

c. Project Methodology (8 pages double-spaced maximum). The application should describe specific plans for conducting the project in terms of the tasks to be performed. It should include relevant information about: (1) Hypotheses to be tested (if appropriate); (2) concise and clear statement of goals and measurable objectives; (3) what the project will do; (4) how the project will be conducted; (5) data to be collected (including specification of data sources); (6) plan for data analysis; and (7) milestones in the progress of the project. A detailed discussion should be provided on how the approach proposed will accomplish the project objectives. The application should describe in detail the approach to replication or franchising, where appropriate. Whenever possible, innovative use should be made of volunteers and the private sector should be involved.

d. Level of Effort: (3 page doubled-spaced maximum). This portion of the program narrative should describe the resources that will be needed to conduct the project, including personnel, time, funds and facilities. The description should indicate that staff (of other personnel resources) are qualified and the team has the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly should link responsibilities to project tasks. Costs should be justified as reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations should be clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) of the Federal funds required and of the sources of outside support that will be used to meet the matching requirement should be included.

e. Utilization and dissemination: (2 page double-spaced maximum). This section should describe the methods the project will use to share its experiences and findings with the field of human services in general and specifically, with agencies or organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings using Federal and non-federal resources should be described. The specific audiences to whom the products will be addressed should be identified. For projects with a dissemination focus, the additional factors at the end of this section on evaluation criteria should be addressed.

4. Organizational Capability Statement

A brief (maximum 2 pages double-spaced or one page single-spaced)

background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under level of effort. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensive and usable. It may include a description of the qualifications of key staff described in a few paragraphs rather than in formal vitae.

If written commitments have been obtained from organizations that will be directly involved in the proposed project, these could be described. Under several priority areas, letters from organizations that will collaborate on the proposed project are necessary to show the organization's firm commitment to the project. For these specific priority areas, letters of commitment (not letters of support) may be attached as appendices to the application without counting against the page limit requirement. In all other priority areas, the organizational capability statement could identify the organizations from which firm commitments have been received, if these are not described in the program narrative. Applicants may be asked to produce evidence of such commitments at a later time.

5. Part V, Assurances

Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 and the Assurance of Compliance with section 504 of the Rehabilitation Act of 1973, as amended. Copies of these assurances are reprinted at the end of this announcement.

D. Check List of Application Requirements

The following check list is provided for your convenience:

- ☐ SF 424 has been completed according to instructions.
- ☐ SF 424 has been signed and dated by an authorized official (item 23) and the original has been included in the package to be mailed.
- ☐ Each application has been stapled securely (no folders or binders) with the first page of the SF 424 as the first page of each copy of the application.

Included in your application package are:

- ☐ One original application plus two copies. We request that you send five additional copies to facilitate our review.
- ☐ Three additional sets of the SF 424 (page one only) and the summary description, stapled in pairs: Each of the copies should include the following:
- ☐ SF 424, page 1 and Part III
- ☐ Summary description
- ☐ Program Narrative (20 pages, double-spaced maximum;
- ☐ Organizational capability statement (2 pages, double-spaced maximum)

Remmber, applications must be postmarked or hand delivered (by 5:30 p.m.) no later than November 20, 1985 to: HDS/Division of Research and Demonstration, 200 Independence Avenue, SW.—Room 724–F, Washington, D.C. 20201 Attention HDS–86–1

Priority Area———————————

F. Points to Remember

- Designate your application for one topic or priority area only.
- Although multiple applications (of different concepts) from the same applicant are not prohibited, they are not encouraged.
- You are required to send an original and two copies of a application. We request that you send FIVE ADDITIONAL copies to facilitate our review. However, there is no penalty for sending only three copies.
- In computing the required match for all projects except those funded under the Native Americans Act Authority or research proposals from institutions with cost sharing agreements with HHS, please note that 25% of the *total* (the amount requested and your cost share) project cost is equivalent to ⅓ of the amount requested from HDS. Thus for every 3 Federal dollars you request, you must match with an one dollar from your organization. *Miscomputation of the match is a common mistake that leads to disqualification.* In order to compute the required minimum match, divide the amount you are requesting from HDS by 3. For example, if your request for Federal funds is $100,000, then the required minimum match or cost sharing is $33,333. The total project cost, Federal request and proposed matching cost, is $133,333.
- *Applications containing narratives in excess of twenty typewritten double-spaced pages or ten typewritten single-spaced pages) or capability statements of more than two double-spaced pages (or 1 single-spaced page) will not be given further consideration.*
- The distribution of topics related to specific HDS programs (e.g., AoA) is not necessarily commensurate with the distribution of discretionary funds among those programs.
- The summary description of 200 words or less is an essential element of the application. It is important that this accurately reflect the nature and scope of the proposed project.
- Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.
- The qualifications of key staff should be described in a few paragraphs rather than in formal vitae.
- Indirect costs of Child Welfare Services Training (Area 8) and Gerontological Training (Area 9) grants may not exceed 8%.
- Applicants are strongly encouraged to have someone other than the writer apply the screening requirements and evaluation criteria to the application prior to its submittal. In this way, applicants will gain a sense of their application's quality and potential competitiveness.
- Unless exempted, applicants must submit the required materials to their SPOCs to obtain their comments for consideration by HDS as part of the application review and award process.
- Applicants proposing projects targeted on individuals with developmental disabilities must submit a copy of the application to the State Developmental Disabilities Council for the State in which the project will be conducted. A listing of Councils may be requested by calling (202) 755–4633.
- Small businesses submitting applications under Area 11, Small Business Innovation Research Program, must request an Application for Financial Assistance from HDS before they can develop their applications. Copies may be obtained by telephoning (202) 755–4633.
- *The activities below generally will not meet the purposes of this announcement when the activity is not in response to the outcomes described under Part II of the announcement:*

Projects whose main activity is a conference or meeting;

Projects whose major product is a manual.

Proposals that request expansion or continuation of existing services or programs.

Proposals which would establish clearinghouses.

Dated: August 28, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Dodie Livingston,

Commissioner, Administration for Children, Youth, and Families.

Jean K. Elder, Ph.D.,

Commissioner, Administration on Developmental Disabilities.

Carol Fraser Fisk,

Acting Commissioner, Administration on Aging.

William L. Engles,

Commissioner, Administration for Native Americans.

Richard E. Shute,

Director, Office of Program Development.

BILLING CODE 4130-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE)
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER
- MULTIPLE ☐
- b. TITLE HDS FY 86 CDP Priority Area:

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Revised; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month day 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month day 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____Yes _____ No
See instructions for additional information to be provided.

OMB NO. 0348-0036

PART III - BUDGET INFORMATION

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1) CDP	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS CDP	$	$	$	$

PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74, and OMB Circulars No. A-102 and A-110, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

_____

Name of Designee(s) — Type or Print

Name of Recipient — Type or Print	Street Address
(IRS) Employer Identification Number	City
Area Code — Telephone Number	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date	Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building, 330 Independence Avenue, N.W., Washington, D.C. 20201.

RETURN COPY TO: Grants Management Office

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated _____ _____ _____
(Applicant)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's mailing address)

PLEASE RETURN ORIGINAL TO: Office of Civil Rights
Room 5627/B North Building
330 Independence Ave., N.W.
Washington, D.C. 20201

RETURN COPY TO: GRANTS MANAGEMENT OFFICE

HDS GRANTS MANAGEMENT

HHS-441 (10/82) Rev.

GPO 894-600

BILLING CODE 4130-01-C

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939. Tel. (205) 284–8905

Arizona

Department of Commerce, State of Arizona

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to:

Janice Dunn, Attn: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007. Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203. Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814. Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203. Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459. Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth., Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301. Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334. Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706. Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204. Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319. Tel. (515) 281–3864

Kansas

Kansas Department of Human Resources, Office of the Secretary, Attention: Judy Krueger, 401 Topeka Avenue, Topeka, Kansas 66603. Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804. Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process/ Janice Hird, State House Station ±38, Αθγθστα, Μαινε 04333. Τελ. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365. Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202. Tel. (617) 727–3253

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909. Tel. (517) 373–1802

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101. Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact:

Mr. Marlan Baucum, Department of Planning and Policy. Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129 Capitol Building, Jefferson City, Missouri 65102. Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620. Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509. Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710. Tel. (702) 885–4420

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator. Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301. Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803. Tel. (609) 292–6613

Note.—Correspondence and questions concerning this state's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803. Tel: (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Div., Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503. Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224. Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505. Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact:

Mr. Leonard E. Roberts, Deputy Director. Tel. (614) 466–0699

Oklahoma

Don Strain, Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105. Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310. Tel. (503) 373–1998

Pennsylvania

Barbara J. Gontz, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907. Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201. Tel. (803) 758–2417

South Dakota

Connie Treidt, Commissioner, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501. Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219. Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711. Tel. (512) 475–6156

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114. Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602. Tel. (802) 828–3326

Virginia

Shawn McNamara, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219. Tel. (804) 786–4474

Washington

Ken Back, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504. Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305. Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street—GEF 2, Madison, Wisconsin 53702. Tel. (608) 266–1212

Note.—Correspondence & questions concerning this state's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Adminstration, P.O. Box 7864, Madison, WI 53707. Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002. Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Programs Coordinator, Office of the Governor, the Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801. Tel. (809) 774–6517

District of Columbia

Loretta Davis, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004. Tel. (202) 727–6265

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

Puerto Rico

Ms. Patria G. Custodio, P.E., Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985. Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

Listing of Services and Target Populations

The listing of services and target populations which follows is to be used to complete item 7 on page one of the SF 424. Detailed instructions are provided under Part IV, C.1. Do not use abbreviations except when an abbreviation is indicated in parentheses below.

Services

Abuse and Neglect
Adoption
After Care for Runaways
After School Care
Alcohol Abuse
Area 8-Child Welfare Services Training (CWST)
Area 9-Gerontology Training (GT)
Area 11-Small Business Innovation Research Program (SBIR)
Board and Care
Child Care
Child Abuse and Neglect
Child Sexual Abuse
Child Welfare Services
Chemical Dependency Prevention
Community Based Living
Community Care
Consumer Health Education
Continuing Care
Counseling
Elderly Abuse and Neglect
Employment
Family Day Care

Foster Care
Group Homes
Guardianship
Head Start
Home Equity Conversion
Hospice
Housing
Independent Living
Infant Care
Information and Referral
In-Home Care
Life Care Communities
Long Term Care
Mental Health
Medical
Nutritional Services
Outreach
Parenting Education
Pregnancy Prevention
Prevention
Protective Services
Respite Care
Retirement
Runaway Services
School Services
Self-Help Groups
Self Sufficiency
Suicide Prevention
Support Groups
Therapeutic Day Care
Therapeutic Foster Care
Transition Services
Volunteers
Vounchers

Target Populations

Abused Elderly
Abused and Neglected Adults
Adults
Adoptive Parents
Aging
Asians
Alcoholics
Chemically Dependent
Children
Developmentally Disabled
Elderly
Families
Family Day Care Providers
Foster Care Parents
Frail Elderly
Head Start
Hispanics
Homeless
Immigrants and Refugees
Incarcerated Parents
Indians
Infants
Isolated Elderly
Latchkey Children
Low Income
Mentally Disabled
Minorities
Native Americans
Near Emancipated Youth
Older Adolescents
Older Persons
Parents
Physically Disabled
Runaway Youth
Sexually Abused
School Age
School Dropouts
Single Parents
Special Needs Adoption
Special Needs
Speech/Language Impaired
Teenage Parents
Unemployed
Visually Impaired
Volunteers
Work Incentive Program (WIN)
Women
Youth

[FR Doc. 85-20893 Filed 9-3-85; 8:45 am]
BILLING CODE 4130-01-M

VOL
50

ISS
171

SE
4

985

UMI

federal register

Wednesday
September 4, 1985

Part III

Department of Energy

48 CFR Parts 914, 915, and 952
Acquisition Regulation; Representations and Certifications; Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 914, 915 and 952

Acquisition Regulation; Representations and Certifications

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) by revising the manner in which contract representations are obtained. The purpose of this rulemaking is to further reduce the paperwork burdens associated with the preparation of representations and certifications by prospective Government contractors. This effort is a part of the Department's ongoing effort to eliminate paperwork burdens in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). The effect of this rule will be to relieve most offerors/bidders of the requirement to submit a full set of representations and certifications every time they respond to a DOE solicitation. Instead, only offerors selected for awards will be asked to submit the full representations and certifications or certify that they have already placed them on record.

EFFECTIVE DATE: This final rule will be effective October 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Procurement Policy Branch (MA–421.1), Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8264

Christopher T. Smith, Office of General Counsel, AGC for Procurement and Financial Incentives (GC–43), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
III. Public Comments

I. Background

Over the years, various statutes, executive orders, and regulations have been enacted or promulgated which require that prospective Federal contractors submit certain representations and certifications prior to award of a Federal contract. Some of these are merely informational while others are necessary to determine eligibility for award. Some are required before the award of any contract while others are required only for special situations. Despite the varying nature of these representations and certifications, traditional Federal practice has been to require them all to be submitted with every bid or offer. This requirement creates an unnecessary paperwork burden on unsuccessful competitors since only the representations and certifications submitted by a successful competitor are routinely evaluated to assure eligibility for award. This practice was not seen as a problem when the representations and certifications were so abbreviated that they could literally be completed by checking a few blocks on the back of a standard form used to submit bids or proposals. With the passage of years, however, representations and certifications, depending upon the nature of the acquisition and the agency involved, now vary from one paragraph to several pages. The length of the representations and certifications when combined with their repetitious nature (that is filed with every bid or proposal submitted) has become a significant irritant to many prospective contractors. This appears especially true for small businesses who tend to submit a greater number of bids and proposals for small contracts.

After evaluating this situation, the Department of Energy authorized its Contracting Activities to adopt a simplified procedure. This new procedure, following a public comment period, was included in the DEAR as section 915.406–5 (see 49 FR 11922, March 28, 1984). The procedure allows prospective contractors to place "recurrent" representations and certifications, which generally recur and do not change from proposal-to-proposal, on file with a contracting activity for a period of three years. During that period, prospective contractors must submit only a simplified representation confirming the continued validity of the previously filed set of recurrent representations and certifications and provide some minimum administrative data.

With this final rule, after considering the comments received and amending the rule accordingly, the Department is further simplifying the process by requiring the recurrent representations and certifications only of successful offerors. Specifically, this rule will revise DEAR 915.406–5 by relieving unsuccessful offerors of the burden of submitting recurrent representations and certifications. All offerors will be asked to submit only simplified representations and certifications with their proposal. The simplified representations and certifications contain only the minimal information needed to allow a routine evaluation. Under this procedure DOE will require only the successful offeror to submit the recurrent representations and certifications, which are required for all contract awards, such as the contingent fee or the Walsh-Healey Public Contracts Act representations.

From time-to-time, it may be necessary to request one or more of a third category of representations and certifications. These are referred to as additional representations and certifications and whether they are applicable depends on the nature or subject matter of the contract. Like the recurrent representations and certifications, these representations and certifications need only be submitted by the successful offeror. Illustrative of these is the certification entitled "Jewel Bearings and Related Items Certification" of FAR 52.208–8 which is required when purchasing items containing jewel bearings. When needed, these will be described in section L of the solicitation.

II. Procedural Requirements

A. Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. Based on this bulletin, this rule is exempt from such review.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax revenues or liabilities, the cost of goods or services or other economic factors. It will not have any indirect economic consequences such as stimulating or retarding new construction. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No new information collection and recordkeeping requirements are imposed on the public by this rulemaking. Simplified procedures have previously been cleared by OMB in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB Clearance Number is 1910–3100.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

A notice of proposed rulemaking, concerning this revised representations and certifications procedure, was published in the **Federal Register** (50 FR 21087) on May 22, 1985. That notice invited interested parties to submit comments through June 21, 1985. Comments were received from one university, from one organization representing research universities, and from five DOE contracting offices. The comments and our responses to them are as follows:

A. Time Deloy

Two DOE contracting offices suggested that the further simplified procedure would create time delays since the representations and certifications would not be requested until an offeror is selected for award. If the Government were routinely ready to make an award concurrent with selection, this concern would be correct. It is more often that not the case however that numerous details remain to be completed after selection which will consume time during which the representations and certifications can be obtained. Examples of such post-selection activities are detailed discussions, request for certification of cost or pricing data after conclusion of negotiations, request for audit, preaward surveys, exchange of final contract documents and so forth. If the request for representations and certifications is handled concurrently with these other activities, rather than sequentially, there should not be a time delay in most instances. Although no change was made to address this comment, section 915.406–5(a)(5) permits contracting activities to request that, under special circumstances, representations and certifications be submitted before selection is made.

B. Option To Request Representations and Certifications as Part of Bid/Proposal

A commenter asked that discretion be allowed to request the representations and certifications earlier than at time of selection, for instance, as part of the proposal or from the firms determined to be within the competitive range. Since the proposed 915.406–5(a)(5), "Special Circumstances," provided such discretion, no change was required to address this comment.

C. Too Much Work for Government Contracting Office

One commenter felt that establishing a central repository at each contracting office create a situation in which the burden on the contracting office would exceed the benefit to contractors. It was seen as requiring a file clerk at each contracting office to file all the Part II submissions and significant time for other personnel to forward the Part II submissions to the central repository. The Department does not believe this to be that significant a burden. In FY84, for example, there were 9,419 contract awards but only 1,295 were new awards which would need representations and certifications. Furthermore, establishing a central repository at the local contracting office level would minimize the number of affected awards at each site and would make information more readily available. For example, in FY84 there were 43 DOE contract offices and the new contract award numbers ranged from 1 to 291. Another consideration is that there will be "repeat" contractors whose representations won't need to be refiled once they are on record. A final item to note is that the certification is a self-certification made under the penalties for false statements in bids and proposals. As such, the procedure does not require and the Department does not anticipate that contracting personnel will routinely verify the representation by reference to the repository for each subsequent award. Additional burden on government contracting personnel will not be great and will diminish as more and more contractors' representations and certifications are placed on record. The cumulative reduction of burden on contractors should be significant by comparison.

D. Single Agency Repository

Two contracting offices questioned how many repositories were contemplated and their location(s). One asked whether the first contracting office receiving a contractor's representations would become the repository for all of the Department while another suggested that the Headquarters become a single repository for the Department. While a single agency repository would be more convenient for contractors, no practical means of doing this is seen. The single repository would require a much greater resource investment and would cause cumbersome or unworkable problems as personnel in various locations around the country would, from time to time, have a need to review the record representations and certifications. The delay encountered while a record copy of recurrent representations and certifications is copied and mailed to another office to respond to an inquiry shows that this is impractical. Consequently, it is concluded that a repository established at each contracting office is the most efficient approach.

E. Applicability to Sealed Bid Acquisitions

Three commenters questioned the use of the procedure in sealed bid acquisitions. They saw a possibility that an apparent low bidder could in effect withdraw its otherwise binding bid by refusing to execute the representations and certifications. One of these even foresaw the need to have numerous bidders extend their bid acceptance dates while the Government awaited receipt of the apparent low, but possibly reluctant, bidder's representations and certifications. The concern is valid if a bidder were unable to prove a mistake in bid and for some reason did not wish to proceed with the bid it had submitted. While such a situation can be argued to be rare, it can likewise be argued that allowing a bidder to renege on a "binding" bid is injurious to the integrity of the sealed bid system. The Department agrees with this comment and has made the following changes. Specifically, the simplified representations and certifications will be handled differently for sealed bid acquisitions. This revision will necessitate a change in the guidance at 914.201–5(a) to provide an additional control in sealed bid acquisitions. Specifically, bidders will be required to submit Parts I and II with their bids unless they are able to certify in Part I that they have previously filed an acceptable Part II. A separae solicitation provision has been written for sealed bids and placed at 952.215–72.

F. Availability of Part II, Recurrent Representations and Certifications

A commenter asked whether Part II, Recurrent Representations and

Certifications, will be included in each solicitation package. Each solicitation package conducted under sealed bid procedures will contain both a Part I and a Part II. Negotiated acquisition solicitation packages would always contain a Part I while Part II could be deferred until the time of selection. In practice, at least for a reasonable familiarization period, all solicitation packages will contain both.

G. Standard Instructions

A commenter suggested that an instruction be added at 915.406–5(a)(4) regarding which Part III representations and certifications are required. This has been done through a parenthetical remark at the listing of Part III representations, 915.406–5(a)(4)(iii).

H. Citation Correction

A commenter pointed out that the citation at 952.208–71 should be corrected to read 952.406–5. That change was made. Additionally, the solicitation provision, which had been erroneously numbered 952.208–71 in the proposed rule, has been changed to read 952.215–71 in this final rule.

I. Additional Overhead Burden

One commenter suggested that the new procedure would create an additional overhead burden for both contractor and government personnel. Illustrations given were of government personnel maintaining many file cabinets of recurrent representations and certifications and contractors having to file separate representations with each DOE contracting office. Concern was also expressed that contractors with multiple offices would have to establish elaborate new communication channels to assure that all of their offices were aware of where and when representations had been placed on record.

In light of this comment, the Department reevaluated the proposed procedures. The proposed procedure does not increase the administrative burden of government personnel. Standard practice had been to obtain representations and certifications with every bid or proposal submitted. DOE simplified this, effective April 1, 1984, when it adopted a policy (See 49 FR 11922, March 28, 1984) allowing contractors who have repetitious business with a DOE office to place their representations on record with that office for a three year period. The Department is now further simplifying the process by only requiring the Part II representations and certifications from successful offerors for a contract. The proposed rule, however, contained a sentence at 952.208–71 which read "*You are welcome to submit the recurrent representations and certifications in anticipation of an award in order to avoid the inconvenience on future bids or proposals.*" That sentence could result in numerous representations and certifications being placed on record for three years by entities who might never receive a contract. This would be an unnecessary burden for the government to store the information and for the offeror to submit it. The sentence has been deleted.

The proposed and final rules have the recurrent representations being filed with individual offices rather than with a single central repository. Although this procedure will result in contractors having to file at each office with which they have contracts, this appears to be the only practical manner in which to maintain the system as was discussed at III.D above.

J. Original Signature

A commenter suggested that the further simplified procedure could not work because the original signed copy of Part II must be included in the offer and in the official contract file. Since an original signed copy of Part I, certifying to Part II, will be in the official contract file, there is no further requirement for an original signed copy of Part II in each contract file.

K. Adoption at Discretion of the Head of the Contracting Activity

A commenter suggested adoption of the further simplified representations and certifications be left to the discretion of the Head of the Contracting Activity. DOE's objective with this rulemaking is that all contracting activities adopt this simplified process in order to ensure that the full benefit to the public is achieved. To allow the HCA the option to not implement the system would contravene the objective. The proposed rule, at 915.406–5(a)(5), granted contracting personnel discretion to not use the further simplified approach under special circumstances. To ensure that this simplified process be used as often as is appropriate, the final rule has been changed to require that such discretion be approved at a level above the contracting officer on a case-by-case basis.

L. Inapplicability to Educational Institutions

A commenter suggested that nine of the recurrent representations at 915.406–(a)(4) Part II were inappropriate or unnecessary for university contracts. Indeed, four of these, designated (c), (f), (g), and (h) in the proposed rule, are duplicative of representations in Part I and have been deleted from this final rule. Item (d) of Part III of the proposed rule was deleted for the same reason. Furthermore, the other five, designated (a), (d), (e), (i), and (n) in the proposed rule, are not applicable in some circumstances and accordingly, the offeror should feel free to indicate that the representation or certification does not apply. DOE had decided not to omit such representations and certifications because the simplified procedure is a general use procedure and was not crafted to fit a particular type of contractor such as universities.

M. Short Form Research Contract

A commenter suggested that the Department adopt the Department of Defense Short Form Research Contract approach to representations and certifications which involves a simple two-page form. The Department is considering adoption of the Short Form Research Contract developed by the Office of Naval Research. This however will have to be the subject of a separate rulemaking.

N. Reclassify Some Representations

A commenter suggested that four of the recurrent representations, those designated (a), (e), (i), and (n) in the proposed rule, should be moved from Part II to Part III as they are not always applicable. Illustrative of these are the Certificate of Independent Price Determination and the Walsh-Healy Public Contracts Act representations. The first is only applicable if a fixed-price type of contract is contemplated as contrasted to a cost-reimbursement contract.

The second is only applicable to a contract for the manufacture or furnishing of supplies as contrasted to a research or service type contract. To move these to Part III will necessitate separately requesting them in each solicitation to which they are applicable. This increases the possibility that they will be overlooked. Leaving them in Part II and providing a check-off box to show that they are not applicable is considered preferable and an instruction to this effect has been added to the procedures section. [See 915.405–5(a)(3)]. This allows these items, which would seldom change, to be placed on record.

O. Only One Filing

A commenter suggested that a single filing of representations and certifications should suffice and requested that the renewal every third year be eliminated. As a practical

matter, the Department believes that changes may occur and that a periodic review is justified. Accordingly, no change has been made.

P. Only Applicable Part III Representations and Certifications Should Be Required

A commenter stated that contractors should be asked to complete only those Part III representations that are applicable to the specific contract situation. The Department fully agrees and has changed the wording of 915.405–6(a)(2)(iii) to state that "DOE will require only those pertinent representations and certifications. . ."

Q. Buy American Act Certification

A commenter suggested that the Buy America Act certification should be included at Part I rather than Part II because it would be necessary to apply any differential to the price of a nondomestic end product prior to selection. This is correct and the change has been made.

R. Other Changes

The Department added a section to Part I to allow offerors to indicate what type, if any, cost accounting standards coverage should apply to any resulting contract. The Department has added 952.215–72 to provide a standard solicitation provision for sealed bid acquisitions and has made other minor changes of a clarifying nature.

List of Subjects in 48 CFR Parts 914, 915 and 952

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., August 27, 1985.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 914—[AMENDED]

1. The authority citation for Part 914 continues to read as follows:

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act 1954, as amended (42 U.S.C. 2168).

2. Subsection 914.201–5(a)(1) is revised to read as follows:

914.201–5 Part IV—Representations and instructions.

(a) * * *

(1) The further simplified representations and certifications technique discussed at 915.406–5 is not to be used in acquisitions conducted under sealed bid procedures except that a bidder who has already had its recurrent representations and certifications placed on record may be allowed to certify that they are accurate and current as part of its simplified representations and certifications. The solicitation provision at 952.215–72 shall be used in sealed bid solicitations.

* * * * *

PART 915—[AMENDED]

3. The authority citation for Part 915 continues to read as follows:

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act 1954, as amended (42 U.S.C. 2168).

4. Subpart 915.4 is amended by revising section 915.406–5 to read as follows:

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.406–5 Part IV Representations and Instructions.

(a) Section K, Representations, certifications and other statements of offerors or quoters.

(1) Various statutes, Executive orders, and regulations require the submission of certain representations and certifications prior to the award of a Federal contract. Some of these are merely informational while others are necessary to determine eligibility for award. Some are required before the award of any contract while others are required only for special situations. Traditional practice is to require submission of these representations and certifications with every bid, proposal, or quotation. This practice creates an unnecessary paperwork burden on unsuccessful competitors since only the representations and certifications submitted by the successful competitor are routinely evaluated to assure eligibility for award. In order to lessen the administrative expense and burden associated with the repetitious submission of representations and certifications, DOE allows offerors to use a simplified three-part approach to submitting representations and certifications and requires a complete submission only by those who have been selected for award. The essential feature of this approach, which is discussed below, is that once submitted and accepted, most representations and certifications can be placed on record with the contracting activity for a period of three years and may be incorporated by reference in subsequent bids or proposals submitted to the contracting activity unless a change occurs in one or more of the representations or certifications.

(2) *Organization.* The three-part approach to submitting representations and certifications consists of the following: Part I—Simplified Representations and Certifications; Part II—Recurrent Representations and Certifications; and Part III—Additional Representations and Certifications. The purpose of these parts is discussed in the following subparagraphs and their contents are specified in paragraph (a)(4) below.

(i) *Part I—Simplified Representations and Certifications.* When issuing negotiated competitive solicitations, DOE will request only submission of Part I—Simplified Representations and Certifications with each proposal. Part I is required as an administrative convenience for both Government and offeror personnel. It contains certain basic information which is neccessry for Government consideration prior to selection, such as who to contact for discussions and business size information which would be necessary to assure responsiveness should the solicitation be a small business set-aside. It also contains information of mutual administrative convenience such as the indication that recurrent representations and certifications have already been placed on record with the contracting office and that they remain current and correct.

(ii) *Part II—Recurrent Representations and Certifications.* Recurrent representations and certifications generally apply to all contracts which DOE awards and in the past have been submitted in a repetitious manner by all offerors. Under this approach, however, DOE will request Part II only from the source selected for award unless special circumstances pertain and approval of a different approach has been granted at a level above the contracting officer in accordance with paragraph (a)(5) below. See 914.201–5(a)(1) when sealed bids are to be solicited.

(iii) *Part III—Additional Representations and Certificotions.* When required by a particular contractual situation, DOE will request only those pertinent additional representations and certifications from the source selected for award. Paragraph (a)(5) below concerning special circumstances also can be applied to those representations and certifications.

(3) *Procedures.* Each contracting office shall establish a central repository for maintenance of recurrent

representations and certifications and assure that record copies are placed in the repository for reference as may be required. The recurrent representations and certifications shall be reviewed for completeness and acceptability prior to placing them on record. If acceptable, the contracting officer shall furnish a notice advising the offeror of this fact and then place the recurrent representations and certifications on record in the central repository established for that contracting activity pursuant to local procedures. A serial number and expiration date for each recurrent representations and certifications shall be included in the notice. The serial number shall consist of the two digit office identification number associated with the Procurement and Assistance Data System, the fiscal year and a sequentially assigned identification number, e.g., the first representation placed on record by the San Francisco office in FY86 would be numbered 03–86–1. The expiration date shall be the date three years after the date of an affirmative decision that the recurrent representations and certifications are acceptable. Local procedures shall identify the individual or office responsible for maintenance of the repository. When requesting recurrent representations and certifications, a solicitation document shall allow check blocks to indicate if an individual representation is not applicable to the offeror. Such procedures shall also provide guidance for contracting offices under the contracting activity's authority. Generally, each office will be expected to maintain its own repository.

(4) *Contents.* Contracting activities shall include, at Section K of the solicitation, a requirement that the Part I Simplified Representations and Certifications be submitted with each proposal and identify which, if any, of the additional representations and certifications are required and whether they must be submitted with the proposal or may be deferred until time of selection. The categories of representations and certifications consist of the following: (i) Part I—Simplified Representations and Certifications.

(A) The offeror or bidder certifies:

(*1*) It is ( ) a Corporation, incorporated in the state of ———; ( ) an individual; ( ) a partnership; ( ) a nonprofit or educational institution; or ( ) a state or local government; and,

(*2*) It is ( ), is not ( ), a small business; is ( ), is not ( ), a small and disadvantaged business; is ( ), is not ( ), a women-owned small business; and it is ( ), is not ( ) a labor surplus area concern.

(*3*) Any end product to be furnished is ( ), is not ( ) a domestic end product. See FAR 52.225–3.

(*4*) Its Data Universal Numbering System (DUNS) establishment number is: ———:

(B) The offeror certifies that the appropriate cost accounting standards coverage, if any, for any resulting contract is:

(*1*) Inapplicable.

(*2*) Full Coverage-National Defense.

(*3*) Full Coverage-Other than National Defense.

(*4*) Modified Coverage.

(C) The offeror or bidder represents that the following persons are authorized to communicate on its behalf with the Government in connection with this solicitation: list names and telephone numbers of appropriate personnel.

Name.....
Phone.....

(D) Recurrent Representations and Certifications. If a "Part II—Recurrent Representations and Certifications" has previously been placed on record with the contracting activity, please indicate the serial number and expiration date assigned to it:

(number).....
(date).....

(E) By signing below, the offeror or bidder certifies that the representations and certifications, including any recurrent representations and certifications which may have previously been placed on record, are accurate, current and complete. The offeror or bidder further certifies that it will notify the contracting activity of any changes affecting a recurrent representations and certifications package if one has been placed on record.

Solicitation Number.....
Signature.....
Date.....
Typed Name.....
Title and.....
Address.....

Note.—The penalty for false statements of offers is prescribed in 18 U.S.C. 1001.

(ii) Part II—Recurrent Representations and Certifications.

(A) Certificate of Independent Price Determination FAR 52.203–2.

(B) Contingent Fee Representation and Agreement FAR 52.203–4.

(C) Parent Company and Identifying Data FAR 52.214–8.

(D) Place of Performance-Sealed Bidding FAR 52.214–14 or for negotiation, Place of Performance, FAR 52.215–20.

(E) Walsh-Healey Public Contracts Act Representation FAR 52.222–19 (need be completed only for contracts for the manufacture or furnishing of supplies to be performed in the United States and which exceed $10,000).

(F) Certification of Nonsegregated Facilities FAR 52.222–21.

(G) Previous Contracts and Compliance Reports FAR 52.222–22.

(H) Affirmative Action Compliance FAR 52.222–25 (not applicable to construction contracts).

(I) Clean Air and Water Certification FAR 52.223–1.

(iii) Part III—Additional Representations and Certifications. (Request only those applicable to a particular acquisition).

(A) Foreign Ownership, Control, or Influence (Representation) 952.204–73.

(B) Jewel Bearings and Related Items Certificate FAR 52.208–2.

(C) Organizational Conflicts of Interest—Disclosure or Representation 952.209–70.

(D) Recovered Material Certification FAR 52.223–4.

(E) Balance of Payments Program Certificate FAR 52.225–6.

(F) Cost Accounting Standards Notices and Certification FAR 52.230–1, or FAR 52.230–2.

(G) Technical Data Certification 952.227–80.

(H) Royalty Payments Certification 952.227–81.

(5) *Special Circumstances.* Contracting personnel may, in special circumstances, depart from the procedures specified in paragraph (a)(2) above. For example, contracting personnel may request recurrent and/or additional representations and certifications from all sources or those selected for the competitive range in negotiated procurements. Special circumstances might include situations where discussions are not anticipated following receipt of proposals and time does not permit the delay associated with requesting representations and certifications after selection. It may also be appropriate to request full representations and certifications prior to an especially important selection which may require special consideration of such topics as conflict of interest or access to classified information prior to selection. Such a decision to depart, in special circumstances, from the procedures specified in paragraph (a)(2) of this section must be approved at a level above the contracting officer on a case-by-case basis and shall not be made on a class basis.

(b) *Section L, Instructions, conditions, and notices to offerors and quoters.* A

proposal may include trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation. Procedures for handling and protecting such data and information are discussed at 927.402–3(d)(2). Insert the solicitation provision at 952.215–71 or 952.215–72 as appropriate.

(d) *Subcontractor solicitation provisions.* Insert the notice at 952.215–70 in solicitations if the resulting contract will contain any of the clauses referenced therein.

PART 952—[AMENDED]

5. The authority citation for Part 952 continues to read as follows:

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

6. Part 952 is amended by adding new subsections 952.215–71 and 952.215–72 to read as follows:

§ 952.215–71 Simplified representations and certifications—negotiated acquisition.

As prescribed at section 915.406–5 insert the following provision in solicitations:

Simplified Representations and Certifications—Negotiated Acquisitions (AUG 1985)

In order to reduce repetitious paperwork related to various representations and certifications which must be obtained prior to the award of Federal government contracts. DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

Part II—Recurrent Representations and Certifications; and

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every proposal. It provides the basic information necessary to process the bid or proposal. Part II contains the recurrent representations and certifications needed for all contracts. It will be requested only of succeseful competitors selected for award. Failure to submit Part II, upon request, will render a proposal ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III, if requested, may render a proposal ineligible for award.

§ 952.215–72 Simplified representations and certifications—sealed bid.

As prescribed at section 915.406–5 insert the following provision in solicitations:

Simplified Representations and Certification—Sealed Bid (AUG 1985)

In order to reduce repetitious paperwork related to various representations and certifications which must be obtained prior to the award of Federal government contracts. DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

Part II—Recurrent Representations and Certifications; and,

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every bid. It provides the basic information necessary to process the bid. Part II contains the recurrent representations and certifications needed for all contracts. Part II must be submitted with your bid unless one has previously been placed on record with the DOE contracting activity to which your bid is being submitted. Failure to submit Part II, with your bid, will render a bid ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only needed when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III with your bid, if requested, may render a bid ineligible for award.

[FR Doc. 85–20976 Filed 9–3–85; 8:45 am]
BILLING CODE 6450–01–M

VOL
50

ISS
171

SE
4

985

UMI

federal register

Wednesday
September 4, 1985

Part IV

Department of Education

34 CFR Parts 682 and 683
Guaranteed Student Loan and PLUS Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 683

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan Program (GSLP) and the PLUS Program. The proposed regulations cover the administration of the GSLP and PLUS Programs administered by State and private nonprofit guarantee agencies, the Federal Insured Student Loan Program (FISLP), and the Federal PLUS Program. The proposed regulations incorporate recent statutory changes and implement various policy initiatives intended to prevent loan defaults and to effect repayment of loans once default has occurred. Currently, the GSLP and PLUS Programs are covered by separate, though similar, regulations. The Secretary proposes to consolidate regulations of the two programs into one part.

These proposed regulations would clarify and simplify the requirements governing the GSLP and PLUS Programs, effect regulatory relief, including the reduction of paperwork and compliance burdens, provide for the improved administration of the programs, and reduce waste, fraud and abuse.

DATES: Comments must be received on or before November 4, 1985.

ADDRESSES: Comments should be addressed to Mr. Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, P.O. Box 23442, L'Enfant Plaza Station, Washington, D.C. 20026.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz or Larry Oxendine, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, Room 4310, ROB–3, 7th and D Streets, SW, Washington, D.C. 20202, telephone number (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations would revise and streamline the existing regulations in several ways. These proposed rules would consolidate 34 CFR Part 682 (GSLP regulations) and 34 CFR Part 683 (PLUS Program regulations) into one part (34 CFR Part 682). The proposed rules would comply with the provisions of Executive Order 12291 by reducing burdens where possible, eliminating unnecessary duplication and clarifying the intent of existing rules. Recent statutory changes would also be incorporated into the program regulations. In order to reduce further the unnecessary duplication of regulations that apply to all title IV student assistance programs, the proposed rules would delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions Regulations (34 CFR Part 668). Provisions common to the FISL and guarantee agency programs are in this notice included in the sections covering the FISL program, with references thereto in the guarantee agency sections. The final rules will reverse this with provisions detailed in the guarantee agency sections and referenced in the FISL sections in recognition of the change in level of activity in the two programs.

The proposed regulations would also make a number of changes designed to reduce defaults and to increase collections on loans that, nevertheless, go into default. The Secretary is concerned that the magnitude of the default problem in the GSL Program has not been properly appreciated and believes that aggressive steps are necessary to address that problem. Indeed, the January budget estimate of the cost of new guarantee agency program defaults in 1985—$800 million—now appears to significantly understate the problem. The Secretary now expects the cost of new defaults to exceed $1 billion in 1985, and in each subsequent year, under current law.

One reason the deault problem has not been adequately addressed in the past stems from the way the GSLP "net default rate" has historically been measured. This rate has been calculated as the ratio of cumulative net defaults to all loans that have entered repayment, with net defaults measured as gross defaults less collections on those defaults, less defaults referred to litigation, and less defaults written off by guarantee agencies as uncollectable. The latter two exclusions—loans in litigation and loans considered to be uncollectable—distort the default rate calculation because they exclude real defaults from the final figure.

In order to ensure that the net GSLP default rate properly expresses the magnitude of the default problem, the Secretary will now calculate this rate as cumulative gross defaults less cumulative collections, divided by matured paper. Using this simpler and conceptually more correct measure helps to make the seriousness of the GSLP default problem clear:

Net default rate	Fiscal year					
	1981	1982	1983	1984	[1] 1985	[1] 1986
Old definition	3.7	3.2	3.1	3.3	4.1	4.5
New definition	6.2	7.3	7.2	7.4	8.3	9.5

[1] Estimates based on current law.

As the chart illustrates, the GSLP default problem as properly measured is quite severe. Indeed, the GSLP default rate is significantly above that for unsecured consumer loans in general. Furthermore, the net GSLP default rate as properly measured, which had been declining in recent years, is now expected to worsen substantially in the near future. It is, therefore, vital to the future viability of this program that serious steps be taken immediately to address this problem.

Important Statutory Changes Included in the Regulations

One of the major purposes of these regulations is to incorporate recent statutory amendments. The legislative amendments and their major provisions are as follows:

(1) *Education Amendments of 1980 (Pub. L. 96–374) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).*

The Education Amendments of 1980 created the PLUS Program and made significant changes in the GSLP. The Postsecondary Student Assistance Amendments of 1981, contained in the Omnibus Budget Reconciliation Act of 1981, also made major changes in the GSLP and the PLUS Program.

Interest Rates. The proposed regulations reflect the current statutory provisions governing applicable interest rates for GSLP loans, which were established in Pub. L. 96–374. GSLP loans made to new borrowers for periods of instruction beginning on or after January 1, 1981, and through September 12, 1983, have an applicable interest rate of 9 percent. GSLP loans to new borrowers, for periods of instruction beginning on or after September 13, 1983, have an applicable interest rate of 8 percent. Any borrower with an outstanding GSLP loan has the same applicable interest rate on subsequent loans that he or she has on the initial loan.

Six-Month Grace Period on 9 Percent Loans. Pub. L. 96–374 provided that the grace period is 6 months for GSLP loans subject to an 8 or 9 precent interest rate. Seven percent loans still carry the 9 to 12 month grace period.

Post-Deferment Grace Period. Pub. L. 96–374 provided that GSLP borrowers are entitled to a six-month grace period following the completion of any authorized deferment period. Pub. L. 97–35 repealed this provision for all loans disbursed on or after October 1, 1981. Borrowers with loans made prior to October 1, 1981, are still entitled to receive the post-deferment grace period on those loans.

Minimum Annual Repayment. Pub. L. 97–35, affecting all loans disbursed on or after October 1, 1981, increased the GSLP borrower's minimum annual repayment to $600.

Loan Origination Fee. Pub. L. 97–35 authorized lenders to charge a GSLP borrower an origination fee of 5 percent of the principal amount of the loan, and allowed the lender to deduct this origination fee from the loan proceeds. ED deducts the 5 percent fee from the total amount of interest and special allowance payable to the lender, whether or not the lender deducts the fee from the loan proceeds paid to the borrower.

New Special Allowance Formula. Pub. L. 97–35 established a new formula for determining the special allowance rate for GSLP and PLUS Program loans made on or after October 1, 1981. The new formula is essentially the same as the previous formula except that it does not require rounding up to the nearest one-eighth of one percent.

Elimination of School Administrative Cost Allowance. Pub. L. 97–35 repealed the provision authorizing the Secretary to pay schools a $10 administrative cost allowance for each GSLP recipient enrolled. The proposed regulations would revoke the existing provisions in § 682.606 concerning this payment.

New Definition of "Estimated cost of attendance" and "Estimated financial assistance". Pub. L. 97–35 amended the definitions of "estimated cost of attendance" and "estimated financial assistance." The Secretary published these definitions as part of the PLUS Program regulations on April 21, 1982 (47 FR 17200) and amended the GSLP regulations on June 1, 1983 (48 FR 24584).

Special Allowance Payments. The statute has never prohibited lenders from making GSLP loans that do not qualify for payment of Federal interest benefits. However, Pub. L. 97–35 redefined the term "eligible loan" for purposes of determining which loans qualify for special allowance payments. Only the following loans now qualify for special allowance payments:

- loans that qualify for Federal interest benefits;
- loans made under the PLUS Program;
- loans made under the loan consolidation program of the Student Loan Marketing Association (Sallie Mae); and
- loans that were made prior to October 1, 1981.

As a result, while lenders may make loans that do not qualify for Federal interest benefits, any such GSLP loans made on or after October 1, 1981, do not qualify for payment of the special allowance.

(2) *The Department of Defense Authorization Act, 1983 (Pub. L. 97–252).*

Pub. L. 97–252 amended the Military Selective Service Act. These amendments mandated that, beginning with the 1983–84 academic year, any student who is required to be registered with the Selective Service and fails to do so is ineligible to receive the benefits of any title IV student assistance program. Final regulations implementing this requirement were published on April 11, 1983 (48 FR 15578), modified on June 28, 1985 (50 FR 26950), and are found in 34 CFR Part 668 (the Student Assistance General Provisions Regulations). Section 682.515 of these proposed regulations would establish procedures that a lender must follow when informed by a school that a student has failed to meet the loan eligibility requirements, including those pertaining to Selective Service registration in 34 CFR 668.24.

(3) *The Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79).*

Disclosure of Information to Student Borrowers. Pub. L. 98–79 eliminated disclosure requirements which had been in effect since the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301) and established new disclosure requirements. These requirements are identified in the proposed § 682.507.

Non-Discrimination. This provision specifies that no lender may deny benefits of the GSLP or PLUS Program on the basis of race, national origin, religion, sex, marital status, age or handicapped status.

Repayment Status. Prior to Pub. L. 98–79, repayment of GSLP loans began 6 months following *the date* a student ceased to be enrolled as at least a half-time student at an eligible institution. Since it is often difficult for schools to establish the specific date on which a student ceased to be enrolled, many lenders had difficulty in complying with the "date specific" provision. Pub. L. 98–79 makes it easier for the lender to determine when the repayment period starts by specifying that the repayment period begins 6 months following *the month* in which the student ceased at least half-time enrollment.

Elimination of Deferments for Parent Borrowers Under the PLUS Program. Pub. L. 98–79 eliminated deferments for parent borrowers under the PLUS Program for all loans disbursed on or after August 15, 1983.

The Secretary's Pending Proposals for Changes to the GSLP and PLUS Program Statute. The Secretary has proposed a number of programmatic changes in connection with the 1986 Budget request for the GSLP and the PLUS Program. These proposals include a family income eligibility limit for participation in the GSLP or FISL Program, an overall dollar limit on all Title IV aid awards (excluding PLUS), a student self-help requirement of $800, a tightened definition of independent student, a requirement of a high school degree or GED equivalent for aid eligibility, extension of need analysis to families with less than $30,000 in income, the tying of GSLP and PLUS Program borrower interest rates to market rates, the conversion of the GSLP special allowance to a flat percentage of loan principal, the elimination of special allowance on PLUS loans, and the establishment of a 1-percent PLUS guarantee fee to cover PLUS default costs, a reduction in the initial reinsurance percentage available to guarantee agencies from 100 per cent to 90 per cent with a revised trigger rate, the elimination of future administrative cost allowances and advances to guarantee agencies, the repayment to ED by guarantee agencies of outstanding advances, and a requirement that lenders disburse all GSLP loans in multipe installments while receiving interest benefits and special allowance payments only on amounts actually disbursed. The Secretary believes that changes such as these, which improve targeting of aid on needy students and reduce unnecessary and excessive subsidies, are important for the future viability of these programs and that they should be enacted by the Congress as a part of the 1986 Budget. It is the Secretary's practice, however, to promulgate program regulations based on existing statutory provisions. These proposed regulations reflect current law only, and may require substantial revisions to conform with statutory changes resulting from the Secretary's legislative proposals.

Other Regulatory Changes

Terminology

The proposed regulations would substitute "guarantee" for "insurance," "guarantor" for "insurer," *etc.*, in many

places throughout the regulations, in order to reflect more accurately the relationship between the guarantor, the lender, and the borrower on a GSLP or PLUS Program loan. As a number of recent Federal court decisions have made clear, it is imprecise to speak of the Secretary or a guarantee agency as "insuring" a loan, because the "insurance" is provided at the borrower's behest. *See, e.g., U.S.* v. *Tilleraas,* 709 F.2d 1088 (6th Cir. 1983); *U.S.* v. *Frisk,* 675 F.2d 1079 (9th Cir. 1982); *U.S.* v. *Bellard,* 674 F.2d 330 (5th Cir. 1982). This consensual relationship between a borrower and the Secretary or a guarantee agency typifies a common law guarantee relationship. The proposed regulations, in deference to long-standing usage, would retain the term "insurance premium," notwithstanding the fact that a GSLP or PLUS Program insurance premium is incident to a guarantee transaction and does not currently begin to cover the costs and risks to the guarantor of its guarantee obligation.

Scope of Judicial Review Provisions

It is sometimes asserted that a court must exercise *de novo* review of certain decisions of the Secretary under the GSLP and PLUS Program because of the use of various agreements therein. The proposed regulations would include finality clauses as terms of such agreements and contracts with respect to each decision of the Secretary as to which *de novo* review might arguably apply. These clauses provide that certain decisions by the Secretary are conclusive and binding on affected parties. A finality clause in a contract with the United States does not preclude judicial review of a decision covered by the clause. Rather, it brings judicial review of such a decision within the provisions of the Wunderlich Act, 41 U.S.C. 321–322, which provides for substantially the same standards of review as those found in the Administrative Procedure Act. *See* 5 U.S.C. 706. Thus, the proposed regulations would clarify that the standard of review that would ordinarily be expected to apply to the Secretary's actions does in fact apply, and would preclude application of a *de novo* review standard.

Proposed Deletion of Current 34 CFR 682.518 and 683.67

The proposed regulations would delete the current provisions governing the Secretary's collection efforts after payment of a default claim on a FISLP or Federal PLUS Program loan, found at 34 CFR 682.518 and 683.67, respectively. The Secretary will continue aggressively to collect loans on which such claims are paid, in accordance with applicable laws. The current provisions, which contain broad rules as to when the Secretary will refrain from collecting a loan in default, inappropriately restrict the Secretary's discretion in such matters. By omitting these rules, the proposed regulations would permit the Secretary to exercise the full discretion accorded by 20 U.S.C. 1082(a)(5) and (a)(6) to decide, on a case-by-case basis, whether the interests of the United States are served by refraining from collection on all or part of a defaulted loan.

Subpart B—General Provisions

(1) *Section 682.200 Definitions.*

Many definitions contained in this section would be replaced by cross-references to 34 CFR Part 668, *Student Assistance General Provisions,* revisions of which will soon be published in the **Federal Register.**

"Enrolled". The proposed regulations would modify this definition to require that a student attend classes in order to be considered enrolled. This proposed change would preclude the possibility of a student registering for classes and receiving the proceeds of the loan check, but never attending class. This change would also conform this definition to definitions in other Title IV programs.

"Graduate or professional student". This definition would be revised to preclude a student's being considered as a graduate or professional student for GSLP purposes and an undergraduate student for other Title IV purposes. In order to be considered a graduate or professional student a borrower must be enrolled in courses above the baccalaureate level. Graduate or professional students would include borrowers who enter a professional school after completing at least three years of an undergraduate program. Borrowers in the fourth or fifth year of an undergraduate program that culminates in a baccalauerate degree would not be considered graduate or professional students.

"Totally and permanently disabled". The proposed regulations would adopt the definition of "totally and permanently disabled" currently used by the National Direct Student Loan (NDSL) Program. The NDSL Program definition is clearer and more precise than that found in current GSLP and PLUS Program regulations.

(2) *Section 682.201 Eligible borrowers.*

This section would be revised to require permanent residents and those who are in the United States for other than a temporary purpose to provide evidence of such permanent residency, or of the intent to become a permanent resident. The Secretary is proposing this requirement in response to a recommendation by the General Accounting Office and to ensure that only eligible borrowers receive loans.

This section would also be revised to make any individual in default on a GSLP, PLUS or National Direct Student Loan Program loan ineligible for a GSL or PLUS loan regardless of which school the borrower attended with the proceeds of the prior loan. This change would effect no major change in existing practice respecting prior GSLP and PLUS defaults by prospective borrowers, since current practice at most guarantee agencies already precludes new loans to such borrowers.

(3) *Section 682.202 Permissible charges by lenders to borrowers.*

This section would be revised to require that the lender return the origination fee to the borrower, through a credit to the borrower's account, if the loan check is uncashed or if the loan is repaid in full within 60 days of disbursement.

(4) *Section 682.206 Prohibition against the use of the Rule of 78's.*

Proposed § 682.206 would prohibit lenders from using the "Rule of 78's" in their various calculations. Some lenders use this method for computing the rebate of unearned interest to borrowers who prepay their loan, or for determining the outstanding principal balance and earned interest for purposes of special allowance and Federal interest benefits. This change is proposed because of the often dramatic differences between the results obtained by the use of Rule of 78's and those obtained by the use of an actuarial method.

Subpart C—Federal Payments of Interest and Special Allowance

(1) *Section 682.300 Payment of interest benefits on a GSLP loan.*

Proposed § 682.300(b) would limit to 90 days the period in which interest benefits are paid on a loan as to which the check is not cashed. A corresponding change is proposed in § 682.302(d) with respect to special allowance payments. ED has found that some lenders have been billing for interest and special allowance on loans for which the checks have remained uncashed for extended periods of time.

(2) Section 682.301 and Appendix B are reserved for the GSL Family Contribution Schedule. The 1985–86 Family Contribution Schedule (FCS) published on April 8, 1985, at 50 FR 13916, is found in current regulations in

§ 682.301 (Eligibility for Interest Benefits on a GSLP loan) and Appendix B to Part 682 (Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1985–86). Since the provisions of the 1985–86 and 1986–87 GSL Family Contribution Schedules are mandated by statute (the Student Financial Assistance Technical Amendments Act of 1982, Pub. L. 97–301), as amended by Section 4(b) of the Student Loan Consolidation and Technical Amendment Act of 1983 (Pub. L. 98–79) and the Education Amendments of 1984 (Pub. L. 98–511), the Secretary expects to republish the applicable FCS, when these proposed rules are promulgated as final regulations.

(3) *Section 682.302 Payments of special allowance on a GSLP or PLUS Program loan.*

This section would be revised to incorporate the Department's long-standing view that the Secretary's obligation to pay special allowance terminates when a loan ceases to be guaranteed.

(4) *Section 682.303 Methods for computing interest benefits and special allowance.*

This section would be revised to discontinue lender's use of the average quarterly balance method for computing interest benefits and special allowance. This change is proposed to assure that the amount of interest benefits and special allowance paid by the Secretary accurately reflects the number of days a loan is outstanding and held by the lender. In addition, elimination of the average quarterly balance method would preclude the Secretary's payment of more interest benefits and special allowance on loans that are transferred between two lenders than on loans that are never transferred. Under the current system, this can occur when one party to the transfer uses the average quarterly balance method and the other does not. The remaining methods—average daily balance and actual accrual—produce the same results with respect to the amount of interest benefits and special allowance payable by the Secretary. Both methods are included for the convenience of lenders with different approaches to portfolio administration.

(5) *Section 682.304 Procedure for payment of interest benefits and special allowance.*

This section would discontinue the use of semi-annual and annual billings by lenders for interest benefits and special allowance, since very few lenders bill for interest benefits and special allowance on other than a quarterly basis. Lenders report on each billing the amount of loans made during the billing period, so that the loan origination fee can be calculated and deducted from any amount due the lender.

The Secretary considers it important to the fiscal integrity of the GSLP and PLUS Program that lenders submit billings for interest benefits and special allowance in a timely manner. Proposed § 682.304(c) would define a timely billing as one received by the Secretary within 90 days following the end of a quarter.

Subpart D—Guarantee Agency Programs

(1) *Section 682.401 Basic program agreement.*

(a) Proposed § 682.401(b)(5) would conform loan disbursement procedures for guarantee agency loans to those under the FISLP and the Federal PLUS Program. This change is designed to facilitate lender participation by establishing uniform loan check procedures.

(b) Similarly, proposed § 682.401(b)(10)(ii) would conform disclosure requirements, forbearance policies, and the consequences of a borrower's failure to establish eligibility for guarantee agency loans to the FISLP and the Federal PLUS Program.

(c) Proposed § 682.401(b)(11) would require each guarantee agency to establish and utilize a system for monitoring the enrollment status of student borrowers and to report any relevant status changes, as reported by a school, to the lender within 60 days.

(2) *Section 682.402 Death, disability, and bankruptcy payments.*

(a) Proposed § 682.402(c), *Claim procedures for a loan held by a lender*, would conform the documentation and timely filing requirements for death, disability and bankruptcy claims under guarantee agency programs to those under the FISLP and the Federal PLUS Program.

(b) Proposed § 682.402(d) would revise the treatment of bankruptcy claims by guarantee agencies. GSLP and PLUS loans may not be discharged in bankruptcy during the first five years of repayment, unless the borrower petitions the bankruptcy court and is granted a hardship waiver. After a lender has submitted a bankruptcy claim to the guarantee agency, the agency would pay the lender the amount owed and hold the loan until it is determined that the loan is, or is not, discharged by the bankruptcy court. If the loan is discharged, the agency would submit a bankruptcy claim to the Secretary for reimbursement. If the loan is not discharged, the guarantee agency may elect to hold and service the loan as the lender or have the lender which submitted the claim repurchase the loan.

(3) *Section 682.404 Federal reinsurance agreement.*

(a) Proposed § 682.404(a)(2) would clarify that the Secretary's reimbursement of "losses" incurred by a guarantee agency include only the amount of unpaid principal and accrued interest that the agency has paid to a lender on a default claim.

(b) Proposed § 682.404(e)(5) would require the agency to refund to the Secretary a portion of the proceeds derived from the sale of an asset which was purchased, in whole or in part, with funds retained from collections. A corresponding proposal is found in § 682.407(b)(3) with respect to assets purchased with administrative cost allowance payments.

(4) *Section 682.405 Supplemental Federal reinsurance.*

This proposed section would amend the formula for determining a guarantee agency's reinsurance percentage to exclude from the formula claims filed under a guarantee agency policy either required by § 682.401(b)(10)(ii)(F) or consistent with § 682.516(a)(1). These claims include any claims filed because it was determined, after the loan was made, that the borrower was enrolled in an ineligible program, failed to meet citizenship or residency requirements, or did not qualify for Federal interest benefits, or that the borrower's school closed during the academic period covered by the loan. The Secretary is proposing this change to prevent guarantee agencies from being penalized for paying claims to its lenders on loans that do not involve ordinary defaults.

(5) *Section 682.406 GSLP loan disbursement through a guarantee agency escrow agent.*

The Education Amendments of 1980 (Pub. L. 96–374) authorized guarantee agencies to establish an escrow system under which the guarantee agency, or its agent, would receive GSLP loan disbursement from certain lenders and would transmit those funds to borrowers in multiple installments. These proposed regulations would allow disbursements to the escrow agent (*i.e.*, the guarantee agency or its agent) to be made in bulk, by electronic transfer, or in any form upon which the escrow agent and lender agree. The escrow agent would transmit loan funds directly to the school by means of a check made payable to the borrower and the school. The check transmitted from the escrow agent to the school would contain, or be accompanied by, a notification to the school that it is part of a multiple disbursement. The escrow agent would

be required to make at least two disbursements during the loan period, according to a schedule that the escrow agent would give to the borrower at the time of the first disbursement. The promissory note would include a reference to the schedule of disbursements.

The escrow system is designed to preserve the student's access to GSLP loan funds as educational costs are incurred, while reducing the Secretary's potential liability in the event that the student ceases attendance at the school. In such cases, loan funds remaining in escrow would be sent directly from the escrow agent to the lender and credited as a prepayment to the student's outstanding loan balance.

The Secretary does not favor the guarantee agency escrow mechanism as a means of reducing defaults involving students who drop out, because it unfairly permits the guarantee agency to reap the benefit of the "float" on loan funds it holds in escrow, rather than the borrower or the Federal taxpayers. Current multiple disbursement procedures are similarly unfair to the taxpayers, because they permit lenders to bill the Federal government for interest benefits and special allowance payments on undisbursed loan amounts. The fairest and least costly means for expanding the use of multiple disbursement of loans is simply to require lenders to disburse all loans in multiple installments, as the Secretary has proposed in connection with the 1986 Budget request, with interest benefits and special allowance payments made only on funds actually disbursed. If this proposal is enacted into law, of course, the guarantee agency escrow mechanism will be unnecessary, since it pertains only to loans not already disbursed in multiple installments by lenders. These proposed regulations would provide needed controls on the guarantee agency escrow mechanism in the event that the Congress declines to enact the Secretary's proposal.

(6) The Secretary requests comment about regulating the management practices and structure of State lenders or State secondary markets that are closely affiliated with guarantee agencies, often under identical management. Although such an arrangement may be cost-effective, since the two organizations can share certain equipment and support services, it raises serious concerns about the independence of decisions made by each organization, one serving as a lender or holder of student loans, and the other as the guarantor of those same loans. In such a situation the potential for conflicts of interest is great, especially when the guarantee agency is responsible for reviewing the program participation of the lender to determine compliance with applicable laws and regulations. The Secretary is therefore seriously considering, and requests comments on, including in the final rule the following requirements concerning the management structure and practices of State lenders, secondary markets, and servicers and affiliated guarantee agencies:

(a) Separation of decision-making authority for policy and procedures (e.g., separate boards of directors);

(b) Diligent oversight by the guarantee agency of the affiliated lender, secondary market, or servicer to ensure the latter's compliance with applicable laws, regulations and policies;

(c) Separation of personnel in areas of activity that involve potential conflicts of interest;

(d) Complete separation of files and filing systems;

(e) Separate deposit arrangement and accounting for all revenues and costs; and

(f) Separation of all operational activities that cannot be combined without creating a potential conflict of interest, such as guarantee issuance and lending decisions, and due diligence activities and claims review activities.

(7) A number of additions to, and revision of, existing regulations are proposed to ensure the administrative and fiscal integrity of the GSLP and the PLUS Program and to ensure that the Secretary is not exposed to unreasonable risks of loss.

(a) The proposed regulations would delete current § 682.403, *Federal advances for reserve funds*, since no additional advances have been authorized under section 422(a) of the act since 1968. The proposed regulations would, however, establish requirements for the maintenance an use of an agency's reserve fund in § 682.410(a). Except for restrictions on the use of loan insurance premiums, current regulations governing the reserve fund apply only as long as the agency retains Federal advance funds. The reserve fund requirements of proposed §682.410(a) would apply to all guarantee agencies. The proposed content and uses of the reserve fund are essentially the same as the requirements in existing regulations, except that administrative cost allowance payments from the Secretary would now be deposited in the agency's reserve fund. The guarantee agency could then use those payments to defray future administrative costs.

Proposed section 682.410(b)(3) would establish specific procedures for guarantee agencies to follow regarding the exercise of due diligence in collecting loans they hold. One proposed provision, section 682.410(b)(3)(vii), would require a guarantee agency to sue every borrower who defaults on a loan held by the agency, if the agency's collection efforts are unsuccessful. A related provison, section 682.410(b)(3)(x), would require agencies to adhere to criteria and procedures approved by the Secretary for "writing off" loans on which its collection efforts have been unsuccessful. The Secretary is developing a model set of write-off criteria and procedures, based on the Federal Claims Collection Standards, to aid agencies in formulating their write-off policies, and to use as a guide in reviewing proposed agency policies in this area. The Secretary emphasizes that the write-offs at issue do not entail excusing the borrower from repayment of the loan; they are not Federal write-offs. Rather, they involve merely the cessation of collection activity by the agency on the loan.

A number of issues in this area are still under discussion. The Secretary is therefore particularly interested in comments regarding guarantee agency write-off criteria and procedures.

(b) Proposed § 682.412 would retain existing provisions on remedial actions available to the Secretary against a guarantee agency that violates program requirements. Proposed §§ 682.406 and 682.412 would also specify the circumstances under which a lender or guarantee agency is not entitled to, and therefore must repay, interest benefits, special allowance, or reinsurance payments on a GSLP or PLUS Program loan, in the absence of a waiver by the Secretary of the right to refuse to make, or require reimbursement of, such payments. A guarantee agency would continue to be required to demonstrate its compliance with Federal rules, including proposed §§ 682.406 and 682.411, in the event an audit or program review questions its right to payments by the Secretary under this part. The program statute, and current regulations, permit the Secretary to recover, or refuse to make, certain interest benefits and special allowance payments to a lender, and reinsurance payments to a guarantee agency, on a loan as to which the lender is in violation of a guarantee agency rule that affects guarantee coverage. Current regulations also permit the Secretary to recover, or refuse to make, reinsurance payments to an agency that makes an incomplete or incorrect statement in connection with

any agreement entered into under the GSLP or PLUS Program. Proposed §§ 682.406 and 682.412 would provide greater clarity regarding the Secretary's rights in these areas, and thus, it is believed, greater compliance with guarantee agency and federal rules.

Proposed sections 682.412 (a)(2) and (b)(2) refer to policies and procedures which a guarantee agency may establish, allowing for the reinstatement of guarantee coverage on a loan as to which the lender has violated a condition of guarantee coverage set by the agency. These policies and procedures would require the approval of the Secretary. The Secretary intends to use the FISLP "cure" policies set forth in Bulletin L–77a (Appendix C to these proposed rules) as a guide in reviewing proposed guarantee agency policies in this area.

While the program statute and current regulations require a guarantee agency to exercise due diligence in the collection of loans and to protect the United States from unreasonable risks of loss, they do not set forth a specific time period within which a guarantee agency must act on a default claim submitted by a lender. The Secretary has interpreted the statute and regulations as requiring an agency to act on a default claim within 90 days of receipt by the agency. Proposed §§ 682.406(b) and 682.412(b)(3) would incorporate the 90-day period into the regulations and provide that an agency may not receive reinsurance reimbursement for interest accruing on a loan after the end of this period.

Similarly, while the statute and current § 682.405(f)(1)(ii) prohibit a lender from neglecting collection on a loan for substantial periods of time, they do not set forth a specific deadline by which a lender must file a claim with the guarantee agency after default. Instead, current regulations require that the agency establish rules for the timely filing of claims by its lenders. A number of agencies have been slow in doing so, however. In addition, the administrative burden on the Secretary of reviewing and approving agencies' timely filing and other rules unduly taxes the Secretary's available resources. Thus, proposed § 682.406(a)(4) would establish a uniform filing deadline for default claims of 90 days from default, and would further specify that the Secretary does not make a reinsurance payment on a default claim that is filed later than 90 days after default.

(c) *Section 682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.*

The Secretary proposes procedures to implement the statutory authority of section 428(c)(8) of the Act concerning the assignment to the Secretary by guarantee agencies of defaulted loans on which the Secretary has paid reinsurance claims. The Secretary intends to use this authority wherever appropriate to reduce the disturbingly high amount of loans on which agencies have been unsuccessful in collection after payment of default claims to lenders.

Proposed § 682.409 would establish general assignment procedures and the basic documentation that would be required for loans that the Secretary selects for assignment. It would be extremely difficult, if not impossible, to establish a single set of specific standards for selecting loans for assignment that would take into consideration the unique circumstances of each loan and each guarantee agency. The proposed regulations, therefore, do not include such a set of standards. Instead, the decision will be made on a case-by-case basis as to which loans, or categories of loans, will be selected for assignment. The Secretary may consider factors such as the adequacy of the guarantee agency's collection system, the agency's default rate, the total dollar amount in default, and any trends in those areas, in deciding whether a particular agency's loan portfolio should be closely examined for purposes of requiring the agency to assign loans to the Secretary. In the event such an examination is conducted of an agency's portfolio, the Secretary may require assignment of the entire portfolio, or of only certain types of loans within it, such as loans made to Federal employees, loans barred or soon to be barred by the statute of limitations, loans written off by the agency, or loans as to which the agency's collection efforts have been completed without success. The Secretary may also require assignment from all agencies of all loans of a particular type, such as loans to Federal employees or loans as to which the exercise of offsets against Federal income tax refunds due the borrowers is appropriate. The Secretary does not plan, at this time, to require the assignment of a loan as to which the agency's collection efforts are successful in inducing the borrower to honor the repayment obligation. The Secretary requests comments on this approach, on the proposed loan categories set out above, and on any other approaches, factors, or loan categories relevant to this issue.

(d) *Section 682.411 Due diligence by lenders in the collection of guarantee agency loans.*

This proposed section would establish minimum collection requirements for lenders administering guarantee agency loans. These standards, which were developed in consultation with the National Council of Higher Education Loan Programs, would help to protect the Secretary from unreasonable risks of loss and improve the collection of loans nationwide.

(e) *Section 682.412 Remedial actions.*

Current §682.405(f)(1)(ii) requires, as a term and condition of the reinsurance agreement, that a guarantee agency assure the Secretary that, as to each reinsurance claim it files, the lender has made all reasonable efforts to collect the underlying loan. Current § 682.400(c) sets forth the Security's remedies when on agency gives a warranty, under § 682.405(f)(1)(ii), on a loan as to which the lender has not exercised due diligence in collection. Under proposed § 682.412, these remedies would similarly be available for a violation of proposed § 682.411.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

(1) *Section 682.501 Extent of Federal guarantee under the FISLP and Federal PLUS Program.*

This proposed section would amend the formula for determining a State lender's guarantee percentage to exclude from the formula claims filed under §§ 682.515 and 682.516. These claims include, but are not limited to, any claims filed because it was determined, after the loan was made, that the borrower was enrolled in an ineligible program, failed to meet citizenship or residency requirements, or did not qualify for Federal interest benefits, or that the borrower's school closed during the academic period covered by the loan. The Secretary is proposing this change to prevent lenders from being penalized for filing claims that do not involve ordinary defaults.

(2) *Section 682.506 Due diligence in making and disbursing a loan.*

This proposed section would require that the lender make the loan check (except in the case of a PLUS Program parent borrower or a borrower attending a foreign school) co-payable to the borrower and the school and that the lender send the check to the school. This change is designed to assure that the school is made aware of when a loan is made and the amount of that loan, to give the school greater control over student loan proceeds, and tc assure that the loan proceeds are used for educational expenses.

Loan checks for parent borrowers would be excluded from this provision

because, unlike a student borrower enrolled at the school for which the loan was intended, a parent borrower will not be at the school to receive the check. Processing a check through the school in these circumstances would be a cumbersome and administratively burdensome process for both the parents and the school. The Secretary proposed that loan checks for student borrowers attending foreign school would be exempt from these provisons. The Secretary, however, requests comment on this proposed exception.

(3) *Section 682.510 Repayment of loans.*

The Secretary proposes the elimination of the provision that lenders currently are permitted to add to the promissory note requiring the borrower to execute a repayment schedule not less than 120 days before the end of the grace period. The 120-day provision was originally authorized when the Secretary did not guarantee interest and was designed to allow lenders to file a default claim as soon as possible, if necessary, thereby minimizing the loss of interest income. Since interest is now guaranteed, and since most GSLP loans now have a six-month grace period instead of a nine- to twelve-month grace period, this procedure is no longer necessary or practical. Holders of outstanding loans that carry the 120-day clause in the promissory note and that have not yet entered the repayment period may, without penalty, decide not to enforce this provision in the note.

(4) *Section 682.511 Deferment.*

(a) This proposed section would establish that an authorized deferment period begins on the earlier of the date the lender approves the borrower's request for deferment or the date the deferment began, not to exceed 60 days prior to the lender's approval. Current regulations specify that an authorized deferment period begins when the condition entitling the borrower to a deferment first exists.

(b) The requirements for an authorized deferment of repayment for volunteer service in the Peace Corps or ACTION programs would be modified to require full-time service for a minimum of one year. This provision would be revised since the Peace Corps and ACTION programs are now allowing volunteers to have service periods for as little as a few months. The intent of these deferments is to accommodate borrowers serving as volunteers for an extended period of time. This change would be consistent with the minimum one year of service that is required for a deferment for volunteer service, comparable to that in the Peace Corps or ACTION programs, with a tax-exempt organization.

(c) The Secretary proposes to codify as criteria, in § 682.511(g), the factors that have generally been considered in determining if a borrower is serving in an eligible internship program.

(5) *Section 6282.513 Due diligence in collecting a loan.*

In cases where the borrower enters the repayment period without the lender's knowledge, the Secretary proposes to allow the lender 30 days from the date it learns of this situation to establish the repayment terms and obtain a payment or otherwise determine that the borrower intends to honor the repayment obligation before sending the borrower a notice as required in § 682.513(b).

(6) *Section 682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.*

The Secretary proposes to establish procedures for curing violations of the due diligence in collection and timely filing of claims requirements by republishing, as Appendix C to Part 682, Bulletin #L-77a (January 7, 1983). References in the Appendix to §§ 682.511 and 682.516 should be understood to refer to §§ 682.513 and 682.518, respectively, of these proposed rules. If Appendix C is included in the final rule, all regulatory citations will be revised to reflect the section numbers adopted in the final rule.

Subpart F—Requirements, Standards, and Payments for Participating Schools

(1) *Section 682.605 The borrower's loan check.*

This proposed section would require that almost all GSLP loan checks be made jointly payable to the student and the school and that they be sent directly to the school. A school would be required to verify that the student is maintaining satisfactory academic progress and is enrolled, or has maintained enrollment, on at least a half-time basis before releasing any funds. Presently, a school is required only to verify that the student is enrolled, and has maintained enrollment, on at least a half-time basis before releasing any funds. Other Title IV programs require that the school also verify satisfactory progress before releasing funds.

The Secretary has decided not to propose establishing regulatory authority for schools to maintain escrow systems for disbursing to borrowers loan proceeds received from lenders. Such systems, which would be similar to the guarantee agency escrow systems discussed above, would unfairly permit schools, rather than borrowers, to reap the "float" on loan funds disbursed in advance of need. As noted above, the Secretary believes that his proposal to amend the statute to require lenders to disburse all GSLP loans in multiple installments, with interest benefits and special allowance payments made only on funds actually disbursed, is the best way to handle the "float" question—in effect, giving it to the Federal taxpayers—and would also greatly reduce default costs associated with mid-year, mid-program dropouts.

(2) *Section 682.606 Determining the date of a student's withdrawal.*

This proposed section would delete the current provision that allows a borrower to take more than one leave of absence. Given the single leave of absence that may still be granted by the school, the six-month grace period provides an adequate period of time to make arrangements to return to school. If a student returns to school on at least a half-time basis before the expiration of the six-month grace period, the student is entitled to the full six-month grace period after later dropping below half-time attendance.

(3) *Section 682.608 Payment of a refund to a lender.*

Under proposed § 682.605, *The borrower's loan check*, if, after receiving a loan check for a student, the school determines that the student has not enrolled as expected, the school would have to return the check to the lender within 30 days of this determination. This proposed section would reduce from 40 days to 30 days after the determination that a refund is due the time within which a school must return the refund to the lender. This change is proposed so that the two sections will be consistent.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

Regulation governing the limitation, suspension, or termination of lender eligibility currently apply only to lenders under the FISLP (Subpart G of 34 CFR Part 682) and the Federal PLUS Program (Subpart F of 34 CFR Part 683). Subpart G of these proposed regulations is essentially the same as current regulations. The Secretary is, however, proposing to make this Subpart applicable to lenders that participate in guarantee agency programs.

Subpart H—[Reserved]

On February 10, 1984, the Secretary published at 49 FR 5330 proposed regulations to govern the approval of the

Plan for Doing Business submitted to the Department of Education by Authorities that issue tax-exempt obligations in order to secure funds to make, purchase, or provide financing for loans under the CSLP and the PLUS Program. On February 8, 1985 the Secretary published final regulations at 50 FR 5506 under *Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations*, and will republish those regulations when these proposed rules are promulgated as final regulations.

Appendix A—[Reserved]

No changes to Appendix A of 34 CFR Part 682 and 34 CFR Part 683 (Standards for Acceptable Refund Policies by Participating Schools) are included in these proposed regulations. Therefore, the Secretary is not publishing Appendix A as part of this notice of proposed rulemaking, but will republish it as part of the final regulation.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Many provisions of the regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders and schools by the regulations. These regulations, however, are modeled on existing GSLP and PLUS Program regulations and will not have a significant economic impact on these institutions. Participating guarantee agencies are reimbursed for their costs.

Invitation To Comment.

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 60th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB–3, Room 4310, 7th and D Streets SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

It has not yet been determined if public hearings will be held. In the event they are, the public will be advised—through a notice published in the Federal Register—of the specific times and locations for each meeting.

It would be extremely helpful if comments are identified by specific sections of the NPRM and are made sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Paperwork Reduction Act

Sections 682.304, 682.305, 682.401, 682.402, 662.407, 682.408, 682.409, 682.411, 682.413, 682.507, 682.511, 682.513, 682.518, 682.522, 682.601, 682.602, 682.603, 682.604, and 682.610 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Although preparation of this NPRM resulted in extensive consideration of the imposition of information collection and recordkeeping requirements, the Department is particularly interested in comments on ways to further reduce the paperwork burden imposed in this program. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administration practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: August 29, 1985.

William J. Bennett,

Secretary of Education.

PART 683—[REMOVED]

The Secretary proposes to remove Part 683 and to revise Part 682 of Title 34 of the Code of Federal Regulations to read as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

Subpart A—Purpose and Scope

Sec.
682.100 The Guaranteed Student Loan and PLUS Programs.
682.101 Participation in the Guaranteed Student Loan and PLUS Programs.
682.102 Obtaining and repaying a loan.
682.103 Applicability of subparts.

Subpart B—General Provisions

682.200 Definitions.
682.201 Eligible borrowers.
682.202 Permissible charges by lenders to borrowers.
682.203 Statement of educational purpose.
682.204 Treatment of refunds by lenders.
682.205 Prohibited transactions.
682.206 Prohibition against the use of the Rule of 78's.

Subpart C—Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on a GSLP loan.
682.301 [Reserved].
682.302 Payments of special allowance on a GSLP or PLUS Program loan.
682.303 Methods for computing interest benefits and special allowance.
682.304 Procedure for payment of interest benefits and special allowance.
682.305 Payment of interest benefits and special allowance to a lender making multiple installment loans.

Subpart D—Guarantee Agency Programs

682.400 Agreements between a guarantee agency and the Secretary.
682.401 Basic program agreement.
682.402 Death, disability, and bankruptcy payments.
682.403 Federal advances for claim payments.
682.404 Federal reinsurance agreement.

Sec.
682.405 Supplemental Federal reinsurance.
682.406 Conditions of reinsurance coverage.
682.407 Administrative cost allowances for guarantee agencies.
682.408 GSLP loan disbursement through a guarantee agency escrow agent.
682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.
682.410 Fiscal, administrative, and enforcement requirements.
682.411 Due diligence by lenders in the collection of guarantee agency loans.
682.412 Remedial actions.
682.413 Records, reports, and inspection requirements for guarantee agency programs.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

682.500 Circumstances under which loans may be guaranteed by the Secretary.
682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.
682.502 The application to be a lender.
682.503 The guarantee contract.
682.504 Issuance of Federal loan guarantees.
682.505 Insurance premium.
682.506 Limitations on maximum loan amounts.
682.507 Disclosure requirements.
682.508 Due diligence in making and disbursing a loan.
682.509 Due diligence in servicing a loan.
682.510 Repayment of loans.
682.511 Deferment.
682.512 Forbearance.
682.513 Due diligence in collecting a loan.
682.514 Assignment of a loan.
682.515 Consequences of failure of a borrower or student to establish eligibility.
682.516 Special conditions for filing a claim.
682.517 Death, disability, and bankruptcy.
682.518 Procedures for filing a claim.
682.519 Determination of amount of loss on a claim.
682.520 Factors affecting coverage of a loan under the loan guarantee.
682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.
682.522 Records, reports, and inspection requirements for program lenders.

Subpart F—Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.
682.601 Agreement between the Secretary and a school that makes or originates loans.
682.602 Providing employment data to prospective students.
682.603 Correspondence school schedule requirements.
682.604 Certification by a participating school in connection with a loan application.
682.605 The borrower's loan check.
682.606 Determining the date of a student's withdrawal.
682.607 Refund policy.
682.608 Payment of a refund to a lender.
Sec.
682.609 Termination of a school's lending eligibility.
682.610 Records, reports, and inspection requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

682.700 Purpose and scope.
682.701 Definitions of terms used in this subpart.
682.702 Effect on participation.
682.703 Informal compliance procedure.
682.704 Emergency action.
682.705 Suspension proceedings.
682.706 Limitation or termination proceedings.
682.707 Appeals in a limitation or termination proceeding.
682.708 Evidence of mailing and receipt dates.
682.709 Reimbursements, refunds, and offsets.
682.710 Removal of limitation.
682.711 Reinstatement after termination.

Subpart H—[Reserved]

Appendix A—[Reserved]
Appendix B—[Reserved]
Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a].

Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–2), unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan and PLUS Programs.

(a) This part governs two programs in which lenders use their own funds to make loans to enable students to pay the costs of attending postsecondary schools:

(1) The *Guaranteed Student Loan Program (GSLP)*, which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The *PLUS Program*, which encourages the making of loans to independent undergraduate students, graduate and professional students, and parents of dependent undergraduate students to help pay for the student's costs of education.

(b)(1) A guarantee agency guarantees lenders against losses due to default by the borrower on GSLP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the default claims it pays.

(2) The Secretary guarantees lenders against losses, within the GSLP, on Federal Insured Student Loan Program (FISLP) loans and, within the PLUS Program, on Federal PLUS Program loans. The FISLP and the Federal PLUS Program are authorized to operate in States not served by a guarantee agency program. In addition, the FISLP is authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(20 U.S.C. 1071 to 1087–2)

§ 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.

(a) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State agencies may be lenders.

(b) Educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools, are eligible to participate as schools for which a student or parent may obtain a loan to pay for the student's cost of education at that institution.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the GSLP and PLUS Program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program.

(20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *GSLP application.* To obtain a GSLP loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the student submits the application to a participating lender. If the lender agrees to make the loan, the lender sends the application to a guarantee agency or to the Secretary for approval.

(b) *Plus Program application.* To obtain a PLUS Program loan a student completes an application and submits it to the school for certification. If the loan is to be made to the student's parent(s), both the student and the parent(s) must complete the application before submitting it to the school. After the school certifies the application, the student or parent(s) submits the application to a participating lender. If the lender agrees to make the loan, the lender sends the application to a guarantee agency or to the Secretary for approval.

(c) *Repaying a loan.*—(1) *General.* The borrower is obligated to repay the full amount of the loan plus any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes

totally and permanently disabled, or has the loan discharged in bankruptcy.

(2) *GSLP repayment.* Generally, a borrower is not required to make any payments during the time the borrower is in school. In most cases the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no payments are required. At the end of the grace period, the repayment period begins. During the repayment period the borrower pays both the principal and the interest accruing on the loan.

(3) *PLUS repayment.* The Secretary does not pay the interest on a PLUS Program loan on behalf of the borrower. The first payment is due on a PLUS Program loan within 60 days after the loan is disbursed.

(4) *Default.* If a borrower defaults on a loan, the guarantee agency or the Secretary reimburses the lender for the amount of its loss. The guarantee agency or the Secretary then collects this amount from the borrower.

(20 U.S.C. 1071 to 1087–2)

§ 682.103 Applicability of subparts.

(a) Subpart B contains general provisions that are applicable to all GSLP and PLUS Program participants.

(b) Guarantee agency programs are subject to Subparts C, D, F, G and H.

(c) The FISLP and the Federal PLUS Program are subject to Subparts C, E, F, G, and H.

(d) Schools are specifically addressed in Subpart F.

(20 U.S.C. 1071, 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Act
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Guaranteed Student Loan Program
Independent student
Institution of higher education
National Direct Student Loan Program
Pell Grant Program
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Vocational school

(b) Other definitions used in this part are:

Actual interest rate: The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that a lender may charge under the Act on a loan, except that the applicable interest rate is seven percent for any loan made for a period of instruction that began before January 1, 1981.

Borrower: A student or parent to whom a GSLP or PLUS Program loan is made.

Co-maker: One of two individuals who are joint borrowers on a PLUS Program loan and who are equally liable for repayment of the loan.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(1) 120 days for a loan repayable in monthly installments; or

(2) 180 days for a loan repayable in less frequent installments.

Disbursement: The making of a loan by a lender to a borrower by means of issuing a check or draft payable to the order of the borrower and requiring the borrower's personal endorsement.

Endorser: An individual who is secondarily liable for a loan obligation.

Enrolled: The status of a student who has—

(1) Completed the registration requirements at the school he or she is attending, except for the payment of tuition and fees, and has attended classes; or

(2) Been admitted into a correspondence study program and submitted one lesson, completed by the student after acceptance for enrollment and without the assistance of a representative of the school.

Escrow agent: An entity that receives, on behalf of student borrowers, the proceeds of GSLP loans disbursed by eligible lenders for the purpose of redisbursing such proceeds to the borrowers.

Estimated cost of attendance: (1) Except as provided in paragraph (2) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period for which the loan is sought. These expenses may include, but are not limited to: reasonable transportation and commuting costs; costs for room, board, books, and supplies; the insurance premium for the loan; the interest on previous GSLP and PLUS Program loans received by the student; and, if applicable, the origination fee for the loan. These expenses may not include the purchase of an automobile.

(2) For a student enrolled in a correspondence study program, only the contract price of the program, the insurance premium for the loan, the interest on previous GSLP and PLUS Program loans received by the student, and, if applicable, the origination fee for the loan. However, other costs described in paragraph (1) of this definition incurred by the student in fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: The estimated amount of assistance that a student has been or will be awarded during the period for which the loan is sought from Federal, State, institutional or other scholarship, grant, work, or loan programs, including but not limited to—

(1) Any Social Security benefits paid to, or on account of, the student which would not be paid if he or she were not a student;

(2) Veterans educational benefits paid under chapters 32, 34, and 35 of title 38 of the United States Code;

(3) The estimated amount of other Federal student financial aid, including but not limited to Pell Grants and campus-based aid, which the student would be expected to receive if he applied, whether or not the student has applied for such aid; and

(4) GSLP and PLUS loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

Foreign school: A school not located in a State, as "State" is defined in the Act.

Full-time student: (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence)

who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: The period that begins on the day on which a GSLP borrower ceases to be enrolled as at least a half-time student (or a full-time student, if so required by the applicable guarantee agency) at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not concurrently receiving Title IV aid as an undergraduate student.

Guarantee agency: A State or private nonprofit organization that administers a loan guarantee program under Title IV, Part B of the Act.

Half-time student: A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP or PLUS Program loan.

Legal guardian: An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender: (1) The term "eligible lender" is defined in section 435(g) of the Act.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union—

(i) The term "subject to examination and supervision" shall be understood to mean "subject to examination and supervision in its capacity as a lender;" and

(ii) The term "consumer credit function" includes home mortgages.

National of the United States: (1) A citizen of the United States; or

(2) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(1) A school determines who will receive a loan and the amount of the loan; or

(2) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Origination fee: A fee which a lender is allowed to charge a GSLP borrower under section 438 of the Act.

Parent: A student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 682.600.

Post-deferment grace period: For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the date when an authorized deferment period ends.

School: (1) An educational institution that is—

(i) An institution of higher education or a vocational school, as those terms are defined in 34 CFR Part 668; or

(ii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP and the PLUS Program.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(3) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS Program is not eligible to participate in those programs. For this purpose—

(i) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) "Promote the availability" means provide prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP or PLUS Program loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: A school, other than a correspondence school, that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender: In any State, a single State agency or private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Totally and permanently disabled: The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

Undergraduate student: A student who—

(1) Is enrolled in an undergraduate course or courses at an institution of higher education; or

(2) Is in an undergraduate course of study that usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(8 U.S.C. 1101; 20 U.S.C. 1071 to 1087–2, 1088–1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* A student is eligible to receive a GSLP loan, and an independent undergraduate student or a graduate or professional student is eligible to receive a PLUS Program loan, if the student—

(1) Is enrolled or accepted for enrollment on at least a half-time basis at a participating school, and meets the requirements of paragraph (c) of this section;

(2) Authorizes the school in writing to pay directly to the lender that portion of any refund of school charges that is allocable to the loan, in accordance with 34 CFR Part 668;

(3) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(4) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section;

(5) Complies with the requirements pertaining to registration with the Selective Service, set forth in 34 CFR Part 668; and

(6) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets all of the qualifications in paragraphs (a)(1) through (5) of this section.

(2) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(3) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section; and

(4) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203.

(c) *Enrollment status.* To be eligible as a student or a borrower under the GSLP or the PLUS Program, a student must—

(1) If currently enrolled, be maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a foreign school, be a national of the United States; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education, meet the additional requirements in paragraph (g) of this section.

(d) *Citizenship and residency status.* Each borrower, and each student for whom a parent is borrowing, must be—

(1) A citizen of the United States;

(2) A national of the United States;

(3) A permanent resident of the United States and must provide evidence from the Immigration and Naturalization Service of such status;

(4) In the United States for other than a temporary purpose and must provide evidence from the Immigration and Naturalization Service of intent to become a permanent resident; or

(5) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

(e) *Effect of default on eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is in default on any loan made under any Title IV student financial assistance program identified in 34 CFR Part 668.

(2) If a borrower, or student for whom a parent is borrowing, is in default, as set forth in paragraph (e)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is in default has made satisfactory arrangements with the holder of the loan to repay the defaulted loan.

(3) The school may rely on the borrower's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(4) The Secretary does not consider a loan that is discharged in bankruptcy to be in default for the purpose of this section.

(f) *Effect of overpayment of a grant on eligibility.* (1) Except as provided in paragraph (f)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is liable for an overpayment on any grant made under any Title IV student assistance program identified in 34 CFR Part 668.

(2) If a borrower, or student for whom a parent is borrowing, is liable for an overpayment on a grant, as set forth in paragraph (f)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is liable for the overpayment meets the following conditions:

(i) *Overpayment of a Pell Grant.* If the borrower, or student for whom a parent is borrowing, has been overpaid on a Pell Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR Part 690) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to a school error.* If the borrower, or student for whom a parent is borrowing, has been overpaid as a result of a school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it within six months from the date of the acknowledgment.

(iii) *Overpayment on a Supplemental Educational Opportunity Grant.* If the borrower, or student for whom a parent is borrowing, is overpaid on a Supplemental Educational Opportunity Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR Part 676) in which it occurred.

(g) *Additional eligibility requirements for a student attending flight school.* To be eligible as a student or a borrower under the GSLP or the PLUS Program for enrollment in a flight school program at a vocational school or an institution of higher education, a student must—

(1) Plan to pursue or be pursuing a full-time program leading to commercial flight ratings;

(2) Have completed ground school training or be taking it concurrently with flight training;

(3) Hold a private pilot's certificate or have sufficient flight hours to qualify for such a certificate; and

(4) Hold at least a Class II medical certificate.

(20 U.S.C. 1077, 1078, 1082, 1085, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* (1) Applicable interest rates under the GSLP:

(i) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on a previous GSLP loan is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983; or

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983.

(ii) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous GSLP loan is the applicable interest rate on the previous loan.

(2) Applicable interest rates under the PLUS Programs:

(i) The applicable interest rate on a PLUS Program loan is—

(A) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1983;

(B) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(C) Twelve percent for a loan made on or after November 1, 1982.

(3) Under both the GSLP and the PLUS Program a lender may charge a

borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1) or (a)(2) of this section.

(b) *Capitalization.* (1) Under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance if so authorized by the guarantee agency. This increase in the principal balance of a loan is called "capitalization." A guarantee agency's policy, with respect to capitalization, may not permit capitalization that is not permitted under paragraphs (b)(2) and (b)(3) of this section.

(2) Under the FISLP and the Federal PLUS Program, a lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note;

(ii) During a period of authorized deferment;

(iii) During a period of of forebearance, as permitted under § 682.512; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accured interest under paragraphs (b)(2) (i) through (iii) of this section no more frequently than once a year, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accured interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal actually begins.

(c) *Originotion fee for a GSLP loon.* Under the GSLP a lender—

(1) May charge a borrower an origination fee of five percent of the principal amount of the loan;

(2) May deduct the origination fee from the proceeds of the loan;

(3) May, in the case of a loan disbursed in multiple installments, either deduct the entire origination fee from the first disbursement or deduct a *pro rata* portion of the fee from each disbursement;

(4) Shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion by a credit to the borrower's account if the check for the loan or multiply disbursed portion is returned uncashed to the lender;

(5) Shall refund the entire origination fee previously charged to the borrower, if the loan is repaid in full within 60 days of disbursement; and

(6) Shall refund a *pro rata* portion of the origination fee by a credit to the borrower's account if, on a multiply-disbursed loan, the lender deducted the entire origination fee from the first disbursement, and subsequent disbursements are not made.

(d) *Insurance premium.* The insurance premium is a charge made by the guarantee agency or the Secretary to the lender incident to the guarantee the lender receives against default by the borrower. If the insurance premium is provided for in a borrower's promissory note, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor.

(e) *Late charges.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. The charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; or

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(f) *Collection charges.* (1) If provided for in the borrower's promissory note, the lender may require that the borrower pay costs incurred by the lender or its agent in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Long distance telephone calls.

(2) The costs referred to in paragraph (f)(1) of this section may not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.*, local telephone calls).

(20 U.S.C. 1077, 1078, 1079, 1082, 1087–1)

§ 682.203 Statement of educational purpose.

No loan may be made under this Part until the borrower submits to the lender a written Statement of Educational Purpose, on a form approved by the Secretary, stating that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending.

(20 U.S.C. 1082, 1091)

§ 682.204 Treatment of refunds by lenders.

(a) A lender shall treat a payment of a borrower's refund received from a school as a credit against the amount owed by the borrower on the GSLP or PLUS loan.

(b) (1) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall promptly transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the source of the payment.

(2) Upon receipt of the refund transmitted under paragraph (b)(1) of this section, the holder of the loan shall promptly provide written notice to the borrower that a payment has been received from the previous holder.

(20 U.S.C. 1082)

§ 682.205 Prohibited transactions.

(a) No points, permiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans, or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or a particular category of students or their parents.

(b) The following are examples of transactions which, if entered into for the purposes described in paragraph (a) of this section, are prohibited;

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high serving costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender, with respect to a loan made to a student, or a

parent of a student, attending a school having common ownership with the lender, may not pledge a loan made under the GSLP or PLUS Program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance prescribed under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school or lender which would be a party to the proscribed transactions.

(f) Warranty: This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans, a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan guaranteed under the GSLP or PLUS Program shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1082, 1097)

§ 682.206 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(20 U.S.C. 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on a GSLP loan.

(a) *General.* The Secretary pays a lender a portion of the interest on a GSLP loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays interest benefits on an eligible GSLP loan for interest accruing—

(i) During all periods prior to the beginning of the repayment period;

(ii) During any period when the borrower has an authorized deferment, or, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (c)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on—

(i) The date of default by the borrower;

(ii) The date the borrower's loan is discharged by a bankruptcy court;

(iii) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(iv) The 90th day after the date of disbursement, if the loan check has not been cashed.

(3) Section 682.412(a) sets forth the circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the Secretary pays the lender the actual interest rate on an eligible GSLP loan, provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(d) *Interest not covered.* Interest benefits do *not* cover—

(1) Interest on interest added to principal, except for interest capitalized in accordance with § 682.202(b);

(2) Interest for which the borrower is not otherwise liable; or

(3) Interest paid on behalf of the borrower by a guarantee agency.

(20 U.S.C. 1078, 1082)

§ 682.301 [Reserved]

§ 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible GSLP or PLUS Program loan. The special allowance is a percentage of the average unpaid principal balance, including interest capitalized in accordance with § 682.202(b), computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* All GSLP and PLUS loans otherwise meeting program requirements are eligible for special allowance payments, except for GSLP loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three-month period;

(ii) Subtracting the applicable interest rate for the loan;

(iii) Adding three and one-half percent;

(iv) For a loan made prior to October 1, 1981, rounding the result upward to the nearest one-eighth of one percent; and

(v) Dividing the resulting percentage by four.

(2)(i) The special allowance rate payable for a three-month period on an eligible loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, is one-half the rate determined under paragraph (c)(1) of this section, but not less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One and one-half percent per year on eligible loans for which the applicable interest rate is nine percent.

(ii) The rate established in paragraph (c)(2)(i) of this section also applies to a loan made or purchased with funds obtained from—

(A) Collections or default reimbursements on, or interest or other income pertaining to, a loan described in paragraph (c)(2)(i) section; or

(B) The investment of the funds described in paragraph (c)(2)(ii)(A) of this section.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower repays the loan;

(ii) The lender receives payment on a claim for loss on the loan;

(iii) The loan ceases to be guaranteed under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(iv) 90 days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor prior to such 90th day; or

(v) 90 days after the date of disbursement, if the loan check has not been cashed.

(2) Section 682.412(a) of this part sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(20 U.S.C. 1082, 1087-1)

§ 682.303 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on its loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each *actual* interest rate for each day of the quarter, and divides the sum by the number of days in the quarter. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The lender computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by 365 (366 in a leap year).

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by 365 (366 in a leap year).

(2) The interest benefits due for a quarter is the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for special allowance purposes, the lender adds the unpaid principal balance outstanding on all qualified loans at each *applicable* interest rate for each day of the quarter and divides this sum by the number of days in the quarter. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(20 U.S.C. 1078, 1082, 1087-1)

§ 682.304 Procedure for payment of interest benefits and special allowance.

(a) General: (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of such fees refunded to borrowers during the quarter under § 682.202(c).

(3) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of such fees refunded to borrowers, during the quarter covered by the report.

(4) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary. In either case, the lender making the loan and any subsequent holder are jointly and severally liable for payment of the origination fee to the Secretary.

(b) Penalty interest: (1) If the Secretary does not authorize the Treasury Department to pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate on those loans computed under § 682.302(c) for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) the 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary authorizes payment on the request by the Treasury Department.

(c) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(20 U.S.C. 1078, 1082, 1087-1)

§ 682.305 Payment of interest benefits and special allowance to a lender making multiple installment loans.

(a) The Secretary pays a lender that meets the criteria in paragraph (b) of this section interest benefits and special allowance on the entire approved amount of a GSLP loan, even though only a portion of the loan has been paid to a borrower. For the purposes of this payment, interest benefits and special allowance begin to accrue on the date of disbursement of the first installment of the loan.

(b) A lender is eligible to receive interest benefits and special allowance on a multiple installment loan even though only a portion of the loan has been paid to the borrower, if the lender—

(1) Is not a school or State agency;

(2) Has made a binding commitment to make the entire amount of the loan; and

(3) Is approved to receive these payments by the Secretary in accordance with paragraph (c) of this section.

(c) To be approved by the Secretary, a lender must—

(1) Submit an application on a form provided or approved by the Secretary;

(2) Agree to disburse the loan in installments as prescribed in paragraph (d) of this section;

(3) Have been making GSLP loans for at least six months;

(4) Not have had its lending status limited, suspended, or terminated by the Secretary or a guarantee agency during the three-year period immediately prior to the date of its application; and

(5) Have made, or expect to make within a 12-month period, GSLP loans qualifying for interest benefits amounting to at least one-fourth of one percent of its total assets or $100,000, whichever is less. The 12-month period must include the date on which the lender makes application for approval.

(d) A lender shall disburse multiple installment loans in accordance with the following requirements:

(1) Disbursement shall be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) The interval between the first and second installment must be at least one-third of the enrollment period for which the loan is made. However, if the lender determines that the student needs the second installment sooner for the cost of attendance, the lender may disburse the second installment sooner. The lender shall document in its records the reason for making an earlier disbursement. For the purpose of this subparagraph, the period of enrollment may not exceed 12 months.

(4) Each disbursement check shall be accompanied by a notice to the school indicating that it is part of a multiple disbursement. The notice accompanying the first disbursement must specify the expected timing and amounts of subsequent disbursements.

(e) The Secretary's obligation to pay interest benefits and special allowance on the undisbursed portion of a multiple installment loan terminates on the date the lender determines that the borrower—

(1) Is no longer enrolled at least half-time at a participating school; or

(2) No longer desires undisbursed loan funds.

(f) If the Secretary determines that a lender making multiple installment loans under this section is not properly administering the disbursement of the loans, the Secretary withdraws approval for the lender to receive the special payments of interest benefits and special allowance under this section.

(20 U.S.C. 1078, 1082)

Subpart D—Guarantee Agency Programs

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSLP and PLUS Program and to receive the various payments and benefits incident to such participation.

(b) There are five agreements:

(1) *Basic program agreement.* In order to participate in the GSLP and the PLUS Program a guarantee agency must have a basic agreement. Under this agreement—

(i) Borrowers whose GSLP loans are guaranteed may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have this agreement to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have this agreement to receive reimbursement from the Secretary for at least 80 percent of its losses on default claims.

(4) *Supplemental reinsurance agreement.* A guarantee agency must have this agreement to receive reimbursement from the Secretary for up to 100 percent of its losses on default claims.

(5) *Secondary administrative cost allowance agreement.* A guarantee agency must have this agreement to receive the secondary administrative cost allowance.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act or regulations.

(20 U.S.C. 1072, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 682.401 Basic program agreement.

(a) In order to participate in the GSLP and PLUS Program, a guarantee agency must enter into a basic agreement with the Secretary.

(b) Program requirements: In the basic agreement, the guarantee agency agrees to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all GSLP and PLUS Program loans made to a borrower may not exceed the amounts set forth in § 682.506 (c) and (e).

(2) *Annual amounts.* (i) The annual loan amount authorized for an academic year must be at least $1,000, but may not exceed the amounts set forth in § 682.506 (b) and (d).

(ii) If the program guarantees loans to an eligible half-time student borrower or to a parent borrower on behalf of an eligibile half-time student, the annual loan amount authorized for an academic year must be at least $500.

(iii) A guarantee agency may make the loan amounts authorized under paragraph (b)(2)(i) and (ii) of this section applicable for either—

(A) A period that does not exceed 12 months; or

(B) A period in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(iv) In no case may the amount of the loan exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrowing under the GSLP or PLUS Program, and a parent borrowing on behalf of a student under the PLUS Program, must be eligible to borrow for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study or the equivalent.

(4) *Borrower responsibilities.* (i) The guarantee agency shall require that the borrower promptly notify the lender of any change of name or address.

(ii) The borrower shall give to the lender, as part of the loan application process—

(A) A statement, described in § 682.203, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible for the loan;

(C) Information concerning the borrower's outstanding GSLP, PLUS Program and NDSLP (National Direct Student Loan Program) loans and, if the borrower is a parent, information on the outstanding GSLP, PLUS Program and NDSLP loans made to or on behalf of the student;

(D) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records.)

(E) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) *Loan disbursement.* The guarantee agency shall require, as a condition for a

loan guarantee, that a lender disburse loan funds as required in § 682.508(f) and (g) with the following modifications:

(i) References to the Secretary shall be understood to mean the guarantee agency.

(ii) The notification to the school required by § 682.508(f)(1)(v) may be made by either the lender or the guarantee agency.

(6) *Insurance premiums.* (i) The guarantee agency may change an insurance premium to the lender on each loan. The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program. The lender may deduct this charge from the borrower's loan proceeds. The guarantee agency may not use the proceeds of this charge to make incentive payments to lenders or to increase yields to lenders.

(ii) The amount of the insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(iii) Under the GSLP the length of time for which the insurance premium is charged determines whether the lender must refund all or part of that charge to the borrower:

(A) If the insurance premium is charged for a period extending no longer than one year after the borrower's anticipated graduation date, the premium need not be refunded to the borrower even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy prior to the anticipated graduation date.

(B) If the insurance premium is charged for a period extending beyond one year after the anticipated graduation date, the insurance premium must be refunded to the borrower in accordance with paragraph (b)(6)(iv) of this section.

(iv)(A) If a borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium on a GSLP loan attributable to the repayment period must be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as a prepayment of the insurance premium for a later period, if a premium will be required for that period, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited frist to accrued interest and then to the principal balance of the loan.

(C) If a borrower prepays the entire unpaid balance fo the loan, the amount of any insurance premium attributable to a period following the date of prepayment by two or more years must be refunded to the borrower.

(v) The insurance premium for a PLUS Program loan need not be refunded under any circumstances.

(7) *Guarantee liability.* The guarantee agency shall guarantee at least 80 percent of the unpaid principal balance of each loan guaranteed.

(8) Guarantee agency administration. In the case fo a State loan guarantee program, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(9) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition; or

(C) The Secretary.

(ii) For the purpose of this paragraph "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(10) *Standards and procedures.* (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(g)(1) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) Approval of forbearance;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program at all times meets the requirements for—

(A) Disclosure of loan information to borrowers as set forth in § 682.507;

(B) Due diligence by lenders in servicing loans as set forth in § 682.509;

(C) Repayment of loans as set forth in § 682.510, execept that references to the FISLP and Federal PLUS program shall be understood to mean the guarantee agency program;

(D) Deferments as set forth in § 682.511;

(E) Forbearance in § 682.512; and

(F) Consequences of failure of a borrower or student to establish eligibility as set forth in § 682.515.

(11) The guarantee agency shall establish and follow a system and procedures for monitoring the enrollment status of a student borrower that include, at a minimum—

(i) Transmitting a student status confirmation form to the school for completion at least semi-annually; and

(ii) Reporting to the current holder of the loan, withint 60 days of receipt of the completed form from the school, any change in the student's enrollment status that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments.

(12) The guarantee agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.413(b).

(c) The agency shall submit to the Secretary, prior to their adoption, its application forms, promissory notes, regulations, and statements of procedures and standards (including standards for due diligence and timely claims filing) as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions. The agency shall not use these materials until the Secretary approves them.

(20 U.S.C. 1078, 1078–2, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a)(1) *Death and disability.* (i) If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968 dies or becomes totally and permanently disabled, the Secretary reimburses the guarantee agency under the provisions of the reinsurance agreement. The agency is

not required to recover the amount of its loss from the borrower or the borrower's estate.

(ii) If a borrower who individually received a loan after December 14, 1968 dies or becomes totally and permanently disabled, the Secretary cancels the borrower's repayment obligation by paying the lender, through the guarantee agency, the amount owed. However, if a PLUS Program loan was obtained by two parents as co-makers, and only one of the co-makers dies or becomes totally and permenantly disabled, the other co-maker remains obligated to repay the loan.

(iii) Further references in this section to death and disability claims relate only to loans made after December 14, 1968.

(2) *Bankruptucy.* If an individual borrower's loan is discharged in bankruptcy, the Secretary pays the lender the amount owed. However, if a PLUS Program loan was obtained by two parents as co-makers, and only one borrower's repayment obligation is discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) *Determination of the borrower's death, total and permanent disability, or bankruptcy.* The procedures in § 682.517 for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to guarantee agency programs with the following modifications:

(i) References to the Secretary in § 682.517(a)(2) and (c)((3) shall be understood to mean the guarantee agency, if the loan is held by a lender.

(ii) References to the lender shall be understood to mean the guarantee agency, if the loan is held by a guarantee agency.

(iii) References to the lender shall be understood to mean a lender under a guarantee agency program, if the loan is held by a lender.

(b) The Secretary does not pay a death, disability, or bankruptcy claim if a default claim for the loan previously has been disapproved by the guarantee agency, or the loan would not qualify either for repayment of a default claim or for reinsurance payments.

(c) Claim procedures for a loan held by a lender:

(1)(i) A lender shall provide the guarantee agency with the documentation required in § 682.518 (b)(1), (b)(2), and (d)(2)–(4) when filing a death, disability, or bankruptcy claim under a guarantee agency program. The agency shall return to the lender any submission that is not timely, accurately and complete.

(ii) The claim filing deadlines in § 682.518(e)(2)–(4) apply to guarantee agency programs.

(iii) For purposes of paragraphs (c)(1)(i) and (ii) of this section, the following modifications apply to §§ 682.518(d)(2)–(4) and 682.518(e)(2)–(4):

(A) References to the lender in §§ 682.518(d)(2)–(4), and 682.518(e)(2)–(4), shall be understood to mean a lender under a guarantee agency program.

(B) References to the Secretary in § 682.518(e)(2)–(4) shall be understood to mean the guarantee agency program.

(2) After determining that a death, disability, or bankruptcy claim is valid, the guarantee agency shall pay the lender the amount authorized by paragraph (c)(3) of this section.

(3) The amount of loss to be paid on a valid claim is determined according to § 682.519(a)(2)(ii), (a)(3), and (b), with the following modifications:

(i) References to the lender in § 682.519(b) (2) shall be understood to mean a lender under a guarantee agency program.

(ii) References in § 682.519(b)(2) and (3) to the Secretary shall be understood to mean the guarantee agency:

(d) Treatment of bankruptcy by the guarantee agency.

(1) After payment of a bankruptcy claim to a lender, the guarantee agency shall diligently contest the discharge of the loan by the bankruptcy court. Once the dischargeability of the loan has been decided in a bankruptcy action, the guarantee agency shall—

(i) Treat the loan as if forbearance had been exercised as to repayment of principal and interest from the date of filing of the bankruptcy petition until the date the court held the loan non-dischargeable, if the court so held; or

(ii) Submit the bankruptcy claim to the Secretary for reimbursement, if the loan is discharged.

(2) In the case of a claim submitted under paragraph (d)(1)(ii) of this section, the Secretary pays the guarantee agency the amount of loss that the guarantee agency paid the lender on the bankruptcy claim, plus interest that accrues through the earlier of—

(i) The date the Secretary authorizes payment to the guarantee agency; or

(ii) 60 days after the date of discharge.

(e) Claim procedures for loans held by a guarantee agency: (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon only in the following circumstances:

(i)(A) In the case of a PLUS Program loan, the borrower (or each of the co-makers) dies, or becomes totally and permanently disabled, or has the repayment obligation discharged in bankruptcy, within 10 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 10-year maximum repayment period; or

(B) In the case of a GSLP loan, the borrower dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy, within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year maximum repayment period;

(ii) The guarantee agency has not written off the loan as uncollectible in accordance with the procedures established by the agency pursuant to § 682.410(b)(2)(iv);

(iii) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(2), until the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy.

(2) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. Interest includes interest which accrues during the lesser of—

(i) The period from the date the guarantee agency determines that the borrower died, became totally and permanently disabled, or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(ii) 60 days.

(f) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(20 U.S.C. 1078–2, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) To the extent that funds are appropriated by Congress for this purpose, the Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have such a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have substantial affiliation with any eligible educational institution.

(b) Application: A guarantee agency must apply in order to receive an initial advance. The application must be submitted as prescribed by the Secretary.

(c) Number of payments: (1)(i) An advance may be made to an established guarantee agency for each of three consecutive calendar years. An established agency is an agency that was actively carrying on a loan guarantee program for which it executed a basic agreement before October 12, 1976.

(ii) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day of succeeding years that the initial advance was made.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in an agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the "outstanding insurance obligation," referred to in section 422(c)(4) of the Act, is determined separately for each State for which the agency has received an advance under this section.

(20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a)(1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Under a reinsurance agreement, the Secretary reimburses the guarantee agency for 80 percent of its losses on default claim payments to lenders. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of such losses.

(2) For the purpose of this section and § 682.405 of this part, "losses" means the amount of unpaid principal and accrued interest the agency pays on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency.

(3) Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Claims on loans to borrowers who have had their loans discharged in bankruptcy also are not covered. The Secretary's payments on death, disability, and bankruptcy claims are addressed in § 682.402 of this part.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans;

(2) Efforts by the guarantee agency to make GSLP and PLUS Program loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(c) The reinsurance agreement contains such terms and conditions as the Secretary finds necessary to promote the purposes of the GSLP and the PLUS Program and to protect the United States from unreasonable risks of loss.

(d) A reinsurance agreement provides that payments made by a borrower must first be applied to the payment of all accrued interest, then to repayment of principal and then to payment of other charges.

(e)(1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For the purpose of this section and § 682.405, "the Secretary's equitable share" means that portion of borrower payments, attributable to principal and interest, which remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage which was in effect when the reinsurance payment was made by the Secretary; and

(ii) An amount, not exceeding 30 percent of borrower payments, expended by the agency for the administrative costs of collection of loans, the administrative costs of preclaim assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers.

(3)(i) The terms "administrative costs of collection of loans" and "administrative costs of preclaim assistance for default prevention," as used in this paragraph, are defined in section 428(c)(6) of the Act. The term "administrative costs of monitoring the enrollment status of students and repayment status of borrowers," as used in this paragraph, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in section 428(c)(6) of the Act, except that the reference to repayment status, in cases where the borrower is a parent, shall be understood to refer to that of the parent borrower.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(4) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments within 60 days of its receipt of the payments.

(5) If a guarantee agency, in determining the Secretary's equitable share of borrower payments, includes as an administrative cost a portion of the price of an asset it buys, and the agency subsequently sells that asset, the agency shall repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid to the agency by the Secretary.

(20 U.S.C. 1078, 1078–2, 1082)

§ 682.405 Supplemental Federal reinsurance.

(a) Amount of supplemental reinsurance payments: (1) The Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with the following exceptions:

(i) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the "amount of loans in repayment" at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches nine percent of the "amount of loans in repayment" at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) For purposes of this paragraph, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency under policy, established by the agency, that is—

(i) Required by § 682.401(b)(10)(ii)(F); or

(ii) Consistent with § 682.516(a)(1).

(3) Notwithstanding paragraph (a)(1) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses under a supplemental reinsurance agreement during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(b) Definitions: (1) "Losses" is defined in § 682.404(a).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans guaranteed by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for guarantee claims on loans, exclusive of claims paid under a policy established by the guarantee agency that is—

(A) Required by § 682.401(b)(10)(ii)(F); or

(B) Consistent with § 682.516(a)(1).

(3) "The Secretary's equitable share" is defined in § 682.404(e).

(c)(1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and the PLUS Program, the agency must include its loans under both programs in calculating the Secretary's reinsurance payment percentage and the "amount of loans in repayment," as defined in paragraph (b) of this section.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 682.404 enters into a supplemental reinsurance agreement for one, but not both, of the programs, the guarantee agency must maintain separate records for each program sufficient to enable the Secretary to determine—

(i) The reinsurance percentage payable by the Secretary on reinsurance claims filed by the agency under each program; and

(ii) The Secretary's equitable share of borrower payments, as defined in § 682.404(e), received after payment by the Secretary of reinsurance claims under each program.

(d)(1) The supplemental reinsurance agreement requires that—

(i) The agency shall ensure that the program requirements of paragraph (e) of this section are continuously met;

(ii) An agreement may be renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of the Act and regulations; and

(iii) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must submit to the Secretary the quarterly report required by the Secretary for the quarter ending September 30, containing complete and accurate data, in order for the Secretary to calculate the "amount of loans in repayment" at the end of the preceding fiscal year as that term is defined in paragraph (b)(2) of this section.

(2) The supplemental reinsurance agreement contains such other requirements as the Secretary may find necessary.

(e) Program requirements: (1) *GSLP loan maximums.* (i) The maximum annual amount of a GSLP loan that a guarantee agency guarantees for an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be—

(A) $2,500, in the case of an undergraduate student, but not more than the maximum loan amounts specified in § 682.506(b)(1); and

(B) $5,000, in the case of a graduate or professional student; and

(ii) The agency must guarantee a maximum aggregate unpaid principal amount of—

(A) $12,500, in the case of an undergraduate student; and

(B) $25,000, in the case of a graduate or professional student, including loans made to the borrower prior to the borrower's becoming a graduate or professional student.

(2) *PLUS Program loan maximums.* (i) The maximum annual amount, attributable to one or more PLUS Program loans, that the agency guarantees for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be—

(A) $2,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(B) $3,000, in the case of a graduate or professional student; and

(C) At least $2,500 but not more than $3,000, in the case of a parent borrower on behalf of each eligible student.

(ii) The agency must guarantee a maximum aggregate unpaid principal amount of—

(A) $12,500, including any amount borrowed under the GSLP, in the case of an independent undergraduate student;

(B) $15,000, in the case of a graduate or professional student; and

(C) At least $12,500 but not more than $15,000, in the case of a parent borrower on behalf of each eligible student.

(3) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal of each loan guaranteed.

(4) *School eligibility.* Except in the case of correspondence schools, a guarantee agency's eligibility criteria for the participation of schools in its program may not be more stringent than those for the FISLP and the Federal PLUS program. However, the agency may exclude a school from its program if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by

the agency under standards and procedures approved by the Secretary; or

(ii) There is a State constitutional prohibition affecting the school's eligibility.

(5) *School lender provisions.* (i) The agency shall provide that a school may be a lender in its program under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended, or terminated by the Secretary under § 682.609 or Subpart G of this part, or by the agency under standards and procedures approved by the Secretary; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographic area that the agency serves.

(6) *Out-of-State schools.* The agency shall guarantee GSLP or PLUS loans for eligible borrowers who are legal residents of the State where the agency operates, but who attend participating schools out of the State, or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending participating schools out of the State. In guaranteeing these loans, the agency must not impose any restrictions not applicable to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 682.406 Conditions of reinsurance coverage.

(a) The Secretary makes a reinsurance payment on a loan to a guarantee agency only if—

(1) The lender exercised due diligence in making and servicing the loan, as prescribed by rules of the agency;

(2) The lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(3) The loan was in default before the agency paid a default claim filed thereon;

(4) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(5) The agency paid a default claim filed by the lender thereon with the agency within 90 days of the date the lender filed the claim;

(6) The agency submitted a request for such payment in such form, and accompanied by such documentation as the Secretary prescribes; and

(7) The agency and lender complied with all other Federal requirements with respect to the loan.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require.

(20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 682.407 Administrative cost allowances for guarantee agencies.

(a)(1) To the extent that Congress appropriates funds for this purpose, the Secretary pays to a guarantee agency having a basic program agreement a primary administrative cost allowance and, to an agency having a reinsurance agreement, a secondary administrative cost allowance.

(2)(i) Payments of allowances to a guarantee agency for any fiscal year under paragraphs (b)(1) and (b)(2) of this section do not exceed, for each administrative cost allowance, one-half of one percent of the total principal amount of loans guaranteed by the agency during that fiscal year.

(ii) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(iii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(3) Application: The guarantee agency must submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section;

(iii) Assurances that sufficient administrative and fiscal procedures, including an independent audit, conducted in accordance with § 682.410(b)(1), will be used to ensure that administrative allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format prescribed by the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) For the primary allowance only, an estimate of the total amount of new loan volume expected to be guaranteed during the fiscal year; and

(vii) For the secondary allowance only, assurances that the agency's program—

(A) Meets and will continue to meet all the requirements contained in § 682.405(e) for a supplemental reinsurance agreement;

(B) Guarantees GSLP or PLUS loans for eligible students who are not legal residents of the State where the agency operates, but who attend participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Guarantees PLUS loans to parent borrowers who ar not legal residents of the State where the agency operates, but who are borrowing for students attending participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on residents of the State who borrow for students attending schools in the State, other than correspondence schools.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to—

(b) Use of funds: (1) A guarantee agency may use the administrative cost allowances only to meet administrative costs related to the GSLP and PLUS Program.

(2) A guarantee agency may not use the administrative cost allowances to meet costs—

(i) Taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrowers payments made after the Secretary has paid reinsurance claims to the agency under § 682.404(e); or

(ii) For which the agency has been, or will be, reimbursed from a source other than the payment provided by this section.

(3) If a guarantee agency uses the allowances paid under this section to pay for a portion of the price of an asset it buys, and the agency subsequently sells that asset, the agency shall repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid for with the allowances.

(20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

(a) *General.* (1) A guarantee agency may act as an escrow agent for the purpose of receiving GSLP loan proceeds disbursed by an eligible lender, other than a school or State lender, and transmitting those proceeds to borrowers in multiple installments if the lender and guarantee agency have entered into an agreement for this purpose.

(2) In its capacity as escrow agent, the guarantee agency may—

(i) Commingle the proceeds of the GSLP loans paid to it pursuant to an escrow agreement;

(ii) Invest the GSLP loan proceeds in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(iii) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* The lender shall disburse the loan funds to the escrow agent in any manner agreed to by the escrow agent and the lender, and shall simultaneously give written notice of the disbursement to the borrower.

(c) *Transmittal of loan proceeds to schools by the escrow agent.* (1) The escrow agent shall, in accordance with paragraph (c)(2) of this section, transmit to the school the loan proceeds received under paragraph (b) of this section by means of a check, that—

(i) Is copyable to the borrower and the school identified on the borrower's loan application;

(ii) Requires the personal endorsement of the borrower; and

(iii) Is sent directly to the school.

(2) The escrow agent shall—

(i) No later than 30 days after the beginning of each academic period in the period of attendance for which the loan is made, transmit to the school the lesser of—

(A) The remaining balance of the borrower's GSLP loan proceeds; or

(B) An amount equal to X/N, where X equals the GSLP loan proceeds that were sent to the escrow agent, and N equals the number of academic periods in the period of attendance for which the loan is made. For a school not using a semester, trimester or quarter system, the number of academic periods in the period of attendance for which the loan is made, for purposes of this section, may be established by the escrow agent, but must be at least two;

(ii) Promptly notify the school receiving the proceeds that the check is part of a multiple transmittal. The escrow agent may include a separate notice to this effect with the check or may include this notice on the face of the check; and

(iii) At the time of the first transmittal, give the student a schedule of the estimated amount and dates of all future transmittals.

(3) The escrow agent shall transmit all proceeds of the loan to the school at least 60 days before the end of the period of attendance for which the loan is made.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled, or has ceased to be enrolled, on at least a half-time basis during the period of attendance for which the loan was intended.

(20 U.S.C. 1078, 1082)

§ 682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.

(a) When the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary for collection a defaulted loan on which the Secretary has made a payment under §§ 682.404 or 682.405. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the guarantee agency.

(b)(1) When a guarantee agency assigns a defaulted loan to the Secretary, the agency releases all rights and title to that loan. The agency does not share in any amounts collected from the borrower by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan.

(2) The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(c)(1) A guarantee agency shall assign a loan to the Secretary at such time, in such a manner, and with such documentation as the Secretary may require.

(2) The documents that the assignor agency shall submit with a loan assigned under this section include, but are not limited to—

(i) The loan application;

(ii) The promissory note; and

(iii) The payment and collection histories for the loan.

(3) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note evidencing a loan assigned under this section.

(d) Assignment of a loan does not affect calculation of any default rate under this Part. However, the Secretary accounts, in calculations of default rates, for any collections achieved by the Secretary on loans assigned by an agency.

(20 U.S.C. 1078, 1078–2, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements.* The fiscal procedures a guarantee agency establishes shall include, at a minimum, the following:

(1) The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained under, and matching funds required by, section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under § 682.403;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on defaulted loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Funds earned from investments under paragraph (a)(5) of this section;

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Guarantee loans under the guarantee agency's loan guarantee program;

(ii) Pay default claims;

(iii) Pay death, disability, and bankruptcy claims;

(iv) Refund overpayments of insurance premiums;

(v) Pay to the Secretary the Secretary's equitable share of borrower payments; and

(vi) Repay advances made by the Secretary;

(3) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use loan insurance premiums, administrative cost allowances, and interest or investment earnings for payments necessary for the proper

administration of the guarantee agency's loan guarantee program;

(4)(i) The guarantee agency may use the amount of Federal advances identified in paragraph (a)(1)(iii) of this section, and interest or other earnings on those advances, only to pay default claims.

(ii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section; and

(5) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in such investment required of a fiduciary charged with the duty of investing the money of others.

(b) *Administrative requirements.* The administrative procedures a guarantee agency establishes shall include, at a minimum, the following:

(1) The guarantee agency must arrange for an independent biennial financial and compliance audit of the agency's guaranteed loan program that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its loan guarantee program.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(iv) The audit must be conducted not less frequently than once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than the effective date of this requirement. Each subsequent audit must cover the agency's activities for the entire period since the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 satisfies the requirements of this paragraph for the period covered by the audit.

(2) The guarantee agency shall charge interest on each loan for which the Secretary has paid a reinsurance claim, at a rate that is the greater of—

(i) The rate established by the terms of the original promissory note; or

(ii) The rate provided for by State law.

(3)(i) The guarantee agency shall engage in at least the collection efforts described in paragraphs (3)(iii)–(ix) of this subsection on a loan on which it pays a default claim filed by a lender.

(ii) The periods of time set forth in paragraphs (3)(iii)–(vi) of this subsection refer to the number of days that elapse from the date the agency pays a default claim on a loan. In the case of a borrower who commences repayment of the loan after the agency pays a default claim thereon, the periods of time set forth in paragraphs (3)(iii)–(v) of this subsection refer to the number of days that elapse from the date that is 40 days following the agency's receipt of the most recent payment. However, nothing in this paragraph (3) requires an agency to report a default to a credit bureau more than once. References to the "borrower" include all endorsers on a loan.

(iii) One–45 days: During this period, the agency shall—

(A) Send a written notice to the borrower stating that the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan. In addition, the notice must forcefully demand that the borrower immediately commence repayment of the loan, and must warn the borrower that, if he fails to do so, the agency will report the default to a cognizant credit bureau, thereby damaging the borrower's credit rating, and will institute a civil suit against the borrower to compel repayment of the loan; and

(B) Diligently attempt to contact the borrower by telephone to demand repayment of the loan.

(iv) 46–90 days: During this period the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan;

(B) Report the default to a cognizant credit bureau; and

(C) Send a written notice to the borrower demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to a credit bureau and that the borrower's credit rating has thereby been damaged.

(v) 91–135 days: During this period, the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send one additional collection letter at least as forceful as the notice described in paragraph (iii)(A) of this subsection.

(vi) 136–180 days: During this period, the agency shall send a written notice to the borrower forcefully demanding repayment in full on the loan, and indicating that it is the final notice the borrower will receive before the agency institutes a civil suit to compel repayment of the loan;

(vii) 181–225 days: During this period, but not sooner than 30 days after sending the notice described in paragraph (vi), the agency shall institute a civil suit against the borrower for repayment of the loan.

(viii) Not later than 10 days after its receipt of information indicating that it does not know the borrower's current address, or the 60th day after its payment of a default claim on a loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(ix) (A) The agency shall diligently attempt to enforce a judgment obtained against a borrower respecting a loan. If, after doing so, the agency is unable to obtain full satisfaction of the judgment because the borrower lacks the means to pay, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired the means to satisfy the remainder of the judgment, the agency shall, not later than 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment *in full* on all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in the preceding paragraph, the agency shall, within 30 days thereafter, institute civil proceedings to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraph (3)(ix) of this subsection only in accordance with write-off criteria and procedures approved by the Secretary.

(c) *Enforcement requirements.* A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews of at least—

(i) Each participating lender whose guaranteed loan volume in the preceding year equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; and

(ii) Each participating school in the agency's geographic area whose students received, or benefited from, loans, the total amount of which equaled or exceeded two percent of the total of all loans guaranteed in the preceding year by the agency.

(2) Seeking prompt recovery of all funds found in such reviews to have been improperly retained by the participants, and monitoring the implementation by participants of corrective action as a result of such reviews.

(3) Adopting procedures for identifying fraudulent loan applications.

(4) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants.

(5) Promptly reporting all such allegations and indications having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(6) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(7) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(20 U.S.C. 1078, 1078–1, 1082, 1097)

§ 682.411 - Due diligence by lenders in the collection of guarantee agency loans.

(a) In the event of delinquency on a loan guaranteed by a guarantee agency, the lender shall engage in at least the collection efforts described in paragraphs (c)–(h) of this section.

(b) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment not later made, or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later. If a payment is made late, the first day of delinquency is the due date of the next missed payment not later made.

(c) One–30 days delinquent: During this period, the lender shall send at least two written notices or collection letters to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) 31–60 days delinquent: During this period, the lender shall make diligent efforts to contact the borrower by telephone. If the lender is unable, despite such efforts, to reach the borrower by telephone, the lender shall send at least two forceful collection letters to the borrower urging the borrower to cure the delinquency. The letters shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency which in turn will report the default to a credit bureau, thereby damaging the borrower's credit rating, and will bring suit against the borrower to compel repayment of the loan.

(e) 61–90 days delinquent: During this period, the lender shall again make diligent efforts to contact the borrower by telephone. If the lender is unable, despite such efforts, to reach the borrower by telephone, the lender shall send at least one more collection letter no less forceful than those described in paragraph (d).

(f) 91–120 days delinquent: During this period, the lender shall send a final demand letter to the borrower, unless the borrower's address is unknown, requiring repayment of the loan in full. The lender shall allow the borrower at least 30 days to respond to the final demand letter before filing a default claim on the loan.

(g) Within 10 days of its receipt of information indicating it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower, through the use of normal commercial skip-tracing techniques. These efforts shall include, but are not limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request such assistance prior to the 90th day of delinquency, or as soon as the assistance is available, whichever is later.

(20 U.S.C. 1078, 1078–1, 1082, 1087–1)

§ 682.412 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with paragraphs (a)(1)–(a)(4), or (a)(7) of § 682.406;

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency and approved by the Secretary;

(3) For any period as to which the lender, with respect to the loan, violates the requirements of Subpart C of this part;

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments on a loan—

(1) If the lender or the agency failed to meet the requirements of paragraphs (a)(1)–(a)(4), or (a)(6) of § 682.406;

(2) If the lender failed to meet a condition of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan pursuant to policies and procedures established by the agency and approved by the Secretary;

(3) If the agency failed to exercise due diligence in collection of the loan in accordance with procedures established under § 682.410(b)(3).

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(i) Require the repayment by the agency of payments made to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the GSLP or PLUS Program.

(iv) Suspend or terminate agreements with the agency.

(v) Require repayment from the agency of any related payments which the Secretary has become obligated to make to others.

(2) The Secretary's decision to require repayment of funds by an agency, to withhold funds, or to limit, suspend, or terminate an agency's GSLP or PLUS Program participation, does not become final until the Secretary provides the

agency with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend an agreement prior to giving notice and an opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Notwithstanding paragraphs (a) through (c) of this section, the Secretary may waive the right to recover a payment when, in the Secretary's judgment, the best interests of the United States so require.

(e) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a guarantee agency or lender under this section is conclusive and binding on the agency or lender.

(Note.—A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.)

(20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1087–1, 1097)

§ 682.413 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records required by this section and such other records as are necessary to document fully the accuracy of reports required by this subpart and the right of the agency to receive or retain payments made by the Secretary under this part.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3) The guarantee agency shall require participating lenders to keep the records described in § 682.522(a).

(4) A guarantee agency or lender may store records on microfilm or computer format. However, a lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under a procedure that is alternatively acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(b) *Reports.* A guarantee agency shall submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at such time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency amounts that are dependent upon data contained in the report until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories or originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions.)

(iv) All other types of lenders.

(3) For a guarantee agency with a supplemental reinsurance agreement, by July 1 of each year, a report on—

(i) Its eligibility criteria for school lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months and a summary of the action taken on those applications;

(iv) A list of all school lenders participating in the agency's program;

(v) A description of any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(vi) The steps the agency has taken to ensure its compliance with § 682.410(c)(2) through (6), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Any other information concerning the loan insurance program, at such frequency as determined by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall give the Secretary or the Secretary's designee access to its records in order to verify the correctness of the reports described in paragraph (b) of this section, or the right of the agency to receive or retain payments made by the Secretary under this part.

(2) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part.

(20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1087–1)

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISLP and Federal PLUS Program loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal PLUS Program loans made by lenders located in a State in which a State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 but does not provide a loan guarantee program for PLUS borrowers; and

(3) FISLP loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISLP loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISLP loan that has not been repaid; or

(4) All students at a school, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISLP; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISLP loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraphs (a) and (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the FISLP, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender which has entered into an agreement with the secretary under § 682.601, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(20 U.S.C. 1071, 1073, 1078–2, 1082)

§ 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any FISLP loan or Federal PLUS Program loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.519, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of default claims under the FISLP and Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches nine percent of the "amount of the FISLP and Federal PLUS Program loans in repayment" at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year does not include claims paid under the provisions of §§ 682.515 or 682.516.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under either the FISLP or the Federal PLUS Program, and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the "amount of the FISLP and Federal PLUS Program loans in repayment" means the original principal amount of all FISLP and Federal PLUS Program loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full has been by the borrower; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of claims paid under the provisions of §§ 682.515 or 682.516.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate FISLP and Federal PLUS Program loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(20 U.S.C. 1075, 1078–2, 1082)

§ 682.502 The application to be a lender.

(a) In order to be considered for participation in the FISLP and the Federal PLUS Program, a lender must submit an application to the Secretary.

(b) In determining whether to enter into a guarantee contract with an applicant, and, if so, what the terms of the contract will be, the Secretary considers—

(1) Whether the applicant is an eligible lender according to the definition contained in section 435(g)(1) of the Act;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status (with the preferred condition being accredited).

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the above criteria.

(d) Denial of participation: (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1078–2, 1079, 1082)

§ 682.503 The guarantee contract.

(a)(1) To participate in the FISLP and Federal PLUS Program, a lender must hold a guarantee contract with the Secretary. No loan is guaranteed unless it is covered by such an agreement.

(2) In general, under a guarantee contract, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the FISLP and the Federal PLUS Program. In return the Secretary agrees to guarantee each eligible FISLP and Federal PLUS Program loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in a contract a limit on the duration of the contract and the number or amount of

FISLP or Federal PLUS Program loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee contract with a school lender shall limit the FISLP and Federal PLUS Program loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) A limit imposed under paragraph (b)(1) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1078–2, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee contract shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan can be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The secretary issues a guarantee on a FISLP or Federal PLUS Program loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.520, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or another party does not relieve the lender of its reponsibilities in the making, servicing, and collecting of a FISLP or Federal PLUS Program loan.

(20 U.S.C. 1078–2, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is guaranteed.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISLP loans—insurance premium calculations.* (1) The insurance premium for FISLP loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which the loan is to be disbursed and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(i) of this section by that obtained in paragraph (c)(ii) of this section.

(2) In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS loans insurance premium calculation.* The insurance premium for a Federal PLUS Program loan is calculated by—

(1) Using the actual repayment period as a base;

(2) Amortizing the loan in monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Totalling the monthly amounts derived in paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. If it does so, it shall clearly indicate to the borrower the amount of the insurance premium and the method of calculation.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(20 U.S.C. 1077, 1078–2, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) *General.* The Secretary does not guarantee a FISLP or Federal PLUS Program loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the academic period for which the loan is intended less the estimated financial assistance awarded for that period; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in paragraphs (b) through (e) of this section.

(b) *FISLP annual limits.* The total amount a student may borrow in any academic year of study under the GSLP, including the FISLP, may not exceed—

(1) $2,500 in the case of an undergraduate student, but not more than—

(i) The lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program; or

(ii) $1,500, for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments shall be at least one-third

of the academic period for which the loan is intended. However, a loan that is to be made to cover the expenses of a single academic period of less than five months, or an academic period of more than five months where no disbursement is to be made until the last one-third of the academic period, is not subject to these requirements. For purposes of this paragraph, all loans made within a period of 90 days will be considered a single loan; or

(2) $5,000 in the case of a graduate or professional student.

(c) *FISLP aggregate limits.* The Secretary does not guarantee an FISLP loan in an amount that, together with the unpaid principal amount of all other GSLP loans to the student, would result in an aggregate amount in excess of—

(1) $12,500, in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student; or

(2) $25,000, in the case of any graduate or professional student, including loans for undergraduate study.

(d) *Federal PLUS Program annual limits.* The total principal amount of all PLUS Program loans made to, or for the benefit of, an eligible student for any academic year of study may not exceed—

(1) $2,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $3,000, in the case of a graduate or professional student; and

(3) $3,000, in the case of a parent borrower.

(e) *Federal PLUS Program aggregate limits.* The total aggregate principal amount of all Federal PLUS Program loans made to or for the benefit of an eligible student may not exceed—

(1) $12,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $15,000, in the case of a graduate or professional student; and

(3) $15,000, in the case of a parent borrower.

(20 U.S.C. 1075, 1078–2, 1079, 1082, 1089)

§ 682.507 Disclosure requirements.

(a) A lender shall disclose the following information to a borrower either before or at the time it disburses a loan. Disclosures identified with an asterisk (*) shall be made in the promissory note:

*(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

*(2) The principal amount of the loan;

*(3) The amount of any charges, including the origination fee and the insurance premium, collected by the lender at the time of or before disbursement of the loan, and an indication of whether those charges are deducted from the proceeds of the loan or paid separately by the borrower;

*(4) The actual interest rate;

(5) The annual and aggregate maximum amounts that may be borrowed;

*(6) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

*(7) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(8) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

*(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

*(10) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(11) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2141, note;

*(12) The definition of "default" found in § 682.200 of this part, and the consequences to the borrower of a default, including a statement concerning likely litigation and a statement that the default will be reported to a credit bureau or a credit reporting agency;

(13) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance; and

*(14) An explanation of any costs the borrower may incur in the making or collection of the loan.

(b) The lender shall also disclose the information listed in this paragraph in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of an FISLP loan. Should the borrower enter the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. The lender shall disclose—

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The scheduled date upon which the repayment period is to begin;

(3) The estimated balance owed by the borrower as of the date upon which the repayment period is disclosed, including the estimated amount of interest to be capitalized;

(4) The actual interest rate on the loan;

(5) An explanation of any fees which may accrue or be charged to the borrower during the repayment period;

(6) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(7) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(8) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(c) The lender shall provide the information required to be disclosed by paragraphs (a) and (b) of this section at no cost to the borrower.

(20 U.S.C. 1078–2, 1082, 1083a)

§ 682.508 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her responsibilities under the loan, completing and having the borrower sign the promissory note, and disbursing the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If such a relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender that does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school that are contained in the application. Except as provided in part 668 subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the

borrower to sign any form before all information requested from the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the leader may determine the borrower's eligibility based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought.

(2) In determining the amount of the loan to be made, within the limitations of § 682.506, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes a promissory note form available to lenders. A lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the Secretary without the Secretary's prior approval.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISLP of Federal PLUS Program loan shall be made without security.

(2) Except as provided in paragraph (e)(4) of this section, a FISLP or Federal PLUS Program loan shall be made without endorsement or other secondary liability on the note.

(3) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(4) A lender may require an endorsement by another person on the borrower's FISLP or Federal PLUS Program loan note if the borrower is a minor and cannot, under applicable State law, create a legally binding obligation by his or her own signature. For purposes of this paragraph "endorsement" means a signature of any party, other than the borrower, who is to assume secondary liability for repayment of the loan.

(f) *Loan disbursement.* (1) In disbursing a loan, a lender—

(i) May not disburse a loan prior to the issuance of the guarantee commitment for the loan by the Secretary, except with the Secretary's prior approval;

(ii) Shall disburse loan proceeds by means of a check that—

(A) Except as provided in paragraph (f)(1)(v) of this section, is made co-payable to the borrower and the school identified on the loan application; and

(B) Requires the personal endorsement of the borrower; and

(iii) In the case of a check that is part of a multiple disbursement, shall provide—

(A) A notice to the school indicating that it is part of a multiple disbursement. The lender may include a separate notice to this effect with the check or may include this notice on the face of the check.

(B) At the time of the first disbursement, a schedule of the estimated amount and dates of all future disbursements to the student.

(iv) Except as provided in paragraph (f)(1)(v) of this section, shall send the loan check directly to the school not earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and in no case, without the Secretary's prior approval, earlier than 30 days prior to the date on which the student is scheduled to enroll; and

(v) Shall make the check payable to the borrower and shall send the check directly to the borrower if the borrower is attending a foreign school, or if the borrower is a parent borrowing on behalf of an eligible student, and shall notify the school of the amount of the loan within 30 days of the date on which the check is sent.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. A borrower may not authorize anyone else to endorse a check on his or her behalf.

(g) *Late disbursements.* (1) Under certain circumstances, a lender, with the prior approval of the Secretary, may disburse a loan after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment.

(2) The Secretary approves a lender's request to make a disbursement under these circumstances only if the Secretary is satisfied that the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended and during which the student was actually enrolled.

(3) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time the lender sends the loan check to the school.

(20 U.S.C. 1077, 1078–2, 1079, 1080, 1082, 1083, 1085)

§ 682.509 Due diligence in servicing a loan.

(a) General: The loan servicing process includes responding to borrower inquiries and establishing the terms of repayment.

(b) (1) A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a loan.

(2) When a lender learns that a FISLP borrower is no longer enrolled at a participating school on at least a half-time basis the lender shall promptly contact the borrower in order to establish the terms of repayment.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1082, 1085)

§ 682.510 Repayment of loans.

(a) *Conversion of a loan to repayment status.* (1) For a Federal PLUS Program loan, the repayment period begins on the day the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) Except as provided in paragraphs (a)(3) and (4) of this section, for a FISLP loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve consecutive months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISLP.

(ii) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six consecutive months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(3) For a borrower of a FISLP loan who is a correspondence student, the grace period specified in paragraph (a)(2) of this section begins on the earlier of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.603. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for submission of a particular assignment if the student states in writing an intention to continue in the program and an

understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program in the schedule required under § 682.603.

(4) For a FISLP loan, the repayment period begins prior to the end of the grace period, if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower may not further utilize the grace period.

(5) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(6)(i) Subject to paragraphs (a)(6)(ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a FISLP or Federal PLUS Program loan, calculated from the beginning of the repayment period. The lender shall, however, require a borrower to fully repay a FISLP loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in §§ 682.511 and 682.512 respectively, the periods of deferment or forbearance are excluded from determinations of the 5, 10, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) Prior to the beginning of the repayment period the borrower may request and be granted by the lender a repayment period of less than five years. At any time, subject to paragraph (a)(6)(iii), and without the lender's consent, the borrower may subsequently have the total repayment period extended to a minimum of five years.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty. Unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, during each year of the repayment period, a borrower's total payments to all holders of the borrower's GSLP or PLUS Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSLP or PLUS Program loans, their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraph (c)(1)(i) and (ii) of this section may not result in an extension of the 10 or 15-year repayment period maximums unless forbearance, as described in § 682.512, has been approved.

(d) *Supplemental repayment schedule.* (1) In the case of a loan made by a school lender, the lender and the borrower may agree on a supplemental repayment schedule, with the prior approval of the Secretary, that would supplement the regular repayment schedule described in paragraph (c) of § 682.509.

(2) The supplemental repayment schedule may be based on other than equal or graduated payments. For example, the supplemental repayment schedule may base the amount of the borrower's payment on the borrower's income.

(3) The borrower may not insist upon the establishment of a supplemental repayment schedule. The lender may not insist upon the establishment of a supplemental repayment schedule unless the lender obtained the borrower's written consent to enter into one at the time the loan was made.

(e) *School refunds.* (1) A lender shall treat a payment of a refund received by the lender from the school as a credit against the amount owed by the borrower on the borrower's loan.

(2) If a lender receives a refund payment from a school on a loan that is no longer held by that lender,—

(i) The lender shall transmit the amount of the refund payment from the school to the holder to whom it assigned the loan, with an explanation of the payment's source; and

(ii) The holder of the loan shall provide prompt written notice to the borrower that the payment has been received.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1082, 1085)

§ 682.511 Deferment.

(a) *Borrower eligibility.* (1) Except in the case of a loan received by a parent borrower under the PLUS Program on or after August 15, 1983, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period.

(2) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installment payments of principal deferred during the six month period (post-deferment grace period) that commences after the completion of each deferment period or combination of such periods.

(3) Interest accrues and is paid by the borrower during the deferment period, and the post-deferment grace period, if applicable, unless, in the case of a FISLP loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4) In order to receive a deferment, the borrower must request the deferment and provide the lender with all documentation required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to a deferment first exists, but not more than 60 days before the date the lender receives the request and documentation required under paragraph (a)(4) of this section.

(6) An authorized deferment period ends on the earlier of—

(i) The date the condition establishing the borrower's eligibility for the deferment ends; or

(ii) The date when the condition entitling the borrower to a deferment has continued to exist for the maximum amount of the time allowed for a specific deferment.

(7) A lender may not deny a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120 or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment or, if applicable, post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment until the borrower brings the account current with the lender.

(9) The borrower must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in—

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school;

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section;

(3) Up to three years of active duty status in the United States Armed Forces or service as an officer in the Commissioned Corps of the United States Public Health Service;

(4) Up to three years of service under the Peace Corps Act (if the borrower has agreed to serve for a term of at least one year);

(5) Up to three years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs) (if the borrower has agreed to serve for a term of at least one year);

(6) Up to three years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraph (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section;

(7) Conscientiously seeking, but unable to find full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section;

(8) Pursuing a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section;

(9) Up to two years of service as an intern, as described in paragraph (g) of this section; or

(10) Up to three years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because the borrower is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower must provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, which may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.*—To qualify for a deferment for full-time volunteer service, for a tax-exempt organization, comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower must provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation (including a subsistence allowance) does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower must provide the lender with a written request for the deferment. To continue the deferment for more than three months, the borrower must provide an additional request before the end of each three month period. Each request must be signed by the borrower and dated, and must contain—

(i) A statement from the borrower describing the borrower's conscientious search for full-time employment, including for at least three attempts to secure employment during that three-month period—

(A) The name of the firm contacted;

(B) The name of the person contacted; and

(C) The firm's address and phone number.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address;

(iii) Certification from the borrower that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address and the date of registration therewith; and

(iv) The borrower's agreement to notify the lender promptly when full-time employment is obtained.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(4) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which the borrower feels qualified by virtue of education or previous experience.

(f) *Rehabilitation training program deferment.* To qualify for a rehabilitation training deferment, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals, and must provide the lender with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Veterans Administration; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week.

(g) *Internship deferment.* (1) An eligible internship program is a supervised training program that is required in order for the borrower to begin professional practice or service, *e.g.*, medical residency.

(2) An eligible internship program is a program—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That a State licensing agency requires completion of before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower must provide to the lender the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (g)(2) of this section.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(h) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower must give the lender a certification from a licensed doctor of medicine or osteopathy, stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from the injury or illness.

(i) *Spouse's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse is temporarily totally disabled, a borrower must give the lender—

(i) A certification of a licensed doctor of medicine or osteopathy, stating that the borrower's spouse is temporarily totally disabled; and

(ii) A statement from the borrower certifying that the borrower is unable to secure employment because the borrower is providing continuous nursing or similar services for the borrower's spouse.

(2) For the purposes of this section, a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from the injury or illness, and who, during that special period, requires continuous nursing or similar services.

(20 U.S.C. 1077, 1078, 1078–2, 1082, 1085)

§ 682.512 Forbearance.

(a) General: (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraph (b) of this section whenever—

(i) Poor health or other personal problems affect the ability of the borrower to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.511 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall grant forbearance only when the ability of both borrowers to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and borrower agree to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10- and 15-year limitations on length of repayment if—

(1) The lender reasonably believes that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note, and the lender states the basis for its belief in writing and maintains that statement in its loan file on that borrower;

(2) Both the borrower and an authorized official of the lender agree to the forbearance; and

(3) Where the forbearance involves the postponement of all payments, the lender contacts the borrower at least every three months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(d) The lender shall maintain evidence in the borrower's loan file that the forbearance has been agreed to.

(20 U.S.C. 1078–2, 1080, 1082)

§ 682.513 Due diligence in collecting a loan.

(a) *General.* (1) lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section when a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender discovers that the borrower has entered the repayment period.

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower at least three more times at regular intervals during the remainder of the four-month

period that started on the due date of the delinquent payment.

(c) *Skip-tracing assistance.* (1) Whenever a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection techniques, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaim assistance from the Department of Education. This preclaim assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower has the ability to repay the loan, the lender may, prior to the deadline for filing a default claim, bring suit against the borrower to recover the amount of the unpaid principal and interest together with reasonable attorney's fees, in accordance with the procedures set forth in this paragraph.

(2) The lender must first notify the borrower that, unless the borrower makes payments sufficient to bring the account current, the lender will seek a judgment under which the borrower will be liable for payment of reasonable attorneys' fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower does not meet the terms of the lender's demand for payment as described in paragraph (f)(2) of this section within ten days following the date of delivery of the notice to the borrower indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its reasonable attorneys' fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1078-2, 1079, 1080, 1081, 1082, 1085)

§ 682.514 Assignment of loan.

(a) *General.* A FISLP or Federal PLUS Program note may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A note assigned from one lender to another shall be made subject to a blanket endorsement together with other notes being assigned or shall individually bear effective words of assignment. Either the blanket endorsement or the note shall be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *Risk assumed by the buyer.* (1) Upon acquiring a note, a new holder assumes responsibility for the consequences of any previous violation of applicable status or regulations or the terms of the note. Neither a FISLP note nor a Federal PLUS Program note is a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or guarantee eligibility of the loan and to the extent of the borrower's legal defenses. When a new holder files a claim on a loan, it shall provide the Secretary with the same documentation that would be required of the original lender.

(2) Special additional rules for assignment of loans made or originated by a school: The buyer of a loan is not entitled to rely on statements made by a school that made or originated the loan. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 682.607, before the first assignment of a loan that was made or originated by a school, as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(e) *Trustee responsibility.* A lender to whom a loan is assigned in its capacity as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on any other holder of a loan.

(f) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the requirements in this part.

(20 U.S.C. 1078-2, 1079, 1080, 1082)

§ 682.515 Consequeces of failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send a final demand letter to the borrower, as required by § 682.513(e), when it learns that the borrower or, if applicable, the student on whose behalf a parent has borrowed—

(1) Did not qualify for all or a portion of a loan made under this part; or

(2) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for such interest benefits.

(b) The lender shall neither bill the Secretary nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter, transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all interest benefits paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall, on its next quarterly interest billing submitted under § 682.304, refund to the Secretary the interest benefits repaid by the borrower, and all other interest benefits previously billed to the Secretary on the ineligible portion of the loan.

(e) If the borrower repays to the lender the principal amount of the ineligible portion of the loan, the lender shall treat that payment as a prepayment on the loan.

(f) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the loan shall be considered in default, and the lender shall file a default claim thereon with the Secretary for the entire unpaid balance of principal and accrued interest within the time specified in § 682.518(e)(1).

(20 U.S.C. 1077, 1078, 1078–2, 1082)

§ 682.516 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.518(e)(2), when—

(1) The lender learns that the school, in which the student on whose behalf the loan was made enrolled, terminated its teaching activities involving that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay the loan.

(20 U.S.C. 1078–2, 1080, 1082)

§ 682.517 Death, disability, and bankruptcy.

(a) *Death.* (1) If an individual borrower dies, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled. However, if a Federal PLUS Program loan was obtained by two parents as co-makers, and only one of the parents dies, the surviving parent remains obligated to repay the loan.

(2) The lender may determine that a borrower has died on the basis of a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(3) Once the lender has determined that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(4) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(b) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a loan is cancelled. However, if a Federal PLUS Program loan was obtained by two parent borrowers as co-makers, and only one of the borrowers becomes totally and permanently disabled, the other borrower remains obligated to repay the loan. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (b)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim described in paragraph (b)(2) of this section.

(4) If the lender determines that a loan owned by a borrower who claims to be totally and permanently disabled is not eligible for cancellation for that reason, or if the lender has not received the physician's certification, described in paragraph (b)(2) of this section, within 60 days of the receipt of the physician's letter described in paragraph (b)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter described in paragraph (b)(2) of this section, and any interest payments forborne may be capitalized in accordance with § 682.202.

(c) *Bankruptcy.* (1) If an individual borrower's repayment obligation on a loan is discharged in bankruptcy, the Secretary will assume the borrower's liability for unpaid principal and interest on the loan. However, if a Federal PLUS Program loan was obtained by two parent borrowers as co-makers and only one of the borrowers has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan and the Secretary does not assume liability for unpaid principal and interest.

(2) The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court.

(3) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan and shall file a bankruptcy claim with the Secretary.

(4) If the loan obligation is not ultimately discharged in the bankruptcy proceeding, the lender is not required to repurchase the loan.

(20 U.S.C. 1078–2, 1082, 1087)

§ 682.518 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a FISLP or Federal PLUS Program loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.515 or § 682.516.

(iii) The borrower has died.

(iv) The borrower is totally and permanently disabled.

(v) The borrower has filed a bankruptcy petition.

(2) If a PLUS Program loan was obtained by two eligible parents as co-makers, the reason for filing a claim thereon must hold true for both parents.

(3) A lender shall file a claim against the Secretary's guarantee on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to submit all required documents, the Secretary denies the claim.

(b) *Documentation required for all claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) The repayment instrument, in the case of a FISLP loan.

(4) A payment history, as described in § 682.522(a)(2)(ix), if any payments have been made.

(5) A collection history, as described in § 682.522(a)(2)(x).

(6) A copy of the final demand letter, if required by § 682.513(e).

(7) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan owned by the borrower, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(8) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.513(c), and for preclaims assistance under § 682.513(d).

(9) Any additional documentation that the Secretary deems relevant to a claim.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim. The lender shall also agree to reimburse the Secretary for any overpayments of interest benefits or special allowance that the Secretary may have made respecting the loan.

(d) *Additional documentation required for specific categories of claims.*—(1) *Default claims.* (i) In the case of a claim filed on a loan made by a school lender, whether or not the claim is filed by the school, the lender shall file with its claim a statement from the school indicating whether the borrower enrolled on at least a half-time basis at the school for the academic period for which the loan was intended. If the student traveled to the school but decided not to enroll, the school shall state the amount of the loan that was reasonably necessary for the student's travel from the student's residence to the school.

(ii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(2) *Death claims.* The lender shall submit with a death claim those documents that formed the basis for its determination of death.

(3) *Disability claims.* The lender shall submit with a disability claim a copy of the certification of disability described in § 682.516(b)(2) of this part.

(4) *Bankruptcy claims.* In the case of a bankruptcy claim, in addition to the documentation required for all claims, the lender shall submit—

(i) Evidence that a bankruptcy petition has been filed, and all pertinent documents sent to or received from the bankruptcy court by the lender; and

(ii) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(e) *Claim filing deadlines.* As a condition for obtaining payment, a lender shall comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.513(f), it must file a default claim on a loan with the Secretary within 90 days after default. For a claim filed pursuant to § 682.515, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.515(c), if the borrower failed to comply with the terms thereof within 30 days of such transmission.

(2) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.516, the lender must file a claim with the Secretary within 90 days of the date the lender determines that the conditions set forth in § 682.516(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.516(a)(2).

(3) *Death and disability claims.* A lender must file a death or disability claim with the Secretary within 60 days after the lender determines that a borrower has died or is totally and permanently disabled, in accordance with the procedures in § 682.517.

(4) *Bankruptcy claims.* A lender must file a bankruptcy claim with the Secretary within 30 days after the lender receives notice of the first meeting of creditors in a borrower's bankruptcy proceeding.

(20 U.S.C. 1078–2, 1080, 1082, 1087)

§ 682.519 Determination of amount of loss on a claim.

(a)(1) *Default claims.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or between August 19, 1972, and February 28, 1973, the amount of loss to be paid on the claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) Between July 1 and August 18, 1972, or after February 28, 1973, the amount of the loss to be paid on the claim is equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202.

(2) *Death and total and permanent disability claims.* The amount of loss to be paid on a death or disability claim depends upon the date the loan was disbursed. If the loan was disbursed—

(i) Prior to December 15, 1968, the amount of loss to be paid on the claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) After December 14, 1968, the amount of loss to be paid is equal to the unpaid balance of the principal and interest that accrues before the determination that the borrower is either deceased or totally and permanently disabled. The unpaid principal amount may include capitalized interest to the extent authorized by § 682.202.

(3) *Bankruptcy claims.* The amount of loss to be paid on a bankruptcy claim is equal to the balance of the principal and interest. The unpaid principal amount may include capitalized interest to the extent authorized in § 682.202.

(b) Payment of additional interest: When the guarantee covers unpaid interest, the payment of an approved claim covers the unpaid interest that accrues during the following periods:

(1) During the period before the claim is filed, not to exceed the period provided for in § 682.518(e) for filing the claim.

(2) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(3) During the period required by the Secretary to approve the claim and to authorize payment.

(c) Special rules for a loan acquired by assignment: Except as provided in

paragraph (d)(2) of this section, if a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(d) Special rules for loans made by a school lender: (1) If the loan for which a claim is filed was made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under § 682.607; or

(ii) An amount which bears the same ratio to the total amount of the claim as the amount of educational services that the student was unable to complete, because the school terminated its teaching activities during the period for which the loan was obtained, bears to the total educational services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activity.

(2) If the loan for which a claim is filed was originally made by a school, but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim the amount determined—

(i) Under paragraph (d)(1)(i) of this section that was due the student prior to the assignment of the loan; or

(ii) Under paragraph (d)(1)(ii) of this section.

(e) Special rule for loans originated by a school: A loan that is originated by a school is treated, for purposes of subsection (d) of this section, as if it were a loan made and still held by the school.

(20 U.S.C. 1078–2, 1080, 1082)

§ 682.520 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.521 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.518(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.518 (b) and (d).

(b) Except as provided in § 682.521, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this section, once final, is conclusive and binding on the lender that filed the claim.

(Note.—A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322)

(20 U.S.C. 1078–2, 1079, 1080, 1082)

§ 682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance or claim payment, or may permit a lender to cure certain defects in a specified manner when, in the Secretary's judgment, the best interests of the United States so require.

(b) In order for a lender to receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which the lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, it must meet the conditions described in Bulletin L–77a, set forth as Appendix C to this Part.

(20 U.S.C. 1078–2, 1080, 1082)

§ 682.522 Records, reports, and inspection requirements for program lenders.

(a)(1) A lender shall keep complete and accurate records of each loan that it holds. The records shall be organized in such a way as to permit ready identification of the current status of each loan.

(2) The lender shall keep—

(i) The loan application;

(ii) The original promissory note, including the repayment instruments, until the loan is fully repaid, after which a copy is required;

(iii) The repayment schedule;

(iv) A record of each disbursement of loan proceeds;

(v) Notices of changes in a borrower's address and status as at least a half-time student;

(vi) Evidence of the borrower's eligibility for a deferment;

(vii) The documents required for the exercise of forbearance;

(viii) Documentation of the assignment of the loan;

(ix) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment attributable to principal and interest;

(x) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan and each effort to locate a borrower whose address was unknown at any time; and

(xi) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(3)(i) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records on microfilm or computer format. However, the holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(b) Reports: A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) Inspections: Upon request, a lender or its agent shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the lender's compliance with the Act and applicable regulations.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.

(a) *General.* Participation of a school in the GSLP and the PLUS Program means that the school's students are eligible to receive GSLP and PLUS Program loans. To participate in the GSLP and the PLUS Program under either the FISLP, the Federal PLUS Program or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR Part 668 through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education and

(2) Enter into a written program participation agreement with the Secretary that is signed by an appropriate official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in this agreement, promises to comply with the applicable provisions of—

(1) The Act and the regulations in this part; and

(2) The Student Assistance General Provisions, 34 CFR Part 668.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSLP or the PLUS Program by a school—

(i) The reason for the decision is included in the Secretary's response to the request; and

(ii) The Secretary provides an opportunity for the school to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school shall be required to comply with the provisions of these regulations to the extent determined by the Secretary.

(20 U.S.C. 1078–2, 1082, 1094)

§ 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Secretary in order to make or originate loans under either the GSLP or the PLUS Program.

(b) *Contents of the agreement.* An agreement to allow a school either to make or to originate loans contains the following terms:

(1) The school will not make or originate loans which would be outstanding to more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (d) of this section.

(2) The school will inform any undergraduate student, who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence under paragraph (c) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set forth in paragraph (b)(3)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(5) Loans that the school makes or originates shall be disbursed in multiple installments in accordance with the disbursement requirements in § 682.506(b)(1)(ii) if—

(i) The loan amount exceeds $1,500 for the academic year;

(ii) The borrower is in the first academic year of study as an undergraduate; and

(iii) The borrower was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender, pursuant to paragraph (b)(3) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to that borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship to the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without GSLP or PLUS Program loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(20 U.S.C. 1075, 1078, 1078–2, 1082, 1083)

§ 682.602 Providing employment data to prospective students.

(a) In addition to the specific requirements of Subpart C (Student Consumer Information Services) of 34 CFR Part 668, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade, or career field—

(1) Shall provide a prospective student in that program or course with a written statement regarding the percentage of previously enrolled students who entered positions of employment directly related to their course of study at the school and data regarding the average starting salaries of those students; or

(2) Shall provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After a reasonable effort the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than three years old and cannot, after a reasonable effort, be updated.

(b) To the extent that information is available, the school shall provide a prospective student with information regarding the long-range prospects for employment in the particular vocational, trade, or career field that the student intends to prepare for at the school.

(20 U.S.C. 1078–2, 1082, 1085, 1094)

§ 682.603 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, which must be given to a prospective student prior to that student's enrollment.

(b) The school shall include in its schedule—

(1) The number of lessons in the course;

(2) The intervals at which lessons are to be submitted;

(3) The date by which the course is to be completed; and

(4) The period of time within which any resident training must be completed.

(c) The school's schedule shall conform to the requirements set forth in paragraph (b) of the definition of "vocational school" in 34 CFR 668.6.

(20 U.S.C. 1078–2, 1082)

§ 682.604 Certification by a participating school in connection with a loan application.

(a) A school shall accurately and completely fill out the portion of a loan application to be completed by the school. Except as provided in Part 668 Subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be certified by the school pertains to—

(1) The borrower's eligibility for a loan as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a GSLP loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(20 U.S.C. 1077, 1078, 1078–2, 1082, 1085, 1094)

§ 682.605 The borrower's loan check.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's loan check. The school shall also comply with any rules for processing a loan check contained in 34 CFR Part 668. The rules in this section do not apply to a loan made by a school lender if the student is attending that school.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower or a loan to a student attending a foreign school, a GSLP or PLUS Program loan check is made jointly payable to the borrower and the school and is sent directly to the school by the lender.

(2) Except in the case of a late disbursement under paragraph (e) of this section, a school may release the proceeds of a loan made under this part only to a student who has maintained eligibility in accordance with the provisions of § 682.201.

(c) *Processing of the check by the school.* When a school receives a loan check, it shall hold the check until the student enrolls, and then either—

(1) Endorse the check on its own behalf and promptly deliver it to the student; or

(2) Obtain the student's endorsement, endorse the check on its own behalf, apply to its own account the portion of the loan proceeds that the student currently owes the school for costs of attendance, as described in paragraph (d) of this section, and promptly deliver the remaining loan proceeds to the student.

(d) *Applying the loan proceeds.* When a school receives a loan check, it may only apply to its own account those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students have been billed. If the school determines that the student has not enrolled as expected, the school shall return the check to the lender within 30 days of this determination.

(e) *Processing a late disbursement check.* (1) For the purposes of this paragraph, a loan check is considered a late disbursement check if the school receives the student's loan check from the lender either—

(i) After the end of the period of attendance for which the loan was made (*i.e.*, the expiration date of the guarantee commitment); or

(ii) Before the end of the academic period for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If a late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the Secretary under § 682.508(g), or the appropriate guarantee agency, the school shall follow the procedure described in paragraph (c)(2) of this section.

(3) If a late disbursement check is not accompanied by the notice described in paragraph (e)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (e)(1) of this section exists;

(ii) Send with the check—

(A) A notice that one of the conditions described in paragraph (e)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis; and

(iii) Advise the student that the lender may, in accordance with the procedures in § 682.508(g) or similar procedures established by the guarantee agency, redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (e)(1) of this section.

(20 U.S.C. 1078, 1078–2, 1082)

§ 682.606 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the date (to include day, month, and year) on which a student to whom or on whose behalf a loan has been made

under this part withdraws from the school, for the purpose of calculating the amount of a refund due the student from the school and reporting to the lender that the student has withdrawn.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal; or

(ii) The date the school determines that the student has withdrawn.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established under § 682.603. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school shall not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days.

(20 U.S.C. 1078–2, 1082, 1094)

§ 682.607 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, and room and board charges to a student who received a GSLP or PLUS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not enroll for the period of attendance for which the loan was intended; or

(ii) Does not complete the period of attendance for which the loan was made.

(2) The school shall provide a written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(ii) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1078–2, 1082, 1094)

§ 682.608 Payment of a refund to a lender.

(a) *General.* By applying for a GSLP or PLUS Program loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSLP or PLUS Program loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, when the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining what portion of a student's refund for an academic period is allocable to a loan received by the borrower for the same academic period, the school shall follow the procedures established in 34 CFR 668.

(c) *Timely payment.* A school shall pay each refund that is due—

(1) Within 30 days after the date of the student's withdrawal from the school, as determined in accordance with § 682.606; or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.606(c), within 30 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provisions for compliance with the requirements of this section with regard to students who obtained, or on whose behalf parents obtained, loans for periods of attendance at the school that began prior to the school's change in status.

(20 U.S.C. 1078–2, 1082, 1094)

§ 682.609 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSLP and PLUS Program loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary

determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(2) The Secretary or a Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the following October 1; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request a hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part unless it has entered into a new lending agreement with the Secretary under § 682.601; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(20 U.S.C. 1078–2, 1082, 1085)

§ 682.610 Records, reports, and inspection requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in these regulations and in 34 CFR Part 668 in order to—

(i) Protect the rights of students and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with any specific requirements in these regulations and in 34 CFR Part 668.

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(6) In the case of a GSLP loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's adjusted gross family income and the student's expected family contribution, and the corresponding certification by the school to the lender;

(7) In the case of a GSLP loan—

(i) The date the school received each loan check;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds to the student; and

(8) A record of the student's job placement, if known.

(c) *Student status reports.* A school shall—

(1) Upon receipt of a student confirmation report form from the Secretary or a similar status confirmation report form from any guarantee agency, complete and return, within 30 days of receipt, that report to the Secretary or the guarantee agency, as appropriate; and

(2) Promptly notify the lender—

(i) When the school discovers that a student who has received a GSLP loan has ceased to be enrolled on at least a half-time basis and it does not expect to submit, within the next 60 days, its next student confirmation report to the Secretary or the guarantee agency;

(ii) When the school discovers that a PLUS Program loan has been made to or on behalf of a student who has been

accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) When the school discovers that a full-time student to whom a PLUS Program loan was made has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under these regulations for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after their completion, copies of reports and other forms used by the school and relating to the GSLP or the PLUS Program;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by these regulations and for access by the Secretary or his authorized representatives to those records and reports; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school shall afford the Secretary, a guarantee agency and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the school's compliance with the Act and applicable regulations.

(20 U.S.C. 1078–2, 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the GSLP and the PLUS Program. These regulations apply to a lender that violates any statutory provision governing the GSLP or the PLUS Program or any regulations, special arrangements, agreements, or limitations prescribed under the GSLP or the PLUS Program. These regulations apply to lenders that participate in a guarantee agency program as well as lenders that participate in the FISLP or the Federal PLUS Program.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in § 435(g)(1) of the Act;

(2) To a school's loss of lending eligibility under § 682.609; or

(3) To administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), which is governed by 34 CFR Part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR Part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions are used in this subpart:

Designated Departmental official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, or termination proceedings.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by the Secretary as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) Effect of limitation: A limitation imposes on a lender—

(1) A limit on the number of total amount of GSLP or PLUS Program loans that a lender may make, purchase, or hold;

(2) A limit on the number or total amount of GSLP or PLUS Program loans a lender may make to, or on behalf of, students at a particular school; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) Effect of termination: After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after such date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section when the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information;

(2) Show that the violation has been corrected; or

(3) Submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSLP or the PLUS Program; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Department official, may take emergency action to stop issuing guarantee commitments to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parents, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail with return

receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) The Secretary provides, upon the request of the lender, an opportunity for the lender to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension removes a lender's eligibility under the GSLP and the PLUS Program, and the Secretary does not guarantee a new loan made by the lender for a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Department official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to voluntarily correct any alleged violations.

(c) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Department official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Notifies the lender of the effective date of the suspension.

(2) If the lender requests a hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary reviews the decision of the presiding officer. The Secretary affirms a decision of the presiding officer imposing a suspension unless it is clearly unsupported by the evidence. The Secretary affirms a decision declining to impose a suspension if the Secretary believes suspension is not warranted by the evidence. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Department official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the limitation or termination should not take effect; and

(vii) Asks the lender to voluntarily correct any alleged violations.

(b) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Department official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence

considered at the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Department official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9), the Secretary—

(1) Sets a time period for the appealing party to submit additional written material, including exceptions to the initial decision, proposed findings, and conclusions, and supporting briefs and statements;

(2) Sets a time by which the opposing party must respond; and

(3) Issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(b) Any party submitting material to the Secretary must provide a copy to each party that participated in the hearing.

(c) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSLP, the PLUS Program, students, or parents.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart are evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Department official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed in accordance with these regulations at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSLP and the PLUS Program, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with these regulations may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668, Student Assistance General Provisions, may not be considered for reinstatement as a GSLP or PLUS Program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request, or allow reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSLP and the PLUS Program is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(20 U.S.C. 1078–2, 1080, 1082, 1094)

Subpart H—[Reserved]

Appendix A—[Reserved]

Appendix B—[Reserved]

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("the diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. *See* 34 CFR 682.511, 682.516 (1981).[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which

[1] All references to the program regulations are to Part 682 of Title 34 of the Code of Federal Regulations (34 CFR Part 682), which was formerly 45 CFR Part 177.

the first day of the 120-day or 180-day default period (set out in 34 CFR 682.200) occurred on or after October 21, 1979 (the effective date of the September 17, 1979, regulations), *whether or not* the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. *See* 44 FR 53916 (September 17, 1979). However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a) (5), (6), and 34 CFR 682.517(g), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Except as provided in 34 CFR 682.509(e)(3), collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period (*see* 34 CFR 682.509(e)(3)), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. *See* 34 CFR 682.510(b)(ii). One exception to this rule is as follows: if the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time. *Note:* Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.512. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.516(e)(1). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with the original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's rights to receive interest and special allowance payments is addressed in Section I.B.1, below.

B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest and Special Allowance Repayment and Certification Required as a Condition for the Secretary's Recognition of a Cure.* The Secretary has commenced a concerted effort to recoup all excess interest and special allowance payments made on loans involving due diligence or timely filing violations. Accordingly, the Secretary will not recognize cures for such violations until the lender has filed an executed Interest and Special Allowance Certification Form (Attachment A) with the Division of

Certification and Program Review of the regional office responsible for the State in which the lender maintains its principal place of business. Additionally, the lender must enclose a photocopy of the certification with each "cured" claim it files.

4. *Applicability of the Cure Procedures to Particular Classes of Loans.* The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

5. *Excusal of Certain Due Diligence Violations.* A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occured.

6. *Treatment of Accrued Interest on "Cured" Claims.*—a. *Due Diligence Violations.* For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accuring on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in Column 15 on the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. *Timely Filing Violations.* For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for any unpaid interest accuring after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

7. *Documents to be Submitted with "Cured" Claims.* The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new OE From 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original OE Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new OE Form 1207;
- All documents showing that the lender has complied with the applicable cure procedures and requirements; and
- A copy of the Interest and Special Allowance Certification form (Attachment A).

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.511)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.511. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request pre-claims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. *Reinstatement of Insurance Coverage.* In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later.

(a) the lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.507(b); or

(b) the lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (*e.g.* copies of the checks) with the claim.

2. *Borrower Deemed Current As of Date of Cure.* On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.511, and the timely filing requirements set out in 34 CFR 682.516.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.516)

1. *Default Claims.*—a. *Reinstatement of Insurance Coverage.* In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see page 8 for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.507, along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "8-Hour" collection letter, on the lender's letterhead. (See Attachment B).

b. *Borrower Deemed Current Under Certain Circumstances.* If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.511, and the timely filing requirements set out in 34 CFR 682.516.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem

the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph, on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment C).

2. *Death, Disability, and Bankruptcy Claims.* Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirement (*see* 34 CFR 682.516 (e)(2),(3).) However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in Section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, except in connection with the certification described below, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. *Due Diligence Violations.* In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. *Timely Filling Violations.* In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender *knows* involves a timely filing violation must repay those amounts.

3. *Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured.* Because most due diligence violations, and all timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. *Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period.* In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However the lender need not repay that interest to the Secretary. *See* II.C.1 above.

b. *Deferment Periods.* A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. *Loans Made Prior to December 15, 1968.* A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A Lender must make the repayments of interest and/or special allowance discussed in II.C, above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported in a format similiar to that in Attachment D, and must not be reported on the normal Lender's Request for Interest and Special Allowance (ED Form 799) submission. Lenders are requested not to send a check with the adjustment, the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. The adjustment must state the quarters for which the adjustment is being made, and the total dollar amounts of all loans involved in the adjustment. In addition, for five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s) repaid, the violation(s) giving rise to the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. *See* 34 CFR 682.519(a)(2)(i). Completed adjustment forms should be sent to the following address: Student Loan Processing Center, P.O. Box 2640, Norfolk, Virginia 23501.

Attachments.

Attachment A—Interest and Special Allowance Certification Form

I, (name) ————, as a duly authorized official of (lender name and address) ————, hereby certify on behalf of this institution as follows:

(1) After consulting with all appropriate employees, agents, and servicers of this institution responsible for the collection of, and the filing of claims on, FISLP loans, I have determined that this institution has not knowingly delayed filing claims on FISLP loans evidencing violations of the due diligence, timely filing or other requirements for the purpose of continuing to bill the Secretary of Education or his predecessors for interest benefits or special allowance thereon, nor will this institution do so in the future.

(2) This institution will thoroughly review all FISLP loans for which claims were denied for violation of the due diligence in collection or timely filing regulations promulgated in 1979, 34 CFR 682.511 and .516, respectively. The purpose of this review will be to determine how much interest and special allowance the Secretary has paid this institution on these loans for the period(s)

during which they were uninsured due to these violations. This institution will repay any and all such amounts so determined by way of an adjustment to one of the next two quarterly interest and special allowance billings (ED Form 799).

(3) This institution will retain all records and upon request will provide the Secretary of Education with all information required by Bulletin L–77a in connection with repayment of interest and special allowance overbillings.

Signature of Employee _____
Date _____
Lender Identification Number _____

BILLING CODE 4000–01–M

Attachment B

NOTICE

_____
Date

TO:

_____
Social Security Number

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

_____
Official of Lender

_____
Title

Attachment C Certification of Borrower Location

As an employee or agent of _____
Name and Address of Lender

I hereby certify as follows:

1. On _____, I spoke with or received written communication
Date
from (copy attached):
(circle a or b)
(a) the borrower on the loan underlying this default claim; or
(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are -- _____
_____,
Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in '2)' above.

4. (Applicable only if 1(b), above, is used) The letter and agreement referenced in 3, above, has not been returned undelivered.

_____
Name of Borrower

_____
Borrower's SSN

_____
Signature of Employee or Agent

_____
Typed Name of Employee or Agent

_____
Title of Employee or Agent

_____
Date

_____
Lender Identification Number

CURE PROCEDURE

Repayment of Interest Benefits and Special Allowance

Attachment D

NAME OF LENDER, I.D. NUMBER, ADDRESS (STREET, CITY, STATE, ZIP CODE)

EMPLOYER IDENTIFICATION NUMBER:

LENDER'S TELEPHONE NUMBER: ( )

(1) BILLING PERIOD (CHECK ONE)
1 ☐ ANNUAL
2 ☐ SEMIANNUAL
3 ☐ QUARTERLY

(2) BILLING PERIOD ENDING (CHECK ONE)
1 ☐ MARCH 31
2 ☐ JUNE 30
3 ☐ SEPTEMBER 30
4 ☐ DECEMBER 31
YEAR 19 ____

(3) METHOD (CHECK ONE)
1 ☐ ACTUAL ACCRUAL
2 ☐ AVERAGE DAILY BALANCE
3 ☐ AVERAGE QUARTERLY BALANCE

INTEREST ADJUSTMENTS (Enter only those Adjustments occurring as a result of Lender Bulletin #77a)

[X] DECREASED $ _____

SPECIAL ALLOWANCE ADJUSTMENTS

Loans made before October 1, 1981:

QTR. ENDING MM/DD/YY	%	AVERAGE PRINCIPAL BALANCE BALANCE PREVIOUSLY REPORTED	AVERAGE PRINCIPAL BALANCE SHOULD HAVE BEEN REPORTED	DIFFERENCE IN AVERAGE PRINCIPAL BALANCE
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			

Loans made on or after October 1, 1981:

/ /	14%			
	12%			
	9%			
	8%			
	7%			
/ /	14%			
	12%			
	9%			
	8%			
	7%			

NOTE: Do not submit this form concurrent with the submission of ED Form 799, "Lender's Request for Interest and Special Allowance." Lenders are required to maintain a copy of this form for their records.

GPO 000-000

[FR Doc. 85-21068 Filed 9-3-85; 8:45 am]
BILLING CODE 4000-01-C

VOL
50

ISS
171

SE

4

985

UMI

federal register

Wednesday
September 4, 1985

Part V

Federal Emergency Management Agency

44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

National Flood Insurance Program; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

[Docket No. FEMA-FIA]

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations dealing with flood plain management standards, risk premium rate zone designations, reimbursement for FEMA engineering review, flood insurance coverage, the Standard Flood Insurance Policy terms and provisions, and the sale of flood insurance.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, D.C. 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: On April 15, 1985, FEMA published for comment in the **Federal Register** (Vol. 50, Page 14904) a proposed rule containing revisions to the National Flood Insurance Program (NFIP) which were the result of a continuing reappraisal of the NFIP from the standpoint of maintaining a business-like approach to the administration of the NFIP by emulating successful property insurance programs in the private sector while, at the same time, supporting the major FEMA goals of achieving greater administrative and fiscal effectiveness in the operation of the NFIP and encouraging sound flood plain management so that reductions in loss to life and property and in disaster expenditures can be realized. This reappraisal includes, in addition to the claims, coverage, rating, and sale of insurance component, the loss reduction (i.e., flood plain mangement) and risk assessment (i.e., mapping of flood hazard areas and flood-risk zones) components of the NFIP.

Probation

The proposed rule established in § 59.24 a probation procedure for participating communities that fail to adequately enforce flood plain management measures adopted to meet NFIP criteria. This procedure would provide FEMA with a means of formally notifying these communities that their flood plain management programs are regarded as not compliant. The proposed rule provided for an additional premium of $50.00 to be paid on all new or renewal policies issued for a year after the community is placed on probation and for successive one-year periods if the community remains on probation. Public comment was solicited on whether the proposed flat charge of $50 per policy or a percentage increase per policy would be more appropriate.

Twenty-seven comments specifically addressed probation. Sixteen of these comments clearly supported the concept of probation with a surcharge on grounds that this would help achieve community compliance with Program regulations and provide FEMA with enforcement options short of suspension of a community's eligibility. Six comments opposed probation with a surcharge for a variety of reasons. The other five comments were on some aspect of probation, but did not clearly indicate either support or opposition to the concept of probation.

Although there was strong overall support for probation with a surcharge, the comments varied as to the type of surcharge favored and the mechanics of imposing probation on a community. Six comments expressed the belief that communities needed more than the 30 days allotted in the proposed rule to correct deficiencies in their flood plain management programs and to remedy violations of their ordinances. Suggestions of appropriate time periods ranged from 45 to 180 days. Six comments suggested that FEMA notify each policyholder in the community prior to imposing the probation surcharge. Four comments suggested that a press release be issued to local media or that a legal notice be published. The overall concern expressed by these comments is that FEMA ensure that a community and its policyholders are fully aware of the impacts of probation and that the community has an opportunity to take the actions necessary to avoid probation.

FEMA's intent is to delegate the authority to impose probation to the ten FEMA Regional Directors. FEMA internal guidelines on community compliance and imposing probation (without a surcharge) already require that FEMA Regional staff visit a community, meet with local officials, and formally notify the community of the deficiencies in its program and of apparent violations. The Regional Office can proceed to probation only after its efforts to provide technical assistance and to consult with the community have failed to obtain compliance. The impending probation should be no surprise to those few communities that continue to be noncompliant at that point.

However, in order to meet more fully some of the concerns expressed in the comments, a number of revisions have been made in the final rule. The 30-day notice of impending probation has been lengthened to a 90-day compliance period, during which the community would have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. The addition of language on correcting Program deficiencies and remedying all violations to the maximum extent possible was added to clarify what is to be expected of communities. A Program deficiency is a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations. This language has also been incorporated elsewhere in § 59.24 (b) and (c) where appropriate. A requirement has been added that a press release be issued to local media explaining the probation. A change has been made to delay the effective date of the surcharge until October 1, 1986. This delay will enable FEMA to develop the procedures and contractual arrangements required to implement the surcharge in cooperation with its servicing contractor and also with the approximately 200 Write-Your-Own companies that are authorized to market NFIP flood insurance. FEMA will use the probation procedure without the surcharge in the interim. The surcharge will only apply in communities that are placed on probation on or after October 1, 1986. A final rule also provides that when the probation is to begin on or after October 1, 1986, all policyholders will be advised of the impending probation and the additional premium that will be charged on policies sold or renewed in the community during the period of probation. If at the end of the 90 days, the community has not demonstrated compliance or corrected Program deficiencies and remedied violations to the maximum extent possible, the probation will go in effect. The final rule also makes it clear that FEMA will proceed to suspension while a community is on probation if the community does not meet compliance deadlines that are established.

The proposed rule solicited public comments to ascertain which was the appropriate method of imposing the

additional premium during probation, the proposed $50 flat charge per policy or the alternative of a percentage increase in the premium of each policy. Twelve comments addressed this issue. Two of the comments supported the $50 surcharge. Comments that expressed general support of the probation concept and the proposed rule could also be regarded as supporting the $50 surcharge. Two comments suggested a lower surcharge on the grounds that $50 was excessive for low-income persons and tenants who generally have minimum premium policies. Seven comments, all from State agencies, suggested that a 25% surcharge would be fairer and more effective in obtaining compliance by communities. A number of these comments felt that the $50 surcharge would be too high for low-income persons, but too low to affect large-premium policyholders who generally are more influential in local government affairs. Two of these comments suggested that a 25% surcharge be combined with a $200 cap to ensure that there would be no exceptional hardships. One comment suggested a $50 floor to maximize pressure by policyholders on local officials.

Although many of these suggestions have merit, FEMA continues to believe that the flat surcharge is the best of the available alternatives. Because probation results from a community-wide problem, the beneficiaries of the NFIP in a particular community (i.e., all policyholders) should share equally in paying the additional premium during probation. Actions or inactions by local officials are ultimately the responsibility of all citizens in the community. The flat surcharge distributes the burden equally among the policyholder citizens. Furthermore, the intent of the surcharge is not punitive. It is intended rather to focus the attention of policyholders on the community's noncompliance and, by doing so, avoid suspension with its serious adverse impacts on those policyholders. It is also intended in part to compensate the NFIP for a portion of the increased liability that results from the community's noncompliance. Since it is not feasible to allocate this increased liability on a structure-by-structure basis, a flat rate is more appropriate. Also, a percentage charge would be more costly and difficult to administer, particularly in a systemic sense and would, therefore, add to the complexity and expense of the Program, to the detriment of the general taxpayer who subsidizes the Program.

In regard to the amount of the surcharge, FEMA agrees with those comments that argued that a $50 surcharge would be too high for some policyholders. As a result, the amount of the surcharge has been reduced to $25. FIA believes that a surcharge of this size will still be effective in drawing the attention of the policyholders to a community's noncompliance and obtaining their support for actions to avoid suspension.

Several comments suggested a different length of time for applying the additional premium charge, but FEMA believes the principle already referred to of having all the policyholders in a community share equally in the increased premium applies to the duration of the surcharges as well. Therefore, the final rule still provides for applying the charge in complete one-year periods. One comment opposed a probation procedure and a premium surcharge for policyholders until a community rating system, using positive and negative incentives, is established. FEMA is studying such a community rating system, and will continue to explore alternatives for implementing such a system, but believes the probation procedure in the proposed rule represents a first step in that direction and should not be delayed. In addition, FEMA believes that a community rating system will be of only limited effectiveness in obtaining compliance from those few communities that are candidates for probation. The main benefit of a community rating system would be to provide incentives that reward communities with exemplary flood plain management programs.

A number of other comments opposed the imposition of any type of surcharge in communities placed on probation. One community opposed the surcharge because it feared it lacked the authority to enforce its flood plain management regulations. FEMA believes that all eligible communities have the authority required to adopt and enforce regulations that meet NFIP criteria. The NFIP has a Community Assistance Program which is available to assist a community with various problems, including enforcement ones. Two comments opposed the surcharge because it would apply to compliant structures and existing structures as well as violations. As indicated above, FEMA believes that the surcharge should be applied to all who benefit from the NFIP in a community. Finally, one community thought that it was FEMA's responsibility to enforce NFIP criteria and that FEMA should not "pass the buck off on innocent citizens." The National Flood Insurance Act of 1968 clearly states that the community itself must adopt and enforce flood plain management measures as a condition of participation in the NFIP. FEMA's role is simply to monitor the community's compliance with that requirement. No community that adequately enforces its regulations will be placed on probation.

Biennial Report

The proposed rule contained a change to § 59.22(b)(2) which would require communities to submit a biennial rather than an annual report to FEMA regarding their NFIP participation. This proposed change was intended to revise NFIP criteria to reflect a decision that was made in 1981 to reduce the frequency of the report from annual to biennial. The reduced frequency would meet the objectives of the Paperwork Reduction Act by reducing burden hours for participating communities and also reflect the limited staff resources that were available at FEMA to process the reports. Three comments supported the change and four opposed it. Two of the comments that opposed the change were from States which felt that the reports were a valuable source of information on community flood plain development activities and should be conducted on an annual basis. One State recommended an annual report for large communities and a biennial report for small communities.

FIA uses this report to allocate resources and to identify and establish community priorities. The actual monitoring of community flood plain development is accomplished through other mechanisms. As a result, FEMA believes that a biennial report is sufficient given the resources available and the purposes to be achieved and will continue to require the report on a biennial cycle. However, FEMA is persuaded that, at some point in the future, circumstances may warrant the return to an annual cycle. As a result, this final rule allows FEMA to require the reports on either an annual or biennial cycle. A parallel change has been made to §§ 60.2(f) and 60.6(a)(6)(ii), which also refer to the annual report.

Elevated Building Definition

One commentator suggested that the first sentence of the definition of elevated building should be broken up into multiple sentences. Since breaking up the sentence into multiple sentences would necessitate repeating the substance of the definition for each category of zones along with the unique portion of the definition for each category, FEMA believes the sentence structure in the proposed rule is a better

editorial approach, but a change has been made in the sentence to improve the clarity.

This commentator also indicated that the meaning of "adequately anchored so as not to impair the structural integrity of the building" was unclear. The intent of the anchoring requirement in the NFIP Regulations has always been that whatever anchoring system is used must be sufficient to prevent damage to that anchoring system or to the building's support system and the elevated building itself. It has always been implied, though not stated, that the requirement extended only to floods of up to the magnitude of the base flood (the 100-year flood), which is consistent with the other requirements of the program, and this is reflected in the definition in this final rule.

Another comentator was concerned that the inclusion of Zones, B, C, X, and D, which are not special flood hazard zones, in the definition of elevated building might mean that there was an elevation requirement in those zones.

That is incorrect. The reason for including those zones in the definition was to provide a better basis for collecting loss data on elevated buildings in those zones so that FEMA could at some future time consider reducing rates for elevated buildings in those zones. Requiring the elevation of buildings in those zones is not contemplated; such elevation would be strictly voluntary.

Elevation Information

The proposed rule contained revisions to §§ 60.3(b)(5) and 60.3(e)(2) that make it clear that communities are to require building elevation information on all structures as evidence of flood plain management compliance, not merely for insurance purposes. Two comments strongly supported the change since it provided additional support for communities in requiring submission of elevation information by property owners. One comment supported the change but felt that the elevation certificate form that is distributed for the NFIP is overly complicated and time-consuming to complete. FEMA encourages communities to use the NFIP Elevation Certificate since the form also can be used for insurance rating. Other forms may not provide sufficient insurance information resulting in delays in the issuance of a policy and added expense to individual property owners. FEMA is in the process of revising the NFIP Elevation Certificate, and the revised form should address some of the concerns that were raised in this comment.

Floodproofing Certification

The proposed rule contained revisions to § 60.3(c)(4) which requires that, for floodproofed nonresidential structures, a registered engineer or architect certify that the design and methods of construction are in accordance with accepted practice for meeting the floodproofing standards in NFIP criteria. This provision was revised for clarity and for consistency with the new wording of § 60.3(e)(4), which requires a similar certification for structures built in V-zones.

One comment suggested that the engineer or architect certify that the completed structure was adequately floodproofed. The engineer or architect would have to make frequent on-site inspections of the structure during construction to make such a certification. FEMA believes that this would be necessarily brudensome in most instances. However, a community can adapt a requirement of this type if local circumstances warrant it, since it would be more restrictive than NFIP criteria.

The proposed rule also deleted § 60.3(c)(4)(ii) which allowed a community to submit a certified copy of a local regulation containing detailed floodproofing specifications in lieu of requiring certification by a registered engineer or architect. No community has received approval of such a regulation. One comment suggested retaining this option for use in large flat areas behind levees that have internal drainage problems but are not designated as special flood hazard areas. FEMA believes that the retention of the provision is unnecessary since NFIP criteria need not apply in areas not designated by FEMA as special flood hazard areas.

Changes to V-Zone Requirements

The proposed rule contained revisions to the requirement in § 60.3(e)(4) that a registered engineer or architect certify the design of all structures in V-zones (coastal high hazard areas). Three comments specifically addressed this change. One community believed that the requirement would impose an economic burden on the construction of low-income housing. However, this certification is not a new requirement and has been contained in NFIP criteria since 1976. The revision in the proposed rule should make the certifications more readily attainable since a registered engineer or architect must review and certify only the design and methods of construction of the structure. Another comment wished to exempt certain low-cost accessory structures from the certification requirement. Again, the basic certification requirement is in the existing regulations, so this comment is not relevant to the proposed rule. However, FEMA will review this requirement to determine if there are feasible options for these small, low-cost structures. Finally, one comment believed that the certification language was unclear and needed clarification but provided no suggestion or further details. FEMA has revised this provision to be consistent with the revisions to § 60.3(e)(5) which clarify wind and water loads associated with the base flood. This change may meet some of the concerns in this comment. Otherwise, FEMA believes that the language is sufficiently clear.

The proposed rule also contained more specific performance standards regarding the design and construction of breakaway walls built to enclose areas below the base flood elevation in V-zones. FEMA had received a number of requests over a several year period for these more definitive standards. The proposed rule allowed for the use of (1) open wood lattice work, (2) insect screening, or (3) breakaway walls of non-masonry construction that have a loading resistance of not less than 10 and no more than 20 pounds per square foot. Breakaway walls with a loading resistance of greater than 20 pounds per square foot would have to be certified by a registered engineer or architect. Finally, such enclosed space was not to be a "finished area," which was defined in § 59.1.

Of the five comments received on the breakaway wall provision, two supported the change without modification and three generally supported the change, but with modifications. One of the comments suggested that FEMA place an upper limit of 20 pounds per square foot on breakaway walls on the grounds that this requirement would be easier to administer. FEMA does not believe that imposing an upper limit of this type can be technically justified. Stronger breakaway walls can be built which will fail and not result in damage to the rest of the structure, particularly in the case of larger, more substantial structures. In addition, some building codes may not permit walls that will collapse under loads of less than 20 pounds per square foot. If a particular community wishes to place an upper limit on the strength of breakaway walls (such as 20 pounds per square foot), it is not precluded from doing so.

Another comment suggested that FEMA clarify the phrase "wind and water loads associated with the base

flood" by relating wind loads to established code requirements for wind hazards. In response to this comment, the final rule specifies that the wind load values to be used shall have a one percent chance of being equalled or exceeded in a given year (100-year mean recurrence interval). Winds of this frequency are commonly used as a design standard in building codes, and are the basis for building designs contained in FEMA's guidance document for coastal construction, "Coastal Construction Manual."

The last comment expressed concern that some building codes, particularly those based on American National Standards Institute (NSI) wind standards and including the North Carolina State Building Code, would require construction of walls with minimum strengths in excess of 20 pounds per square foot. It was believed that, in effect, this requirement would prohibit the use of breakaway walls in such situations. In response to these comments, FEMA consulted representatives of two major building code groups, a number of technical experts, and performed additional internal review and research on the breakaway wall requirement. Based on that review, FIA does not believe that further changes are warranted in response to this comment. The proposed and final rule rules do not prohibit the use of breakaway walls with design strengths greater than 20 pounds per square foot. However, buildings which utilize breakaway walls with such strength capacities will require additional care in designing the building's structural system to minimize the risk of building collapse or displacement. Accordingly, use of such wall strengths will require that the building design be certified by a registered professional engineer or architect.

In the final rule, the provision that all masonry breakaway walls be certified by a registered engineer or architect has been deleted. Additional research has shown that there are insufficient technical grounds for distinguishing masonry from non-masonry breakaway walls. In addition, for clarification, an upper limit is placed on the strength of all breakaway walls. These walls must collapse from water loads less than that of the base flood. The requirement has also been clarified to specify the types of damages from which the structure must be protected. These damages include collapse or displacement of the structure and other structural damage resulting from the effect of wind and water loads acting simultaneously on the building's components. These changes were also made to a similar provision in § 60.3(e)(4) which contains the basic elevation requirement for V-zone structures as well as the requirement that they be certified by a registered engineer or architect.

The proposed rule also required that spaces enclosed by breakaway walls not be a "finished area," which was defined in the proposed rule in § 59.1. FEMA's further review of the proposed rule identified a potential inconsistency between this definition of "finished area" and the definition of "lowest floor" in the existing regulations regarding what uses are permitted within such enclosures. To avoid this inconsistency, the definition of "finished area" has not been included in the final rule. Section 60.3(e)(5) has been revised in the final rule to state that spaces enclosed by breakaway walls are to be used solely for the parking of vehicles, building access, and storage. This is consistent with the definition of "lowest floor" in § 59.1. In addition the provisions of § 60.3(a)(4)(ii) would apply to such enclosed spaces.

All of paragraph (e) of § 60.3 was reprinted in the proposed rule due to adding V and VE zones. However, the only provisions of § 60.3 that were otherwise changed were paragraphs (e)(2), (e)(4), and (e)(5), which have been discussed above. Therefore, the comments on other provisions such as requirements that structures be located landward of the reach of mean high tide, the prohibition of new mobile homes except in existing mobile home parks and subdivisions, and the provision regarding the alteration of sand dunes and mangroves are not relevant to the proposed rule. However, FEMA has noted these suggestions and will consider them in its continual review of NFIP policies and regulations.

Flood Plain Management Provisions on Mobile Homes

The proposed rule contained a number of changes to the requirements for the placement and anchoring of mobile homes. The anchoring requirements in § 60.3(b)(8) would be revised to delete the specific performance standards related to over-the-top and frame ties and substitute a more general performance standard that requires that the mobile home be elevated and anchored to resist flotation, collapse and lateral movement. Provisions in § 60.3(c) (5) and (6) were revised to require that the lowest floor of the mobile home be elevated to or above the base flood level, but do not specify the elevation technique to be used. There were fourteen comments that addressed the mobile home changes. Twelve of the comments fully supported the proposed changes, mostly on the grounds that the more general performance standards eliminated conflicts with manufacturer's specifications and State and local codes. A number of the comments noted that publication of the FEMA manual "Manufactured Home Installation in Flood Hazard Areas" this fall should provide sufficient guidance on elevation and anchoring techniques. Thus, there was widespread support for the change, and no revisions have been made in the language in the proposed rule. One comment recommended an addition to § 60.1(d) that would permit States or communities to accept designs for specific structures at specific sites if certified by an registered engineer or architect. FEMA regards this suggestion as unnecessary since the general performance standards for mobile home anchoring and placement should provide sufficient flexibility to address the State's concern. One comment recommended the NFIP criteria require that the mobile home pads be elevated to or above the base flood level to provide access to the mobile home during a flood. FEMA regards this suggestion as desirable, but not feasible on a national scale due to the flood depths encountered in large numbers of communities. Allowance will continue to be made for other elevation techniques. However, any State or community is permitted by § 60.1(d) to adopt regulations that are more restrictive than NFIP criteria.

There were a number of suggestions in the comments for changes to NFIP mobile home requirements. Several comments argued that the prohibition of placement of mobile homes in V-zones except in existing mobile home parks and subdivisions was discriminatory and not justified. Several comments suggested that the provisions that "grandfather" existing mobile home parks and subdivisions be eliminated and all newly installed mobile homes be elevated to or above the base flood elevation. None of these changes were included or discussed in the proposed rule, so these comments are not relevant to the proposed rule. However, as indicated in the Supplemental Information in the proposed rule, these changes are being reviewed for possible inclusion in proposed rulemaking for FY 86.

Adoption by Communities

Two communities requested information on requirements and procedures for the adoption of

provisions in the final rule by NFIP communities. In accordance with § 60.7 of NFIP criteria, communities have six mor'hs from the effective date of any new regulation to revise their flood plain management ordinances to comply with those new regulations. Since the effective date of this final rule is January 1, 1986, local ordinances will have to be revised by July 1, 1986. NFIP regulations require that communities adopt regulations that meet NFIP minimum criteria as a condition of Program eligibility. Communities can also comply with Program requirements by adopting regulations that exceed these criteria. Most of the changes that are included in the final rule are less restrictive than or substantially the same as current requirements. As a result, communities, other than those which have V-zones, may already comply or require only minor changes to their ordinances to remain compliant. FEMA will mail copies of the final rule and additional instructions regarding adoption to all participating communities. FEMA Regional Offices will be available to provide assistance to communities in revising their ordinances.

Flood Risk Zones

Seven commentators responded to that portion of the proposed rule that addressed the mapping of flood hazard areas and flood risk zones. Four of these commentators either supported the replacement designations or stated they had no objection to their implementation.

One commentator suggested that Zones A, AO, and AH be added to the definitions of "Special Flood Hazard Area" and "Area of Special Flood Hazard." Since Zones A, AO, and AH are already in the definitions in § 59.1 of "Area of special flood hazard" and "Special hazard area," the suggested change is not needed.

One commentator observed that the floodway and the 500-year flood plain are valuable sources of information to communities as they pursue flood plain management activities and must not be left undelineated. FEMA will continue to delineate these items, as appropriate, when it prepares mapping of flood hazard areas and flood-risk zones. The 500-year flood plain will be delineated as the shaded portion of Zone X, and the floodway will be given greater visual emphasis by shading the crossing-hatching.

One commentator opposed the use of Zone X as a replacement designation for Zones B and C and stated that it is important to map users to be able to continue to distinguish between Zones B and C. Zone X will be both shaded and unshaded on the map. The shaded portion of Zone X will correspond to the former Zone B designation and the unshaded portion to the former Zone C. Therefore, it is not necessary to amend the Zone X designation since the distinction desired by this commentator will be obvious for all map users.

This final rule makes the following mapping changes, all of which were in the proposed rule. It makes a change in the flood-risk zone designations of Flood Insurance Rate Maps for consistency with a change in the tables made effective October 1, 1983, that collapsed the rates for Zones A1–30 to treat them as one zone for rating purposes and likewise collapsed the rates for Zones V1–30 to treat them as one zone for rating purposes. Similarly, the rates for Zones B and C were collapsed to treat them as one zone for rating purposes. This final rule gives Zone AE as a replacement designation for Zones A1–30, Zone VE as a replacement for Zones V1–30, and Zone X as a replacement for Zones B and C.

The new maps will continue to delineate the 500-year flood plain (shaded portion of Zone X) and the floodway. The replacement designations will be used on new maps, thus gradually replacing the current designations. This final rule also provides for Zone V, which is a zone designating a coastal high hazard area without water surface elevations.

Standard Flood Insurance Policy

The Standard Flood Insurance Policy (SFIP) of the NFIP currently distinguishes between a "mobile home" and a "doublewide mobile home", with mobile homes having to meet certain requirements in special flood hazard areas and in coastal high hazard areas to be eligible for flood insurance and not being eligible for replacement cost coverage. The proposed rule revised the definition of "doublewide mobile home" by adding quantitative criteria relating to the structure's dimensions.

Several comments on this proposed revision to the definition in the SFIP of the term "doublewide mobile home" suggested using a different term. As indicated in the Supplementary Information of the proposed rule, changes in mobile home terminology are being considered for possible proposed rulemaking in FY 1986. One comment suggested different quantitative criteria from those proposed. However, neither of the two trade associations commenting on this matter objected to the quantitative criteria proposed, and this final rule has the same doublewide mobile home definition as the proposed rule.

This final rule has the change that the proposed rule had in the flood plain management requirements for anchoring mobile homes. This change dropped the over-the-top and frame ties requirement in favor of a more general performance standard. The proposed rule did not contain a corresponding change in the SFIP provisions requiring over-the-top and frame ties or requiring that the placement of the mobile home otherwise met the community's flood plain management requirements as a condition for insuring mobile homes in Special Flood Hazard Areas unless the mobile home is one on a foundation continuously insured by the NFIP at the same site since September 30, 1982, although an editorial change was proposed to that provision. In the interest of better coordinating the treatment of mobile home anchoring by the flood plain management provisions and the insurance provisions of the NFIP, a change has been made in this final rule in the SFIP provisions to allow several options for mobile home anchoring.

In recognition of certain leases where a private individual leases land from the Federal Government with the lease holding the Federal Government harmless for flood damage it causes, the proposed rule provided for not covering such losses since the individual knowingly assumed that flooding risk. The only comment on this provision was one generally favoring it. It remains the same in this final rule as it was in the proposed rule.

The proposed rule provided the basis for insuring more than one building on a policy using a form approved by the Administrator. That provision has been clarified by referring to a form or a format.

Also, to clarify the intent of the NFIP not to cover bailees' goods, the Contents paragraph of the Property Covered section of the SFIP General Property Form (Appendix A(2) of Part 61) was revised in the proposed rule to make it clear that bailees' goods are not covered. A recent court decision held that bailees' goods were covered, so this revision would carry out the intent of the NFIP not to cover them. There were no objections to this provision, and it is the same in the final rule as it was in the proposed rule.

When a limitation of coverage for finished basements (and their contents) and for enclosures (and contents) beneath the lowest floor of elevated buildings was placed in effect on October 1, 1983, coverage was continued for certain equipment and other machinery vital to a building's intended

use. While oil tanks and well-water tanks were specified as being covered, there was no mention of the oil in an oil tank or the pump for a well-water tank. The proposed rule clarified that there is coverage for these items. It also specified that there is coverage for cisterns (and the water in them) despite this basement/elevated building limitation, inasmuch as cisterns are integral parts of the building in certain communities, particularly in the Virgin Islands, and often provide the only source of water for the building. One commentator suggested that the similar items of natural gas tanks and also pumps and/or tanks used in conjunction with solar energy systems be specified as covered in such areas. FEMA agrees that this is appropriate, and those items have been added in this final rule as covered in such areas.

In furtherance of loss prevention, as an insurance concept, and of hazard mitigation, which is one of the major goals of FEMA, an October 1, 1984, change in the SFIP made coverage available for sandbags under certain conditions. The proposed rule extended that development by also providing coverage for fill for temporary levees, pumps, and wood under the same conditions except that, for both sandbags and the new items proposed, the provision referring to the purpose of preserving the building at the premises after a flood loss was deleted. There were no comments on this provision, and it is the same in the final rule as it was in the proposed rule.

Another change in the SFIP effective October 1, 1984, was the addition of a provision for building coverage and one for contents coverage to make it clear that dwelling units in condominium buildings can only be covered, along with the policyholder's insurable tenant in common interest in property covered under any condominium association flood insurance coverage provided under the National Flood Insurance Act of 1968, or any Acts amendatory thereof, up to the statutorily permissible limits of coverage available for the insuring of single-family dwelling owners under the Act. The proposed rule added a provision making the same clarification for contents coverage involving non-residential units in a condominium building. There were no comments on this provision, and it is the same in this final rule as it was in the proposed rule.

A private sector insurer participating in the Write-Your-Own Program, under which the Standard Flood Insurance Policy may be issued by private sector insurers signatory to an Arrangement with the Federal Insurance Administrator, suggested that the specific amount of the probation additional premium charge not be stated in the policy so that if the amount should ever be changed in the future, the policy form would not have to be amended. FEMA agrees with this commentator that this change could avoid administrative costs so this final rule makes the change. As an extension of this approach of not stating dollar amounts in the SFIP, a change has also been made in this final rule to refer to "the minimum premium set forth in 44 CFR 61.10" instead of stating the dollar amount itself.

Fees for Conditional Approval of Map Changes

FEMA receives a large number of requests to review proposed projects to determine if they would qualify for map amendments and revisions upon their completion. Such proposed projects include flood plan fills, stream channelizations, levee construction, or other flood control projects. This service has led to the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map Revision (LOMRs) that provide FEMA assurance to individuals, developers, and communities that their projects would be accepted for map revision upon completion. The conditional LOMA and conditional LOMR are often needed by developers to obtain construction loans and building permits and attract prospective buyers. It should be noted that conditional LOMAs and LOMRs are not based on any limitations or deficiencies in the FEMA maps; rather they have come about in response to requests from individuals, developers, and communities for FEMA review and comment on proposed projects. Thus, to reduce expenses to the general taxpayer, FEMA developed the reimbursement procedure set forth in the proposed rule to allow for the recovery of costs associated with these actions. Under the procedure, an initial fee, the amount determined by the type of project, will be required to those seeking a conditional LOMA or conditional LOMR before any review commences. The initial fee represents the minimum cost required to review that type of project. FEMA will then determine the actual cost associated with the review of a particular project and the requestor will be billed for any additional costs incurred. In this way FEMA proposes to recover the entire cost associated with the review and processing of conditional LOMAs and conditional LOMRs.

FEMA determined that the costs associated with the technical review and administrative processing of a conditional LOMA or conditional LOMR request vary in proportion to the number of submittals required of an appellant to accurately show the effects of his proposed project, as well as with the type of project involved. An incomplete submittal, or one with significant problems in the technical analyses, takes significantly longer to process since it must be reviewed, an additional data request letter prepared and sent, and the new submittal re-reviewed. While administrative processing time varies between conditional LOMAs and conditional LOMRs, it does not differ significantly within each category of project. It was also determined that for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The conditional LOMAs were first categorized by the type of project. Each category was then examined and minimum review and processing times were determined for engineering review, engineering administration, word processing and quality control. This basic processing common to each type of project was then converted to a dollar amount using direct labor rates, overhead, and fee, which FEMA pays for each services.

The determination of review and processing time for conditional LOMAs was simplified in that there is a distinct difference between single-lot and multi-lot/subdivision requests. Administrative processing was the same for each, but engineering review time for multi-lot/subdivision requests was approximately double that for single-lot determinations The range of processing times for each type of LOMA was also narrower. The minimum times determined for each type were then converted to a dollar amount as described above.

The proposed rule was erroneously interpreted by several commentators to mean that FEMA will require reimbursement for all LOMAs and LOMRs. The fee applies only to conditional LOMAs and conditional LOMRs that are requested based on a proposed flood plain modification that could affect established flood mapping. Map appeals based on conditions existing at the time of the appeal will continue to be reviewed at no cost to the appellant.

Several commentators addressed the "open-endedness" of both the fees and the time frame for review and processing of a particular request. This final rule establishes a fee cap of $500 for conditional LOMAs and $1,500 for

conditional LOMRs that will not be exceeded without written authorization from the requestor. Requestors will be notified in writing when it is anticipated that a particular case would exceed the cap. Processing would be suspended pending receipt by FEMA of written authorization to proceed. Similarly, this final rule establishes time frames for a response from FEMA regarding the adequacy of the data submitted in support of a request and for comment by FEMA regarding the particular request.

Two comments dealt with the data requirements for conditional LOMA and conditional LOMR requests. FEMA has several documents, entitled *Conditions and Criteria*, that explain in general the information required in support of a request for a LOMA, LOMR, floodway revision, or map revision. With the exception of "as-built" plans of a completed project, the data requirements for conditional LOMAs and LOMRs and actual amendments and revisions are essentially the same and are covered by the various *Conditions and Criteria* documents. It is not possible to list detailed submission requirements for each type of project in these documents due to the unique engineering factors involved in different installations. FEMA does intend to expand its general submission requirements under 44 CFR Parts 65 and 70 in Fiscal Year 1986.

One commentator requested clarification on the information a community must submit to obtain an exemption from the fee. As addressed in § 72.5 of the proposed rule, exemptions apply to those Federal, State, and local government projects designed primarily to benefit the general public. A certification will be required from the Federal, State, or local government or agency that the particular project is for the public benefit and primarily intended for flood loss reduction to *existing development* in flood areas as opposed to planned flood plain development.

One commentator expressed concern that the proposed rule was not clear in defining payment responsibility. FEMA will bill the entity that prepares the original request. Communities involved in their own review and eventual transmittal of the request to FEMA would not be billed simply because they were the agency transmitting the request.

Two commentators felt the cost for a single-lot conditional LOMA was too high and along with others felt the initial fees in general were excessive. As already explained, the fees were determined through an analysis of the *minimum* processing and review times for the various types of requests and converted to dollar amounts using direct labor rates, overhead, and fee, which FEMA pays for these services.

Other commentators expressed concern that the rule could have the effect of discouraging development because of the fee requirements. It is not the intent of the rule to either discourage development or discourage the submittal of proposed projects for review. Because requestors need FEMA comment on their proposed projects to satisfy other requirements, and only they will benefit from this service, FEMA developed the reimbursement procedure. In this way, the general taxpayer is not paying for FEMA review of a project initiated by a private entity.

The final rule contains the following changes in regard to fees for conditional LOMA and LOMR review from the proposed rule of April 15, 1985:

1. Section 72.1 clarifies that there is no fee requirement for final LOMAs and LOMRs that correct errors in the original FIS and FIRM or are otherwise requested on the basis of existing flood plain conditions.

2. Section 72.4 clarifies the group to be billed and establishes a fee cap for conditional LOMAs and conditional LOMRs that would not be exceeded without written authorization from the requestor. Section 72.4 has also been modified to address the time frame for response by FEMA to a conditional LOMA or conditional LOMR request.

3. Section 72.5 clarifies the conditions by which a Federal, State, or local government or agency would be exempt from the fees.

In addition to the changes discussed above that this final rule made to the proposed rule, a few changes of an editorial nature were also made.

FEMA has determined, based upon Environmental Assessments, that this rule does not have significant impact upon the quality of the human environment. As a result, an Environment Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Two comments questioned the finding that the proposed rule would not have a significant economic impact on a substantial number of small entities. One comment from a State felt that the provisions on probation with a surcharge would have a significant impact on a very great number of communities in that State. One community felt that the proposed rule and, in particular, the probation provision, would have a severe effect on that community, which is a small entity. This community also commented on existing NFIP provisions that were not changed in the proposed rule and, as a result, have no impact for the purposes of this rule. In regard to probation, FEMA's experience has been that most communities are substantially compliant with NFIP criteria. During a typical year, FEMA staff will visit and review the actions of approximately 1,000 of the NFIP's 17,600 participating communities. Generally, less than 10% of these communities will have serious compliance problems and the majority of these problems will be resolved through the provision of technical assistance and through consultation with local officials. It is likely that only a very small number of communities will be on probation at any given time. No community that fulfills its commitment to enforce its flood plain management regulations will be placed on probation. In addition, the NFIP remains a voluntary program. Any community that does not wish to adopt and enforce adequate flood plain management measures as required by the National Flood Insurance Act of 1968 has the option to withdraw from the NFIP. Thus, this rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 1981, and, hence, no regulatory analysis has been prepared.

The collection of information requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

Flood insurance, Flood plains, Intergovernmental relations.

Accordingly, 44 CFR Chapter 1, Subchapter B is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 is revised as set forth below and the authority citations following all the sections in Part 59 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended in the following particulars:

a. By removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE, A99" in the definitions of "Area of special flood hazard" and "Special hazard area".

b. By removing the phrase "or VI–V30" and adding in its place the phrase "V1–30, VE, or V" in the definition of "Area of special flood hazard".

c. By adding after the phrase "V1–30" the phrase ", VE, or V" in the definition of "Coastal high hazard area".

d. By removing the phrase "VI–30," and adding in its place the phase "V1–30, VE, V," in the definition of "Special hazard area".

e. By adding, alphabetically, a definition of "Breakaway wall" to read as follows:

* * * * *

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building of supporting foundation system.

* * * * *

f. By revising the definition of "Elevated Building" to read as follows:

* * * * *

"*Elevated building*" means a non-basement building (i) built, in the case of a building in Zones A1–30, AE, A, A99, A0, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1–30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1–30, AE, A, A99, A0, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1–30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of § 60.3(e)(5).

* * * * *

g. In the definition of " 'Flood' or 'Flooding' ", paragraph (a)(3) is amended by removing "or precipitated by accumulations of water on or under the ground." and adding in its place the phrase "by flooding as defined in paragraph (a)(2) above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.".

h. By removing the phrase "or under" in the first sentence of the definition of "Mudslide.".

§ 59.22 [Amended]

3. Section 59.22 is amended by revising paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) Designate the official responsible to submit a report to the Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Administrator.

* * * * *

4. Section 59.24 is amended by removing paragraphs (b) and (c) and by adding paragraphs (b) through (g) to read as follows:

§ 59.24 Suspension of community eligibility.

* * * * *

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) when the probation is to begin on or after October 1, 1986, shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, an additional premium of $25.00 shall be charged on each such policy initially issued, based upon the submission by the applicant of an application for flood insurance, or renewed, based upon the policyholder's response to a turn-around renewal premium notice or policyholder application notice, during the one-year period beginning on the date the community is placed on probation and during any successive one year periods during which the community remains on probation for any part thereof.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the **Federal Register** under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to

correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the Federal Register under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the Federal Register under Part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if its submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

5. The authority citation for Part 60 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.2 [Amended]

6. Section 60.2 is amended by adding in paragraph (f) after the word "annual" both times it appears the phrase "or bienial".

§ 60.3 [Amended]

7. Section 60.3 is amended in the following particulars:

a. By adding after "FHBM" the phrase "or FIRM" in the following paragraphs: (b) introductory text, (b)(1), (b)(2), (b)(5), and (b)(9).

b. By removing in paragraph (b)(5) the words "For the purpose of the determination of applicable flood insurance risk premium rates within" and adding in their place the word "within".

c. By revising paragraph (b)(8) to read as follows:

* * * * * *

(b) * * *

(8) Require that all mobile homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

* * * * * *

d. By removing in paragraph (c)(1) the word "unnumbered" and adding in its place the phrase ", AE zones,".

e. By adding after the phrase "A1–30" the phrase ", AE" in the following paragraphs: (c)(2) and (c)(3).

f. By revising paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

* * * * * *

(c) * * *

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);

(5) Require that all mobile homes to be placed within Zones A1–30 and AE on the community's FIRM in new mobile home parks and mobile home subdivisions, in expansions to existing mobile home parks and mobile home subdivisions, and in existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, have the lowest floor of the mobile home elevated to or above the base flood level.

(6) Require that all mobile homes to be placed within Zones A1–30 and AE on the community's FIRM, which are not to be placed into a mobile home park or mobile home subdivision, have the lowest floor of the mobile home elevated to or above the base flood level.

* * * * * *

g. By adding after the phrase "A1–30" the phrase "and AE" in paragraph (c)(10).

h. In paragraph (d) by adding after the phrase "A1–30" the phrase "and/or AE" and by removing the phrase "A99 zones and unnumbered" and adding in its place the phrase ", AH zones, A99 zones, and".

i. By removing the phrase "(c)(9)" and adding in its place the phrase "(c)(11)" in paragraph (d)(1).

j. By revising paragraph (e) to read as follows:

* * * * * *

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1–30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating

Zones V1–30, VE, and/or V, the coummunity shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(11) of this section;

(2) Within Zones V1–30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1–30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide that all new construction and substantial improvements in Zones V1–30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval). A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (i) and (ii) of this paragraph.

(5) Provide that all new construction and substantial improvements within Zones V1–30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(ii) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval).

Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(6) Prohibit the use of fill for structural support of buildings within Zones V1–30, VE, and V on the community's FIRM;

(7) Prohibit the placement of mobile homes, except in existing mobile homes parks and mobile home subdivisions, within Zones V1–30, VE, and V on the community's FIRM;

(8) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1–30, VE, and V on the community's FIRM which would increase potential flood damage.

§ 60.6 [Amended]

8. Section 60.6 is amended by adding in (a)(6)(ii) after the word "annual" the phrase "or biennial".

§ 60.22 [Amended]

9. Section 60.22 is amended by adding after the phrase "V1–30" the phrase ", VE, and V" in paragraph (c)(14) and by removing the phrase "and V1–30" and adding in its place the phrase ", AE, V1–30, and VE" in paragraph (c)(15).

PART 61—INSURANCE COVERAGE AND RATES

10. The authority citation for Part 61 is revised as set forth below and the authority citations following all the sections in Part 61 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.3 [Amended]

11. Section 61.3 is amended by adding to the end of the third sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

§ 61.4 [Amended]

12. Section 61.4 is amended by adding paragraph (e) to read as follows:

* * * * *

(e) The policy does not cover loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

§ 61.5 [Amended]

13. Section 61.5 is amended in the following particulars:

a. By revising paragraph (f)(8) to read as follows:

* * * * *

(f) * * *

(8) A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

* * * * *

b. By removing from paragraph (f)(9) the phrase "V1–V30" and adding in its place the phrase "V1–30, VE, and V".

c. By removing from paragraph (f)(10) the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems,".

d. By removing in paragraph (h)(1)(v) the amount "$50.00" and adding in its place the phrase "the minimum premium set forth in § 61.10".

§ 61.6 [Amended]

14. Section 61.6 is amended by revising the chart in paragraph (a) to read as follows:

(a) * * *

	Regular Program		
	Emergency Program 1		
	First layer	Second layer	Total amount available
Single family residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands....	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands.....	50,000	2 150,000	185,000
Other residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands....	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands.....	150,000	3 150,000	250,000
Small business.....	100,000	150,000	250,000
Churches and other properties.....	100,000	100,000	200,000
Contents			
Residential.....	10,000	50,000	60,000
Small business.....	100,000	200,000	300,000
Churches, other properties (per unit).....	100,000	100,000	200,000

1 NOTE: Only first layer available under Emergency Program.
2 NOTE: Add to 35,000.
3 NOTE: Add to 100,000.

* * * * *

§ 61.11 [Amended]

15. Section 61.11 is amended by adding in paragraph (c) after the words "new policy" the words "or added coverage or increase in the amount of coverage".

§ 61.16 [Added]

16. Section 61.16 is added to Part 61 to read as follows:

§ 61.16 Probation additional premium.

The additional premium charged pursuant to § 59.24(b) on each policy sold or renewed within a community that has been placed on probation on or after October 1, 1986, is $25.00.

Appendix A(1) of Part 61—[Amended]

17. Appendix A(1) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. In Article II—Definitions, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

b. In Article II—Definitions, the definition of "Doublewide Mobile Home" is amended by adding after the words "permanent buiding" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

c. In Article II—Definitions, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

d. In Article II—Definitions, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

* * * * *

"Probation additional premium" means a flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

* * * * *

e. In Article III—Losses Not Covered, the opening clause beginning "We only . . ." is amended by adding after the word "by" and before the word "flood" the phrase "or from".

f. In Article III—Losses Not Covered, paragraph A.2 is revised to read as follows:

* * * * *

2. Loss caused (i) by rain, snow, sleet, hail or water spray; or (ii) by freezing, thawing, the pressure or weight of ice or water, sewer backup or seepage of water unless your insured property has been, at the same time, damaged by a flood.

* * * * *

g. In Article III—Losses Not Covered, paragraph A.3 is amended by removing the word "or" between the words "Water" and "moisture" and adding a comma in its place and by adding the phrase "or mudslide (i.e., mudflow)" after the word "moisture".

h. In Article III—Losses Not Covered, paragraph B.1 is amended by adding between the word "of" and the word "sandbags" the phrase "(i)"; by adding between the phrase "with them," and the phrase "for the purpose" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

i. In Article III—Losses Not Covered, paragraph B is amended by adding paragraphs 6 and 7 to the end thereof to read as follows:

* * * * *

6. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physcial damage to power, heating or cooling equipment situated on premises where the insured property is located, caused by the peril insured against.

7. Loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

j. In Article IV—Property Covered, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

k. In Article IV—Property Covered, paragraph C is amended by removing the comma between the word "art" and the word "glass" and by adding a closing parenthesis between the phrase "antique silver" and the following comma.

l. In Article V—Property Not Covered, paragraph B is revised to read as follows:

* * * * *

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982;

* * * * *

m. In Article V—Property Not Covered, paragraph F is amended by removing the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems,".

n. In Article V—Property Not Covered, paragraph H is revised to read as follows:

H. A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

o. In Article V—Property Not Covered, paragraph J is amended by removing the phrase "V1–V30" and adding in its place the phrase "V1–30, VE, and V".

p. In Article VII—Replacement Cost Provisions, paragraph I is added to read as follows:

* * * * *

I. If the community in which your property is located has been converted from the Emergency Program to the Regular during the current policy term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the National Flood Insurance Program at the beginning of the current policy term instead of at the time of loss.

q. In Article VIII—General Conditions and Provisions, paragraph C is amended by adding at the end of the first sentence a sentence to read as follows:

* * * In other words, if you obtain additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then you must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

* * * * *

r. In Article VIII—General Conditions and Provisions, paragraph F.1.e. is revised by removing the amount "$50.00" and adding in its place the phrase "the minimum premium set forth in 44 CFR 61.10".

s. In Article VIII—General Conditions and Provisions, paragraph F.2.(ii)a is amended by removing in the last sentence the comma after the word "year" and adding in its place a closing parenthesis, by removing the closing parenthesis before the semi-colon, and by adding the word "or" after the semi-colon.

t. In Article VIII—General Conditions and Provisions, paragraph O is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

Appendix A(2) of Part 61—[Amended]

18. Appendix A(2) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. That part of the heading of Appendix A(2) that is enclosed in brackets is revised to read as follows:

* * * * *

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

* * * * *

b. In the DEFINITIONS section, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

c. In the DEFINITIONS section, the definition of "Doublewide Mobile Home" is amended by removing the word "an" and adding in its place the word "and" and by adding after the words "permanent building" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

d. In the DEFINITIONS section, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

e. In the DEFINITIONS section, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

* * * * *

"Probation additional premium" means a flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

* * * * *

f. In the PERILS EXCLUDED section, paragraph A is amended by adding a comma between the word "water" and the word "moisture" in item (3).

g. In the PERILS EXCLUDED section, paragraph F is amended by removing the phrase "purpose of sandbags" and adding in its place the phrase "purchase of (i) sandbags"; by adding between the phrase "with them," and the phrase "for the purpose of saving" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

h. In the PERILS EXCLUDED section, paragraph K is added to read as follows:

* * * * *

k. To any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

i. In the PROPERTY COVERED section, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

j. In the PROPERTY COVERED section, paragraph B.1 is amended by removing the semi-colon between the word "description" and the word "furniture" and adding in its place a comma and by adding to the end of paragraph B.1 the following sentence: "Bailees' goods are specifically excluded from coverage under this policy."

k. In the PROPERTY COVERED section, paragraph B is amended by adding paragraph 5 to read as follows:

* * * * *

5. In the case of contents owned by the Insured in a condominium building, as a condominium unit owner, as well as in common with other condominium unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to the Insured as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available under the Act for the insuring of risks of the class (residential, nonresidential, or small business) of the Insured, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

* * * * *

l. In the PROPERTY NOT COVERED section, paragraph B is revised to read as follows:

* * * * *

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982.

* * * * *

m. In the PROPERTY NOT COVERED section, paragraph E is amended by removing the phrase "equipment; and business property." and adding in its place the phrase "equipment.".

* * * * *

n. In the PROPERTY NOT COVERED section, paragraph F is amended by removing the phrase "oil tanks,

furnaces", and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems, furnaces, hot water heaters, clothes washers and dryers, food freezers, air conditioners,".

o. In the PROPERTY NOT COVERED section, paragraph H is revised to read as follows:

A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

p. In the PROPERTY NOT COVERED section, paragraph J is amended by removing the phrase "V1–V30" and adding in its place the phrase "V1-30, VE, and V".

q. In the General Conditions and Provisions section, paragraph C is amended by removing "Insured" in the first sentence and adding in its place "Insurer" and by adding at the end of the first sentence a sentence to read as follows:

* * * * *

In other words, if the Insured obtains additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then the Insured must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

* * * * *

r. In the General Conditions and Provisions section, paragraph E.1.e. is revised by removing the amount "$50.00" and adding in its place the phrase "the minimum premium set forth in 44 CFR 61.10".

s. In the General Conditions and Provisions section, paragraph M is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

t. The IN WITNESS WHEREOF clause and the signature lines appearing after paragraph V of the GENERAL CONDITIONS AND PROVISIONS section and before Endorsement 1 are revised to read as follows:

IN WITNESS WHEREOF, the Insurer has executed and attested these presents.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

19. The authority citation for Part 64 continues to read as set forth below and the authority citations following all the sections in Part 64 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 64.3 [Amended]

20. Section 64.3 is amended in the following particulars:

a. In the chart in paragraph (a)(1) by removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE" and by adding after this amended entry in the chart the following entry:

A99	Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

b. In the chart in paragraph (a)(1) by adding after the "AH" entry the following entry:

V	Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).

c. In the chart in paragraph (a)(1) by adding after the phrase "V1–30" the phrase ", VE" and by adding in this entry in the chart after "flood hazards," the words "with water surface elevations determined and".

d. In the chart in paragraph (a)(1) by adding both after the phrase "B" and after the phrase "C" the phrase ", X".

e. In paragraph (b), by removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE, A99" and by adding after the phrase "V1–30," the phrase "VE, V,".

PART 66—CONSULTATION WITH LOCAL OFFICIALS

21. The authority citation for Part 66 is revised as set forth below and the authority citations following all the sections in Part 66 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 66.1 [Amended]

22. Section 66.1 is amended by removing the phrase "A1–99 and" and adding in its place the phrase "A1–30, AE, AH, AO" and by adding after the phrase "V1–30" the phrase ", and VE".

PART 70—PROCEDURE FOR MAP CORRECTION

23. The authority citation for Part 70 is revised as set forth below and the authority citations following all the sections in Part 70 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§§ 70.1, 70.3, 70.4, and 70.5 [Amended]

24. Part 70 is amended by removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE, AH, A99" in the following sections: §§ 70.1, 70.3(a), 70.4(a), 70.4(b), and 70.5(c).

25. Part 70 is amended by removing the phrase "and V1–30" and adding in its place the phrase ", V1–30, VE, and V" in the following sections: §§ 70.1 and 70.3(a).

26. Part 70 is amended by removing the phrase "or V1–30" and adding in its place the phrase ", V1–30, VE, or V" in the following sections: §§ 70.4(a), 70.4(b), and 70.5(c).

27. Part 72 is added to 44 CFR Chapter 1, Subchapter B to read as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

Sec.

72.1 Purpose of part.
72.2 Definitions.
72.3 Initial fee schedule.
72.4 Submittal/payment procedures and FEMA response.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

Authority: 31 U.S.C. 9701; 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for engineering review and processing associated with the issuance of Conditional Letters of Map Amendment (conditional LOMAs) and Conditional Letters of Map Revision (conditional LOMRs). Final LOMAs and LOMRs granted to correct map deficiencies are not subject to this reimbursement procedure.

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part

59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a Conditional Letter of Map Amendment (conditional LOMA) is FEMA's comment on a proposed project to be located in and affecting only that portion of the area of special flood hazard outside the regulatory floodway and having no impact on the existing regulatory floodway or effective base flood elevations.

(c) For the purpose of this part, a Conditional Letter of Map Revision (conditional LOMR) will be FEMA's comment on a proposed project that would affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway or effective base flood elevations.

§ 72.3 Initial fee schedule.

(a) For conditional Letters of Map Amendment, the initial fee shall be paid by the requestor in the following amounts:

(1) Single-lot	$125
(2) Multi-lot/subdivision	$175

(b) For conditional Letters of Map Revision, the initial fee shall be paid by the requestor in the following amounts:

(1) New bridge or culvert (no channelizstion)	$350
(2) Channel modifications only	$400
(3) Channel modification and new bridge or culvert	$525
(4) Levees, berms, or other structural measures	$675

(c) For projects involving combinations of the above actions which are not separately identified, the initial fee shall be that charged for the most expensive of the actions comprising the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of conditional LOMAs and conditional LOMRs.

(b) Initial fees must be received by FEMA before the review can be initiated for any conditional LOMA or conditional LOMR request.

(c) Following completion of FEMA review for any conditional LOMA or conditional LOMR, the requestor will be billed at the prevailing private sector labor rate (currently $25.00 per hour) for any actual costs exceeding the initial fee incurred during the review.

(1) Requestors of conditional LOMAs will be notified of the anticipated total cost if the total cost of processing their request will exceed $500.

(2) Requestors of conditional LOMRs will be notified of the anticipated total cost if the total cost of processing their request will exceed $1,500.

(3) In the event that processing costs exceed the limits defined in (c)(1) and (2) of this section, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the submittal to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the United States Treasury and must be received by FEMA before the conditional LOMA or conditional LOMR will be issued.

(f) For conditional LOMA requests, FEMA shall:

(1) Notify the requestor within 30 days as to the adequacy of the submittal, and

(2) Within 30 days of receipt of adequate information, provide comment to the requestor on the proposed project.

(g) For conditional LOMR requests, FEMA shall:

(1) Notify the requestor within 60 days as to the adequacy of the submittal, and

(2) Within 90 days of receipt of adequate information, provide comment to the requestor on the proposed project.

§ 72.5 Exemptions.

Federal, state, and local governments and their agencies shall be exempt from fees for projects they sponsor if the requestor certifies that the particular project is for public benefit and primarily intended for flood loss reduction to existing development in identified flood hazard areas, as opposed to planned flood plain development.

§ 72.6 Unfavorable response.

A conditional LOMA or conditional LOMR may be denied or may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the letter contains such comments, concerns, or conditions, or if the letter is denied. A requestor is not entitled to any refund if the requestor is unable to obtain required authorizations, permits, financing, etc., for which the letter was sought.

§ 72.7 Resubmittals.

Any resubmittal of a request more than 90 days after FEMA notification that a request has been denied or after a review has been terminated due to insufficient information or other reasons will be treated as an original submission and subject to all submittal/payment procedures as described in § 72.4, including the initial fee. The procedure of § 72.4 including the initial fee, will also apply if the project has been significantly altered in design or scope other than that necessary to respond to previously issued comments, concerns, or conditions by FEMA.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

28. The authority citation for Part 75 is revised as set forth below and the authority citations following all the sections in Part 75 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§§ 75.1, 75.10, 75.11, and 75.13 [Amended]

29. Part 75 is amended by removing the phrase "M, V, VO" and inserting in its place the phrase "AH, A1–30, AE, A99, M, V, VO, V1–30, VE" in the following sections: §§ 75.1, 75.10, 75.11(a)(4)(twice), 75.11(a)(5), 75.11(a)(7), and 75.13(c).

Dated: August 29, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 85–21009 Filed 9–3–85; 8:45 am]

BILLING CODE 6718–01–M

VOL
50
ISS
171
SE
4
985
UMI

Reader Aids

Federal Register

Vol 50, No. 171

Wednesday, September 4, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
3.....35533

7 CFR
319.....35533
736.....35535
908.....35767
981.....35767
989.....35769
1472.....35772
Proposed Rules:
917.....35828
920.....35828
999.....35564
1135.....35829

9 CFR
Proposed Rules:
77.....35564

14 CFR
39.....35772
108.....35535
Proposed Rules:
39.....35820-35839
71.....35840

16 CFR
Proposed Rules:
13.....35565

20 CFR
Proposed Rules:
295.....35568

21 CFR
74.....35774
81.....35774-35789
82.....35774
177.....35535
510.....35535
558.....35535, 35536
Proposed Rules:
74.....35841
82.....35841
170.....35571

26 CFR
1.....35536, 35540
6a.....35540
602.....35536, 35540
Proposed Rules:
1.....35572
602.....35572

30 CFR
Proposed Rules:
817.....35573

31 CFR
206.....35547

32 CFR
155.....35790

33 CFR
100.....35552-35554
165.....35555
Proposed Rules:
207.....35573

34 CFR
Proposed Rules:
682.....35964
683.....35964

36 CFR
327.....35555

39 CFR
Proposed Rules:
111.....35843

40 CFR
52.....35796
81.....35561
271.....35798
Proposed Rules:
147.....35574
180.....35844

42 CFR
505.....35646
512.....35646

44 CFR
59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

47 CFR
73.....35562, 35799-35800
Proposed Rules:
73.....35574-35581, 35845

48 CFR
15.....35815
52.....35815
914.....35956
915.....35956
952.....35956
Proposed Rules:
549.....35582
552.....35582

49 CFR
Ch. X.....35562
1085.....35563

Proposed Rules:
218.....35636
221.....35636
232.....35640, 35643
571.....35583

50 CFR

20.....35762
32.....35563, 35815
33.....35563
611.....35825
630.....35563
661.....35827
672.....35825
675.....35825

Proposed Rules:
17.....35584

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1985

VOL
50

ISS
171

SE
4

1985

UMI

O L

O

SS

72

E

85

MI

9-5-85
Vol. 50 No. 172

federal register

Thursday
September 5, 1985

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N SEEB RD
ANN ARBOR MI 48106
97

CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L

0

S

2

E

5

MI

9-5-85
Vol. 50 No. 172
Pages 36031-36404

federal register

Thursday
September 5, 1985

Selected Subjects

Administrative Practice and Procedure
Federal Energy Regulatory Commission
Federal Trade Commission
Land Management Bureau

Air Pollution Control
Environmental Protection Agency

Authority Delegations (Government Agencies)
Justice Department

Aviation Safety
Federal Aviation Administration

Communications Equipment
Federal Communications Commission

Endangered and Threatened Species
Fish and Wildlife Service

Government Procurement
General Services Administration

Hunting
Fish and Wildlife Service

Imports
Agriculture Department

Marketing Agreements
Agricultural Marketing Service

Meat Inspection
Food Safety and Inspection Service

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Milk Marketing Orders
Agricultural Marketing Service

Railroads
Interstate Commerce Commission

Satellites
Federal Communications Commission

Endangered and Threatened Species
Fish and Wildlife Service

Food Grades and Standards
Agricultural Marketing Service

Supplemental Security Income (SSI)
Social Security Administration

Contents

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

The President
EXECUTIVE ORDERS
36031 Nicaraguan Humanitarian Aid Office (EO 12530)
36033 Railroad labor dispute, emergency board to investigate (EO 12531)
PROCLAMATIONS
36220 United States-Israel free trade agreement, reductions in U.S. rates of duty

Executive Agencies

Agricultural Marketing Service
RULES
36041 Cucumbers, greenhouse; grade standards
Milk marketing orders:
36043 Southwestern Idaho-Eastern Oregon
PROPOSED RULES
36094 Peeled potatoes; grade standards

Agricultural Stabilization and Conservation Service
NOTICES
Meetings:
36123 National Conservation Review Group

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Food Safety and Inspection Service; Forest Service.
RULES
Import quotas and fees:
36040 Sugar; market stabilization price calculation; interim
36037 Sugar to be re-exported in refined form
NOTICES
36123 Agency information collection activities under OMB review

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
36162 First National Supermarkets, Inc., et al.
National cooperative research notifications:
36162 Bell Communications Research, Inc., et al.

Commerce Department
See also International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.
NOTICES
36123 Agency information collection activities under OMB review (5 documents)

Commodity Futures Trading Commission
RULES
Futures commission merchants:
36049 Customer margin funds
PROPOSED RULES
Registration:
36104 Floor brokers; petition for rulemaking
NOTICES
36180 Meetings; Sunshine Act (7 documents)

Defense Department
See Engineers Corps.

Energy Department
See Federal Energy Regulatory Commission.

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
36135 Des Moines River, IA
36136 Patrick County, VA

Environmental Protection Agency
RULES
36188 Federal contracts, loans, and grants under the Clean Air and Water Acts
NOTICES
Meetings:
36142 Science Advisory Board
Pesticide programs:
36142 Confidential business information; disclosure to Congress
Toxic and hazardous substances control:
36142 Premanufacture exemption approvals

Equal Employment Opportunity Commission
NOTICES
36180, 36181 Meetings; Sunshine Act (2 documents)

Export-Import Bank
NOTICES
Meetings:
36143 Advisory Committee

Federal Aviation Administration
RULES
Airworthiness directives:
36044 Boeing
36045 Lockheed-California
36046 McDonald Douglas
36047 Transition areas
PROPOSED RULES
Airworthiness directives:
36098 Boeing
36097 British Aerospace (4 documents)
36096 Hughes Helicopters, Inc.
36095 Saab-Fairchild Corp.
36102 Short Brothers Ltd.
NOTICES
36177 Exemption petitions; summary and disposition

Federal Communications Commission
RULES
Common carrier services:
36071 Domestic fixed-satellite service; space station licensing
Communications equipment:
36061 Industrial, scientific, and medical equipment; equipment authorization program, etc.

Practice and procedure:
36056 Minority ownership preferences to women; random selection or lotteries
Radio services, special:
36080 Amateur service; White Sands Missile Range prohibitions; correction
NOTICES
36143 Agency information collection activities under OMB review
Hearings, etc.:
36143 Chadwell, Opal, et al.
36145 Roberts, Gerald R., et al.

Federal Deposit Insurance Corporation
NOTICES
36146 Agency information collection activities under OMB review
36181 Meetings; Sunshine Act (2 documents)

Federal Election Commission
NOTICES
36181 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Practice and procedure:
36051 Remedial order appeals; rehearing denied, etc.
NOTICES
Electric rate and corporate regulation filings:
36140 Florida Power Corp. et al.
Hearings, etc.:
36136 Conoco Inc.
36136 Dawson Operating Co., Inc.
36137 Equitable Gas Co.
36137 Houston Pipeline Co. et al.
36138 Southwest Gas Corp. et al.
Natural gas companies:
36139 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend

Federal Home Loan Bank Board
NOTICES
Senior Executive Service:
36146 Bonus awards schedule

Federal Maritime Commission
NOTICES
36147 Agreements filed, etc. (2 documents)

Federal Mine Safety and Health Review Commission
NOTICES
36181 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
36148 Citizens & Southern Georgia Corp. et al.
36151 Colony Bankcorp, Inc.
36149 Community Bancorp, Inc., et al.
36150 RIHT Financial Corp.
Federal Open Market Committee:
36150 Domestic policy directives
Meetings:
36149 Consumer Advisory Council
36182 Meetings; Sunshine Act

Federal Trade Commission
RULES
Procedure and practice rules:
36048 Subpoenas to employees; interim confirmed
NOTICES
36151 Premerger notification waiting periods; early terminations

Fiscal Service
PROPOSED RULES
36115 Surety companies; financial guidelines for qualifications

Fish and Wildlife Service
RULES
Endangered and threatened species:
36089 Maguire daisy
36085 Short's goldenrod
Migratory bird hunting:
36198 Seasons, limits, and shooting hours; establishment, etc.
PROPOSED RULES
Endangered and threatened species:
36118 Toad-flax cress
NOTICES
36157 Marine mammal permit applications

Food and Drug Administration
NOTICES
Human drugs:
36152 Single-entity coronary vasodilators; approval withdrawn

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
36094 Diethylstilbestrol (DES) residues in cattle; ante-mortem inspection

Forest Service
NOTICES
Meetings:
36123 North Kaibab Grazing Advisory Board

General Services Administration
RULES
Acquisition regulations (GSAR):
36080 Competition in contracting requirements

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; Public Health Service; Social Security Administration.

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
36153 September

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service.

International Trade Administration
NOTICES
Countervailing duties:
36129 Carbon steel wire rod from Portugal
36130 Carbon steel wire rod from Singapore

Export privileges, actions affecting:
36128 Behrens, Kurt, et al.
36126 Export trade certificates of review (2 documents)
Scientific articles; duty free entry:
36127 Kansas State University et al.

International Trade Commission
NOTICES
Import investigations:
36158 Apparatus for disintegration of urinary calculi
36157 Cast-iron pipe fittings from Brazil
36157 Convertible rowing exercisers
36158 Floppy disk drives and components
36160 Generalized System of Preferences; eligible articles list, etc.
36158 Natural bristle paint brushes from China
36159 Welded carbon steel pipes and tubes from Taiwan

Interstate Commerce Commission
RULES
Railroad car service orders:
36085 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; track use by various railroads
NOTICES
Railroad operation, acquisition, construction, etc.:
36161 Missouri-Kansas-Texas Railroad Co. et al. (2 documents)
Railroad services abandonment:
36161 Southern Railway Co. et al.

Justice Department
See also Antitrust Division; Prisons Bureau.
RULES
Organization, functions, and authority delegations:
36054 Associate Attorney General
NOTICES
Pollution control; consent judgments:
36167 Columbus Coated Fabrics
36167 General Motors Corp.
36167 Texaco, Inc.

Land Management Bureau
RULES
Administrative procedures:
36055 New Mexico State Office; jurisdiction over public lands in Kansas
NOTICES
Exchange of lands:
36156 Montana
Sale of public lands:
36154 Nevada
Survey plat filings:
36154, 36155 Colorado (2 documents)
36155 Montana
36158 Washington

Maritime Administration
NOTICES
Applications, etc.:
36177 Farrell Lines Inc.
36178 Lykes Bros. Steamship Co., Inc.
36178 United States Lines, Inc.

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
36156 Amoco Production Co.
36157 ODECO Oil & Gas Co.

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
36168 Project Galileo

National Bureau of Standards
NOTICES
National Fire Codes:
36131 Fire safety standards revision; inquiry
36132 Technical Committee reports; inquiry

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
36084 Occupant crash protection; automatic restraint system (airbags, etc.); petitions for reconsideration; responses; correction

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
36092 Ocean salmon off coasts of Washington, Oregon, and California (2 documents)
NOTICES
Meetings:
36133 Pacific Fishery Management Council
Permits:
36133 Marine mammals (2 documents)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
36169 Commonwealth Edison Co.
36170 Gulf States Utilities et al.
Environmental statements; availability, etc.:
36169 Plateau Resources Ltd.
36168 Export and import license applications for nuclear facilities or materials
36182 Meetings; Sunshine Act

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer pension plans; substantial damage determination requests:
36171 DeHart Motor Lines, Inc., et al.

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
36168 Federal Correctional Facility, Cumberland County, NJ

Public Health Service
NOTICES
Meetings; advisory committees:
36153 October

Railroad Retirement Board
NOTICES
36172 Agency information collection activities under OMB review
36182 Meetings; Sunshine Act

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
36116 Natural and other gas transportation; maximum allowable operating pressure; advance notice

Revenue Sharing Office
RULES
Financial assistance to local governments:
36055 Audit requirements for local governments; interim; correction

Securities and Exchange Commission
NOTICES
Applications, etc.:
36175 National Fuel Gas Co. et al.
36173 Wal-Mart Stores, Inc.
36183 Meetings; Sunshine Act
Self-regulatory organizations:
36173 Regulatory responsibilities plan; Midwest Stock Exchange, Inc. and Cincinnati Stock Exchange, Inc.
Self-regulatory organizations; proposed rule changes:
36176 Options Clearing Corp.

Social Security Administration
PROPOSED RULES
Supplemental security income:
36108 Eligibility, etc.; prorating monthly benefit payments

Synthetic Fuels Corporation
NOTICES
36183 Meetings; Sunshine Act

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man made textiles:
36134 Philippines
Textile consultation; review of trade:
36135 Korea
36134 Malaysia; correction

Transportation Department
See Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See Fiscal Service; Revenue Sharing Office.

United States Information Agency
NOTICES
Meetings:
36179 Public Diplomacy, U.S. Advisory Commission

Veterans Administration
NOTICES
Meetings:
36179 Educational Allowances Station Committee
36179 Women Veterans Advisory Committee

Separate Parts in This Issue

Part II
36188 Environmental Protection Agency

Part III
36198 Department of the Interior, Fish and Wildlife Service

Part IV
36220 The President, proclamation

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
11888 (Amended by Proc. 5365)....36220
12530....36031
12531....36033
Proclamations:
4707 (Amended by Proc. 5365)....36220
4768 (Amended by Proc. 5365)....36220
5133 (Amended by Proc. 5365)....36220
5142 (Amended by Proc. 5365)....36220
5291 (Amended by Proc. 5365)....36220
5305 (Amended by Proc. 5365)....36220
5308 (Amended by Proc. 5365)....36220
5365....36220

7 CFR
6 (2 documents)....36037, 36040
51....36041
1135....36043
Proposed Rules:
52....36094

9 CFR
Proposed Rules:
309....36094

14 CFR
39 (3 documents)....36044–36046
71....36047
Proposed Rules:
39 (8 documents)....36095–36102

16 CFR
4....36048

17 CFR
1....36049
Proposed Rules:
1....36104
3....36104

18 CFR
385....36051

20 CFR
Proposed Rules:
416....36108

28 CFR
0....36054

31 CFR
51....36055
Proposed Rules:
223....36115

40 CFR
15....36188

43 CFR
1820....36055

47 CFR
Ch. I....36056
0....36061
2....36061
18....36061
25....36071
97....36080

48 CFR
501....36080
502....36080
504....36080
505....36080
506....36080
507....36080
509....36080
510....36080
514....36080
515....36080
525....36080
536....36080
549....36080

49 CFR
571....36084
1033....36085
Proposed Rules:
192....36116

50 CFR
17 (2 documents)....36085, 36089
20....36198
661 (2 documents)....36092
Proposed Rules:
17....36118

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

Presidential Documents

Title 3—

The President

Executive Order 12530 of August 29, 1985

Establishment of Nicaraguan Humanitarian Assistance Office

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 722 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83) (the Act), Chapter V of the Supplemental Appropriations Act, 1985 (Public Law 99–88) (the Supplemental Act), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et. seq.*) (the FAA), including but not limited to sections 621, 632, and 633 thereof (22 U.S.C. 2381, 2392, 2393), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established the Nicaraguan Humanitarian Assistance Office (the Office).

(b) The Office shall, unless otherwise extended, terminate on April 1, 1986, or one week following completion of disbursement of the funds made available under section 722(g) of the Act by Chapter V of the Supplemental Act, whichever date is later.

Sec. 2. *Functions.* The Office shall, in accordance with the FAA, section 722(g) of the Act, Chapter V of the Supplemental Act, and the provisions of this Order, administer the program of humanitarian assistance to the Nicaraguan democratic resistance authorized thereunder. The Office may, to the extent permitted by law and the provisions of this Order, enter into such grant agreements and contracts and take such other actions as may be necessary to implement the program effectively.

Sec. 3. *Policy guidance.* In accordance with the FAA, and to the end that such programs and activities are effectively integrated with and supportive of the foreign policy of the United States, the Secretary of State shall be responsible for the continuous supervision and general direction of the programs and activities carried out by the Office.

Sec. 4. *Administration.* (a) At the head of the Office there shall be a Director, who shall be an officer of the United States designated by the President. The Director shall exercise immediate supervision and direction over the Office.

(b) The Director may, to the extent permitted by law, including but not limited to section 621 of the FAA (22 U.S.C. 2381), employ such staff from Federal agencies as may be necessary, except that the staff shall be limited to twelve supervisory personnel, plus appropriate support personnel. No personnel from the Department of Defense or the Central Intelligence Agency may be detailed or otherwise assigned to the Office.

(c) The Secretary of State shall provide the Office with such administrative services, facilities, and other support as may be necessary for the performance of its functions. Funds made available under section 722(g) of the Act by Chapter V of the Supplemental Act shall be provided to the Office through the Department of State.

(d) At the request of the Director, and to the extent otherwise permitted by law, the agencies of the Executive Branch shall provide such information, advice, additional administrative services, and facilities as may be necessary for the fulfillment of the Office's functions under this Order.

Sec. 5. *Classification Authority.* In accordance with section 1.2(a)(2) of Executive Order No. 12356 of April 2, 1982, the Director is hereby designated as an

agency official with authority to classify information originally as Top Secret. The Director shall ensure that the Office establishes and maintains controls for the safeguarding of classified information as provided in part 4 of that Order.

Sec. 6. *Delegation of Functions.* Subject to the provisions of this Order and Executive Order No. 12163 of September 29, 1979, as amended, and to the extent necessary to the efficient and effective implementation of this Order, there are hereby delegated to the Director the functions conferred upon the President (and not reserved to him) by sections 632(a) and 635(b) of the FAA and other provisions of that Act (including but not limited to those set forth in Part III of the FAA) that relate directly and necessarily to the conduct of the programs and activities vested in or delegated to the Director.

Sec. 7. *Procurement.* (a) In accordance with the provisions of section 633 of the FAA (22 U.S.C. 2393), it is hereby determined to be in furtherance of the purposes of the FAA that the functions authorized thereunder, as set forth in section 2 of this Order, may be performed by the Director without regard to the provisions of law and limitations of authority specified in Executive Order No. 11223 of May 12, 1965, as amended.

(b) It is directed that each specific use of the waivers of statutes and limitations of authority authorized by this section shall be made only when determined in writing by the Director that such use is necessary to the efficient and effective implementation and in furtherance of the purposes of this Order and in the interest of the United States.

Sec. 8. *Reports.* The Director shall assist the President in preparing the reports required by section 722(j)(2) of the Act, including a detailed accounting of the disbursements made to provide humanitarian assistance with the funds provided pursuant to section 722(g) of the Act. The Director shall keep the President informed about the implementation of the program.

Ronald Reagan

THE WHITE HOUSE,
August 29, 1985.

[FR Doc. 85-21299
Filed 9-3-85; 2:25 pm]
Billing code 3195-01-M

Editorial note: For the President's statement of Aug. 29 on the establishment of the Nicaraguan Humanitarian Assistance Office, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 1015).

Presidential Documents

Executive Order 12531 of August 30, 1985

Establishing an Emergency Board To Investigate a Dispute Between the United Transportation Union and Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference

A dispute exists between the United Transportation Union and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference designated on the list attached hereto and made a part hereof.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

This dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by Section 10 of the Act, as amended (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is hereby established, effective August 30, 1985, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days from the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 10 of the Act, as amended, from the date of the creation of the board and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the carriers or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
August 30, 1985.

RAILROADS
Akron & Barberton Belt Railroad Company
Alameda Belt Line Railway
Alton & Southern Railway Company
Atchinson, Topeka and Santa Fe Railway Company
Atlanta & Saint Andrews Bay Railway Company

Bessemer and Lake Erie Railroad Company
Burlington Northern Railroad Company
Canadian National Railways—St. Lawrence Region, Lines in the United States
Canadian Pacific Limited
Central of Georgia Railroad Company
The Chessie System:
Baltimore and Ohio Railroad Company
Baltimore and Ohio Chicago Terminal Railroad Company
Chesapeake and Ohio Railway Company
Toledo Terminal Railroad Company
Chicago & Illinois Midland Railway Company
Chicago and North Western Transportation Company
Chicago and Western Indiana Railroad Company
Chicago South Shore and South Bend Railroad
Chicago Union Station Company
Columbia & Cowlitz Railway Company
Davenport, Rock Island and North Western Railway Company
Denver and Rio Grande Western Railroad Company
Des Moines Union Railway Company
Duluth, Missabe and Iron Range Railway Company
Duluth, Winnipeg & Pacific Railway Company
Elgin, Joliet and Eastern Railway Company
Galveston, Houston and Henderson Railroad Company
Grand Trunk Western Railroad Company
Houston Belt and Terminal Railway Company
Illinois Central Gulf Railroad
Kansas City Southern Railway Company
Louisiana & Arkansas Railway Company
Kansas City Terminal Railway Company
Lake Superior Terminal & Transfer Railway Company
Lake Terminal Railroad Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
McKeesport Connecting Railroad Company
Meridian & Bigbee Railroad
Milwaukee Road Inc., The
Minnesota, Dakota & Western Railway Company
Minnesota Transfer Railway Company
Mississippi Export Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company
Monogahela Railway Company
Montour Railroad Company
Newburgh and South Shore Railway Company
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk and Western Railway Company
Oakland Terminal Railway
Ogden Union Railway and Depot Company
Oklahoma, Kansas and Texas Railroad Company
Peoria and Pekin Union Railway Company
Pittsburgh and Lake Erie Railroad
Pittsburgh, Chartiers & Youghiogheny Railway Company
Portland Terminal Railroad Company
Port Terminal Railroad Association
Richmond, Fredericksburg and Potomac Railroad Company

Sacramento Northern Railway Company
St. Joseph Terminal Railroad Company
St. Louis Southwestern Railway Company

Seaboard System:
Seaboard System Railroad:
Seaboard Coast Line Railroad (former)
Louisville and Nashville Railroad (former)
Georgia Railroad (former)
Clinchfield Railroad
Atlanta and West Point Railroad—Western Railway of Alabama

Soo Line Railroad Company
Southern Pacific Transportation Company—
Western Lines
Eastern Lines
Southern Railway Company—
Alabama Great Southern Railroad Company
Atlantic East Carolina Railway Company
Cincinnati, New Orleans and Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
New Orleans Terminal Company
St. Johns River Terminal Company
Spokane International Railroad Company
Terminal Railroad Association of St. Louis
Texas Mexican Railway Company
Union Pacific Railroad Company
Western Pacific Railroad Company
Wichita Terminal Association
Yakima Valley Transportation Company
Youngstown & Southern Railway Company

[FR Doc. 85-21298
Filed 9-5-85: 3:28 pm]
Billing code 3195-01-M

Editorial note: For the White House announcement of Aug. 30 on the establishment of the emergency board, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 1017).

L

0

S

2

E

5

11

Rules and Regulations

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Licenses for Importation of Sugar To Be Re-Exported in Refined Form

AGENCY: Office of the Secretary, Department of Agriculture.
ACTION: Final rule.

SUMMARY: This rule amends the regulations which govern the licensing of sugars which are imported exempt from the import quotas on sugars, sirups, and molasses as modified by Presidential Proclamation No. 4941 of May 5, 1982, in order to be re-exported in refined form. License holders will be required to submit additional proof of export documentation; to certify that the sugar they are seeking credit for has in fact been exported; to designate third parties who act as exporting agents; and to increase the liquidated damages that may be assessed for failure to re-export sugar. The amendments are necessary to provide additional safeguards in the administration of the sugar re-export program.

DATE: Effective on October 7, 1985.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Room 6091, South Building, Foreign Agricultural Service, Department of Agriculture, 12th & Independence Avenue, SW., Washington, D.C. 20250. Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the final rule will not have any of the effects specified in those documents.

The Administrator, Foreign Agricultural Service (FAS), certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are not a substantial number of small entity participants in the program. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An assessment of the impact on the enviroment of this final rule has been completed. It has been determined that this action will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this final rule. An environmental assessment is available for review in Room 6091, South Building, USDA, during normal business hours.

The paperwork requirements imposed by this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and have been given OMB approval number 0551–0015.

Imports of sugar are currently subject to quotas, determined in accordance with Presidential Proclamation No. 4941, which limit the amount of sugar which may be entered, or withdrawn from warehouse, for consumption into the customs territory of the United States. Presidential Proclamation No. 5002 of November 30, 1982, in part, authorizes the Secretary of Agriculture to issue licenses for the entry of sugar exempt from these quotas on the condition that the sugar be re-exported in refined form.

On June 28, 1983, the Department of Agriculture published "Regulations Governing Licenses for Importation of Sugar to be Re-exported in Refined Form," 7 CFR 6.100–6.112 (48 FR 29824), which implement this provision of Presidential Proclamation No. 5002. The regulations established procedures and requirements designed to ensure that the quantity of sugar which is imported into the customs territory of the United States free of quota does not exceed the equivalent adjusted quantity of refined sugar which is exported from the customs territory of the United States pursuant to the regulations. Proposed amendments to these regulations were published in the **Federal Register** on July 24, 1984 (49 FR 29801).

Generally, the proposed amendments are intended to cover the use of agents to export refined sugar and to increase the amount of liquidated damages that may be assessed against the license holder and/or the license holder's agent in the event of the license holder's failure to export refined sugar as required. One proposed amendment would add a new paragraph (b) to § 6.105 to prohibit the license holder from using a third party to export refined sugar under the program unless the license holder designates this third party as the license holder's agent for the purposes of exporting that sugar

A second proposed amendment would amend § 6.106(a)(1)(iv) by adding a requirement that the license holder certify to the Licensing Authority that the quantity of refined sugar for which the license holder is seeking credit has been exported from the customs territory of the United States. It should be noted that, where an agent is used to export sugar under the program, the license holder is liable for the actions of the agent and is responsible for ensuring that the entire export transaction occurs properly.

A third proposed amendment would amend § 6.106(a)(2) to require that, in order for the license holder to establish proof of export, the license holder must submit a U.S. Customs document bearing an original certification by a U.S. Customs official at the port of export, which identifies the license holder and which states that the quantity of refined sugar specified on the document is being exported from the customs territory of the United States. It is expected that exporters will use U.S. Customs form 7512 "Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit" for this purpose. Additional documentation would be required if the license holder uses an agent to export the refined sugar. This would include a letter from the license holder to the Licensing Authority stating that the license holder has designated such person as the license holder's agent for purposes of exporting that sugar and a certification by the agent to the Licensing Authority stating that the agent has exported the sugar from the U.S. customs territory on behalf of the particular license holder.

A fourth amendment would amend § 6.107 by adjusting the amount of the bond required for the entry of sugar exempt from quota. The use of the Number 12 price in calculating the amount of the bond has been eliminated because the New York Coffee, Sugar

and Cocoa Exchange is discontinuing its reporting of the Number 12 price. Therefore, it is necessary to substitute the Market Stabilization Price (MSP) (as announced by the Secretary for that fiscal year under §§ 6.300—6.302 of this title) for the Number 12 price. The bond requirement will be three times the difference between the Market Stabilization Price and the daily "spot" price of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange.

A fifth amendment would amend § 6.110(a) to provide that when a license holder designates an agent to export refined sugar under the program, both the license holder and the agent may be held liable for the failure to export refined sugar. The Licensing Authority could assess the license holder and/or the agent designated by the license holder under the program liquidated damages up to three times the difference, in cents per pound, between the Market Stabilization Price and the daily "spot" price of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, times the quantity of sugar, raw value, determined by the Licensing Authority that should have been, but was not, exported under the program if the bond had been released under § 6.107. The Licensing Authority could, under a new § 6.110(b)(2), deny credit to a license holder for exports made by an agent if the Licensing Authority determines that the agent had rendered a false or incorrect certification (under § 6.106(a)) that sugar had in fact been exported from the U.S. customs territory.

A sixth amendment would add a new § 6.110(d), which makes it explicit that false, fictitious or fraudulent certifications by license holders or agents would be subject to civil and criminal laws of the United States, including fines of up to $10,000 and imprisonment of up to 5 years, or both, as provided under 18 U.S.C. 1001.

The Administrator, FAS, has found that there is good cause for not delaying the effective date of §§ 6.107 and 6.110 because the New York Coffee, Sugar & Cocoa Exchange has discontinued its reporting of the Number 12 contract price.

Discussion of Comments and Proposed Revisions

Six written comments from five refiners participating in the program were submitted in response to the proposed amendments and are available for inspection. All of the comments were considered in preparing the final rule. The written comments of four refiners supported stricter requirements for the re-export of sugar. Comments focused on several provisions of the proposed amendment, including: additional documentation required for proof of export; the time required for submitting proof of export documentation; the amount of the liquidated damages for failure to export a quantity of sugar corresponding to an import; the liability of persons for wrong-doing under the program and the additional certification required for use of an agent to export.

Specific Comments To Proposed Amendments

Section 6.106(a): Proof of Export.

One comment suggested an additional requirement specifying that the U.S. Customs document identify the license holder who will receive credit for the export covered by the document. It is felt that this suggestion will provide an additional safeguard against duplication of documents. Thus, we have adopted this suggestion by revising § 6.106(a)(2)(ii) to require that the license holder be identified on the U.S. Customs document.

One comment suggested that the license holder should not be placed in a position to certify that refined sugar has, in fact, been exported. This suggestion was not adopted. The intent of the program is to ensure that non-quota sugar entering the United States is re-exported. Whenever a license holder imports a quantity of sugar into the United States, the license holder must be responsible for the re-export of refined sugar even if an agent is designated to re-export the refined sugar.

Another comment suggested that the U.S. Customs document become the sole documentation necessary to receive credit under the program. This suggestion was not adopted. It is felt that a U.S. Customs document of the type required in § 6.106(a)(2)(ii) is necessary to supplement information found in proof of export documentation currently required by the regulation. It is not intended to replace that documentation.

One comment noted that U.S. Customs Form 7512 is not always the form used to verify an export. The regulations do not specifically require use of U.S. Customs Form 7512. However, arrangements have been made with the U.S. Customs Service to have U.S. Customs Form 7512 available for use with all exports under this program.

One comment suggested "the grandfathering through the end of 1985 of all existing contracts between license holders/refiners and their customers calling for export of sugar from the United States." This suggestion was not adopted. Credit will be granted only to refiners and agents able to comply with the regulations. It is felt adequate adjustment time is provided before the regulation becomes effective, and therefore it should not unduly interfere with the business proceedings of refiners and agents. Further, Customs agents are prepared for the additional documentation required.

Time Requirement Within Which Proof of Export Must Be Submitted

Three comments suggested an extension of the 30 working day time limit within which proof of export must be submitted. Two comments suggested an extension to 60 working days and the third comment did not specify the length of the extension.

In reviewing this suggestion, we were assured by U.S. Customs officials that 30 working days is a reasonable amount of time within which to submit a Customs document. It is the responsibility of the exporter to present the form to the U.S. Customs Service and the exporter may do so any time after an export. U.S. Customs agents have been instructed to certify the form at the time it is presented. Thus, these suggestions were not adopted.

Section 6.110: Enforcement.

Two comments suggested that the proposed amendment be amended to clarify that the liquidated damages which would be assessed for failure to export refined sugar corresponding to the sugar imported will be up to three times the difference in price on whichever of the eligible days for determining the difference between the daily "spot" price of the Number 11 contract and the MSP produces the greatest differential. These comments have been adopted in the revised § 6.110(a).

One comment suggested that the regulation should state "that the Licensing Authority may hold the license holder and/or such agent liable for any amount it determines appropriate, not to exceed the 'treble damage amount'." The comment also suggested that the regulation "should at least state that the Licensing Authority is not required to impose any penalty if, in his opinion, the violation is not intentional." It is believed that the language of the regulation is sufficiently flexible to allow the Licensing Authority to determine the amount of the liquidated damages. The regulations state that the Licensing Authority may assess the license holder and/or agent

"up to three times the difference" between the Market Stabilization Price and the daily "spot" price of the Number 11 contract on either of the designated days. Thus this suggestion was not adopted.

One comment suggested imposing "criminal penalties on any party directly responsible for the preparation of false, fictitious or fraudulent documents . . . in connection with the re-export program." This comment was not adopted because criminal penalties are provided by statute, not by these regulations. These regulations do not in any way alter the scope or application of the existing criminal laws of the United States.

Three comments suggested that the agent should post a performance bond to safeguard against an agent's failure to adhere to the regulations. It is felt that this matter should be between the license holder and the party designated as the license holder's agent. Individual license holders are free to require their agents to post performance bonds. However, the Department of Agriculture will not do so. Agents are not licensed under the program and their involvement is strictly on behalf of the license holder. Thus, these suggestions were not adopted.

List of Subjects in 7 CFR Part 6

Documentation, Exports, Foreign trade, Imports, Licenses, Quotas, Sugar. Accordingly, 7 CFR Part 6 is amended as follows:

1. The authority citation for §§ 6.100–6.113 continues to read as follows:

Authority: Presidential Proclamation No. 5002, 47 FR 54289.

2. The table of contents for §§ 6.100 through 6.112 is amended by:

(a) Revising the entry for § 6.105 to read as follows:

§ 6.105 Use of an agent.

(b) Adding at the end a new entry to read as follows:

§ 6.113 Paperwork Reduction Act Assigned Number.

3. Section 6.105 is revised to read as follows:

§ 6.105 Use of an Agent.

(a) In those cases where entry of sugar is made by an agent of the license holder, the agent shall produce for inspection by the appropriate U.S. Customs official a written authorization by the license holder designating such person to act as an agent for the license holder for the purpose of entering sugar.

(b) The license holder may not use a third party to export the refined sugar under this program unless the license holder designates the third party as the license holder's agent for purposes of exporting that sugar.

4. Section 6.106 is amended by revising paragraph (a)(1)(iv) and paragraph (a)(2) to read as follows:

§ 6.106 Proof of Export.

(a) * * *

(1) * * *

(iv) The date of exports, point of export, identification of the vessel, railroad or other means of export, and a statement by the license holder that such sugar has been exported from the customs territory of the United States;

* * * * *

(2) *Documentation.* (i) A copy of the on-board bill of lading or intermodal bill of lading with an on-board date or, if exported by land, an authenticated landing certificate or similar document issued by an official of the importing country. The document could include a foreign official's stamp and/or certification on a U.S. document.

(ii) A copy of a U.S. Customs Service document acceptable to the Licensing Authority, bearing an original certification by a U.S. Customs Service official at the port of export, on which it is stated that the quantity of refined sugar specified thereon is being exported from the customs territory of the United States. The license holder making the export must be identified on the U.S. Customs Service document.

(iii) If the license holder has used an agent to export the refined sugar, a letter from the license holder to the Licensing Authority stating that the license holder has designated such person as the license holder's agent for that export, and a certification from the agent to the Licensing Authority stating that the agent has exported the quantity of sugar from the customs territory of the United States on behalf of the license holder.

* * * * *

5. Section 6.107, paragraph (c) is revised to read as follows:

§ 6.107 Bond requirements.

* * * * *

(c) The amount of the bond for the entry of sugar exempt from quota shall be equal to three times the difference between the Market Stabilization Price in effect for the appropriate period as announced by the Secretary under §§ 6.300–6.302 of this title and the daily "spot" price of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, multiplied by the weight of the sugar entered under license. If no daily "spot" price of the Number 11 contract is recorded for one or more of these market days, then the Licensing Authority may use such price as he/she deems appropriate. In the case of a single entry bond, the difference between the Market Stabilization Price and the daily "spot" price of the Number 11 contract shall be computed as of the last market day before the execution of the bond. In the case of term bonds, the difference between the Market Stabilization Price and the daily "spot" price of the Number 11 contract shall be computed quarterly based on the average price difference during the 20 consecutive market days preceding the 20th day of the month preceding the calendar quarter.

* * * * *

6. Section 6.110 is revised to read as follows:

§ 6.110 Enforcement.

(a) If at any time after receiving the proof of export described in § 6.106 of this subpart, the Licensing Authority determines that an export of refined sugar corresponding to the amount of sugar entered under the license did not occur, and if the bond has been released under § 6.107, the Licensing Authority may assess liquidated damages against the license holder or, where the license holder has designated an agent to export such sugar under the program, against the license holder and/or such agent. The liquidated damages may be up to three times the difference between the Market Stabilization Price announced by the Secretary for that fiscal year under §§ 6.300–6.302 of this title and the daily "spot" price of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange times the amount of sugar, raw value, that should have been, but was not, exported. For the purposes of determining that daily "spot" Number 11 contract price, the Licensing Authority may select either the last market day before the entry of the corresponding sugar or the last market day before the end of the three month period, whichever results in the greatest differential between the two prices. If no "spot" Number 11 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange for the relevant market day, then the Licensing Authority may use such price as he or she deems appropriate.

(b)(1) If at any time the Licensing Authority determines that a license holder has failed to comply with the requirements of this subpart, the Licensing Authority may, after notice to the license holder, suspend for up to two years or revoke the license issued to the license holder pursuant to this subpart and/or refuse to issue future licenses to that license holder for a length of time not to exceed two years.

(2) If at any time the Licensing Authority determines, after notice and opportunity for an informal hearing, that an agent designated by a license holder to export a quantity of refined sugar under this program has rendered false or incorrect certification under § 6.106(a)(2)(iii), the Licensing Authority may refuse to grant credits to the license holder for exports made through that agent subsequent to the date of such determination for a length of time not to exceed two years.

(c) The determination of the Licensing Authority under paragraphs (a) and (b) may be appealed to the Director, Horticultural and Tropical Products Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days from the date of notification. The appeal shall be presented in writing specifically stating any reason as to why such determination should not stand. The Director, Horticultural and Tropical Products Division, FAS, U.S. Department of Agriculture, Washington, D.C. 20250, will provide such person with an opportunity for an informal hearing on such matter. An appeal may be made from the decision of the Director, Horticultural and Tropical Products Division, FAS, to the Administrator, FAS, U.S. Department of Agriculture, Washington, D.C. 20250, within five working days of receipt of the notification of the Director's decision. The Licensing Authority may take action under subsection (b) during the pendency of any appeal.

(d) False, fictitious or fraudulent certifications submitted to the Licensing Authority by either license holders or agents designated by license holders to participate in this program may subject the license holders or the agents to penalties and sanctions under the civil and criminal laws of the United States.

7. Section 6.111 is revised to read as follows:

§ 6.111 Waiver.

Under unusual, unforeseen or extraordinary circumstances, the Secretary may extend the three month period for the re-export of sugar or may temporarily increase the maximum amount of the license.

8. A new § 6.113 is added which reads as follows:

§ 6.113 Paperwork Reduction Act Assigned Number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and OMB Number 0551–0015 has been assigned.

Signed at Washington, D.C., on August 28, 1985.

Leo V. Mayer,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 85–21070 Filed 8–30–85; 2:14 pm]

BILLING CODE 3410–10–M

---

7 CFR Part 6

Calculation of the Market Stabilization Price

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: This rule sets forth terms and conditions for calculating a market stabilization price for sales of raw sugar. A market stabilization price is needed in administering various licensing programs for the entry of sugar exempt from import quotas.

EFFECTIVE DATE: September 5, 1985. In order to be assured of consideration, comments must be received no later than November 4, 1985.

ADDRESS: Mail comments to Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6093, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Telephone (202) 447–2916.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the final rule will not have any of the effects specified in those documents.

The Secretary of Agriculture certifies that this interim rule will not have a significant economic impact on a substantial number of the small entities involved. The economic impact will be minimal because the current procedure for program administration remains unchanged. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An assessment of the impact on the environment of this interim rule has been completed. It has been determined that this action will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this interim rule. An environmental assessment is available for review in Room 6091, South Building, USDA, during normal business hours.

The Department of Agriculture currently operates several programs to license the importation of sugar exempt from the import quota for sugar under Presidential Proclamation No. 5002 (47 FR 54289). Under those programs, license holders are required to post a bond in connection with use of their licenses. The amount of that bond in some cases is determined in part by a price called the Market Stabilization Price.

Presidential Proclamation No. 5164 of March 21, 1984, in part established the terms and conditions for calculating and using the market stabilization price (MSP). Since the MSP provisions of Proclamation No. 5164 have been suspended by Presidential Proclamation No. 5313 of March 29, 1985, it is necessary to make other arrangements for calculating the MSP. This rule provides for the calculation of the MSP by the Secretary of Agriculture. The MSP calculation under this rule is the same as the MSP calculation under Proclamation No. 5164.

Since this rule is needed immediately to calculate the amount of the bond required for entry of sugar under license and liquidated damages under the several programs, the Secretary of Agriculture has determined that there is good cause not to apply the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date. However, any comments received within 60 days after the date of publication of this rule will be considered in adopting a final rule.

List of Subjects in 7 CFR Part 6

Bonds, Exports, Foreign trade, Imports, Licenses, Quotas, Sugar.

Accordingly, 7 CFR Part 6 is amended by adding the following center heading and §§ 6.300, 6.301 and 6.302:

PART 6—IMPORT QUOTAS AND FEES

Calculation of Market Stabilization Price

Sec.
6.300 Definitions.
6.301 Applicability.
6.302 Adjustments.

Authority: Presidential Proclamation No. 5002, 47 FR 54289.

Calculation of Market Stabilization Price

§ 6.300 Definitions.

(a) "Market Stabilization Price" (MSP) means the sum of (1) the price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average

transportation costs; (3) interest costs, if applicable, and (4) 0.2 cent. The adjusted average transportation costs shall be the weighted average cost of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast points, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable if a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the U.S. Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority may hereafter be delegated to act in the Secretary's place.

§ 6.301 Applicability.

Any Market Stabilization Price calculated by the Secretary shall be published in the **Federal Register** and shall be effective no earlier than the date of publication. A Market Stabilization Price so published will remain effective until terminated, suspended or modified by the Secretary in a subsequent publication in the **Federal Register.**

§ 6.302 Adjustments.

If the Secretary determines that there is a significant change in any one or more of the elements comprising the Market Stabilization Price then in effect, the Secretary shall adjust the Market Stabilization Price to reflect that change.

Signed at Washington, D.C., on July 11, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-20720 Filed 8-30-85; 2:14 pm]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Greenhouse Cucumbers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary U.S. Standards for Grades of Greenhouse Cucumbers. Industry requested that the standards be revised to bring them in line with current cultural and marketing practices. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

EFFECTIVE DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

This revision makes the following changes and additions:

—Deletes maturity requirements from all grades. The original standards required the cucumbers to be sufficiently mature for slicing purposes but not full-grown or ripe. Hybridization has eliminated the need for this requirement.

—Establishes a definition for "Injury" by specific defects for the U.S. Fancy grade.

—Includes "Clean," defined as "practically free from dirt or other foreign material," as the minimum cleanness requirement for all grades. The original standards required the U.S. Fancy and U.S. No. 1 grades to be free from "Damage" caused by dirt and U.S. No. 2 free from "Serious Damage."

—U.S. Fancy grade cucumbers will be required to be free from cuts and the U.S. No. 1 and U.S. No. 2 grades to be free from unhealed cuts. The original standards required cucumbers to be "free from unhealed cuts" in the U.S. Fancy and U.S. No. 1 grades and the U.S. No. 2 grade to be free from serious damage by cuts.

—The minimum length, unless otherwise specified, will be not less than 11 inches for all grades. The minimum length in the original standards was 5½ inches for the U.S. Fancy grade and, unless otherwise specified, 5½ inches for the U.S. No. 1 grade.

—The "Standard Pack" section will be redefined to reflect current packing practices.

—Includes definitions for "Permanent defects" and "Condition defects."

—Updates the format of the standards.

A proposal to revise these standards was published in the **Federal Register** on July 1, 1985 (50 FR 27004-27006). Copies were widely distributed to interested growers and industry organizations for review and comment.

Written comments were received from eighteen industry members during the comment period which ended on July 31, 1985. All respondents agreed with the proposal and urged its adoption as a final rule.

After careful review of comments presented by interested persons, the U.S. Department of Agriculture has determined that these revised standards will be more in line with current industry cultural and marketing practices.

It is hereby found that good cause exists for not postponing the effective date of this revision beyond the date of publication hereof in the **Federal Register**, in that: (1) The packing season for greenhouse cucumbers is continuous and it is in the interest of the public and industry that this revision be placed in effect at the earliest date; and (2) no special preparation is required for compliance with this revision on the part of members of the greenhouse cucumber industry or others.

Accordingly this revision shall become effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, 7 CFR Part 51 shall be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended as 1090, amended, 7 U.S.C. 1622-1624.

2. Subpart—United States Standards for Grades of Greenhouse Cucumbers and the table of contents thereof are revised to read as follows:

Sec.
51.3855 General.
51.3856 Grades.
51.3857 Tolerances.

Sec.
51.3858 Application of tolerances.
51.3859 Standard pack.
51.3860 Definitions.
51.3861 Permanent defects.
51.3862 Conditions defects.
51.3863 Classification of defects.

§ 51.3588 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

§ 51.3856 Grades.

(a) "U.S. Fancy" consists of cucumbers which meet the following requirements:

(1) Basic requirements:
(i) Clean;
(ii) Well formed;
(iii) Well colored;
(iv) Fresh; and,
(v) Firm.

(2) Free from: Decay, cuts or mechanical injury.

(3) Free from injury by:
(i) Scars;
(ii) Freezing;
(iii) Mosaic or other diseases; and,
(iv) Insects or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(b) "U.S. No. 1" consists of cucumbers which meet the following requirements:

(1) Basic requirements:
(i) Clean;
(ii) Fairly well formed;
(iii) Fairly well colored;
(iv) Fresh; and,
(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from damage by:
(i) Scars;
(ii) Freezing;
(iii) Mosaic or other diseases;
(iv) Insects; and,
(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(c) "U.S. No. 2" consists of cucumbers which meet the following requirements:

(1) Basic requirements:
(i) Clean;
(ii) Not badly deformed;
(iii) Fairly well colored;
(iv) Fresh; and,
(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from serious damage by:
(i) Scars;
(ii) Freezing;
(iii) Mosaic or other diseases;
(iv) Insects; and,
(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

§ 51.3857 Tolerances.

In order to allow for variations incident to proper grading and handling in the foregoing grades the following tolerances, by count, shall be permitted in any lot:

(a) *For defects.* Ten percent for cucumbers in any lot which fail to meet the requirements of the specified grade: Provided, that included in this amount not more than 1 percent for decay.

(b) *For off-size.* Five percent for cucumbers in any lot which are below a specified minimum length and 5 percent for cucumbers longer than a specified maximum length.

§ 51.3858 Application of tolerances.

When packed in containers the contents shall be the sample, when in bulk or bulk bins the sample shall consist of at least 25 cucumbers. Individual samples are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual samples may contain not more than one and one-half times the tolerance specified except that when the lot consists of containers with 18 cucumbers or less, individual containers may contain not more than double the tolerance specified: and provided, that the average is within the specified lot tolerance.

(b) For a tolerance of less than 10 percent, individual samples may contain not more than double the tolerance specified: Provided, that at least one defective and one off-size cucumber may be permitted in any sample: and provided further, that the average is within the specified lot tolerance.

§ 51.3859 Standard pack.

(a) Each cucumber shall be completely enclosed in a shrink wrapper.

(b) Cucumbers shall be fairly uniform in size and packed fairly tight in layers in containers according to approved and recognized methods.

(1) Fairly uniform in size means that not more than 10 percent, by count, of the cucumbers in any container shall vary more than 2 inches in length.

(2) In order to allow for variations incident to proper packing, not more than 10 percent, by count, of the containers in any lot may fail to meet these requirements.

§ 51.3860 Definitions.

(a) "Clean" means practically free from dirt or other foreign material.

(b) "Fresh" means bright, not wilted, yellow or exhibiting other symptoms of aging.

(c) "Well formed" means that the shape shall be fairly straight and not more than slightly tapered at one or both ends.

(d) "Fairly well formed" means not materially curved, constricted, or pointed at one or both ends, or otherwise materially misshapen.

(e) "Badly deformed" means badly curved, beaked, bottlenecked, constricted, or otherwise so badly misshapen that the appearance is seriously affected.

(f) "Well colored" means a characteristic green color over practically the entire surface.

(g) "Fairly well colored" means a characteristic green color over two-thirds or more of the surface except for areas affected by foliage shading.

(h) "Injury" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality.

(i) "Damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality.

(j) "Serious damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality.

§ 51.3861 Permanent defects.

"Permanent defects" means defects which are not subject to change during shipping or storage; including, but not limited to factors of shape, scars, or growth cracks and cuts which are so located as to indicate that they occurred prior to packing.

§ 51.3862 Condition defects.

"Condition defects" means defects which may develop or change during shipment or storage; including, but not limited to decay, soft or yellowing and bruises which are so located as to indicate that they occurred after packing.

§ 51.3863 Classification of defects.

Defects	Injury[1]	Damage[1]	Serious damage[1]
Bruises	When any indentation is more than 1/16 inch (1.6mm) in depth or exceeds an area of a circle ½ inch (12.7mm) in diameter.	When any indentation is more than ⅛ inch (3.2mm) in depth or exceeds an area of a circle ¾ inch (19.1mm) in diameter.	When any indentation is more than ¼ inch (6.4mm) in depth or exceeds an area of a circle 1 inch (25.4mm) in diameter
Insects	When feeding injury is evident or any insect is present.	When feeding injury materially detracts from appearance or any insect is present.	When feeding injury seriously detracts from appearance or any insect is present.
Scars	When not smooth, or not light colored, and aggregating more than the area of a circle ⅜ inch (9.5mm) in diameter; or smooth and light colored and aggregating more than the area of a circle ¾ inch (19.1mm) in diameter.	When not smooth, or not light colored, and aggregating more than the area of a circle ½ inch (12.7mm) in diameter: or smooth and light colored and aggregating more than the area of a circle 1½ inch (38.1mm) in diameter.	When dark or slightly rough or barklike scars aggregate more than a circle ¾ inch (19.1mm) in diameter; or smooth and light colored and aggregating more than the area of a circle 2 inches (50.8mm) in diameter

[1] Defect classifications are based on a cucumber 11 inches in length. Correspondingly larger areas are permitted on longer cucumbers and smaller areas on shorter cucumbers.

Done in Washington, D.C. on: August 30, 1985.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 85-21218 Filed 9-4-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1135

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September 1985 through February 1986, provisions of the Southwestern Idaho-Eastern Oregon Federal milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended is the requirement that one day's production of each producer be received at a pool plant in the months of September through February. The suspension was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk.

EFFECTIVE DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 2, 1985; published August 8, 1985, (50 FR 32085).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 8, 1985 (50 FR 32085) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f)(2) and (f)(3).

Statement of Consideration

This action removes for the months of September 1985 through February 1986 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. Also suspended for the same period is the "touch-base" requirement that one day's production of each producer be received at a pool plant in the months of September through February. The suspension was requested by Dairymen's Creamery Association, Inc. (DCA), a cooperative association of a substantial portion of producers supplying the market.

The order now provides that a cooperative association may divert up to 70 percent of its total member milk received at all pool plants or diverted therefrom during the months of September through February. Similarly, the operator of a pool plant may divert up to 70 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of September through February.

The suspension is necessary because of the failure of one of the two distributing plants through which DCA pools its milk to qualify as a pool plant for June 1985. Dairymen's has continued producer status of its dairy farmer members by unnecessary and uneconomic movements of milk through its supply plant at Caldwell, Idaho. The cooperative has proposed amended order provisions to assure continued pooling of its member producers, and a hearing has been scheduled to consider those proposals. Until the order can be amended, however, DCA will continue to experience problems in pooling the milk of its members without suspension of the requested provisions.

In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Southwestern Idaho-Eastern Oregon milk order should be suspended for the months of September 1985 through February 1986 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or

extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. In addition, a hearing to consider this issue has been requested and is scheduled to be held October 16, 1985, at Boise, Idaho. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1135

Milk Marketing Orders, Milk, Dairy Products.

PART 1135—[AMENDED]

The authority citation for Part 1135 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

It is therefore ordered, That paragraphs (f) (2) and (3) of § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended for the months of September 1985 through February 1986.

Effective Date: September 5, 1985.

Signed at Washington, D.C., on: August 29, 1985.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–21220 Filed 9–4–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–124–AD; Amdt. 39–5134]

Airworthiness Directives; Boeing Model 767, 757, 737, and 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires rework of the Rosemount Angle Of Attack (AOA) sensors on Boeing Model 767 and 757 series airplanes and on certain Model 737 and 727 series airplanes. During receiving inspections by the airframe manufacturer, it was found that some internal gears were not secured to the shaft and caused erroneous AOA information; it was also found that gears could come off the shaft and possibly jam the vane. Failure of the AOA system will cause improper operation of the stall warning and stall protection systems, and will also affect operation of other systems using AOA data.

EFFECTIVE DATE: October 12, 1985.

ADDRESSES: The applicable service bulletins may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, and Rosemount, Inc., P.O. Box 35129, Minneapolis, Minnesota 55435. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Systems and Equipment Branch, telephone (206) 431–2948. Mailing address: FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would require: (a) Initial and interim inspection(s) of the AOA system to ensure that the vane is free to move and provide damping; and (b) a complete one-time inspection which requires opening of the vane assembly to ensure that all the gears are properly machined and installed as specified, was published in the Federal Register on February 11, 1985 (50 FR 5625), and with a revision on June 20, 1985 (50 FR 25582). This action is necessary to detect and replace faulty angle of attack sensors.

The comment period for the NPRM, as revised, ended on July 15, 1985, and interested persons were given an opportunity to participate in the preparation of this amendment. Four comments were received.

Comments from three operators were received through the Air Transport Association of America (ATA). One operator recommended that only an initial inspection be required. The FAA does not agree. An interim inspection time was proposed because the failure is latent and, without interim inspections, the compliance time for replacement would be unduly restrictive. Another operator recommended an increase in both the interim inspection period and the terminating action time. The FAA had determined that such an increase would be unacceptable since the exposure period would be extended to beyond that which is required to provide an acceptable level of safety. The third operator suggested that the repetitive acceptitive interval for inspections should be stated in terms of operating hours instead of calendar days, since most operators conduct inspection based on flight hours. The FAA finds this suggestion to be reasonable, and the final rule has been changed to reflect the inspection interval in both calendar days and flight hours.

A fourth operator commented that no faulty units had been found in its fleet of affected airplanes. The FAA notes this comment, but finds that issuance of the final rule is necessary since other operators may not have had the same experience.

After careful review of all available data, including all of the comments received, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 87 airplanes of U.S. registry will be affected by this AD; that it will take approximately 3 manhours per aircraft to accomplish the required inspection, removal, rework, and/or replacement; and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators will be $10,400.

For the reasons discussed above, the FAA has determined that this regulation (1) is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, since few, if any, Boeing Model 767, 757, 737, or 727 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and is contained in the regulatory docket.

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 and 757 series airplanes, and certain Model 737 and 727 series airplanes, certificated in any category, equipped with Rosemount Angle Of Attack (AOA) sensors identified as Model 861CAB or 861CAK and modification number 0001. To prevent the hazards associated with a malfunctioning AOA sensor caused by loose resolver and/or damper gears, accomplish the following as indicated below, unless already accomplished:

A. Inspect Model 757 and 767 series airplanes equipped with Rosemount AOA sensors, Model 861CAB, modification number 0001, within 300 flight hours or 30 days, whichever is later, after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours or 30 days, whichever is later, until the replacement prescribed in subparagraph A.1. or A.2., below, is accomplished:

1. Replace Rosemount AOA sensors, serial numbers 00475 through 00629, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

2. Replace Rosemount AOA sensors, serial number 00001 through 00474, within 360 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

Inspect in accordance with the appropriate Boeing Alert Service Bulletin, 757-34A0028 or 767-34A30, both dated November 12, 1984, or later FAA approved revision. Units determined to be faulty during inspections must be replaced with a serviceable unit, prior to further flight.

B. Inspect Model 727 and 737 series airplanes equipped with Rosemount AOA sensors, Model 861CAK, modification number 0001, within 300 flight hours or 30 days, whichever is later, after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours or 30 days, whichever is later, until the replacement required in subparagraph B.1., below, is accomplished:

1. Replace Rosemount AOA sensors, serial numbers 00001 through 00173, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A in accordance with the instructions in paragraph C., below.

Inspect in accordance with paragraph 3 of "Accomplishment Instructions" of the appropriate Boeing Alert Service Bulletin, 727-34A0223 or 737-27A1128, both dated November 12, 1984, or later FAA approved revision. Units determined faulty during inspection must be replaced with a serviceable unit, before further flight.

C. Remove, inspect, and rework Rosemount AOA sensors as specified in paragraphs A. and B., above, in accordance with the appropriate Rosemount Service Bulletin, 861CAB-34-02 or 861CAK-34-01, both dated November 12, 1984, or later FAA approved revision. Units found with both resolver gears loose must be returned to Rosemount for rework.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturers may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or Rosemount, Inc., P.O. Box 35129, Minneapolis, Minnesota 55435. They may also be examined at the FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 12, 1985.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21111 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 84-NM-111-AD; Amdt. 39-5135]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive which requires re-routing and clamping of a wire bundle in the cockpit on Lockheed Model L-1011 series airplanes. This action is prompted by reports of wire chafing which, if uncorrected, may lead to arcing and result in a fire hazard.

DATE: Effective October 12, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Wasinger, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require re-routing and clamping of a wire bundle in the cockpit on Lockheed Model L-1011 series airplanes was published in the **Federal Register** on March 19, 1985 (50 FR 10975). The comment period for the proposal closed May 5, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received; the commenter had no objection to the proposed rule.

It is estimated that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately eight (8) manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $38,400.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L-1011 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category.

To prevent the potential for electrical arcing in the cockpit windshield heating electrical wire bundle, accomplish the following within six months after the effective date of this AD, unless already accomplished:

A. Re-route the C38 wire harness in accordance with Part 2, Accomplishment Instructions, of Lockheed-California Company L-1011 Service Bulletin 093-30-056, dated April 30, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the Requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 12, 1985.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21112 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-NM-45-AD; Amdt. 39-5136]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Nos. 1 through 1157

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that supersedes an existing airworthiness directive (AD) which requires inspection of the left and right hand window belt panels and adjacent structures for cracks on certain McDonnell Douglas DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes. This amendment expands the applicability of the existing AD to include the DC-9-80 series airplanes, and provides terminating action for repetitive inspections. In addition, this action deletes certain reporting requirements.

DATE: Effective October 12, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection and repair, as necessary, of the fuselage window belt panels on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on May 28, 1985 (50 FR 21622). The comment period for the proposal closed July 19, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The first commenter stated that its fleet of airplanes is beyond the 30,000 landing threshold, and it is currently accomplishing the 4,000 landing repetitive inspections. Additionally, no cracks have been reported during these inspections. This commenter suggested that, based on its repetitive inspection programs, negative findings, and the severe economic impact to accomplish the proposed terminating action, it be allowed to continue repetitive inspections. The AD, as proposed and as adopted, allows operators the option to either accomplish the required terminating action or to continue repetitive inspections.

The second commenter submitted the following recommendations: (1) Revise the number of airplanes on which the proposed AD has a cost impact (i.e., 380 instead of 185); (2) revise the cost estimates for verification inspections and permanent repairs; and (3) clarify portions of the accomplishment instructions in paragraph D.2. of the proposed rule. The FAA disagrees with the first recommendation. This amendment supersedes an existing AD (AD 80-09-07) which affects DC-9 series airplanes other than the Model DC-9-80; the cost impact for this amendment involves only the DC-9-80 series airplanes, of which there are 185. The FAA agrees with recommendations 2 and 3, and these have been incorporated into the final rule.

The third commenter agrees with the intent of the proposed rule, but questions its applicability to the DC-9-80 series airplanes, since compliance with the intent of this AD is mandated by a Special Inspection Report (MDC J8855) during the original type certification. The FAA disagrees. It was not the intent of the FAA to perpetuate the Special Inspection Report for the life duration of DC-9-80 series airplanes. Since the affected airplanes (fuselage numbers 1 through 1157) are manufactured with essentially the same design features in the affected area(s), fatigue cracking which was found on the basic series airplanes is likely to occur on certain DC-9-80 series airplanes and, thus, would require the same inspection consideration.

It is estimated that 185 airplanes of U.S. registry will be affected by this AD. It will take approximately 131 manhours per airplane to accomplish the required inspections, and 34 manhours to accomplish a typical permanent repair. The average labor cost would be $40 per manhour. Based on these figures, the cost impact of the inspections required by this AD is estimated to be $969,400.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the critieria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 series airplanes are

operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation by superseding AD 80-09-07, Amendment 39-3767 (45 FR 30421), as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1345(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1157, certificated in any category. Compliance required as indicated, unless previously accomplished within the past 4,000 landings.

To prevent crack propagation which could result in rapid cabin depressurization, accomplish the following:

A. On airplanes with 30,000 or more landings on or after the effective date of this AD, within 1,000 additional landings inspect the left and right hand window belt panels and adjacent structures for cracks using eddy current methods, in accordance with McDonnell Douglas Alert Service Bulletin (ASB) A53-142, Revision 7, dated June 11, 1985 (hereinafter referred to as ASB 53-142), or later FAA approved revisions.

B. Repeat the inspections required by paragraph A. of this AD at intervals not to exceed 4,000 landings since the last such inspection, until such time as preventive modification is installed in accordance with McDonnell Douglas Service Bulletin 53-142, dated June 30, 1983, or later FAA approved revisions.

C. Credit may be given for inspections and repairs already accomplished by virtue of the original AD in accordance with earlier versions of the Alert Service Bulletin A53-142.

D. If any fuselage skin cracks are found, accomplish D.1., D.2., or D.3., below, before further flight:

1. Repair fuselage skin cracks in accordance with Option 2 described in ASB 53-142; or

2. Repair fuselage skin cracks in accordance with McDonnell Douglas DC-9 Drawing J060131. Repairs of fuselage skin cracks accomplished in accordance with Drawing J060131 must be visually inspected at intervals not to exceed 2,000 landings, and must be replaced by repairs accomplished in accordance with McDonnell Douglas Drawing J060109 within 4,000 landings. After accomplishment of repairs in accordance with Drawing J060109, inspect the unrepaired areas of the airplane in accordance with the requirements of paragraph B. of this AD; or

3. Install a placard in plain view of the pilot reading "Pressurized Flight Prohibited," and accomplish paragraph D.1. or D.2., above, within 4,000 landings.

E. Accomplishment of the preventive modifications in accordance with McDonnell Douglas DC-9 Service Bulletin 53-142 will constitute terminating action for the special inspection requirements listed in McDonnell Douglas Report MDC-J8855, Part I, Revision A through G, or later FAA approved revisions.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base to comply with the requirements of this AD.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This supersedes AD 80-09-07, Amendment 39-3767, dated May 12, 1980.

This Amendment becomes effective October 12, 1985.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21110 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-AWP-22]

Revised Description of the Reno, NV, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action is required to correct the existing Reno, Nevada, Transition Area description as a result of a name change to the Reno Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility. This action does not change the actual airspace of the existing transition area. This action only provides editorial changes to the description.

EFFECTIVE DATE: 0901 G.M.T., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6649.

SUPPLEMENTARY INFORMATION:

History

The Reno, Nevada, Transition Area is currently described using the Reno VORTAC as a reference. The name change of the Reno VORTAC required updating the description of the transition area. To preclude numerous editorial changes to transition area descriptions, it has been determined that the use of geographical coordinates as reference points are more permanent and not subject to name or location changes.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to update the description of the Reno, Nevada, Transition Area. This action was the result of the name change of the Reno VORTAC. The revised description uses geographical coordinates to provide permanent reference points. This amendment does not change the actual airspace of the original transition area, but provides only editorial changes. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA concludes that there is an immediate need for a regulation to reflect the correct description of the Reno, Nevada, Transition Area. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the charting date of November 21, 1985. Description of the amended transition area is set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12201; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Control zone, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Reno, NV—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 39°49'00" N., long. 120°00'00" W.; thence clockwise via the 25-mile radius arc of the Reno Cannon International Airport (lat. 39°29'52" N., long. 119°46'04" W.); to lat. 39°25'00" N., long. 119°19'10" W.; to lat. 39°13'00" N., long. 119°47'00" W.; to lat. 39°06'20" N., long. 119°47'00" W.; to lat. 39°10'20" N., long. 120°00'00" W.; to the point of beginning. That airspace extending upward from 1200 feet above the surface beginning at lat. 39°07'00" N., long. 120°19'00" W.; to lat. 39°56'00" N., long. 120°19'00" W.; thence clockwise via the 45-mile radius arc centered on lat. 39°31'53" N., long. 119°39'18" W.; to lat. 39°56'00" N., long. 119°00'00" W., to lat. 39°07'00" N., long. 119°00'00" W.; thence clockwise via the 45-mile radius arc centered on lat. 39°31'53" N., long. 119°39'18" W.; to the point of beginning; and that airspace northwest of Reno Cannon International Airport extending from the 45-mile radius area bounded on the northeast by the southwest edge of V-452 and on the west by long. 120°19'00" W. That airspace extending upward from 13,100 feet above mean sea level (AMSL) beginning at lat. 38°54'30" N., long. 119°22'40" W.; thence clockwise via the 45-mile radius to lat. 38°52'20" N., long. 119°35'40" W.; thence southbound along the eastern edge of V-165 to the northern edge of V-244; thence eastbound to lat. 38°04'00" N., long. 119°15'20" W.; to the point of beginning. That airspace extending upward from 12,300 feet above mean sea level (AMSL) beginning at lat. 38°52'20" N., long. 119°35'40" W.; to lat. 38°52'20" N., long. 119°47'50" W.; to lat. 38°28'00" N., long. 119°52'40" W.; to lat. 38°01'30" N., long. 119°51'30" W.; to lat. 38°01'00" N., long. 119°38'00" W.; to lat. 38°27'30" N., long. 119°33'40" W.; to the point of beginning.

Issued in Los Angeles, California, on August 27, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-21097 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Organization, Procedures, and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: On June 21, 1985, the Federal Trade Commission revised, on an interim basis with a request for comment, Rule 4.11(e) of its Rules of Practice and Procedure, governing subpoenas to employees. No comments were received and the Commission is now adopting the interim rule as a final rule, with one minor technical modification.

DATE: The rule is effective September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Office of the General Counsel, (202) 523-3865.

SUPPLEMENTARY INFORMATION: The revised Rule 4.11(e), which was previously adopted on an interim basis, see 50 FR 25699 (1985), is intended to promote consistency in the agency's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. It applies only where employees are subpoenaed in litigation to which the agency is not a party.

Under the rule, employees must seek General Counsel approval prior to responding to any subpoenas for materials or information, whether public or nonpublic, that relate to the employees' official duties. Also, former employees are expressly required to seek General Counsel approval prior to responding to subpoenas that seek nonpublic materials and information acquired during their Commission employment. Finally, the rule requires parties who cause a subpoena to be issued to provide a written statement containing specified information.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

Accordingly, the Commission amends 16 CFR Part 4 as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

2. 16 CFR 4.11(e) is revised to read as follows:

§ 4.11 Requests for disclosure of records.

* * * * *

(e) *Information requested by subpoena in cases or matters to which the agency is not a party.*

(1) The procedures specified in this section will apply to all subpoenas directed to Commission employees, except special government employees, that relate in any way to the employees' official duties. These procedures will also apply to subpoenas directed to former Commission employees and current or former special government employees of the Commission, if the subpoenas seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (e)(3) of this section will also apply to subpoenas directed to the agency. For purposes of this section, the term "subpoena" includes any compulsory process in a case or matter to which the agency is not a party; the term "nonpublic" includes any material or information which, under § 4.10, is exempt from availability for public inspection and copying; the term "employees," except where otherwise specified, includes "special government employees" and other agency employees; and the term "special government employees" includes consultants and other employees as defined by section 202 of title 18 of the United States Code.

(2) Any employee or former employee who is served with a subpoena shall promptly advise the General Counsel of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances.

(3) A party causing a subpoena to be issued to the Commission or any employee or former employee of the Commission shall furnish a statement to the General Counsel. The statement shall set forth the party's interest in the

case or matter, the relevance of the desired testimony or documents, and a discussion of whether the desired testimony or documents are reasonably available from other sources. If testimony is desired, the statement shall also contain a general summary of the testimony and a discussion of whether agency records could be produced and used in its place. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(4) Absent authorization from the General Counsel, the employee or former employee shall respectfully decline to produce requested documents or records or to disclose requested information. The refusal should be based on this paragraph and on *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(5) The General Counsel will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account factors such as the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and records.

By direction of the Commission, dated August 28, 1985.

Benjamin L. Berman,

Acting Secretary.

[FR Doc. 85-21137 Filed 9-4-85; 8:45 am]

BILLING CODE 6730-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Segregation of Customer Funds

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted technical amendments to Regulation 1.20, 17 CFR 1.20 (1985), to clarify two provisions concerning obligations of futures commission merchants ("FCMs"), clearing organizations and other depositories with respect to customer margin funds.

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has adopted two technical, corrective amendments to Regulation 1.20, 17 CFR 1.20 (1985), concerning certain obligations of FCMs and other recipients of customer margin funds. Neither amendment effects any change in existing law. Specifically, the Commission has amended the final sentence of Regulation 1.20(a) to refer to "customers" in the plural rather than the singular. Secondly, the first sentence of Regulation 1.20(c) has been amended to make clear that its protections extend equally to commodity customers and to option customers.

Regulation 1.20(a)

Section 4d(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6d(2), defines the manner in which FCMs, clearing organizations, and other depositories of funds deposited by commodity customers to margin or settle futures transactions, or accruing to customers as the result of such trades, must deal with such funds. It provides, *inter alia*, that FCMs shall "treat and deal" with funds deposited by a customer to margin or settle trades or contracts "as belonging to such customer." Section 4d(2) also provides that FCMs shall segregate and separately account for customer funds and property but may, for purposes of convenience, deposit such funds and property "in the same account or accounts with any bank or trust company or with the clearinghouse organization of such contract market." The final sentence of section 4d(2), which specifically addresses the obligations of clearing organizations and other recipients of customer margin funds and property, provides that:

> [i]t shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

Commission Regulation 1.20(a) codifies in regulatory form many of the requirements of section 4d(2) with respect to the disposition of customer funds by FCMs, clearing organizations and other depositories of customer margin funds. Like the final provision of section 4d(2), the final sentence of Regulation 1.20(a) expressly addresses the obligations of clearing organizations, depositories and other non-FCM recipients of customer margin funds for deposit in segregated accounts:

> No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customer of the futures commission merchant which deposited such funds.

Unlike the final sentence of section 4d(2), which requires clearing organizations and other depositories to dispose of segregated funds as belonging to the "customers" of the depositing FCM, Regulation 1.20(a), by requiring use of such funds as belonging to "the option or commodity customer" of the depositing FCM, could be construed to require the use of such funds as the property of each individual customer of the FCM to whom such funds may be traceable. Such a construction would be at odds with the reality that clearing organizations generally deal directly only with their clearing member firms and have no knowledge of the identities of a clearing firm's customers or of the extent of their respective ownership interests in margin funds posted by a clearing firm. Moreover, such a construction of Regulation 1.20(a) would impose duties upon clearing organizations and other depositories not contemplated by section 4d(2) of the Act or other Commission regulations and at odds with the intended meaning of Regulation 1.20(a) itself.

As explained in a recent interpretative statement of the Office of General Counsel,[1] section 4d(2) of the Act and related Commission regulations require clearing organizations and other depositories of customer margin deposits to dispose of such funds as the property of the depositing FCM's customers, collectively, but do not require them separately to account for, segregate and dispose of such funds as the discrete property of the individual customer of the FCM to whom they may be traceable or otherwise attributable. In the view of the Office of General Counsel, section 4d(2) of the Act should be construed in light of the fact that

[1] Office of the General Counsel Interpretative Statement 85-3, "Use of Segregated Funds by Clearing Organizations Upon Defaults By Member Firms."

clearing organizations and other non-FCM depositories generally have as their direct customers FCMs, not the ultimate "customers" who entered into the futures contracts and option positions for which the margin funds were posted. Consequently, the Office of General Counsel concluded that section 4d(2)'s mandate that clearing organizations use margin deposits on behalf of the "customers" of the depositing futures commission merchant "requires only that the clearing organization use such funds as the property of the clearing firm's customers collectively, but does not require the clearing organization to treat such funds as the property of the particular customers who deposited them or to whose positions they have accrued."[2]

Commission regulations support the view that clearing organizations and other depositories of customer funds are not required to employ such funds as the property of the particular customers of the clearing member firm to whom they may ultimately be traceable. Regulation 1.20(b), 17 CFR 1.20(b) (1985), for example, requires that a clearing organization separately account for and segregate all customer funds received from a member of the clearing organization to margin, secure or settle the trades, contracts or commodity options of the clearing member's customers and all funds accuring to such customers as the result of such trades, contracts, or commodity options "as belonging to such commodity or option *customers*," and specifies that a clearing organization shall not hold, use or dispose of such customer funds "except as belonging to such commodity or option *customers*." 17 CFR 1.20(b) (1985) (emphasis added). Regulation 1.36, 17 CFR 1.36 (1985), requires FCMs to maintain a record providing "separately for each customer or option customer" a description of the securities or property received, name and address of the depositing customer and other pertinent information. By contrast, Regulation 1.36(b) requires only that clearing organizations with which their member firms deposit securities or property belonging to particular customers or option customers of such members maintain records "which will show separately for each *member*" the date of receipt of such securities and property and other pertinent data, without requiring that the names of the particular customers of the member firm from whom such securities and property were received by recorded. (emphasis added).

Finally, the history of Regulation 1.20(a)'s final sentence reflects that it was not intended to impose upon clearing organizations and other depositories of customer funds duties different from those arising from section 4d(2)'s final provision. Prior to the adoption of regulatory amendments reflecting establishment of the Commission's exchange-traded options pilot program in 1981, Regulation 1.20(a)'s final provision closely paralleled section 4d(2)'s final sentence in requiring clearing organizations, depositories and other recipients of customer margin funds to refrain from using or disposing of such funds "as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant." In considering amendments to various Commission regulations to effect establishment of the options pilot program, the Commission proposed to expand Regulation 1.20(a) to extend its protections to funds deposited by option customers but would not have effected any other substantive change in the provision. 46 FR 33293, 33315 (1981). As adopted, however, the Commission's final rules concerning the exchange-traded options pilot program included Regulation 1.20(a)'s concluding sentence in the form in which it appears today, modifying, *inter alia*, the proposed regulations to require that customer funds be held as funds of "the option or commodity *customer* of the futures commission merchant which deposited such funds." 46 FR 54500, 54518 (1981) (emphasis added). The Commission's preamble to these rules noted that it was "adopting the amendments to those regulations essentially as proposed." 46 FR 54508 (1981). The substitution of "customer" for "customers" in the final rule was thus not intended to impose any additional duties upon depositories of margin funds or to effect any substantive change in existing law.

The Commission has therefore revised the final sentence of Regulation 1.20(a) to make clear that the obligation of clearing organizations and other depositories of customer funds is to hold and dispose of such funds as belonging to "the option or commodity *customers* of the futures commission merchant which deposited such funds." (emphasis added). This amendment conforms the regulation to its intended meaning and should obviate any construction of Regulation 1.20(a) as imposing duties upon clearing organizations or other depositories of customer margin funds that differ from those created by section 4d(2) of the Act.

Regulation 1.20(c)

The Commission has also adopted a technical amendment of Regulation 1.20(c) to eliminate potential ambiguity. The first sentence of Regulation 1.20(c) currently refers only to the FCM's duty to "treat and deal with the customer funds of an option customer as belonging to such customer." The Commission is hereby amending this provision to incorporate parallel references to commodity customers in order to make clear that its protections, like those contained in the balance of Regulation 1.20, extend equally to commodity customers as to option customers. Since the FCM's duty to treat and deal with the funds of commodity customers as belonging to such customers is expressly provided for in the balance of Regulation 1.20(c), in Regulation 1.20(a) and in section 4d(2) of the Act, no substantive change will be effected by this amendment.

II. Related Issues

Section 553(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b), generally requires that notice of proposed rulemakings be published in the **Federal Register** and that opportunity for public comment be provided when an agency promulgates new rules. APA section 553(b)(B), however, provides an exception to this requirement:

> when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

As previously noted, the amendments to Regulation 1.20 adopted by the Commission are made for purposes of clarification and effect no change in existing law. Consequently, the Commission finds that these amendments raise no substantive issues for which notice and public comment are necessary.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires that agencies, in proposing rules, consider their impact on small entities. The RFA requires such an analysis whenever 5 U.S.C. 553 requires the agency to publish a notice of proposed rulemaking. As noted above, notice of proposed rulemaking under 5 U.S.C. 553 is unnecessary with respect to these

[2] The Office of General Counsel also concluded, however, that "a clearing organization's rights with respect to the use of customer margin funds may be limited in particular circumstances by reason of the clearing organization's knowledge of or participation in a violation of the Act or other provision of law that precludes it from obtaining rights to such funds superior to those of one or more customers of the defaulting clearing member."

amendments and, thus, is not required. Consequently, the RFA does not require analysis of the impact of these amendments on small entities.

Pursuant to the provisions of the Paperwork Reduction Act of 1980, the Office of Management and Budget has assigned control numbers 3038–0007 and 3038–0024 to the regulations which appear herein. The amendments hereby adopted by the Commission have no Paperwork Reduction Act implications.

List of Subjects 17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customer funds, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 19 and 21, the Commission hereby adopts amendments to Part 1 of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 19 and 21, unless otherwise noted.

2. Section 1.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and these regulations. Each registrant shall obtain and retain in his files for the period provided in §1.31 an acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and these regulations. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

* * * * *

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in obligations described in § 1.25.

Issued in Washington, D.C., on August 30, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–21158 Filed 9–4–85; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM85–2–001, Order No. 416–A]

Rules of Practice and Procedure: Commission Review of Remedial Orders

Issued: August 29, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing and Making Clarifying Corrections.

SUMMARY: On April 17, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM85–2–000, 50 FR 15731 (April 22, 1985) (Order No. 416), revising its procedural rules applicable to Commission review of Department of Energy remedial orders. The Commission received one timely petition for rehearing of the final rule in this docket. This order denies rehearing of the final rule and makes several clarifying corrections.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8315.

SUPPLEMENTARY INFORMATION:

Rules of Practice and Procedure: Commission Review of Remedial Orders and Order Denying Rehearing and Making Clarifying Corrections

Issued: August 29, 1985.

I. Introduction

The Federal Energy Regulatory Commission (Commission) denies rehearing of Order No. 416 [1] and makes clarifying corrections to its procedural rules governing remedial order appeals.[2]

II. Background

On April 17, 1985, the Commission issued Order No. 416, adopting revised procedural rules applicable to Commission review of Department of Energy (DOE) remedial orders. On May 17, 1985, Dorchester Gas Corporation (Dorchester) filed a request for rehearing of that order. On June 4, 1985, the Administrator of DOE's Economic

[1] 50 FR 15,731 (April 22, 1985), III FERC Statutes & Regulations ¶ 30,636.

[2] 18 CFR Part 385, Subpart I (1985).

Regulatory Administration wrote to Commission Chairman Raymond J. O'Connor suggesting changes in the new procedural rules. The Administrator's letter was placed in the file of this rehearing proceeding and is being treated as a request for reconsideration. On June 17, 1985, the Commission granted rehearing for the purpose of further consideration. On July 10, 1985, the Administrator filed additional comments on the further consideration of Order No. 416, restating in greater detail the changes suggested in his June 4, 1985, letter.

Dorchester recommends that the Commission (1) make the new regulations effective only as to those proceedings involving appeals of remedial orders for which the notice of appeal was filed after April 17, 1985, the effective date of the new regulations; (2) reinstate the requirement that the Secretary of Energy be responsible for certifying the complete administrative record to the Commission; (3) begin the fifteen-day filing period for petitioner's answer on the day the Secretary of Energy advises the Commission that the Secretary has received petitioner's notice of intent to appeal; and (4) permit a participant to file a motion for cross-examination at any time during the appeal proceeding if necessary for a full and true disclosure of the facts.

The Administrator recommends three general changes to (1) define what constitutes the administrative record, declare that the entire administrative record before the DOE's Office of Hearings and Appeals (OHA) is part of the record before the Commission, and require OHA to submit a stipulated record, the entire record, or a certified index to the entire record; (2) make the final Commission decisions in remedial order appeals subject to Commmission Rule 713 permitting requests for rehearing of final Commission decisions, but with rehearing limited to issues raised for the first time by the Commission in its decision or cases in which the Commission's decision is based on a legal proposition with a substantial impact on other cases; and (3) make copies of recommended final orders available to the parties.

For the reasons stated below and those set forth in the final rule, the Commission denies the request for rehearing but makes several technical corrections to clarify the regulations.

III. Discussion

A. Effective Date of New Regulations and Filing Deadline for Answer

In the final rule in this docket, the Commission made the new regulations effective immediately. Dorchester argues that this constitutes "changing the ground rules in the middle of the game"[3] for petitioners who filed notices of appeal prior to April 17, 1985, the effective date of the new regulations. Dorchester offers only one example of alleged prejudice to the rights of a party to a remedial order appeal—its own appeal in Docket No. R065–12–000, in which the revised deadline for filing its answer fell only seven days after the effective date of the new regulations. Dorchester concedes, however, that "this particular problem has been somewhat alleviated by the extension of time granted by the Chief ALJ."[4]

The Commission agrees that the problem has been resolved. In particular, the Chief Administrative Law Judge alleviated Dorchester's problem by granting the company two extensions of time totaling thirty-four additional days within which to file its answer—the the entire period sought by the company. When these thirty-four days are added to the seven days previously available to Dorchester, the firm had forty-one days within which to prepare its answer. Under the circumstances, the Commission finds that Dorchester was not prejudiced by the effective date of the new regulations. Since no other petitioners sought rehearing, the Commission concludes that they were likewise not prejudiced by the effective date of the rule. The Commission therefore finds no need to change the effective date of the rule.

Dorchester also contends that under the new regulations a petitioner could be required to file its answer before the proceeding has actually commenced. Dorchester points out that, while Rule 906(b)(1) now requires a petitioner to file its answer within fifteen days of the date the petitioner informed DOE of its intent to appeal and remedial order, Rule 904(a) regulations unaffected by Order No. 416) states that the proceeding is commenced by DOE's filing of a written notice that the petitioner informed DOE of its intent to appeal. If DOE files its notice with the Commission more than fifteen days after receiving a petitioner's notice of intent to appeal, the answer would be due prior to the commencement of the proceeding. (DOE took fifteen days to make such a filing in Dorchester's appeal.) Dorchester suggests that the Commission could not have intended such a result, but must have intended that the filing period for the answer run from the date on which the proceeding is commenced under rule 904(a).

Dorchester is correct that Rule 904(a) is potentially inconsistent with Rule 906(b)(1). Rule 904(a) should indicate that the proceeding is to be commenced by the filing of either DOE's written notice or the petitioner's answer, whichever is filed first. The Commission today amends Rule 904(a) to clarify its intent and makes other amendments necessary to conform the remaining procedural regulations to the amended Rule 904(a).

B. DOE Administrative Record

In the final rule, the Commission relieved DOE of its obligations under the prior regulations to file two certified copies of the entire OHA administrative record. The rule now requires the parties to submit as appendices to their pleadings those portions of the DOE record specifically relied upon and cited in such pleadings.[5] Dorchester contends that the amended rule increases the burden on the petitioner by effectively requiring it to file the entire record, in order to avoid omitting documents of "potential questionable value or benefit to its case."[6] Absent a certified OHA record, Dorchester states that there will be no reliable mechanism for the filing of a complete record for either Commission or judicial review.

The Commission recognizes that the petitioner has the added responsibility under the new regulations of photocopying and submitting the documents on which the petitioner relies in its various pleadings. However, the Commission does not agree with Dorchester that the petitioner must file all or almost all of the OHA record in order to protect its interests. Selective use of those portions of the OHA record relevant to the issues appealed is all that is necessary to protect a petitioner's interests. The prior practice of filing the entire record, regardless of its relevance to the issues appealed, was excessive and burdensome. The amended procedures promote a more focused and efficient review of petitioners' arguments, both by the Commission and the courts.

The Administrator suggests the need for a definition of "administrative record," a declaration that the intire OHA administrative record is a part of the record before the Commission, and a requirement that OHA submit a stipulated record, the entire record, or a certified index to the entire record. The suggested changes are unecessary and contrary to the Commission's revised

[3] Request for Rehearing at 4.
[4] Request for Rehearing at 4.
[5] Order No. 416, 50 FR 15731 (to be codified at 18 CFR 385.906(d)).
[6] Request for Rehearing at 7.

procedures which provide that the record will be those portions of the OHA record relied on by parties to the appeal. The new procedures focus attention on only the relevant portions of the record, to the benefit of the Commission and all participants. The Commission notes that, under revised Rule 906(d)(3), the "entire [OHA] administrative record is always available to the Commission." Since the parties are required to file relevant portions of the OHA record, there is no need for a certified index of that record.

C. Motion For Cross-Examination

In the final rule, the Commission required any party wishing an opportunity for cross-examination to file such a request within twenty days of the date the petitioner notifies DOE that it intends to appeal the remedial order.[7] Dorchester asserts that since such a filing must be made prior to the filing of briefs by any party, parties might not know of the need for cross-examination. Dorchester suggests that parties be given the right to request cross-examination at any time during the appeal proceeding.

The Commission in its new regulations intended to require the parties to file requests for cross-examination early in the proceeding. Given the parties' participation in the OHA proceeding, the Commission believes that participants should know at the outset of the appeal the extent to which cross-examination is needed and permitted under Rule 909(a). Therefore, the deadline established for filing cross-examination requests is reasonable. But, in order to conform Rule 909(a) to amended Rule 904(a), the Commission amends Rule 909(a) so that the motion for cross-examination must be filed within twenty days of the commencement of the proceeding.

D. Rehearing of Final Commission Orders

In the final rule, the Commission did not provide for rehearing of final Commission decisions concerning remedial order appeals. The Administrator suggests that the Commission's decision be subject to the general rehearing procedures set forth in Rule 713, but with rehearing limited to issues raised for the first time in the Commission order to cases in which the Commission's decision is based on a legal proposition with a substantial impact on other cases.

The Commission notes that rehearing under the amended rules is not substantially different from that under the prior rules. Except in highly unusual circumstances,[8] the Commission did not reconsider final decisions in remedial order appeals under the prior regulations. The parties have ample opportunity before both OHA and the Commission to file briefs, present oral argument and offer evidence. The absence of yet another opportunity for the parties to argue their positions does not adversely affect the parties' opportunity to obtain a fair and reasoned final decision in remedial order appeals. Therefore the Commission finds no need to permit rehearing as a matter of right. While rehearing is not required by statute, the Commission notes that it has authority to reconsider its decisions.[9]

E. Service of Recommended Decisions

In the final rule, the Commission did not provide for parties in a remedial order appeal to be served with the draft final decision that the presiding judge submits to the Commission. Such service would be pointless unless the parties were also given the opportunity to file comments on the draft decision. A modification of the regulations to permit the service of the draft order and the filing of comments thereon would effectively vitiate the portion of Order No. 416 that deletes the unnecessary and duplicative proposed order and comment procedures and would thereby undermine the Commission's efforts to streamline the remedial order appeal proceedings. The Administrator also urges the Commission to require such service because the draft decision becomes a part of the record of the proceeding before the Commission. However, the judges' draft final decisions are merely draft orders that the Commission is free to modify or even disregard, and are not included in the Commission's administrative record unless finalized by Commission action.

F. Other Matters

The Commission is amending its regulations in two additional respects. First, Rule 906(b)(2)(i), concerning petitioner's answer, is amended to remove the reference to DOE's certification of the OHA administrative record, since Rule 906(a) no longer requires DOE to certify that record to the Commission.

Second, Rule 906(c)(6), concerning orders granting or denying intervention, is amended to remove the reference to the submission of comments to the Commission, since Rule 913 no longer provides for such comment procedures

Under the previous rules, a person denied intevenor status in a remedial order appeal could challenge the denial in comments to the Commission concerning the proposed order. Since Order No. 416 deleted the proposed order and comment procedures, orders denying motions to intervene under Rule 906(c)(6) will henceforth be subject to interlocutory appeal under Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers). A person denied intervention will be considered a "participant" (as that term is defined in rule 102(b) (definitions)) for the limited purpose of permitting that person to file an interlocutory appeal under Rule 715 of the order denying that person's motion to intervene. Rule 906(c)(6) is revised accordingly.

List of Subjects in 18 CFR Part 385

Administrative practice and Procedure.

The Commission orders:

In consideration of the foregoing, the Commission denies rehearing of the final rule in this docket, and amends Part 385 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 385—[AMENDED]

1. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. In § 385.904, paragraph (a) is revised to read as follows:

§ 385.904 Commencement of proceeding (Rule 904).

(a) Except as provided in paragraph (b) of this section, the proceeding pursuant to this subpart will be commenced by filing with the Secretary of the Commission either an answer by a petitioner pursuant to Rule 906(b)(1), or a written notice by the Secretary that

[7] Order No. 416, 50 FR 15731 (1985) (to be codified at 18 CFR 385.909(a)).

[8] *See* Billy Bridewell, 28 FERC ¶ 61,021 (1984).

[9] Hydro Development Group, Inc., 20 FERC ¶ 61,059 at 61,128 (1982); Long Lake Energy Corp., 20 FERC ¶ 61,058 at 61,126–61,127 (1982). *See also* K. Davis, *Administrative Law* 369 (3d ed. 1972).

a petitioner has filed a notice of intent to contest an order reviewable under this subpart, whichever is filed first. The Secretary must file written notice that a petitioner has filed a notice of intent to contest an order reviewable under this subpart within 15 days of the Secretary's receipt of such notice of intent. When the Secretary files the written notice, the Secretary must serve a copy of the contested order upon other participants in the prior proceedings and upon persons denied intervention in the prior proceedings, and must certify to the Commission that such service has been made, stating the names and addresses of persons served.

* * * * *

§ 385.904 [Amended]

3. In § 385.904, paragraph (c) is amended by removing the words "Upon receipt of notice from the Secretary under paragraph (a) of this section, or upon receipt of a notice of a petition for review by the petitioner under paragraph (b) of this section" and inserting, in their place, the words "Upon commencement of a proceeding".

§ 385.905 [Amended]

4. In § 385.905, paragraph (a) is amended by removing the words "Upon the filing of the notice with the Commission by the Secretary under paragraph (a) of Rule 904 (commencement of proceedings), or by the petitioner under paragraph (b) of such rule" and inserting, in their place, the words "Upon commencement of a proceeding".

§ 385.906 [Amended]

5. In § 385.906, paragraph (a)(1) is amended by removing the words "filing of notice by the Secretary under Rule 904(a) (commencement of proceedings)" and inserting, in their place, the words "commencement of a proceeding".

6. In § 385.906, paragraph (b)(2)(i) is amended by removing the words "which the Secretary certified to the presiding officer under paragraph (a)(1)(i) of this section".

7. In § 385.906, paragraph (c)(4) is amended by removing the word "Secretary's".

8. In § 385.906, paragraph (c)(6) is amended by removing the final sentence, and inserting, in its place, the sentence "A person wholly or partially denied intervention may take an interlocutory appeal of the order denying intervention, under Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers), and will be considered a "participant" (as that term is defined in Rule 102(b) (definitions)) for the limited purpose of permitting that person to file an interlocutory appeal under Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers) contesting denial, in whole or in part, of that person's motion to intervene."

§ 385.909 [Amended]

9. In § 385.909, paragraph (a) is amended by removing the word "Secretary's".

[FR Doc. 85-21154 Filed 9-4-85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 0

[Order No. 1106-85]

Delegation of Authority and Responsibility

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order vests in the Associate Attorney General the responsibility to determine whether compliance with certain requirements of the Department's section 504 federally conducted regulation (28 CFR Part 39) will result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, and whether a person is a qualified handicapped person. As a result of this order, only the Attorney General, the Deputy Attorney General, or the Associate Attorney General can make such determinations on behalf of the Department.

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Deputy Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724-2227 (Voice) or 724-7678 (TDD); or L. Irene Bowen, Supervisory Attorney, Community Services Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724-2245 (Voice) or 724-7678 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department recently issued a final regulation for the enforcement of nondiscrimination on the basis of handicap in its programs. 49 FR 35724 (1984) (to be codified at 28 CFR Part 39). The rule was issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

The section 504 rule provides that a qualified handicapped person is one who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature. *Id.* at 35735 (§ 39.103 *Definitions* "Qualified handicapped person"). Only the agency head or his or her designee can determine whether a modification would result in a fundamental alteration. *Id.* at 35728.

Also, the rule places outer limits on the Department's responsibilities to make accommodations for handicapped persons: section 504 does not require an action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. *Id.* at 35736-7 (§§ 39.150(a)(2) and 39.160(d)). The rule explicitly places the burden of showing fundamental alteration/undue burdens on the Department. *Id.* It provides that only the Attorney General or his or her designee can make the "fundamental alteration"/"undue burdens" decision. *Id.*

This order names the Associate Attorney General as the Attorney General's designee responsible for determining whether a person can achieve the purpose of a program without fundamental changes in its nature, and whether an action would fundamentally alter the nature of a program or activity or result in undue burdens. The authority to make these determinations may not be redelegated.

It should be noted that under 28 CFR 0.15, the Deputy Attorney General has been authorized to exercise the powers and authority vested in the Attorney General. These powers would include that of making the "fundamental alteration"/"undue burdens" decision. Thus, the effect of this order is that only the Attorney General, the Deputy Attorney General, or the Associate Attorney General can make the decision.

In light of the extensive resources and capabilities that could properly be used for making the Department's programs and activities accessible, we anticipate that compliance with the section 504 regulation will not, in most cases, result in a fundamental alteration in the nature of a program or activity or undue burdens. To ensure that the decision

that compliance would result in such alteration or burdens be made only in those circumstances where it is necessary and appropriate and to ensure that such decisions will be made uniformly, only one of the three top Department officials can make that decision.

List of Subjects in 28 CFR Part 0

Authority delegations [Government agencies], Discrimination against handicapped, Nondiscrimination, Organization and functions [Government agencies].

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and 29 U.S.C. 794, Part O of Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part O continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

2. Section 0.19 is amended by adding a new paragraph (c) that reads as follows:

§ 0.19 Associate Attorney General

* * * * *

(c) The Associate Attorney General is the Attorney General's designee for purposes of determining whether, under part 39 of this title, a handicapped person can achieve the purpose of a program without fundamental changes in its nature, and whether an action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Associate Attorney General may not redelegate this authority.

Dated: August 27, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-21224 Filed 9-4-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Audit Requirements

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule; correction.

SUMMARY: This document corrects the interim rule concerning audit requirements for local governments which receive Revenue Sharing funds, published in the **Federal Register** on Wednesday, August 28, 1985, at 50 FR 35072. These amendments to Subpart F were made necessary by the enactment of the Single Audit Act of 1984.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Revenue Sharing, or James C. Harmon, Attorney Advisor. Telephone: (202) 634-5182.

SUPPLEMENTARY INFORMATION: Accordingly, corrections are made in FR Doc. 85-19779 beginning on page 35072 in these issue of August 28, 1985, as follows:

(1) On page 35072, first column, forty-fourth line (under Background), there should be a comma after "$25,000" and the word "year".

(2) On page 35072, second column, third line, the word "the" should be inserted between the words "in" and "Standards", and the letters "al" should be added to the word "Government". Therefore, the third through the sixth lines should read as follows:

in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, developed by the Comptroller General.

(3) On page 35072, third column, forty-fifth line (under Need for Immediate Guidance), the word "made" should be inserted between the words "been" and "are". Therefore, the forty-fifth line should read as follows:

The changes that have been made are

(4) On page 35073, third column, § 51.103(b)(1)(i), second line, the word "unaudibility" should read unauditability".

Richard S. Isen,

Chief Counsel, Office of Revenue Sharing.

August 30, 1985.

[FR Doc. 85-21225 Filed 9-4-85; 8:45 am]

BILLING CODE 4810-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2564]

General Management; Change of Area of Jurisdiction and Responsibility in Colorado and New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking transfers jurisdiction over public lands in the State of Kansas from the Colorado State Office to the New Mexico Office to allow the Bureau of Land Management to handle more efficiently filings and other documents. All filings and other documents relating to the public lands in the State of Kansas shall be filed with the New Mexico State Office of the Bureau of Land Management.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ralph Smith, (303) 294-7171.

SUPPLEMENTARY INFORMATION: The transfer of jurisdiction over public lands in the State of Kansas from Colorado to New Mexico will allow the Bureau of Land Management to handle more efficiently filings and other documents required by other provisions of Title 43 of the Code of Federal Regulations. It makes no change in the filing requirements. All official Bureau records relating to the State of Kansas that were formerly in the Colorado State Office will have been moved to the New Mexico State Office by October 1, 1985.

Because this rulemaking changes only the location where certain documents are to be filed, this amendment is published as a final rulemaking, to be effective October 1, 1985.

The principal author of this final rulemaking is Ralph Smith, Office of Administration, Colorado State Office, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects for 43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and records, Public Lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

August 30, 1985.

PART 1821—[AMENDED]

The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the

address and jurisdiction of the New Mexico State Office, is revised to read as follows:

§ 1821.2–1 [Amended]

* * * * *

State Office and Area of Jurisdiction

* * * * *

Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205—Colorado.

* * * * *

New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504—New Mexico, Oklahoma, Texas and Kansas.

* * * * *

[FR Doc. 85–21152 Filed 9–4–85; 8:45 am]
BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 81–768; FCC 85–453]

Allow the Selection From Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Third report and order in general docket No. 81–768.

SUMMARY: This action was taken pursuant to the *Third Notice of Proposed Rule Making in Gen. Docket No. 81–768*, in which the Commission considered whether it had the authority to grant women special lottery preferences under Section 309(i) of the Communications Act. In this *Third Report and Order* the Commission has concluded that it has no authority under the lottery statute to grant "minority ownership" or "media ownership" preferences to women. The Commission also determined that it does not have residual authority to create a special lottery preference for women analogous to the statutory media and minority ownership preferences.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Office of the General Counsel, (202) 632–7020.

SUPPLEMENTARY INFORMATION:

Third Report and Order

In the matter of amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings; Gen. Docket No. 81–768.

Adopted: August 7, 1985.
Released August 16, 1985.

By the Commission: Commissioner Dawson concurring in part and dissenting in part and issuing a statement; Commissioner Rivera concurring and issuing a statement.

1. In our *Third Notice of Proposed Rule Making* in General Docket No. 81–768,[1] we initiated a proceeding to determine whether women as a group should be granted preferences when initial licensing proceedings in the mass media services are conducted by lottery pursuant to section 309(i) of the Communications Act, 47 U.S.C. 309(i). As discussed more fully below, we conclude that the amended lottery statute does not give the Commission the authority to grant women a "minority ownership" preference by including them in the definition of "minority group" set out at section 309(i)(3)(C)(ii) of the Act. Nor, we believe, does the statute give the Commission authority to grant women a "media ownership" preference since eligibility for that preference is based solely upon the number and location of other mass media properties owned by the applicant. Finally, we conclude that we do not have residual authority to create a special lottery preference for women in addition to the "minority ownership" and "media ownership" preferences.

Background

2. The history of the Commission's efforts to implement a workable lottery system under section 309(i) of the Act is set forth in detail in the *Third Notice*.[2] Briefly, however, the Commission first received explicit statutory authority to use a lottery as a means of allocating licenses to use the electromagnetic spectrum in Pub. L. No. 97–35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 357 (1981), which added subsection 309(i) to the Communications Act. The new statute authorized the Commission, at its discretion, to grant licenses or construction permits for any use of the spectrum to a qualified applicant by use of a lottery system. In a new section 309(i)(3)(A) to the Communications Act, Congress directed the Commission to

> . . . establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection, groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties will be granted significant preferences.[3]

In large part due to the lack of specificity about which groups would be eligible for preferences under the statute, the Commission was unable to exercise its statutory authority and requested additional congressional guidance in effecting the statutory lottery preference scheme.[4]

3. Congress gave the Commission "the additional guidance and clarification it said it needed" by enacting Section 115 of the Communications Amendments Act of 1982.[5] In a new subsection 309(i)(c)(C)(ii), Congress provided that:

> The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

In addition, amended section 309(i)(3)(A) directed that:

> . . . significant preferences will be granted to applications or groups of applications, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

4. The Commission's *Second Report and Order*[6] adopted rules implementing

---

[1] 95 FCC 2d 432 (1983) (hereinafter *"Third Notice"*).

[2] *See* 95 FCC 2d at 432–35.

[3] The *Conference Report* explained the purpose for the system of lottery preferences as follows: It is the firm intention of the conferees that ownership by minorities, such as blacks and hispanics, *as well as by women*, and ownership by other underrepresented groups, such as labor unions and community organizations, is to be encouraged through the award of significant preferences in any such random selection proceeding. These are groups which are inadequately represented in terms of nationwide telecommunications ownership, and it is the intention of the conferees in establishing a random selection process that the objective of increasing the number of media outlets owned by such persons or groups be met. [emphasis added]

H.R. Rep. No. 97–208, 97th Cong., 1st Sess. (1981), at 897 (hereinafter *"1981 Conference Report"*). Given this expression of Congressional intent, the Commission's first *Notice* in this proceeding included women in the list of groups to be awarded a preference in relevant lottery proceedings. *See Amendment of Part 1 of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Proceedings*, 88 FCC 2d 476, 484–485 (1981) (hereinafter *"First Notice"*). However, practically every aspect of the proposed lottery structure became the object of substantial dispute among the commenters.

[4] *Report and Order*, 89 FCC 2d 257 (1982) (hereinafter *"First Report and Order"*).

[5] Pub. L. No. 97–259, which amended section 309(i)(3)(A) of the lottery statute and added a new subsection 309(i)(3)(C)(ii). *See* (hereinafter *"1982 Conference Report"*)

[6] 93 FCC 2d 952 (1983), *recon. in part*, 49 FR 49466 (Dec. 20, 1984) (*"Lottery Reconsideration Order"*), *appeal docketed sub nom. National Latino Media Coalition v. FCC*, No. 83–1785, (D.C. Cir. July 26, 1983).

this amended lottery authority and granted a "minority ownership" preference to those named groups listed in the statutory definition of "minority" and a "media ownership" preference to those applicants owning no or few other media of mass communications.[7]

Third Notice of Proposed Rule Making

5. Because the appropriateness of granting preferences to women under the amended lottery statute was a matter of some dispute, the Commission issued a *Third Notice* in this docket to resolve that issue. In the *Third Notice* we observed that the statutory lottery preferences available to an applicant under the amended statute appeared to be predicated on two standards—first, the number of other media outlets owned and, second, the racial or ethnic origin of the applicant. However, we also raised the possibility that the following language in the *1982 Conference Report* might indicate the conferees' intent for women as well to be eligible for a lottery preference:

> It should be noted that such groups as women, labor unions, and community organizations which are mentioned in the legislative history of the lottery statute that was originally adopted . . . are all significantly underrepresented in the ownership of telecommunications facilities. Such applicant groups would, of course, be eligible for both media ownership and minority preferences if they meet the eligibility guidelines. The Conferees expect that such groups will also substantially benefit from this lottery preference scheme . . .[8]

6. We also noted that language in the *1982 Conference Report* indicated that the scheme of lottery preferences was to some extent intended to substitute for the Commission's comparative licensing proceedings in which the Commission awarded "significant comparative advantages" to "minority-controlled applicants and to applicants with a low degree of ownership interest in mass communications media."[9] We asked whether Congress intended to grant women as a class a comparable preference under the lottery scheme similar to that awarded under the integration of ownership and management criterion of the Commission's comparative licensing process.

7. We suggested that two avenues might be available under the statute for providing women a preference: (1) To amend the lottery rules to treat women as a "minority group" for purposes of the statutory "minority ownership" preference, or (2) to accord women as a class a preference under the diversification ("media ownership") preference.

8. Assuming the Commission had authority to grant women a preference under either approach, we also requested comment on whether the Commission is itself competent to make findings that women have been discriminated against in the ownership of mass communications media or whether Congressional action is instead required. We observed that while the Commission previously has found that women as a class have been historically discriminated against in employment,[10] and a study recently conducted for the Commission, which was designed to identify the extent of women's ownership of broadcast facilities suggested there was a disproportionately low level of women's ownership,[11] no such record apparently existed in this proceeding for establishing a nexus between discrimination and women's ownership of broadcast facilities. We requested comment on whether the study's results constituted adequate legal and factual grounds upon which to grant a preference.

9. Fourteen parties filed comments or reply comments in response to the *Third Notice*.[12] In addition, letters were received from Sen. Robert Packwood, Rep. Olympia J. Snowe, and Rep. Nancy L. Johnson. The congressional letters supported the inclusion of women within the enumerated groups accorded "minority" preference under the statute. AAUW, AWRT, NOW-LEDF, NRBA and Pappas filed comments which supported granting women both "minority" and "media ownership" preferences. ACTS, ALF, Citizens and BCFM, Howard Students, Steele, NCBL and UCC filed comments opposing granting women either "minority" or "media ownership" diversification preferences.

Discussion

10. The principal questions raised by our *Third Notice* are whether it is appropriate and within the Commission's authority to amend its rules implementing the lottery statute to grant women a preference either under the "minority ownership" classification or under the "media ownership" diversification preference. If neither of these alternatives is within the Commission's authority, we additionally asked whether it would be an appropriate exercise of the Commission's residual discretion to create a special lottery preference for women in addition to the statutory "minority ownership" and "media ownership" preferences. As discussed below, we answer no to all three alternatives.

A. Eligibility of Women for "Minority Ownership" Diversification Preference

11. In our *Third Notice* we observed that the literal language of the amended statute enumerates specific groups which are "included" in the class of "minority group", but that the language does not mention "women." We also noted that the term "includes" usually is a term of enlargement, not of limitation, intended to convey that other things are "includable" along with, rather than exhausted by, the enumerated particulars.[13] As the term "minority" is not generally viewed as encompassing women, we asked whether a proposed amendment to the Commissions lottery rules which construed the term "minority group" to include women was authorized under the statute.

12. Nine commenters supported an amendment to the rules to include women in the "minority ownership" preference. Generally, the commenters argued that while various specific

---

[7] 93 FCC 2d at 953.

[8] *1982 Conference Report* at 44–45.

[9] *Id.* at 40. The conferees observed that "the degree of advantage, merit, or preference heretofore awarded to such applicants need not be precisely duplicated in the administration of a random selection system." *Id.*

[10] *Equal Employment Program*, 32 FCC 2d 708, 709 (1971).

[11] *Female Ownership of Broadcast Stations*, ELRA Group, Inc., May 1982. In the event we determined that we do not have jurisdiction to establish a preference for women, we proposed to forward to the Congress documents reflecting the record developed in response to the *Third Notice*, together with such recommendations as were found appropriate. By direction of the Commission, the Secretary sent a letter to Sen. Robert Packwood, Chairman of the Senate Committee on Commerce, Science and Transportation, informing him of the issues raised by the *Third Notice* and the pendency of this proceeding. A similar letter was sent to Sen. Ernest F. Hollings.

[12] Comments were filed by: American Association of University Women ("AAUW"), American Christian Television System, Inc. ("ACTS"); American Legal Foundation ("ALF"); American Women in Radio and Television ("AWRT"); four students at Howard University School of Law ("Howard students"); National Association of Black Owned Broadcasters ("NABOB"); National Black Media Coalition ("NBMC"); National Radio Broadcasters Association ("NRBA"); NOW Legal Defene and Education Fund ("NOW-LEDF"); Mrs. Stella A. Pappas ("Pappas"); and James U. Steele ("Steele"). Reply comments were filed by: ACTS; Citizens Communications Center and Black Citizens for a Fair Media (" Citizens and BCFM"); National Conference of Black Lawyers, Communications Task Force ("NCBL"); and Office of Communication, United Church of Christ ("UCC"). These comments are summarized in Appendix B.

[13] *See* 2A Sands, *Sutherland on Statutes and Statutory Construction* § 47.17 at p. 103 (4th ed.); *Highway City Freight Drivers v. Gordon*, 576 F.2d 1285, 1289, *cert. denied*, 439 U.S. 1001 (1978).

minority groups are mentioned in section 309(i)(3)(C)(ii), Congress did not preclude the Commission from exercising its judgment in awarding preferences to other groups, such as women, which are similarly underrepresented in the ownership of mass media. The commenters also argued that under general rules of statutory interpretation, use of the term "includes" is permissive rather than restrictive.

13. Twelve commenters opposed the inclusion of women within those eligible for "minority group" preferences, asserting that it was contrary to normal canons of statutory construction to include women in the definition of "minority group" adopted by Congress. Opposing commenters argued that Congress made specific determinations as to past discrimination in the ownership of mass media only with respect to racial and ethnic minorities, and created the narrowly drawn "minority group" preference scheme in the amended legislation specifically to remedy the effects of the past discrimination. The commenters maintained that it is not within the Commission's authority under the lottery statute to dilute the "significant preferences" established by Congress for racial and ethnic minorities by including women, a group which was not found by the legislators as having endured the same discriminatory effects. The commenters added that the conferees referenced the Office of Management and Budget's Statistical Policy Directive No. 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" and directed that it be used to resolve disputes on the application of the term "minority."[14] That OMB document, commenters asserted, does not define women to be a minority group. The commenters also pointed out that in 1981, the conferees expressly stated that both minorities and women were entitled to preferences under the initial lottery statute, but this language was dropped from the *1982 Conference Report* where women were instead described as eligible for the same preferences under the statute as labor unions and community organizations.

14. Our examination of the statute leads us to conclude that the "minority ownership" diversification preference was intended by Congress to be limited solely to racial and ethnic minority groups and that women are not includable. Section 309(i)(3)(C)(ii) indicates that "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders" are "included" within the class of "minority group." We agree with commenters favoring the inclusion of women in this preference group that the word "includes" is a term of expansion which indicates that minority groups other than those specified are "includable." We do not find, however, that women as a class are sufficiently like the enumerated groups to be includable in the term "minority group." Women are in each one of these groups; however, they do not themselves constitute a separate minority group as we understand the term.

15. In common language usage, when a list of particulars is associated with a general reference such as "includes," what is intended to be incorporated are those things not mentioned which have significant qualities in common with the enumerated categories.[15] The named particulars in section 309(i)(3)(C)(ii) are all commonly understood to represent terms identifying an individual's racial or ethnic ancestry. Accordingly, we find that the word "includes" in the context of section 309(i)(3)(C)(ii) should properly reference only those persons belonging to racial or ethnic groups not enumerated, or those persons belonging to a class of mixed racial and/or ethnic origins. Women as a class do not fit into either of these groups and thus are not "included." This interpretation accords not only with applicable canons of statutory construction but also with a reasonable reading of the explicit intent of the conferees.

16. This conclusion is reinforced by a review of the history of the lottery statute. In 1981, Commission found it could not implement the first lottery statute in large part because of confusion about who should be eligible for a minority preference. It consequently requested Congress to provide "specificity" on that issue, and Congress responded by enacting section 309(i)(3)(C)(ii), which listed specific groups to be awarded a minority preference. The fact that Congress had indicated women should be among those to be awarded preferences in the first lottery statute [16] and then, in its 1982 clarification, Congress did not include women, leads to a strong inference that Congress did not intend to extend preferences to women in the amended lottery statute. This is confirmed by the fact that the *1982 Conference Report* expressly referred to its prior discussion of women in the *1981 Conference Report* and concluded that women "would, of course, be eligible for both media ownership and minority ownership preferences if they meet the eligibility guidelines."[17] Thus, in giving the Commission specificity, Congress limited the minority preference to traditionally recognized minorities, intending that women were to receive preferences only to the extent they were part of those cognizable groups.

17. Further support for this is found in the *1982 Conference Report* at 43, which describes application of the "minority ownership" preference exclusively in terms of "*racial* and *ethnic* minorities—groups that traditionally have been extremely underrepresented in the ownership of telecommunications facilities and media properties." (emphasis added). Indeed, Congress expressly stated that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications . . . " [18] Moreover, the conferees specifically directed reference to the Office of Management and Budget's Statistical Policy Directive No. 15 for purposes of defining those eligible for the minority group preference.[19] This document neither enumerates nor otherwise mentions women as a minority group. This bears out the correctness of NBMC's argument that, since women are not defined in any federal statute as a "minority," had Congress intended for women to be included in section 309(i)(3)(c)(ii) as a "minority group," it would have explicitly so stated in the amended statute. Moreover, as many commenters pointed out,[20] to include so large a group as women as a minority would substantially dilute the preferences to the groups identified by Congress and would be contrary to the congressional intent. For all these reasons, we conclude that Congress intended to limit the eligibility for the "minority ownership" preference solely to racial and ethnic minorities and that including women in this preference is not within our authority under the lottery statute.

B. Eligibility of Women for the "Media Ownership" Preference

18. We turn next to the issue of whether the Commission has the

[14] *1982 Conference Report* at 45.

[15] *See 2A Sands, Sutherland on Statutes and Statutory Construction* (Sutherland, 4th ed.), at § 48.18.

[16] *1981 Conference Report, Supra* n. 3.

[17] See *1982 Conference Report*, at 44–45.

[18] *1982 Conference Report* at 43.

[19] *Id.* at 45.

[20] *See, e.g.*, comments of ACTS, ALF, Howard students, NABOB, NBMC, Steele, BCFM, NCBL, and UCC.

authority under the statute to include women in the "media ownership" preference. The language of section 309(i) does not on its face contemplate any preference for women.[21] The *1982 Conference Report*, however, provides explicit instructions for administering the "media ownership" preference. These directives lead us to conclude that Congress intended that eligibility for the "media ownership" preference be based solely upon structural criteria—specifically, the *number* and *location* of other media of mass communications properties owned by the prospective applicant. We therefore conclude that we do not have the authority to grant "media ownership" preferences based on any other factor, such as gender.

19. The *1982 Conference Report* establishes the criteria to be considered by the Commission in its implementation of the "media ownership" lottery preference:

> [T]he Conferees intend that in the administration of a lottery to be used for granting licenses or construction permits for any media of mass communications, the Commission award a significant media ownership preference to those applicants whose owners control no other media of mass communications. . . . Similarly, a media ownership preference should be awarded to those applicants whose owners, when aggregated, have controlling interest (over 50%) in 1, 2, or 3 other media of mass communication . . . . No media ownership preference should be awarded to applicants whose owners, when aggregated, have controlling interest (over 50%) in more than 3 other media of mass communications properties. . . . [N]o media ownership preference should be awarded to any applicant whose owners, when aggregated, have controlling interest (over 50 percent) in any medium of mass communications which is licensed to serve, franchised to serve (in the case of a cable television system), or primarily serves (in the case of a daily newspaper) the community of license for which of [sic] the grant is sought.[22]

These explicit directives lead us to agree with ACTS' comments that it was Congress' intent to base eligibility for the "media ownership" diversification preference solely on the number of other mass media outlets owned by the applicant nationally, irrespective of the race, ethnicity, sex or other characteristic of the applicant.[23]

20. This conclusion is bolstered by language in the *1982 Conference Report* declaring the conferees' "firm intent" for the Commission to preserve in the "media ownership" preference the traditional advantages accorded by the Commission's comparative process.[24] In the Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (*"1965 Policy Statement"*), cited by the conferees, a comparative advantage for "diversification of control of the media of mass communications" is awarded only to entities controlled by those with few or no other interests in other mass media.[25] And in proceedings to select from among new competing applicants, the Commission has steadfastly confined its selection process under the diversification factor to this purely structural approach. *See Radio Jonesboro, Inc.* FCC 85–7 at 8 (released April 5, 1985), *appeal pending sub nom. Whispering Sounds, Inc.* v. *FCC*, No. 85–1277 (D.C. Cir. filed May 6, 1985); *Las Missiones de Bejan Television Co.*, 93 FCC 2d 191 (Rev. Bd. 1983), *review denied* FCC 84–97 (released May 16, 1984) *appeal pending*, No. 84–1255 (D.C. Cir. filed June 18, 1984). For these reasons, we find that we do not have authority to expand the "media ownership" diversification preference to include a further preference for women.

C. Commission's Residual Authority To Create a Special Lottery Preference for Women

21. Our *Third Notice* also solicited comment on whether the lottery amendments, by their own terms or intent, would prohibit the Commission from exercising its residual jurisdiction under Title III of the Communications Act to create for women a preference beyond the "media ownership" and "minority ownership" preferences discussed in the *1982 Conference Report*. In this regard, we asked whether creation of a lottery preference for women analogous to the "minority ownership" preference was consistent with congressional intent that the lottery preference scheme reflect the traditional criteria used by the Commission in the comparative licensing process.[26] Noting that in comparative hearings the Commission traditionally has awarded an enhancement credit for female ownership and participation in management, we asked in the *Third Notice* whether the failure to provide a preference or other special consideration for applicants with significant female ownership involvement would situate such applicants substantially differently in the lottery context than would be the case in a traditional comparative proceeding and, if so, whether that would be contrary to congressional intent.

22. After examining the preference scheme established by the amended lottery statute, the legislative history, and the comments submitted in response to our *Third Notice*, we now conclude that the lottery statute does not afford us the authority to create an additional lottery preference for women tantamount to the "minority ownership" and "media ownership" preferences established by Congress. We believe ACTS is correct in its assertion that while the Commission has authority under the statute to administer lotteries, this authority does not enable the Commission to adopt rules that alter the specific preferences established by Congress. In our reading of section 309(i), in addition to determining which additional racial and ethnic groups may be includable in the "minority ownership" preference, the other area of discretion accorded the Commission is in determining those proceedings to which the lottery system shall apply.[27] As discussed above, we have concluded that the preference scheme established by Congress does not permit the Commission to include women in either the "minority ownership" or "media ownership" preferences. Further, it seems apparent that adopting a preference for women would disrupt Congress' explicit plan for Commission administration of fixed, congressionally mandated "media ownership" and "minority ownership" preference factors by diluting the selection probabilities, intended by Congress to be "highly outcome oriented" for applicants who

---

[21] The language of section 309(i)(3(A) reads: The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or constuction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications.

[22] *1982 Conference Report* at 42–43. The specificity Congress employed here is again in response to the difficulty the Commission encountered in implementing the broader 1981 statute.

[23] Indeed, inclusion of women under this preference would lead to the anomalous result of granting women a preference even in the situation where a female applicant was the licensee of a broadcast facility in the very community applied for, a result directly in conflict with Congress' intent to deny a media ownership preference to any applicant already licensed in the same community.

[24] *See 1982 Conference Report* at 39.

[25] 1 FCC at 394–95.

[26] The conferees indicated that the lottery preference scheme was to some degree intended to substitute for the "significant comparative advantages" provided in the Commission's comparative broadcasting license proceedings although "the degree of advantage, merit, or preference awarded to such applicants need to be precisely duplicated. . . ." *1982 Conference Report* at 40.

[27] *See 1982 Conference Report* at 37–39.

met the specific eligibility guidelines.[28] We thus find no indication that Congress intended to leave us any discretion to create additional lottery preferences.[29]

23. Several commenters maintained that incorporation of a preference for women is mandated because Congress intended for the preference system to reflect the Commission's comparative process and because Congress was well aware of the Commission's treatment of women as a minority group at the time it enacted the legislation.[30] Indeed, many commenters supporting the creation of a "women's preference" pointed to language in the *1982 Conference report* which, in their opinion, indicated Congress' intent for women to benefit from the lottery preference scheme. These commenters rely on the following language:

> It should be noted that such groups as women, labor unions, and community organizations which were mentioned in the legislative history of the lottery statute that was originally adopted [citation omitted] are all significantly underrepresented in the ownership of telecommunications facilities. Such applicant groups would, of course, be eligible for both media ownership and minority ownership preferences if they meet the eligibility guidelines. The Conferees expect that such groups will also substantially benefit from this lottery preference scheme, and, consequently, the American public will benefit by having access to a wider diversity of information sources.

1982 Conference Report at 44–45. We believe, however, as indicated above in para. 16, that the most reasonable interpretation of this language is that Congress intended for women, as well as labor unions and community groups, to participate in the preference scheme only to the extent that they met the "minority ownership" and "media ownership" eligibility guidelines. This interpretation reconciles the old and the new lottery statute. As commenters pointed out, a reading of the initial and amended statutes, as amplified by the explanations provided in the 1981 and 1982 *Conference Reports*, indicate that Congress expressed its intention to award both minorities and women preferences in the initial statute but that under the amended statute, the conferees intended for women to be treated similiarly to groups such as labor unions and community organizations, which are also not granted statutory preferences. To include women as a third category eligible for a preference would, in our view, be expressly contrary to Congress' specific decision not to include women as eligible for a special preference.

D. Conclusion

24. For the reasons discussed above, our interpretation of the *1982 Conference Report* leads us to conclude that the Commission does not have authority under the amended statute to make women eligible for either a "media ownership" or "minority ownership" preference in awarding initial licenses through lotteries. Our interpretation of the *1982 Conference Report* also leads us to conclude that we do not have the authority or the discretion under the statute to create a special lottery preference for women.

Ordering Clause

25. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, 47 U.S.C. 154(i) and 154(j), and section 1.425 of the Commission's Rules, 47 CFR 1.425, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Due to the continuing effort to mininize publishing costs, Appendices A and B (List of Commenters and Summary of Comments) will not be printed herein; however, these lists may be reviewed in the FCC Docket Branch, Room 239, and the FCC Library, Room 639, both located at 1919 M St. NW, Washington, DC 20554. They are also filed at the Office of the Federal Register.

[Re: Third Report and Order in General Docket 81–768]

Statement of Commissioner Mimi Weyforth Dawson Concurring in Part and Dissenting in Part

I am unconvinced of the wisdom of preference schemes to remedy statistical ownership disparities. I question the practicality, the effectiveness, the fairness and the Constitutionality of any Goverment actions which are premised on racial or ethnic—or gender based—preferences. However, so long as Congress has determined in this instance that preference schemes are appropriate to remedy broadcast ownership disparties for certain select groups, I believe it is unfair to exclude women.

Congress, in authorizing lotteries for broadcast licenses, required the Commission to award "minority ownership" preferences to specific racial and ethnic groups. This was based on Congress' determination that certain groups, including Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders, have been subject to historic discrimination and underrepresentation in the ownership of broadcast facilities. In addition to this "minority ownership" preference, Congress also required the Commission to award a "media ownership" preference in lotteries if it would increase diversity of ownership.

The majority has concluded that the Commission lacks authority, under the lottery statute, to award either a "minority ownership" or a "media ownership" preference to women. I concur in that determination, based on the rationale set forth in the *Third Report and Order*. I disagree with the majority, however, when it concludes that the Commission lacks "residual authority," under the general public interest provisions of the Communications Act, to create a lottery preference for women.

The history of employment discrimination against women has been widely recognized by Congress, the Courts and this Commission. *E.g.*, S. Rep. No. 92–689, 92nd Cong., 2nd Sess. (1972); *Frontiero* v. *Richardson*, 411 U.S. 677, 684 (1973); and *Equal Employment Program*, 32 FCC2d 706, 709 (1971). The underrepresentation of women in the ownership of broadcast facilities has been documented. *Conference Report* at 44–45. The Commission's most recent study indicates that even though women comprise more than half the population, they own only 2.8% of the country's television stations, 8.8% of the AM stations and 9% of the FM stations. *Female Ownership of Broadcast Stations*, The ERLA Group, Inc. (1982).

The Commission traditionally has addressed this issue under the general authority of the Communications Act, without specific enabling legislation. For years, women have received preferences in broadcast comparative proceedings based on the Commission's public interest mandate and our goal of promoting diversity in the ownership of broadcast facilities. *West Michigan Broadcasting* v. *F.C.C.*, 735 F.2d 601 (1984).

I do not believe Congress intended to prevent the Commission from awarding similar preferences to women in lotteries. The legislative history accompanying the new lottery legislation makes it abundantly clear that Congress sought to have the Commission's traditional diversity objectives "continued" in the comparative process and "incorporated" into any lottery system.

---

[28] These fixed relative preferences for eligible applicants are detailed in the *1982 Conference Report* at 46–48.

[29] In contrast, we have previously found that our residual discretion to act in the public interest arises in those circumstances where the lottery statute is not intended to apply. In the *Lottery Reconsiderotion Order*, supra n.8, we determined that the amended lottery statute was not intended to apply to the deadlock or tie-breaker situation. We came to this decision after reasoning that the systematic use of lotteries for certain specific services in the mass media, common carrier and private radio areas as a substitute for comparative hearings was in sharp contrast to the occasional *ad hoc* use of lotteries as an instrument of last resort to resolve a comparative hearing after there is a finding on the record that there are no material differences between the applicants. Without apparent authority under the new legislation to conduct a lottery in a tie-breaker situation, we raised the question whether our general public interest discretion supports such use. Answering that question in the affirmative, we found that tie-breaker lotteries would be a fair and reasonable decisionmaking device if the applicants were in true equipoise on comparative factors. We note that petitions for reconsideration of this order are still pending.

[30] *See, e.g.*, comments of AWRT and AAUW.

Conference Report at 38–40. Lottery preferences for women also have been endorsed by both the Honorable Bob Packwood, the then-Chairman of the Senate Committee on Commerce, Science and Transportation, and the Honorable Timothy E. Wirth, the Chairman of the House Subcommittee on Telecommunications, Consumer Protection and Finance.

Attaining the goal of ownership diversity should not depend on the licensing methodology we choose to use in particular cases. The same residual statutory authority that allowed this Commission to grant preferences to women in comparative hearings, in my opinion, could be used now to grant similar preferences to women in lotteries. Accordingly, I dissent from the majority's conclusion that the Commission lacks residual authority under the Communications Act to create a special lottery preference for women.

Concurring Statement of Commissioner Henry M. Rivera

Re: Third Report and Order in General Docket No. 81–768—Women's Lottery Preferences

My decision not to vote to create a distinct female ownership preference for use in mass media lotteries is one that did not come easily. My initial view was that we lack the authority to create such a preference in light of the legislative history of section 309(i).[1] The record developed in the *Third Report and Order* has confirmed my initial analysis of the law. I, therefore, feel constrained to concur in the decision not to create a female preference absent further legislation.

The proceeding does, however, raise an important policy issue worthy of further congressional study. Minorities and women often have an identity of interest in matters concerning diversity in the mass media. I am pleased, therefore, that Commission is making good on its promise[2] to forward the record developed in this proceeding to the relevant congressional subcommittees for their further review. It may be that Congress will see fit to amend section 309(i) to authorize a female ownership preference as it has done for minorities.

[FR Doc. 85–21130 Filed 9–4–85; 8:45 am]
BILLING CODE 6712–01–M

---

47 CFR Parts 0, 2, and 18

[Gen. Docket No. 20718; FCC 85–445]

Overall Revision of the Rules Regarding Industrial Scientific and Medical (ISM) Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends Part 0 (dealing with the organization and function of the Commission), Part 2, Subparts I and J (dealing with the marketing rules and equipment authorization procedures), Part 18 of its Rules (dealing with industrial, scientific, and medical (ISM) equipment) by deleting administrative provisions which have become burdensome and obsolete and providing four additional frequency bands exclusively for the operation of ISM equipment. The intended effect is to provide a more efficient equipment authorization program for ISM devices, more comprehensive regulations, uniform methods of measurements, and provisional technical standards for RF lighting devices.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20544.

FOR FURTHER INFORMATION CONTACT: Lillian M. Volcy, Office of Science & Technology, Washington, D.C. 20554, Tel: (202) 653–8247.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 2

Imports.

47 CFR Part 18

Business and industry, Household appliances, Medical devices, Scientific equipment.

Third Report and Order

In the matter of overall revision of the rules regarding industrial, scientific, and medical (ISM) equipment under Parts 0, 2, and 18, Gen. Docket No. 20718.

Adopted: August 5, 1985.

Released: August 21, 1985.

By the Commission: Commissioner Quello concurring in the result.

*Introduction and Summary**

1. This proceeding was initiated to revise the regulations concerning industrial, scientific, and medical (ISM) equipment under 47 CFR Parts 0, 2, and 18.(*1*)(*2*) These rules were adopted in 1946 in order to protect radiocommunication services from receiving interference from the operation of ISM equipment. In light of the changes in spectrum allocation and the proliferation of ISM equipment as well as radiocommunication services, we questioned whether some of the regulations adopted in 1946 were still adequate. We started by releasing several notices inquiring into the suitability of the prescribed technical standards, methods of measurements, and the effectiveness of the equipment authorization and enforcement program.(*3*) We continued, in response to comments filed on these notices, and based on our experience in dealing with ISM equipment, and in view of the continued rarity of incidences of interference from the operation of such equipment, by amending the technical standards only for induction cooking ranges and by deleting the requirement for filing the Form 724.(*4*) We then proceeded by issuing a *Third Notice of Proposed Rule Making*(*5*) (*Notice*) addressing the following topics: (1) the adoption of a more liberal and efficient equipment authorization program, (2) the deletion of burdensome and obsolete administrative rules, (3) the addition of four ISM frequency bands, (4) technical standards for RF lighting devices, and (5) the implementation of uniform methods of measurements.(*6*)(*7*) In the *Notice*, we indicated that the general technical standards would be revised when further study has been undertaken. We are also seeking more information from the CCIR and CISPR, (*8*) which, in Resolution 63 of the 1979 Geneva World Administrative Radio Conference (WARC), were invited to collaborate in preparing a recommendation on the emission limits from ISM equipment.

2. Comments on the *Notice* are very supportive of the Commission's proposal. The consensus is that a more liberal authorization program is justified when dealing with an established industry and that the current technical standards are adquate to control electromagnetic interference from classical ISM equipment (large industrial machines, scientific and medical apparatus). However, commenters have requested minor changes and some clarification in the area of: (1) terminology and definitions used under Part 18, (2) equipment authorization requirements and enforcement, and (3) methods of measurements. This *Order* takes into account, to the extent practicable, the comments filed in response to the *Notice* and amends the rules accordingly.(*9*) A list of the commenters is given in Appendix A of this document. The new rules and measurement procedures adopted herein are contained in Appendices B and C, respectively.

Restructure of Part 18 and Terminology

3. The Rules governing ISM equipment under Part 18, especially with respect to the administrative provisions, have grown complex and quite difficult for the layman to comprehend. In the

---

[1] *Third Notice of Proposed Rulemaking*, 95 FCC 2d 432, 443 (1983) (Concurring Statement of Commissioner Henry M. Rivera).

[2] *See* 95 FCC 2d at 440, para. 20.

* Footnotes appear after signature.

Notice, we proposed to rewrite Part 18 in its entirety and organize it into only three subparts rather than the nine subparts to the old Part 18. We believe that this would yield a better understanding of the rules, and decrease publication costs by reducing the length of the text (by about 40%). The intricacy of Part 18 primarily results from the amendments to 47 CFR Part 2 dealing with the administrative rules for all equipment regulated by the Commission and from the development of new technologies which have rendered inappropriate some of the definitions and terminology used. No objections to the new format were voiced, but a few changes to the terminology used were requested. The American Telephone & Telegraph Company (AT&T) notes that the latest amendments to § 2.1 with regard to the definition of "ISM equipment" and "harmful interference" have not been reflected in § 18.107.(*10*) We agree that the definitions in Part 18 should be consistent with the ones used under Part 2 and are rewording § 18.107 accordingly. In response to the National Electrical Manufacturers Association (NEMA) comments, we clarify that, for the purposes of our rules, ISM equipment only includes machines which generate RF energy from 9 kHz to 3 THz (3,000 GHz) for non-telecommunication purposes. Equipment which operates and generates energy below 9 kHz or above 3 THz is not included under this definition. We also affirm, in response to Dash, Strauss and Goodhue's (DSG) comments, that nuclear magnetic resonance equipment which generates RF energy and is used for identifying and determining the structure, conformation, and movement of molecules and their phases in the fields of medicine, chemistry, and physics, fall under the category of general ISM equipment.(*11*) Other comments of an editorial nature have also been considered and are acknowledged, to the extent possible, as shown in Appendices B and C.

Applications and Authorizations

4. In the *Notice*, we reported that difficulties in implementing the administrative regulations have evolved, especially because of the complexity of the equipment authorization program.(*12*) We proposed to solve these problems by simplifying the regulations and by deleting burdensome and obsolete rules. The intended effect is to institute a more comprehensible authorization and enforcement program and to increase the efficiency of our service to the public. The comments received endorse the changes proposed by the Commission. Inquiries have been made on the possibility of expanding the verification procedure for certain devices, relaxing the labeling requirements, and on the authorization procedures applicable to microwave ovens and RF lighting devices.

A. Equipment Authorization

5. Most ISM equipment is required to be authorized as meeting the pertinent technical standards, in accordance with one or more of the following procedures: (1) type approval, (2) on-site certification, and (3) prototype certification.(*13*) Confusion, however, has been caused by the fact that all three procedures, in some cases, can be applied to the same equipment. For instance, the same ultrasonic device can either be type approved, certified on-site by a competent engineer, or prototype certified by the Commission. Further adding to the complexity, the Commission imposes a triennial recertification requirement for certain ISM equipment (See § 18.142); manufacturers or operators must have their devices retested every three years by a competent engineer to assure continued compliance. In the *Notice*, we proposed to simplify the equipment authorization program by placing all ISM equipment under notification except for consumer products which would be subject to certification, and for one-of-a-kind equipment and ultrasonic devices operating below 90 kHz with less than 500 watts which would be verified. We also suggested to continue type approval only for consumer microwave ovens and to delete the triennial certification requirement.(*14*)

6. The comments received are very supportive of the proposed program. The General Electric Company (GE), NEMA, and the International Business Machines Corporation (IBM) suggest that verification be extended to "large unwieldy" equipment and/or "custom-built devices in small quantities". GE, NEMA, and IBM state that verification would ease the testing requirements on manufacturers for large equipment built in small volume which has repetitive applications; the operator could assume the responsibility of testing the equipment, in some instances. Verification, IBM mentions, would also permit operators to modify their devices a few years after installation (as is often the case) without having to request any authorization from the Commission. Notification in such cases, the commenters believe, would not be cost effective since tests would have to be performed on similar equipment and authorization from the FCC would also have to be obtained, possibly creating a marketing delay.

7. The vast majority of nonconsumer ISM devices are in fact large and unwieldly and are typically built in low quantities. Therefore, the manufacturers' comments are interpreted as requesting that virtually all nonconsumer ISM equipment be placed under verification. In retrospect, it appears that there is much to be gained by doing so and little reason not to. It is now clear that attempting to distinguish whether an equipment should be verified or notified on the basis of whether it is "one-of-a-kind" would only lead to confusion, and consequently, there would likely ensue numerous requests for interpretation of the rules. For the kind of equipment involved here, where manufacturers have had a long history of compliance and the equipment changes little from year to year, notification would provide little information of use to the Commission. Accordingly, we are placing all nonconsumer ISM equipment into the verification category. As explained later in the discussion of the measurement procedures, manufacturers may either verify equipment for a given installation or, if a suitable measurement site is used, can verify compliance by performing tests on only one unit of an equipment which is representative of units produced subsequently. Consumer ISM equipment will be subject to certification as proposed. We shall also permit the operation of equipment, to determine customer acceptability, prior to the receipt of grants from the Commission, to avoid marketing delays.(*15*) See Appendix B, § 2.809. Also for certified equipment, when the same or essentially the same model will be marketed under more than one trade name, we shall require reports of measurements only for the basic device; such a procedure will be referred to as a multiple listing. See Appendix B, §§ 18.203 through 18.211.

8. R&B Enterprises (R&B), a test facility, suggests that the Commission impose a triennial reverification requirement to assure continued compliance with the regulations. R&B states that no burden would be placed on the operator since the tests are relatively easy and inexpensive (around $5,000 each). We disagree. Many manufacturers and operators have found that one of the most burdensome regulations under Part 18 is the requirement to retest equipment at predetermined intervals.(*16*) The Commission through experience has found it unnecessary to require manufacturers or operators to test their equipment at fixed time intervals when dealing with mature industries.(*17*) There is nothing in the record to indicate

that any useful purpose would be served by placing such a requirement on manufacturers or operators of ISM equipment.

9. In the *Notice*, we proposed to continue type approval for microwave ovens because the measuring instrumentation needed to evaluate such equipment has not been commercially available for more than a decade. More precisely, the present FCC methods of measurements call for the use of field intensity meters (FIMs) with linear amplifiers and average reading detectors which are no longer manufactured.(*18*) The Commission initially started type approving microwave ovens due to the unfamiliarity of the industry with the pertinent test methodology and techniques for achieving compliance. Over the years, the industry has matured and we feel today that there is sufficient familiarity with the test procedures. Manufacturers have had little difficulty in achieving compliance. This is evidenced by the high rate of compliance found in our type approval tests. Nevertheless, the type approval procedure has been maintained because of the limited availability of the necessary measuring instrumentation and the complexities involved in establishing an alternate test procedure. We have learned, however, that suitable measurement equipment is once again available on the market.(*19*) Certification, instead of type approval, can thus be applied to consumer microwave ovens. While we anticipate that some manufacturers have enjoyed the benefit of no mandatory requirement to test the equipment themselves, we do not see this service as a reason to continue type approval. The Commission will start accepting applications for certification immediately, but to allow manufacturers enough time to make arrangements for having measurements performed, we shall continue to type approve consumer microwave ovens until September 1, 1986.

10. In response to some questions raised on the applicable equipment authorization procedures for RF lighting devices, we clarify that devices marketed and/or used for general purpose or consumer applications will be subject to certification. All other RF lighting devices will be subject to verification. The new equipment authorization requirements are specified in Appendix B under § 18.203.

B. Equipment Identification

11. As proposed in the *Notice*, we shall require that certified equipment carry an FCC identifier. No other labeling requirements will be imposed. We believe that requiring manufacturers to include information about the interference potential of their equipment in the instruction manual is sufficient to warn the operator. Also, in the past we have found that a label placed on the device itself is often misinterpreted by the layman as being a warning against radiation which is hazardous to human life. No objections to our proposal have been voiced.

C. Miscellaneous Regulations

12. In the *Notice*, we concluded that §§ 18.21–18.29, which state that ISM equipment not in conformance to Part 18 requirements may only be operated with a license, were obsolete and could be deleted. Licensing of ISM devices, if necessary, can only be made under Part 5 of the Rules on an experimental basis. Based on the fact that the Commission has never issued a license for ISM equipment for non-experimental purposes and that no objections to the discontinuation of these regulations have been made, we are deleting §§ 18.21–18.29.

Technical Standards

13. Although the revision of the technical standards is not the primary area of interest of this proceeding, we did request comments in the *Notice* on whether additional technical standards are needed as a result of the opening of four new ISM frequency bands, and on what interim standards should be imposed for RF lighting devices. Other subjects of a technical nature which were raised in the comments are also addressed below.

A. Addition of Four ISM Bands

14. In the *Notice*, we proposed no in-band limits for the four new ISM frequency bands. Out-of-band emissions were to be the same as apply already to that particular type of equipment. We requested comments on the suitability of such standards, particularly, with regard to ISM equipment at 6.78 MHz ±15 kHz which, in accordance with footnote 524 of the U.S. Table of Frequency Allocations, must be made with the coordination of other administrations whose services might be affected. No objections were received from the Interdepartment Radio Advisory Committee, which oversees U.S. Government use of the spectrum or from other possibly concerned parties. Spectrum Measurement Corporation (SMC) requested an additional ISM frequency. However, SMC's request exceeds the scope of this proceeding as we previously mentioned in footnote 9, supra.

B. RF Lighting Devices

15. RF lighting is a term which applies to a new technology whereby radio frequency (RF) energy is used to produce light more efficiently. Of concern to the Commission is the potential for a small portion of that energy escaping into space and causing radio interference. With the frequencies currently utilized by RF lighting devices, AM broadcast is the most likely candidate to receive interference. Most RF lighting products operate under the conditions of a waiver.(*20*) The waiver pertains to the triennial certification requirement of § 18.142. As a condition of the waiver, the Commission imposes the technical standards specified under Part 15, Subpart J, instead of the ones under Part 18. In order to study further the effects of RF lighting devices on radiocommunication, we have issued a *Notice of Inquiry* in Gen. Docket 83–806.(*21*) In the *Notice*, we proposed to delete the triennial certification requirement of § 18.142 and at the same time adopt only one set of technical standards for RF lighting devices in order to simplify the rules, pending further action in Gen. Docket 83–806. The standards which we find to be the most suitable to protect the radiocommunication services, for the time being, are the ones specified under Part 15, Subpart J.

16. NAB, which represents the interest of the majority of the AM broadcasting community, feels that such a proposal would still be inadequate to deter incidences of interference to AM radio reception because it would not impose field strength limits below 30 MHz. NAB believes that "at minimum, an appropriate limit should be 25 μV/m at a distance of 10 meters" for frequencies below 30 MHz.(*22*) Other parties affected by the rules on RF lighting devices, such as NEMA and GE, support the Commission's proposal. GE and NEMA also advocate the possibility of establishing voluntary industry standards with the cooperation of NAB and have submitted to the Commission several reports on the progress made in their studies. The data filed by NEMA and GE have been incorporated in Docket 83–806 and will be considered in that proceeding.

17. Although the concerns of NAB are understandable, we disagree with imposing a fixed radiated emission limit of 25 μV/m at 10 meters for frequencies below 30 MHz. We do not dispute the need for controlling radiation from RF lighting devices; however, insufficient information has been submitted as to whether a radiated emission limit is

indeed necessary below 30 MHz, and what limit might be appropriate. NAB does not provide any in-depth analysis of the potential problems. We note, for example, that the man-made radio noise below 30 MHz is very high and that a field strength limit of 25 μV/m at 10 meters might be too stringent at certain frequencies to permit the effective operation of RF lighting products.(*23*)

18. The emission limits under Part 15, Subpart J, which were adopted to control the electomagnetic interference from digital or computing devices to radiocommunication services, seem to be serving the same purpose, for the moment, when they are applied to RF lighting devices. We have not received, to this date, any reports of interference from the operation of RF lighting devices to radiocommunication services when the technical standards of Part 15, Subpart J are met. For the reasons given above, we shall adopt in this proceeding the technical standards of Part 15, Subpart J for RF lighting devices, pending further development in Gen. Docket 83–806. The question of radiation limits below 30 MHz, which has also been raised by GE and NEMA in their comments in Gen. Docket 83–806, will be addressed with more depth in that docket.(*24*)

C. Miscellaneous

19. In an open meeting with the Commission staff held on August 21, 1984, manufacturers of medical diagnostic ultrasonic equipment expressed their desire to have such equipment exempted from Part 18. This matter is currently under review and further action is expected in the near future. In the meantime, the relaxation in the equipment authorization requirements from type approval to verification for such equipment will ease the burden of these rules. The Ultrasonic Industry Association, Inc. (UIA) which represents major manufacturers of ultrasonic equipment, and other parties, filed comments in this docket requesting that the radiated emission limits for such equipment be deleted, retaining only limits for line conducted emissions. The reasons given by the commenters are that ultrasonic devices which meet the prescribed conduction limits seldom exceed the radiation limits. Reference is also made by UIA to the *First Notice* in this proceeding in which we proposed to exempt from the out-of-band radiated emission limits ultrasonic equipment which would comply with the conducted RF voltage limits in the 9 kHz to 30 MHz frequency range. Also, we indicated in the *First Notice* that proof of compliance with the out-of-band radiated emissions would only be necessary when requested by the Commission.(*25*) The test data accumulated by the FCC laboratory show that the nature of the emissions from ultrasonic equipment is such that compliance with the conduction limits has always led to conformance with the radiation limits below 30 MHz. We, therefore, see no objection to accommodating UIA's request.

20. The Aerospace and Flight Test Radio Coordinating Council (AFTRCC), in light of the low likelihood of interference, and the characteristics of the environment of use, feels that ISM equipment at aerospace manufacturing plants should be exempt from the testing procedures and the emission limits in Part 18. We cannot exempt such equipment from the technical standards, as requested by AFTRCC, without explicit studies demonstrating that noncompliance with Part 18 will not be a threat to radiocommunication services. The low incidence of interference reports cannot be the sole determining factor for granting an exemption. The only assumption we can make from AFTRCC's comments is that their systems have not been a source of interference because they have been operating in compliance with Part 18.

21. IBM raises the issue of dual or multiple regulations for certain devices it manufactures. More precisely, IBM is concerned that two different sets of standards may be applied to its computer plasma displays (CPDs). A CPD is a special type of video monitor intended to be used as a peripheral for a computer. The image on the screen is generated by applying radio frequency (RF) energy to gases in the "picture tube" in order to ionize those gases. IBM is concerned that, since the equipment utilizes RF energy to ionize a gas, it might be considered as subject to the requirements in Part 18. On the other hand, since the device is basically a peripheral for a computer, it also appears to be subject to the emissions limits for computing devices in Part 15, Subpart J. IBM feels that CPDs are much more akin to conventional computer monitors than ISM equipment and asserts that only the computer rules should apply. IBM notes that the computer standards are generally more stringent than those for ISM equipment.

22. We agree with IBM that, in general, two sets of standards should not apply to a single piece of equipment. In fact, the definition of a computing device in § 15.4(n) specifically excludes digital electronics included in ISM equipment. In other words, ISM equipment that utilizes digital electronics is governed only by the Part 18 rules. In the case of CPDs, what is unusual is that it is clearly a piece of computer equipment which only incidentally generates and uses RF energy to ionize a gas. We do not view CPDs as falling under the definition of ISM equipment because it is not the fundamental purpose of such equipment to generate and use RF energy for ISM applications. Accordingly, CPDs are subject only to the rules for computer equipment in Part 15, Subpart J. We believe that in most cases the rules are clear as to whether Parts 15 or 18 apply to a piece of equipment. If further guidance is needed, inquiries should be directed to the Chief Scientist.(*26*)

23. In response to DSG's requests, we are adding a new § 18.309 to indicate the frequency range over which the measurements of field strength and conducted voltage levels must be recorded to verify compliance with the rules. In our proposal we only specified the frequency range in the methods of measurements. This addition will provide the public with a better insight on the extent of the emission limits. See Appendix B, § 18.309.

Methods of Measurements

24. In the *Notice* we proposed to consolidate the methods of measurements for ISM equipment and to issue them separately from the Rules in a document entitled MP–5, "Methods of Measurements for ISM Equipment". It is less costly for the Commission to publish the methods of measurements separately from the rest of the rules. It is also advantageous to manufacturers and test facilities that are only concerned with measurement procedures for certain types of products. MP–5 is not a mandatory test procedure, but is basically a guideline and a summary of the methods used at the FCC laboratory for evaluating the radiated radio noise from ISM equipment. MP–5 supersedes FCC Bulletins OCE 39 (dealing with medical diathermy equipment), OCE 20 (discussing microwave ovens), and Test Procedure No. 2 (regarding ultrasonic equipment). Comments on the proposed MP–5 are positive but requests for clarification or changes have been made in the area of test sites, measuring instrumentation, attenuation law factors, and line conducted measurements.

25. Consumer products or certified equipment, as described in MP–5, should be tested on an open field site or at a location which yields comparable results. Classical ISM or verified equipment can be tested at any location. It was not our intent in the proposal, as AFTRCC, GE, IBM, and others

interpreted, to preclude testing equipment on-site, i.e., testing a given piece of equipment at its actual place of installation.(*27*) Sections 2.1 and 2.1.1 of MP–5 indicate that this is permitted. However, it appears that some clarification is needed as to what the criteria will be for accepting data taken at a manufacturer's plant or at a location other than an open field. That is, in what situations will the measurements be considered sufficiently representative of how the equipment will perform at any installation, that the marketing of that equipment may be based on that single set of measurements? If the individual installation has unique shielding, we shall consider the test results as being representative of that case only. For example, in situations where the equipment is located in a building with metal walls or deep inside a building, with measurements taken outside that building, cannot be considered representative of how the equipment will perform at any other installation; the same degree of shielding may not be present. Some judgment must be exercised in choosing a location other than an open field, as has been done in the past, if only a single set of measurements is to be performed. If due to the location of the equipment in a large city, or for some other reason, measurements as outlined in MP–5 are impractical because large buildings or other objects are in the path where measurements should be taken, every effort should be made to obtain necessary measurements at the nearest clear location(s).

26. Modifications to the minimum 6 dB bandwidth of the measuring instrumentation we proposed to use for frequencies below 30 MHz have been requested by several parties.(*28*) The consensus is that from 150 kHz to 30 MHz the 6 dB bandwidth of the measuring instrumentation should be specified to be at least 9 kHz, and below 150 kHz at least 200 Hz. Commenters believe that the Commission's proposal of 3 kHz minimum bandwidth below 450 kHz might contradict its requirement to use a radio noise meter or spectrum analyzer which conforms with ANSI (American National Standards Institute) C63.2–1980 standards. We find no apparent reason for not applying the ANSI C63.2–1980 standards to MP–5 and modify § 2.2.2 accordingly. This will help exporting manufacturers to perform only one set of measurements for verification of compliance with FCC rules and other countries' regulatons.

27. In response to questions raised by SMC, we specify that the measurements need not always be undertaken at the distance at which the emission limits are applied. Due to the nature and the configuration of most ISM equipment, testing may be made at closer distances, especially for equipment for which the limits are specified at distances greater than 30 meters; a sufficient number of measurements should be taken to plot a representative polar radiation pattern and to assure the correct determination of the major lobes. This should enable parties undertaking the measurements to record more accurately the attenuation factors applicable to a particular equipment. As an alternative, measurements may be made at a fixed closer distance, provided the field strength limits are readjusted using an attenuation law factor of 1/d (where d is the distance measured in appropriate units).

28. Commenters note that the proposed MP–5 only deals with radiated radio noise and suggest that the power line conducted radio noise measurements for ISM equipment be made in accordance with MP–4, "FCC Methods of Radio Noise Emissions from Computing Devices", and/or ANSI C63.4–1981. We find merit in such a request especially since the tests undertaken by the FCC laboratory are similar to what is stated in MP–4. Conducted measurements are usually performed with the aid of a line impedance stabilization network (LISN).(*29*) The use of a LISN assures repeatable measurements by stabilizing the impedance between the device under test and the power source. The limits for most ISM equipment were established using a 5 uH/50 ohm LISN. Some commenters believe that the use of a 50 μH/50 ohm LISN will be more appropriate especially below 2 MHz. However, we feel that the use of a LISN other than the one specified will cause inaccurate readings. We will, therefore, specify in MP–5 that measurements are to be made using the LISN with which the conducted voltage limits have been specified. We have accepted, in the past, that measurements be made with LISN's other than the one indicated in the methods of measurements, but only because the required LISN was not always available commercially. Most test facilities are now equipped with both 5 μH and 50 μH LISN's. However, parties encountering difficulty in procuring the required LISN should contact the FCC laboratory.

29. Additional information on interconnecting cables, accessories, and applicators has been included in MP–5. Also, to allow more flexibility, we shall accept radiated radio noise measurements above 1 GHz made with a broadband linearly polarized horn antenna or any other comparable antenna.(*30*) We wish to emphasize that MP–5 is a *recommended* procedure and that alternatives are permitted by the Commission as long as they are justifiable. We recommend that parties who intend to use alternate procedures contact the FCC laboratory prior to undertaking them.

Enforcement

30. Changes in 47 CFR Part 0, more specifically § 0.314, are made to delegate authority to the "Engineer in Charge" for dealing with enforcement cases. Such action, along with the sampling program instituted by the Office of Science and Technology, should deter any circumvention of the rules, especially in light of the liberalization of the equipment authorization program.

Final Regulatory Analysis

31. Pursuant to 5 USC 601 *et seq.*, an Initial Regulatory Flexibility Analysis was incorporated in paragraph 26 of the *Third Notice of Proposed Rule Making.* In paragraph 26 of this *Notice*, written comments on this Analysis were solicited. No comments in response to this request were received.

I. Need for and Objective of Rule

The rule changes shown in Appendices B and C will simplify the equipment authorization program associated with the operation of ISM equipment. They will reduce the amount of paper work handled by the FCC laboratory and required from applicants filing for equipment authorization with the Commission. They will also provide for more uniform methods of measurements for evaluating ISM equipment. Such action is taken in light of the difficulties encountered in implementing some of the regulations by the FCC; it is also a result of the FCC's recognition that manufacturers of ISM equipment for the most part represent a mature industry for which certain regulations are burdensome and obsolete.

II. Summary of Issues Raised in Comments on Initial Analysis

No issues were raised in public comment or agency assessment.

III. Significant alternatives

None.

Ordering Clauses

32. Accordingly, it is Ordered that, pursuant to sections 1, 4(i), 302, and 303 of the Communications Act of 1934, as

amended, Parts 0, 2, and 18 Are Amended, as shown in Appendices B and C, effective September 27, 1985. It is further ordered that this proceeding, Gen. Docket 20718, is terminated.

33. Further information on this matter may be obtained by contacting Liliane M. Volcy (202) 653–8247, Office of Science & Technology.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note. Appendix C, "Methods of Measurements of Radio Noise Emissions . . .", will not be published herein. However, copies of the complete text of this Report and Order may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554, Tel.: (202) 857–3800. A copy is also available for public inspection in the FCC Dockets Branch, Rm. 239 and the FCC Library, Rm. 639, both located at 1919 M St., NW. Appendix C is also filed at the Office of the Federal Register, 1100 L St., NW., Washington, D.C.

Footnotes

(*1*) ISM equipment is defined under 47 CFR 2.1 as devices or appliances designed to generate and use locally radio frequency (RF) energy for industrial, medical, domestic or similar purposes, excluding applications in the field of telecommunications. Examples are microwave ovens, industrial heaters and sealers, ultrasonic room humidifiers, nuclear magnetic resonance machines, and certain particle accelerators.

(*2*) ISM equipment may be operated on any frequency. In certain frequency bands, ISM equipment is permitted unlimited radiation. These bands which are specified in the U.S. Table of Frequency Allocations are usually referred to as "ISM frequencies" or "ISM frequency bands". Other users of these ISM frequency bands must accept any interference received within these bands from the operation of ISM equipment.

(*3*) *See* Gen. Docket 20718: *Notice of Inquiry*, 58 FCC2d 636 (1976), *Notice of Proposed Rule Making*, 68 FCC2d 876 (1979), and *Second Notice of Proposed Rule Making*, 70 FCC2d 1314 (1979).

(*4*) *See* Gen. Docket 20718: *First Report and Order*, 44 FR 48178 (1979), *Memorandum, Opinion and Order*, 44 FR 74702, and *Second Report and Order*, 48 FR 51302 (1983). A Form 724 had to be filed to notify the Commission of the location of each ISM equipment. This information which was sought to assist in locating interference has proven to be of little value with the advances in spectrum monitoring techniques.

(*5*) *See Third Notice of Proposed Rule Making* in Gen. Docket 20718, FCC 84–578, 49 FR 47628,— FCC2d — (adopted November 21, 1984).

(*6*) RF lighting is a broad term which applies to new technologies developed to produce light more efficiently, whereby the 60 hertz AC electrical power is converted to radio frequencies and is used to stimulate a gas inside a bulb. Lighting products are being developed for both home and industrial use. Some types are intended as replacements for standard household Edison light bulbs, and others are designed to be used with fluorescent light fixtures. RF lighting devices are treated under our Rules as general or miscellaneous ISM equipment.

(*7*) The four ISM frequency bands added recently to the U.S. Table of Frequency Allocations as a result of the 1979 WARC are: 6.78 MHz ±15 kHz, 61.25 GHz ±250 MHz, 122.50 GHz ±500 MHz, and 245 GHz ±1.0 GHz. *See Second Report and Order* in Gen. Docket 80–739, FCC 83–511, 49 FR 2357 (1984) (dealing with the implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979).

(*8*) CCIR is the French acronym for International Radio Consultative Committee, an arm of the International Telecommunication Union (ITU). CISPR is the French acronym for International Special Committee on Radio Interference, an arm of the International Electrotechnical Commission (IEC).

(*9*) Some comments made on the *Notice* exceed the scope of this proceeding and will not be considered. They are (1) the request by the Committee on Radio Frequencies of the National Academy of Sciences to discontinue the operation of ISM equipment in the frequency bands in which radio astronomy and remote sensors services are permitted, and (2) the suggestion by Spectrum Measurement Corporation to add 20.34 MHz as an ISM frequency to the U.S. Table of Frequency Allocations.

(*10*) *See Second Report and Order* in Gen. Docket 80–739, op. cit., at C–7 and C–8.

(*11*) *See* Fischetti, "Probing the Human Body," 20 IEEE Spectrum 74 (Jan 1983) for additional information. *See also* Horgan, "Medical Electronics," 22 IEEE Spectrum 89 (Jan 1985).

(*12*) *See Third Notice of Proposed Rule Making* in Gen. Docket 20718, op. cit., paragraphs 13 and 21.

(*13*) Under type approval, a grant of equipment authorization is issued by the Commission based on examination and measurement of one or more sample units at its laboratory. On-site certification requires that a qualified party test the device at the user's premises, that measurements be made occasionally to assure continued compliance and that records of the test results be kept; it is very often associated with the triennial certification rule of § 18.142. Prototype certification is similar to certification as defined under Part 2, Subpart J; a grant of equipment authorization is issued by the Commission based on a written application and test data submitted by the applicant.

(*14*) *See Third Notice of Proposed Rule Making* in Gen. Docket 20718, op. cit., at 6, paragraph 17. *See also* 47 CFR Part 2, Subpart J for additional information on the FCC equipment authorization procedures.

(*15*) *See Public Notice* No. 3037, released March 8, 1985, entitled "FCC Laboratory Authorization Processing—Speed of Service".

(*16*) Cf. *Order Granting Limited Waiver*, FCC 83–361, released August 5, 1983 and *Petitions for Waiver* filed by NEMA (Public Notice, September 5, 1984, Mimeo No. 6400).

(*17*) Cf. *Report and Order* in Gen. Docket 83–10, FCC 84–21, 49 FR 3991 (1984) (dealing with the expansion of the verification and notification equipment authorization procedures).

(*18*) *See Third Notice of Proposed Rule Making* in Gen. Docket 20718, op. cit., paragraph 14.

(*19*) *See* Electro-Metrics comments in Gen. Docket 20718, dated December 20, 1984.

(*20*) *See Order Granting Limited Waiver*, op. cit., paragraph 19.

(*21*) *See Notice of Inquiry* in Gen. Docket 83–806, FCC 83–360, 48 FR 37235 (1983).

(*22*) *See* NAB reply comments in Gen. Docket 20718, filed February 22, 1985, at 3.

(*23*) *See* CCIR Report No. 258–4, "Man-made Radio Noise" (1982) for specific values in this region of the spectrum.

(*24*) *See* GE comments in Gen. Docket 83–806, filed October 31, 1983, at 16, Tables III and IV. *See also* NEMA comments in Gen. Docket 83–806, filed October 21, 1983, at 32 and 33.

(*25*) *See Notice of Proposed Rule Making* in Gen. Docket 20718, op. cit., Appendix C, §§ 18.108, 18.112, and 18.116.

(*26*) Cf. Section 2.11 of FCC/OST Bulletin 62, "Understanding the FCC regulations concerning computing devices," May 1984, for further information on the Commission's policy regarding multiple technical regulations.

(*27*) *See Third Notice of Proposed Rule Making* in Gen. Docket 20718, op. cit., Appendix B, sections 2.1–2.1.3.

(*28*) The 6 dB bandwidth of a measuring instrument represents its resolution-filter bandwidth or its band-pass characteristics.

(*29*) A LISN is a network inserted in the supply-mains lead of the equipment under test (EUT) to provide a specified measuring impedance for radio noise voltage measurements and to isolate the EUT from the supply mains at radio frequencies.

(*30*) Cf. MP–4, "FCC Methods of Measurement of Radio Noise Emissions from Computing Devices" (1983), at 8, section 4.2.4.

Appendix A

The following parties filed comments in response to the *Third Notice of Proposed Rulemaking* in this docket:

1. Aerospace and Flight Test Radio Coordinating Council
2. American College of Chest Physicians
3. American Telephone and Telegraph Company
4. Branson Ultrasonics Corporation
5. Edwin L. Bronaugh
6. Dash, Strauss and Goodhue [1]
7. Dukane Corporation (Dukane)
8. Electro-Metrics
9. Fusion Systems Corporation
10. General Electric Company [1]
11. Lewis Corporation
12. National Academy of Sciences
13. National Electrical Manufacturers Association
14. Pepper, Hamilton & Scheetz
15. R & B Enterprises

[1] These late-filed comments have been accepted because they enhance the diversity of view points on the issues at hand and thereby serve the public interest.

16. Spectrum Measurement Corporation
17. Ultrasonic Industry Association, Inc.

The following parties filed reply comments:

1. General Electric Corporation
2. International Business Machines Corporation
3. National Association of Broadcasters
4. National Electrical Manufacturers Association

Appendix B

PART 0—[AMENDED]

A. 47 CFR Part 0 is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 5, 303, 307, 308, 309, 48 Stat., as amended, 1066, 1068, 1082, 1083, 1084, 1085; 47 U.S.C. 154, 303, 307, 308, 309.

2. In Part 0, § 0.314 paragraphs (m) and (n) are revised to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(m) Issuances of notices and orders to operators of industrial, scientific, and medical (ISM) equipment, as provided in § 18.115 of this chapter.

(n) Requests for permission to resume operation of ISM equipment on a temporary basis, as provided by § 18.115 of this chapter, and requests for extensions of time within which to file final reports, as provided by § 18.117 of this chapter.

* * * * *

PART 2—[AMENDED]

B. 47 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303, unless otherwise noted).

2. In Part 2, § 2.809 is revised to read as follows:

§ 2.809 Exemption for ISM equipment.

(a) The announcement and offer for sale of ISM equipment which is subject to the provisions of Part 18 of this chapter, and which is in the conceptual developmental, design or pre-production stage is permitted prior to determination of compliance, provided the prospective buyer is advised in writing at the time of the announcement or offer for sale that said equipment is subject to FCC Rules and that said equipment shall comply with the appropriate FCC Rules prior to final delivery to the buyer or to the distribution centers.

(b) Manufacturers of nonconsumer ISM equipment shall have the option of insuring compliance with applicable technical specifications of this chapter at each end user's location after installation, provided the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the manufacturer of the equipment.

(c) ISM equipment subject to the provisions of this chapter may be operated prior to determination of compliance and, when appropriate, obtaining authorization from the Commission under the following circumstances:

(1) While testing for purposes of determining equipment compliance.

(2) When demonstrating equipment at trade shows, provided a conspicuous notice is displayed to specify that the device has not been tested for compliance or approved by the Commission. If the device is offered for sale or lease, the provisions of § 2.809(a) shall apply.

(3) While testing at customer's premises to determine equipment acceptability.

3. In Part 2, the title and paragraph (b) of § 2.1033 are revised to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) The application shall be accompanied by a report of measurements, and such other attachments as specified in the rules governing that particular equipment.

* * * * *

§§ 2.1037 and 2.1039 [Removed]

4. In Part 2, §§2.1037 and 2.1039 are removed.

C. 47 CFR Part 18 is revised in its entirety to read as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Subpart A—General Information

Sec.

18.101 Basis and purpose.
18.103 Organization and applicability of the rules.
18.105 Other applicable rules.
18.107 Definitions.
18.109 General technical requirements.
18.111 General operating conditions.
18.113 Inspection by Commission representatives.
18.115 Elimination and investigation of harmful interference.
18.117 Report of interference investigation.
18.119 Importation.

Subpart B—Applications and Authorizations

18.201 Scope.
18.203 Equipment authorization.
18.205 Description of measurement facilities.
18.207 Technical report.
18.209 Identification of authorized equipment.
18.211 Multiple listing of equipment
18.213 Information to the user

Subpart C—Technical Standards

18.301 Operating frequencies.
18.303 Prohibited frequency bands.
18.305 Field strength limits.
18.307 Conduction limits.
18.309 Frequency range of measurements.
18.311 Methods of measurements.

Authority: Secs. 4, 303, 307, 48 Stat. 1066, 1082, 1083, as amended; sec. 303, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307.

Subpart A—General Information

§ 18.101 Basis and purpose.

The rules in this part, in accordance with the applicable treaties and agreements to which the United States is a party, are promulgated pursuant to section 302 of the Communications Act of 1934, as amended, vesting the Federal Communications Commission with authority to regulate industrial, scientific, and medical equipment (ISM) that emits electromagnetic energy on frequencies within the radio frequency spectrum in order to prevent harmful interference to authorized radio communication services. This part sets forth the conditions under which the equipment in question may be operated.

§ 18.103 Organization and applicability of the rules.

The rules in this part are divided into the following subparts:

(a) Subpart A contains general information and definitions for use in this part.

(b) Subpart B describes the procedures and requirements for authorization to market or operate ISM equipment under this part.

(c) Subpart C contains the technical standards for ISM equipment.

§ 18.105 Other applicable rules.

Other Commission rule parts relating to the authorization and operation of ISM equipment include the following:

(a) Part 0 describes the Commission's organization and delegations of authority. This part also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission field offices.

(b) Part 1 contains the rules of practice and procedure for adjudicatory proceedings including hearing proceedings; procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and for forfeiture proceedings; and the

requirements for evironmental impact statements.

(c) Part 2 contains special requirements in international regulations, agreements, treaties, and the table of frequency allocations. This part also contains requirements and procedures concerning the marketing, the equipment authorization, and the importation of radio frequency devices into the United States.

§ 18.107 Definitions.

(a) *Radio frequency (RF) energy.* Electromagnetic energy at any frequency in the radio spectrum from 9 kHz to 3 THz (3,000 GHz).

(b) *Harmful interference.* Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

(c) *Industrial, scientific, and medical (ISM) equipment.* Equipment or appliances designed to generate and use locally RF energy for industrial, scientific, medical, domestic or similar purposes, excluding applications in the field of telecommunication. Typical ISM applications are the production of physical, biological, or chemical effects such as heating, ionization of gases, mechanical vibrations, hair removal and acceleration of charged particles.

(d) *Industrial heating equipment.* A category of ISM equipment used for or in connection with industrial heating operations utilized in a manufacturing or production process.

(e) *Medical diathermy equipment.* A category of ISM equipment used for therapeutic purposes, not including surgical diathermy apparatus designed for intermittent operation with low power.

(f) *Ultrasonic equipment.* A category of ISM equipment in which the RF energy is used to excite or drive an electromechanical transducer for the production of sonic or ultrasonic mechanical energy for industrial, scientific, medical or other noncommunication purposes.

(g) *Consumer ISM equipment.* A category of ISM equipment used or intended to be used by the general public in a residential environment, notwithstanding use in other areas. Examples are domestic microwave ovens, jewelry cleaners for home use, ultrasonic humidifiers.

(h) *ISM frequency.* A frequency assigned by this part for the use of ISM equipment. A specified tolerance is associated with each ISM frequency. See § 18.301.

(i) *Marketing.* As used in this part, marketing shall include sale or lease, offer for sale or lease, advertising for sale or lease, the import or shipment or other distribution for the purpose of sale or lease or offer for sale or lease. See Subpart I of Part 2 of this chapter.

Note.— In the foregoing, sale (or lease) shall mean sale (or lease) to the user or a vendor who in turn sells (or leases) to the user. Sale shall not be construed to apply to devices sold to a second party for manufacture or fabrication into a device which is subsequently sold (or leased) to the user.

§ 18.109 General technical requirements.

ISM equipment shall be designed and constructed in accordance with good engineering practice with sufficient shielding and filtering to provide adequate suppression of emissions on frequencies outside the frequency bands specified in § 18.301.

§ 18.111 General operating conditions.

(a) Persons operating ISM equipment shall not be deemed to have any vested or recognizable right to the continued use of any given frequency, by virtue of any prior equipment authorization and/or compliance with the applicable rules.

(b) Subject to the exceptions in paragraphs (c) and (d) of this section and irrespective of whether the equipment otherwise complies with the rules in this part, the operator of ISM equipment that causes harmful interference to any authorized radio service shall promptly take whatever steps may be necessary to eliminate the interference.

(c) The provisions of paragraph (b) of this section shall not apply in the case of interference to an authorized radio station or a radiocommunication device operating in an ISM frequency band.

(d) The provisions of paragraph (b) of this section shall not apply in the case of interference to a receiver arising from direct intermediate frequency pickup by the receiver of the fundamental frequency emissions of ISM equipment operating in an ISM frequency band and otherwise complying with the requirements of this part.

§ 18.113 Inspection by Commission representatives.

Upon request by a representative of the Commission the manufacturer, owner, or operator of any ISM equipment shall make the equipment available for inspection and promptly furnish the Commission with such information as may be required to indicate that the equipment complies with this part.

§ 18.115 Elimination and investigation of harmful interference.

(a) The operator of ISM equipment that causes harmful interference to radio services shall promptly take appropriate measures to correct the problem.

(b) If the operator of ISM equipment is notified by the Commission's Engineer in Charge (EIC) that operation of such equipment is endangering the functioning of a radionavigation or safety service, the operator shall immediately cease operating the equipment. Operation may be resumed on a temporary basis only for the purpose of eliminating the harmful interference. Operation may be resumed on a regular basis only after the harmful interference has been eliminated and approval from the EIC obtained.

(c) When notified by the EIC that a particular installation is causing harmful interference, the operator or manufacturer shall arrange for an engineer skilled in techniques of interference measurement and control to make an investigation to ensure that the harmful interference has been eliminated. The EIC may require the engineer making the investigation to furnish proof of his or her qualifications.

§ 18.117 Report of interference investigation.

(a) An interim report on investigations and corrective measures taken pursuant to § 18.115 of this Part shall be filed with the EIC of the local FCC office within 30 days of notification of harmful interference. The final report shall be filed with the EIC within 60 days of notification.

(b) The date for filing the final report may be extended by the Engineer in Charge when additional time is required to put into effect the corrective measures or to complete the investigation. The request for extension of time shall be accompanied by a progress report showing what has been accomplished to date.

§ 18.119 Importation.

ISM equipment shall be refused entry or withdrawal for consumption into the Customs territory of the United States, unless accompanied by a copy of FCC Form 740, in accordance with the provisions of Subpart K, Part 2 of this chapter.

Subpart B—Applications and Authorizations

§ 18.201 Scope.

This subpart contains the procedures and requirements for authorization to market or operate ISM equipment under this part.

§ 18.203 Equipment authorization.

(a) Consumer ISM equipment, unless otherwise specified, shall be subject to certification prior to use or marketing. An application for certification shall be filed with the Commission on an FCC Form 731, pursuant to the relevant sections in Part 2, Subpart J of this chapter and shall also be accompanied by:

(1) A description of measurement facilities pursuant to § 18.205 or reference to such information already on file with the Commission.

(2) A technical report pursuant to § 18.207 and 18.311.

Note.—The Commission will accept applications for either type approval or certification until September 1, 1986, for consumer microwave ovens. After that date, only applications for certification will be accepted for filing.

(b) Consumer ultrasonic equipment generating less than 500 watts and operating below 90 kHz, and non-consumer ISM equipment shall be subject to verification, in accordance with the relevant sections of part 2, Subpart J of this chapter.

(c) Grants of equipment authorization issued, as well as on-site certifications performed, before March 1, 1986, remain in effect and no further action is required.

§ 18.205 Description of measurement facilities.

(a) Any party filing a report of measurements with the Commission shall include in that report a description of the measurement facilities. If such a description is already on file with the Commission, it may be included by reference.

(b) The description shall include the following information:

(1) Location of test site.

(2) Physical description of the test site accompanied by photographs 8" x 10" in size. Photographs smaller than 8" x 10" will be acceptable if they are of sufficient clarity and mounted on paper 8" x 10".

(3) Scaled drawing showing the dimensions of the site, the physical layout of supporting structures and all structures within 5 times the distance between the measuring set and the device under test.

(4) Description of structures used to support the device being measured and the test instrumentation.

(5) List of measuring equipment used and information concerning the calibration of the measuring equipment, i.e., when the equipment was last calibrated and frequency of calibration.

(6) A statement indicating whether this facility is available to do measurement work for others on a contract basis.

(c) This information shall be kept current at all times. At least every three (3) years, the organization filing the data shall advise that the data on file are current.

Note.—OST Bulletin 55, "Characteristics of Open Field Test Sites", provides further guidance on open field test sites.

§ 18.207 Technical report.

When required by the Commission a technical report shall include at least the following information:

(a) A description of the measurement facilities in accordance with § 18.205. If such a description is already on file with the Commission, it may be included by reference.

(b) A copy of the installation and operating instructions furnished to the user. A draft copy of such instructions may be submitted with the application, provided a copy of the actual document to be furnished to the user is submitted as soon as it is available, but no later than 60 days after the grant of the application.

(c) The full name and mailing address of the manufacturer of the device and/or applicant filing for the equipment authorization.

(d) The FCC Identifier, trade name(s), and/or model number(s) under which the equipment is or will be marketed.

(e) A statement of the rated technical parameters that includes:

(1) A block and schematic diagram of the circuitry.

(2) Nominal operating frequency.

(3) Maximum RF energy generated.

(4) Electrical power requirements of equipment.

(5) Any other pertinent operating characteristics.

(f) A report of measurements, including a list of the measuring equipment used, and a statement of the date when the measuring equipment was last calibrated and when the measurements were made. The frequency range that was investigated in obtaining the report of measurements shall be indicated. See also §§ 18.309 and 18.311.

§ 18.209 Identification of authorized equipment.

Each device for which a grant of equipment authorization is issued under this part shall be identified pursuant to the applicable provisions of Subpart J of Part 2 of this chapter. Changes in the identification of authorized equipment may be made pursuant to § 2.933 of Part 2 of this chapter. FCC Identifiers as described in §§ 2.925 and 2.926 of this chapter shall not be used on equipment subject to verification.

§ 18.211 Multiple listing of equipment.

(a) When the same or essentially the same equipment will be marketed under more than one FCC Identifier, equipment authorization must be requested on an FCC Form 731 for each FCC Identifier.

(b) If equipment authorization for additional FCC Identifiers is requested in the initial application, a statement shall be included describing how these additional devices differ from the basic device which was measured and stating that the report of measurements submitted for the basic device applies also to the additional devices.

(c) If equipment authorization for additional FCC Identifiers is requested after a grant has been issued by the FCC for the basic device, the application may, in lieu of the report of measurements, be accompanied by a statement including:

(1) FCC Identifier of device for which measurements are on file with the FCC.

(2) Date when equipment authorization was granted for the device(s) listed under paragraph (c)(1) of this section and the file number of such grant.

(3) Description of the difference between the device listed under paragraph (c)(1) of this section and the additional device(s).

(4) A statement that the report of measurements filed for the device listed under paragraph (c)(1) of this section applies also to the additional device(s).

(5) Photographs pursuant to § 2.1033(c).

§ 18.213 Information to the user.

Information on the following matters shall be provided to the user in the instruction manual for any type of ISM equipment:

(a) The interference potential of the device or system

(b) Maintenance of the system

(c) Simple measures that can be taken by the user to correct interference.

Subpart C—Technical Standards

§ 18.301 Operating frequencies.

ISM equipment may be operated on any frequency above 9 kHz except as indicated in § 18.303. The following frequency bands, in accordance with § 2.106 of the rules, are allocated for use by ISM equipment:

ISM frequency	Tolerance
6.78 MHz	±15.0 kHz
13.56 MHz	±7.0 kHz
27.12 MHz	±163.0 kHz
40.68 MHz	±20.0 kHz

ISM frequency	Tolerance
915 MHz	±13.0 MHz
2,450 MHz	±50.0 MHz
5,800 MHz	±75.0 MHz
24,125 MHz	±125.0 MHz
61.25 GHz	±250.0 MHz
122.50 GHz	±500.0 MHz
245.00 GHz	±1.0 GHz

Note.—The use of the 6.78 MHz ±15 kHz frequency band is subject to the conditions of footnote 524 of the Table of Allocations. See § 2.106.

§ 18.303 Prohibited frequency bands.

Operation of ISM equipment within the following safety, search and rescue frequency bands is prohibited: 490–510 kHz, 2170–2194 kHz, 8354–8374 kHz, 121.4–121.6 MHz, 156.7–156.9 MHz, and 242.8–243.2 MHz.

§ 18.305 Field strength limits.

(a) ISM equipment operating on a frequency specified in § 18.301 is permitted unlimited radiated energy in the band specified for that frequency.

(b) The field strength levels of emissions which lie outside the bands specified in § 18.301, unless otherwise indicated, shall not exceed the following:

Equipment	Operating frequency	RF Power generated by equipment (watts)	Field strength limit (μV/m)	Distance (meters)
Any type unless otherwise specified (miscellaneous.	Any ISM frequency.	Below 500	25	300
		500 or more	$25\sqrt{\frac{\text{Power}}{500}}$	300 (1)
	Any non-ISM frequency.	Below 500	15	300
		500 or more	$15\sqrt{\frac{\text{Power}}{500}}$	300 (1)
Industrial heaters and RF stabilized arc welders.	On or below 5725 MHz.	Any	10	1,600
	Above 5725 MHz	Any	(*)	(*)
Medical diathermy	Any ISM frequency.	Any	25	300
	Any non-ISM frequency.	Any	15	300
Ultrasonic	Below 490 kHz	Below 500	$\frac{2400}{F(\text{kHz})}$	300
		500 or more	$\frac{2400\sqrt{\frac{\text{Power}}{500}}}{F(\text{kHz})}$	300 (2)
	490 to 1,600 kHz	Any	$\frac{24000}{F(\text{kHz})}$	30
	Non-ISM frequency above 1.6 MHz.	Any	15	30
Induction cooking ranges	Below 90 kHz	Any	1500	30 (3)
	On or above 90 kHz.	Any	300	30 (3)

Reduced to the greatest extent possible.

Notes.—

(1) Field strength may not exceed 10 μV/m at 1600 meters. Consumer equipment operating below 1000 MHz is not permitted the increase in field strength otherwise permitted here for power over 500 watts.

(2) Field strength may not exceed 10 μV/m at 1600 meters. Consumer equipment is not permitted the increase in field strength otherwise permitted here for over 500 watts.

(3) Induction cooking ranges manufactured prior to February 1, 1980, shall be subject to the field strength limits for miscellaneous ISM equipment.

(c) The field strength limits for RF lighting devices shall be the following:

Frequency (MHz)	Field strength limit at 30 meters (μV/m)
Non-consumer equipment:	
30–88	30
88–216	50
216–1000	70
Consumer equipment:	
30–88	10
88–216	15
216–1000	20

Notes.—1. The tighter limit shall apply at the boundary between two frequency ranges.

2. Testing for compliance with these limits may be made at closer distances, provided a sufficient number of measurements are taken to plot the radiation pattern, to determine the major lobes of radiation, and to determine the expected field strength level at 30 meters. Alternatively, if measurements are made at only one closer fixed distance then the permissible field strength limits shall be adjusted using 1/d as an attenuation factor.

§ 18.307 Conduction limits.

For the following equipment, which is designed to be connected to a low voltage public utility power line, the RF voltage conducted back into the power lines measured with a line impedance stabilization network (LISN) shall be limited to:

(a) Ultrasonic equipment:

Frequency (MHz)	Maximum RF line voltage measured with a 5 μH/50 ohm LISN (μV)
0.010–0.49	1000
0.49–30	200

(b) Induction cooking ranges manufactured after February 1, 1980:

Frequency (MHz)	Maximum RF line voltage measured with a 5μH/50 ohm LISN (mV)
0.010–0.1	10–1 (linear interpolation)
0.1–0.5	1
0.5–30	0.25

(c) RF lighting devices:

Frequency (MHz)	Maximum RF line voltage measured with a 50μH/50 ohm LISN (μV)
Non-consumer equipment:	
0.45 to 1.6	1000
1.6 to 30	3000
Consumer equipment:	
0.45 to 30	250

Notes.

1. For ultrasonic equipment, compliance with these conduction limits shall preclude the need to show compliance with the field strength limits below 30 MHz unless requested by the Commission.

2. These limits shall apply to RF lighting devices, pending further action in General Docket 83–806.

3. The tighter limits shall apply at the boundary between two frequency ranges.

§ 18.309 Frequency range of measurements.

(a) For field strength measurements:

Frequency band in which device operates (MHz)	Range of frequency measurements	
	Lowest frequency	Highest frequency
Below 1.705	Lowest frequency generated in the device or 9 kHz, whichever is lower.	30 MHz.
1.705 to 30	....do	400 MHz.
30 to 500	Lowest frequency generated in the device or 25 MHz, whichever is lower.	Tenth harmonic or 1000 MHz, whichever is higher.

Frequency band in which device operates (MHz)	Range of frequency measurements	
	Lowest frequency	Highest frequency
500 to 1000	Lowest frequency generated in the device or 108 MHz, whichever is lower.	Tenth harmonic.
Above 1000	do	Tenth harmonic or highest detectable emission.

(b) For conducted powerline measurements, the frequency range over which the limits are specified will be scanned.

§ 18.311 Methods of measurements.

The measurement techniques which will be used by the FCC to determine compliance with the technical requirements of this Part are set out in FCC Measurement Procedure MP–5, "Methods of Measurements of Radio Noise Emissions from ISM equipment". Although the procedures in MP–5 are not mandated, manufacturers are encouraged to follow the same techniques which will be used by the FCC.

[FR Doc. 85–21038 Filed 9–4–85; 8:45 am]
BILLING CODE 6712–01–M

---

47 CFR Part 25

[CC Docket No. 85–135; FCC 85–395]

Licensing Space Stations in the Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts final rules that specify the financial qualifications an applicant must demonstrate in order to be granted Commission authorization to construct and operate a domestic fixed-satellite system. In addition, it adopts rules codifying traditional Commission policy of authorizing expansion satellites only when existing satellites are essentially filled and additional capacity is needed to accommodate traffic growth. This action was prompted by the FCC's Notice of Proposed Rulemaking. 50 FR 19413 (May 8, 1985).

EFFECTIVE DATE: July 25, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Cecily C. Holiday, Fern J. Jarmulnek or Rosalee C. Gorman, Satellite Radio Branch, (202) 634–1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Report and Order

In the matter of licensing space stations in the domestic fixed-satellite service; CC Docket No. 85–135.

Adopted: July 25, 1985.
Released: August 29, 1985.

By the Commission.

I. Introduction

1. On September 9, 1983, the Commission established a processing group of domestic fixed-satellite space station applicants by setting a November 7, 1983 cut-off date for filing applications.[1] Notice was also given of the information required in such applications.[2] Twenty-one entities filed 85 applications for satellites.[3]

2. After completion of a detailed review of these pending applications and of the extensive comments submitted,[4] we tentatively concluded that a strict application of financial qualification and satellite utilization standards was necessary to accomplish our objective of providing the public with satellite delivered services in an efficient and timely manner.[5] To ensure that all parties clearly understood our standards, we began this rulemaking proceeding to restate and clarify our traditional financial qualification requirements for domestic satellite licensees and transponder loading requirements for licensees seeking expansion satellites. Our proposed rules required applicants to demonstrate that they have sufficient external or internal sources of financing to construct, launch and operate their satellite systems for one year. In addition, numerical standards using transponder utilization figures were proposed by which current licensees requesting expansion satellites were to establish their need for the additional satellites. We gave parties the opportunity to supplement their applications to guarantee that all information relevant to the qualifications of applicants and the use of current satellite facilities was before us for consideration in our authorization process.

3. Comments and reply comments filed in response to the *Notice* have been received and reviewed. Comments submitted with respect to financial standards basically fall into three categories. The majority of commenters generally support the application of these standards with some suggesting minor adjustments to reflect common business practices. In addition to alleging that requiring committed internal funds is unreasonable and impractical, some of these parties urge that a distinction be made between new entrants and current licensees when financial qualifications are evaluated. A smaller group of commenters objects to our proposed rules on the basis that they are unfair to smaller, newly established companies and suggests major modifications. A third group composed of applicants or parties interested in services other than domestic fixed-satellite asserts that these requirements should not apply to the proceeding of their applications.[6] Many parties also raise questions with respect to our proposed transponder loading rules. Most parties generally acknowledge a need for application standards to prevent warehousing of orbital locations. However, there was considerable opposition to the manner in which the proposed transponder-fill standards were technically defined and to the proposed application of any loading standards to in-orbit satellites for the purpose of requiring colocation of satellites.

4. We have taken all of the comments into consideration and have made a detailed evaluation of the applications and amendments before us. We are now prepared to adopt final rules which have been somewhat modified from our proposals as a result of the comments received. In separate actions, we also authorize satellite system proposals submitted by those entities who have demonstrated compliance with our

---

[1] Domestic Fixed-Satellite Service, 93 FCC 2d 1200 (1983) (hereinafter *1983 Processing Order*). This order was released in conjunction with Licensing of Space Stations in the Domestic Fixed-Satellite Service, 54 Rad. Reg. 2d 577 (P&F) (1983) (hereinafter *Reduced Orbital Spacing*) and the individual orders granting the previous group of space station applications. The actual cut-off date was specified in Public Notice, Report No. DS–207 (released September 9, 1983).

[2] *1983 Processing Order, supra* note 1 at Appendix B.

[3] See list of applicants attached as Appendix A.

[4] See list of commenting parties attached as Appendix B.

[5] Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 85–238 (released May 7, 1985) (Notice of Proposed Rulemaking, hereinafter *Notice*).

[6] The rules being adopted here only apply to applications for authorization in the domestic fixed-satellite service. Therefore, the concerns raised by commenters in reference to other satellite services, such as international or mobile satellite service, should be addressed to the ongoing proceedings focused on those services. *See* comments of Global Land Mobile Satellite, Inc.; Skylink Corporation; Financial Satellite Corporation; and Pan American Satellite Corporation and reply comments of Pan American Satellite and Skylink Corporation.

qualification standards as described in detail herein.[7]

II. Financial Qualification Rules

5. As discussed in the *Notice*, the Commission has traditionally required all domestic fixed-satellite applicants to demonstrate that they are financially qualified to construct, launch and operate their proposed systems promptly. For example, in 1983 we affirmed that "[a]n applicant must demonstrate its financial, technical and legal qualifications, as well as an ability to proceed promptly with construction and launch of the proposed satellites." Appendix B of this order listed the minimum amount of information necessary for Commission staff to begin to process applications, although the list was not intended to be all inclusive nor did the submission of the information in itself demonstrate the qualifications of the applicant.[8] Our proposed rules regarding financial qualifications were intended to provide a clear, objective means by which we could determine whether an applicant had sufficient financial resources to allow it to construct and launch its system promptly upon grant. Specifically, we proposed that applicants be required to demonstrate uncommitted current assets or firmly committed debt or equity financing sufficient to meet estimated costs of the proposed system and of the initial year of operation.[9] Nothing raised by the commenters convinces us that this financial qualification standard should be relaxed, although we believe that some modifications of the proposed rules are warranted with respect to the documentation required to make this showing.

A. General Standard

6. Although many parties support the requirement that an applicant demonstrate sufficient sources of funding to finance its proposed system, several argue that our proposed rules are too stringent and that new entrants to the domestic satellite industry will be unable to meet them. Equatorial Communication Services (Equatorial), for example, states that the standards are too restrictive and that the Commission should use the "traditional *Ultravision* test." According to Equatorial, the Commission appears to be unjustifiably applying the same standards as those for the previously awarded conditional licenses, where adhering to *Ultravision* would allow consideration of smaller companies. National Exchange, Inc. (NEX) basically agrees and submits a counter-proposal which initially requires the Commission to scrutinize applications to see if the entity meets conventional financial criteria. If it does not, an applicant's commitment and capability should be determined on the basis of a bank's opinion that the company can obtain financing, the existence of a concrete and realistic business plan, demonstrate progress in implementation of its proposal, and whether individuals associated with the company have been successful in the satellite industry.[10] In addition, NEX suggests that construction permits should be conditioned on actual progress and should be subject to revocation for failure to meet due diligence standards. Committee of Corporate Telecommunications Users (Committee), Sat-Time, Inc. (Sat-Time) and Mobile Communications Corporation of America (Mobile) also contend that the proposed rules unfairly place a greater burden on start-up companies and should be relaxed.

7. Western Union argues that the proposed standards are vague and ambiguous. It further contends that the *Ultravision* standard is one of "reasonable assurance," and that it is not clear how much more than that is required of applicants. It urges that a "reasonable assurance" test should be applied. In contrast, other commenters urge that we adopt stringent standards, arguing that this is the only way to ensure that proposed facilities are built and put into operation.[11]

8. Nothing less than a showing of current financial capability is acceptable in the domestic fixed-satellite industry under current conditions. Applying a "due diligence" or "reasonable assurance" standard or another standard less than requiring the demonstrated ability to proceed immediately with construction and launch would allow some permittees to tie up orbital locations for several years while attempting to bring their financing plans to fruition, and would prevent qualified applicants from implementing their plans to provide service to the public.[12] Although more lenient approaches may be used for some radio services, our experience with the domestic fixed-satellite industry warrants the conclusion that stricter requirements are necessary.

---

[7] Because the rules adopted herein are more liberal than the ones proposed in the *Notice*, permitting any further supplements to the pending applications is unnecessary. Pursuant to 47 CFR 1.65, all applicants have a continuing duty to update their applications and the material submitted in response to the *Notice* may be viewed as such supplementation.

[8] The following financial information was required:

J. Detailed information on the financial qualifications of the applicant to construct and launch the proposed satellites including the following items:

1. The source and amounts of funds firmly committed to the satellite program on a year-by-year basis (e.g. current assets, scheduled debt financing or stock issues, established lines of credit, or other forms of internal financing).

2. The source and amounts of funds that are potentially available to the satellite program on a year-by-year basis (including the identity of the financers and the degree of commitment to provide funding).

3. The source and amounts of estimated revenues or income from the proposed satellite operations on a year-by-year basis.

4. Detailed financial statement of the applicant (and parent companies if relied on for financial qualification showings), including current balance sheet and current operating statement.

Domestic Fixed-Satellite Service, 93 FCC 2d at 1268 (1983), Appendix B. The *1982 Processing Order* similarly stated that "an applicant must demonstrate its financial, technical and legal qualifications and its ability to immediately proceed with the construction and operation of the proposed satellite system." Domestic Fixed-Satellite Service, 90 FCC 2d 1, 2 (1982) (hereinafter *1982 Processing Order*). *See also* Domestic Fixed-Satellite Service, 77 FCC 2d 956, 960 (1980) (hereinafter *1980 Processing Order*); Establishment of Domestic Communications Satellite Facilities by Non-Governmental Entities, 35 FCC 2d 844, 850 (1972) (hereinafter *Domsat II*; Establishment of Domestic Communications Satellite Facilities by Non-governmental Entities, 22 FCC 2d 86, 93 (1970).

[9] The specific criteria were patterned after those established by the Commission in *Ultravision Broadcasting*, 1 FCC 2d 544 (1965), but were to be applied using a strict interpretation of the required financial showing.

[10] In reply comments, SBS asserts that these factors are unreliable meesurements of financial capability.

[11] GTE Satellite Corporation/GTE Spacenet Corporation (GTE), Hughes Communications Galaxy, Inc. (Hughes), RCA American Communications, Inc. (RCA), Ford Aerospace Satellite Services Corporation (Ford), Federal Express, Inc. (Federal Express), Martin Marietta Communications Systems Inc. (Martin Marietta), American Satellite Company (ASC), Systematics General Corporation (SGC), American Telephone and Telegraph Company (AT&T), Comsat General Corporation (Comsat) and Bonneville International Corporation (Bonneville).

[12] Contrary to the claims of some commenters, we are not changing the qualifications traditionally applied in the satellite area. We have consistently required a demonstration that a potential satellite licensee have the requisite financial resources to proceed immediately with construction and launch (Domestic Fixed-Satellite Service, 77 FCC 2d 956 (1980)), and have referred to *Ultravision* as offering a method by which such a demonstration would be made. *Ultravision* requires an applicant to demonstrate its ability to construct the station and meet first year operating costs by proof that adequate funds are available and committed to the proposed station, or by a convincing showing that these funds will be supplemented by sufficient operating income. Where operating income is being relied upon to demonstrate the permittee's financial capability to construct and operate the proposed system, the accuracy of estimates of such income becomes critical. *Ultravision* at 547. Our rules permit applicants to rely on internal and external funds, as well as operating income that can be concretely demonstrated, such as revenues from current operations, or from executed contracts for sales or leases of transponders.

Constructing and operating a domestic fixed-satellite system involves an average investment cost of $300 million. Arranging this amount of financing even with a construction permit already issued by the Commission has proven to be extremely difficult.[13] Further, assignable orbital locations are becoming less available.[14] Applications of entities who appear to be fully-qualified to construct and launch new systems or expand existing systems are pending. Permitting an applicant without available resources to attempt to arrange or complete financing after grant will prevent currently qualified applicants from promptly constructing proposed systems, and will provide no assurance that the underfinanced permittee will be successful.[15] We conclude that any lessening of our traditional standard requiring licensees to be financially capable of proceeding immediately to construct, launch and operate their systems would impair the provision of service to the public.

9. We recognize that small firms will have difficulty meeting this standard. However, small or newly established companies will also face great difficulties in arranging for the $200–300 million financing necessary to build and launch a satellite system in any event.[16] The fact that an entrepreneurial firm might not be qualified to obtain a license to launch and operate a satellite system does not mean that it will be prevented from offering new technologies, marketing approaches and services on a retail basis to users. Rather, these companies are more likely to be successful in first establishing themselves on the basis of offerings that do not require large capital investments. They can then expand and eventually establish sufficient assets to form the basis for financing their own satellite system.[17] Start-up companies can acquire space segment capacity for their service offerings on either a sale or lease basis from existing operators. The provision of these services to users is, however, dependent upon sufficient space segment capacity being available. The availability of this basic capacity either on a wholesale basis to users or other carriers, or to end users on a retail basis, may be frustrated by award of orbital locations to companies unable to implement proposed satellite systems immediately. Thus, our necessarily strict standards will ensure the availability of space segment capacity which will facilitate, rather then impede, the progress of smaller entrepreneurial firms seeking to offer satellite services.

B. Specific Rules

10. Although a showing of current financial capability is necessary to ensure that authorized facilities will be built and operated to the benefit of users, we find, after considering the parties' comments, that some modifications to our proposed rules are warranted to render them practical in operation. Our intention was to set objective criteria that could easily and consistently be applied to identify applicants who are financially capable of proceeding with the construction and launch of their proposed satellites immediately upon grant of their applications. We did not want to burden applicants unnecessarily in demonstrating such qualifications, nor do we wish to engage in a rigorous and burdensome parsing of applicants' financial statements. Based upon the comments of parties, we will adopt the following modifications to the showing that must be made.

11. Initially, we note that Western Union, ASC and SBS urge that a distinction be made between new entrants and established carriers.[18] They argue that established carriers' qualifications are a matter of record before the Commission and that the obligation to report any change in financial condition offers sufficient assurance of continued qualification.[19] We find, however, that requiring existing companies to demonstrate compliance with the rules as adopted is not burdensome and will ensure that the licensee remains qualified to expand its system. Thus, all applicants must demonstrate the financial capability to construct, launch and operate for a year their proposed systems immediately upon grant as delineated in the rules adopted today.[20] We note that the rule we are adopting allows applicants to demonstrate financial qualifications through a showing of current assets, without balancing them against current liabilities. This standard therefore accommodates the concern of the existing licensees that their success in launching and operating systems in the past should be probative in determining their likelihood of launching and operating systems in the future.

12. Our proposed rules required applicants to demonstrate "uncommitted capital assets" sufficient to finance the system "together with an explicit commitment from management that these assets will be used for the proposed satellite program."[21] GTE, ASC, SBS and Ford argue that this requirement may be overly stringent. GTE points out that companies will not be willing or able to set aside specific assets for any project more than three years in advance and that a demonstration of financial capability based on the availability of internal or external funds plus a general management commitment to the program should be sufficient. Ford asserts that it is impractical to require an unalterable commitment of internal funds from management regardless of market factors, especially in view of the Commission's recognition of normal contingencies in credit arrangements.[22]

13. These comments persuade us that it will be more practical simply to require applicants to demonstrate sufficient current assets or operating income to cover the cost of the proposed system.[23] The availability of internal

---

[13] *See, e.g.*, Advanced Business Communications, Inc., FCC 85-57 (released February 27, 1985); Rainbow Satellite, Inc., Mimeo No. 2583 (released February 14, 1985); United States Satellite Systems Inc., Mimeo No. 2584 (released February 14, 1985), where extensive administrative proceedings were necessary to nullify authorizations issued to unqualified applicants who failed to obtain financing, even after extensions of time had been granted.

[14] Thirty-two orbital locations are currently assigned to domestic fixed-satellite operators. *See* Domestic Fixed-Satellite Service: re Assignment of Orbital Locations, 94 FCC 2d 129 (1983). As a result of other actions today, another 22 domestic locations are being assigned to companies who are clearly capable of immediately proceeding with construction and launch of their proposed systems.

[15] Setting progress milestones in grants, such as suggested by NEX, is not an adequate solution under current circumstances. There is no assurance that milestones will be met and issuing such grants will, in all likelihood, involve the Commission in proceedings entertaining numerous requests for extensions of time, while the orbital locations assigned to the permittee remain unused. *See* note 13, *supra*, for cases where a similar experimental approach proved unsuccessful and time consuming.

[16] Our experiment with conditional grants in 1983 illustrates the practical difficulties start-up companies face in financing a complete satellite system. *See* note 13, *supra*.

[17] This entry has been successfully used by ASC and Alascom.

[18] Such a dual approach is opposed by Martin Marietta and NEX.

[19] *See* 47 CFR 1.65.

[20] Rather than requiring balance sheets to be current within 90 days of that date of the application or amendment, as proposed in the *Notice*, we will require the submission of an audited balance sheet current for the end of the most recent year. This information should be readily available from the applicant's annual report to stockholders. Any change in circumstances must, of course, be reported to the Commission pursuant to § 1.65 of the Commission's rules, 47 CFR 1.65.

[21] Section 25.37(d)(1).

[22] Western Union asserts that our proposed rules are impermissibly vague. No other commenter has raised this objection. We do not see, nor does Western Union suggest, how the rules can be made more explicit than as adopted today.

[23] *See 1983 Processing Order*, *supra* note 1, at Appendix B.

funds sufficient to cover the system's investment and first-year operating costs provides adequate assurance at the time the Commission acts on the applications that the system can be built and launched. Current assets—which includes cash, inventory, and accounts receivable—provides a general measure of a company's ability to raise funds on the basis of its on-going operations.[24] This measure is one we have used since 1983 (*see* note 8, *supra*), is without objection or comment and is an indication of a company's ability to finance its system promptly upon grant. Because operating income represents a stream of available funds into a company, we will allow applicants to include operating income, *i.e.*, operating revenues less operating expenses, as well as current assets, to demonstrate their financial capability. Further, we will not require specific assets to be earmarked for the proposed satellite system nor will we generally require an explicit management commitment that funds will be available for the proposed system. Management can withdraw a commitment as easily as it can make one, and therefore this commitment provides little additional assurance that the system will in fact be built. We do not expect systems to be built if they are economically unfeasible,[25] and conclude that the costs involved in preparing an application, and the fact that an applicant has sufficient assets to finance the project, provide ample assurance that the proposed system will be constructed and launched. However, in the case of a company that is owned by more than one entity, *i.e.*, is not a wholly-owned subsidiary, we find that a firm financial commitment is necessary from the corporate parents to ensure that all management interests are in accord with the proposed plans of the applicant. When an applicant has more than one corporate parent and is relying on financing from one or more of these entities, we will require it to submit a general commitment to expend the necessary funds from all parent companies upon which it is relying.[26]

14. If an applicant cannot demonstrate sufficient internally generated funds to finance its system, the proposed rule requires it to submit the details of any form of credit arrangement or equity placement it is relying on to cover investment and initial operating costs. The *Notice* states that acceptable arrangements must demonstrate that financing has been approved and does not rest on contingencies that require further action by either party.[27] We believe that this type of noncontingent financing is necessary to ensure that funds will be available upon grant of Commission authorization.[28]

15. In response to comments of Federal Express, however, we find that some clarification is warranted. Federal Express argues that requiring fully executed loan agreements at the time the application is filed will impose substantial costs on applicants because commitment fees are required to be paid upon execution of these agreements. It argues that requiring executed loan agreements at this time is not necessary to accomplish the Commission's objective of assuring that space station authorizations are granted only to financially qualified applicants. As we emphasized in the *Notice*, our intent in requiring noncontingent financing is to guarantee that the lender is prepared to make the funds immediately available upon grant of Commission authorization. If all terms of the agreement have been fully negotiated and only the parties' signatures are necessary to activate the loan, the unsigned agreement is sufficient evidence of the availability of these funds. We did not intend, and see no reason, for an applicant to incur prematurely costs associated with loan commitment fees. However, we will condition any authorizations granted on the basis of any unexecuted credit agreements to require the agreement to be signed and binding within 30 days of the date of the authorization.[29]

III. Transponder Loading Rules

16. Our proposed rules on transponder loading (Sections 25.391(f) through (j)) were designed to ensure that additional orbital locations awarded to licensees are used efficiently. We proposed that new entrants be granted two locations initially. Requests for additional locations had to be based on projections from historical use and show that the additional satellite would be 80 percent full three years after launch. Existing providers of satellite service could be assigned one additional location even if they could not make this showing, but had to demonstrate that the in-orbit system was 80 percent filled by launch date. In the event total system fill fell below 80 percent, colocation of satellites could be required. To implement these policies, definitions of fill based on transponder configuration were proposed.

17. The rules were intended to provide a fair and objective set of criteria to decide how many orbital locations should be assigned to each applicant. In establishing these criteria, we sought to avoid protracted comparisons of applicants' expectations of future success in marketing their planned services. We also sought to avoid administrative comparisons of proposed offerings that might have little relevance to actual customer demand or to the services ultimately provided to the public.[30] Thus, the proposed criteria used factual data on current and past performance in a manner that recognized the market uncertainties involved in a long lead-time program such as satellite construction. After reviewing the comments submitted regarding the difficulties that would arise in the application of the criteria we proposed in the *Notice*, we are persuaded that a simpler formulation is desirable and sufficient to accomplish our purpose.

---

[24] Current assets are defined as cash plus other assets reasonably expected to be realized in cash or sold or consumed during a normal operating cycle of a business. #43 Accounting Research Bulletin, chapter 3, para. 4 (June, 1953). This measurement is an administratively convenient and useful way to enable us to determine an applicant's current access to financial resources.

[25] However, such circumstances will not justify an extension of time to construct or launch an authorized satellite.

[26] We do not require an unalterable management commitment that the funds will be expended regardless of market conditions, but, as will credit arrangements from the outside sources, a commitment that absent changed circumstances, the management is immediately prepared to expend the necessary funds.

[27] *See Notice* at para. 22 for a discussion of acceptable and unacceptable financial arrangements. Columbia, SAT-Time, and Rainbow urge that this is contrary to the Commission's policy of allowing operators to finance their systems through sales of transponders. To the contrary, revenues from executed transponder sales contracts may be provided as evidence of financial qualifications. However, projections of anticipated future sales are not acceptable as evidence of available funds. As evidenced by the attempts of Rainbow and USSSI to arrange financing as required by their conditioned authorizations, there is no guarantee that a financing plan continent on future transponder sales will be successful. *See* note 13, *supra*.

[28] Rainbow and Columbia argue that in requiring this type of arrangement, we are ignoring reasonable business contingencies drawn into every agreement and making the standard impossible to meet. To the contrary, the types of contingencies Rainbow mentions, *e.g.*, marketing transponder capacity, do not even meet a "reasonable assurance" test of financial qualifications. *See, e.g.*, West Jersey Broadcasting Co., 89 FCC 2d 478 (1978). As an example of the type of credit arrangement contemplated by our rules, see the Citibank financial commitment letter to Federal Express submitted with Federal Express' amended application.

[29] Because these agreements are required to be fully negotiated, and the only act remaining for effectuation is the signatures of the parties, no extensions of time are contemplated.

[30] These comparisons would inevitably require hearings with attendent costs, delays and possible distortions of applicants' proposals to better survive the hearing process rather than serve users.

18. The proposed rules reflect the Commission's policy of assigning two orbital locations to newly authorized systems.[31] This policy rests on our recognition that even qualified new entrants often have little existing traffic to transfer to their satellites initially upon launch. It also recognizes that a second in-orbit satellite is needed to restore service immediately in the event of the complete failure of the first in-orbit satellite. The second satellite would also be used for occasional services and to provide growth capabilities. This policy further reflects the historical practice of new satellite system entrants of proposing systems consisting of two satellities to be launched into separate orbital locations and a third to be retained as an on-ground spare. The ground spare would be available for launch on short notice.

19. Although the vast majority of commenters support this policy, NEX suggests that it may no longer be necessary. It instead proposes that only one location be initially assigned to each new entrant with additional assignments being made on the basis of other criteria.[32] While we find it premature to limit each new entrant to only one orbit location at this time, there may be merit in this approach. Experience with domestic satellites over the past decade suggests that complete failures of in-orbit satellities are no longer likely. Thus, a second satellite to provide back-up capacity may not be necessary.[33] Moreover, technical proposals such as NEX's, which use two satellities at one location with narrow spot-beams to achieve very high frequency reuse, are now being introduced. As the number of frequency re-uses of an orbital location increases with technological advances, the automatic initial assignment of a second orbital location to allow for growth may become more questionable. However, until these matters can be fully considered, we believe it preferable at this time to retain our policy of honoring new entrants' requests for the initial assignment of two orbital locations.[34]

20. The basic objective of the remainder of the proposed rules was to avoid prematurely assigning an excessive number of orbital locations to an existing licensee for expansion of its system. Our initial experience with expansion satellites began in 1979.[35] Several years after launch of the two initial satellites, traffic in some systems had grown to the point where unused capacity was insufficient to provide reasonable restoral capabilities. With the in-orbit satellites essentially filled, traffic growth clearly justified launch of the previously authorized and constructed ground spare (launch services were necessarily scheduled and procured since they had to be available in the event of a failure). However, orbit locations were not reserved at the time of construction; launch authorization and assignment of orbital locations were made shortly before the scheduled launch. Since then, we have continued to authorize expansion satellites only when justified on the basis that existing facilities were essentially filled. However, we have also combined launch authorizations with construction permits to simplify the administrative process.[36] This change in licensing practice has forced us to make decisions on the need for expansion satellites several years in advance of the actual launch date. In addition, because of the amount of time involved in constructing and launching a satellite, licensees also need to make predictions of future need far in advance of launch.[37] As many of the parties point out, such predictions are fraught with uncertainty because of the cyclical nature of supply and demand for satellite services. The further advanced these predictions are made, the more speculative they become. Our proposed criteria therefore sought to achieve a balance between providing some certainty to satellite operators that orbital assignments will be available for their future use should anticipated traffic growth materialize, and preventing the plans of other companies from being blocked by authorizing satellite launches that might not be justified at launch date.

21. No party objects to the adoption of criteria to eliminate applications that appear to represent efforts to warehouse orbital locations. Further, most appear to accept, as a principle, that we continue the policy enunciated in our *1980 Orbit Assignment Order*[38] that no licensee, apart from a new entrant, have assigned to it more than one spare satellite. However, many parties object to the specific criteria proposed in the *Notice*. Generally, these parties take issue with our proposed definitions of "fill," alleging that the standards do not reflect the realities of the industry or the variable requirements of different types of satellite systems, and create incentives to operators not in accordance with the Commission's objectives of efficient, economical and innovative satellite service offerings. AT&T, supported by many commenters, urges that any "fill" definitions be used as guidelines only. Several parties also suggest that if definitions are necessary, they should be formulated by an industry advisory committee. Newer licensees argue that our proposed policy of relying on historical data favors companies authorized in the 1970's because they have more experience and larger traffic bases making it easier for them to justify additional satellities on the basis of historical data. In addition, many parties argue that grants contingent on a demonstration of requisite fill at the time of launch would distort marketplace forces and create additional and unreasonable uncertainty in what they claim is an already risky business. In their view, once a commitment is made by a company to construct and launch a satellite, it will do whatever is necessary to fill the satellite. Finally, many parties argue that an 80 percent fill requirement is too high, and that any fill requirement should apply the average industry standard. Despite these criticisms, no parties argue that evidentiary or comparative hearings would be a productive way of evaluating pending applications.

22. In view of these comments, we have decided not to adopt explicit transponder fill criteria at this time. We accept the parties' arguments that any fill requirements be applied flexibly and take into account market conditions and technological innovation. We also believe that as the number of available orbital locations diminishes, our interest in using an objective standard formula to evaluate the need for expansion

---

[31] Domestic Fixed-Satellite Service—Orbit Deployment Plan, 84 FCC 2d 584 (1981). *See also 1983 Processing Order, supra* note 1.

[32] Hughes also questions the advisability of initially assigning two locations to new entrants if the result is to preclude expansion satellites for current operators.

[33] Additional back-up transponders on a satellite or colocation of in-orbit spares to provide restoral capacity may be more efficient.

[34] Martin Marietta urges that existing operators seeking to build systems to operate in a frequency band other than the one in which they are currently operating should not be considered as new entrants or routinely provided with two locations in that band. We disagree. Under current circumstances, construction of at least two in-orbit satellites in a band appears necessary to establish a viable system with in-orbit restoral capacity.

[35] *See* Western Union Telegraph Company, FCC 79-444 (released July 24, 1979); RCA American Communications Corporation, 74 FCC 2d 531 (1979).

[36] *See* Domestic Fixed-Satellite Service, 84 FCC 2d 584 (1981).

[37] Practical constraints require a minimum of 30 months between the execution of a spacecraft manufacturer's contract and launch of the satellite.

[38] Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 84 FCC 2d 584 (1981) (hereinafter *1980 Assignment Order*).

locations will increase.[39] The record before us convinces us, however that formulating these criteria requires additional study and industry participation. We look to the Industry Advisory Committee's second phase report on implementing 2° spacing to provide guidance in this regard. The current group of domestic satellite applications will be processed in accordance with a rule codifying the Commission's traditional policy of assigning expansion locations when in-orbit satellites are essentially filled and additional capacity is needed to accommodate traffic growth.[40]

23. Specifically in the rules adopted herein, we will provide all existing operators room for growth as well as for in-orbit restoral capacity. We have reviewed the transponder loading data submitted by current licensees and observe that the current fill factor at the end of 1984 is slightly more than 70 percent, although we find variations in fill from satellite to satellite within a system. However, average fill on existing in-orbit systems does not vary appreciably. We can therefore presume all systems to be currently operating near the industry average.[41] Thus, we are able at this time to adopt a rule assigning each licensee one additional orbital location in each frequency band in which it is authorized to operate provided that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band.[42] If, upon further study, acceptable fill criteria can be developed, we will adjust the rule accordingly. These assignments will provide sufficient growth and restoral capacity for this generation of satellites.[43] In addition, construction could continue on up to two ground spares in anticipation of traffic growth.

24. Finally, both satellite operates and users object to our proposed rule in Section 25.391(i) that would require colocation of satellites to accommodate new ones if requisite fill were not maintained. They argue this would add unnecessary risk to operators and would unfairly penalize users for the operator's failure to maintain the required level of fill. Federal Express suggests that before a satelllite is ordered to be colocated, the Commission should initiate a proceeding requiring the licensee to show cause as to why its satellite should not be colocated, with the burden of proof on the licensee.

25. Our basic objective is to ensure that the orbit spectrum is used efficiently to provide services to the public. It seems fundamental to that policy that an underutilized system should not block entry by qualified companied who could use a particular location more efficiently. Requiring colocation of underutilized in-orbit satellites has long been Commission policy.[44] Moreover, we have consistently held that orbital assignments are temporary and do not confer licensees with any permanent right to the use of specific locations.[45] We continue to believe that a policy allowing for colocation of underutilized satellites should be affirmed and codified as a basic principle of our orbital assignment policies. Specifically, we find it essential that a fully qualified applicant who can effectively use such an assignment to provide domestic satellite services to the public not be barred from doing so because orbital locations are assigned to other companies who are not using them. We will provide licensees an opportunity to present their views or new information before any cancellation of orbital assignments.[46] Further, as proposed by several parties, we will require the lightest loaded system to be colocated first as necessary to accommodate fully qualified new entrants or fully justified expansion satellites.

IV. Replacement Expectancy

28. Several parties commenting in response to the March, 1984 *Public Notice*[47] urge the Commission to provide some sort of replacement expectancy for operational satellites. This request was renewed in comments in response to the *Notice of Proposed Rulemaking*. They urge that given the long lead time and capital investment necessary in the domestic satellite industry, operators and users must be protected by a measure of certainty that they will not lose their orbital locations. GTE Spacenet, proposing a policy of expectancy analogous to that of broadcast application proceedings, urges the Commission to give added weight to a replacement application as opposed to an application for new facilities using such factors as past service record, customer base, and specialized offerings. It suggests that in processing these applications the Commission immediately consider as outside the current processing group replacements that are not needed until after 1990. American Satellite also favors a renewal expectancy, but requests the Commission to defer action on applications to launch replacements where satellites being replaced are not yet launched or when the replacements are not to be launched for more than seven years.[48] Western Union argues that the Commission should award positions indefinitely to be revoked only for good cause. In contrast, NEX and Federal Express oppose a renewal expectancy. They argue that technological advances are hindered by a replacement expectancy because it would operate as a barrier to new entry and give existing operators less incentive to innovate.

27. We conclude that in the capital-intensive domestic satellite industry there should be some assurance that operators will be able to continue to serve their customers. To do otherwise would chill investment and would impose large costs on satellite users. In

---

[39] We also need to assure that the introduction of technologically advanced, high capacity satellites are not blocked by an excess of older ones. For example, we note in particular the filing of 6-fold and 9-fold frequency reuse satellite designs only seven months after adopting a 2-fold frequency reuse standard in *Reduced Orbital Spacing*.

[40] *1980 Assignment Order, supra*, note 38. *See also Reduced Orbital Spacing, supra*, note 1.

[41] Levels of fill on existing satellite systems range from 55.55% for GTE Spacenet's newly launched system as of December 31, 1984, to 88.73% for Western Union's mature system, as of June 30, 1983. The remaining systems range from approximately 61% to 81% as of December 31, 1984. These percentages, however, may not be used as the sole criteria for evaluating the fill of any particular system. Factors such as the age of the in-orbit satellites, the type of services provided, and their technical configuration must be considered in analyzing whether a system is essentially filled.

[42] If a licensee has three or more authorized but unlaunched satellites, no additional orbital assignments are needed to provide growth or restoral capacity. The first two constitute an initial assignment, while the third can be construed as essentially unfilled. Thus, no additional assignments are warranted under this rule. We have in the past declined to assign additional orbital locations on the basis of "long range traffic growth projections." *See* RCA American Communications, Inc., 84 FCC 2d 633, 640 (1981).

[43] Rapidly changing technology and the increasingly speculative nature of traffic growth predictions over time convinces us that acting on applications for expansion satellites to be launched after 1990 would lead to inefficient spectrum use. *See* para. 28 *infra*.

[44] *Reduced Orbital Spacing, supra* note 1.

[45] 1980 Assignment Order, *supra* note 38.

[46] We are sympathetic to the argument that relocation may adversely affect users through no fault of their own. However, if a satellite is required to be relocated because it is essentially unfilled, few if any customers would be affected and through contract the user may protect itself from adverse effects.

[47] Report No. DS-285 (March 12, 1984). The notice invited comments on the individual applications received by the November 7, 1983 filing date, as well as on the general processing procedures for the group.

[48] Hughes, SBS, RCA Americom, and Rainbow also argue that replacement authorizations should be granted if the satellite has been operated in the public interest.

providing this assurance, however, we do not wish to stifle innovation or freeze technology by rountinely authorizing replacement satellites years in advance and regardless of their technical efficiency. For example, in *Comsat General Corporation,* [49] the Commission granted AT&T authority to construct and launch two replacement satellites but deferred a request for a third replacement satellite, stating that:

> it would be unwise to authorize in 1980 launch of a satellite which will not be required until 1987 and which should be functioning through the mid-1990's. State-of-the-art advances could well render the satellite obsolete by 1987. Futhermore, we cannot predict with any degree of confidence whether that satellite will be adequate to meet, or, indeed, even necessary to meet, AT&T's service requirements in 1987.[50]

In addition, granting an orbital position indefinitely, as Western Union suggests, or providing an expectancy that the same number of orbital locations will be available to operators, may tend to stifle technology because there could be less incentive to increase efficiency. Doing so also could block more efficient licensees, including new entrants. Thus, the Commission has consistently emphasized that all orbital assignments are temporary and confer no permanent rights of use to the assignee.[51]

28. With growing demand and rapidly changing technology, we do not believe it prudent to make long-term licensing decisions that would prematurely freeze our ability to respond to the challenges that will face us in the future.[52] In view of this, we do not believe that decisions regarding replacement satellites should be made more than five years in advance. This is sufficient time for satellite operators to construct systems and bring them into service. Therefore, we will not consider applications for satellites scheduled for launch after 1990. We will apply these policies to the current group of applicants, and will authorize only replacement satellites that are needed to prevent a disruption in service to customers between now and 1990 provided that the replacement design meets state-of-the-art technical standards. We will address specific longer-term aspects of this policy and will solicit comment on these issues in a forthcoming *Notice of Inquiry.* This inquiry will also address other matters dealing with long-term technical and regulatory issues. In particular, we will look to the second phase report of our 2° Advisory Committee as a major impetus for such a proceeding.

[49] 84 FCC 2d 547 (1981).

[50] *Id.* at 558.

[51] *1980 Assignment Order, supra* note 8; *Reduced Orbital Spacing, supra* note 1.

[52] As indicated at note 37, applications proposing 6- and 9-fold reuse satellite designs were filed shortly after a 2-fold reuse standard was adopted by the Commission.

V. Procedural Matters

29. Some commenters have raised questions regarding the procedure followed in this action which gave parties the opportunity to supplement their applications in light of our proposed clarification of standards. NEX again objected to this approach, incorporating by reference its Motion to Separate Rulemaking and Adjudicatory Proceedings and Request for Expedited Relief (hereinafter *Motion*) filed on May 24, 1985.[53] NEX has filed an Application for Review of the Bureau's decision denying the *Motion* in which it basically reiterates its original arguments. Hughes has filed an opposition to NEX's Application for Review.

30. In addition, other parties raise issues regarding the validity of requiring compliance with proposed rules before the rulemaking is finalized [54] and question Commission use of allegedly strict standards to eliminate applications.[55] Hughes and Federal Express offer support for the procedure.[56]

31. Because NEX raises the same issues as other commenters and because its motion has been incorporated by reference in this action, we will address all questions regarding the procedure followed herein by ruling on NEX's Application for Review in the context of this order.

32. NEX offers several arguments in support of its assertion that the Common Carrier Bureau was incorrect in denying its *Motion.* Initially, it asserts that the Bureau erred in not addressing the impropriety of combining a rulemaking process with the adjudicatory proceeding presented by the pending applications. NEX claims that the reliance on precedent cited by the Bureau is misplaced because the situations in those cases involved the adoption of a new licensing scheme or the establishment of a new service.

33. A second argument is that the Bureau failed to address the question of whether the applicants' hearing rights were subverted by the adoption of new rules to be applied in an *ex post facto* manner in order to dismiss applications. Related to this argument is NEX's assertion that applicants may not be required to comply with unadopted rules.

34. Another argument advanced by NEX is that the Bureau conceded that the proposed rules do result in a change in our licensing policies when, in the order denying NEX's motion, the Bureau included a discussion of our authority to impose new rules on pending applicants. Finally, NEX claims that it never had any reason to believe that it would have to meet the requirements set forth in the *Notice* and thus, contrary to the Bureau's assertion, it has not had ample time to arrange its financing.

35. NEX's Application for Review is opposed by Hughes which states that the Application is procedurally defective in failing to set forth an adequate basis for review [57] and, to the extent that NEX's assertions are considered at all, they must be viewed as comments in the rulemaking proceeding. Hughes defends the lawfulness of the use of a two track processing procedure. Because NEX has had notice of the proposed rules and an opportunity to participate in the rulemaking process, its procedural rights have not been violated and Hughes states that all parties with pending applications are subject to any intervening changes in the processing procedure.

36. Hughes also disputes NEX's assertion that the proposed financial standards constitute new rules. Applicants were given fair notice of the Commission's intent to apply strict processing policies. The requirements in the *Notice* are merely a "translation" of general standards into specific rules based on the same underlying policies.[58] Hughes states that probably the standards could be classified as an interpretative rule, exempt from the requirements governing rulemaking.[59]

37. The substance of these arguments was fully addressed by the Common Carrier Bureau in its order denying NEX's *Motion.* A two track processing procedure requiring parties to conform

[53] This motion was denied by the Common Carrier Bureau on June 3, 1985, Mimeo No. 4971 (released June 5, 1985).

[54] *See* Comments of Equatorial, NTIA, SBS, Rainbow, and Columbia, Reply Comments of the U.S. Small Business Administration. Western Union asserts that applicants must be given the opportunity to conform their applications to any finally adopted rules. The U.S. Small Business Administration (SBA) comments cite a "belief" that the Commission's action violates the Administrative Procedure Act but offers no analysis of this point.

[55] *See* Comments of Mobile Communications Corp. of America.

[56] Hughes states that parties should be given further opportunity to supplement applications if the final rules change. In reply comments, Federal Express criticizes the legal analysis offered in support of NEX's procedural objections.

[57] *See* 47 CFR 1.115(b)(2).

[58] Hughes states that the Bureau's order was not inconsistent with respect to this point because these are *new* rules defining *old* policy. Opposition at 10 n. 13.

[59] *See* Administrative Procedure Act, 5 U.S.C. 553.

to certain requirements during the pendency of a rulemaking has been successfully utilized by the Commission in previous matters, especially where there is a necessity for expeditious action on applications.[60] As stated by Hughes, no procedural rights are violated where, as required by the Administrative Procedure Act,[61] the public has notice of the "terms or substance" of a proposed rule and is given the opportunity to participate in the rulemaking by submission of written data. NEX and all other parties have had this opportunity. NEX has filed comments in the rulemaking proceeding which have been considered prior to the adoption of the final rules to be applied to its applications. Thus, it has been afforded a full and fair opportunity to be heard.[62]

38. Finally, as stated throughout this proceeding, the rule proposed by our *Notice* merely restates and clarifies well established policies.[63] The test for financial qualifications is that established by these precedents and Appendix B to the *1983 Processing Order* and has been Commission policy since 1972.[64] Applicants have always been on notice that they must demonstrate financial ability to construct, launch and operate a satellite system based on the standards enunciated by these precedents. The Commission's now abandoned experiment with conditional licensing does not lessen in any manner the showing necessary to establish financial qualifications. NEX had full notice of our requirements and cannot now be excused from compliance based on an asserted ignorance of our standards.[65]

39. We find that the Common Carrier Bureau was correct in denying NEX's *Motion*. The proposition that the Commission should grant domestic satellite orbital locations only to financially qualified entities with a demonstrated need for such locations is not unreasonable. This is especially evident where grant of experimental authorizations to unqualified applicants has proven unsuccessful. The fact that our actions may be objectionable to unqualified parties does not render them procedurally defective.

40. In our *Notice*, pursuant to section 605(b) of the Regulatory Flexibility Act, we certified that our proposed rule would not have a significant impact on a substantial number of small entities. This finding is supported by the fact that large financial resources are needed by an entity in order to construct and launch a domestic satellite system.[66] SBA, in Reply Comments, disputes our finding. Attached as Appendix D is a final Regulatory Flexibility Analysis that addresses the issues raised by the SBA.

41. Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i) and 303(r), it is ordered that Part 25 of Chapter I of Title 47 of the Code of Federal Regulations is amended as set forth in Appendix C. Pursuant to § 533(d)(3),[67] we find that good cause exists for implementing these rules immediately. Pressing international considerations raised by the upcoming SpaceWARC, beginning August 8, 1985, require action on the pending applications. In addition, both our *Notice of Proposed Rulemaking* and the Bureau's order in *Licensing of Space Stations in the Domestic Fixed-Satellite Service*, Mimeo 5028 (released June 10, 1985), gave notice that we contemplated making these rules effective immediately.[68] Accordingly, the effective date of § 25.391 will be the adoption date of this order.

42. It is further ordered that the Application for Review filed by National Exchange, Inc. is denied.

43. It is further ordered that the proceedings in CC Docket No. 85–135 are terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Alascom, Inc.
American Satellite Company
American Telephone and Telegraph Company
Cablesat General Corporation
Columbia Communications Corporation
Comsat General Corporation
Digital Telesat, Inc.
Equatorial Communication Services
Federal Express Corporation
Ford Aerospace Satellite Services Corporation
GTE Satellite Corporation
GTE Spacenet Corporation
Hughes Communications Galaxy, Inc.
Martin Marietta Communications Systems, Inc.
National Exchange, Inc.
Rainbow Satellite, Inc.
RCA American Communications Inc.
Satellite Business Systems
Systematics General Corporation
United States Satellite Systems, Inc.
The Western Union Telegraph Company

Appendix B

Alascom, Inc.
American Satellite Company
American Telephone and Telegraph Company
Cablesat General Corporation
Cable Television Operators
CBS, Inc.
Columbia Communications Corporation
Comsat General Corporation
N.H. Correia
Digital Telesat, Inc.
Equatorial Communication Services
Federal Express Corporation
Federal Trade Commission
Ford Aerospace Satellite Services Corporation
GTE Satellite Corporation
GTE Spacenet Corporation
Henry Geller and Donna Lampert
Home Box Office
Hughes Communications Galaxy, Inc.
International Satellite, Inc.
M/A–Com Development Corporation
Martin Marietta Communications Systems, Inc.
Mobile Satellite Corporation
National Cable Television Association
National Exchange, Inc.
National Telecommunications and Information Administration
Rainbow Satellite, Inc.
RCA American Communications, Inc.
Satellite Business Systems
Satellite Television Industry Association
Skylink Corporation
Systematics General Corporation
United States Satellite Systems, Inc.
The Weather Channel
The Western Union Telegraph Company

PART 25—[AMENDED]

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 25) is amended as follows:

1. The authority citation for Part 25 continues to read as follows:

---

[60] NAB v. FCC, 740 F.2d 1190 (D.C. Cir. 1984); Domestic Communications Satellite Facilities, 22 FCC 2d 86 (1970), 35 FCC 2d 844 (1972), *recon. in part*, 39 FCC 2d 665 (1972); Geostar Corporation, FCC 84–319 (released September 7, 1984). NEX has cited no authority nor given any persuasive analysis for its assertion that factual distinctions make these precedents inapposite. Moreover, our requirement in this proceeding that applicants submit particular information in documentation with their applications pending completion of the rulemaking is only a procedural rule exempt from APA notice and comment provisions. As discussed in the text, failure to submit this information had no substantive effect on the status of any application until completion of the rulemaking.

[61] 5 U.S.C. 553.

[62] *See* U.S. v. Storer Broadcasting Co., 351 U.S. 192 (1956).

[63] *See Domsat II*, *supra* note 8; Domestic Fixed-Satellite Service, 35 FCC 2d 844 (1972); and *Reduced Orbital Spacing*, *supra* note 1. *See* para. 5, *supra*.

[64] *Supra* note 1.

[65] In any event, NEX has never indicated or argued that if given more time it would be able to bring its application into compliance; rather, it merely argues that all pending applications should be excused from compliance.

[66] *See Notice* at para. 17.

[67] 5 U.S.C. 533(d)(3).

[68] *See* Citizens to Save Spencer County v. United States Environmental Protection Agency, 600 F.2d 844, 879–891 (D.C. Cir. 1979); *see also* Kessler v. FCC, 325 F.2d 673, 682 (D.C. Cir. 1963) (effectiveness prior to publication in the **Federal Register**).

Authority: Sections 25.101 to 25.531 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. § 54. Interpret or apply Secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744.

2. By revising § 25.202(d) to read as follows:

§ 25.202(d) Frequencies, frequency tolerance and emission limitation.

* * * * *

(d) Orbital locations assigned to space stations licensed under this part by the Commission are subject to change by summary order of the Commission on 30 days notice. An authorization to construct and/or to launch a space station becomes null and void if the construction is not begun or is not completed, or if the space station is not launched and positioned at its assigned orbital location and operations commenced in accordance with the station authorization, by the respective date(s) specified in the authorization. Frequencies and orbital location assignments are subject to the policies and procedures set forth in the Report and Order, FCC 83–184, adopted April 27, 1983 in CC Docket No. 81–704, for domestic satellite space stations and in the Report and Order, adopted July 25, 1985 in CC Docket No. 84–1299 for international space stations, and the licensees of such space stations shall comply with the requirements set forth in that decision.

* * * * *

3. By adding new § 25.391 as follows:

§ 25.391 Qualifications of Domestic Satellite Space Station Licensees.

(a) New domestic fixed-satellites shall comply with the requirements established in Report and Order in CC Docket No. 81–704. The requirements for radio station applications for new domestic fixed-satellites are specified in Appendix B to the Commission's *1983 Processing Order* (93 FCC 2d 1260). Applications must also meet the requirements in paragraphs (b) through (e) of this section. The Commission may require additional or different information in the case of any individual application. Applications will be unacceptable for filing and will be returned to the applicant if they do not meet the requirements referred to in this paragraph.

(b) Each applicant for a space station authorization in the domestic fixed-satellite Service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization. Financial qualifications should be demonstrated in the form specified below. Failure to make such a showing shall result in the dismissal of the application.

(c) Each application for authority to construct and/or to launch and operate a space station in this service shall include a detailed statement of estimated investment and operating costs for the expected lifetime of the facility, and shall demonstrate in accordance with paragraph (d) of this section the applicant's current financial ability to meet the:

(1) Estimated costs of proposed construction and/or launch, and any other initial expenses for the space station(s); and

(2) Estimated operating expenses for one year after launch of the proposed space station(s).

(d) Each application for authority to construct and/or launch a space station shall demonstrate an applicant's current financial ability to meet the costs specified in paragraph (c) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exhibit demonstrating that the applicant has current assets and operating income sufficient to satisfy the requirements of paragraph(c) of this section. If the applicant is owned by more than one corporate parent, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources;

(2) If the submissions of paragraph (d)(1) of this section do not satisfy paragraph (c) of this section, the applicant shall submit additional information as listed below to satisfy paragraph (c).

(i) The terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that paragraph (e) of this section is complied with;

(ii) The terms of any fully negotiated sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (d)(2)(i) of this section;

(iii) Any financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not satisfy the requirements of subsection (c) of this section.

(3) Whatever other information or details the Commission may require with regard to a specific application or applicant;

(e) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

(f) An applicant found to be qualified pursuant to paragraph (b) of this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed. Authorizations to construct ground spares are at the applicant's risk that launch authorization will not be granted by the Commission.

(g) Each applicant found to be qualified pursuant to paragraph (b) may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorized to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band.

(h) In the event that one or more applications satisfying the requirements of this section are ready for grant, any orbital location occupied by a satellite that is not essentially filled may be canceled and colocation of in-orbit satellites may be required. The Commission will take this action if, in so doing, it would allow the grant of pending applications which satisfy the requirements of this section. If a cancellation is made, the licensee will be afforded a period of 30 days to notify the Commission which of its assigned locations should be canceled.

(i) *Need for and Objective of Rules.* The rules adopted herein restate and clarify existing Commission policy regarding qualifications of applicants for space station authorizations in the domestic fixed-satellite service, and the assignment of orbital locations to such stations. The policies underlying these

rules have been in effect for many years and applicants have had ample notice of them. However, the Commission, in an abundance of caution, sought to ensure that all applicants requesting satellite authorizations clearly understood these standards. This action was taken so that the Commission could promptly grant the applications of those entities who are able to provide service to the public expeditiously.

(2) *Issues Raised in Response to Certification.* Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certified that the proposed rules would not have a significant effect on a substantial number of small entities. We based this finding on the relatively small number of companies who operate domestic satellites in the geostationary satellite orbit and on the observation that a company who has financed a satellite system costing several hundred million dollars requiring an annual revenue stream of several tens of millions of dollars is unlikely to qualify as a small business. Moreover, it has been our traditional policy to require applicants to have a demonstrated financial ability to implement their satellite proposals thus entailing access to significant resources not available to small entities.

The U.S. Small Business Administration has objected to our certification, stating that our proposed rules would eliminate the type of financing which might be used by small businesses. The SBA also states that the use of a lottery to award satellite authorizations should have been considered.

As stated throughout these proceedings, the rules proposed and adopted herein are merely a clarification of prior policies which have been used to fulfill our statutory responsibility to assure that satellite licensees are financially qualified. The fact that small businesses may be precluded from launching satellites is due to their inability to raise the necessary two to three hundred million dollars necessary to finance a system. Their lack of financial ability does not render our certification invalid on the basis that such entities have not been able to satisfy our financial qualification.

(3) *Alternatives Considered.* In authorizing a prior group of satellite applicants, we attempted to provide underfinanced companies with an opportunity to demonstrate their ability to construct, launch and operate satellite systems in essentially the same way as is now being advocated by the Small Business Administration. That attempt was unsuccessful and a repetition of that experiment today would only delay provision of service to the public. Other alternatives, including the use of lotteries, were discussed and considered in the Notice of Proposed Rulemaking initiating this action where it was determined that only the use of strictly applied qualifications standards would be feasible. *Notice* at 3–9. Other alternatives available to small businesses seeking to enter the domestic satellite market include lease or purchase of transponders to establish an initial traffic base and joint ventures with other companies to pool resources.

[FR Doc. 85–21131 Filed 9–4–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

Modification of Footnote US275 to the Table of Frequency Allocations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects typographical errors in the Final Rule Action in this proceeding concerning Amateur use of a certain MHz band in Southern New Mexico (published on August 20, 1985, 50 FR 33543).

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Room 7310, Washington, D.C. 20554, Tel: (202) 653–8162.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of amendment of parts 2 and 97 of the Commission's rules to prohibit amateur use of the 902–928 MHz band at White Sands Missile Range in Southern New Mexico.

Released: August 27, 1985.

The Order in the above-entitled proceeding, FCC 85–444, released August 15, 1985 is corrected as follows:

§ 97.7 [Corrected]

In the appendix, on page 33544, throughout the modifications to § 97.7, limitation designator "12" is corrected to read "14" and limitation designator "13" is corrected to read "15".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–21132 Filed 9–4–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 502, 504, 505, 506, 507, 509, 510, 514, 515, 525, 536, and 549

[APD 2800.12 Chge 16]

General Services Administration Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 is amended to renumber certain sections to conform to the Federal Acquisition Regulation (FAR) numbering system, to redesignate certain sections to alter the placement of material within the regulation, and to make miscellaneous other changes for clarity. The changes are being made as a result of the Office of Management and Budget (OMB) review of GSA's final rule implementing the Competition in Contracting Act of 1984 (CICA). The intended effect is to update and maintain the regulation for the benefit of GSA contracting activities.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION: Before the final rule was issued on February 20, 1985, revising the GSAR to implement the CICA, it was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. OMB cleared the regulation for issuance in order to provide for timely implementation of the statute on April 1, 1985. However, GSA did agree to make certain changes requested by OMB at a later date. This final rule makes the requested changes.

On December 5, 1984, the General Services Administration published in the **Federal Register** (49 FR 47516) its proposed change to the GSAR implementing the CICA. All comments received in response to the notice were reviewed, reconciled, and incorporated, when applicable into the final rule.

The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no

regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Parts 501, 502, 504, 505, 506, 507, 509, 510, 514, 515, 525, 536, and 549

Government procurement.

1. The authority citation for 48 CFR Parts 501, 502, 504, 505, 506, 507, 509, 510, 514, 515, 525, 536, and 549 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION REGULATIONS SYSTEM

2. Section 501.601 is amended by revising paragraph (b) to read as follows:

501.601 General.

* * * * *

(b) Heads of contracting activities (HCA) (see GSAR 502.1) have unlimited contracting authority which may not be redelegated and are responsible for:

* * * * *

3. Section 501.707 is amended by revising the introductory text and paragraphs (a) and (k) of Table 501–1 to read as follows:

501.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with Table 501–1 of this regulation before the solicitation is issued. The Federal Acquisition Regulation frequently refers to determinations being made by the agency head. Section 309 of the Federal Property and Administrative Services Act defines agency head and provides that at the option of the Administrator of GSA, the term may include the chief official of any principal organizational unit of the General Services Administration. The Administrator has authorized the heads of contracting activities to act as agency head to facilitate the procurement of property and services under Title III of the Federal Property and Administrative Services Act. (See GSA Delegation of Authority Manual ADM P 5450.39.) When the applicable statute precludes redelegation of the authority the table provides for the Administrator to sign such D&F's.

TABLE 501–1.—SIGNATORY AUTHORITY

D&F requirement	Signatory authority
a. Determinations as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contract. (See 41 U.S.C. 254(b) and FAR 16.306.).	Individual D&F's shall be signed by the head of the contracting activity, as defined in GSAR 502.1, or a designee. Class D&F's shall be signed by the head of the contracting activity.
* * *	* *
K. Determinations regarding the exceptions to the restrictions of the Buy American Act. (See FAR Subpart 25.1 and GSAR Subpart 525.1.).	Individual D&F's may be signed by the head of the contracting activity or a designee.
* * * * *	

4. The table of contents for Part 502 is amended by deleting the entries for sections 502.170, 502.171, 502.172, 502.173, and 502.174 and by adding an entry for section 502.101 as set forth below:

PART 502—DEFINITIONS OF WORDS AND TERMS

Subpart 502.1—Definitions

502.101 Definitions.

(5) Subpart 502.1 is amended by removing sections 502.170 through 502.174 and adding section 502.101 to read as follows:

Subpart 502.1—Definitions

502.101 Definitions.

"Head of the contracting activity" means the (a) Assistant Administrator for Acquisition Policy, (b) Assistant Administrator for Federal Supply and Services (FSS), (c) Assistant Administrator for Information Resources Management (OIRM), (d) Commissioner of Public Buildings Service (PBS), (e) Commissioner of Federal Property Resources Service (FPRS), or (f) Regional Administrators. The Assistant Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FSS, OIRM, PBS, and FPRS.

"Contracting director" means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions.

"Senior procurement executive" means the Assistant Administrator for Acquisition Policy.

"Agency competition advocate" means the Director of the Office of Acquisition Management and Contract Clearance.

"Contracting activity competition advocate" means the (a) Director of the Office of Acquisition Management and Contract Clearance, (b) Director, Office of Procurement, FSS, (c) Director, Agency Liaison Officer Program Division, OIRM, (d) Director, Special Projects Staff (FPRS), or (e) Regional Director, Office of Project Control and Oversight. The Director of the Office of Acquisition Management and Contract Clearance serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, OIRM, and FPRS.

6. The table of contents for Part 504 is amended by revising the entry for section 504.670 as set forth below:

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.6—Contract Reporting

Sec.

* * * * *

504.670 [Reserved]

504.670 [Reserved]

7. Section 504.670 is removed and reserved.

8. Section 504.671 is amended by revising paragraph (b)(1) to read as follows:

504.671 Reporting taxpayer identification numbers.

* * * * *

(b) *Procedures.* (1) This procedure pertains only to contractors who are not incorporated and who receive payments from GSA for performing services totaling $600 or more in any calendar year. If the contracting officer anticipates that payment to the contractor will equal or exceed the $600 amount for the year, he shall report the TIN.

* * * * *

9. The table of contents for Part 505 is amended by adding an entry for section 505.303–70 as set forth below:

PART 505—PUBLICIZING CONTRACT ACTIONS

Subpart 505.3—Synopses of Contract Awards

Sec.

* * * * *

505.503–70 Notification of proposed substantial awards and awards involving Congressional interest.

* * * * *

10. Section 505.202 is amended by revising paragraph (b)(3)(iii) to read as follows:

505.202 Exemptions

* * * * *

(b) * * *

(3) * * *

(iii) An increase in the amount of space leased in order to provide expansion space at the existing location to meet the needs of an agency.

11. Section 505.303 is revised to read as follows:

505.303 Announcement of contract awards.

By complying with GSAR 505.303–70 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a). When the Office of Congressional Affairs (EG) determines a contract award may be of interest to the public, it will provide the Office of Public Affairs (EX) with a copy of the GSA Form 2932, Proposed Substantial Contract Award, or otherwise communicate the information to EX for release to the public. Contracting activities may submit information directly to EX if they believe public announcement is appropriate.

12. Section 505.303–70 is added to read as follows:

505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either sealed bid or negotiated solicitations, including contract modifications exercising options:

(1) When a supply contract is involved and the dollar value exceeds or is estimated to exceed $500,000 (except for products whose points of origin are not readily identifiable or which involve foreign production points);

(2) When a design (Architect/Engineer) contract or construction contract is involved and the dollar value exceeds or is estimated to exceed $100,000; or

(3) When there is Congressional interest in any contract for supplies or services regardless of dollar value.

(i) When Congressional interest is involved, GSA Form 2932, Proposed Substantial Contract Award, or a facsimile message shall be prepared for transmittal to the Director of Congressional Affairs (EG) containing the following information:

Congressional Interest—(*Name of Congressman or Senator*)—(State)—Control No.
In behalf of (Name of firm and complete address)—(If award is not proposed to the bidder, explain why) _____

(ii) In addition to the requirement in paragraph (a) of this section, when a Congressional inquiry is made orally with a contracting officer, and award or other information has been promised to a Congressman or Senator, GSA Form 2932 or the facsimile message shall contain the following statement:

"Unless notified to the contrary, we will assume that the (*Congressman or Senator*) has been advised by EG."

(b) *Codes.* The following codes shall be used in the appropriate columns of GSA Form 2932 or in the facsimile message, as applicable.:

(1) *DQ* for definite quantity contract.

(2) *SC* for schedule contract.

(3) *TC* for term contract other than schedule.

(4) *S* for small business concern.

(5) *O* for other than a small business concern.

(6) *NLS* for not labor surplus area.

(7) *LS* for labor surplus area.

(c) *Notification procedure.* (1) The contracting director shall be responsible for submitting directly to the Director of Congressional Affairs (EG) complete and factual data pertinent to any proposed award of the type described in paragraph (a) of this section.

(2) Regional offices (except Region W) shall prepare GSA Form 2932 and transmit the notification directly to the Director of Congressional Affairs (EG), by facsimile machine except as shown in paragraph (c)(4) of this section.

(3) Central Office and Region W contracting activities shall prepare GSA Form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (EG). The notification(s) shall be placed in a messenger envelope and addressed as follows: PLEASE HAND-CARRY Attention: EG, GS Bldg.

(4) The following additional information shall be furnished on the GSA Form 2932 as applicable:

(i) Under Type of Contract insert "S" for sealed bid and "N" for negotiated. Include the applicable reference to the specific authority in parentheses for each contract awarded without providing for full and open competition; i.e., N(1) for only one responsible source.

(ii) Under Point of Production show the name (plant or operational unit), address (including county), and the dollar value for each production point. When the name of the supplier (subcontractor) is different from the contractor, show the supplier's or subcontractor's name, address (including county), and applicable dollar value for each point of production. When the offer does not clearly indicate a specific production point for the item(s); i.e., several sources shown for one item, the word "undeterminable" shall be stated in the Point of Production column, and the various production points (name, address, and county) will be listed. When there are multiple production points and specific items and their points of production are not shown, or when the number of production points exceed 10, show the word multiple and indicate immediately after, in parentheses, the total number of production points.

(iii) For definite quantity awards, show (A) the quantity and unit, in parentheses, under each production point, (B) the name of the requisitioning activity next to the applicable quantity, and (C) the requirement or portion thereof for overseas use.

(iv) The contracting officer's name and telephone number shall be typed or printed at the bottom of each report in the event additional information is required by the Director of Congressional Affairs (EG).

(d) *Release of awards.* (1) Unless notified to the contrary, contracting activities may release awards of the type described in paragraphs (c)(2) and (3) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of transmittal of the GSA form 2932 or the facsimile message to the Director of Congressional Affairs (EG).

(2) Preaward inquiries from offerors shall be processed in accordance with FAR 14.408 and 15.1001.

(e) Proposed exiguency or emergency awards and cases when the acceptance time in an offer is about to expire.

(1) The contracting activities shall transmit notifications as determined by their director directly to the Director of Congressional Affairs (EG), by telephone, followed by a completed GSA Form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (EG), shall be completed at the time and date specified by EG.

13. Section 505.403 is revised to read as follows:

505.403 Requests from Members of Congress.

When responding to a congressional inquiry would result in disclosure of classified material, confidential business information, or information prejudicial to a competitive acquisition, the contracting officer shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity and inform the Office of Congressional Affairs (EG) of the action taken. See GSAR 505.303–70 regarding notification of proposed substantial awards and awards involving congressional interest.

PART 506—COMPETITION REQUIREMENTS

14. Section 506.304 is amended by revising paragraphs (a) (1) thru (4) to read as follows:

506.304 Approval of the justification.

(a) The justification for other than full and open competition (except for contracts awarded under the authority of FAR 6.302–7) shall be approved in writing by—

(1) The contracting director, as defined in GSAR 502.1, for proposed contracts for the amount of $100,000 or less, unless the contract is exempt from the review and approval requirement by FAR 6.304(a)(1).

(2) The contracting activity competition advocate, as defined in GSAR 502.1, for contracts for an amount exceeding $100,000 but equal to or less than $1,000,000. The contracting director shall coordinate on and concur in all justifications before submission to the contracting activity competition advocate for approval.

(3) The head of the contracting activity (HCA), as defined in GSAR 502.1, for contracts for an amount exceeding $1,000,000 but equal to or less than $10,000,000. The contracting activity competition advocate shall coordinate on and concur in all justifications before submission to the HCA for approval.

(4) The senior procurement executive, as defined in GSAR 502.1, for contracts for an amount exceeding $10,000,000. The agency competition advocate, as defined in GSAR 502.1, shall coordinate on and concur in all justifications before submission to the senior procurement executive for approval.

* * * * *

PART 507—ACQUISITION PLANNING

15. Section 507.102 is amended by revising the first sentence and the last sentence of the section to read as follows:

507.102 Policy.

All proposed acquisitions which are determined, in accordance with the requirements of GSA Order, Comprehensive Acquisition Planning (APD 2800.13), to meet the criteria for comprehensive acquisition planning shall have such a plan prepared for them. * * * A contract shall not be entered into without providing for full and open competition on the basis of a lack of acquisition planning or concerns relating to the amount of funds available for acquisition.

PART 509—CONTRACTOR QUALIFICATIONS

15. Section 509.403 is amended by revising paragraph (a) to read as follows:

509.403 Definitions.

* * * * *

(a) The "debarring official" and the "suspending official" for GSA is the Assistant Administrator for Acquisition Policy or a designee.

* * * * *

17. Section 509.405–1 is amended by revising paragraph (c) to read as follows:

509.405–1 Continuation of current contracts.

* * * * *

(c) The debarring or suspending official may make a determination, as provided in FAR 9.405–1(b), that there are compelling reasons to accord a debarred or suspended contractor treatment other than that required by FAR 9.405.

18. Section 509.405–2 is revised to read as follows:

509.405–2 Restrictions on subcontracting.

The debarring or suspending official may make a determination, as provided in FAR 9.405–2, that there are compelling reasons to accord a debarred or suspended contractor treatment other than that required by FAR 9.405.

19. The table of contents for Part 510 is amended by revising the entries for 510.004–70 and 510.004–71 and by removing the entries for section 510.004–72 and 510.004–73 as set forth below:

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

* * * * *

510.004–70 Solicitation, brand name or equal descriptions.
510.004–71 Offer evaluation and award, brand name or equal descriptions.

* * * * *

20. Sections 510.004–70 and 510.004–71 are redesignated as section 510.004 and revised to read as follows:

510.004 Selecting specifications or descriptions for use.

(a) *Brand name products or equal.*—(1) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product no longer applies, the reference thereto shall be deleted from the purchase description. Information on additions and deletions shall be immediately communicated to the specification manager.

(2) *Specifying essential characteristics.* (i) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See GSAR 510.004–70.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(ii) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

(b) *Limitations on use of brand name or equal purchase descriptions.*—(1) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote full and open competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the clause at GSAR 552.210–74 would be impracticable, the requirement to include the entry described in GSAR 510.004–70(a), shall not apply. If the clause is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the clause applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to procure a particular product under the guise of competitive

procurement to the exclusion of other products that would meet the actual needs.

(2) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(3) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved by the contracting director.

21. Sections 510.004–72 and 510.000–73 are redesignated as sections 510.004–70 and 510.004–71.

PART 514—SEALED BIDS

22. Section 514.201 is revised to read as follows:

514.201 Preparation of invitation for bids.

Refer to GSAR 514.270 for information on specifying a minimum bid acceptance period.

23. Section 514.201–71 is revised to read as follows:

514.201–71 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a clause requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, regarding fire and casualty hazards, explosion protection, or safety or health requirements.

(b) When a specification is not available or the specification to be used does not include a provision such as that described in paragraph (a) of this GSAR 514.201–71, and it is believed that such a clause should be included in the current procurement, technical advice shall be obtained from the appropriate program or technical office. If the contracting officer then determines that the matter should be covered, an appropriate clause shall be included in the solicitation. The provision shall cite the nationally recognized standards requiring compliance. If several such standards are available, the clause shall cite all standards that are acceptable. Since compliance with such standards is normally objectively determined under regular acceptance inspection and test procedures, no requirement for bidders to submit proof of compliance with the standard shall be included in the clause.

24. Section 514.404–1 is revised to read as follows:

514.404–1 Cancellation of invitations after opening.

The head of the contracting activity is delegated the authority to cancel invitations for bid and to reject all bids received or to cancel invitations for bids and authorize the use of negotiations to complete the acquisition in accordance with FAR 14.404–1 and 15.103. This authority may be redelegated. When exercising this authority, the required determination documenting the reasons for rejecting all bids and authorizing completion of the acquisition through negotiation, when applicable, shall be included in the contract file.

PART 515—CONTRACTING BY NEGOTIATION

25. Section 515.608 is revised to read as follows:

515.608 Proposal evaluation.

The head of the contracting activity is authorized to reject all proposals received in response to a solicitation pursuant to FAR 15.608(b). This authority may be redelegated. When exercising this authority, the required determination documenting the reasons for rejecting all proposals will be included in the contract file.

PART 525—FOREIGN ACQUISITION

26. Section 525.402–71 is amended by revising the introductory text of paragraph (b) to read as follows:

525.402–71 Delegation of limited waiver authority.

* * * * *

(b) The Administrator of General Services has authorized the heads of contracting activities, as defined by GSAR 502.1, to grant such waivers in cases where:

* * * * *

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

27. Section 536.203 is amended by revising paragraph (c) to read as follows:

536.203 Government estimate of construction cost.

* * * * *

(c) If the procurement is by sealed bidding, the sealed copy of the detailed Government estimate shall be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate shall be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate shall be opened and retained with the Standard Form 1418, Abstract of Offers—Construction. However, the Government's estimate shall not be disclosed until after award. Immediately after award the Government estimate shall be recorded on the SF 1419 as the Independent Government Estimate.

* * * * *

28. Section 536.206 is amended by revising paragraph (b)(3) to read as follows:

536.206 Liquidated damages.

* * * * *

(b) * * *

(3) The cost of monies.

PART 549—TERMINATION OF CONTRACTS

29. Section 549.111 is amended by revising paragraphs (a) and (b) to read as follows:

549.111 Review of proposed settlements.

(a) Proposed termination settlement between $25,000 and $100,000, shall be reviewed and approved by the contracting director as defined at GSAR 502.1.

(b) Proposed termination settlements over $100,000, shall be reviewed and approved by the head of the contracting activity as defined at GSAR 502.1.

* * * * *

Dated: August 16, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–21198 Filed 9–4–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 41]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

Correction

In FR Doc. 85–20745, beginning on page 35233 in the issue of Friday, August 30, 1985, the notice number should read as it does in the bracketed heading above.

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 3 to Fifteenth Revised Service Order No. 1474]

Railroad Car Service Order; Des Moines Union Railway Co., Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor, (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 3 to Fifteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes Des Moines Union Railway Company (DMU) to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits DMU to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., August 31, 1985, and continuing in effect until 11:59 p.m., November 30, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr. (202) 275–7840 or 275–1559.

Decided: August 29, 1985.

List of Subjects in 49 CFR Part 1033

Railroads.

Upon further consideration of Fifteenth Revised Service Order No.. 1474 (50 FR 2676, 11368, and 26774) and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 *DES MOINES UNION RAILWAY COMPANY AUTHORIZED TO USE TRACKS AND/OR FACILITIES OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR (RICHARD B. OGILVIE, TRUSTEE),* Fifteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., November 30, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 31, 1985.

This action is taken under authority of 49 U.S.C. 10304–10305 and section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Bernard Gaillard, William J. Love, and John H. O'Brien. Board member Love did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–21174 Filed 9–4–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Solidago Shortii (Short's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Solidago shortii* Torrey and Gray (Short's goldenrod), a plant endemic to three counties in Kentucky, to be an endangered species under the Endangered Species Act of 1973, as amended. Only five populations of *Solidago shortii* are known, and these are threatened by potential recreational activities, natural and human-induced habitat alterations, and development of its habitat. This action will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Solidago shortii.*

DATE: The effective date of this rule is October 7, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 8/672–0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago shortii, a member of the Asteraceae (Aster family), was first collected by C.W. Short at Falls of the Ohio, Jefferson County, Kentucky. In 1842, the species was described and named in honor of its discoverer by Torrey and Gray. The original site, which was apparently Rock Island, adjacent to Falls of the Ohio on the Ohio River, was later inundated by dam construction. In 1939, Braun (1941) discovered *Solidago shortii* in the vicinity of Blue Licks, Kentucky. She reported that numerous populations were growing on rocky slopes and in pastures in Nicholas and Fleming Counties, Kentucky. Medley (1980) conducted a status survey for *Solidago shortii,* but despite extensive searches in 1978, 1979, and 1980, he found only one population. This population is located within Blue Licks Battlefield State Park, Robertson County, Kentucky. Medley reported that a major segment of this population was almost completely destroyed by campground construction in the middle 1970s. Medley (1980) further stated that the overgrazed pastures, which, according to Braun (1941), had provided habitat for *Solidago shortii,* were still numerous in the Blue Licks area. However, Medley (1980) concluded, after thorough searches of likely habitat, that the only remaining population was within Blue Licks Battlefield State Park. In 1983, Baskin and Baskin (1984) reported on the discovery of three additional populations of *Solidago shortii,* and in 1984, Baskin (personal communication, October 1984) informed the Service that another population had been found. One population is located just outside the State park's boundary in Nicholas County, and the other three populations are within a 2-mile radius of the park in Nicholas, Fleming, and Robertson Counties, Kentucky, respectively.

The historic distribution of *Solidago shortii* may have been correlated with disturbance caused by bison. The largest remaining population is adjacent to the old Buffalo Trace, which passes through Blue Licks Battlefield State Park (Medley, 1980). It was also suggested by Braun (1941) that fire may have been a factor that created openings within wooded areas and provided habitat for the species. Whether the loss of the numerous populations reported by Braun (1941) was caused by more

intense grazing pressures during the intervening years or was the result of some other factor or factors is not known.

Short's goldenrod is usually less than 1 meter (39 inches) tall and bears yellow flowers between mid-August and early November. The light brown fruits (achenes) mature several weeks after the flowers wither. The alternately arranged narrow leaves are usually 5–10 centimeters (2–4 inches) long and 0.6–1.5 centimeters (0.24–0.60 inches) wide. *Solidago shortii* is found in cedar glades and openings in oak and hickory forests (Kral, 1983; Medley, 1980), in areas adjacent to the Old Buffalo Trace (Medley, 1980), and in pastures and areas adjacent to roads (Braun, 1941; Baskin and Baskin, 1984).

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)), of the Act and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Solidago shortii* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Solidago shortii* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's possession indicate that listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago shortii* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago shortii* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to list this and other species. Notice of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). On October 11, 1984, the Service published, in the **Federal Register** (49 FR 39873), a proposed rule to list *Solidago shortii* as an endangered species, constituting the next required 12-months finding.

Summary of Comments and Recommendations

In the October 11, 1984, proposed rule (49 FR 39873) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The Mercury*, Carlisle, Kentucky, on October 25, 1984; *The Times*, Augusta, Kentucky, on October 30, 1984; and the *Gazette*, Flemingsburg, Kentucky, on October 31, 1984; which invited general public comments. Eight substantive comments were received and are discussed below.

The proposal was supported by the Kentucky Department of Parks, the Kentucky Nature Preserves Commission, and one private individual. The Kentucky Department of Fish and Wildlife Resources (KDFWR) also supported the proposal and recommended that critical habitat be designated. They stated that, "In our view, designation of areas as critical habitat would definitely be an asset to protection of the species. This measure would ensure against development by the Department of Parks at the Blue Licks site and protect the smaller populations along the roads if the Department of Transportation deemed road widening necessary. KDFWR does not feel that designation of critical habitat will cause that much more public attraction to the sites and would afford the species considerably more protection." The Service does not believe that designating critical habitat for *Solidago shortii* would provide the species any significant increased protection. The Kentucky Department of Parks is on record as a staunch supporter of active management to protect the species. The Kentucky Department of Highways is aware of the plant's location, and if Federal funds are involved with a highway project, the Endangered Species Act of 1973, as amended, requires consideration of the plant's welfare whether or not critical habitat is designated. The Service also believes (see "Critical Habitat" section of this rule) that critical habitat designation would draw attention to specific areas inhabited by the species and could further threaten the plant from inadvertent trampling and the increased incidence of taking.

The Kentucky Department of Highways (DOH) informed the Service of their plans for a project adjacent to *Solidago shortii* populations. Their review of the project impact area and the precise location of the plants has shown that none of the plants will be impacted by the project. The Service has been in contact with DOH on this matter and concurs with DOH's assessment.

The Federal Energy Regulatory Commission concluded ". . . that listing Short's goldenrod as an endangered species would have no effect on any hydroelectric project under the Commission's jurisdiction." The Service concurs with this statement.

The Department of the Army, Corps of Engineers (CoE), referred to the Falmouth Lake Project, but does not believe that a serious conflict would arise because (1) the project is presently inactive and likely will not be built and (2) if it were built, the flood pool elevation would likely not reach the 650.0-foot elevation where the plants are found. CoE also stated, "If further detailed investigations of the Falmouth Lake would be approved and funded, additional coordination will be effected between our respective agencies to assure that Federal and State environmental policies and guidelines are satisfied." The Service appreciates the concern the CoE has shown for this species, and will be available to assist CoE in meeting Endangered Species Act responsibilities if the Falmouth Lake Project is approved.

A University of Kentucky professor with considerable expertise concerning this species supported endangered species status for the plant and supplied

information on one newly found population of *Solidago shortii* in Robertson County, Kentucky. He concluded that this new population should ". . . in no way affect the proposal for endangered species status of this species." The Service has analyzed this new information, which is included in the "Background" section of this rule. The Service concludes that, as this population is in the same area as the other populations and is threatened by the same factors, the existence of this additional population does not measurably alter the species' status.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago shortii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago shortii* Torrey and Gray (Short's goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Solidago shortii* occurs at five locations in an extremely limited portion of Robertson, Nicholas, and Fleming Counties, Kentucky. One of these populations is within Blue Licks Battlefield State Park. In the middle 1970s, a major segment of the park's population was lost during construction of a new campground. Most of the plants remaining at the park (about 2,000 individuals) are within a 1.5-acre area that has been dedicated by the Kentucky Nature Preserve Commission as a nature preserve. Research is needed to determine proper management techniques for maintenance of the species at this site. Additional protection from accidental trampling or inadvertent destruction is also needed. The remaining four sites are located on private property. No plans to develop these sites are known at this time; however, they could be lost to building and other construction activities in the future. Changes in land use, such as more intensive agricultural activities, could further reduce or eliminate *Solidago shortii* from these sites. Kral (1983) states that fire could adversely affect *Solidago shortii*. The populations on private land are susceptible to fires as these plants are adjacent to roadsides. Although no known highway alterations that would impact the plants are planned at this time, alterations that are not designed in a manner to minimize impacts to *Solidago shortii* could adversely affect the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The largest population (up to half of the known plants) occurs within a Kentucky park. Increased recreational use at the park could adversely impact the species if recreation activities are not carefully directed to areas away from the *Solidago shortii* population. As mentioned above, a major segment of the park's population was destroyed by campground construction. The remaining individuals are vulnerable to accidental trampling by park visitors. The small total number of individual plants in existence (Medley, 1980; Baskin and Baskin, 1984) makes the species vulnerable to overcollecting for scientific purposes. The plants within the park cannot be collected without a permit from the Department of Parks and the Kentucky Nature Preserves Commission. However, the much smaller and consequently more vulnerable populations on private land have no protection from this potential threat.

C. *Disease or predation.* No diseases are known to be adversely impacting *Solidago shortii*. Kral (1983) states that grazing could adversely impact the species.

D. *The inadequacy of existing regulatory mechanisms.* The Blue Licks Battlefield State Park Nature Preserve population of *Solidago shortii* is afforded protection from unauthorized taking. Taking is authorized through a permit system administered by the Department of Parks and the Kentucky Nature Preserves System. Permits are only issued for valid scientific purposes. Currently, there are no other forms of protection provided to the species. The Endangered Species Act will afford additional protection to *Solidago shortii*.

E. *Other natural or manmade factors affecting its continued existence. Solidago shortii* has been reduced to a small number of populations with a limited number of individuals in each population. Therefore, the plant is particularly vulnerable to any natural or human-induced factors, such as fire, that might further reduce population size. Although fire may have been important historically in maintaining suitable habitat, a fire in the plant's existing remnant habitat could destroy an entire population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Solidago shortii* as an endangered species. Only five populations of this species are known to exist. Four of the five populations are on privately owned property and currently receive no protection or management designed to enhance their continued existence. The fifth population is on property administered by the Kentucky Department of Parks and the Kentucky Nature Preserves Commission. Although this population is within a State park and a dedicated nature preserve, it could still be lost through inadvertent human-induced alterations of its habitat, natural fluctuations in the population, or perturbations of human or natural origin, such as fire. Critical habitat is not being designated for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The 1.5-acre site in Blue Licks Battlefield State Park, which contains the largest remaining population of *Solidago shortii*, has been registered as a nature preserve. Both the Kentucky Department of Parks and the Kentucky Nature Preserves Commission believe that any publicity about the preserve and the extremely rare species that it contains would be disadvantageous to the continued existence of *Solidago shortii*. Although taking without a State permit is prohibited, this prohibition is difficult to enforce. Taking is not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. No Federal lands are involved here. Publication of critical habitat descriptions and maps would increase the vulnerability of *Solidago shortii* and would create additional enforcement problems for the Kentucky Department of Parks. Critical habitat designation may stimulate increased visitation to all the population sites and result in inadvertent trampling, habitat destruction, and taking. The Kentucky Department of Parks and the private landowners on whose property the populations of *Solidago shortii* occur are aware of the plants' locations and the

importance of protecting the plants and their habitat. No additional benefits would result from a determination of critical habitat. Therefore, it is not prudent to designate critical habitat for *Solidago shortii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal projects have been identified that would require formal consultation under section 7(a)(2) with respect to *Solidago shortii*. As this species does not occur on Federal lands, Federal involvement is expected to be minimal.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Solidago shortii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Solidago shortii* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Solidago shortii* if it ever is discovered on Federal lands. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Solidago shortii* is not known to occur on Federal lands, and therefore no requests for permits are anticipated.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Baskin, J.M., and C.C. Baskin. 1984. Rediscovery of the rare Kentucky endemic *Solidago shortii* T. & G. in Fleming and Nicholas Counties. Transactions of the Kentucky Academy of Science 45:159.

Braun, E.L. 1941. A new locality for *Solidago shortii*. Rhodora 43:484.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service, Southern Region, Technical Publication R8-TP2.

Medley, M.E. 1980. Status of *Solidago shortii*. Unpublished report produced under contract to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 14 pp.

Torrey, J., and A. Gray. 1842. A flora of North America. New York Botanical Garden, New York. Vol. II: p. 222.

Authors

The primary authors of this final rule are Mr. Robert R. Currie and Mr. Richard G. Biggins, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 8/672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Solidago shortii	Short's goldenrod	U.S.A. (KY)	E	198	NA	NA

Dated: August 13, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21080 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Erigeron maguirei var. maguirei (Maguire daisy)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Erigeron maguirei* var. *maguirei* (Maguire daisy). It is known to occur only at the upper end of a sandstone canyon in Emery County, Utah. Only seven plants were seen there in 1982, all on Bureau of Land Management land. Any surface disturbance could easily cause the extinction of this taxon, and it may also be depleted genetically as a consequence of reduced population size. This action implements the protection provided by the Endangered Species Act of 1973, as amended, for the Maguire daisy.

DATE: The effective date of this rule is October 7, 1985.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours of the Service's Endangered Species Regional Staff at the following locations: 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80228; Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104; and Suite B-109, Independence Plaza, 551 25½ Road, Grand Junction, Colorado 81501.

FOR FURTHER INFORMATION CONTACT: Larry England, Salt Lake City (801/524-4430 or FTS 588-4430), or John Anderson, Grand Junction (303/241-0563 or FTS 322-0348), at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

Erigeron maguirei var. *maguirei* (Maguire daisy) is a small perennial daisy, up to 5 inches tall, which blooms in mid-June; it has leafy and stiffly hairy stems, and bears 1-5 flower heads with relatively few white to pinkish ray flowers surrounding a yellow center of disc flowers. It was first collected by Dr. Bassett Maguire in 1940 in the dry, rocky, sandy bottom of Calf Canyon in the San Rafael Swell, Emery County, Utah. *Erigeron maguirei* was described by Dr. Arthur Cronquist in his monograph of the genus (Cronquist 1947). It was not seen again until 1960, when James Harris, a temporary employee of the Bureau of Land Management (BLM), engaged in floristic inventory, found a single plant in the bottom of Pine Canyon, a side canyon of Calf Canyon. This one plant, which was on State of Utah land, was looked for in 1961, 1962, and 1964, but not found. In 1982, John Anderson, a Service botanist, hiked the entire length of Calf Canyon and its two side canyons, Cow Canyon and Pine Canyon, and found only seven plants of this taxon, all at the upper ends of branches of Pine Canyon on sandstone ledges or among boulders. These seven plants were on BLM land at about 5,800 feet elevation in the pinyon-juniper zone, growing with *Amelanchier utahensis* (Utah serviceberry), *Fraxinus anomalus* (single-leaf ash), *Rhus trilobata* (skunkbush), and *Philadelphus microphyllus* (little-leaf mock-orange) (Anderson 1982). Only five plants were seen in 1984. The Maguire daisy is thus one of the rarest taxa in Utah and the nation. In April 1983, *Erigeron maguirei* var. *harrisonii* was described as a new variety. It is a rare related plant in Wayne County, Utah, outside the historical and current range of *E. maguirei* var. *maguirei* (Welsh 1983a, 1983b).

There are mining claims for uranium, and oil and gas leases in the area in which this species grows, as in much of this part of Utah. No commerical deposits are known in the area at present; however, annual assessment work on the claims must still be done, and energy exploration may occur. The canyon bottoms where the Maguire and Harris collections were made are grazed by cattle, which may have affected the Maguire daisy. There is also some recreational motorcycle use in the canyon bottoms. In addition, the five to seven plants are all that remain of a formerly larger population and may not be viable without some management.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In the Federal Register of July 1, 1975 (40 FR 27823), the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. In the Federal Register of June 16, 1976 (41 FR 24523), the Service published a proposed rule to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of these taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the Federal Register notice of July 1, 1975. *Erigeron maguirei* was included in the notice of July 1975 (40 FR 27880), and the proposal of June 1976 (41 FR 24531). General comments received in response to the 1976 proposal were summarized in a publication in the Federal Register of April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was provided for proposals already over two years old. In the Federal Register of December 10, 1979 (44 FR 70796), the Service published a notice of the withdrawal of the still applicable portions of the proposal of June 16, 1976, along with other proposals that had expired. The notice of July 1, 1975, was replaced by the Service's publication in the Federal Register of December 15, 1980 (45 FR 82480), of a new notice of review for plants, which included *Erigeron maguirei*. No comments on this taxon were received in response to the 1980 notice. In the Federal Register of February 15, 1983 (48 FR 6752), the Service published a notice of its prior finding that the petitioned action on this taxon may be warranted, in accordance

with section 4(b)(3)(A) of the Act, as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Erigeron maguirei* var. *maguirei* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the Federal Register of January 20, 1984 (49 FR 2485). In the case of such a finding, the petition is recycled and another finding becomes due within 12 months. In the Federal Register of July 27, 1984 (49 FR 30211), the Service published a proposed rule to determine endangered status for *Erigeron maguirei* var. *maguirei*, and that document incorporated the required 12-month finding.

Summary of Comments and Recommendations

In the proposed rule of July 27, 1984 (49 FR 30211), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newpaper notice, inviting general public comment, was published in the *Emery County Progress*, Castledale, Utah, on August 10, 1984. Three comments were received and are discussed below. No public hearing was requested or held.

Two comments, one from BLM and one from a private individual, supported the proposed listing. A third comment pointed out a typographical error in the proposed rule. BLM also noted the presence in portions of Pine Canyon of mining claims and oil and gas leases, but that no current or planned activities associated with these were known. In addition, no grazing is authorized by the BLM in one of the upper side canyons of Pine Canyon (which contains potential habitat but not the seven plants). The comment from the private individual was addressed to Senator Orrin Hatch of Utah, who requested information on the proposal for his constituent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Erigeron maguirei* var. *maguirei* (Maguire daisy) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Erigeron maguirei* Cronquist var. *maguirei* (Maguire daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Maguire daisy is extremely rare. First discovered in 1940, it appears to have been extirpated at two of the three sites from which it is historically known. Only five to seven plants are now known to occur at the third site, which is on BLM land. There are mineral claims for uranium, and oil and gas leases in the area. Even minor surface disturbance, associated with exploration or assessment of these claims and leases, could cause extinction if it occurred where the plants grow. Recreational motorcycle use of the canyon bottom also may threaten these plants.

It should be noted that the present rocky sites might be a marginal habitat that is not suitable for the taxon's survival in the long term. The few existing plants occur at the upper ends of canyons on sandstone ledges or among boulders in less accessible and thus naturally protected areas. This is different habitat from the canyon bottomland where the plants were seen in 1980 and first seeen in 1940 ("dry rocky sandy canyon bottom"). Bottomland is more susceptible to impacts such as cattle grazing and off-road vehicle activity. Since the remaining plans are found only at less accessible sites, this upper canyon area may, in fact, be ecologically marginal habitat for a minor remnant of the population of the Maguire daisy. The vulnerable lower canyon bottoms may represent the prime, long-term habitat, and the Maguire daisy's absence there may be a reflection of past land use rather than of the habitat suitability of the upper canyons. This speculation is supported by the fact that the most robust of the remaining plants is one found among boulders on the shallow wash bottom of the upper canyon in soil somewhat deeper than that in which the other plants occur.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be a problem, but the extremely low numbers of this taxon make it very vulnerable to any taking that might occur.

C. *Disease or predation.* The presently known plants are in rocky areas inaccessible to cattle grazing. The absence of plants in the canyon bottoms, where they were originally found in 1940 and 1980, may be a result of cattle grazing pressure. Studies are needed to determine the actual impact of cattle grazing and its compatibility with the survival of the daisy. Presumably, this small herbaceous perennial is palatable to cattle. Two of the seven plants have shown some grazing damage, perhaps from deer.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws currently protect *Erigeron maguirei* var. *maguirei*. The Endangered Species Act offers possibilities for protection of this taxon through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of specimens from areas under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* Because only five to seven plants of the Maguire daisy now appear to exist, its vulnerability is greatly magnified by any inadvertent human actions in the area that do not take its presence into account, or by any natural catastrophe. Its gene pool may be depleted because of the known loss of individuals since 1940.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Erigeron maguirei* var. *maguirei* as an endangered species. With only five to seven individuals known, endangered status seems an accurate assessment of the taxon's condition. A decision to list as threatened would not adequately reflect the threats to the species or the possibility of its extinction. It is not considered prudent to designate critical habitat for this species, because doing so would increase risk to it, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Maguire daisy at this time. BLM has been informed of this rule, is aware of the location of the Maguire daisy, has acknowledged the threats to the taxon, and is considering this information in its management and planning. Therefore, no further benefits would accrue to the daisy by critical habitat designation. Because of the very

low number of plants, the accessibility of the nearby canyon bottoms to off-road vehicles (i.e., motorcycles), and the potential for vandalism, it could be detrimental to the taxon to publish a critical habitat map and exact location description.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to *Erigeron maguirei* var. *maguirei*, BLM may be required to consult concerning its administration of mining or oil and gas exploration permits, and grazing leases, where the taxon has been found and may be affected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Erigeron maguirei* var. *maguirei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species, under certain circumstances. No such trade in *Erigeron maguirei* var. *maguirei* is known. It is anticipated that few trade permits will ever be issued, since this plant is not common in the wild or in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Erigeron maguirei* var. *vaguirei*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. This daisy is currently only known to occur on Federal (BLM) land. It is likely that few taking permits for it will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 6th Floor Broyhill, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References

Anderson, J. 1982. Search for *Erigeron maguirei*. U.S. Fish and Wildlife Service. Denver, Colorado, 3pp.

Cronquist, A. 1947. Revision of the North American species of *Erigeron*, north of Mexico. Brittonia 6(2):121-302.

Harris, J. 1980. Inventory of land in the San Rafael Resource Area for the presence of endangered or threatened plants. Bureau of Land Management, Price, Utah, 3 pp.

Welsh, S.L. 1983a. Utah flora: Compositae (Asteraceae). Great Basin Naturalist 43(2):179-357.

Welsh, S.L. 1983b. A bouquet of daisies (*Erigeron*, Compositae). Great Basin Naturalist 43(2):365-368.

Authors

The primary author of this final rule is Mr. John Anderson, Botanist, of the Grand Junction address given above (303/241-0563 or FTS 322-0348). Mr. John L. England, Botanist, of the Salt Lake City address given above (801/524-4430 of FTS 588-4430), served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
ASTERACEAE—Aster family:						
Erigeron maguirei var. *maguirei*	Maguire daisy	U.S.A (UT)	E	199	NA	NA

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21091 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) for the subareas between Cape Falcon and Cape Blanco, Oregon, and between Cape Blanco and the Oregon-California border at midnight, September 2, 1985, because the coho salmon quota will be reached. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG), that the recreational fishery quota of 170,000 coho salmon for the area south of Cape Falcon will be reached by midnight, September 2, 1985. Immediately following this closure, the recreational salmon fishery in the FCZ between Cape Blanco and the Oregon-California border will reopen for all salmon species except coho. The intended effect is to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the FCZ between Cape Falcon, Oregon, and the Oregon-California border to recreational fishing for all salmon species is effective at 2400 hours Pacific Daylight Time (PDT), September 2, 1985. At 0001 hours PDT, September 3, 1985, the FCZ between Cape Blanco and the Oregon-California border is open to recreational fishing for all salmon species except coho.

ADDRESS: Information relevant to this notice has been compiled in aggregate form and is available for public review at the Northwest Region, NMFS, 7600 Sand Point Way NE., Building 1, Seattle, Washington, from 8:00 a.m to 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS) 206-526-6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the ocean salmon management plan (49 FR 43679, October 31, 1984) specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). The 1985 recreational season in the FCZ between Cape Falcon, Oregon, and Cape Blanco, Oregon, was established as July 1 through the attainment of a quota of 170,000 coho salmon for the area south of Cape Falcon. The same recreational season was established in the FCZ between Cape Blanco, Oregon, and the Oregon-California border with an additional season to follow immediately for all salmon species except coho through October 31, 1985. Based on the most recent catch and effort information supplied by ODFW and CDFG, the recreational fishery catch in the area south of Cape Falcon is projected to reach the 170,000 coho salmon quota by midnight, September 2, 1985. The Secretary therefore issues this notice closing the recreational fishery in the FCZ between Cape Falcon, Oregon, and the Oregon-California border at midnight, September 2, 1985. The recreational fishery in the FCZ between Cape Blanco, Oregon, and the Oregon-California border reopens for all salmon species except coho effective 0001 hours, September 3, 1985.

The Regional Director consulted with the Director of ODFW regarding this closure. The Director of ODFW has confirmed that Oregon will close the recreational fishery in State waters adjacent to the area of the FCZ between Cape Falcon and the Oregon-California border effective midnight, September 2, 1985, and will reopen the recreational fishery in State waters adjacent to the area of the FCZ effective 0001 hours, September 3, 1985.

This notice does not apply to the regularly scheduled recreational fishery for all salmon species in the FCZ between the Oregon-California border and the U.S.-Mexico border because this area is not affected by the attainment of the coho salmon quota for the area south of Cape Falcon.

Other matters

This action is taken under the authority of 50 CFR Part 661 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 30, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-21169 Filed 8-30-85; 3:11 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) between the U.S.-Canada border and the Queets River, Washington, at midnight, September 1, 1985, to ensure that the chinook salmon quota is not exceeded. the Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Washington Department of Fisheries (WDF) that the recreational fishery quota of 2,450

chinook salmon for the area will be reached by midnight, September 1, 1985. The intended effect is to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the FCZ between the U.S.-Canada border and the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours Pacific Daylight Time, September 1, 1985.

ADDRESS: Information relevant to this notice has been compiled in aggregate form and is available for public review at the Northwest Region, NMFS, 7600 Sand Point Way NE., Building 1, Seattle, Washington, from 8:00 a.m. to 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the ocean salmon fishery management plan (49 FR 43679, October 31, 1984) specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). The 1985 recreational season in the FCZ between the U.S.-Canada border and the Queets River, Washington, was established as June 30 through the earliest of September 19 or attainment of a quota of either 1,700 chinook salmon or 28,400 coho salmon. The quotas were changed subsequently to 2,450 chinook and 25,400 coho salmon (50 FR 33344, August 19, 1985). Based on the most recent catch and effort information supplied by WDF, the recreational fishery catch in the area is projected to reach the 2,450 chinook salmon quota by midnight, September 1, 1985. The Secretary therefore issues this notice to close the recreational fishery in the FCZ between the U.S.-Canada border and the Queets River, Washington, effective midnight, September 1, 1985. This notice does not apply to treaty Indian fisheries operating in the same area or other fisheries which may be operating in other areas.

The Regional Director consulted with the Director of WDF regarding this closure. The Director of WDF has confirmed that Washington will close the recreational fishery in State waters adjacent to this area of the FCZ effective midnight, September 1, 1985.

Other Matters

This action is taken under the authority of 50 CFR Part 661 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 30, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–21170 Filed 8–30–85; 3:11 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Peeled Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to revise the voluntary U.S. Standards for Grades of Peeled Potatoes. The proposed rule was developed by the United States Department of Agriculture (USDA). This proposal would: (1) Eliminate the reference to sulfur dioxide (SO_2) in the product description and (2) replace dual grade nomenclature with single letter designations. Its effect would be to improve the grade standards and promote orderly and efficient marketing of peeled potatoes.

DATE: Comments must be received on or before: November 4, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 20250, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers: individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The currently effective standards for grades of peeled potatoes reference the use of sulfur dioxide (SO_2) as a treatment to prevent discoloration in the product. The use of sulfites in food is purported to be a possible health hazard to some consumers. This proposal would delete the reference to sulfur dioxide in the product description but retain the reference to treatment, to prevent discoloration, by means permissible under provisions of the Federal Food, Drug, and Cosmetic Act.

Following the policy of making grade standards simpler to understand, the dual grade nomenclature would be replaced with single letter grade designations.

List of Subjects in 7 CFR Part 52

Fruits and vegetables, Food grades, Standards.

Accordingly, the United States Standards of Grades of Peeled Potatoes (7 CFR 52.2421–52.2432) are proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, 1090 as amended (7 U.S.C. 1622, 1624).

1a. Section 52.2421 is revised to read as follows:

§ 52.2421 Product description.

"Peeled potatoes" are clean, sound, fresh tubers of the potato plant prepared by washing, peeling, trimming, sorting, and by proper treatment, to prevent discoloration, by any means permissible under the provisions of the Federal Food, Drug, and Cosmetic Act. The product is properly packed in suitable containers and securely closed to maintain the product in a sanitary condition.

§ 52.2423 [Amended]

2. Section 52.2423 is amended in paragraph (a) by removing the phrase "or U.S. Fancy," in paragraph (b) by removing the phrase "or U.S. Extra Standard" and in paragraph (c) by removing the phrase "or U.S. Extra Standard."

§ 52.2428 [Amended]

3. Section 52.2428 is amended in paragraph (b) by removing the phrase "or U.S. Extra Standard."

§ 52.2430 [Amended]

4. Section 52.2430 is amended in paragraph (c) by removing the phrase "or U.S. Extra Standard."

§ 52.2431 [Amended]

5. Section 52.2431 is amended in paragraph (b) by removing the phrase "or U.S. Extra Standard."

Done at Washington, D.C. on: August 30, 1985.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 85–21217 Filed 9–4–85; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 309

[Docket No. 84–023]

Biological Residues; Rescission of Obsolete Regulatory Provision Concerning Cattle Which Had Been Treated With DES

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service [FSIS] is proposing to rescind an obsolete regulatory provision concerning cattle which had been treated, or were suspected of having been treated, while diethylstilbestrol (DES) on or after November 1, 1979. The program which is the subject of that provision has been terminated and the provision is, therefore, obsolete.

DATE: Comments must be submitted on or before November 4, 1985.

ADDRESS: Comments concerning this proposal may be addressed to the

Department of Agriculture, Food Safety and Inspection Service, ATTN: Hearing Clerk, Room 3803, South Building, 14th and Independence, SW., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Spaulding, Director, Residue Evaluation and Planning Division, Food Safety and Inspection Service, Department of Agriculture, 14th and Independence, SW., Washington, D.C. 20250, (202) 447–2807.

SUPPLEMENTARY INFORMATION:

Executive Order 12291/Effect on Small Entities

The Administrator has determined that this proposed rule would not be a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a majorn increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, the Administrator has determined that this proposal will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*).

These determinations have been made because this amendment will simply rescind an obsolete regulatory provision without affecting current Agency policies or impacting upon industry or the consuming public.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Regulations Office and must bear reference to the docket number located in the heading of this document. All comments submitted pursuant to this proposal will be made available for public inspection in the Hearing Clerk's office (see "Dates" for address and location) between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

In 1979 the FDA withdrew approvals for use of diethylstibestrol (DES) as a feed additive and as a subcutaneous implant. During March of 1980, it came to the attention of FDA and USDA that some cattle producers were continuing to treat cattle with DES implants under the mistaken impression that DES supplies on hand could be used until exhausted. This finding prompted a joint USDA/FDA program to identify violators or suspected violators of the ban, and provide for pre-slaughter segregation of treated and untreated cattle.

In the **Federal Register** of April 22, 1980, USDA took "emergency action . . . in order to protect the public health from animals exposed to DES." [45 FR 26947] This rule was codified at 9 CFR 309.16(c).

The new rule announced a special program requiring that cattle which had been treated with DES on or after November 1, 1979 would be processed for slaughter separately from untreated cattle. This program permitted the slaughter of treated cattle provided that the implant was surgically removed by or under the supervision of a USDA-accredited veterinarian, and imposed certain other procedural requirements to ensure meat safety. That program was brought to a successful conclusion. Paragraph 309.16(c) has since remained in the regulations, but is now considered obsolete and no longer needed to ensure meat safety.

List of Subjects in 9 CFR Part 309

Meat inspection; Livestock.

For reasons explained in the preamble, Part 309, Subchapter A, Chapter III of Title 9, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 309—ANTE-MORTEM INSPECTION—[AMENDED]

9 CFR Part 309 is amended as follows:

1. The authority citation for Part 309 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 1254(b), unless otherwise noted.

§ 309.16 [Amended]

2. In Part 309, § 309.16 is amended to delete a reference to paragraph (c) in the first sentence of paragraph (a).

3. In Part 309, § 209.16(c) is removed and reserved for future use.

Dated: August 26, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–21136 Filed 9–4–85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–72–AD]

Airworthiness Directives: Saab-Fairchild Corp. Model SF–340A Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt air airworthiness directive (AD) that would require modification of the rudder limiter mechanism to reduce the range of travel on certain Model SF–340A airplanes. This action is proposed to assure that structural limits are not exceeded with maximum rudder deflection at high speeds.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, attention: Airworthiness Rules Docket No. 85–NM–72–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Saab-Fairchild, Product Support, S.58188, Linkoping, Sweden. This information may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–72–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain Model SF–340A airplanes. Analysis and tests have shown that it is necessary to reduce the range of travel allowed by the rudder limiter mechanism in the higher speed ranges so that structural limits will not be exceeded with maximum rudder deflection. To achieve this, the BCA, on May 10, 1985, mandated that the rudder limiter must be modified in accordance with Saab-Fairchild Service Bulletin SF340–27–018.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the service bulletin.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model SF–340A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Saab-Fairchild: Applies to Model SF–340A series airplanes, serial numbers 340A–003 to –048 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent rudder overloads, accomplish the following, unless already accomplished:

1. Modify the rudder limiter in accordance with Saab-Fairchild Service Bulletin SF340–27–018 dated May 10, 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modfications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Saab-Fairchild, Product Support, S.58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21099 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–ASW–48]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) which supersedes Amendment 39–4940 (AD 84–18–08). Amendment 39–4940 required a one-time inspection and modification of certain tail rotor blades on Hughes Helicopters, Inc., Model 369, 369A, D, E, H, HE, HM, and HS helicopters. Amendment 39–4940 was prompted by a report of loss of a tail rotor blade tip cap assembly during helicopter operation with subsequent loss of tail rotor control. Compliance requires riveting the tip cap assembly in position. This proposed new AD includes the requirements of the previous AD except it extends the applicability to tail rotor blades previously excluded and also includes the Model 369F helicopter.

DATE: Comments must be received on or before October 23, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 84–ASW–48. Comments may be inspected at Room 158 between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Hughes Helicopters, Inc., Centinela Avenue and Teale Street, Culver City, California 90230.

A copy of each document is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles.

California 90009–2007, telephone (213) 536–6166.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84–ASW–48." The postcard will be date/time stamped and returned to the commenter.

Amendment 39–4940 (AD 84–18–08) was issued because of a report of a tail rotor blade tip cap assembly separating from a tail rotor blade with subsequent loss of tail rotor control. The tail rotor tip cap assembly is bonded to the tail rotor blade with an adhesive which has experienced at least one incident of deterioration in service, resulting in separation of the tip cap assembly. Amendment 39–4940 was published in the Federal Register on October 26, 1984 (49 FR 43046), and requires inspection of the bond joint and modification of certain tail rotor blades on Hughes Helicopter Inc., Model 369, 369A, D, E, H, HE, HM, and HS helicopters. Tail rotor blades with tip caps showing evidence of debonding are required to be removed from service. Tail rotor blades with acceptable tip cap bonds are required to be modified by having rivets added to strengthen the joint.

After Amendment 39–4940 was issued, the FAA determined that (1) another model helicopter is affected and should be added to the applicability paragraph of the existing AD, (2) tail rotor blades previously excluded must also be included, and (3) Hughes Helicopters, Inc., has issued a new service information notice applicable to tail rotor blades not covered by the earlier service information notice. Therefore, the FAA proposes to supersede Amendment 39–4940 (AD 84–18–08) with a new AD applicable to Model 369 series helicopters equipped with certain part numbered and serial numbered tail rotor blades and also to require compliance with a specific Hughes Helicopter, Inc., service information notice. The first service information notices are DN–129, EN–18, HN–195, dated August 27, 1984, and the second are DN–132.1, EN–21.1, FN–9.1, HN–199.1 dated May 1, 1985.

Since this condition of tail rotor blade tip cap debonding is likely to exist on other helicopters of the same type design, the proposed AD would require inspection and modification of tail rotor blades on Model 369 series helicopters.

The FAA has determined that this proposed regulation affects approximately 1,700 helicopters, and it is estimated that the one-time cost of compliance for United States registered aircraft is less than $544,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding Amendment 39–4940, AD 84–18–08 (49 FR 43046; October 26, 1984), with the following new AD:

Hughes Helicopters, Inc., (Hughes Helicopters): Applies to Model 369 series helicopters including military Models YOH–6A and OH–6A, certificated in all categories, equipped with tail rotor blades Part Numbers (P/N) 369A1613–3, –7, –501, and –503, Serial Numbers (S/N) 6928 and prior; P/N's 369D21613–11, –41, and –51, S/N's 5144 and prior; P/N 369D21606, S/N's 0077 and prior; P/N 369D21615, S/N's 0480 and prior; and P/N's 421–068–BSC and –3, all serial numbers.

Compliance is required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent the loss of a tail rotor blade tip cap in flight and subsequent loss of tail rotor control, accomplish the following:

(a) Remove, inspect, and modify blades in accordance with paragraphs a through g, Part I "PROCEDURE" section, of Hughes Service Information Notices (SIN) DN–132.1, EN–21.1, FN–9.1, and HN–199.1 dated May 1, 1985, or SIN's DN–129, EN–18, and HN–195 dated August 27, 1984.

(b) An equivalent method of compliance with this AD may be used when approved by the Manager of the Western Aircraft Certification Office, Hawthorne, California.

(c) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

Issued in Fort Worth, Texas, on August 20, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85–21098 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–83–AD]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections of the wing structure at rib 134.366 and adjacent area on all British Aerospace (BAe) Model HS 748 airplanes. This action is prompted by reports of cracks and is necessary to maintain the structural integrity of the wing.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules

Docket No. 85–NM–83–AD, 17900 Pacific Highway South, C–68966, Seattle Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.l

FOR FURTHER INFORMATION CONTACT:
Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–83–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on BAe Model HS 748 airplanes. Cracks have been reported in dagger fittings and stringers adjacent to rib 134.366, which could compromise the structural capability of the wing if allowed to grow. To prevent this from occurring, the CAA has required inspections and repairs, where necessary, in accordance with BAe Service Bulletin 57/75, dated August 1984.

This airplane model is manufactured in the United Kingdom and type of certification in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections and repairs, where necessary, in accordance with the service bulletin.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, BAe Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to all BAe Model HS 748 airplanes, certificated in any category. Compliance is required within the next 750 hours time in service after the effective date of this AD or upon accumulating the service threshold as specified in paragraph 1.D of Service Bulletin 57/75, Revision 1, dated August 1984, whichever occurs later, and thereafter at the intervals as specified in the service bulletin. To detect cracks in the wing structure, accomplish the following, unless already accomplished:

A. Inspect the wing structure at rib 134.366 and adjacent areas in accordance with BAe Service Bulletin 57/75, Revision 1, dated August 1984. Repair any damage found in accordance with the requirements specified in the service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,
Director, Northwest Mountain Region.

[FR Doc. 85–21100, Filed 9–4–85; 8:45am]
BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–90–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the cargo compartment blowout panel assemblies on certain Boeing Model 757 airplanes for adhesive bonding, subsequent rework if necessary, and reinstallation. Several blowout panels have been

detected that were glued to the retainer. Gluing may prevent proper separation during a sudden decompression, which could result in overloading of the main deck floor.

DATES: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–90–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certication Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–90–Ad, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been several reported cases on Boeing Model 757 airplanes of the cargo compartment blowout panels being glued to the retainer during manufacture. The cargo compartment blowout panels, which supplement the main deck floor venting, are designed to blow out in case of a sudden decompression to minimize the differential pressure on the main deck floor. The blowout panels, if glued to the retainer, may not properly separate during a sudden decompression, which could result in overloading of the main deck floor.

Since these conditions are likely to exist on other airplanes of this model, an AD is proposed that would require inspection, rework if necessary, and reinstallation of the cargo compartment blowout panels on certain Boeing Model 757 airplanes.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $11,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant ruled pursuant to the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 airplanes listed in Boeing Service Bulletin Number 757–25–0047, Revision 1, certificated in any category. To prevent the overloading of the main deck floor as the result of a sudden decompression, accomplish the following within 120 days after the effective date of this AD, unless already accomplished:

A. Inspect and, if necessary, rework and reinstall the cargo compartment blowout panel assemblies in accordance with paragraph III of Boeing Service Bulletin 757–25–0047, Revision 1, or later FAA approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21108 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–84–AD]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modifications to the overwing escape hatches on all British Aerospace (BAe) Model HS 748 airplanes. This action is prompted by reports of hatches opening and detaching in flight, and is necessary to prevent the inadvertent opening of these hatches.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal

Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–84–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–84–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on BAe Model HS 748 airplanes. There have been several reports of overwing escape hatches opening and detaching during flight. To prevent this from recurring, the CAA has required compliance with BAe Service Bulletin 52/115, dated July 4, 1984, which prescribes a modification to the hatches.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $1200 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,920.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, BAe Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to all BAe Model HS 748 airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent the overwing escape hatches from opening and becoming detached during flight, accomplish the following, unless already accomplished:

A. Modify the overwing escape hatches in accordance with BAe Service Bulletin 52/115 dated July 4, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued In Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21103 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–71–AD]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections of the microswitch rocker arms in the autofeather system on all British Aerospace (BAe) Model 748 airplanes which have not incorporated Modification 6909. This action is necessary to insure the autofeather system operates properly in the event of an engine failure.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules, Docket No. 85–NM–71–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Council, Attention: Airworthiness Rules Docket No. 85–NM–71–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on BAe Model 748 airplanes which have not incorporated Modification 6909. If the microswitch rocker arm in the propeller autofeather system has failed, autofeathering will not take place in the event of an engine failure. To prevent this from occuring, the CAA, in November 1983, mandated compliance with BAe Service Bulletin 76/15, which requires repetitive inspections of the microswitches. Terminating action is provided by the installation of modified rocker arm assemblies.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $160 per inspection.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, BAe Model 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aviation Group: Applies to all Model BAe HS 748 airplanes on which Modification 6909 has not been incorporated, certificated in any category. Compliance is required within the next 500 flight hours time in service after the effective date of this AD, unless accomplished within the last 500 flight hours time in service, and thereafter at intervals not to exceed 1000 flight hours time in service. To prevent the loss of autofeather capability, accomplish the following:

A. Inspect the microswitch rocker arm assemblies in accordance with BAe Service Bulletin 76/15, Revision 3, dated November 1983. Replace any cracked rocker arm assemblies prior to further flight.

B. The installation of modified rocker arm assemblies in accordance with the service bulletin terminates the requirements for inspection of paragraph A., above.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21104 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–85–AD]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require a visual inspection and modification, as necessary, of the

windshield wiper actuating arm on certain British Aerospace (BAe) Model HS 748 airplanes. This action is necessary to detect cracks in the actuating arm which could allow the arm to detach and strike the propeller.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–85–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to paricipate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–85–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model HS 748 airplanes. A number of windshield wiper arms have failed at the locating pinhole, causing the arm to detach and strike the propeller disc. In one instance, the fuselage was punctured. In order to prevent this from recurring, the CAA has mandated compliance with Dunlap Limited Aviation Division Service Bulletin 30–92, dated March 7, 1985, which prescribes a one-time visual inspection and modification of the actuating arm.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $20 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $880.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Proedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, BAe Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to all BAe Model HS 748 airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent the detachment of the windshield wiper actuating arm, accomplish the following, unless already accomplished:

A. Inspect and modify, as necessary, the windshield actuating arm in accordance with Dunlap Limited Aviation Division Service Bulletin 30–92 dated March 7, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issed in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles E. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21105 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–NM–69–AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that requires modifications to the elevator torque tube assembly to strengthen

existing structural components on certain Short Brothers Model SD3–30 and SD3–60 airplanes. An incident has been reported in which elevator control was lost, requiring the airplane to be landed using elevator trim. Subsequent inspection revealed that four rivets had been lost from the torque shaft assembly. This condition, if uncorrected, could lead to the loss of the structural integrity of the elevator control circuit.

DATE: Comments must be received on or before October 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–69–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–69–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion:

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain Short Brothers, Ltd. Model SD3–30 and SD3–60 airplanes. An incident has been reported in which elevator motion was lost on a model SD3–30 airplane; the airplane was landed using trim only. The problem was traced to four rivets which were lost from the torque shaft assembly. In order to prevent this from recurring, the CAA has required that certain SD3–30 and SD3–60 airplanes be modified in accordance with Short Brothers Ltd. Service Bulletins SD3–27–29 and SD360–27–06, dated April 1985.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletins.

It is estimated that 101 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $150 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $35,350.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Models SD3–30 and SD3–60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthniness directive:

Short Brothers, LTD.: Applies to Models SD3–30 and SD3–60 airplanes as listed in Short Brothers, Ltd. Service Bulletins SD3–27–29 dated April 1985 (for SD3–30 airplanes), and SD360–27–06 dated April 1985 (for SD3–60 airplanes), certificated in any category.

To prevent the loss of elevator control, accomplish the following within the next 90 days after the effective date of this AD, unless already accomplished:

1. Modify the elevator torque tube assembly in accordance with Short Brothers Ltd. Service Bulletin SD3–27–29 dated April 1985 (for SD3–30 airplanes), or SD360–27–06, dated April 1985 (for SD3–60 airplanes).

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Shorts aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–21107 Filed 9–4–85; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Floor Broker Registration Processing; Petition for Rulemaking

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is requesting comment on a petition for rulemaking submitted by the Chicago Board of Trade ("Board of Trade") on May 23, 1985, with respect to the registration for floor brokers. The petition proposes a number of amendments to the Commission's regulations which, if adopted, would permit the designated contract markets to process and, where appropriate, grant applications for registration as a floor broker. A copy of the petition and proposed amendments may be obtained from the Commission's Office of the Secretariat at the address set forth below.

DATE: Comments must be submitted by November 4, 1985.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Philip V. McGuire, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 1985, the Chicago Board of Trade submitted a petition for rulemaking under Commission rule 13.2 requesting the Commission to amend proposed rule 1.62 and other related rules to authorize the designated contract markets, pursuant to section 8a(10) of the Commodity Exchange Act ("Act"), 7 U.S.C. 12a(10) (1982), to process and, where appropriate, grant initial and renewal applications for floor broker registration.[1] In a related matter, on June 5, 1985, the Commission published final rule 1.62, which requires each contract market to adopt and enforce rules prohibiting any person from acting in the capacity of a floor broker on the floor of that contract market unless that person is first registered with the Commission as a floor broker in accordance with the provisions of sections 4e and 4f(1) of the Act, 7 U.S.C. 6a, 6f(1) (1982), and the regulations thereunder.[2] Noting that the obligation of contract markets under rule 1.62 to ensure that anyone acting as a floor broker is registered as such would not be altered whether or not the contract markets were eventually authorized to perform the proposed registration function, the Commission determined to proceed with the adoption of rule 1.62.[3]

In support of its proposal, the Board of Trade made the following argument:

> [O]ur proposal not only is consistent with the Commission's policy, as stated in the [notice requesting public comment on proposed rule 1.62], "of requiring direct regulation in the first instance by the contract markets" but also with the self-regulatory theme of the Act in general and with section 8a(10) in particular. Indeed, Congress has specifically noted that section 8a(10) and other 1982 amendement to the Act's registration provisions provide for the establishment of a "framework for delegation of the registration functions," and were intended to enhance the "evolution of self-regulation in the commodities industry and to permit the Commission to move to an oversight role in connection with the registration of commodity professionals."[4]

The CFTC already has authorized National Futures Association ("NFA") to process the intitial and renewal applications for registration of all of its members—FCMs, IBs, CPOs, CTAs, and their associated persons.[5] Floor brokers are not members of NFA and thus NFA is not authorized to handle floor broker registration. The Commission, therefore, has continued to register floor brokers. Floor brokers are subject now to extensive exchange oversight and must satisfy exchange requirements to be eligible for exchange membership. The exchanges are thus best suited to perform the similar secreening function involved in the registration of floor brokers by the Commission.

Although Congress contemplated that registered futures associations would be authorized by the Commission under section 8a(10) of the Act to perform certain of its registration functions, Congress expressly did not limit this authority to such association.[6] Thus, the Commission's power to authorize "any person" to perform "any portion" of Commission registration functions under section 8a(10) of the Act clearly would encompass Commission authorization of contract markets to process and grant floor broker registrations.

As discussed in more detail below, under the Board of Trade's proposal, each contract market would be authorized to process and, where appropriate, grant initial and renewal applications for floor broker registration.[7] Pursuant to section 8a(10) of the Act and pursuant to a Commission order of delegation issued under section 8a(10) of Act, each contract market would adopt rules setting forth its authority and function, and would then submit the rules governing its floor broker registration program for Commission approval. In addition, the Board of Trade's proposal would extend the registration period of a floor broker from one year to four years and permit apparently qualified applicants to receive a temporary license to act in the capacity of a floor broker pending registration as such.

Congress adopted section 8a(10) of the Act in 1982 at the specific request of the Commission. The purpose of this provision, as the Board of Trade correctly notes, is to permit the Commission to delegate direct responsibility for performance of its registration functions and to assume an oversight role in this area. In this connection, the Commission has authorized NFA to process and, where appropriate, grant registration to applicants for initial and renewal regiatration for every category of registrant other than floor brokers, leverage transaction merchants and associated persons of leverage transaction merchanta. The Commission

---

[1] In its petition, the Board of Trade indicated that its petition had been circulated to the other twelve boards of trade designated as contract markets, but that it had submitted the petition prior to the various exchanges' final review in order to accommodate the Commission's scheduled consideration of proposed rule 1.62 on May 29, 1985. The Board of Trade also stated that its petition was "the result of a series of discussions among the boards of trade concerning exchange assumption of floor broker registration.

[2] 50 FR 23666 (June 5, 1985) (effective date October 1, 1985) (to be codified at 17 CFR 1.62). The Commission extended twice the comment period to permit the Board of Trade and other exchanges to evaluate the practicability of submitting a petition for authority under section 8a(10) of the Act to perform registration functions with respect to floor brokers. 49 FR 44105 (November 2, 1984); 49 FR 48570 (December 30, 1984).

[3] 50 FR 23666, n.2.

[4] S. Rep. No. 97–384, 97th Cong., 2d Sess. 109 (1982).

[5] Commodity Futures Trading Commission Order Authorizing the Performance of Registration Functions, 49 FR 39593 (Oct. 9, 1984); 49 FR 45418 (Nov. 16, 1984) (notice of effective date of order).

[6] *E.g.*, H.R. Rep. No. 97–565, 97th Cong. 2d Sess. 101–2 (1982) provides that pursuant to new paragraph (10) of section 8a of the Act, "any person [such as a registered futures association) . . . [may] perform any portion of [the Commission's] registration functions, in accordance with rules approved by the Commission, and subject to applicable provisions of the Act. . . . [R]egardless of who performs the registration functions, registrants will continue to be registered with the Commission."

[7] The contract markets would have authority only to grant registration. Authority to deny, condition, suspend, restrict or revoke registration would continue to be vested solely in the Commission.

is committed to delegate responsibility for performance of its registration functions with respect to these latter categories of registrant by no later than October 1, 1986, and intends to work with the several self-regulatory organizations to develop the most appropriate program to achieve this goal.

The Commission, therefore, welcomes the interest of the Chicago Board of Trade and other contract markets in strengthening and expanding their self regulatory responsibilities with respect to floor brokers as an important first step toward this end. The Commission staff has carefully reviewed the petition for rulemaking submitted by the Board of Trade and has identified a number of issues which it believes should be addressed before further action is taken on the petition. In this connection, the Commission is requesting comment from the affected contract markets, in particular, and the public with respect to the issues discussed herein. This discussion is preceded by a more detailed explanation of the Board of Trade's proposal.

II. The Proposal

A. Initial Registration Procedure

The Board of Trade's proposal sets out the following registration procedure. An applicant for floor broker registration would file a registration application with the exchange on which the floor broker has trading privileges, or intends to trade. If the applicant has trading privileges or intends to trade on more than one exchange, he would be required to select one exchange as the "registering exchange," and then file only with that exchange. The registering exchange would be responsible for the floor broker's registration until the registration was suspended, revoked, or withdrawn, or the floor broker ceased having trading privileges on the registering exchange. The floor broker would be required to notify any other exchange where he intends to trade that another exchange has been designated for registration purposes. Additionally, the applicant must take and pass any required exchange floor broker qualification test.[8]

B. Temporary Licensing

The registering exchange would grant a temporary license if certain conditions were met: First, an applicant must have trading privileges on the registering exchange and must have passed any required qualification test; second, an applicant must file with the exchange a fingerprint card and Form 8–R with no derogatory information; and third, an applicant or any firm he controls must not be currently charged or subject to pending proceedings invlolving the violation of any rule and must not have been, within the past six months, subject to disciplinary sanctions by that exchange (excluding minor summary penalties and minor housekeeping sanctions).[9] The Board of Trade's proposal also provides that if a floor broker has, or has applied for trading privileges on any other exchange, the registering exchange will notify the other exchange(s) that the temporary license has been issued to the applicant.

C. Final Registration

Following the issuance of the temporary license, the exchange would conduct the necessary background investigation. This process would consist of a review of the relevant exchange files, NFA files, Securities and Exchange Commission ("SEC") files and Federal Bureau of Investigation ("FBI") files (including FBI review of fingerprint cards).[10] In the event that this review reveals adverse information about the applicant indicating that he may be subject to a statutory disqualification, the registering exchange would terminate his temporary license, and forward the application and negative information to the Commission. As noted above, the Commission would retain the authority to condition, deny, revoke or suspend floor broker registrations.

Following these review steps, if the applicant meets the statutory and Commission registration requirements, the exchange would issue a final registration, which would be for a four-year period. The registering exchange would advice all other exchanges listed on the applicant's Form 8–R that the applicant's registration had been granted. The registration granted by the

---

[8] The Board of Trade's proposal also contemplates that the procedures for granting exchange membership and floor broker registration may in the future be combined to eliminate much of the duplication between these two procedures. In this connection, the Commission notes that the standards for membership on an exchange are not always as high as the fitness standards for registration as a floor broker. Therefore, the standards for membership on such exchanges must be raised before the Commission could consider a merger of the membership and registration procedures.

[9] In this connection, the Commission notes that an exchange sanction may be the basis of a statutory disqualification from registration, whether or not such sanction was imposed within six months preceding the filing of an application.

[10] The Commission notes that release of criminal history information from the FBI is governed by Department of Justice regulations, which provide in relevant part:

> Criminal history record information contained in any Department of Justice criminal history record information system will be made available: (1) To criminal justice agencies for criminal justice purposes; and (2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order; (3) Pursuant to Pub. L. 92–544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statues and approved by the Attorney General of the United States. 28 CFR 20.33(a), (b) (1984). *See also* 28 CFR 0.85(j), 20.31(b), 534(a)(4) (1984).

The Board of Trade asserts that under current law, if authorized by the Commission under rules approved in accordance with section 8a(10) of the Act, exchange receipt and processing of criminal history record information comports with Department of Justice rules limiting the release of such information. In this connection, however, the Commission notes that section 8a(10) of the Act simply permits the Commission "to authorize any person to perform any portion of the registration functions under the Act" but does not specifically address whether such person may receive criminal history information from the FBI. In contrast, section 17(b)(4)(E) of the Act provides that, "[n]otwithstanding any other provision of law," a registered futures association, such an NFA, "may receive from the Attorney General all results of [fingerprint] identification and processing." Because of this difference between the two provisions, the Commission has not resolved whether the contract markets may receive such information and has specifically requested the views of the Department of Justice in this regard. The Commission also requests comments on this issue from the other contract markets and the public.

exchange would be in the name of the Commission and would be considered the official floor broker registration for purposes of the Commodity Exchange Act.

D. Multiple Exchange Membership

As noted above, in the case of multiple exchange memberships and floor brokerage operations, the exchange that registers a floor broker would be required to notify immediately each other exchange listed on the floor broker's latest Form 8–R if the floor broker's registration is terminated for any reason or if a floor broker who trades on more than one exchange terminates his association with that exchange. The non-registering exchanges on which a floor broker has or has applied for trading privileges would have a corresponding obligation to notify the registering exchange if the floor broker's registration is terminated for any reason or if the floor broker terminates his association with any of the exchanges.

If the floor broker ceases trading on the registering exchange, for reasons other than a statutory disqualification, his registration would terminate immediately unless the floor broker has trading privileges on another exchange and his floor broker registration has not expired. In that event, the floor broker's registration would not lapse so long as he thereafter files a new Form 8–R and fingerprint card with such other exchange and the Form 8–R reveals no statutory disqualifications.

III. Request for Comment

A. Access to Registration Records

An essential element of any registration program is the ability to obtain accurate information with respect to applicants and registrants promptly. In this connection, the Board of Trade's proposal anticipates that each exchange would provide prompt access to it floor broker registration records, including on-line or equivalent access to its data base. The Commission notes that if such on-line access to the registration data base at each exchange were provided, it would appear that an integrated or unified data base would be more efficient in order that the Commission would not have to access thirteen different computer systems. In that connection, the Commission believes the exchanges themselves would want to be able to respond to public inquiries about the status of individuals and should be able to tell an inquirer whether a multiple registrant is registered on its exchange irrespective of whether it was the initial registering exchange. Commission staff estimates that approximately 20 percent of registered floor brokers have trading privileges on more than one exchange.

An analysis of the cost of providing the Commission with on-line access to the floor broker registration data base would depend on the type of system selected and whether a unified data base were established. In addition, each exchange would have to consider whether it would want to maintain on-line access to the Commission's and NFA's computer systems for the purpose of conducting background examinations on applicants or whether it would prefer to conduct such examinations manually.

The Commission notes that the registration files relating to floor brokers are Commission files for all purposes, and the exchanges must be prepared to treat and deal with them as such. Each exchange, therefore, would be required to develop procedures to maintain the security of those documents, produce them to the Commission, courts and other governmental agencies and the public upon request and, when necessary, certify to their accuracy for the purposes of administrative or judicial proceedings. Moreover, in certain instances, written certification may not be acceptable and testimony as to custodianship and recordkeeping may be required. In this connection, the Commission notes that during the period January 15 through July 15, the Commission received and completed 178 requests for copies of floor broker applications and prepared 69 certifications of floor broker registration files.

Commission staff has found that registration files can be difficult to maintain and, therefore, it is of particular importance that a relatively stable staff with experience with the registration files be in place. The prospect of having to work with the staffs of thirteen exchanges until the necessary expertise is achieved raises serious concern of delays and errors. These concerns are exacerbated by the possibility that files may be transferred among exchanges as floor brokers move from exchange to exchange. Moreover, since the registering exchange would be responsible for being aware of the status of a registrant on every exchange on which he had trading privileges, the registering exchange would also be responsible for ensuring that all documents submitted by non-registering exchanges with respect to a floor broker were properly maintained. The Commission, therefore, requests the contract markets, in particular, to address whether and, if so, how they would develop a unified data base and filing system and whether they are prepared to develop appropriate procedures to maintain access to and the security of Commission records.

B. Temporary Licensing

In support of its contention that its proposal to extend temporary licensing to floor brokers is consistent with the temporary licensing program for associated persons,[11] the Board of Trade asserts:

> Through the process of obtaining exchange approval of floor trading privileges, floor brokers already are subject to preliminary screening by an entity regulated by the Commission. The application process for floor trading privileges on most, if not all, exchanges requres an applicant to submit information on his employment or educational background and other matters bearing on his qualification to be admitted to membership. This requirement parallels the certification requirement for associated persons' temporary licenses (footnote deleted). In addition, each exchange is required as part of its self-regulatory responsibilities to determine on an ongoing basis whether the floor broker is complying with its rules.
>
> Thus, the elements of pre-screening and supervision on which the Commission based its determination to adopt temporary licensing of associated persons will apply equally to floor brokers. Furthermore, the concerns of business disruption which the Commission expressed with respect to other categories of registrant are no more applicable to floor brokers than to associated persons.

In this connection, however, the Commission notes that there are differences between an associated person and a floor broker. First, the sponsor of an associated person certifies that it has performed the background examination before a temporary license is issued, and the exchange apparently would not make such a certification. More important, if a temporarily licensed associated person who is subsequently not registered injures a customer, the customer is able to look to the sponsor for satisfaction. Such would not be the result in the case of a temporarily licensed floor broker, however, unless such floor broker were employed by a futures commission merchant. Therefore, comment is requested on whether the exchanges are prepared to certify that they have performed the necessary background examinations and on the alternative measures that could be developed to provide relief to an injured customer.

---

[11] *See* 49 FR 8208 (March 5, 1984).

C. Extension of Registration Period

The Board of Trade also proposes that the period of registration of a floor broker be extended to four years in order to relieve registrants of unnecessary burdens while requiring periodic screening to ensure the continued fitness of floor broker registrants. The Commission staff believes this period may be too long, since floor brokers are not subject necessarily to continuous supervision as are associated persons. Exchanges obviously have an obligation to supervise the activities of floor brokers while they are acting on the floor of the exchange. However, the Commission understands that once an individual purchases a membership on an exchange, there is generally no requirement that he trade on the floor. Therefore, it is possible a floor trader or floor broker could be absent from the exchange for an extended period of time. The floor trader or floor broker would have no obligation to explain his absence to the exchange, although he may have been engaged in activities that would subject him to statutory disqualification.

This contrasts with the relationship between an associated person and his sponsor. In general, an associated person is in daily contact with his sponsor and any absences will be explained. Therefore, a sponsor is more likely to be aware of the non-commodities related activities of an associated person that may subject that person to a statutory disqualification from registration. In this connection, the Commission requests comment on the extent to which exchanges currently have systems in place for advising themselves of the activities of floor brokers off the exchange floor and what systems may be developed for this purpose.

D. Resource Requirements

The Commission notes that each exchange must agree to perform the registration function if the Commission is to proceed with its consideration of the Board of Trade's proposal. Under section 8a(10) of the Act, the Commission may authorize, but may not require, a person to perform its registration functions. Therefore, unless every exchange accepts this responsibility, the Commission would be compelled to continue processing at least some floor broker applications, or delegate such function to another self-regulatory organization prepared to accept it. The Commission, therefore, requests each exchange to advise the Commission whether it is prepared to assume responsibility for the registration of floor brokers with trading privileges on that exchange.

As the Board of Trade's petition noted, one purpose of section 8a(10) was to permit the Commission to move into an oversight role with respect to registration. However, in spite of other efficiencies that self-regulation might generate, this move may not be practicable if the Commission were required to expend more resources overseeing the activities of the exchanges than would be required to perform the registration functions directly. The Commission is concerned that this may be the resulf if the Commission must oversee thirteen different programs. The Commission is also concerned that the SEC and FBI may find it burdensome to process information reques:s from each exchange.

E. Potential Alternatives

Finally, the Commission notes that many of the concerns of its staff would be obviated if the processing of registration applications for floor brokers were performed by a single entity. In particular, the security and integrity of the Commission's registration documents would be ensured more effectively and the resources required for oversight would be reduced. The Commission, therefore, requests comment on whether it would be desirable for a single entity to process floor broker registration applications. Such entity could be a new organization established by the exchanges or an existing self-regulatory organization.

In this connection, the Commission further wishes to note that it could present NFA to perform this function under section 8a(10) of the Act. This alternative has certain advantages in that it would result in all of the Commission's registration records being in one location and all computer information with respect to applicants and registrants being contained in one unified data base.

It also may be advantageous from the perspective of floor broker applicants as well. As noted above, unless each exchange intends to have on-line access to both the Commission's and NFA's computer systems, the necessary review of each agency's files will have to be accomplished manually. This will add significantly to the time required to process an application. Moreover, NFA is developing procedures by which the review of the SEC's files will also be achieved automatically, as is the case with the Commission, rather than manually. It is uncertain that each exchange would have the volume of applications necessary to justify the development of such a system or that the SEC would be willing to provide such access to thirteen exchanges. Yet, a manual system will again increase the time required to process an application. For these reasons, therefore, the Commission requests comment on the feasibility of authorizing NFA to process floor broker registration as an alternative to the Board of Trade proposal.

The Commission wishes to emphasize that, if it were to pursue this latter alternative and if NFA were to accept this responsibility, the Commission would not expect to authorize NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any floor broker. The Commission has authorized NFA to conduct such proceedings effective September 30, 1985, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and their respective associated persons.[12] However, each of these categories of registrant is also required to be a member of NFA and, thus, NFA otherwise has regulatory authority over such registrants. Floor brokers, on the other hand, are not members of NFA, and NFA has no regulatory authority over their activities as such. As a result, the Commission does not believe it would be appropriate to authorize NFA to take adverse action with respect to floor brokers. Essentially, therefore, NFA would be serving only in a clerical capacity in connection with the processing of floor broker registration applications and the Commission would continue to have sole authority to initiate a proceeding to affect the registration of such registrants.

Issued in Washington, D.C. on August 30, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–21159 Filed 9–4–85; 8:45 am]

BILLING CODE 6351–01–M

[12] 50 FR 34885 (August 28, 1985).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Prorating SSI Monthly Benefit Payments

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to revise our regulations to reflect section 1611(c) of the Social Security Act (the Act), as amended by section 181 of Pub. L. 97–248 (the "Tax Equity and Fiscal Responsibility Act of 1982") which was effective on October 1, 1982. The revised regulations will provide that Supplemental Security Income (SSI) benefit payments for the month of initial eligibility will be prorated from the date of application or the date an individual meets all eligibility requirements, whichever is later. They will also provide that the SSI benefit payments for the month after a month or more of ineligibility will be prorated from the date an individual again meets all eligibility requirements.

DATE: Your comments will be considered if we receive them no later than November 4, 1985.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Fred Miranda, Legal Assistant, 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7341.

SUPPLEMENTARY INFORMATION:

Prior Law

From January 1974 through September 30, 1982, an individual was paid SSI benefits from the first day of the first month the individual met all eligibility requirements, regardless of what day during that month he or she applied or on what day in the month he or she met the other factors of eligibility (attainment of age 65, onset of disability, etc.) for SSI benefits. Further, a person was also paid SSI benefits from the first day of the month in which he or she reacquired eligibility after a month or more of ineligibility, without regard to what day during the month all factors of eligibility were again met. Consequently, some individuals, when they met all eligibility requirements on a day other than the first day of the month, received an SSI benefit check which included benefits for days before the individual met all eligibility requirements.

Section 181 of Pub. L. 97–248

Section 181 of Pub. L. 97–248 amended section 1611(c) of the Act to change the way the amount of SSI benefits is determined in the month of initial eligibility and in the first month in which an individual again meets all eligibility requirements after a month or more of ineligibility. Effective October 1, 1982, such SSI benefits payments must be prorated.

When SSI benefit payments are prorated, an individual who meets all factors of eligibility on a day other than the first day of the month of initial eligibility or on a day other than the first day of the month after a month or more of ineligibility is paid an amount which is less than a full month's benefits. The amount of benefits for such month is based on the number of days in the month the individual meets all eligibility requirements, beginning with the day in that month the individual first meets the requirements through the end of the month.

The purpose of prorating SSI benefit payments is to ensure that SSI benefits are paid only for the period individuals meet all eligibility requirements for benefits.

The Proposed Regulations

General

The proposed regulations provide that in a month of initial eligibility the amount of the SSI benefit payment is based on the number of days from and including the day on which an individual first meets all of the requirements for eligibility (filing an application is a requirement of eligibility) through the end of the month. When an individual again meets all eligibility requirements after a month or more of ineligibility, the amount of the SSI benefit payment is based on the number of days from and including the day on which an individual again meets all factors of eligibility through the end of month. Under the proposed regulations, proration will apply to both Federal SSI benefits and federally administered optional State supplemental (OSS). Proration will not, however, apply to mandatory minimum State supplementation (MMSS).

Subpart B—Eligibility

Section 416.211 currently provides that with certain limited exceptions an individual is not eligible for SSI benefits for any month throughout which he or she is a resident of a public institution. This section has been expanded by the proposed regulations also to provide that an individual, who is a resident of a public institution at the time he or she applies for and first meets all other eligibility factors for SSI benefits, will be considered ineligible until the date on which he or she is no longer a resident of the public institution. That is, the SSI benefit amount for such a month will be prorated based on the date of discharge from the public institution.

We have proposed this change because the purpose of section 1611(c) is to assure that the amount of the SSI benefits payable for a month of initial eligibility or re-eligibility reflects only the number of days in which individuals establish their need for such benefits by meeting all eligibility requirements. The legislative history of this provision states, ". . . since SSI is available only to the needy the committee believes that benefits should not be provided for periods prior to the time the individual recognizes his need and requests assistance." S. Rep. No. 97–494, Vol. I, 97th Cong., 2d Sess. 56(1982).

Section 1611(e) of the Act, which describes the limitations on eligibility for SSI benefits of certain individuals, provides in part that any individual who is a resident of a public institution throughout a month cannot be eligible for SSI benefits. The proration provisions of section 1611(c) of the Act do not change the SSI eligibility requirements nor do they expressly provide that benefits can be prorated based on the date of discharge from a public institution. On the other hand, section 1611(c) does not specify those situations in which we must prorate SSI benefits. The statute merely specifies the month to which proration applies and the date to use as the basis for determining the prorated amount. Therefore, it is within the Secretary's authority to determine when SSI eligibility is met or restored for purposes of implementing proration.

The purpose of the proration provision as previously noted, is to pay an amount based on the days in the month an individual meets all eligibility requirements for such benefits. In carrying out this purpose, the proposed

regulations would prorate benefits from the date of discharge from the public institution both in cases of initial eligibility and reeligibility. During these months the needs of the individual are being met by the public institution until the date of discharge. Therefore, to pay SSI benefits from the date of discharge is within the purpose of section 1611(c).

Subpart C—Filing of Applications

The proposed regulations will amend several sections of Subpart C to implement section 1611(c) as amended by section 181 of Pub. L. 97–248, to make changes that are technical and clarifying, and to make other changes that will make the regulations within Subpart C consistent with each other and to make them as consistent as is practicable with the rules dealing with the filing of applications that we follow in the Old-Age, Survivors, and Disability Insurance (OASDI) programs.

The current rules in § 416.325(b) that discuss the exceptions to the general rule as to when an application is considered filed and in § 416.340 that discuss the use of the date of a written statement as the application filing date are inconsistent. Section 416.325(b) provides that, when an application for SSI benefits is mailed, if using the date we receive the application results in a loss of benefits, we consider the application as being filed on the date shown by a United States postmark. Section 416.340 provides that the date a written statement, such as a letter, is received at a Social Security office (whether or not it was mailed) is to be considered the application filing date if the use of that date will result in eligibility for additional benefits. The proposed regulations would make §§ 416.325(b) and 416.340 consistent with one another.

We are proposing to revise §§ 416.325(b) and 416.340 to provide that we consider an application for SSI benefits as being filed on the date that the document (application or written statement) is received by us or by someone authorized to act on our behalf. If the application or written statement is mailed to us, we will use the date of mailing as shown by a United States postmark. By amending § 416.340 to permit the use of the postmark date of a written statement as an application filling date we would also make the rules of Title XVI more consistent with the rules in the OASDI programs that deal with the filing of applications, and thus eliminate an element of confusion that now exists. Further, a written statement constitutes an intent to file for benefits. Therefore, a written statement should be given the same consideration as a mailed written application.

Sections 416.325(b) and 416.340 would provide further that if there is no postmark or if it is unreadable, we will use the date of signature (if dated) or 5 days before the day the signed application or written statement was received, whichever date is later. In effect this revision would also amplify on and make these rules more specific. At present, § 416.325(b) simply indicates that when the postmark is not available or there was no postmark, we consider other evidence of when the application was mailed to us.

Section 416.325(b) will be revised by the proposed rules to provide that SSI benefits will be paid effective with the date on which an application is filed, if all other factors of eligibility are met on that date. The proposed rules will also provide that benefits cannot be paid for any period before the date of application, when the application is filed on a date after all other factors of eligibility are met.

The proposed revisions to § 416.330, for the most part, reflect changes that were proposed on May 16, 1983, in a separate NPRM that was published in the **Federal Register** at 48 FR 21967 to implement the provisions of section 306 of Pub. L. 96–265, the Social Security Disability Amendments of 1980. These changes relate to the effective period of applications when a hearing decision on the application in pending. The additional change that we are making in § 416.330 is simply to provide that if an individual meets all requirements of eligibility while an application is in effect, we will pay SSI benefits from the first day (rather than the first month) that he or she meets all the requirements.

We have changed the example in § 416.315 to reflect proration. The revision to the rules in § 416.320 is not substantive; it corrects a technical error. The revision to the rules in § 416.345 is editorial in nature.

Subparts D-Amount of Benefits and E-Payment of Benefits

Amendments to Subpart E (Payment of Benefits) that implement proration appear in the final rules implementing section 1611(c)(1) as amended by section 2341 of Pub. L. 97–35 which provides for retrospective monthly accounting (RMA). These final rules also include a change to Subpart D.

Section 1611(c) as amended by section 2341 of Pub. L. 97–35 requires, with certain exceptions, the use of RMA in the SSI program. The NPRM dealing with RMA, which was published in the **Federal Register** on October 29, 1981, (46 FR 53449) included amendments to Subpart D to implement RMA. The final RMA regulations that are being published separately, are being updated to take account of provisions of section 1611(c) as amended section 181 of Pub. L. 97–248, so that the rules contained therein will not be incorrect and outdated. For this reason, amendments to § 416.501 and § 416.502 of Subpart E and § 416.420(b)(1) of Subpart D have not been included in these proposed rules.

Section 416.420 as included in the RMA regulations will provide that in the month of initial eligibility or reeligibility the SSI benefit amount will be prorated according to the number of days in the month that the individual is eligible beginning with the date of application or the date all eligibilty requirements are met, whichever is later. Formerly, an application was considered to have been received on the first day of the month in which we received the application and SSI benefits were paid for the entire month.

Section 416.501, as amended in the RMA regulations, will provide that SSI benefits will be prorated and they will be paid beginning on the first day on which the individual meets all requirements for eligibility regardless of whether it is a month of intitial eligibility or a month following a month or more of ineligibility. Since it is now possible for members of a couple to become eligible for SSI benefits on Different days of the month, this section also provides that each member of a couple may receive different SSI payment amounts for a month if each meets the eligibility requirements on different days of the month.

Section 416.502, which describes the manner in which we pay SSI bendfits, as included in the RMA regulations, provides that SSI benefits payable to an individual will not be paid before the day on which the individual acquires or reacquires eligibility. This section also provides that, unless otherwise indicated, the monthly amount of SSI benefits payable to an eligible couple will be equally divided and paid.

These proposed rules also amend Subpart D to include a new § 416.421 that explains the way we compute prorated benefits. Under these proposed rules, the amount of the SSI benefit payment is prorated based on the date all eligibiltiy factors, except income and resources, are met. For a fuller discussion of the policy on income and resources, see below under the heading "Subpart M—Suspensions and Terminations".

Payment Computation

In determining the amount of SSI benefit payments due for a month in which benefits are to be prorated:

(1) We first compute the amont of the SSI benefit payment which the claimant would receive for the month without proration. (We call this the unprorated benefit.)

(2) We then determine the date in the month on which the claimant meets all factors of eligibility. (We call this the proration date.)

(3) We then count the number of days in the month a claimant meets all eligibility factors, beginning with the proration date and counting through the end of the month. (We call these the benefit days.)

(4) We then multiply the unprorated benefit by the number of benefit days and divided by the number of days in the month for which benefits are being determined. The result is the amount of the SSI benefit payment due for the month in which the benefits are to be prorated.

These steps will be followed in computing the federally administered OSS also. We will do this since it is SSA policy to maintain consistent rules for determining OSS and Federal SSI benefits. We do this under our authority in section 1616(b) of the Act to establish rules, when consistent with the Act, that facilitate efficient administration of both the SSI and OSS programs.

Under the proposed regulations, if an individual is eligible for both a Federal SSI benefit and a federally administered OSS, we compute and proprate the Federal SSI and OSS benefit amounts separately. The results in either computation that include a fraction of a cent will be raised to the next higher cent. We then add the two prorated amounts to get the total payment due for the month.

Under these proposed rules, proration will not apply to federally administered mandatory minimum State supplements (MMSS). Although we have the authority to apply the rules for Federal SSI benefits to the MMSS we can do so only if the rule is consistent with the purpose of MMSS. The purpose of the MMSS is to assure that an individual's total income is not reduced below its December 1973 level. Since the application of proration could result in a reduction in an individual's December 1973 level, it cannot be applied to MMSS.

Subpart M—Suspensions and Terminations

Subpart M provides in part that suspension of SSI benefit payments is required when an individual is alive but no longer meets the requirements of eligibility under title XVI of the Act and termination in accordance with §§ 416.1331–416.1335 does not apply. SSI benefit payments are not resumed until the individual again meets all requirements for eligibility except for the filing of a new application. These rules also provide, upon requesting reinstatement of SSI benefit payments, that an individual is required to submit such evidence as may be necessary to establish that he or she again meets all the requirements for eligibility.

The proposed revisions to the rules in Subpart M provide that the amount of the SSI benefit payments for the first month in which an individual again becomes eligible after a month or more of ineligibility will be prorated. A month of ineligibility for purposes of determining when to prorate the SSI benefit payment for a subsequent month, is a month for which the individual is ineligibile for any Federal SSI benefit and any federally administered State supplementation.

When an individual again meets all eligibility requirements after a month or more of ineligibility, under the proposed rules, proration will apply only when an individual reacquires eligibility after being ineligible for at least one of the following reasons:

(1) The individual was a resident of a public institution throughout a month. Eligibility is reacquired as of the date of discharge if all other eligibility requirements are met (see § 415.1325).

(2) The individual failed to comply with the requirement to accept treatment for drug addiction or alcoholism. Eligibility is reacquired as of the earliest date of the first month on which the recipient complies with the required treatment or other direction, and all other eligibility requirements are met (see § 416.1326).

(3) The individual was absent from the United States throughout a month. If the individual is outside the United States for 30 consecutive days or more, the individual is considered as remaining outside the United States until he or she has returned and remained in the United States for 30 consecutive days. Eligibility is reacquired as of the day following the 30th consecutive day of presence in the United States if all other eligibility requirements are met. If the individual is outside the United States for a full calendar month but less than 30 days (i.e. absent during February) eligibility is reacquired as of the day the individual returns to the United States if all other factors of eligibility are met (see § 416.1327).

(4) The individual was not a resident of the United States. Eligibility is reacquired as of the date the individual is a resident of the United States if all other eligibility requirements are met (see § 416.1329).

(5) The individual did not meet the definition of United States citizen, "alien lawfully admitted for permanent residence", or permanent resident of the United States under color of law. Eligibility is reacquired as of the date on which the individual regains his or her status in one of these categories, if all other eligibility requirements are met (see § 416.1329).

(6) The individual failed to comply with the requirement to accept vocational rehabilitation services. Eligibility is reacquired as of the date on which he or she complies if all other eligibility requirements are met (see § 416.1328).

(7) The individual failed to comply with the requirement to file for and obtain other benefits. Eligibility is reacquired as of the date the individual complies, if all other eligibility requirements are met (see § 416.1330).

Under the proposed rules, if the reason that a recipient's benefits were suspended was excess resources, excess income, or failure to comply with a request for information, benefits for the first month that benefits are reinstated will not be prorated. We have not proposed to prorate benefits for the first month that benefits are reinstated under each of these circumstances for differing reasons. First, we will not prorate based on income since we count income for the entire month. If an individual has excess income for a month he or she is ineligible for that month. Income cannot be spent down and eligibility established during the month. In addition, using countable income for the entire month is necessary to calculate the prorated benefit amount under section 1611(c)(2)(B) of the Act. Second, we regarded the failure to provide information as being not so much a factor of eligibility as it is a failure to substantiate eligibility based on other factors. The proposed rules clarify that once the information is provided, benefits are reinstated for any previous months the individual met the eligibility requirements. Last, regarding resources, the reason we have not proposed to have proration apply to the first month for which benefits are reinstated after suspension due to excess resources is that, like income, resources are counted for an entire month. Resources cannot be spent down and eligibility established during the month. Also, not prorating in these instances reflects our

ongoing concern for effective and efficient administration. Paying benefits for only full months in these situations is simpler, will result in fewer errors and in less costly to administer because it is less complicated than the prorating of benefits in these instances.

Subpart R—Relationships

Current regulations at § 416.1802(d) of Subpart R provide, if an individual gets married during a month, even on the first day of the month, that we will treat that individual as being single until the next month. Alternatively, this section provides that if an individual's marriage ends, even on the first day of the month, we will treat that individual as married until the next month. Thus, an individual's marital status at the beginning of a given month determines whether we consider that individual to be single or married when we compute the amount of that individual's SSI benefits for the month.

Before the proration of benefits pursuant to section 1611(c) as amended by section 181 of Pub. L. 97–248 began, this policy worked effectively at assuring that the SSI benefit which we paid an individual for a month accurately reflected the individual's marital status at the point in time at which he or she became eligible for SSI benefits. This was because an individual was considered to have filed for benefits on the first day of the month and was paid benefits for the full month as long as he or she became eligible to receive benefits at some point during that month.

Now that SSI benefits are being prorated, our regulations can no longer provide this assurance. For this reason we propose to amend § 416.1802(d) of Subpart R. Under our proposed rule, the current provisions of § 416.1802(d) would remain in effect. However, this section would also include one very limited exception. The proposed exception provides that during the month in which two individuals get married to one another, we will treat them as an eligible couple if each become eligible for SSI benefits in such month on a day after the date on which they were married. A very limited number of individuals would be affected by our proposed change; for the individuals that would be affected, the amount of benefits they receive will be less than that which they would be paid if we treated them as single. However, to treat them as single seems incongruous, since they are married at the point at which their eligibility for SSI benefits is first met. Similarly, if in the month a marriage ends, each member of the couple becomes eligible for SSI benefits after the date the marriage ends, we will treat them as eligible individuals.

Regulatory Procedures

Executive Order No. 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The policies reflected in these proposed rules will generate estimated program savings at $21 million and no administrative costs in fiscal year (FY) 1985. In FY 1984 the estimated program savings were $21 million and in FY 1983 the estimated program savings were $21 million and the administrative costs were $7.2 million. Also, implementation of these provisions will result in annual Medicaid savings of $20 million because the Medicaid program follows SSI policy. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These proposed regulations impose no reporting and recordkeeping requirements requiring clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect the States and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 28, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 21, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart B—Eligibility

1. The authority citation for Subpart B of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1614, and 1631 of the Social Security Act as amended, secs. 211 and 212 of Pub. L. 93–66, 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat. 1446, 86 Stat. 1471, and 86 Stat. 1475 (42 U.S.C. 1302, 1381a, 1382, 1382c, and 1383).

2. In § 416.211, paragraph (a) is revised to read as follows:

§ 416.211 You are a resident of a public institution.

(a) *General rule.* (1) You are not eligible for SSI benefits for any month throughout which you are a resident of a public institution (defined in § 416.201). In addition, if you are a resident of a public institution when you first apply for SSI benefits and meet all other eligibility requirements you cannot be eligible until the day of your release from the institution. The amount of SSI benefits for the month of your release will be prorated (see Subpart D) beginning with the date of your release.

(2) By "throughout a month" we mean that you reside in an institution as of the beginning of a month and stay the entire month. If you have been a resident of a public institution, you remain a resident if you are transferred from one public institution to another or if you are temporarily absent for a period of not more than 14 consecutive days. A person also is a resident of an institution throughout a month if he or she is born in the institution during the month and resides in the institution the rest of the month or resides in the institution as of the beginning of a month and dies in the institution during the month.

* * * * *

Subpart C—Filing of Applications

3. The authority citation for Subpart C of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611 as amended, and 1631 of the Social Security Act, 49 Stat. 647, as amended, 86 Stat. 1466, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1383).

4. In § 416.315 the example is revised to read as follows:

§ 416.315 Who may sign an application.

* * * * *

Example: Mr. Smith comes to a Social Security office to file an application for SSI disability benefits for Mr. Jones. Mr. Jones, who lives alone, just suffered a heart attack and is in the hospital. He asked Mr. Smith, whose only relationship is that of a neighbor and friend, to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application at this

time. SSI benefits are payable starting with the day an application is filed or the date all other requirements for eligibility are met, whichever is later. If Mr. Smith could not sign an application for Mr. Jones, a loss of benefits would result if it is later determined that Mr. Jones is in fact disabled.

5. In § 416.320 the last sentence of paragraph (a)(2) is amended by removing the words "or an institution" and adding the words "of an institution" in lieu thereof.

6. In § 416.325 paragraph (b)(1) is revised to read as follows:

§ 416.325 When an application is considered filed.

* * * * *

(b) *Exceptions.* (1) When we receive an application that is mailed, we will use the date shown by the United States postmark as the filing date if using the date the application is received will result in a loss of benefits. If the postmark is unreadable or there is no postmark, we will use the date the application is signed (if dated) or 5 days before the day we receive the signed application, whichever date is later.

* * * * *

7. Section 416.330 is revised to read as follows:

§ 416.330 Filing before the first month you meet the requirements for eligibility.

If you file an application for SSI benefits before the first month you meet all the other requirements for eligibility, the application will remain in effect until we make a final determination on your application unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

(a) If you meet all the requirements for eligibility while your application is in effect, we will pay you benefits from the first month that you meet all the requirements. The amount of such benefits is based on the number of days you meet all eligibility requirements beginning with the first day you meet all of the requirements through the end of the month.

(b) If you first meet all the requirements for eligibility after the period for which your application was in effect, you must file a new application for benefits. In this case, we will pay you benefits only from the first month that you meet all the requirements based on the new application. The amount of such benefits is calculated as in § 416.330(a) above.

8. Section 416.335 is revised to read as follows:

§ 416.335 Filing in or after the month you meet the requirements for eligibility.

When you file an application in the month that you meet all the other requirements for eligibility, your application is good for payment as of the first day in the month that you meet all eligibility requirements. If you file an application after the month you first meet all the other requirements for eligibility, you cannot be paid for any months before the month you filed an application. See §§ 416.340, 416.345 and 416.350 on how a written statement or an oral inquiry made before the filing of the application form may affect the filing day of the application. The amount of SSI benefits you are paid in the first month that you meet all eligibility requirements is based on the number of days you meet all such requirements, starting with the first day on which you meet all eligibility requirements through the end of the month.

9. Section 416.340 of is amended by revising the introductory text and revising paragraph (d)(1) to read as follows:

§ 416.340 Use of date of written statement as application filing date.

We will use the date of a written statement, such as a letter, an SSA questionnaire or some other writing, is received at a social security office, at another Federal or State office designated by us, or by a person we have authorized to receive applications for us as the filing date of an application for benefits, only if the use of that date will result in your eligibility for additional benefits. If the written statement is mailed, we will use the date the statement was mailed to us as shown by a United States postmark. If the postmark is unreadable or there is no postmark, we will use the date the statement is signed (if dated) or 5 days before the day we receive the written statement, whichever date is later, as the filing date of an application for benefits. In order for us to use your written statement to protect your filing date, the following requirements must be met:

* * * * *

(d)(1) The claimant is alive when the application is filed on a prescribed form, or

* * * * *

10. In § 416.345, paragraph (e)(1) is revised to read as follows:

§ 416.345 Use of date of oral inquiry as application filing date.

* * * * *

(e)(1) The claimant is alive when the application is filed on a prescribed form, or

* * * * *

Subpart D—Amount of Benefits

11. The authority citation for Subpart D of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1468, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1382a, and 1383).

12. A new § 416.421 is added to read as follows:

§ 416.421 Determination of benefits; computation of prorated benefits.

(a) In the month you are first eligible for benefits, your benefit will be prorated according to the number of days in the month that you are eligible beginning with the date of application or the date on which you meet all eligibility requirements, whichever is later. In the month that you reacquire eligibility after a month or more of ineligibility (see § 416.1321(b)), your benefit will be prorated according to the number of days in the month that you are eligible beginning with the date on which you meet all eligibility requirements.

(b) In determining the amount of your benefit for a month in which benefits are to be prorated, we first compute the amount of the benefit that you would receive for the month as if proration did not apply. We then determine the date on which you meet all factors of eligibility. (The income limits must be met based on the entire month and the resource limit must be as of the first day of the month.) We then count the number of days in the month beginning with the day on which you first meet all factors of eligibility through the end of the month. We then multiply the amount of your unprorated benefit for the month by the number of days for which you are eligible for benefits and divide that figure by the number of days in the month for which your benefits is being determined. The result is the amount of the benefit that you are due for the month in which benefits are to be prorated.

Example: Mr. X applies for SSI on April 16, 1984. He has no income. He first meets all factors of eligibility on April 16, 1984. His Federal benefit rate is $314 per month. Mr. X's unprorated benefit for April is $314. The number of days from when he first meets all factors of eligibility (including that day) through the end of the month is 15. The unprorated benefit ($314) multiplied by the number of days for which he is eligible for benefits (15) is $4710. That amount divided by

the number of days in April (30) is $157. This is the amount that Mr. X is due for the month of April.

Subpart M—Suspensions and Terminations

13. The authority citation for Subpart M of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611–1615 and 1631 of the Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466–1477 (42 U.S.C. 1302, 1382–1382d, 1383), unless otherwise noted.

14. In § 416.1321, paragraph(b) is revised to read as follows:

§ 416.1321 Suspensions; general.

* * * * *

(b) *Effect of suspension.* (1) When payments are correctly suspended due to the ineligibility of a recipient, payments shall not be resumed until the individual again meets all requirements for eligibility except the filing of a new application. Such recipient, upon requesting reinstatement, shall be required to submit such evidence as may be necessary (except evidence of age, disability, or blindness) to establish that he or she again meets all requirements for eligibility under this part. Payments to such recipient shall be reinstated effective with the first day such recipient meets all requirements for eligibility except the filing of a new application.

(2) A month of ineligibility for purposes of determining when to prorate the SSI benefit payment for a subsequent month, is a month for which the individual is ineligible for any Federal SSI benefit and any federally administered State supplementation.

* * * * *

15. Section 416.1322 is revised to read as follows:

§ 416.1322 Suspension due to failure to comply with request for information.

(a) Suspension of benefit payments is required effective with the month following the month in which it is determined in accordance with § 416.714(b) that the individual is ineligible for payment due to his or her failure to comply with our request for necessary information. When we have information to establish that benefit payments are again payable, the benefit payments will be reinstated for any previous month for which the individual continued to meet the eligibility requirements of § 416.202. If the reason that an individual's benefits were suspended was failure to comply with our request for information, the payments for the months that benefits are reinstated will not be prorated under § 416.421.

(b) A suspension of payment for failure to comply with our request for information will not apply with respect to any month for which a determination as to eligibility for or amount of payment can be made based on information on record, whether or not furnished by an individual specified in § 416.704(a). Where it is determined that the information of record does not permit a determination with respect to eligibility for or amount of payment, notice of a suspension of payment due to a recipient's failure to comply with a request for information will be sent in accordance with §§ 416.1336 and 416.1404.

16. In § 416.123, paragraph (b) is revised to read as follows:

§ 416.1323 Suspension due to excess income.

* * * * *

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first month in which a recipient's monthly countable income becomes less than the applicable Federal benefit rate (or the sum of that rate and the level for any federally administered State supplementary payment) for that month. If the reason that a recipient's benefits were suspended was excess income, the payment for the first month that benefits are reinstated will not be prorated under § 416.421.

17. In § 416.1324, paragraph (b) is revised to read as follows:

§ 416.1324 Suspension due to excess resources.

* * * * *

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the start of the month after the month in which a recipient's countable resources no longer exceed the limit that applies. If the reason that a recipient's benefits were suspended was excess resources, the payment for the first month that benefits are reinstated will not be prorated under § 416.421.

18. Section 416.1325 is revised to read as follows:

§ 416.1325 Suspension due to status as a resident of a public institution.

(a) Except as provided in § 416.211(b) and (c), a recipient is ineligible for benefits for the first full calendar month in which he or she is a resident of a public institution (as defined in § 416.201) throughout the calendar month (as defined in § 416.211(a)), and payments are suspended effective with such first full month. Such ineligibility continues for so long as such individual remains a resident of a public institution.

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the earliest day of the month in which a recipient is no longer a resident of a public institution. See § 416.421. A transfer from one public institution to another or a temporary absence from the institution lasting 14 days or less, however, will not change his or her status as a resident, and the suspension will continue.

19. Section 416.1326, paragraph (b) is revised to read as follows:

§ 416.1326 Suspension for failure to accept treatment for drug addiction or alcoholism.

* * * * *

(b) *Resumption of payments.* When payments are suspended because a disabled recipient who is medically determined to be a drug addict or an alcoholic is not undergoing the required treatment, such ineligibility continues until he or she demonstrates compliance by actually undergoing the required treatment and such compliance is verified by the responsible authority at the institution or facility providing the treatment (see Subpart Q of this part). Benefits will be resumed effective with the earliest day of the month on which the recipient complies with the required treatment or other direction, provided such compliance is first verified by the responsible official and provided the recipient otherwise establishes eligibility for benefits for such month. See § 416.421.

Example: Payments to C, a drug addict, were supsended effective May because C failed to report for treatment. On June 25, C reported for treatment and otherwise established eligibility for benefits. The responsible State official reported on August 2 that C had reported June 25 and was complying with the required treatment. SSI payment may be resumed effective with June. The amount of SSI benefits payable for June will be based on the number of days starting with June 25 through the end of the month.

20. Section 416.1327 is revised to read as follows:

§ 416.1327 Suspension due to absence from the United States.

(a) *Suspension effective date.* A recipient is not eligible for SSI benefits if he is outside the United States for a full calendar month. For purposes of this paragraph—

(1) "United States" means the 50 States, the District of Columbia, and the Northern Mariana Islands;

(2) "day" means a full 24-hour day; and

(3) In determining whether a recipient has been outside the United States for a full calendar month, it must be established whether the recipient is outside the United States for 30 consecutive days or more. If yes, he or she will be treated as remaining outside the United States until he or she has returned to and remained in the United States for a period of 30 consecutive days. When a recipient has been outside the United States, the first period of 30 consecutive days of absence is counted beginning with the day after the day the recipient departs from the United States and ending with the day before the day on which he or she returns to the United States. When a recipient has returned to the United States, the second period of 30 consecutive days starts on the day the individual returned and ends on the 30th day of continuous presence in the United States. Benefits will be suspended effective with the first full calendar month in which a recipient is outside the United States.

(b) *Resumption of payments after absence from the United States.* If benefits are otherwise payable they will be resumed—

(1) Effective with the day following the 30th day of continuous presence in the United States after the recipient's return if the absence was for 30 consecutive days or more.

(2) Effective with the day the recipient returned to the United States, if the absence from the United States was for a full calendar month, but for less than 30 consecutive days (this can occur only for the calendar month of February).

Example 1: Mike left the United States on March 1 and returned on April 1. Counting March 2 through March 31, he was outside the United States for 30 consecutive days; thus he is also deemed to be outside the United States for 30 additional consecutive days. Therefore, for April 1 through April 30, he is deemed to be outside the United States and not eligible for the calendar month of April. Payments start effective May 1.

Example 2: Mary left the United States on April 15 and returned on July 1. Counting April 16 through June 30, she was actually outside the United States and not eligible for the calendar months of May and June. Since she was absent for more than 30 consecutive days, she is deemed to be outside the United States for 30 additional consecutive days. Therefore, for July 1 through July 30, she is deemed to be outside the United States and not eligible for payment until July 31.

21. In § 416.1328, paragraph (b) is revised to read as follows:

§ 416.1328 Suspension due to refusal to accept vocational rehabilitation services.

* * * * *

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the earliest day of the month on which the recipient no longer refuses without good cause to accept vocational rehabilitation services. See § 416.421.

22. Section 416.1329 is revised to read as follows:

§ 416.1329 Suspension due to loss of United States residency, United States citizenship, or status as an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(a) A recipient ceases to be an eligible individual or eligible spouse, under section 1614(a)(1)(B) of the Act, when he or she ceases to meet the requirement of § 416.202(b) with respect to United States residency, United States citizenship, or status as an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law. Payments are suspended effective with the first month after the last month in which a recipient meets the requirements of § 416.202(b).

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the earliest day of the month on which the recipient again meets both the residence and citizenship or lawfully admitted alien or color of law requirements. See § 416.421.

23. Section 416.1330 is revised to read as follows:

§ 416.1330 Suspension due to failure to apply for and obtain other benefits.

(a) *Suspension effective date.* A recipient ceases to be an eligible individual or eligible spouse when, in the absence of a showing of incapacity to do so, or other good cause, he or she fails within 30 days after notice from the Social Security Administration of probable eligibility, to take all appropriate steps to apply for and, if eligible, to obtain payments such as an annuity, pension, retirement, or disability benefit, including veterans' compensation, old-age, survivors, and disability insurance benefit, railroad retirement annuity or pension, or unemployment insurance benefit. Benefit payments are suspended due to such ineligibility effective with the

month in which the recipient was notified in writing or the requirement that he or she file and take all appropriate steps to receive the other benefits. See § 416.210(e).

(b) *Resumption of payment.* If benefits are otherwise payable, they will be resumed effective with the earliest day of the month on which the recipient takes the necessary steps to obtain the other benefits. See § 416.421.

Subpart R—Relationship

24. The authority citation for Subpart R of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614 (b), (c), and (d), and 1631(d)(1) of the Social Security Act; 49 Stat. 647 as amended, 86 Stat. 1473 and 1476 (42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383(d)(1)).

25. In § 416.1802, paragraph (d) is revised to read as follows:

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

* * * * *

(d)(1) *General rule:* Benefits depend on whether you are married or not married at the beginning of each month. If you get married, even on the first day of a month we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.

(2) *Exception: If you both meet eligibility requirements after your date of marriage or after your marriage ends.* If, in the month that you marry each of you first meets all eligibility requirements after the date of your marriage, we will treat you as an eligible couple for the month. If, in the month that your marriage ends, each of you first meets all eligibility requirements after the date your marriage ends, we will treat you as eligible individuals.. (See Subparts D and E regarding how your benefits will be prorated.)

[FR Doc. 85-21052 Filed 9-4-85; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Financial Guidelines for Qualification of Surety Companies

AGENCY: Financial Management Service, Treasury.

ACTION: Revised proposed guidelines.

SUMMARY: The proposed guidelines supplement the current financial standards which are used to assist Treasury (FMS) in making a statutorily required determination that a surety company is solvent and able to keep and perform its contracts in order to qualify as an acceptable surety on Federal bonds. Treasury (FMS) has determined that its current guidelines and practices (as set forth in its regulations at 31 CFR Part 223) do not adequately provide such assistance in all instances. In view of rapidly changing insurance industry technology and the need to effectively and efficiently utilize fewer resources, Treasury (FMS) proposes to amend its guidelines and alter its practices to strengthen the financial standards governing surety companies doing business with the United States.

DATES: The proposed additional financial guidelines for companies seeking or holding Treasury authority are proposed to become effective December 31, 1985.

Comment Deadline: All comments or inquiries received on or before November 4, 1985 will be given due consideration.

In evaluating comments, Treasury will give more weight to those comments which include a practical means of accomplishing the desired end, and less weight to those responses which merely object to the revisions without offering a workable alternative. In addition, more weight will be given to alternatives which include supporting data.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, Finance Division, Financial Management Service Department of the Treasury, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone (202) 634-2345.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

Pursuant to 31 U.S.C. 9305, the Secretary of the Treasury is required, among other things, to be satisfied that a surety company is able to keep and perform its contracts before authorizing that company to write Federal bonds. By Treasury Department Order No. 145-18 dated September 22, 1983, the Fiscal Assistant Secretary delegated to the Commissioner, Financial Management Service (FMS), the authority of the Secretary of the Treasury under 31 U.S.C. 9304-9308 (formerly 6 U.S.C. 6-13), and the regulations issued thereunder to carry out those responsibilities.

The applicable regulations are set forth in 31 CFR Part 223 (Treasury Circular 297) entitled "Regulations Governing Surety Companies Doing Business with the United States." The guidelines applied in assessing a company's financial condition are in the "Instructions Relating to the Submission of Annual Financial Statements of Surety Companies to the Treasury Department." *See,* 31 CFR 223.8(b) and 223.9. These instructions are transmitted to surety companies annually with the Treasury's "Annual Letter to Surety Companies Reporting to the Treasury."

Treasury's practices for assessing a company's financial condition involve the review of the company's annual financial statements, application of the criteria set forth in the regulations and guidelines, and establishing a Treasury underwriting limitation in accordance with the criteria. If a company no longer meets the set criteria, Treasury terminates a company's authority to act as a surety on Federal bonds. The proposed guidelines will better enable Treasury (FMS) to furnish Federal bond-approving officers with a list of surety companies which are not only solvent and able to keep and perform their contracts at the time of the listing, but which can be expected to remain so for a reasonable period in the future.

The guidelines published herein are a revision of guidelines published in the **Federal Register** on August 7, 1984 at page 31455. We received numerous comments pertaining to the August 7 publication. This revision incorporates many of those responses.

The Department of the Treasury proposes to adopt the following financial guidelines:

Additional Financial Guidelines:

Effective December 31, 1985, in order to qualify for a Certificate of Authority to do business with the Government as a surety, or to be recognized as an admitted reinsurer on non-federal business, a company will be expected to maintain usual results for the following ratios.

Ratio	Acceptable ranges	
	Over	Under
1. Premium to surplus		300
2. Change in writings	−33	33
3. Surplus aid to surplus		25
4. Two year overall operating ratio		100
5. Investment yield	6	
6. Change in surplus	−10	50
7. Liabilities to liquid assets		105
8. Agents' balances to surplus		40

Ratio	Acceptable ranges	
	Over	Under
9. One year reserve development to surplus		25
10. Two year reserve development to surplus		25
11. Estimated current reserve deficiency to surplus		25

In those instances where a company's ratio results do not fall within the usual ranges, the Treasury may issue a warning to the company indicating Treasury's concern over its financial condition.

If information submitted by the company to support its continued financial strength is not sufficient to convince the Treasury of the company's continued ability to keep and perform its contracts, Treasury will commence proceedings to terminate the company's Certificate of Authority.

Termination procedures as described at 31 CFR 223.17 will be followed in all instances.

Treasury has the option of revising these guidelines in the future should industry conditions change significantly.

Dated: August 22, 1985.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-21106 Filed 9-4-85; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-84; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Confirmation or Revision of Maximum Allowable Operating Pressure for Gas Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice invites comments on whether it is necessary for safety to confirm or revise the maximum allowable operating pressure of gas pipelines in the vicinity of isolated buildings or outdoor places of assembly where 20 or more people gather in normal use. The current requirements may be too conservative and costly compared to the benefits attained. Comments received may result in a Notice of Proposed Rulemaking to adopt the most practical and beneficial alternatives to the current rule.

DATE: Interested persons are invited to submit written comments on this advance notice before November 4, 1985. Late filed comments will be considered so far as practicable. All interested persons must submit as part of their written comments all the material that they consider relevant to any statement of fact made by them.

ADDRESS: Comments should be sent to the Dockets Branch, DMT-62, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Please identify the docket and notice numbers. All comments and docket materials will be available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day. Non-Federal employee visitors are admitted to the DOT Headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, (202) 426-2082, regarding the contents of this advance notice, or the Dockets Branch, (202) 426-3148, regarding copies of the advance notice or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 192.611 was originally derived from existing industry standards. Briefly stated, § 192.611 requires the operator of a gas pipeline segment which has a hoop stress at its present operating pressure in excess of that corresponding to the maximum allowable operating pressure (MAOP) for the present class location to reduce the pipeline segment's operating pressure or the pipeline must be changed (to increase its strength), or relocated. The rule is designed to provide safety benefits by reducing internal stress levels on the particular pipeline when class location changes, based on an increase in the number of dwellings intended for human occupancy adjacent to the pipeline, occur after construction. Section 192.611 also establishes time limits within which this revision or confirmation of MAOP must be accomplished. However, the rule does make allowance for an affected segment of a pipeline if it had been previously tested in place to 90 percent of its specified minimum yield strength (SMYS) for at least 8 hours, or is subsequently tested in accordance with applicable parts of Subpart J. For such a line the MAOP could be maintained to one class location higher but the MAOP may not exceed that established prior to the confirmation or revision. For example, such a tested segment of pipeline found to be in a Class 3 location after change from Class 2 would retain an MAOP of 60 percent of the SMYS rather than the 50 percent of SMYS otherwise required by Part 192 for Class 3 pipelines. Unlike the industry standard, which recommended making necessary revisions in the affected pipeline(s) as soon as the location changes were noted, the Federal pipeline safety regulations allow 18 months from the time the change has taken place until the applicable requirements of § 192.611 must be met.

The class location concept in the Federal gas pipeline safety standards was derived from the 1968 edition of the Standard Code, USAS B31.8-1968, "Gas Transmission and Distribution Piping Systems," and relates such pipeline operating parameters as design pressure and MAOP to population density adjacent to the pipeline. Section 192.5 defines the class location unit as an area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline; and with two exceptions the class location of a pipeline is determined by the number of buildings (dwellings) intended for human occupancy in the class location unit. Section 192.5(d)(2) is very significant in its effect on pipeline operations when the class location change occurs some time after initial construction and the determination of a MAOP for a line segment.

Under § 192.5(d)(2) a Class 3 location is an area where the pipeline lies within 100 yards of any of the following:

(i) A building that is occupied by 20 or more persons during normal use.

(ii) A small, well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly.

There are three elements in § 192.5(d)(2) that control when a gas pipeline becomes subject to Class 3 location requirements due to a single building or well defined outside area intended as a place of public assembly which otherwise would be considered a Class 1 or Class 2 location. These are: (1) a pipeline within 100 yards of the single building or outside area (2) the building or outside area is occupied by 20 or more persons; (3) the occupation occurs as normal use. A § 192.5(d)(2) class location may include churchs occupied by more than 20 persons for a few hours one day per week or nursing homes occupied by more than 20 persons all of the time.

A § 192.5(d)(2) class location change often takes place after the gas pipeline has been constructed resulting in a

major cost impact on the operator. These isolated areas of public assembly make it necessary for a pipeline operator who has a pipeline constructed to meet requirements for a Class 1 or Class 2 location to relocate or change a segment of that pipeline to conform to the requirements of § 192.611 when the segment becomes a Class 3 location. The impact is especially costly where an otherwise Class 1 location becomes a Class 3 under § 192.5(d)(2) criteria.

Petitions for waiver of the above two rules have been received by MTB and a list of those follows:

Docket No. 74–17W, § 192.611(e)(1), Great Lakes Transmission Company;
Docket No. 83–5W, §§ 192.5(d)(2) and 192.611, Transcontinental Gas Pipe Line Corporation;
Docket No. 84–3W, §§ 192.5(d)(2) and 192.611, United Gas Pipeline Company;
Docket No. 85–4W, § 192.611(e), El Paso Natural Gas Company; and
Docket No. 85–5W, § 192.5(d)(2)(i), Texas Gas Transmission Corporation.

Each of the above petitioners requested waivers from the requirements for segments of pipeline amounting to approximately 600 feet each. The above waivers were requested because an isolated building of some sort, housing 20 or more persons at some time, had been erected within 100 yards of the pipeline. Since these pipelines were operating at or near full capacity, the operators preferred, if necessary, to replace the segment rather than reduce the MAOP. To reduce the MAOP, in particular during the winter peak load periods, would lead to unnecessary hardship for the consumers. Therefore, all of the operators requesting waivers cited the costs of replacing the short segments. For the above listed operators alone, the total costs of replacement, including cost of gas "blown down" to the atmosphere amounted to nearly two million dollars. None of the above listed waivers were granted because the petitioners did not demonstrate that the safety of the public would be assured if the pipeline's MAOP were not confirmed or revised as a result of granting the waiver.

However, MTB is considering the waiver petitions involving § 192.611, directly or indirectly, as a request for a rule change and is pursuing rulemaking action to possibly amend § 192.611 or § 192.5(d)(2) as appropriate. The alternative of processing the large number of waiver requests anticipated in the future would be substantially more time consuming and costly for both the operators and the Department than adopting new or modified rules which change these requirements while assuring pipeline safety.

Problem

In many areas of the country, thousands of miles of major gas transmission pipelines (20 inch or larger) are installed to what have become known as Class 1 or Class 2 location specifications. The concept of increased strength or additional piping design and operating specifications being related to increased population near the pipeline dates back over 40 years, and was codified in early editions of the USAS B31.8 Code. The concept derives from the theory that risks, whether they be physical damage to the pipeline or potential hazards to persons and dwelling places adjacent to the pipeline, increase as population increases and greater risks require greater protection through more stringent safety standards.

MTB believes that there is a real question whether the requirement of § 192.611 for an operator to upgrade or cut the pressure on a pipeline in an otherwise rural Class 1 location can be justified on a cost/safety benefit basis when an area becomes Class 3 merely because of the application of § 192.5(d)(2). RSPA does not have supporting safety or accident data to verify that any additional safety benefits balance the costs of reducing the MAOP, replacing the pipe segment with higher strength pipe, or relocating either the pipeline or the building or outdoor place. Perhaps an equivalent degree of safety may be achieved in a different and more economical manner than the application of the § 192.5(d)(2) criteria in § 192.611. RSPA is studing this matter and seeks public comments on how to define the safety benefits that compliance with § 192.611 provide, if any, and what other approaches there are to achieve that safety.

Discussion

The criteria in § 192.5(d)(2) were incorporated into § 192.5 because the Department believed at that time that they would provide a higher degree of safety for the isolated buildings and outside areas of congregation which would otherwise be Class 1 or Class 2 locations. MTB now believes that this concept, while valid, may be too conservative for at least two important reasons. First, the exposure of persons at risk in most "normal use" situations covered by § 192.5(d)(2) are more comparable to a Class 2 population density than to a Class 3 population density based on a dwelling unit count. A 1983 study, "Characteristics of Population," by the Bureau of Census shows that the average number of full time occupants, nationwide, of buildings intended for human occupancy is 2.75. The normal designation of a Class 1 location, as defined by § 192.5(b) is 10 or less buildings intended for human occupancy. Likewise, a Class 2 location defined by § 192.5(c) is a class location with more than 10 but less than 46 buildings intended for human occupancy. When we use the Bureau of Census figure of 2.75 occupants per building, the upper limit of person count for Class 1 and Class 2 locations is 28 and 124 occupants, respectively. It appears, therefore, based on the above, that under § 192.5(d)(2) defining the occasional occupancy of a building or area within 100 yards of a pipeline by "20 or more persons during normal use" as a Class 3 location may be overly conservative.

Further, MTB has recently reviewed earlier work on the strength testing of line pipe which indicates that there is significant conservatism in the yield strength of pipe grades covered by Part 192. The Battelle Memorial Institute's Columbus (Ohio) Laboratories conducted a research project [1] for the American Gas Association (AGA) titled "Study of Feasibility of Basing Natural Gas Pipeline Operating Pressure on Hydrostatic Test Pressure." The conclusions of that study were that there is conservatism in the yield strength designated by the manufacturer because of the manner in which yield strength has been traditionally determined. The study discusses the Bauschinger effect which refers to the fact that prior plastic deformation of steel in compression lowers the yield strength in tension. The usual test by pipe manufacturers for the yield strength of pipe is to take a specimen parallel to the circumference of the pipe and then flatten it. The flat specimen is then put under tension in a tensile test machine and yield strength is determined by recording the stress. The preparation by flattening causes plastic deformation thus indicating a lower yield strength than the pipe actually possesses. Another method of testing for yield strength of pipe, but more complicated, applies internal hydraulic loading to a complete ring of pipe duplicating more closely the internal stress placed on a working pipeline. It was found that yield strength of the pipe was higher than that designated by the manufacturer by about 4.6 percent when this latter test was used.

In addition to the impacts of the 192.5(d)(2) criteria on MAOP

[1] AGA Cat. No. L30050, Project NG–18, A.R. Duffy and others (1968).

requirements in § 192.611, those criteria also affect many other requirements in Part 192 that are based on class location. The most significant ones are: Subpart C—Pipe Design; Subpart D—Design of Pipeline Components; Subpart J—Test Requirements, and §§ 192.179, 192.243, 192.327, 192.607, 192.609, 192.619, 192.625, 192.705, 192.706, and 192.707.

Based on information in the waiver petitions and RSPA's review of the above data, a rulemaking proposal was drafted and presented to the Technical Pipeline Safety Standards Committee (TPSSC) at a public meeting on October 30, 1984. The TPSSC did not take formal action on the proposal, but their comments favored appropriate rulemaking action on this matter.

Alternatives

1. Continue present rules §§ 192.5(d)(2) and 192.611 unchanged.
2. Modify § 192.5(d)(2) by changing number of persons to some number greater than 20, possibly the range of numbers in the other Class 3 location using Census data.
3. Quantify the term "normal use." This could be on the basis of days of use per year or percentage of time used.
4. Place the criteria presently in § 192.5(d)(2) under § 192.5(c), thus making such a location a Class 2 location.
5. Revise § 192.611 to increase the MAOP allowed for those pipelines impacted by the criteria of § 192.5(d)(2) to that allowed for pipelines in Class 2 locations.
6. Except the § 192.5(d)(2) defined Class 3 locations from § 192.611.

Request for Information

To help MTB decide which alternative, or combination of alternatives, to choose, interested persons are invited to participate in this rulemaking by commenting on the above altlernatives, suggesting additional ones, and answering the following questions. Substantiating information for any comments should also be submitted.

1. Are the requirements of § 192.611 needed for the safety of pipelines in general? If so, are they needed for pipelines in Class 3 areas defined by § 192.5(d)(2)?
2. If the requirements of § 192.611 are needed for safety in general or in § 192.5(d)(2) areas, what safety problem does compliance with § 192.611 help to resolve, and are there any alternative less costly solutions to that problem?
3. If the rules are modified under any alternative above, should other safety requirements be proposed to maintain safety in the vicinity of the isolated building or outside area as defined in § 192.5(d)(2)? If so, what should they be and why? If not, why not?
4. What data can be provided from experience or studies about degree of risks associated with a pipeline in proximity to the § 192.5(d)(2) type locations? In this regard, is an isolated pocket of population within 100 yards of a pipeline a factor in the occurrence of a pipeline accident? What data can you provide about such adjacent population density in relationship to the severity of (or hazardous results from) a pipeline accident?
5. Is "20 or more persons" the appropriate size group on which to base this class location criteria? Cite any research, experience, or safety studies.
6. Can a better criteria be developed from research, study, or risk analysis upon which to base possible exposure of the public to hazard than "normal use?" What is it and what is the basis for your recommendation?
7. What data are available from research or experience concerning any relationship between the stress level in a gas pipeline and the cause of a pipeline accident or the magnitude of accident consequences? Do accidents on higher stress level pipelines normally result in greater damages than lower stress level pipelines, given the same population denisty and mixture?
8. If change is not provided in the regulation from the effects of the criteria in § 192.5(d)(2) on the MAOP resulting from such class location changes, what are the estimated costs to comply for an operator's impacted pipelines? For upgrading? Moving the pipeline? Reducing MAOP? Give estimated number of locations with size and length of each.

The RSPA has long recognized the impact of § 192.611 on pipelines in areas which have become Class 3 locations solely because of § 192.5(d)(2). Because of the possibility that the requirements of § 192.611 are overly conservative and too costly from a safety standpoint for such areas and the difficulties of framing a regulatory solution, the RSPA has evolved a posture of not seeking enforcement of § 192.611 for Class 3 areas brought about solely by § 192.5(d)(2). The RSPA will continue this posture until there is an announced agency position on a regulatory solution or on abandoning the search for a solution.

Authority: 49 U.S.C. 1672; 49 CFR 1.53; Appendix A to Part 1 and Appendix A to Part 106.

Issued in Washington, D.C., on August 30, 1985.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85-21231 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Glaucocarpum Suffrutescens To Be an Endangered Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Glaucocarpum suffrutescens* (toad-flax cress), to be an endangered species and to designate its critical habitat under the authority of the Endangered Species Act of 1973, as amended. This species is the only one in its genus. It is endemic in the Unita Basin of northeastern Utah on shale barrens of the Green River Formation, in or adjacent to the Hill Creek drainage in southern Uintah County, and at the base of the Badland Cliffs in nearby Duchesne County. The 8 known populations of the species total fewer than 1,900 individuals and show decline due to overgrazing and removal of building stone; future oil shale development without consideration for this species could cause its extinction. Lands on which the species occurs are under the jurisdiction of Bureau of Land Management, Department of Energy, Bureau of Indian Affairs, State of Utah, Uintah and Ouray Indian Reservation, and private individuals or companies. This proposal, if made final, would implement protection provided by the Endangered Species Act. The Service is requesting data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by November 4, 1985. Public hearing requests must be received by October 21, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection, by appointment, during normal business

hours at the Service's Regional Endangered Species Division, fourth floor, 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Botanist, Regional Endangered Species Staff, at either address above (303/236-7531 or FTS 776-7531).

SUPPLEMENTARY INFORMATION:

Background

This species was first discovered in 1935 and described by Reed C. Rollins as *Thelypodium suffrutescens* in Graham (1937). Following further research, Dr. Rollins (1938) described the monotypic genus *Glaucocarpum* for this species. The toad-flax cress is a member of the mustard family (Brassicaceae); it is a perennial herb from a deep woody root, and forms a clump of several slender simple stems, with elongated loose inflorescences and yellow flowers.

Glaucocarpum suffrutescens is one of several endemic limited to the Green River Formation in the Uinta Basin of eastern Utah. It survives with a few other species mostly on one calcareous shale startum strongly resistant to erosion. The habitat of this plant is disjunct knolls and benches resembling small extremely dry desert islands surrounded by sagebrush or piñon-juniper woodland. *Cryptantha barnebyi* (Barneby cat's-eye), another candidate plant under review for threatened or endangered status (48 FR 53640), occurs at least in part in the habitat of *Glaucocarpum*.

Glaucocarpum occurs in two main population groups near each other in Uintah County. One group is centered in the Gray Knolls between the Green River and Hill Creek, with 800–1000 plants in 3 populations. The other group is centered on Little Rock Pack Mountain between Hill Creek and Johnson Draw, with about 800 individuals in 4 populations. A small third population center about 24 kilometers (15 miles) to the west in Duchesne County has 28 plants. The individual populations range in size from 3 to perhaps 1,000 plants. Most populations occur on land managed by the Bureau of Land Management (BLM).

From 1977 to 1980, considerable field work was undertaken on this species by Larry England, Kathy Mutz, Elizabeth Neese, and Scott Peterson. This work documented range, specific occurrences, approximate number of individuals, and recommended areas of critical habitat for *Glaucocarpum* (England, 1982).

The toad-flax cress habitat is underlain by rich oil shale deposits. Overgrazing and building stone collecting have damaged the species and decreased its range; oil shale development without adequate provision for the species could destroy it in the future.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institute to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1985. On July 1, 1985, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition to list the taxa named therein under section 4(c)(2) of the 1983 Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of those plants. *Glaucocarpum suffrutescens* included in the July 1985, notice and was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn; proposals already over 2 years old were subject to a 1-year grace period. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). The July, 1975, notice was replaced on December 15, 1980, by the Service's publication in the Federal Register (45 FR 82480) of a new notice of review for plants, which included *Glaucocarpum suffrutescens* as a category-1 species. Category 1 comprises taxa for which the Service presently has sufficient biological informal to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on such petitions, including that for *Glaucocarpum suffrutescens*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that lising this species was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424, see revision at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Glaucocarpum suffrutescens* (Rollins) Rollins (toad-flax cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Over the almost 50 years since its original discovery, there has been decline in the habitat of this species. During repeated fieldwork at the type locality, most recently by Dr. Rollins in 1980, no individuals have been found (England, 1982; Rollins, Harvard University, pers. comm., 1983). Removal of building stone and heavy grazing are probable factors that have contributed to the extirpation of this population (England, 1982). Larger linear flagstones, are, or were, common in the habitat of the species; populations appear denser and more vigorous where these tuff fragments or clasts, which are in great demand, have not been removed.

The entire range of this monotypic genus is underlain by oil shale, which is likely to be mined when economic conditions favor it. The largest population is partly on Naval Oil Shale Reserve No. II of the Department of Energy, with BLM responsible for surface management, and partly on the Uintah and Ouray Indian Reservation, which is owned and managed by the Ute Indian tribe. The other 4 populations with 70 or more plants are partly managed by BLM and partly under private, State, or Indian management, while the 3 smallest populations are solely managed by one of the above entities. Habitat and individuals on two sections of land under State of Utah and private owership are now under lease by an oil shale development firm. Without a concerted effort and coordinated planning, this monotypic genus could inadvertently be brought to extinction (England, 1982).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known.

C. *Disease or predation.* The adverse effect of sheep and cattle on this species appears to be due both to grazing and trampling (England, 1982).

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that address this species or directly provide for protection of its habitat.

Although BLM is aware of this plant, it is not currently obligated to regulate activities so as to provide for the conservation of *Glaucocarpum.* The Endangered Species Act offers possibilities for additional protection of this species through the provisions of section 7 of the Act (interagency cooperation) and through section 9 of the Act, which prohibits removing and reducing to possession a listed plant from an area under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* The estimated total number of individuals of toad-flax cress that currently exist is less than 1,900. Only 3 of the 8 populations consist of 170 individuals or more, and 3 consist of fewer than 30 plants each. Only the largest populations may have genetic variability sufficient for long-term adaptation.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Glaucocarpum suffrutescens* as an endangered species. With fewer than 1,900 individuals known in 8 populations and the risk of damage to the cress and its habitat, endangered status seems an accurate assessment of the plant's condition. It is prudent to propose critical habitat, because risks from vandalism or collecting are not anticipated in the remote area where the species occurs, and delineating the habitat may aid in its management.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat of about 7,360 acres in the Uinta Basin is being proposed for *Glaucocarpum suffrutescens.* The area proposed supports the majority of known populations of the species and appears to be necessary to its continued survival. The species is confined to a localized geological formation in the area. Buff-colored calcareous shale of the Green River Formation, which directly occupies some 2,552.5 acres on scattered knolls and slopes, is a primary constituent element for the species. The 8 parcels of critical habitat are indicated exactly in the Regulations Promulgation section of this proposal. No critical habitat is proposed for the newly discovered small population in Duchesne County, because it has not yet been adequately delimited.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. A large range of surface-disturbing activities could adversely modify the *Glaucocarpum* habitat. The area involved is remote, about 2.5 hours on dirt roads from the nearest town, and it is believed that most human activities will probably be associated with energy development. These could include road building, exploration, drilling, surface mining, servicing or retort sites, oil transportation, and housing and recreation for workers. As in all deserts, available water is a critical factor in plant survival. The effect oil shale development would have on local water supplies for this species is not known. Building stone removal and livestock grazing can also have adverse effects on the critical habitat.

The Bureau of Land Management, the Department of Energy, the Bureau of Indian Affairs, the State of Utah, the Ute Indian tribe, and private individuals or companies have jurisdiction over various parts or aspects of the toad-flax cress habitat. As resident and transient human populations increase in the basin with growth of the energy industry, pressures on the toad-flax cress habitat may change and increase. In complying with section 7 of the Act, Federal agencies might find it necessary to increase regulation and enforcement on the removal of building stone from the habitat and reduce grazing, or require site clearances prior to development or approval of leases. If there is no Federal presence in the activity on State, Indian, or private lands, critical habitat designation would have no effect.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation, in light of all additional relevant information obtained, at the time of final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and can result in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible Federal involvement with *Glaucocarpum suffrutescens* has already been

discussed under "Critical Habitat," above. Management of some areas is likely to be affected, but not to any major extent.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Glaucocarpum suffrutescens,* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import, or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species, in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in *Glaucocarpum suffrutescens* is known. It is anticipated that few trade permits would ever be sought or issued, since this species is not common in the wild or in cultivation, and is of no commercial interest.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition would apply to the toad-flax cress. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made following public comment. It is anticipated that few collecting permits for the toad-flax cress will ever be requested, as it is not of commercial interest. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, 6th floor Broyill, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

If this species is listed under the Act, the Service will review it to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preserevation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Glaucocarpum suffrutescens:*

(2) The location of any additional populations of *Glaucocarpum suffrutescens:* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Glaucocarpum suffrutescens;* and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on *Glaucocarpum suffrutescens* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director. U.S. Fish and Wildlife Service (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

England, J.L. 1982. Status report on *Glaucocarpum suffrutescens* (Rollins) Rollins. Office of Endangered Species, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado. 39 pp.

Graham, E.H. 1937. Botanical studies in the Uinta Basin of Utah and Colorado. Ann. Carnegie Mus. 26:1–432.

Rollins, R.C. 1938. *Glaucocarpum* a new genus in the Cruciferae. Madrovno 4:232–235.

Authors

The primary authors of this proposed rule are J. Scott Peterson, Colorado Natural Heritage Inventory, Denver, Colorado and J. Larry England, Field Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430). Dr. James L. Miller of the Service's Denver Office and Dr. Bruce MacBryde, then of the Office of Endangered Species, Washington, D.C., served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 9–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.).*

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family						
Glaucocarpum suffrutescens	Toad-flax cress	U.S.A. (UT)	E		17.96(a)	NA

3. It is further proposed to amend § 17.96(a) by adding critical habitat of *Glaucocarpum suffrutescens*, as follows: (The position of this entry under § 17.96(a) follows the same sequence as the species occurs in 17.12.)

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * * *

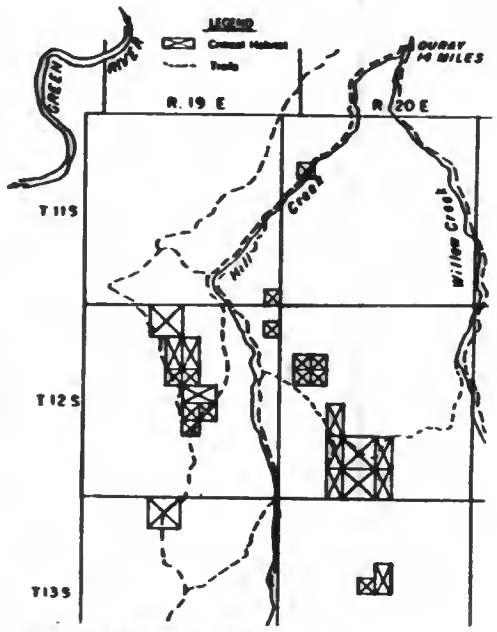
Family Brassicaceae: *Glaucocarpum suffrutescens* (toad-flax cress)

Utah, Uintah County, Hill Creek area south of Ouray: T11S R19E SE¼ Sec. 36; T11S R20E SE¼ Sec. 7; T12S R19E SE¼ Sec. 1, Sec. 4, E½ Sec. 9, W½ Sec. 10, NW¼ and S½ Sec. 15, NE¼ Sec. 16, N½ and SW¼ Sec. 22; T12S R20E SE¼ Sec. 7, SW¼ Sec. 8, NW¼ Sec. 17 NE¼ Sec. 18, E½ Sec. 20, W½ Sec. 27, Sec. 28, E½ Sec. 29, E½ Sec. 32, Sec. 33, W½ Sec. 34; T13S R19E Sec. 4; T13S R20E W½ Sec. 15, SE¼ Sec. 16.

The primary constituent element is buff-colored, calcareous shale found on knolls and slopes of the Green River Formation within the areas designated.

(critical habitat map follows)

* * * * * *



Dated: August 9, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21161 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 30, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Farmers Home Administration

Borrower Acknowledgement of Notice to take adverse action FmHA 1924–26; FmHA 1962–1
On occasion
Individuals or households; Farms; 220,000 responses; 65,400 hours; not applicable under 3504(h)
Ron Thelen (202) 382–8030

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85–21221 Filed 9–4–85; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Conservation Program (ACP) National Conservation Review Group will meet to consider recommendations from State and County ACP review groups with respect to operational features of the program. Also, comments and suggestions will be received from the public concerning the various conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATE: Meeting date: October 3, 1985.

ADDRESS: Meeting location: Room 4960 South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723, South Building, Washington, D.C. 20013, 202–447–7333.

SUPPLEMENTARY INFORMATION: The Agricultural Conservation Program (ACP) National Conservation Review Group meeting is scheduled to be held from 9:00 a.m. to 12:00 p.m. on October 3, 1985, in Room 4960, South Building, U.S. Department of Agriculture, Washington, D.C. Meeting sessions will be open to the public. The agenda will include consideration of State and county review group recommendations for changes in the administrative procedures and policy guidelines of the ACP. Also, an opportunity will be provided for the public to present comments on the various conservation and environmental programs administered by ASCS. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of the limitations of space available, persons desiring to attend the meeting should call Mr. Vincent Grimes (202) 447–7333 to reserve a seat.

Signed at Washington, D.C., on August 29, 1985.

Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85–21219, Filed 9–4–85; 8:45am]
BILLING CODE 3410–05–M

Forest Service

North Kaibab Grazing Advisory Board; Meeting

The North Kaibab Grazing Advisory Board will meet at 1:00 p.m., Tuesday, October 1, 1985, at the Coconino County Building, Fredonia, Arizona. The purpose of this meeting is development of allotment management plans and utilization of Range Betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona, 86046, telephone (602) 635–2681. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Those attending may express their views when recognized by the chairman.

Dated: August 28, 1985.

Leonard A. Lindquist,
Forest Supervisor.

[FR Doc. 85–21124 Filed 9–4–85; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: Bureau of the Census
Title: 1985 Address Materials Survey
Form Number: Agency—S–561, S–562; OMB—NA
Type of Request: New
Burden: 3,456 respondents; 288 reporting hours
Needs and Uses: This is a survey of small governmental units which will provide information to the Census Bureau about address listings and maps that might be available for their jurisdictions.
Affected public: State or local governments
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB DESK Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–21180 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: National Oceanic and Atmospheric Administration
Title: Logbook Family of Forms—Amendment 3
Form Number: Agency—NOAA 75–700; OMB—0648–0016
Type of request: Revision of a currently approved collection
Burden: 4,282 respondents; 8,122 reporting hours
Needs and uses: This collection supports the implementation of Amendment 9 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 14 to the FMP for Groundfish of the Gulf of Alaska. Information is used to measure attainment of quotas and adjust allocations of allowable yield to participants
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion, weekly monthly, quarterly
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785
Agency: National Oceanic and Atmospheric Administration
Title: Disposal of Fishing Gear, Other Articles
Form Number: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 30 respondents; 2 reporting hours
Needs and uses: Fishermen accidentally disposing or encountering articles that interfere with fishing or which cause damage to fishery resources or marine mammals are to inform the Coast Guard of the location and nature of the article.
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox 395–3785
Agency: National Oceanic and Atmospheric Administration
Title: Atlantic Bluefin Tuna Vessel Allocation
Form Number: Agency—N/A; OMB—N/A
Type of request: Existing collection in use without an OMB control number
Burden: 7 respondents; 2 reporting hours
Needs and uses: The Atlantic Tuna Convention Act authorizes the Secretary of Commerce to implement recommendations of the International Commission for the Conservation of Atlantic Tunas. The application for a purse seine vessel allocation by each of the seven affected operators is used by the National Marine Fisheries Service to divide the quota available to this sector of the fishery
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 29, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–21181 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: Bureau of the Census
Title: Current Industrial Reports Program—Unfilled Orders Questionnaire
Form number: Agency—MA300P; OMB—N/A
Type of request: New collection
Burden: 500 respondents; 167 reporting hours
Needs and uses: This questionnaire will collect information on accounting practices regarding unfilled orders from 500 manufacturers in the United States. The results will be used by Census to design a survey on unfilled orders to benchmark this important series in the monthly Manufacturers', Shipments, Inventories, and Orders Survey
Affected public: Business or other for-profit institutions
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814
Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1985 Panel Wave 4 and Wave 8
Form number: Agency—SIPP–5400, 5405L, 4800, 4803, 4805; OMB–0607–0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: This survey is conducted to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured overtime. The data will support policy and program planning.

Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–21182 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Benchmark Survey of U.S. Services Transactions with unaffiliated Foreign Persons—1985
Form number: Agency—BE–20; OMB—N/A
Type of Request: New collection
Burden: 10,000 respondents; 132,000 reporting hours
Needs and Uses: This data will secure data from U.S. persons on their services transactions with unaffiliated foreign persons. The data will fill major data gaps in the balance of payments and gross national product accounts and will be used to develop U.S. international trade policy and to support U.S. trade policy initiatives
Affected public: State or local governments, farms, businesses or other for-profit institutions; small businesses or organizations
Frequency: Approximately every five years
Respondent's Obligation: Mandatory
OMB desk officer: Tim Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 29, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–21183 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Dealer Purchases and Trip Interviews—Amendment 3
Form Number: Agency—N/A; OMB—0648–0013
Type of Request: Revision of a currently approved collection
Burden: 5,183 respondents; 8,013 reporting hours
Needs and uses: Fishing effort is expanding into the Caribbean area where no previous landings occurred. Landings data are essential for determining the extent of seasonal closures needed to prevent overfishing. All commercial fishermen in the Caribbean area must report landings
Affected public: Businesses or other for-profit, small businesses or organizations
Frequency: Monthly
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Application for Authorized Chart Agent
Form Number: Agency—NOAA Forms 49–7B and 49–7C; OMB—New
Type of Request: Existing collection in use without an OMB control number
Burden: 400 respondents; 400 reporting hours
Needs and uses: Information provides means to assess requests to enter authorized chart sales agreement with NOS and facilitates compliance with laws and regulations as to whom may be appointed to represent the government as authorized chart sales agents. All requests to become agents originate with potential applicants
Affected public: State and local governments, businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Dealer Purchases and Trip Interviews—Amendment 2
Form Number: Agency—N/A; OMB—0648–0013
Type of Request: Revision of a currently approved collection
Burden: 5,258 respondents; 8,119 reporting hours
Needs and uses: Current statistics from dealers provide incomplete information on catch. Information will be collected from all user groups—non-trap fishermen, dealers, processors and charterboat operations—to provide a reliable estimate of total catch. This information will allow NMFS and the Council to more accurately assess optimum yield
Affected public: Businesses or other for-profit, small businesses or organizations
Frequency: By trip
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Logbook Family of Forms—Amendment 1
Form Number: Agency—N/A; OMB—0648–0016
Type of Request: Revision of a currently approved collection
Burden: 4,407 respondents; 8,602 reporting hours
Needs and uses: Current statistics from dealers understate actual landings. Information will be collected from fishermen who sell their catch, bypassing dealers. Identification of the areas fished will enable NMFS and the Councils to more accurately assess landings
Affected public: Businesses or other for-profit, small businesses or organizations
Frequency: Monthly
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Oficer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to

Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-21184 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Georgetown Export Trading, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

All products and services, including but not limited to: electronic microwave tubes, power transistors (dissipating), indicator panels, light sensing electronic tubes, and other electronic component parts; and educational and training materials.

Export Trade Facilitation Services (As They Relate to the Export of Products and Services)

Export trade and export management services, including the provision of international market research and information regarding the mechanics of exporting, and the performance of services related to international trade (including taking title to goods, warehousing, shipping, arranging for after-sales product servicing, transportation, export licensing, export financing, providing information about duties and other fees applicable to exporters, providing information and training on quality control, advertising and distribution). Such services also include feasibility studies regarding the establishment of export trading companies among U.S. competitors.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. GETI may enter into exclusive and/or nonexclusive agreements with suppliers individually to provide Export Trade Facilitation Services. "Exclusive" means that the supplier agrees not to purchase such services from anyone except GETI.

2. GETI may assist domestic suppliers in the organization of export trading companies. GETI will gather and analyze information provided to GETI by such suppliers individually about products, prices, and delivery schedules for the Export Markets, as well as information about potential Export Markets, in order to determine whether an ETC is feasible. GETI then will advise the participating suppliers individually regarding the results of the feasibility study.

3. GETI may enter into exclusive and/or nonexclusive agreements with suppliers individually to act as licensee or licensing agent for products and services in Export Trade.

4. GETI may enter into exclusive and/or nonexclusive agreements with suppliers individually to act as an Export Intermediary for products and services in Export Trade wherein:

a. GETI agrees not to represent any competitors of such supplier for products and services in Export Trade unless authorized by the supplier; and/or

b. The supplier agrees not to sell, directly or indirectly, through any other intermediary, into any part of the Export Markets in which GETI exclusively represents the supplier as an Export Intermediary.

5. On behalf of any individual supplier, GETI may act as an agent to identify and appoint exclusive and/or nonexclusive Export Intermediaries for the Export Markets to deal in the supplier's products and services in Export Trade.

6. GETI may enter into exclusive agreements with Export Intermediaries whereby:

a. GETI agrees to deal in products and services in Export Trade in any Export Market only through that intermediary; and/or

b. That intermediary agrees not to deal in particular products and services in particular Export Markets with anyone except GETI.

7. As GETI becomes aware of invitations to bid or sales opportunities in the Export Market, GETI may contact individual suppliers of the products and services specified in the invitation to bid or the purchase specification, invite the suppliers to provide independent quotations to GETI for the products and services, and enter into agreements with individual suppliers whereby GETI will submit a response to the bid invitation or request for quotation.

8. GETI may enter into and terminate exclusive and/or nonexclusive agreements with individual buyers in any Export Market to act as a purchasing agent with respect to particular transactions.

9. GETI may enter into agreements with individual end-users of products and services located in any Export Market under which such end-users may agree to purchase all or part of their requirements of products and services in Export Trade from or through GETI.

10. The foregoing agreements may contain territorial, customer, price and/or quantity restrictions for the Export Markets.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: August 29, 1985.

James V. Lacy,

Director, Office of Export Trading Compony Affairs.

[FR Doc. 85-21125 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Amendments to Export Trade Certificates of Review.

SUMMARY: The Department of Commerce has issued twenty-two amendments to Export Trade Certificates of Review. This notice summarizes the amendments.

ADDRESS: The Department requests public comments on the amendments. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985). The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the Federal Register a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amendment

The certificate of review previously issued to each applicant contained the following disclaimer:

This certificate does not apply to sales to the United States Government or to any sale more than half the cost of which is borne by the United States Government.

This language has been deleted and replaced with the following language:

The application of this certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

Applicants

International Development Institute, 750 13th Street, SE., Washington, DC. 20003, Application No. 83–00001

U.S. Farm-Raised Fish Trading Company, Inc., 550 High Street, P.O. Box 34, Jackson, Mississippi 39205, Application No. 83–00004

Intex International Trading Company, 199 South Beach Avenue, P.O. Box 288, Old Greenwich, Connecticut 06870, Application No. 83–00006

International Trailer Sales, Inc., 17000 Kentucky Road, Independence, Missouri 64050, Application No. 83–00009

Trade Development Corporation of Chicago, 2049 Century Park East, Suite 416, Los Angeles, California 90067, Application No. 83–00012

U.S. Export & Trading Company, P.O. Box 1698, Carlsbad, California 92008, Application No. 83–A0024

SOR, Inc., P.O. Box 591, Olathe, Kansas 66061, Application No. 83–00027

Micro Products Company, 20 North Wacker Drive, Chicago, Illinois 60606, Application No. 83–00034

VEXTRAC, Ltd., 600 World Trade Center, Norfolk, Virginia 23510, Application No. 83–00036

Farmers' Rice Cooperative, P.O. Box 696, West Sacramento, California 95691, Application No. 84–00005

Fleetwood International, Inc., 88 Pine Street, New York, New York 10005, Application No. 84–00006

United Export Trading Company, Inc., 1605 W. Olympic Boulevard, Suite 900, Los Angeles, California 90015, Application No. 84–00008

Opti-Copy, Inc., 10930 Lackman Road, Lenexa, Kansas 66219, Application No. 84–00009

Equinomics, Inc., International Trade Mart Building, Suite 2317, New Orleans, Louisiana 70130, Application No. 84–00013

The Aries Group, Ltd., 1745 Jefferson Davis Highway, Suite 404, Arlington, Virginia 22202, Application No. 84–00014

AEON International Corporation, 360 Seventh Avenue, Marion, Iowa 52302, Application No. 84–00015

Carolina Western, Inc., P.O. Box 2524, Rutledge Lake Road, Greenville, South Carolina 29602, Application No. 84–00016

Alco World Trade, Inc., 8161 NW 36th Street, Suite 4, Miami, Florida 33166, Application No. 84–00018

Great Agassiz Basin Export Trading Company, 112 North University Drive, Suite 385, Fargo, North Dakota 58102, Application No. 84–00022

Gerhardt's Inc., 819 Central Avenue, P.O. Box 10161, Jefferson, Louisiana 70181, Application No. 84–00024

N.B. Carson & Company, Inc., 4636 Broadway, Cleveland, Ohio 44127, Application No. 84–00027

Bariston, Inc., 223 Derby Street, Salem, Massachusetts 01970, Application No. 84–00028

A copy of each amended certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: August 30, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85–21229 Filed 9–4–85; 8:45 am]

BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85–252. Applicant: Kansas State University, Department of Anatomy & Physiology, VMS 28, College of Veterinary Medicine, Manhattan, KS 66506. Instrument: Equine Treadmill for Horses, Model 4785. Manufacturer: RTC Systems, KB, Sweden. Intended use: The instrument will be used to train and evaluate horses with a standard treadmill exercise test before, during and after the horses have completed specific training programs and following detraining to simulate musculoskeletal injury. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–268. Applicant: Medical College of Virginia, 401 N. 12th street, Richmond, VA 23298. Instrument: NMR Spectrometer. Manufacturer:

Oxford Research Systems, United Kingdom. Intended use: The instrument will be used to investigate biochemical and morphological properties of experimental biological systems. These biological systems fall into two classes: (1) Tissue organ preparations which need to be maintained using chemicals and electrical devices (e.g. cell suspensions) and, (2) intact whole animals. Particular emphasis will be placed on determining the chemical state of water and the metabolic pathways used by the biological system in response to stress and pathologic conditions. The studies will be performed to gain a deeper understanding of the processes of life by studying biological systems with a tool that presents no harmful effects due to the measurements taken or the preparation necessary for measurement. Another objective of these studies involves developing techniques which will allow in-vivo nuclear magnetic resonance to be used medically as a diagnostic tool. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–270 Applicant: The Arthritis Institute, 2455 Army Navy Drive, Arlington, VA 22206. Instrument: Electron Microscope, Model EM 410LS. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used to detect and identify viral-like submicroscopic agents during research into the cause and eventual cure of human rheumatoid diseases. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–271. Applicant: University of Rhode Island, 109 Wales Hall, Kingston, RI 02881. Instrument: Thermal Balance, Model 409. Manufacturer: Netzsch Geraetebau GmbH, West Germany. Intended use: The instrument is intended to be used to train the undergraduate and graduate mechanical engineering student to use sophisticated scientific equipment and to conduct experimental investigations into the thermal behavior of polymer composite materials exposed to high temperatures. Application received by Commissioner of Customs: August 6, 1985.

Docket No.: 85–272. Applicant: District 2 Marine Engineers Beneficial Association-Associated Maritime Officers Safety and Education Plan, One Maritime Plaza, Toledo, OH 43604. Instrument: Marine Engine room Machinery Training and Research Simulator. Manufacturer: Haven Automation, Limited, United Kingdom. Intended use: The instrument will be utilized for research for the purpose of studying engine room procedure, development of needed training methods, fuel management, combined plant operational studies, etc. Application received by Commissioner of Customs: August 13, 1935.

Docket No.: 85–274. Applicant: National Oceanic and Atmospheric Administration, Atlantic Oceanographic and Meteorological Laboratory, 4301 Rickenbacker Causeway, Miami, FL 33149. Instrument: Mass Spectrometer System, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended use: The instrument is intended to be used for the identification of trace organic substances collected in and over the ocean in investigations to determine the effect of the oceans on the chemistry of the lower atmosphere. Application received by Commissioner of Customs: August 9, 1985.

Docket No.: 85–273. Applicant: U.S. Department of Commerce, NOAA, National Marine Fisheries Service, P.O. Box 271, 8604 La Jolla Shores Drive, La Jolla, CA 92038. Instrument: Fisheries Sonar, Model 3133–15. Manufacturer: Fathom Oceanology Limited, Canada. Intended use: The instrument is intended to be used in research to study the distribution of pelagic schooling fish and to improve quantitative surveys of their abundance. Application received by Commissioner of Customs: August 9, 1985.

Docket No.: 85–276. Applicant: University of Maryland, Department of Physics and Astronomy High Energy Physics, College Park, MD 20742. Instrument: Equipment and components to produce streamer tube chambers. Manufacturer: Costruzioni Meccaniche M. Bindi, Italy. Intended use: The device will be used for the manufacture of detectors used only in pure scientific research to detect strongly interacting particle showers. Application received by Commissioner of Customs: August 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21141 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-DS-M

Kurt Behrens et al; Order Modifying Temporary Denial Order

In the matter of Kurt Behrens, Elisabethbrunnen 5, 5442 Mendig, Federal Republic of Germany and Delta-Avia Fluggerate GMBH, Heliport, D–5405 Ochtendung, Federal Republic of Germany and Flugplatz, D–5406 Winningen, Federal Republic of Germany, Case No. 661.

By order dated February 1, 1985, 50 FR 5288 (February 7, 1985) (Order), Kurt Behrens and Delta-Avia Fluggerate GmbH (hereinafter Respondents), and parties designated in the Order as related to at least one of the Respondents, were temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (Regulations), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data under the jurisdiction of the United States Department of Commerce (Department).[1] Included among the parties designated as related to at least one of the Respondents, and thereby subject to the provisions of the Order, were Arnold A. Semler, Inc., Associated Industries, Associated Air Services, Arnold A. Semler, Ronald H. Semler and Monte Barry Semler (hereinafter collectively referred to as Associated).

On July 12, 1985, Associated filed a Motion to Modify the Temporary Denial Order (Associated's Motion to Modify). The Department and Associated have represented that they have conducted extensive discussions following the filing of Associated's Motion to Modify. Following those discussions, the Department and Associated have filed a Joint Motion for Order Modifying Temporary Denial Order (Joint Motion) so as to narrow the scope of the denial as it applies to Associated to U.S.-origin helicopters, helicopter parts and specially-designed accessories for helicopters which are subject to the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401–2420 (1982)) (the Act), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and the Regulations. In addition, the Joint Motion requests modification of the Order to permit Associated to export Hughes/Schweizer model 300C helicopters and parts and specially-designed accessories therefor, subject to the Department's prior approval, on a case-by-case basis.

The Joint Motion states that Associated and the Department have agreed to a modification of the Order as set forth above. Associated has agreed to withdraw its Motion to Modify if the Joint Motion is granted by the Hearing Commissioner, although the

[1] On June 28, 1985, the Order was modified by deleting National Helicopter Service and Engineering Company as a related party. 50 FR 28001 (July 9, 1985).

modification proposed in the Joint Motion is more restrictive than the modification Associated sought unilaterally in its Motion to Modify. Associated states that its agreement to the modification of the Order as requested in the Joint Motion is done in the spirit of cooperation with the Department and in no way should be considered an admission of any wrongdoing on the part of Associated. In the Joint Motion, the Department states that Associated has been named in the Order only as a party related to at least one of the Respondents and that its investigation into the matters identified in the Order is still ongoing. Associated and the Department have specifically reserved their rights to move to modify, vacate or amend the Order, as revised, to request a hearing on such motion, or to take such other action as is appropriate, in the future. Associated and the Department have also noted that if the Joint Motion is granted, Associated will be permitted to export U.S.-origin commodities or technical data subject to the Act and the Regulations, other than those helicopters, parts and accessories which would continue to be subject to the Order, as amended, provided all such exports are made in accordance with the requirements of the Act and the Regulations.

Based upon the Joint Motion and the representations made therein by Associated and the Department, I find that a modification of the Order as to Associated is justified. In making this finding, I note that Associated has been named in the Order only as a party related to at least one of the Respondents. The purpose of naming related parties in a temporary denial order is to prevent evasion of the order by the named respondents, using others over whom they may have some influence or control. In any event, a temporary denial order serves only as a preventive enforcement measure and does not constitute a charge by the Department that any party named in such an order has violated the Act or the Regulations. Overall, I find that modification of the Order as proposed by Associated and the Department will not jeopardize the purposes of the Order.

Accordingly, it is hereby

Ordered

1. That the Order of February 1, 1985 is modified as it applies to Arnold A. Semler, Inc., Associated Industries, Associated Air Services, Arnold A. Semler, Ronald H. Semler and Monte Barry Semler (hereinafter collectively referred to as Associated) as follows: (a) The denial of export privileges to Associated shall apply only to U.S.-origin helicopters, helicopter parts and specially-designed accessories for helicopters. (b) Associated may apply to the Department on a case-by-case basis for authorization to engage in export-related transactions involving Hughes/Schweizer model 300C helicopters, model 300C helicopter parts and specially-designed accessories for model 300C helicopters. Notwithstanding the foregoing, Associated is authorized to carry on negotiations with respect to the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any such helicopter, helicopter part or specially-designed accessory. Any authorization granted by the Department to Associated to engage in export-related transactions with respect to such helicopters, helicopter parts or specially-designed accessories for such helicopters may be subject to such conditions as the Department deems necessary to fulfill the policies and purposes of the Act and the Regulations.

2. The Order is not modified as it applies to Kurt Behrens or to Delta-Avia Fluggerate GmbH, or to any other party named as a related party in the Order, as modified.

3. Associated's request to withdraw its Motion to Modify is hereby granted.

4. This modification of the Order is effective immediately.

Dated: August 29, 1985, 12 noon E.D.T.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-21145 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-471-502]

Extension of the Deadline for Final Countervailing Duty Determination: Carbon Steel Wire Rod From Portugal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioners, Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of carbon steel wire rod from Portugal to correspond to the date of the final determination in the antidumping investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

EFFECTIVE DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0167 or 377-3464.

SUPPLEMENTARY INFORMATION:

Case Histories

Dated: On April 8, 1985, we received antidumping and countervailing duty petitions filed by the Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. against carbon steel wire rod from Portugal.

In compliance with the filing requirements of § 353.26 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of carbon steel wire rod from Portugal are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Portugal of carbon steel wire rod directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping and countervailing duty investigations, and on May 3 and May 6, 1985, respectively, we published the initiation notices of such investigations (50 FR 18900, 50 FR 19065). On July 11, 1985, we published a negative preliminary determination in the countervailing duty investigation (50 FR 28232). The preliminary determination in the antidumping investigation will be made on or before September 16, 1985.

On August 19, 1985, the petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the

Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation [19 U.S.C. 1671d(a)(1)]. Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of carbon steel wire rod from Portugal to December 2, 1985, the current deadline for the final determination in the antidumping investigation.

Dated: August 27, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21185 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. C-559-501]

Initiation of Countervailing Duty Investigation: Carbon Steel Wire Rod From the Republic of Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in the Republic of Singapore of carbon steel wire rod, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before November 4, 1985.

EFFECTIVE DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 02030; telephone: (202) 377-0160, 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On August 9, 1985, we received a petition in proper form filed by Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of carbon steel wire rod receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, §§ 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessry for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Singapore and we have found that it meets the requirements of section 702(b) of the Act.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of carbon steel wire rod (as described in the "Scope of Investigation" section of the notice), receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before November 4, 1985.

Scope of Investigation

The product covered by this investigation is carbon steel wire rod which is a coiled, semi-finished, hot-rolled product of approximately round solid cross section, other than alloy iron or steel, not under 0.20 inch nor over 0.74 inch in diameter. Carbon steel wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States* (TSUS).

Allegations of Bounties or Grants

The petition alleges that producers, manufactureres, or exporters in Singapore of carbon steel wire rod receive benefits under the following programs which constitute bounties or grants:

Economic Expansion Incentives Act (Export Subsidies)
—Part IV allows tax exemptions on export profits
—Part IVA allows tax exemptions for export trading companies
—Part VIB allows tax exemptions for export warehouses
—Part VI allows tax reductions or exemptions on royalties, technical assistance fees, and research and development costs

- Economic Expansion Incentives Act (Domestic Subsidies)

—Part II allows tax holidays for "pioneer enterprises"
—Part III allows tax exemptions for "expanding enterprises"
—Part V allows tax-free repayment of interest on loans

- Research and Development Tax Incentives
- Monetary Authority of Singapore Rediscount Facility
- Singapore Economic Development Board
- The Capital Assistance Scheme
- The Product Development Assistance Scheme
- Labor Training
- Double Deduction of Export Promotional Expenses
- Location in Industrial Towns

We are not initiating an investigation on the following allegations:

- *Equity Infusions by the Singapore Economic Development Board*

Petitioners allege that, under the Capital Assistance Scheme, the SEDB makes equity investments which are on terms inconsistent with commercial considerations because they are based on policy priorities rather than financial analyses. However, petitioners provide no information that the government of Singapore has invested in any wire rod producers, nor any information that the wire rod producers are unequityworthy.

In our "Subsidies Appendix" attached to the notice of "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" which was published in the **Federal Register** (49 FR 18006), we state that government equity ownership *per se* does not confer a subsidy. Government ownership confers a subsidy only when it is on terms inconsistent with commercial

considerations. Since petitioners provide no information that the Singapore Economic Development Board has made equity investments in wire rod producers or that such investments are on terms inconsistent with commercial considerations, we are not initiating on this allegation,

• *Income Tax Exemption for Shipping*

Petitioners allege that the income derived from a shipping enterprise using Singapore-registered ships is tax-exempt, and that such as exemption acts as a countervailable subsidy to export trade. Since petitioners provide no information on how wire rod producers, manufacturers, or exporters benefit from tax exemptions to shipping enterprises, we are not initiating on this allegation.

• *Export Credit Insurance*

Petitioners allege that the Export Credit Insurance Corporation of Singapore (ECICS) provides export credit insurance at concessional rates inconsistent with commercial considerations. Since petitioners have not alleged that the rates charged by ECICS are inadequate to cover its long-term operating costs, we are not intitiating on this allegation.

The following programs were found not to confer bounties or grants in a prior investigation because they were not limited to a specific enterprise or industry, or group of enterprises or industries [see "Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore" (50 FR 9840)]. Petitioners have not presented any new information, nor have they alleged changed circumstances, with respect to these programs.

• *Part VIA of the Economic Exponsion Incentives Act*
• *Skills Development Fund*
• *Public Utility Board Surchorge Exemption Program*
• *Smoll Industries Finonce Scheme*

Dated: August 29, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21186 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or argument to Secretary, Standrds Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submit a proposal must include his or her name and address, must identify the notice and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: August 29, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by 5:00 p.m. e.s.t. on the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Arthur E. Cate, Assistant Vice President/Standards, on Proposal Forms available from the NFPA Standards Administration Office.

Aviation:	
NFPA 415-1983, Aircraft Fueling Ramp Drainage.	Nov. 1, 1985.
NFPA 416-1983, Airport Terminal Buildings.	Nov. 1, 1985.
NFPA 419-1983, Master Planning Airport Water Supply Systems.	Nov. 1, 1985.
NFPA 423-1983, Aircraft Engine Test Facilities.	Nov. 1, 1985.
Boiler-Furnace Explosions:	
NFPA 85A-1982, Fuel Oil and Natural Gas-Fired Single Burner Boiler-Furnaces.	Jan. 17, 1986.
NFPA 85F-1982, Pulverized Fuel Systems.	Jan. 17, 1986.
NFPA 85G-1982, Furnace Implosions in Multiple Burner Boiler-Furnace.	Jan. 17, 1985.
Dust Explosion Hazards:	
NFPA 61A-1984, Manufacturing and Handling of Starch.	(open).
NFPA 61C-1984, Dust Explosions in Feed Mills.	(open).
NFPA 61D-1984, Milling of Agricultural Commodities for Human Consumption.	(open).
Emergency Power Supplies: NFPA 110-1985, Emergency Power Supplies.	July 11, 1986.
Fire Inspector and Investigator Professional Qualifications: NFPA 1031-1982, Professional Qualifications for Fire Inspector, Fire Investigator and Fire Prevention Education Officer.	Jan. 17, 1986.
Fire Instructor Professional Qualifications: NFPA 1041-1981, Fire Service Instructors Professional Qualifications.	Jan. 17, 1986.
Fire Officer Profession Qualifications: NFPA 1021-1983, Fire Officer Professional Qualifications.	Jan. 17, 1986.
Fire Service Occupational Safety and Health:	
Proposed NFPA 1500, Fire Department Safety Program.	Jan. 17, 1986.
NFPA 1501-1977, Fire Department Safety Officer.	Jan 17, 1986.
Flammable Liquids:	
NFPA 30-1984, Flammable & Combustible Liquids Code.	Jan. 17, 1986.

NFPA 30A–1984, Service Stations.	Jan. 17, 1986.
Foam:	
NFPA 11–1983, Low Expansion and Combined Agent Systems.	July 11, 1986.
NFPA 11A–1983, High Expansion Foam Systems.	July 11, 1986.
Halogenated Fire Extinguishing Agent Systems:	
NFPA 12A–1985, Halon 1301.	Jan. 17, 1986.
NFPA 12B–1985, Halon 1211.	Jan. 17, 1986.
Hazardous Chemicals:	
NFPA 40–1982, Cellulose Nitrate Motion Picture Film.	Dec. 31, 1985.
NFPA 43A–1980, Liquid and Solid Oxidizing Materials.	Oct. 1, 1985.
Libraries, Museums and Historic Buildings:	
Proposed NFPA 912, Fire Protection in Places of Worship.	Jan. 17, 1986.
Proposed NFPA 913, Protecting Our Heritage.	Jan. 17, 1986.
Proposed NFPA 914, Fire Safety in Building Rehabilitation & Reuse.	Jan. 16, 1987.
Mining Facilities:	
Proposed NFPA 123, Underground Coal Mines.	Jan. 17, 1986.
Proposed NFPA 124, Underground Diesel Mining Equipment.	Jan. 17, 1986.
Ovens and Furnaces: NFPA 86C–1984, Industrial Furnaces Using a Special Processing Atmosphere.	Jan. 17, 1986.
Portable Fire Extinguishers:	
NFPA 10L–1980, Model Enabling Act for the Sale or Leasing and Servicing of Portable Fire Extinguishers.	Dec. 2, 1985.
Properties of Hazardous Chemicals: NFPA 49–1975, Hazardous Chemicals Data.	Jan. 17, 1986.
Public Fire Service Communications: NFPA 1221–1984, Public Fire Service Communications.	July 11, 1986.
Pyrotechnics:	
NFPA 1121L–1982, Model State Fireworks Law.	Oct. 1, 1985.
NFPA 1122–1982, Code for Unmanned Rockets.	Oct. 1, 1985.
NFPA 1123–1982, Public Display of Fireworks.	Oct. 1, 1985.
NFPA 1124–1984, Fireworks Manufacture, Transportation and Storage.	Jan. 17, 1986.
Proposed NFPA 1125, Manufacture of Model Rocket Engines.	Jan. 17, 1986.
Proposed NFPA 1126, Use of Pyrotechnics in the Performing Arts.	Jan 17, 1986.
Safety to Life:	
NFPA 101–1985, Life Safety Code.	Jan. 17, 1986.
Proposed NFPA 101M, Systems Approaches to Life Safety.	Jan. 17, 1986.
Signalling Systems:	
NFPA 71–1985, Central Station Signaling Systems.	Jan. 17, 1986.
NFPA 72H–1984, Testing Fire Alarm Systems.	Sept. 1, 1985.
Waste Water Treatment Plants: Proposed NFPA 820, Waste Water Treatment Plants.	Jan. 17, 1986.
Water Extinguishing Systems:	
NFPA 16–1980, Foam-Water Sprinkler and Spray Systems.	Jan. 17, 1986.
NFPA 22–1984, Water Tanks for Private Fire Protection.	Jan. 17, 1986.
NFPA 24–1984, Private Fire Service Mains & Their Appurtenances.	Jan. 17, 1986.

[FR Doc. 85–21207 Filed 9–4–85; 8:45 am]

BILLING CODE 3510-13-M

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1986 Annual Meeting. The publication of thisnotice by the National Bureau of Standards (NBS on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports are available for distribution. Comments received on or before November 8, 1985, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1986 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (Single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested parties may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, Secretary, Standards Council, NFPA, Batterymarch Park, Qunicy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before November 8, 1985, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 28, 1986, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action of the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 19–22, 1986, in Portland, Oregon, by NFPA Members.

Dated: August 29, 1985.

Ernest Ambler,

Director, National Bureau of Standards

Action at the NFPA Annual Meeting in May 1986 is being proposed on the NFPA standards listed below:

1986 ANNUAL MEETING; TECHNICAL COMMITTEE REPORTS

Committee reporting	Document	Action
Aviation: Aircraft rescue and fire fighting.	NFPA 424, Airport/Community Emergency Planning.	C
Building construction: Fire doors and windows.	NFPA 80, Fire Doors and Windows.	P
Chemistry laboratories.	NFPA 45, Fire Protection for Laboratories Using Chemicals.	P
Electrical equipment in chemical atmospheres.	NFPA 496, Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations.	C
Electronic computer systems.	NFPA 75, Electronic Computer-Data Processing Equipment.	P
Explosion protection systems.	NFPA 69, Explosion Prevention Systems.	C
Explosives	NFPA 498, Explosives Motor Vehicle Terminals.	R
Fire reporting	NFPA 901, Uniform Coding for Fire Protection.	P
	NFPA 902M, Fire Reporting Field Incident Manual.	P
	NFPA 903M, Fire Reporting Property Survey Manual.	P
	NFPA 904M, Incident Follow-up Report Manual.	R
Firesafety for recreational vehicles.	NFPA 501C, Firesafety Criteria for Recreational Vehicles.	C
	NFPA 501D, Firesafety Criteria for Recreational Vehicle Parks and Campgrounds.	C
Firesafety symbols.	NFPA 171, Visual Alerting Symbols for General Public Firesafety.	N
	NFPA 172, Firesafety Symbols for Architectural and Engineering Drawings.	R
	NFPA 174, Firesafety Symbols for Risk Analysis Diagrams.	R
	NFPA 178, Symbols for Fire Fighting Operations.	P
Halogenated fire extinguishing agent systems.	NFPA 12CT, Halon 2402 Extinguishing Systems.	N
Lightning protection.	NFPA 78, Lightning Protection Code.	P
Loss prevention procedures and practices.	NFPA 601, Guard Service in Fire Loss Prevention.	R
	NFPA 602 (existing NFPA 601A), Guard Operations in Fire Loss Prevention.	R
	NFPA 600 (existing NFPA 27), Private Fire Brigades.	P
Marine fire protection: Marinas and Boatyards.	NFPA 303, Marinas and Boatyards.	C
Protective equipment for fire fighters.	NFPA 1971, Protective Clothing for Structural Fire Fighting.	P
Storage: Fur cleaning and storage.	NFPA 81, Fur Storage, Fumigation and Cleaning.	R
Water extinguishing systems: Form-water sprinklers.	NFPA 16, Installation of Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems.	P

Types of action: C—Complete Revision; P—Partial Revision; R—Reconfirmation; N—Official Adoption.

[FR Doc. 85-21208 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to the Northeast Fisheries Center

On July 15, 1985, notice was published in the **Federal Register** (50 FR 28605) that an application had been filed by the Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543 for a scientific research permit to take an unspecified number of marine mammals, not listed as endangered or threatened under the ESA, which are killed incidentally to legal fishing operations and in joint venture fisheries within 200 miles of the U.S. coast.

Notice is hereby given that on August 28, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Dated: August 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21210 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene public meetings at the Portland Holiday Inn-Airport, 8439 NE. Columbia Boulevard, Portland, OR, September 17–19, 1985 as follows:

On September 18, the Council meeting will begin at 9 a.m. with a closed session (not open to the public) to discuss litigation and personnel matters. The Council's open session will begin at 10 a.m. with election of officers, appointment of committees for FY86, and consideration of other administrative matters. The Council also will hear from its management team, advisors, and the public on possible changes in measures to manage the groundfish fishery and will review and adopt a policy on domestic utilization of underutilized species. The Council will review and discuss amendment issues relating to the groundfish management plan and give direction on which issues should be included for public review. There will be a public comment period at 4 p.m.

On September 19, the Council will be provided with summaries of the 1985 ocean salmon fishery management events and current status of the fishery, a progress report on comprehensive salmon planning, and other current salmon management matters. It will review salmon management plan amendment issues, adopt proposed amendments for public review, and schedule public hearings.

Meetings of the Council's Habitat Committee, Salmon Advisory Subpanel and team, and Scientific and Statistical Committee will be convened at the same location starting on the morning of September 17, through the afternoon of September 18. Detailed agendas of all meetings will be available for the public around September 5. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: August 30, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service

[FR Doc. 85-21209 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification; Southwest Fisheries Center, National Marine Fisheries Service

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 482 issued on September 12, 1984 (49 FR 36899), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Regulations Governing the Taking and Importing of Marine Mammals and the regulations governing

endangered species permits (50 CFR Parts 216 and 222).

The Permit Holder is requesting to take for captive maintenance up to twenty (20) adult and subadult rogue male Hawaiian monk seals (*Monachus schauinslandi*) for scientific research and to enhance the propagation of the species in the wild. The requested animals are the remaining take authorized for translocation under Permit No. 482 and will be maintained instead in qualified scientific research and/or public display facilities.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 30, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21232 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Apparel Products Produced or Manufactured in the Republic of the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 29, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50231) established limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1985. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by the exchange of notes dated November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, the 1985 limits for Categories 331, 333/334, 335T, 335NT, 336T, 336NT, 340, 341T, 348NT, 431, 433, 631pt. (only T.S.U.S.A. numbers 704.3215, 704.8525, and 704.9000), 636NT, 638/639, 640 and 652NT are being adjusted, variously, by the application of swing, carryover, carryforward and carryforward used. To the extent the carryforward is used in 1985, it will be deducted from the affected category limits established for 1986. The limits for Categories 331, 336T., 431 and 638/639 are being reduced either to acount for carryforward used during the 1984 agreement year or for swing applied to other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 151750, May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports in to the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of the Phillippines and exported during 1985.[1]

Effective on August 29, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include the adjusted restraint limits for following categories:

Category	Adjusted 12-month restraint limit [1]
331	645,310 dozen pairs.
333/334	94,002 dozen.
335T	47,951 dozen.
335NT	42,455 dozen.
336T	409,004 dozen.
336NT	34,490 dozen.
340	293,163 dozen.
341T	85,229 dozen.
348NT	271,793 dozen.
431	147,123 dozen.
433	3,618 dozen.
631pt. [2]	437,320 dozen pairs.
636NT	50,994 dozen.
638/639	873,767 dozen.
640	130,042 dozen.
652NT	736,461 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.
[2] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525 and 704.9000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 5533 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21142 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment On Bilateral Textile Consultations With the Government of Malaysia to Review Trade in Category 369pt. (Shop Towels);

Correction

On August 15, 1985 a notice was published in the **Federal Register** (50 FR 32882) concerning a request for public comment on bilateral textile consultations with the Government of Malaysia on cotton shop towels in Category 369pt. The prorated specific limit announced for goods exported during the period beginning on October 28, 1985 and extending through December 31, 1985 should have been 142,721 pounds. The level for the ninety-day consultation period for goods exported on and after July 30, 1985 and

[1] The agreement provides, in part, that: (1) Specific limits maybe exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

extending through October 27, 1985 should have been 233,751 pounds.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21144 Filed 9-4-85 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment On Bilateral Textile Consultations With the Republic of Korea to Review Trade in Categories 342, 352, and 632

On August 19, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to women's, girls, and infants' cotton skirts in Categories 342, cotton underwear in Category 352 and man-made fiber hosiery in Category 632. This request was made on the basis of the agreement of December 21, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 342, 352, and 632, produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of these categories from Korea under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21143 Filed 9-4-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) on the Operation and Maintenance of the Lake Red Rock Project, Des Moines River

AGENCY: U.S. Army Corps of Engineers, Rock Island District.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: This notice advises the public that the Rock Island District intends to gather information necessary for the preparation of a supplement to the *Final Environmental Impact Statement for Operation and Maintenance of Red Rock Dam and Lake Red Rock, Des Moines River, Iowa.* The Lake Red Rock project encompasses 47,611 acres of fee title land and 29,038 acres of flowage easement land in Marion County, Iowa. Public meetings were held on 26 and 27 March 1985 to solicit public input concerning the study of alternatives for regulation of Lake Red Rock. This notice further solicits input and assistance from the interested public and invites participation by affected Federal and State agencies having special jurisdiction and/or expertise as cooperating agencies.

SUPPLEMENTARY INFORMATION: The Red Rock Dam, completed in 1969, was built for flood control, hydropower, and recreation. The original conservation pool was to provide low-flow augmentation and sediment storage. The extisting conservation pool is used to supplement the low-flow augmentation releases from Saylorville Reservoir, located 70.8 miles upstream. Changes in the conservation pool are required to account for the conservation storage lost as a result of sedimentation. Using existing estimates of sediment losses within the watershed, the conservation pool will eventually have to be raised to approximately 742 feet National Geodetic Vertical Datum (NGVD) in order to provide for 50,000 acre-feet of conservation stroage in addition to the 100-year sediment storage. In anticipation of eventual pool raises, certain changes in the regulation, operation, and maintenance of the Lake Red Rock project will be necessary. Four alternatives to lake regulation were presented in *Alternatives to the Regulation of Lake Red Rock, Des Moines River, Iowa,* March 1985. These alternatives will be used as a basis for development of the SEIS for the Lake Red Rock project. Other alternatives may be developed during study for the draft SEIS, and will be presented in that document for public review. The development of the SEIS will be used to analyze alternative regulation plans in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR Parts 1500–1508), and other appropriate Federal regulations. The final SEIS will accompany a decision document identifying the preferred regulation plan.

DATES: Written comments should be received within 30 days of publication in the **Federal Register.** Public meetings will be scheduled following circulation of the draft SEIS during March 1986. The final SEIS is anticipated to be completed by September 1986. Locations and dates of scheduled meetings will be announced approximately 30 days in advance by area press releases.

Additional information concerning the proposed project may be requested from: District Engineer, U.S. Army Engineer Distric, Rock Island, ATTN: Planning Division, Clock Tower Building, P.O. Box 2004, Rock Island, Illinois 61204–2004.

Dated: August 26, 1985.

William C. Burns,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-21128 Filed 9-4-85; 8:45 am]

BILLING CODE 3710-GP-M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Charity Lake Project, Patrick County, VA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The proposed project consists of constructing a reservoir on the Smith River in the headwaters of Philpott Lake in Patrick and Franklin Counties, Virginia. This reservoir known as Charity Lake would have a surface acreage of approximately 3,100 acres and a flood pool surface elevation of approximately 1,210 feet mean sea level (m.s.l.). Charity Lake would function in tandem with Philpott Lake as a pumped storage hydropower project. Each reservoir would have a daily pool fluctuation of 3 to 6 feet.

2. Alternatives to the proposed project include variations in damsite location, height of the dam, and construction technique. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies known to have an interest in the study have been notified of the study start and have been provided an opportunity for input into the study process. All additional agencies, organizations, and interested parties which have not been previously notified are invited to comment at this time.

3b. The significant issues to be analyzed in the DEIS are as follows: (1) The impacts of the impoundment on the wildlife resources of the impoundment area; (2) the conversion of a riverine fishery into a lacustrine fishery; (3) the loss of rainbow trout spawning areas; (4) loss of cultural resources; (5) impacts of the project's operation on the brown trout fishery downstream of Philpott Lake; (6) the loss of whitewater canoeing opportunities in the upper Smith River; and (7) impacts of the project on the water quality of Philpott and on the releases from Philpott.

3c. The U.S. Fish and Wildlife Service is furnishing input into the planning process in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). A Sec. 404 (Pub. L. 95–217) public notice will be circulated to the public.

4. A scoping letter requesting input to the study has been sent to all known interested parties. No formal scoping meetings are currently planned; however, the identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Feasibility report and Draft Environmental Impact Statement for the project are currently scheduled for distribution to the public in October 1986.

ADDRESS: Questions about the proposed action and reports can be answered by Mr. Ron Fascher, Plan Formulation Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402, phone: (919) 343–4783 or commercial: FTS 671–4783.

Dated: August 27, 1985.

Wayne A. Hanson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–21120 Filed 9–4–85; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP85–43–000]

Conoco Inc.; Petition for Declaratory Order

Issued: August 29, 1985.

Take notice that on August 9, 1985, Conoco Inc. filed a petition with the Federal Energy Regulatory Commission for a declaratory order concerning the construction of the "commingling" requirement of the Commission's regulations. 18 CFR 271.1104(d)(1)(ii) (1984). Section 271.1104(d)(1)(ii) sets out the generic delivery allowances for gas delivered through new facilities and states that "the gas hauled must be commingled with other gas at or before the point of the final first sale in order to be eligible for the allowance under this clause."

Conoco and other producer-partners sell and deliver gas to Sea Robin Pipeline Company, at a production platform located in South Marsh Island Block 113, offshore Lousiana. Conoco states that producer-owned facilities collect the gas from all producing wells in South Marsh Island Blocks 112 and 113, and deliver it to Sea Robin at a single point on the platform. Construction of all facilities used for such delivery was begun on or after November 9, 1978. At the time that deliveries began in 1982, there were three gas wells producing from the platform. By July 1984, two of the three wells ceased production, one permanently and one temporarily for various reasons.

Conoco petitions the Commission to issue an order declaring that gas does not become disqualified from receiving the generic delivery allowance for new facilities under § 271.1104(d)(1)(ii) solely because commingling ceases due to depletion or temporary shut-in of gas from the other wells with which the subject gas was commingled at or before delivery.

Within thirty days of publication of this notice in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. Persons wishing to become parties to this proceeding must file a petition to intervene pursuant to Rule 214. 18 CFR 385.214 (1984).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21163 Filed 9–4–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85–40–000]

Dawson Operating Co., Inc.; Petition for Adjustment and Waiver of Filing Fee

Issued: August 29, 1985.

On June 14, 1985, Dawson Operating Co., Inc. (Dawson) filed with the Federal Energy Regulatory Commission, a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301, *et seq.*) and Part 385, Subpart K of the Commission's regulations. Dawson seeks adjustment under Subpart H of Part 271 of the Commission's regulations.

The petition and additional information indicate Dawson received a final determination in 1980 that the Roetker No. 2 Well in Harper County, Oklahoma, qualified as a stripper gas well. In 1981, Northern Natural Gas Company (Northern), purchaser from the well, filed a notice of disqualification with the Commission based on production of the well during the latter part of 1980 which exceeded stripper gas well limits. On September 14, 1981, Dawson filed a petition for enhanced recovery status with the Oklahoma Corporation Commission. The petition was denied based on the well's disqualification and lack of requalification prior to the enhanced recovery work performed in March of 1981. Data contained in the enhanced recovery filing indicates that had

Dawson filed an application for a new NGPA section 108 determination subsequent to the disqualification, the well, based on sales to Northern could have requalified as of the end of December, 1980. Dawson also states that it would not be able to make refunds to Northern if its petition were denied.

Dawson requests an adjustment under subpart H of Part 271 of the Commission's regulations allowing it opportunity to seek or re-establish qualification of the well as a stripper gas well for a period prior to its enhanced recovery work, so that it may seek reconsideration of its enhanced recovery petition.

In addition, Dawson requests a waiver of the applicable filing fee, pursuant to 18 CFR 381.106.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21164 Filed 9-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-180-001]

Equitable Gas Company, a Division of Equitable Resources, Inc.; Tariff Filing

Issued: August 28, 1985.

Take notice that on August 22, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") tendered the following tariff sheets:

FERC Gas Tariff, First Revised Volume No. 1

Rate Schedule TS-1, Substitute First Revised Sheet No. 10-11
Superseding First Revised Sheet No. 10-11

FERC Gas Tariff, First Revised Volume No. 2

Rate Schedule X-1, Substitute Second Revised Sheet No. 8
Superseding Second Revised Sheet No. 8
Rate Schedule X-2, Substitute Fifth Revised Sheet No. 29
Superseding Fifth Revised Sheet No. 29
Rate Schedule X-8, Substitute First Revised Sheet No. 23-D
Superseding First Revised Sheet No. 23-D
Rate Schedule X-9, Substitute First Revised Sheet No. 111
Superseding First Revised Sheet No. 111
Rate Schedule X-10, Substitute First Revised Sheet No. 124
Superseding First Revised Sheet No. 124
Rate Schedule X-11, Substitute First Revised Sheet No. 134
Superseding First Revised Sheet No. 134
Rate Schedule X-12, Substitute First Revised Sheet No. 145
Superseding First Revised Sheet No. 145

Equitable states that the substitute tariff sheets are submitted in accordance with § 154.63 of the Federal Energy Regulatory Commission's ("Commission") regulations, which tariff sheets relate to an increase in the rate for transportation service. The proposed changes would increase revenues from jurisdictional sales and service by $596,000 based on the twelve-month period ending March 31, 1985, as adjusted.

The proposed changes are necessary for Equitable to recover its cost of operations and to realize a reasonable return on its investment in facilities utilized to provide transportation services.

Equitable ahs requested a waiver of Commission Regulations so as to permit these tariff sheets to become effective on August 30, 1985.

Equitable states that it has served copies of its filing upon all transportation customers to be affected by the proposed change in rates, the Pennsylvania Public Utility Commission and the West Virginia Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21165 Filed 9-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-50-003 et al.]

Houston Pipe Line Co., Extension Reports

Issued: August 28, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; and a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 16, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date[1]
ST80-60-003	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	07-25-85	C	10-26-85	
ST80-59-003	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	07-25-85	C	10-26-85	
ST80-307-002[2]	Southwestern Gas Pipeline, Inc., P.O. Box 4000, The Woodlands, TX 77387.	Natural Gas Pipeline Co. of America	07-19-85	C	10-01-85	10-17-85
ST82-48-002[2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Louisiana Gas Intrastate, Inc	07-23-85	B	10-19-85	10-21-85
ST82-59-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Northern Natural Gas Co	07-25-85	C	10-30-85	
ST82-60-002	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Northern Natural Gas Co	07-25-85	C	10-30-85	
ST82-66-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Panhandle Eastern Pipeline Co	07-25-85	G	11-03-85	
ST84-31-001[2]	Florida Gas Transmission Co., P.O. Box 1188, Houston, TX 77001	Tejas Gas Corp	07-18-85	B	10-07-85	10-16-85
ST84-38-001[2]	Florida Gas Transmission Co., P.O. Box 1188, Houston, TX 77001	Tejas SW Two	07-18-85	B	10-06-85	10-16-85
ST84-43-001	United Texas Transmission Co., P.O. Box 1478 Houston, TX 77001	Tennessee Gas Pipeline Co	07-16-85	C	10-17-85	
ST84-91-001[2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Neche's Distributing Co	07-18-85	B	10-10-85	10-16-85
ST84-108-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Intratex Gas Co	07-22-85	B	10-20-85	
ST84-114-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Cabot Transmission Corp	07-25-85	B	11-01-85	
ST84-125-001	Natural Gas Pipeline Co., of America, P.O. Box 1208, Lombard, IL 60148.	Mississippi River Transmission Corp	07-30-85	G	10-28-85	
ST84-126-001	Natural Gas Pipeline Co., of America, P.O. Box 1208, Lombard, IL 60148.	Cabot Transmission Corp	07-26-85	B	10-24-85	
ST84-167-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Endevco Pipeline Co	07-30-85	B	11-09-85	
ST84-330-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Endevco Pipeline Co	07-25-85	B	11-20-85	
ST84-429-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Louisiana Gas Systems, Inc	07-24-85	B	10-26-85	
ST85-262-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Dayton Power & Light Co	07-31-85	B	11-01-85	
ST85-263-001	Columbia Gas Transmission Corp, P.O. Box 1273, Charleston, WV 25325.	Dayton Power & Light Co	07-31-85	B	11-01-85	
ST85-313-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	UGI Corp	07-31-85	B	11-01-85	
ST85-316-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	UGI Corp	07-31-85	B	11-01-85	
ST85-317-001	Columbia Gas Transmission Corp., P.O. Box 1273 Charleston, WV 25325.	Roanoke Gas Co	07-31-85	B	11-05-85	
ST85-399-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Commonwealth Gas Pipeline Corp	07-31-85	B	11-01-85	
ST85-404-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Commonwealth Gas Pipeline Corp	07-31-85	B	11-01-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-21166 Filed 9-4-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-186-000]

Southwest Gas Corp. v. Northwest Pipeline Corp.; Complaint and Request for Expedited Action

Issued: August 28, 1985.

Take notice that on August 19, 1985, Southwest Gas Corporation (Southwest) tendered for filing a Complaint and Request for Expedited Action against Northwest Pipeline Corporation (Northwest). In its Complaint, Southwest requests that the Commission issue an order requiring Northwest to substitute Canadian gas or other gas with percentages of nitrogen, ethane and propane at or below the tolerance levels of Southwest's liquefied natural gas (LNG) facility for gas Northwest currently supplies to Southwest from the Rychman-Painter field and the Moxa Arch area. Southwest requests that this substitution continue until such time as Northwest can demonstrate that the gas from the Rychman-Painter field and the Moxa Arch area will not increase the levels of nitrogen, ethane and propane above the tolerance levels for Southwest's LNG facility. Southwest requests, in the alternative, that the Commission issue an order requiring Northwest to reimburse Southwest for all additional costs incurred by Southwest as a result of Northwest's failure to supply gas which meets the tolerance levels of Southwest's LNG facility.

Southwest states Northwest is the sole supplier of the gas stored at its LNG facility. According to Southwest, this facility was designed to operate using gas of the quality of Northwest's Canadian gas supplies, which are low in nitrogen, ethane, and propane. Southwest alleges that Northwest has reduced its takes of Canadian gas and has increased its reliance on domestic sources, which contain levels of the stated contaminants in excess of the tolerance levels for Southwest's facility. Among other things, Southwest alleges that the presence of these contaminants during the LNG storage injection period will result in a 10% reduction in the efficiency of the LNG facility. Southwest states it has informed Northwest of this and other difficulties caused by the presence of the contaminants, but the problems have not been resolved.

Southwest requests expedited treatment of its Complaint, as a new storage injection season commences on, or about, August 23, 1985. Southwest alleges it is during this period that the increased costs will be incurred.

Any person desiring to be heard or to

protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-21167 Filed 9-4-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-5131-001, et al]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

August 27, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-5131-001, D, Aug. 19, 1985	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Texas Eastern Transmission Corporation, Hostetter Field, McMullen County, Texas.	(1)	
G-5932-000, D, Aug. 16, 1985	....do	Arkansas Louisiana Gas Company, Athens Field, Claiborne Parish, Louisiana.	(2)	
G-5932-001, D, Aug. 16, 1985	....do	....do	(3)	
G-11762-004, D, Aug. 19, 1985	....do	Northern Natural Gas Company, Harper Ranch Field, Clark County, Kansas.	(3)	
CI61-1429-000, D, Aug. 12, 1985	....do	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(3)	
CI61-1429-001, D, Aug. 12, 1985	....do	El Paso Natural Gas Company, Rhodes Field, Lea County, New Mexico.	(3)	
CI63-150-001, D, Aug. 19, 1985	....do	Northern Natual Gas Company Various Fields (Mocane-Laverne Area), Beaver County, Oklahoma.	(7)	
CI63-1351-000, D, Aug. 12, 1985	....do	El Paso Natural Gas Company, Rhodes Field, Lea County, New Mexico.	(3)	
CI85-617-000, F, Aug. 13, 1985	Samson Resources Company (Succ. in Interest to ARCO Oil & Gas. Co., A Division of Atlantic Richfield Company), Samson Plaza, Two West Second Street, Tulsa, Oklahoma 74103.	Arkansas Louisiana Gas Company, Certain acreage in Pittsburg County, Oklahoma.	(3)	14.73
CI85-618-000 (CI64-1440), B, Aug. 5, 1985.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Horizon Oil & Gas Company of Texas, Horizon Field, Ochiltree County, Texas.	(3)	
CI85-619-000 (CS82-86), B, Aug. 13, 1985.	W. D. Cutwell, P.O. Box 56203, Houston, Texas 77256.	Transcontinental Gas Pipe Line Corp., Lucy Field, St. Charles Parish, Louisiana.	(10)	
CI85-620-000 (CS75-35), B, Aug. 13, 1985.	RK Petroleum Corporation, P.O. Box 8528, Midland, Texas 79703.	Phillips Petroleum Company, Spraberry Field, Midland County, Texas.	(11)	
CI85-621-000 (CI69-133), B, Aug. 12, 1985.	Blaik Oil Company, a corporation, 5825 North Grand Boulevard, Oklahoma City, Oklahoma 73118.	Northern Natural Gas Company, Northeast Buffalo Field, Harper County, Oklahoma.	(12)	
CI85-622-00 (CI61-1327), B, Aug. 12, 1985.	Blaik Oil Company, a corporation	Northwest Central Pipeline Corporation, Sec. 2-2N-14ECM, Texas County, Oklahoma.	(13)	
CI85-623-000, A, Aug. 16, 1985	Koch Industries, Inc., Post Office Box 2256, Wichita, Kansas 67201.	Natural Gas Pipeline Company of America, Vermilion Block 277 (OCS-G 3396), Offshore Louisiana.	(14)	14.73
CI85-624-000 (CS73-0158), B, Aug. 19, 1985.	Partnership Properties Co., P.O. Box 2250, Denver, Colorado 80201.	Transcontinental Gas Pipe Line Corp., Courtney #1 Well, Beesfield Field, Jefferson Davis County, Mississippi.	(15)	
CI85-625-000, B, Aug. 19, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Phillips Petroleum Company, North Baldie Field, Andrews County, Texas.	(16)	
CI85-626-000 (CI68-776), B, Aug. 16, 1985.	Union Oil Company of California, Union Oil Center, Box 7600, Los Angeles, California 90051.	Transcontinental Gas Pipe Line Corp., Eugene Island Block 179, South Marsh, Island Block 48 Field, Offshore Louisiana.	(17)	
CI85-627-000 (CI74-215), B, Aug. 15, 1985.	Krennerman Oil & Gas Company, Inc., 139 Winterwood Drive, Butler, Pennsylvania 16001.	Gas Transport, Inc., Silverton Field, Jackson County, West Virginia.	(18)	
CI85-628-000, B, Aug. 16, 1985	Conoco, Inc.	Shell Oil Co. & Exxon Co. U.S.A. (Succ. in Interest to The Carter Oil Co.), Bayou Field, Carter County, Oklahoma.	(18)	
CI85-629-000, B, Aug. 16, 1985	....do	....do	(19)	
CI85-630-000, B, Aug. 16, 1985	....do	....do	(19)	
CI85-631-000, B, Aug. 16, 1985	....do	....do	(19)	

[1] Assignment of Gouger Gas Unit No. 3 to Shaw Energy, Inc.
[2] Partial Assignment and Bill of Sale of E.S. McClaman Unit and Joseph Flucas Unit to Getty Oil Company.
[3] Partial Assignment and Bill of Sale of Bishop-Lewis Unit and Dillon, *et al.* Unit to TXO Production Corp.
[4] Assignment of May Havey, *et al.* lease to Egret Energy Corp.
[5] Assignment of Van Zandt Property No. 733642, leases T20193, T20193-001, 002, 003, 004, 005 to Doyle Hartman.
[6] Assignment of Gregory B lease No. T20196 to Doyle Hartman.
[7] Assignment of Morris E. Smith lease to Michael Starkey.
[8] Proposed effective date of assignment: 6-1-85.

[9] The subject contract dated 3-8-84 expired by its own terms on 8-26-84. The dedicated wells, the J.L. Dodson #1-134 & 2-134, no longer produce casinghead gas. As such, Tennaco Oil's purchaser, Horizon Oil & Gas Company of Texas, has elected not to negotiate a replacement contract.
[10] All production has ceased and no further production is planned.
[11] Subject contract will expire under its own terms on 12-12-85. Due to reoccurring high line pressure on Phillip's system, venting of excessive volumes of casinghead gas has resulted. Seller desires to enter into a new gas purchase contract with Northern Gas Products Company, who has agreed to maintain a low pressure line in order that 100% of available casinghead gas may be sold.
[12] Production declined to point that further operations were economically unfeasible and insufficient to keep lease in effect and the well has been plugged and abandoned.
[13] Well is not capable of further production.
[14] Applicant is filing under Gas Purchase Contract dated June 5, 1985.
[15] Tubing collapsed. Efforts to rework unsuccessful. Well plugged and abandoned.
[16] Conoco's leasehold interest expired and reverted back to the lessor(s) on August 28, 1980.
[17] Gas reserves were depleted. The lease expired on 8-21-81, 90 days following cessation of production. The only well was temporarily abandoned on 1-22-82.
[18] Purchaser determined the purchase price of gas supplies from the Silverton Field is greater than the price for which it can purchase gas along its pipeline network and it is therefore willing to release the Silverton Field gas from the Gas Purchase Agreement.
[19] Normal depletion and contract passed its primary term.
Filing Code A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-21168 Filed 9-4-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER85-700-000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER85-700-000]

August 27, 1985

Take notice that on August 19, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedules F and X providing for assured capacity and energy interchange service and extended economy interchange service with the City of Vero Beach, Florida. Florida Power states that Service Schedules F and X are executed pursuant to the Contract for Interchange Service dated November 30, 1981 between Florida Power and the City of Vero Beach, which contract is designated as Florida Power's Rate Schedule FERC No. 93. Service Schedules F and X are submitted for inclusion as supplements to that rate schedule.

Florida Power requests that Service Schedules F and X be permitted to become effective September 1, 1985, and, therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the City of Vero Beach and the Florida Public Service Commission.

Comment date: September 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER85-699-000]

August 27, 1985

Take notice that Puget Sound Power & Light Company ("puget") on August 19, 1985 tendered for filing Notice of Termination of Puget's Rate Schedule FERC No. 77, such schedule having terminated by its own terms.

Copies of the filing were served upon the following: G.R. Garman, Director, Energy Resources Planning and Management, City of Seattle—City Light Department, City Light Building, 1015 Third Avenue, Seattle, Washington 98104.

Comment date: September 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER85-701-000]

August 27, 1985

Take notice that on August 19, 1985, Puget Sound Power & Light Company (Puget) tendered for filing copies of an Amendment to an exchange agreement with The Washington Water Power Company (Washington) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial saving in both transmission service cost and in transfer losses.

Washington is a 15% owner of the Centralia Steam-Electric Plant in western Washington near Puget's system load area. Puget is a 50% owner of Colstrip Units #1 and #2 and a 25% owner of Colstrip Units #3 and #4 in eastern Montana. The subject agreement provides for the exchange of Washington's Centralia capacity and energy for like amounts of Puget's Colstrip capacity and energy, which, because of the shortening of the transfer distances involved results in substantial savings in both transmission service costs and transfer losses. The savings resulting therefrom both in transmission costs and the transfer losses are shared equally by Washington and Puget under the terms of this agreement.

Comment date: September 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Alabama Power Company

[Docket No. ER85-703-000]

August 28, 1985

Take notice that on August 19, 1985 Alabama Power filed in above-referenced docket Twenty-First Revised Sheet No. 34 to its FERC Electric Tariff, Original Volume No. 1. The purpose of this filing is to give notice that effective September 1, 1985, the load normally served from The City of Dothan's North Ross Clark Parkway, South Park Avenue, South Ross Clark Parkway, West Ross Clark Parkway, East Ross Clark Parkway, Flynn Road, Highway 84 West, Michelin Substation and East Haven delivery points will be served from the new Dothan delivery point. The delivery point will be served at the company applicable revision to Rate Schedule MUN-1 incorporated in FERC Electric Tariff, Original Volume No. 1 of Alabama Power Company.

Copies of the filing were served upon the City of Dothan.

Comment date: September 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Black Hills Power and Light Company

[Docket No. ER85-702-000]

August 28, 1985

Take notice that Black Hills Power and Light Company ("Black Hills") on August 20, 1985, tendered for filing the Electric Power and Energy Supply and Transmission Agreement dated August 6, 1985 ("New Agreement") between Black Hills and the City of Gillette, Wyoming ("Gillette").

Black Hills states that the New Agreement supersedes the existing Electric Power and Energy Supply Agreement dated October 3, 1984 ("Existing Agreement") between Black Hills and Gillette.

Black Hills states the major changes in the New Agreement from the Existing Agreement generally are that the New Agreement provides for an extension of the Term to June 30, 2010; provides an increase commencing October 1, 1989, in the amount of firm power and energy to be sold Gillette; provides for Black Hills to furnish transmission service at 230 kV on its bulk transmission system for all of the power and energy requirements of Gillette acquired from sources other than Black Hills and sets a rate therefore, subject to regulation; and sets forth an option to Gillette to require Black Hills to furnish transmission service from the 230 kV system to Gillette's municipal electric system at 69 kV.

Black Hills states that the reasons for the changes are to allow Gillette

flexibility to take advantage of preference rights for government power or other opportunities to cover Gillette's power needs and future requirements because of unusual expected growth and to allow Black Hills to serve Gillette better by allowing a longer lead time for planning and new power and energy resources.

Black Hills requests a waiver of the Commission's notice requirements to permit the rate schedule to become effective August 6, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to Gillette and the regulatory commissions of the states of Wyoming, South Dakota and Montana.

Comment date: September 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Power and Light Company

[Docket No. ER85-705-000]

August 28, 1985

Take notice that Black Hills Power and Light Company (Black Hills) on August 22, 1985, tendered for filing an agreement between Black Hills and the City of Gillette, Wyoming which provides for an amendment and extension of Black Hills Rate Schedule FERC No. 28 to provide for the continued sale of seasonal nonfirm power and energy.

The reasons for the proposed changes are to extend the term until March 31, 1986, provide Gillette options under certain conditions, to extend the term for additional seasons, and provide changes in the method of determining the energy charge component.

Copies of the filing were supplied to City of Gillette, Wyoming and the regulatory commissions of the states of Wyoming, South Dakota, and Montana.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric

[Docket No. ER85-680-000]

August 28, 1985

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson), on August 12, 1985, tendered for filing, as a rate schedule an executed agreement dated May 14, 1985 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for a transmission agreement between Central Hudson and O&R.

Central Hudson states that the service to be provided by Central Hudson is the transmission of power and energy between (a) Central Hudson's transmission connection with the 345 Kv. Leeds Substation of Niagara Mohowk Power Corporation and (b) Central Hudson's transmission connection with O&R at the 115 Kv. Sugarloaf Substation.

Central Hudson states that copies of the subject filing were served upon: Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977.

Comment date: September 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER85-21-000]

August 28, 1985

Take notice that on August 21, 1985, Idaho Power Company (Applicant), a corporation organized under the laws of the State of Maine, and qualified to transact business in the States of Idaho, Montana, Nevada, Oregon and Wyoming, with its principal business office at Boise, Idaho, filed an Application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an Order authorizing the Applicant to purchase or acquire securities of other public utilities as a part of a planned expansion of corporate investments. Applicant proposes to limit its holding or ownership of any given class of securities to an amount not to exceed one percent (1%) of the capital stock or funded debt outstanding. Additionally, Applicant is requesting a modification of the reporting requirement under Title 18, CFR 33.8 to allow an annual update and status report only. The application is on file with the Commission and open to public inspection.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Missouri Public Service Company

[Docket No. ER85-693-000]

August 28, 1985

Take notice that on August 16, 1985, Missouri Public Service Company (the Company), having changed its name to Utilicorp United Inc., tendered for filing a request for waiver of provision 35.16 of the Commission's rules to file a notice of succession within 30 days.

The Company encloses separate filings to adopt rate schedules and supplements of Missouri Public Service Company by Utilicorp United Inc. Rate Schedules adopted are FERC rate schedules numbered: 47, 41, 36, 37, 39, 38, 46, 34, 26, 24, 17, 18, 19, 7A, and 22.

Comment date: September 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Oklahoma

[Docket No. ER85-704-000]

August 28, 1985

Take notice that on August 21, 1985, Public Service Company of Oklahoma ("PSO") tendered for filing Notices of Cancellation of PSO's Power Sales and Service Contracts with the following Oklahoma cities and towns: Altus, Comanche, Duncan, Eldorado, Frederick, Granite, Hominy, Marlow, Olustee, Pawhuska, Ryan and Walters. As of July 1, 1985, these cities and towns began taking service from the Oklahoma Municipal Power Authority and ceased taking service from PSO. PSO requested an effective date of July 1, 1985 and, accordingly, requests waiver of the Commission's notice requirements.

Copies of the filing have been served on each of the twelve municipalities and on the Oklahoma Corporation Commission.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Electrical Power Company

[Docket Nos. ER85-534-002, ER85-424-001, ER85-425-001 and ER85-468-001]

August 28, 1985

Take notice that on August 21, 1985, Southwestern Electric Power Company ("SWEPCO") submitted for filing, in accordance with the Commission's order of July 22, 1985, revised rates applicable to service to the City of Bentonville, Arkansas ("Bentonville"). As directed by the Commission, the revised rates were derived, in all aspects except return on common equity, pursuant to cost of formulas contained in the Contract for Electric Service, as amended, between SWEPCO and Bentonville. The revised rates reflect a fixed return on common equity of 18.75%.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21162 Filed 9-4-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59201A; FRL-2892-2]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-60. The test marketing conditions are described below.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-60. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-60. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

85-60

Date of Receipt: July 19, 1985.

Notice of Receipt: August 9, 1985 (50 FR 32293).

Applicant: Confidential.

Chemical: (G) Substituted phenoxy alkyl acid ester.

Use: (G) Site limited intermediate.

Production Volume: Confidential.

Number of Customers: None.

Worker Exposure: Manufacturing: dermal, a total of up to 8 workers, up to 1 hour/day for up to 12 days/year each.

Test Marketing Period: One year.

Commencing on: August 23, 1985.

Risk Assessment: EPA identified no significant concerns for human health effects. Therefore, the test market substance will not present any unreasonable risk of injury to health. The Agency did identify potential adverse effects on aquatic organisms. However, since wastes from manufacturing will be landfilled, the test market substance will not pose any unreasonable environmental risk.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 23, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-21171 Filed 9-4-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2892-1]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's (SAB) Radiation Advisory Committee will be held on September 19-20, 1985 in the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209 in Conference Room Shenandoah. The meeting will begin at 10:00 a.m. on September 19 and adjourn no later than 5:00 p.m. on September 20, 1985.

The Committee is reviewing the March 13, 1985 draft background information document on Low-Level Radioactive Waste Disposal and a number of supporting documents which provide the scientific basis for a standard to be proposed on low-level radioactive waste. The documents are available from G. Lewis Meyer, Office of Radioactive Programs (ANR-460C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The telephone number is (202) 557-8610. The principal purpose of the meeting is to enable the Committee to complete its scientific report on the technical basis of development of the Low-Level Radioactive Waste Disposal standards. The Committee may also be briefed on other radiation related activities of the Environmental Protection Agency.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or make a statement, or obtain further information should contact Mrs. Kathleen Conway, Executive Secretary, Radiation Advisory Committee, Science Advisory Board, by the close of business Tuesday, September 17, 1985. The telephone number is (202) 382-2552.

Dated: August 28, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-21160, Filed 9-4-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2893-2; OPP-100030]

Pesticide Data; Disclosure to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing a complete list of inert ingredients contained in pesticides registered under sections 3 and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to the Subcommittee on Health and the Environment of the Committee on

Energy and Commerce of the U.S. House of Representatives. The Subcommittee has requested this information to help it evaluate EPA's regulatory policies and actions concerning inert ingredients in pesticides. Some of the information that is being made available to the Subcommittee may have been claimed by the submitters to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, D.C. 20460.

Office location and telephone number: Rm. 222 CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

SUPPLEMENTARY INFORMATION: In a letter to EPA, the Chairman of the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce stated that the Subcommittee plans to hold a hearing on September 27, 1985 to receive testimony on several issues regarding pesticides, including inert ingredients. The Chairman requested EPA to provide the Subcommittee with a list of inert ingredients to assist it in evaluating EPA's regulatory policies and actions concerning such ingredients.

Under section 10(d)(1)(C) of FIFRA, a deliberately added inert ingredient of a pesticide may be entitled to confidential treatment. Some of the inert ingredients appearing on the list to be provided the Subcommittee may be subject to claims of confidentiality by the pesticide registrants. Pursuant to 40 CFR 2.209(b), which applies to information submitted under FIFRA through 40 CFR 2.307(h), EPA must provide confidential business information to a Congressional subcommittee in response to a written request by the Chairman.

This is a notice to a pesticide registrants under sections 3 and 6 of FIFRA that a list of inert ingredients contained in pesticides registered with EPA, including inert ingredients which may be claimed confidential, will be provided to the Subcommittee. EPA has not yet determined whether the identities of the inert ingredients which will be provided to the Subcommittee are entitled to confidential treatment. However, the Agency has informed the Subcommittee that the requested information may be entitled to confidential treatment and that the provisions of section 10(f) of FIFRA set criminal penalties for unlawful disclosure of confidential business information under FIFRA.

Dated: September 3, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–21374 Filed 9–4–85; 10:57 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Friday, September 20, 1985 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include discussion of the financial report covering the first ten months of FY 1985, status of legislation affecting Eximbank, Eximbank's budget requirements for FY 1986, preview of new Foreign Credit Insurance Association (FCIA) exporter insurance policy, domestic marketing initiatives with State agencies, international outreach including video excerpts, and the Competitiveness Report.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, D.C. 20571, (202) 566–8871, not later than September 16, 1985.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, D.C. 20571, (202) 566–8871.

Hart Fessenden,

General Counsel.

[FR Doc. 85–21257 Filed 9–4–85; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 28, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632–7513. Persons wishing to comment on this information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB No.: 3060–0072

Title: Application for Individual Airborne Mobile Radio Telephone License in the Public Mobile Radio Service

Form No.: FCC 409

Action: Extension

Estimated Annual Burden: 3,000 Responses; 750 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–21146 Filed 9–4–85; 8:45 am]

BILLING CODE 6712–01–M

Opal Chadwell; Hearing Designation Order

In re Applications of: MM Docket No. 85–269; Opal Chadwell, File No. BPCT–850103KK; Dorothy O. Schulze and Deborah Brigham, a general partnership, File No. BPCT–850320KG; Blanco Communications, Ltd., File No. BPCT–850320LC; Marie Luckow, File No. BPCT–850320LG (Application Dismissed); For Construction Permit, Blanco, Texas.

Adopted: August 22, 1985.

Released: August 30, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Divison, action pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Opal Chadwell (Chadwell), Dorothy O. Schulze and Deborah Brigham, a general partnership (Schulze), Blanco Communications, Ltd. (BCL), and Marie Luckow (Luckow) for authority to construct a new commercial television station on Channel 52, Blanco, Texas; informal; objections filed by the Association of Maximum Service Telecasters, Inc. (AMST) and Balcones Broadcasting Limited (Balcones), an applicant for a construction permit for

Channel 54, Austin, Texas, against Chadwell, and related pleadings;[1] a Petition to Deny filed by Balcones against Schulze; and an amendment filed by BCL.[2]

2. On May 6, 1985, Balcones filed a petition to deny against Schulze's application on the ground that Schulze's proposed site would be 13 miles from Balcones' proposed site, whereas § 73.610 of the Commission's Rules requires a minimum separation of 20 miles between a UHF station operating on Channel 52 and one operating on Channel 54.[3] Schulze would be short-spaced 7 miles. Schulze would also be 7 miles short-spaced to the site of Television 54 Corporation, another applicant for Channel 54 in Austin. Furthermore, § 73.610 of the Rules requires a minimum separation of 175 miles between co-channel UHF stations. Schjulze's proposed site would be short-spaced to the sites proposed by 8 of the 11 applications now pending in hearing in Docket No. 85–130 for a construction permit for a new television station to operate on Channel 52, Forth Worth, Texas.[4] Accordingly, an issue will be specified to determine whether circumstances exist warranting a waiver of the rules. Since an applicant proposing a short-spaced site must make the threshold showing that no suitable fully-spaced site is available, the Administrative Law Judge will, in assessing those circumstances, consider the fact that other applicants in this proceeding have specified fully-spaced sites.

3. Luckow proposes to locate her transmitter at the same coordinates as those specified by ATV Associates, Inc., one of seven competing applicants for a new television station on Channel 54, Austin, Texas. Since § 73.610 of the Commission's Rules requires a minimum separation of 20 miles between a station operating on Channel 52 and one operating on channel 54, Luckow would be 100% short-spaced to the site specified by ATV Associates, Inc.[5] Further, Luckow has not requested a waiver or provided any information to persuade us that the public interest would be served by a total disregard for the spacing requirement involved. We know of no case permitting a waiver of this magnitude. Therefore, Luckow's application will be dismissed, pursuant to § 73.3566(a) of the Rules.

4. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. Mrs. Chadwell, sole proprietor of the proposed television station, is also the Secretary-Treasurer, director and 39.7% stockholder in Blanco Cablevision Corp., Blanco, Texas. Her husband, Carl Chadwell, is also an officer, director and 39.7% stockholder in the cable company.[6] Consequently, grant of Mrs. Chadwell's application would violate the rule. However, Mrs. Chadwell and her husband have represented to the Commission that they will divest themselves of all interest in, and connection with Blanco Cablevision Corp., in the event of a grant of her application. Accordingly, any grant of a construction permit to Mrs. Chadwell will be appropriately conditioned.

5. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. No determination has been made that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

7. As originally, filed, Chadwell's application contained an environmental narrative statement as required by § 1.1311 of the Commission's Rules. On May 6, 1985, however, Chadwell amended her application to specify a different site. Her application, as thus amended, indicates that grant of her application would be a major environmental action, but she did not submit an environmental narrative statement with respect to the new site. Accordingly, Mrs. Chadwell will be required to file, within 20 days of the release of this Order, an environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979) *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

---

[1] AMST and Balcones allege that Chadwell has proposed a site that does not meet the Commission's mileage separation requirements; however, Chadwell subsequently amended her application to specify a non-short-spaced site. Accordingly, the AMST and Balcones objections and related pleadings will be dismissed as moot.

[2] BCL filed an amendment to its application on May 6, 1985 (the "B" cut-off date) with a facsimile signature. An original signature page was submitted May 7, 1985. In view of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. The amendment was timely filed; only the original signature was missing. These circumstances are governed by a long-standing Commission policy which dictates that the amendment and a signature be accepted *nunc pro tunc. Bocanegra/Gerald Broadcasting Group*, Mineo No. 1470, released December 22, 1982; *Communications Gothersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hort*, 44 FCC 2088 (1960). Accordingly, the signature page will be accepted *nunc pro tunc*.

[3] There are seven pending applications in hearing in Docket Nos. 84–923–931 for a new television station on Channel 54, Austin, Texas. The Austin applications were "cut-off" with respect to conflicting applications on July 11, 1984. Schulze's application was filed March 20, 1985. Schulze is, therefore, required to meet the separation requirements to all of the proposed Austin sites.

[4] The eight Fort Worth sites to which Schulze would be short-spaced are:

David Reese (6 miles short-spaced)
Rebecca Rangel Henton (5 miles short-spaced)
Alden Television, Inc. (4 miles short-spaced)
Channel 52 Limited Partnership (3 miles short-spaced)
Fort Worth Television, Inc. (3 miles short-spaced)
Channel 52 Fort Worth Television, Ltd. (3 miles short-spaced)
Texas Spanish Broadcasters (2 miles short-spaced)
Nuevo Mundo Broadcasting, Inc. (2 miles short-spaced)

The Fort Worth applications were "cut off" on January 8, 1985; Schulze's application was filed March 20, 1985.

[5] The Channel 54 applications for Austin were cut-off with respect to conflicting applications on July 11, 1984. Luckow's application was not filed until March 20, 1985. Luckow was, therefore, required to meet the separation requirements to each site specified by the Austin applicants.

[6] There is a rebuttable presumption that the interests of each spouse are attributable to the other spouse. *Reconsideration of Attribution of Ownership Interests*, FCC 85–252, Mimeo No. 35803, released June 24, 1985.

8. Section 73.685(f) of the Commission's rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Chadwell has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that the application filed by Marie Luckow is dismissed.

11. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the remaining applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the application of Dorothy O. Schulze and Deborah Brigham, is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the Rule.

2. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. If a final environmental impact statement is issued with respect to Opal Chadwell which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment:

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which the applications should be granted.

12. It is further ordered, that the informal objections filed by the Association of Maximum Service Telecasters, Inc. and Balcones Broadcasting Limited against Opal Chadwell ARE DISMISSED as moot.

13. It is further ordered, that the signature page filed by Blanco Communications, Ltd. dated May 17, 1985 is accepted *nunc pro tunc.*

14. It is further ordered, that Balcones Broadcasting Limited is made a party respondent to this proceeding.

15. It is further ordered, that, in the event of a grant of the application of Opal Chadwell, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Opal Chadwell and Earl Chadwell have severed all interest in, and connection with Blanco Cablevision Corp, Blanco, Texas.

16. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

17. It is further ordered, that § 1.1317 of the Commission's Rule's is waived to the extend indicated herein. Within 20 days of the release of this Order, Opal Chadwell, shall submit an amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge with a copy to the Chief, Video Service Division.

18. It is further ordered, that Opal Chadwell shall submit an amendment providing the information required by §73.685(f) of the Commission's Rules to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days, after the release date of this Order.

19. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

20. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 3.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 3.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief; Video Services Division; Mass Media Bureau.

[FR Doc. 85–21147 Filed 9–4–85; 8:45 am]

BILLING CODE 6712-01-M

Gerald R. Roberts; Hearing Designation

In re Applications of: MM Docket No. 85–265; Gerald; R. Roberts; File No. BPCT–850228KH; Sandra J. Lewis; File No. BPCT–850422KL; Robin C. Brandt; File No. BPCT-850422KW; For Construction Permit, Cookeville, Tennessee.

Adopted: August 19, 1985.
Released: August 30, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Gerald R. Roberts (Roberts), Sandra J. Lewis (Lewis), and Robin C. Brandt (Brandt) for authority to construct a new commercial television station on Channel 28, Cookeville, Tennessee, and a motion to accept a late filed amendment and the amendment filed by Lewis.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 645 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

[1] The deadline for filing amendments to the above-captioned applications was June 7, 1985. Lewis filed a motion to accept a late filed amendment and an accompanying amendment to her application on June 10, 1985. The amendment undates Ms. Lewis' broadcast interests, provides an omitted EEO program and corrects engineering. Since the amendment was required by Section 1.65 of the Commission's Rules, it will be accepted for Section 1.65 purposes only.

3. The transmitter sites proposed by Roberts and Brandt now meet all of the Commission's minimum mileage separation requirements. There is, however, a rulemaking proposal pending which would allocate Channel 42 to Athens, Tennessee. (RM 4814, Docket No. 84–378). If this proposal is adopted both Roberts and Brandt would be short-spaced to the reference point in Athens.[2] An issue would be required to determine whether circumstances exist which would warrant a waiver of the rule. In assessing the circumstances to determine whether a waiver would be warranted, the presiding Administrative law Judge would consider the fact that Lewis has specified a site which would comply with the separation requirements. Accordingly, a contingent issue which respect to the possible short-spaced proposals will be specified.

4. No determination has been made that the tower height and location proposed by Brandt would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applicants are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administration Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. In the event that the rulemaking proposal in Docket No. 84–378, proposing to allocate Channel 42 to Athens, Tennessee, is adopted, to determine, with respect to Gerald R. Roberts and Robin C. Brandt, whether each proposal would be consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and if not, whether circumstances exist which would warrant a waiver of the rule.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Robin C. Brandt would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that, Sandra J. Lewis' June 10, 1985, Motion to Accept late filed Pleading is granted and the accompanying amendment IS ACCEPTED for filing, for § 1.65 purposes only.

8. It is further ordered, that the Federal Aviation Administration is made a Party Respondent to this proceeding with respect to issue 2.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–21148 Filed 9–4–85; 8:45 am]

BILLING CODE 6712-01-M

[2] Section 73.610 of the Commission's Rules requires a minimum separation of 60 miles between a station operating on Channel 28 and a Channel 42 station or reference point. Roberts and Brandt would each be 5 miles short-spaced to the Athens reference point.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reducation Act of 1980.

Title of information collection: Annual Report of Trust Assets (OMB No. 3064–0024).

Background: In accordance with requirement of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for revising the information collection system identified above.

ADDRESS: Written comments regarding the submisslon should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington D.C. 20429.

Comments: Comments on this collection of information should be submitted within 15 days of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB approval to revise the Annual Report of Trust Assets, Form FFIEC 001. The report is prepared as of December 31 each year by financial institutions which operate trust departments. The revision involves relatively minor changes in one of the two current schedules, plus the addition of two new schedules on an as-applicable basis. The revised reporting would become effective with the report prepared as of December 31, 1985. The revision is the result of the work of an interagency committee of the Federal Financial Institution Examination Council (FFIEC). The reporting burden on FDIC-supervised banks for the revised report is estimated at approximately 3.5 hours per report.

Dated: August 29, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–21134 Filed 9–4–85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service; Performance Awards; Schedule for Awarding Bonuses

In accordance with the Office of Personnel Management directive dated July 21, 1980, the Federal Home Loan Bank Board hereby gives notice that SES

bonuses will be awarded on or after September 20, 1985.

For Further Information Contact: William R. Casey, Acting Director of Personnel, Federal Home Loan Bank Board, (202) 377–6050.

Jeff Sconyers,

Secretary to the Board, Federal Home Loan Bank Board.

[FR Doc. 85–21151 Filed 9–4–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003945–004.

Title: Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Maersk Line Pacific, Ltd. (Maersk)

Synopsis: Agreement No. 224–003945–004 modifies Agreement No. T–3945 between the Port and Maersk wherein the port assigned certain marine terminal facilities in the Port's Outer Harbor Terminal Area to Maersk. Agreement No. 224–003945–004 amends Agreement No. T–3945 to extend the time to December 31, 1985, in which Maersk may exercise its right to extend the term of Agreement No. T–3945 for an additional five years.

Agreement No.: 224–004173–001.

Title: Jeffersonville, Indiana, Terminal Agreement.

Parties:

Indiana Port Commission (IPC)

Merchants Grain and Transportation, Inc. (MGTI)

Synopsis: Agreement No. 224–004173–001 amends the basic agreement between the parties which provides for the lease by IPC to MGTI of premises at Clark Maritime Center, Jeffersonville, Indiana, to be used in handling cargo in connection with common carriers by water. The amendment modifies or eliminates the dates by which certain actions were to have been accomplished; modfies the legal description of the property under the lease; adjusts the rental accordingly; and, defines more clearly the location of non-exclusive rights of ingress and egress at the facility. All other provisions of the basic agreement will remain the same.

Agreement No.: 202–010636–010.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line (G.I.E.)

Dart-ML Limited

Hapag-Lloyd AG

Intercontinental Transport (ICT)

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States Lines, Inc.

Compagnie Generale Maritime (CGM)

Synopsis: On August 23, 1985, the parties filed a correction to their initial filing of amendment number 10 to the agreement. The initial filing was found to encompass matters not covered by exemptions granted in 46 CFR 572.307, requiring a refiling of the amendment. The proposed amendment would set forth rules and procedures for self-policing of the Conference membership. The parties have requested a shortened review period.

Agreement No.: 202–010637–008.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line (G.I.E.)

Dart-ML Limited

Hapag-Lloyd AG

Intercontinental Transport (ICT)

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States, Lines Inc.

Compagnie Generale Maritime (CGM)

Synopsis: On August 23, 1985, the parties filed a correction to their initial filing of amendment number 8 to the agreement. The initial filing was found to encompass matters not covered by exemptions granted in 46 CFR 572.307, requiring a refiling of the amendment. The proposed amendment would set forth rules and procedures for self-policing of the Conference membership. The parties have requested a shortened review period.

Agreement No.: 202–010693–004.

Title: Florida/Caribbean Liner Association.

Parties:

Bernuth Lines, Ltd.

Calypso Lines

West Indies Shipping Corp.

Tropical Shipping & Construction Co., Ltd.

Shipping Corporation of Trinidad and Tobago

Saquenay Shipping, Ltd.

TEC Lines, Ltd.

Sea-Land Service, Inc.

Concorde/Nopal Lines

Synopsis: The proposed amendment would permit the members of each conference section to exercise their right of independent action upon seven calendar days' notice to the Executive Director of the Association. The parties have requested a shortened review period.

Agreement No.: 221–010812.

Title: Philadelphia Marine Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)

Pasha Auto Warehousing, Inc. (PASHA)

Synopsis: The agreement provides that PPC will construct for sublease to PASHA a temporary contract automobile facility and a permanent facility for the loading, discharging, transfer, storage and processing of automobiles to be situated within or adjacent to the Port of Philadelphia. The compensation will be paid by PASHA to PPC and shall consist of a certain percentage of dockage and wharfage charges received by PASHA together with a throughput charge per vehicle. The term of the agreement shall commence as of the date of the completion of the temporary facility and shall end on the tenth anniversary thereof.

Agreement No.: 221–010813.

Title: Philadelphia Marine Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)

Pasha Auto Warehousing, Inc. (PASHA)

Synopsis: The agreement provides that PPC will provide PASHA space to operate an automobile facility within the Port of Philadelphia until such time as the construction of the temporary automobile facility provided under the agreement is completed. The compensation to be paid by PASHA to PPC shall consist of 100% of dockage and wharfage assessed at the facility assigned to PASHA.

Agreement No.: 224–010814.

Title: New York Terminal Agreement.

Parties:

Global Terminal & Container Service, Inc. (Global)

Compania Trasatlantica Espanola, S.A. (Spanish Line)

Synopsis: The agreement provides that Global will provide and perform at its marine terminal facility in the Port of New York, container terminal stevedoring and terminal services for

vessels owned by Spanish Line. Spanish Line agrees to utilize exclusively Global's premises for such services at the Port of New York. Spanish Line also appoints Global as its agent for the assessment, billing, collection and administration of free time and demurrage on cargo and container discharged at Global's premises.

Agreement No.: 224–010615.
Title: New York Terminal Agreement.
Parties:
Global Terminal & Container Service, Inc. (Global)
"Italia" di Navigazione, S.p.A. (Italian Line)

Synopsis: The agreement provides that Global will provide and perform, at its marine terminal facility in the Port of New York, container terminal stevendoring and terminal services for vessels owned by Italian Line. Italian Line agrees to utilize Global's premises exclusively for such services at the Port of New York. Italian Line also appoints Global as its agent for the assessment, billing, collection and administration of free time and demurrage on cargo and containers discharged at Global's premises.

Agreement No.: 224–010616.
Title: Wilmington, North Carolina Terminal Agreement.
Parties:
North Carolina State Ports Authority (Authority)
Yangming Marine Transport Corporation (Yangming)

Synopsis: The agreement provides that Yangming will transport through the Port of Wilmington, North Carolina, 50,000 tons of containerized cargo annually with a reduction of wharfage charges on tonnage in excess of 50,000 tons. The wharfage rates shall be assessed against all containerized cargo from, or loaded to, Yangming's vessels according to the Authority's Tariff No. 5, FMC No. T–6. The term of the agreement shall be for a period of one year commencing on the effective date as determined by the Commission with an option to extend for one additional term of two years.

Agreement No.: 224–010617.
Title: Portland Terminal Agreement.
Parties:
The Port of Portland (Port)
Johnson Line AB, The East Asiatic Company, Ltd., and Blue Star Line, Ltd., collectively operating as Johnson Scanstar;
Compagnie General Maritime and Intercontinental Transport (ICT) BV, collectively operating as Pacific Europe Express; and, Hapag-Lloyd AG, operating as Europe-Pacific Service (Lines)

Synopsis: Agreement No. 224–010617 provides for the use by the Lines of a berth, one container crane, and a second whenever available, complete with lifting beams, and a backup area at the Port's Terminal No. 6, to handle the Lines' cargo at the Port of Portland. The term of the agreement will be for two years, with an option to extend the term for an additional three years. The Port will provide the terminal and stevedoring services for the Lines at the premises. The percentage of the wharfage and dockage charges to be paid by the Lines to the Port are shown in the agreement. When this agreement becomes effective it will cancel and supersede Agreement No. T–4154.

Agreement No.: 224–010618.
Title: Anchorage Terminal Agreement
Parties:
Totem Ocean Trailer Express, Inc. (Totem)
Municipality of Anchorage (Anchorage)

Synopsis: The agreement covers a settlement between Totem and Anchorage which resulted from the allision between Totem's vessels and the Port of Anchorage pier in 1983 and 1985. The agreement settles the parties' claims arising out of the allisions. It provides that Totem will pay the costs of repairs to the piers as set out in the agreement.

Agreement No.: 224–010619.
Title: Anchorage Terminal Agreement.
Parties:
Totem Ocean Trailer Express, Inc. (Totem)
Municipality of Anchorage (Anchorage)

Synopsis: The agreement covers a settlement between Totem and Anchorage which resulted from the allision of Totem's vessels and the Port of Anchorage pier in 1983 and 1985. This agreement settles certain claims between the parties arising out of wear and tear damage to the dock. The agreement provides that Totem will pay half of the costs of repairing this damage and of constructing a new fendering system as set out in the agreement. The agreement also sets out the procedures for operating the new fendering system.

Dated: August 30, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–21187 Filed 9–4–85; 8:45 am]

BILLING CODE 6730-01-M

Request for Additional Information; Blue Star Line Ltd.

Agreement No.: 207–009973–012.
Title: Johnson Scanstar Service Agreement.
Parties: Blue Star Line Limited, East Asiatic Company Ltd. A/S, Johnson Line Aktiebolag.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C app. 1701–1720), has requested additional information from the parties to the agreement in order to complete the statutory review of Agreement No. 207–009973–012 as required by the Act. This section extends the review period as provided in section 6(c) of the Act.

By Order of the the Federal Maritime Commission.

Dated: August 30, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–21188 Filed 9–4–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens and Southern Georgia Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation*, Atlanta, Georgia; to engage *de novo* through its subsidiary, Citizens and Southern Investment Counseling, Inc., Atlanta, Georgia; as an investment and financial advisor, including the rendering of investment advice and portfolio management services to individuals, corporations, pension and profit sharing plans, private foundations and endowments pursuant to § 225.25(b)(4) of Regulation Y.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Inland Mortgage Corporation, Indianapolis, Indiana, in the origination of FHA, VA and conventional mortgage loans. Comments on this application must be received not later than September 24, 1985.

Board of Governors of the Federal Reserve System, August 29, 1985.

James McAfee,

Associate Secretary of the Board.

FR Doc. 85-21116 Filed 9-4-85; 8:45 am]

BILLING CODE 6210-01-M

Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bancorp, Inc.*, Rhinebeck, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Rhinebeck, Rhinebeck, New York.

B. Federal Reserve Bank of Atlanta (Robert R. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Sunbelt Bancshares, Inc.*, Tifton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Tifton, Tifton, Georgia. Comments on the application must be received not later than September 27, 1985.

2. *Williamson County Bancorp, Inc.*, Franklin, Tennessee; to merge with Planters Financial Corporation, Hopkinsville, Kentucky. Comments on this application must be received not later than September 25, 1985.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 100 percent of the voting shares of Chemical Bank West, Cadillac, Michigan (in organization). Comments on this application must be received not later than September 25, 1985.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Lancaster Bancshares, Inc., Lancaster, Wisconsin, thereby indirectly acquiring Lancaster State Bank, Lancaster, Wisconsin. Comments on this application must be received not later than September 26, 1985.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire 100 percent of the voting shares of Financial and Property Management, Inc., Emporia, Kansas and thereby indirectly acquiring its subsidiary, Educators Investment Company of Kansas, Inc., Emporia, Kansas (direct and indirect parents of Citizens National Bank and Trust Company of Emporia, Emporia, Kansas).

Board of Governors of the Federal Reserve System, August 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21117 Filed 9-4-85; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, October 24, and Friday, October 25. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The October 24 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The October 25 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Possible Revision of the Advertising Rules of Regulation Q.* Discussion of possible revisions to the Board's regulation governing the advertising of deposit accounts.

2. *Tie-Ins In the Granting of Consumer Credit.* Discussion of the extent to which certain creditors engage in a practice whereby credit insurance is automatically sold to consumers without their explicit request or knowledge.

3. *Disclosures for Adjustable Rate Mortgages.* Discussion of the Board's proposal to expand the required Truth in Lending disclosures given to consumers obtaining adjustable rate mortgages.

4. *Emerging Technologies.* Presentation to inform Council members about technological developments in the delivery of consumer financial services. (This presentation is being arranged by the Council's Ad Hoc Committee on Emerging Technologies.)

5. *Basic Banking Services.* Status report by the Council's Ad Hoc Committee on Service Charges about its efforts to date in exploring issues pertaining to so-called basic or "lifeline" banking—whereby financial institutions might offer a minimum level of financial

services to individuals with limited funds at low or no cost.

6. *Implementation of the Community Reinvestment Act (CRA) by the Federal Reserve.* Status report by the Council's Ad Hoc Committee on the Community Reinvestment Act about its efforts to date in exploring how Federal Reserve examiners evaluate various CRA activities by banks and otherwise use the existing CRA rating system.

7. *Expanded Powers for Financial Institutions* (Tentative). Brief status report by the Council's Ad Hoc Committee on Changes in Financial Organization on the issues that it has targeted for further committee study and eventual Council consideration.

8. *Regulatory Update.* Status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Monday, October 21, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452–3204; or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) at (202) 452–3244.

Board of Governors of the Federal Reserve System, August 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–21115 Filed 9–4–85; 8:45 am]

BILLING CODE 6210–01–M

Federal Open Market Committee; Domestic Policy Directive of July 9–10, 1985

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on July 9–10, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests some pickup in the expansion of economic activity in recent months following virtually no growth in the first quarter. Total retail sales rose on balance in April and May to a level appreciably above the average for the first quarter, and housing starts held earlier gains after rising substantially in the first quarter. Information on business capital spending suggests further growth, though at a much less rapid pace than earlier in the economic expansion. Industrial production declined slightly in April and May after rising little over the first quarter. Total nonfarm payroll employment increased at a somewhat reduced pace in May and June with employment in manufacturing registering further declines. The civilian unemployment rate remained at 7.3 percent in June, unchanged since February. Broad measures of prices and wages appear to be rising at rates close to those recorded in 1984.

Since the Committee's meeting in May, the tradweighted value of the dollar against major foreign currencies has generally moved within a relatively narrow range but recently has declined to a level below its April low. The merchandise trade deficit in April-May widened from the first-quarter rate as both agricultural and nonagricultural exports fell, while imports remained close to their high first-quarter level.

M1 expanded very rapidly in May and June after growing at a moderate pace in the preceding two months. The broader aggregates also grew more rapidly in May and June after slowing appreciably earlier. From the fourth quarter of 1984 through June, M1 grew at a rate well above the Committee's range for 1985; M2 increased at a rate around the upper end of its longer-run range; while M3 expanded at a rate in the upper half of its range. Expansion in total domestic nonfinancial debt slowed a little in the second quarter but remained high relative to the Committee's monitoring range for the year. Interest rates have declined somewhat further since the May meeting of the Committee.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee at this meeting reaffirmed ranges for the year of 6 to 9 percent for M2 and 6 to 9½ percent for M3. The associated range for total domestic nonfinancial debt was reaffirmed at 9 to 12 percent. With respect to M1, the base was moved forward to the second quarter of 1985 and a range was established at an annual growth rate of 3 to 8 percent. The range takes account of expectations of a return of velocity growth toward more usual patterns, following the sharp decline in velocity during the first half of the year, while also recognizing a higher degree of uncertainty regarding that behavior. The appropriateness of the new range will continue to be reexamined in the light of evidence with respect to economic and financial developments including developments in foreign exchange markets. More generally, the Committee agreed that growth in the aggregates may be in the upper parts of their ranges, depending on continuing developments with respect to velocity and provided that inflationary pressures remain subdued.

For 1986 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1985 to the fourth quarter of 1986, of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9 percent for M3. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1986. With respect to M1 particularly, the Committee recognized that uncertainties surrounding recent behavior of velocity would require careful reappraisal of the target range at the beginning of 1986. Moreover, in establishing ranges for next year, the Committee also recognized that account would need to be taken of experience with institutional and depositor behavior in response to the completion of deposit rate deregulation early in the year.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M2 and M3 at an annual rate of around 7½ percent during the period from June to September, and with a substantial slowing of M1 growth to an annual rate of 5 to 8 percent. Somewhat lesser reserve restraint might be acceptable in the event of substantially slower growth of the monetary aggregates while somewhat greater restraint would be acceptable in the event of substantially higher growth. In either case such a change would be considered in the context of appraisals of the strength of the business expansion, progress against inflation, and conditions in domestic credit and foreign exchange markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, August 28, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85–21119 Filed 9–4–85; 8:45 am]

BILLING CODE 6210–01–M

RIHT Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

[1] The Record of policy actions of the Committee for the meeting of July 9–10, 1985, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *RIHT Financial Corporation*, Providence, Rhode Island; to acquire American Financial Systems Corporation, Tampa, Florida, thereby engaging in marketing, origination, underwriting, funding, warehousing and packaging for its own account and for the account of others of loans and extensions of credit secured by real estate, and the sale of such loans and extensions of credit in the secondary market. Applicant has also applied to engage in the sale of credit life and credit accident and health insurance in connection with extensions of credit made by the bank holding company or its subsidiaries, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, August 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21116 Filed 9-4-85; 8:45 am]

BILLING CODE 6210-01-M

Colony Bankcorp, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 13, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Colony Bankcorp, Inc.*, Fitzerald, Georgia; to acquire 100 percent of the voting shares of Bank of Dodge County, Chester, Georgia.

Board of Governors of the Federal Reserve System, September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21286 Filed 9-4-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18A, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acqusitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0903—Nevada-California Land Company, Inc.'s, (John B. Anderson, UPE proposed acquisition of voting securities of Getty Agricultural Business, Inc., (Texaco, Inc., UPE).	Aug. 14, 1985.
(2) 85-0943—Cardinal Communications Inc.'s proposed acquisition of assets of Teleosystems Corporation and Video Service Company, (Cox Enterprises, Inc., UPE).	Do.
(3) 85-0946—R.B. Davenport, III's proposed acquisition of voting securities of The Krystal Company.	Do.
(4) 85-0964—Cox Enterprises, Inc.'s proposed acquisition of assets of WFTV, Orlando, FL, (Warburg, Pincus & Co., UPE).	Do.
(5) 85-0905—Dr. Felix Tschudi's proposed acquisition of assets of ("Lyons Falls Division), (Georgia-Pacific Corporation, UPE).	Aug. 15, 1985.
(6) 85-0830—Norlek, Inc.'s proposed acquisition of voting securities of Dixie-line Lumber Company, (Weyerhaeuser Company, UPE).	Do.
(7) 85-0952—Transworld Corporation's proposed acquisition of voting securities of Interstate United Corporation, (Hanson Trust PLC, UPE).	Do.
(8) 85-0976—Heck's, Inc.'s proposed acquisition of voting securities of Maloney Enterprises, Inc.'; Maloney's of Logan, Inc.; Maloney's of West Hamlin, Inc.; and Maloney's of Hindman, Inc., (Charles E. Padgett, UPE).	Do.
(9) 85-0987—The Signal Companies' proposed acquisition of voting securities of the wholly-owned Canadian subsidiaries of Allied, FRAM Canada, Inc., Bendix Heavy Vehicle Systems, Inc., Allied Chemical Canada, Limited, Allied Canada, Inc., (Allied Corporation, UPE).	Do.
(10) 85-0991—National Intergroup, Inc.'s proposed acquisition of voting securities of The Permian Corporation.	Do.
(11) 85-0993—Raymond G. Chambers' proposed acquisition of voting securities of National Intergroup, Inc.	Do.
(12) 85-0994—William E. Simon's proposed acquisition of voting securities of National Intergroup, Inc.	Do.
(13) 85-0924—Anthony Industries, Inc.'s proposed acquisition of voting securities of Silca Corporation, BankAmerica Corporation, UPE).	Do.
(14) 85-0913—Tribune Company, Inc.'s proposed acquisition of voting securities of Golden West Television Holding Company, (Golden West Associates, L.P., UPE).	Aug. 19, 1985.
(15) 85-0917—Winn Enterprises' proposed acquisition of voting securities of Meyer Dairy, Inc., (Wetterau, Incorporated, UPE).	Do.
(16) 85-0926—CIBA-GEIGY Limited's proposed acquisition of assets of Genentech, Inc.	Do.

Transaction	Waiting period terminated effective
(17) 85-0956—Universal Foods Corporation's proposed acquisition of voting securities of California Cheese Company. (Angelo Marino Trust, UPE).	Do.
(18) 85-0960—Boral Limited's proposed acquisition of assets of Henderson Clay Products, Inc.	Do.
(19) 85-0961—Dairy Mart Convenience Stores' proposed acquisition of voting securities of the Lawson Company, (Sara Lee Corporation, UPE).	Do.
(20) 85-0969—Bergen Burnswig Corp.'s proposed acquisition of assets of Cibcos, Inc., (Messrs. Jeffrey Kleckner, UPE).	Do.
(21) 85-0970—Bergen Burnswig Corp.'s proposed acquisition of assets of Cibcos, Inc., (Burton Rudder, UPE).	Do.
(22) 85-0941—United Biscuits (Holdings), plc's proposed acquisition of assets of the Olive Division, (Early California Industries, Inc., UPE).	Aug. 20, 1985.
(23) 85-0968—Paracelsus Healthcare Corporation's, (Dr. med. Hartmut Krukemeyer, UPE proposed acquisition of assets of Owens-Illinois, Inc.	Do.
(24) 85-0978—George N. Gillett, Jr.'s proposed acquisition of voting securities of Vail Associates, Inc., (Bass Trust Two, UPE).	Do.
(25) 85-0996—Gulf Canada Limited's proposed acquisition of voting securities of Abitibi-Price, Inc.	Do.
(26) 85-1005—Grand Metropolitan Public Limited Company's proposed acquisition of voting securities of Pearle Health Services, Inc.	Do.
(27) 85-1006—Grand Metropolitan Public Limited Company's proposed acquisition of voting securities of Pearle Health Services, Inc.	Do.
(28) 85-1007—Grand Metropolitan Public Limited Company's proposed acquisition of voting securities of Pearle Health Services, Inc.	Do.
(29) 85-0948—The Pillsbury Company's proposed acquisition of voting securities of Joan of Arc Company, (Raffinerie Tirlemontoise, S.A., UPE).	Aug. 21, 1985.
(30) 85-0955—Holderbank Financiere Glaris Ltd.'s proposed acquisition of assets of Hagerstown and Baltimore, MD, operations of Marquette Company, (Lone Star Industries, Inc. UPE).	Do.
(31) 85-1009—Southern Dairies, Inc.'s, (Michael C. Cameron, UPE) proposed acquisition of assets of IC Industries, Inc. plus voting securities of Spartanburg Dairy, Inc., (I.C. Industries, Inc., UPE).	Aug. 23, 1985.
(32) 85-1018—Air Products and Chemicals, Inc's proposed acquisition of voting securities of Getty Synthetic Fuels, Inc., (Texaco, Inc., UPE).	Do.
(33) 85-1033—Imperial Chemical Industries, PLC's proposed acquisition of voting securities of Garst Seed Company.	Do.
(34) 85-0949—Vickers PLC's proposed acquisition of assets of Teca Corporation, (J. Morton Davis, UPE).	Do.
(35) 85-0981—CIBA-GEIGY, Ltd.'s proposed acquisition of assets of American Optical Corp. and voting securities of Optical Associated Technologies Corp. and Young Contact Lens Laboratories, Inc.	Do.
(36) 85-0989—H. Group Holding, Inc.'s proposed acquisition of voting securities of Conwood Corporation.	Do.
(37) 85-0990—H. Group Holding, Inc.'s proposed acquisition of voting securities of Conwood Corporation.	Do.
(38) 85-0980—Martin T. Soanoff's proposed acquisition of voting securities of Caesars World, Inc.	Aug. 26, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580. (202) 523-3894.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-21140 Filed 9-4-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N-0240; DESI 1786]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Single-Entity Coronary Vasodilators; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug applications (NDA's) for certain single-entity coronary vasodilators containing pentaerythritol tetranitrate (PETN) for which FDA offered an opportunity for a hearing, but for which no hearing was requested. These products lack substantial evidence of effectiveness for the prophylactic treatment of angina pectoris.

EFFECTIVE DATE: October 7, 1985.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 1786 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 15, 1984 (49 FR 40213), the Director of the Center for Drugs and Biologics revoked a temporary exemption for certian single-entity coronary vasodilators containing PETN. The exemption permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on the proposal to withdraw approval of the NDA's for these products. The proposal was based on the lack of substantial evidence that these drugs are effective as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5).

As state in the notice of opportunity for hearing, the failure to request a hearing constitutes an election not to make use of the opportunity for a hearing. Accordingly, this notice withdraws approval of the following new drug applications for which no hearing was requested:

1. NDA 16-555; Pentaerythritol Tetranitrate Tablets containing 10 milligrams (mg) and 20 mg PETN; Zenith Laboratories, Inc., 140 LeGrand Ave., Northvale, NJ 07647.

2. ANDA 86-086; Pentaerythritol Tetranitrate Tablets containing 20 mg PETN; Danbury Pharmacal, 131 West St., Danbury, CT 06810.

3. ANDA 87-528; Pentraspan Capsules (contolled release) containing 80 mg PETN; Vitarine, Division of Phoenix Pharmaceuticals, 227-15 North Conduit Ave., Springfield Gardens, NY 11413.

4. ANDA 87-529; Pentaerythritol Tetranitrate Capsules (controlled release) containing 80 mg PETN; Vitarine.

5. ANDA 87-640; Peritrate SR Capsules (controlled release) containing 80 mg PETN Parke-Davis, Division of Warner Lambert Co., (Parke-Davis), 201 Tabor Rd., Morris Plains, NJ 07950.

6. ANDA 87-690 Pentaerythritol Tetranitrate Tablets containing 20 mg PETN; Vangard Laboratories, 101-107 Sampson St., Glasgow, KY 42141.

Any drug product that is identical, related, or similar to these products and is not the subject of an approved new drug application or a pending hearing request is covered by the new drug applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Divisin of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of the applications listed above, and all their amendments and supplements, is withdrawn effective

October 7, 1985. Shipment in interstate commerce of these products or any identical, related, or similar product that is not the subject of an approved new drug application or a pending hearing request will then be unlawful.

This withdrawal of approval does not apply to the products listed below, named in the October 15, 1984 notice, for which a hearing was requested. The requests are now under review and will be the subject of a future Federal Register notice. Marketing of the following nine products may continue pending a ruling on the hearing requests.

1. NDA 8–072; Peritrate Tablets containing 10 mg, 20 mg, and 40 mg PETN; Parke-Davis.

2. NDA 11–109; Peritrate SA (controlled release) Tablets containing 80 mg PETN (20 mg in the immediate release layer and 60 mg in the controlled release base); Parke-Davis.

3. NDA 12–311; Pentritol Tempules containing PETN; Armour Pharmaceutical Co., 303 South Broadway, Tarrytown, NY 10591.

4. NDA 12–748; Duotrate-45 Plateau Caps containing 45 mg PETN; Marion Laboratories, Inc., 10236 Bunker Ridge Rd., Kansas City, MO 64137.

5. NDA 16–457; Pentritol Tempules (controlled release capsules) containing 60 mg PETN; Armour Pharmaceutical Co.

6. NDA 16–470; Duotrate-30 Plateau Capsules containing 30 mg PETN; Marion Laboratories, Inc.

7. NDA 16–625; Pentaerythritol Tetranitrate Tablets containing 10 mg and 20 mg PETN; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Coplague, Long Island, NY 11726.

8. ANDA 86–193; Pentaerythritol Tetranitrate Tablets (controlled release) containing 80 mg PETN; Bolar Pharmaceutical Co.

9. ANDA 87–683; Pentaerythritol Tetranitrate Capsules (controlled release) containing 80 mg PETN; Inwood Laboratories/Forest, 300 Prospect St., Inwood, NY 11696.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82).

Dated: August 29, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85–21114 Filed 9–4–85; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

National Council on Health Planning and Development Steering Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1985:

Name: Steering Subcommittee of the National Council on Health Planning and Development.

Date and Time: September 19, 1985; 3:00 p.m.

Place: Conference Room A, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (Meeting by Conference Call). Due to the limited nature of the meeting, a conference call will be substituted for the regular scheduled meeting. Open for entire meeting.

Purpose: The objectives of the Steering Subcommittee are to (1) assist the Chairperson in planning the order and timing of agenda topics for full Council consideration and action to assure that the Secretary will receive advice and/or recommendations on each of its three areas of functional responsibilities under section 1503(a) in an appropriate time and manner; (2) coordinate information about and among subcommittee activities and plans; and (3) provide preliminary review of proposed changes in Council operations.

Agenda for the meeting: (1) Discussion of Agenda for Fall plenary session of the Council; (2) status reports on the Office of Health Planning and Office of Health Facilities; and (3) other Council business.

Anyone requiring information regarding the subject Subcommittee should contact Mrs. Diane A. McMenamin, Executive Secretary, National Council on Health Planning and Development, Bureau of Health Maintenance Organizations and Resources Development, Room 11–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–6377.

Agenda items are subject to change as priorities dictate.

Dated: August 30, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 85–21206 Filed 9–4–85; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of October 1985:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 17–18, 1985, 8:30 am.

Place: Linden Hill Hotel; Queensbury Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open October 17, 8:30 am to 9:30 am.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of October 17 from 8:30 am to 9:30 am will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Care Technology Study Section.

Date and Time: October 23–25, 1985, 8:00 pm.

Place: Jesuit Retreat House, Bellarmine Room 622 University Avenue, Los Altos, California 94022.

Open October 23, 8:00 pm to 9:00 pm.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:00 pm to 9:00 pm on October 23 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code,

Appendix 2 and Title 5, U.S.C. 552(b)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetintg, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152; Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Services Research Review Suibcommittee.

Date and Time: October 10–11, 1985, 8:00 am.

Place: Linden Hill Hotel, Pinehurst Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open October 10, 8:00 am to 9:00 am.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Service Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting on October 10 from 8:00 am to 9:00 am will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applicaitons. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: August 27, 1985.

John E. Marshall,

Director, Notional Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85–21096 Filed 9–4–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plats of Survey

August 23, 1985.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., August 23, 1985.

The plat representing the dependent resurvey of the south boundary, T.4 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 696, was accepted July 9, 1985.

The plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, subdivisional lines, and certain mineral claims; the survey of the subdivision of section 12, and the survey of lot 22 in section 12, T. 44 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group No. 760, was accepted July 16, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat, in six sheets, representing the dependent resurvey of a portion of the south boundary, subdivisional lines, and certain tract lines, and the survey of the subdivision of certain sections, T. 2 N., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 742, was accepted July 16, 1985.

The plat representing the dependent resurvey of a portion of the south and east boundaries, a portion of the subdivisional lines, and a portion of certain tract lines, and the survey of the subdivision of certain sections, T. 2 N., R 94 W., Sixth Principal Meridian, Colorado, Group No. 742, was accepted July 16, 1985.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of section 25, T. 45 N., R. 1½ W., New Mexico Principal Meridian, Colorado, Group No. 740, was accepted July 12, 1985.

The plat representing the dependent resurvey of the south, west, and north boundaries, and the subdivisional lines, and the survey of the subdivision of sections 12 and 25, T. 46 N., R. 1½ W., New Mexico Principal Meridian, Colorado, Group No. 740, was accepted July 12, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–21201, Filed 9–4–85; 8:45 am]

BILLING CODE 4310–84–M

[N–39976]

Nevada; Realty Action; Noncompetitive Sale of Public Lands Located in Humboldt County, NV

The following described public land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 46 N., R. 33 E.,
Sec. 36, S½SW¼SE¼SW¼
Containing 5 acres more or less.

The sale is consistent with the Bureau's planning system and the land is not needed for any other resource management program. The lands are not suitable for management by the Bureau of Land Management or any other Federal department or agency. The disposal action by the Bureau of Land Management conforms with the regulations contained in 43 CFR 2711.3–3(a)(5). This sale is being consummated by the Bureau of Land Management to resolve an occupancy problem that has occurred in King's River Valley, Nevada. The patent when issued, will contain the following reservations to the United States Federal Government:

1. A right-of-way for ditches and canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. *All mineral deposits together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Winnemucca District Office.

*The mineral interests having no known mineral values will be conveyed simultaneously with the conveyance of the surface estate. At the time of the sale, the purchaser will be required to remit a $50 nonreturnable fee. Failure to do so will result in cancellation of this direct sale.

3. An easement, 30 feet in width along the north boundary of the subject parcel, in favor of Humboldt County, for road and public utility purposes to insure continued access to public utilities and to perform road maintenance.

No grazing rights will be affected by this sale.

Detailed information concerning this sale is available for review at the Winnemucca District Office.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws. This segregation shall terminate upon issuance of patent, upon publication in the **Federal Register** of a notice of termination of segregation, or 270 days from the date this Notice is published in the **Federal Register**, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the date of this Notice. For a period of 45 days after the date of this Notice, interested parties may submit comments to the District Manager, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445. Any adverse comments will be reviewed by the State Director who may sustain, modify or vacate this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with applicable law.

Dated: August 28, 1985.

Frank C. Shields,

District Manager.

[FR Doc. 85-21150 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-HC-M

Colorado; Filing of Plats of Survey

August 27, 1985.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., August 27, 1985.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), a portion of the Ninth Guide Meridian West (east boundary), a prior of the subdivisional lines and mineral survey No. 19635, Mill Gulch Hope No. 4, and Mill Gulch Hope No. 5 lodes, and the survey of the subdivision of certain sections, T. 15 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 751 was accepted August 16, 1985.

The plat, representing the dependent resurvey of a portion of the subdivisional lines and a portion of certain tracts; the survey of the subdivision of section 14, and the metes-and-bounds survey of lot 6 in section 14, T. 4 S., R. 83 W., Sixth Principal Meridian, Colorado, Group No. 765, was accepted August 16, 1985.

The plat, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivision of section 2, and the metes-and-bounds survey of lot 10 in section 2, T. 5 S., R. 83 W., Sixth Principal Meridian, Colorado, Group No. 770, was accepted August 16, 1985.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivision lines, and the survey of the subdivision of sections 13, 23, and 24, T. 4 N., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 753, was accepted August 16, 1985.

The plat, representing the dependent resurvey of a portion of the First Standard Parallel North (south boundary), and a portion of the subdivisional lines; and the survey of the subdivision of sections 33 and 34, and the remonumentation of certain corners in T. 5 N., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 753, was accepted August 16, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South on the south boundary of Township 15 South, Ranges 86 and 87 West, and a portion of the subdivisional lines, and the survey of the subdivision of section 35, T. 15 S., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 743, was accepted August 16, 1985.

The plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines and the survey of the subdivision of certain sections, T. 50 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 743, was accepted August 16, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., October 16, 1985.

The plats representing the dependent resurvey of a portion of the south boundary, the east boundary, Homstead Entry Survey No. 151, and a portion of the subdivisional lines; the completion survey of a portion of the subdivisional lines and the survey of the subdivision of sections 11, 13, and 14, T. 51 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 743, was accepted August 16, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-21222 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-84-M

Land Resource Management; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted April 19, 1985, and June 20, 1985, were officially filed in the Montana State Office effective 8 a.m. on August 15, 1985.

Principal Meridian, Montana

T. 12 N., R. 12 W.

This plat, representing the dependent resurvey of a portion of the Third Standard Parallel North through Range 12 West, a portion of the West boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 6 and 8, Township 12 North, Range 12 West, Principal Meridian, Montana, was accepted April 19, 1985. The area described is in Powell County.

This survey was executed at the request of the Butte District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 24 N., R. 32 W.

This plat, in three sheets, representing the dependent resurvey of a portion of the Sixth Standard Parallel North, through Ranges 31 and 32 West, a portion of the east boundary, a portion of the subdivisional lines, and Homestead Entry No. 675; and the survey of the subdivision of sections 2, 4, 9, 10, 12, 14, 16, 17, 22, 24, 25, 26, and 27; and the dependent resurvey of a metes and bounds description of a warranty deed (Parcel B) in section 2, Township 24 North, Range 32 West, Principal Meridian, Montana, was accepted June 20, 1985. The area described is in Sanders County.

This survey was executed at the request of the U.S. Forest Service, Region 1.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: August 19, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-21200 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plats of Survey; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on August 16, 1985.

Willamette Meridian

WA T. 37 N., R. 1 E.
WA T. 38 N., R. 1 E.
WA T. 37 N., R. 2 E.
WA T. 38 N., R. 2 E.

All of the above-listed plats represent dependent resurveys.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 27, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-21122 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-33-M

[M-60358]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-60358—Exchange of public and private lands, in Petroleum County, Montana.

SUMMARY: This exchange will be between the United States of America and Petroleum County. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 14 N., R. 26 E.,
Sec. 2, Lots 1-4, S½N½.
T. 14 N., R. 27 E.,
Sec. 6, Lots 1-10 of Block 13, Rimrock Addition to the town of Winnett.

Aggregating 328.584 acres.

In exchange for these lands, the United States Government will acquire the surface estate and mineral estate with the exception of oil and gas in the following described land:

Principal Meridian Montana

T. 15 N., R. 28 E.,
Sec. 27, W½SW¼;
Sec. 28, NE¼SE¼;
Sec. 34, NW¼NW¼.
T. 17 N., R. 28 E.,
Sec. 21, NE¼, NW¼SE¼.

Aggregating 360.000 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. A reservation to the United States of oil and gas in the lands being transferred out of Federal ownership. Oil and gas shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available at this BLM Office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. A $500.000 value equalization by cash payment will be paid to the United States of America by Petroleum County.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

6. The exchange of these lands will be subject to all valid existing rights and reservations of record including the following rights-of-way: Mid Rivers Telephone M-049342 and State of Montana M-15847 and M-39335.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as we are acquiring land which will enhance recreational opportunities and public access.

Dated: August 27, 1985.

Roy H. Oliver,

Acting District Manager.

[FR Doc. 85-21121 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2606, Block 301, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on August 23, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executive of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: August 26, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21197 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Develoment Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on August 23, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 26, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21199 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals; Detroit Zoological Park

On March 8, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 46) that an application had been filed with the Fish and Wildlife Service by Detroit Zoological Park (PRT-690489) for a permit to anesthetize 7 captive polar bears and extract premolar teeth to be used for age determination research.

Notice is hereby given that on August 23, 1985, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 29, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-21189 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-278 (Preliminary)]

Certain Cast-Iron Pipe Fittings From Brazil; Suspension of Investigative Activity Pursuant to Court Order

AGENCY: U.S. international Trade Commission.

ACTION: Suspension of investigative activity in Inv. No. 731-TA-278 (Preliminary).

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Office of the General Counsel, 202-523-0148, or Brenda A. Jacobs, Office of the General Counsel, 202-523-1627.

SUPPLEMENTARY INFORMATION: Pursuant to a motion filed by counsel for Fundicao Tupy and Tupy American Foundry Corporation on August 21, 1985 with the U.S. Court of International Trade, the Court issued an ex parte temporary restraining order on August 21, 1985 restraining the Commission, its officers, agents, and employees, "from continuing its investigation of certain cast-iron pipe fittings from Brazil (Investigation No. 731-TA-278 (Preliminary))." The Court also ordered that a hearing be held on August 28, 1985 to require the Commission to show cause why plaintiffs' motion for a preliminary injunction should not be granted. Accordingly, the Commission is suspending its investigative activity with respect to this investigation pending further action by the Court.

Copies of all non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: August 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21194 Filed 9-4-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-212]

Certain Convertible Rowing Exercisers; Determination to Review and Reverse Initial Determination Terminating Five Respondents on the Basis of Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Review and reversal of initial determination (ID) that granted motions to terminate the investigation as to five respondents on the basis of consent orders.

SUMMARY: Notice is hereby given that the Commission has determined to review and reverse the ID of the presiding administrative law judge (ALJ) (Order No. 40) to terminate the above-captioned investigation on the basis of consent order agreements and proposed consent orders as to respondents Seasonal Merchandise Development Co., Ltd., Sunstar International Ltd., National Sporting Goods Corp., Shinn Fu Company of America, Inc., and Ever Young Industries Co., Ltd.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 523–0493.

SUPPLEMENTARY INFORMATION: The Commission is currently conducting an investigation, pursuant to its authority under section 337 of the Tariff Act of 1930, 19 USC 1337, to determine whether there are unfair methods of competition or unfair acts in the importation and sale of certain convertible rowing exercisers, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. On various dates, complainant Diversified Products Corp. and each of the above-named respondents moved to terminate the investigation as to that respondent on the basis of a consent order agreement and proposed consent order. The Commission investigative attorney opposed the motions. On July 22, 1985, the ALIJ issued an ID granting the motions (Order No. 40). The Commission has determined, pursuant to rules 210.55 and 210.56 (19 CFR 210.55 and 210.56), to review and reverse the ID on the ground that Commission rule 211.20 (19 CFR 211.20) requires that the Commission investigative attorney be a party to all motions to terminate an investigation on the basis of proposed consent orders.

Issued: August 23, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21190 Filed 9–4–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–203]

Certain Floppy Disk Drives and Components Thereof; Commission Decision of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Affirmance of the administrative law judge's (ALJ's) determination that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202–523–0480.

SUPPLEMENTARY INFORMATION: On April 26, 1985, the ALJ filed an initial determination (ID) that there is no violation of section 337 in the investigation.

On May 6, 1985, respondent Gold Star Tele-Electric Co., Ltd. (GST) appealed to the Commission the ALJ's denial of its motion for summary determination on the issue of domestic industry.

On May 29, 1985, the Commission ordered review of the initial determination (ID) in order to review the ALJ's conclusion that there is no violation of section 337 by reason of respondent's imports or sales.

The Commission determined to affirm the ALJ's denial of GST's motion for summary determination on the issue of domestic industry.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.56).

Notice of this investigation was published in the **Federal Register** of September 6, 1984 (49 FR 35257).

Copies of the Commission's Action and Order, the nonconfidential version of the Commission's Memorandum Opinion, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: August 29, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21193 Filed 9–4–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–221]

Certain Apparatus for Disintegration of Urinary Calculi

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on September 16, 1985, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, D.C., and the hearing will commerce immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: August 28, 1985.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 85–21192 Filed 9–4–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–244 (Final)]

Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–244 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China of natural bristle paint brushes, except artists' brushes, with or without handles, provided for in item 750.65 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). In respone to a request from counsel for the respondents, Commerce has extended the date for its final LTFV determination in this investigation to December 13, 1985. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make it final injury determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by January 27, 1986.

For futher information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subpart A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of

Commerce that imports of natural bristle paint brushes and brush heads from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 19, 1985 by the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, Washington, DC.

In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of this subject merchandise (50 FR 15238, April 16, 1985).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 6, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigtion beginning at 10:00 a.m. on December 19, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 12, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 13, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 16, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the preharing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analysis, and factural materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 27, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 27, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21195 Filed 9-4-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-211 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on October 16, 1985, to 10:00 a.m. on December 17, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1985, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for October 16, 1985 (50 FR 31930, August 7, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from September 30, 1985 to December 4, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section

735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by January 17, 1986.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 27, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on December 17, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 3, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 6, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 10, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Prehearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 24, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 24, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary of the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21196 Filed 9-4-85; 8:45 am]

BILLING CODE 7020-02-M

[332-218]

Information and Advice to Assist the President in a Review of the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: The Commission has instituted investigation No. 332-218, following receipt of letters on July 23 and August 12, 1985, from the United States Trade Representative (USTR). At the direction of the President, the USTR requested the Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information and advice to the President for each article that is currently designated as an eligible article under the Generalized System of Preferences.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Reuben Schwartz or Robert W. Wallace, project team leader, U.S. International Trade Commission, Washington, DC 20436 (telephone 202-523-0114 or 202-523-0120). For information on the legal aspects of the investigation, contact William W. Gearhart of the Commission's Office of the General Counsel at 202-523-0487. For information on a product basis, contact the most appropriate person of the Commission's Office of Industries as follows:

(1) Agricultural products, Mr. Robert Roeder (202-724-1170).

(2) Chemical products, Mr. James Emanuel (202-523-0334).

(3) Textiles and apparel, Ms. Jackie Worrell (202-523-0452).

(4) Minerals and metals, Mr. James Lukes (202-523-0279).

(5) Machinery and equipment, Mr. Harold Graves (202-523-0360).

(6) Miscellaneous manufactures, Mr. Mark Estes (202-724-0977).

SUPPLEMENTARY INFORMATION: The Generalized System of Preferences Renewal Act of 1984 (title V of the Trade and Tariff Act of 1984 (98 Stat. 3018; 19 U.S.C. 2461)) requires the President to complete a general review of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). The review is to be based on the considerations listed in sections 501 and 502(c) of title V of the Trade Act of 1974 (19 U.S.C. 2461, 2462(c)). Among the considerations listed in section 501 are the anticipated impact of actions taken in regard to duty-free treatment under the GSP on U.S. producers of like or directly competitive products, and the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Therefore, the Commission was requested by the USTR, at the direction of the President and pursuant to section 332(g) of the Tariff Act of 1930, to provide information and advice as follows:

(1) Advice as to the probable economic effect on domestic industries producing like or directly competitive articles and on U.S. consumers of the loss of GSP duty-free treatment for imports from the additional countries that would be affected if the competitive need limitations provided for in section 504(c)(2)(B) of the Trade Act of 1974 are applied. This advice should be prepared on the assumption that the limits are not applicable to imports from the beneficiary countries which will be exempt from all competitive need limits pursuant to section 504(c)(6) of the act;

(2) Information to assist the President in determining the competitiveness of each beneficiary country which has been a source of U.S. imports of the articles in 1982-84 relative to other beneficiary countries, developed countries, and U.S. producers of like or directly competitive products (except

those beneficiary countries exempt from all competitive need limits pursuant to section 504(c)(6) of the Trade Act of 1974;

(3) Advice as to whether a like or directly competitive article was produced in the United States on January 3, 1985; and

(4) Advice as to the probable economic effect on domestic industries producing like or directly competitive articles and on U.S. consumers of waiving competitive need limits for each article that has been accepted for review from any or all beneficiary countries.

To assist the President in his decisions, the Commission will furnish information concerning beneficiary country competitiveness with respect to an article, including the beneficiary's share of U.S. imports and its share of U.S. consumption of the product, its price competitiveness, its production capacity and degree of technological sophistication, and any other relevant information. The Commission's advice was requested to be presented in sufficient detail that each item of the Tariff Schedules of the United States which is currently designated as an eligible article under the GSP can be examined individually in the review with respect to each of the considerations specified above.

The USTR requested that the Commission submit its report on this investigation to the President not later than February 1, 1986.

Public Hearings and Prehearing Briefs

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 701 E Street, NW, Washington, DC 20436, beginning at 10:00 a.m. each day on October 22–25, 1985. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. Inernational Trade Commission, 701 E Street, NW, Washington, DC 20436, not later than noon, October 7, 1985.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but not later than October 15, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

All statements and written briefs should be in English and relate to the four areas noted above that the Commission will address in its response to the USTR. A description of the article(s) of interest, including the Tariff Schedules of the United States (TSUS) item number, if known, should be included. In addition, the country or countries of concern and/or the domestic industry likely to be affected by actions taken in regard to changes in duty-free treatment under the GSP should be identified.

Hearing-imparied individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: August 27, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21191 Filed 9–4–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 24243 (Sub-1)]

Railroads; Missouri-Kansas-Texas Railroad Co.—Trackage Rights Machens to St. Louis, MO—Chicago, Burlington & Quincy Railroad Co.; Exemption

Burlington Northern Railroad Company, succesor to Chicago, Burlington & Quincy Railroad Co., has agreed to continue to grant overhead trackage rights to Missouri-Kansas-Texas Railroad Company between Machens, MO, and St. Louis, MO, a distance of approximately 22.66 miles. The trackage rights renewal will be effective on September 1, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 28, 1985.

By the Commission,

James H. Bayne,

Secretary.

[FR Doc. 85–21172 Filed 9–4–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29018 (Sub-No. 1)]

Railroads; Missouri-Kansas-Texas Railroad Co.—Trackage Rights—Burlington Northern Railroad Co.; Exemption

Burlington Northern Railroad Company (successor to St. Louis-San Francisco Railway Company) has agreed to renew overhead trackage rights to Missouri-Kansas-Texas Railroad Company between Columbus, Kansas, and Oswego, Kansas, a distance of approximately 19.44 miles. The trackage rights agreement becomes effective on September 1, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–21173 Filed 9–4–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–26 (Sub—32X)]

Railroads; Southern Railway Co. & Southern Railway-Carolina Division—Discontinuance of Operations and Abandonment Exemption in Charleston, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of operations by the Southern Railway Company and abandonment by Southern Railway-Carolina Division of approximately 0.33 miles of rail line at Charleston, SC, subject to employee protective conditions.

DATES: This exemption will be effective on October 7, 1985. Petitions to stay must be filed by September 16, 1985 and petitions for reconsiderations must be filed by September 24, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB–26 (Sub-No. 32X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20433

(2) Petitioners' representative: Nancy S. Fleischman, Norfolk Southern Corporation, 1050 Connecticut Avenue NW Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 12, 1985.

By the Commission, Chairman Taylor, Vice Chariman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–21109 Filed 9–4–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc. and ADC Telecommunications, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification, on behalf of a joint venture between Bellcore and ADC Telecommunications, Inc. ("ADC"), simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting any potential antitrust damage liability of the joint venture to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

ADC is a Minnesota corporation with its principal place of business at 5501 Green Valley Drive, Minneapolis, Minnesota 55437.

Bellcore and ADC entered into a collaborative research agreement on July 30, 1985 seeking to better understand the applications for telecommunication exchange services and telecommunication exchange access services of an electronically controlled integrated circuit switching matrix for digital interconnection, and to demonstrate feasibility of such applications by developing experimental prototypes and experimental systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–21092 Filed 9–4–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Final Judgment in United States v. First National Supermarkets, Inc., et al., and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and a Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the Northern District of Ohio, Eastern Division, in *United States* v. *First National Supermarkets, Inc., et al.*, Civil No. C 80–1893. The Complaint in this case alleges that three retail grocery chains violated the Sherman Act by conspiring to fix, raise, stabilize, and maintain the advertised prices and everyday shelf prices of grocery products and the advertised prices of some meat items sold to consumers in Cuyahoga County, Ohio.

The proposed Judgment enjoins the defendants from participating in the alleged conspiracy and from communicating certain pricing information to any other person engaged in the retail sale of grocery products, meat items or produce items in Cuyahoga County.

The CIS describes the terms of the proposed Judgment and the background of the action and concludes that the proposed Judgment provides appropriate relief against the violation alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to John A. Weedon, Chief, Great Lakes Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court, Northern District of Ohio, Eastern Division

United States of America, plaintiff, v. First National Supermarkets, Inc., dba Pick-N-Pay Supermarkets: Fisher Foods, Inc., dba Fazio's; and Association of Stop-N-Shop Super Markets, defendants.

[Civil No. C 80–1893]

Judge Thomas D. Lambros

Filed: August 27, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 9, 1985.

For the Plaintiff. Charles F. Rule, *Acting Assistant Attorney General;* Joseph H. Widmar, David F. Hils, *Attorneys, Department of Justice;* Patrick M. McLaughlin, *United States Attorney.*

For the Defendants. John D. Leech, *Counsel for First National Supermarkets, Inc.;* John F. McClatchey, *Counsel for Fisher Foods, Inc.;* Paul L. Binder, *Attorney, Antitrust Division, Department of Justice, 995 Celebrezze Federal Blgd., Cleveland, Ohio 44199, Telephone: (216) 522–4083;* S. Lee Kohrman, *Counsel for Association of Stop-N-Shop Super Markets.*

United States District Court Northern District of Ohio Eastern Division

United States of America, Plaintiff, v. First National Supermarkets, Inc., dba Pick-N-Pay Supermarkets; Fisher Foods, Inc., dba Fazio's; and Association of Stop-N-Shop Super Markets, Defendants.

[Civil No. C 80-1883]

Judge Thomas D. Lambros

Filed: August 27, 1985.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on October 10, 1980, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendent under section 1 of the Sherman Act (15 U.S.C. 1).

As used in this Final Judgment:

(A) "Person means any individual, partnership, association, firm, corporation or other business or legal entity;

(B) "Grocery products" means dry groceries, dairy products, frozen foods, non-alcoholic beverages, pet foods, paper goods, detergents, and other such products commonly sold in a grocery store;

(C) "Meat items" means those portions of animals in whatever form, including beef, pork, and poultry, commonly sold in a grocery store;

(D) "Produce items" means fresh fruits and vegetables commonly sold in a grocery store;

(E) "Price checking" means an activity wherein an employee, agent, or third party on behalf of a defendant, physically enters a retail store of any competitor (including retail stores of another defendant herein) and inspects or records and reports the prices stamped, printed, or written on grocery products, meat items, or produce items;

(F) "Wholesaler" means any division or subsidiary of either defendant Fisher Foods, Inc. or First National Supermarkets, Inc., or any member of, or entity formed by one or more members of, defendant Association of Stop-N-Shop Super Markets, that engages in the sale at wholesale of grocery products, meat items, or produce items.

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, members, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply to any person to which any defendant transfers (a) only the stock or assets of a Wholesaler or (b) substantially less than all of the assets used in the retail sale of grocery products, meat items, or produce items.

IV

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing, or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items to determine, establish, fix, raise, maintain, or adhere to advertised retail prices, retail prices, or other terms or conditions for the retail sale of grocery products, meat items, or produce items.

Each defendant is enjoined and restrained from, directly or indirectly:

(A) Communicating to any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items, any information concerning the advertised retail prices, retail prices, or terms or conditions of sale at which grocery products, meat items, or produce items are or may be advertised or sold in Cuyahoga County, Ohio, or concerning consideration of changes or revisions in any such prices or terms of conditions of sale;

(B) Exchanging with or transmitting to or receiving from any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items, any information concerning present or future advertised retail prices or retail prices for grocery products, meat items, or produce items sold or to be sold in Cuyahoga County, Ohio;

(C) Requesting from any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items, any information or documents that said defendant could not communicate or transmit without violating subsections (A) or (B) hereof.

VI

Nothing in sections IV or V of this Final Judgment shall prohibit any defendant from:

(A) Communicating information to or obtaining information from any person in the course of, related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sale transaction with such person, including (1) any defendant or member of the defendant Association of Stop-N-Shop Super Markets communicating its retail prices or suggested retail prices to the supplier of those products or items to be priced, or (2) a Wholesaler communicating a manufacturer's suggested retail prices to the Wholesaler's retail customers, or (3) a Wholesaler (a) separately maintaining in its data processing equipment a record of the retail prices established and provided by each of its retail customers or separate retail customer groups, and (b) separately providing to each of its retail customers or separate retail customer groups, price books containing only the retail prices of that retail customer or retail customer group;

(B) Engaging in *bona fide* joint collective bargaining or *bona fide* collective bargaining through a common agent in the course of labor negotiations;

(C) Price checking; and

(D) Communicating information to advertising agencies, newspapers, radio stations, television stations and printers for the sole purpose of advertising the prices of grocery products, meat items, or produce items.

VII

Nothing in sections IV or V of this Final Judgment shall:

(A) Prohibit any person, except defendants First National Supermarkets, Inc. and Fisher Foods, Inc., from being a member of defendant Association of Stop-N-Shop Super Markets; or

(B) Prohibit any member of defendant Association of Stop-N-Shop Super Markets or any member of any organized group of retail stores from purchasing from a Wholesaler or from participating in cooperative buying and joint advertising activities.

VIII

(A) Defendants First National Supermarkets, Inc. and Fisher Foods, Inc. shall advise each of their officers and directors and each of their employees who has any responsibility for the pricing of grocery products, meat items, or produce items in Cuyahoga County, of its and his or her obligations under this Final Judgment.

(B) Defendant Association of Stop-N-Shop Super Markets shall advise each of its officers, directors, agents, employees and each of the employees of its members who has any responsibility for the pricing of grocery products, meat

items or produce items of its and his or her obligations under this Final Judgment.

(C) Each defendant is ordered and directed, with respect to the appropriate subsection (A) or (B) hereof, to:

(1) Furnish a copy of this Final Judgment to each of the persons described in either subsection (A) or subsection (B) hereof within thirty (30) days after the date of the entry of this Final Judgment;

(2) Furnish a copy of this Final Judgment to each successor to each person described in subsection (A) or (B) hereof within thirty (30) days after each successor becomes associated with the defendant;

(3) Obtain from each of those persons described in subsections (A) or (B), and (C)(2) hereof and furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

(4) Attach to each copy of this Final Judgment furnished to each of those persons described in subsections (A) or (B), and (C)(2) hereof, a statement, in substantially the form set forth in Appendix A attached hereto, advising each such person of his or her obligations, and of the defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him or her and upon the defendant for violation of this Final Judgment;

(5) Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of the persons described in subsections (A) or (B), and (C)(2) hereof, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year;

(6) Establish and implement a plan for monitoring compliance by the persons described in subsections (A) or (B), and (C)(2) hereof with the terms of the Final Judgment; and

(7) File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (C)(1), (4), (5), and (6) hereof.

(D) Each defendant shall file with the Court and serve upon the plaintiff annually on the anniversary date of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

IX

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of its assets used in the retail sale of grocery products, meat items or produce items in Cuyahoga County, that the acquiring party agree to be bound by the provisions of this Final Judgment. The selling defendant shall file with the Court and serve upon the plaintiff the written consent of the acquiring party to be bound by this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendfant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in an legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Appendix A

Notice

Re: United States v. First National Supermarkets, Inc., Fisher Foods, Inc., and Association of Stop-N-Shop Super Markets, Civil No. C 80-1893 (N.D. Ohio)

Attached hereto is a copy of a Final Judgment entered _____, 1985 in the captioned case. We are required to provide this to you. You should read it carefully. The provisions of the Final Judgment contained in Sections IV and V apply to you. If you violate these provisions, you may subject the company [or the Association of Stop-N-Shop Super Markets] to a fine and you may also subject yourself to a fine and imprisonment.

United States District Court, Northern District of Ohio, Eastern Division

United States of America, plaintiff, v. First National Supermarkets, Inc., dba Pick-N-Pay Supermarkets; Fisher Foods, Inc., dba Fazio's; and Association of Stop-N-Shop Super Markets, defendants.

[Civil No. C 80-1883]

Judge Thomas D. Lambros

Filed: August 27, 1985.

Competitive Impact Statement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On October 10, 1980, the United States filed a civil antitrust Complaint alleging that three retail grocery chains—First National Supermarkets, Inc., dba Pick-N-Pay Supermarkets ("First National"); Fisher Foods, Inc., dba Fazio's ("Fisher"); and the Association of Stop-N-Shop Super Markets ("Stop-N-Shop")—conspired to fix prices in violation of Section I of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that, beginning at least as early as August 1977 and continuing at least until October 1978, the defendants engaged in a combination and conspiracy to fix, raise, stabilize and maintain the advertised prices and everyday shelf prices of grocery products and the advertised prices of some meat items sold to consumers in Cuyahoga County, Ohio. As used in the Complaint, the term "grocery products" means dry groceries, dairy products, frozen foods, non-alcoholic beverages, pet foods, paper goods, detergents, and other such products commonly sold in a grocery store.

The Complaint seeks a judgment by the Court that the defendants engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also asks that the Court enjoin the defendants from such activities in the future.

The defendants in this action have previously pleaded *nolo contendere* to two criminal felony charges, one of which was the same combination and conspiracy alleged in this action. A fine of $800,000 was levied against each of the two corporate defendants, First National and Fisher. A fine of $100,000 was levied against defendant Stop-N-Shop. This civil case has been held in abeyance until the criminal charges were resolved.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

First National is a Massachusetts corporation doing business in Cuyahoga County, Ohio under the name "Pick-N-Pay." Pick-N-Pay, originally an Ohio corporation, was merged into First National on May 25, 1978. At the time the Complaint was filed, First National operated retail grocery stores in Ohio, New York and New England and was one of the fifteen largest food retailers in the United States.

Fisher was incorporated in Ohio in 1908. At the time the Complaint was filed, Fisher operated retail grocery stores in Ohio and Illinois.

Stop-N-Shop is a voluntary association of retail food chains, each of which owns and operates its own stores. The members of Stop-N-Shop advertised together, bought certain products together, and shared certain other services and costs.

During the period covered by the Complaint, First National, Fisher, and Stop-N-Shop were engaged in the retail sale of grocery products, meat and produce in Cuyahoga County, Ohio. During the same period, the defendants were among the leading retail sellers of grocery products, meat and produce in Cuyahoga County. In the period 1977 through 1978, the defendants had total gross sales in Cuyahoga County of approximately $1.1 billion.

The Complaint alleges that beginning at least as early as August 1977 and continuing at least until October 1978, the defendants engaged in a conspiracy to fix, raise, stabilize and maintain the advertised prices and everyday shelf prices of grocery products and the advertised prices of some meat items sold to consumers in Cuyahoga County.

The Complaint alleges that the combination and conspiracy to fix prices was in restraint of trade and commerce in violation of section 1 of the Sherman Act, as amended (15 U.S.C. 1). The conspiracy to fix prices had the following effects:

a. Advertised prices and everyday shelf prices of grocery products and advertised prices of some meat items sold in Cuyahoga County, Ohio were fixed, raised, stabilized, and maintained at artificial and non-competitive levels;

b. Competition in the retail sale of grocery products and some meat items sold in Cuyahoga County, Ohio was restrained; and

c. Consumers were deprived of the benefits of free and open competition in the market for the sale of grocery products and some meat items in Cuyahoga County, Ohio.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, section IV enjoins and restrains the defendants from entering into, adhering to, participating in, maintaining, furthering, enforcing, or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any person engaged in the retail sale in Cuyahoga County, Ohio, or grocery products, meat items, or produce items to determine, establish, fix, raise, maintain, or adhere to advertised retail prices, retail prices, or other terms or conditions for the retail sale of grocery products, meat items, or produce items.

Section V of the proposed Final Judgment enjoins the defendants from communications with each other or with any other retail grocer in Cuyahoga County about the prices or terms of sale of grocery products, meat items, or produce items. Specifically, the defendants are enjoined and restrained from directly or indirectly:

(A) Communicating to any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items, any information concerning the advertised retail prices, retail prices or terms or conditions of sale at which grocery products, meat items, or produce items are or may be advertised or sold in Cuyahoga County, Ohio, or concerning consideration of changes or revisions in any such prices or terms or conditions of sale;

(B) Exchanging with or transmitting to or receiving from any person engaged in the retail sale in Cuyahoga County, Ohio, of grocery products, meat items, or produce items, any information concerning present or future advertised retail prices or retail prices for grocery products, meat items, or produce items sold or to be sold in Cuyahoga County, Ohio;

(C) Requesting from any person engaged in the retail sale in Cuyahoga

County, Ohio, of grocery products, meat items, or produce items, any information or documents that said defendant could not communicate or transmit without violating subsections (A) or (B) hereof.

Since the defendants engage in a number of potentially legitimate activities that may involve communications about the prices of grocery products, meat items or produce items, Section VI of the proposed Final Judgment provides that certain activities are excluded from the prohibitions of sections IV and V. For example, Fisher has been engaged in wholesaling grocery products to independent grocery stores for several years. In order to compete in the wholesale grocery business, Fisher provides certain marketing services to its wholesale customers which enable its customers to compete with the larger grocery chains. In connection with these services, Fisher receives retail price information from its wholesale customers which it uses for case labeling and individual retail price books which enable the individual customer to keep track of the retail prices of the many items carried in its stores. Consistent with the intent of the proposed Final Judgment to prohibit *per se* unreasonable conduct but not to prohibit arrangements which may promote competition, section VI(A) excepts this activity from the prohibitions of the Final Judgment.

Section VI (B), (C), and (D) also excepts from the prohibitions of the Final Judgment *bona fide* collective bargaining activities, price checking and communications for the purpose of advertising. Price checking is an activity in which an agent or employee of a grocery store physically enters a competitor's retail store and records prices. Not only may price checking be pro-competitive, but any prohibition against price checking would be difficult to enforce.

Section VII provides that the Final Judgment does not prohibit any person, other than defendants First National and Fisher, from being a member of defendant Stop-N-Shop. Section VII also provides that the Final Judgment shall not prohibit any member of defendant Stop-N-Shop or any member of any organized group of retail stores from purchasing grocery products, meat items or produce items at wholesale from a defendant or participating in cooperative buying and joint advertising activities. Such activities, of course, remain subject to generally applicable principles of antitrust law.

Section VIII of the proposed Final Judgment orders the defendants to advise their officers and directors and their employees who have any responsibility for the pricing of grocery products, meat items or produce items, and in the case of defendant Stop-N-Shop, the employees of its members who have any responsibilities for the pricing of grocery products, meat items or produce items, of their obligations and their company's obligations under the Final Judgment. Section VIII also orders the defendants to furnish a copy of the Final Judgment to each of those persons; successors of those persons are also to be furnished a copy of the Judgment. Each copy of the Final Judgment so provided will have attached a statement informing the recipient that a violation of the Final Judgment could result in a fine for the company or for Stop-N-Shop and a fine and imprisonment for the recipients. Section VIII requires each defendant to hold a meeting every year for ten years at which the persons mentioned above are instructed on their obligations and their company's or Stop-N-Shop's obligations under the Final Judgment. The defendants are required to implement a plan for monitoring compliance of those persons with the Final Judgment.

Section III of the proposed Final Judgment makes the Judgment applicable to each defendant and to the officers, directors, agents, employees, subsidiaries, members, successors and assigns of each defendant, as well as all other persons in active concert or participation with any of them who have received actual notice of the the Final Judgment. The Final Judgment does not apply, however, to any person to which any defendant transfers only its wholesale food business or substantially less than all the assets used in the retail sale of grocery products, meat items, or produce items.

Section IX requires that, if a defendant sells all, or substantially all, of the assets of its retail food business in Cuyahoga County, the purchaser must agree to be bound by the Final Judgment.

Section XII makes the Final Judgment effective for ten year from the date of its entry.

Section XIII of the proposed Final Judgment states that entry of this Judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

Standard provisions similar to those found in other antitrust Final Judgments entered by consent are contained in section I (jurisdiction of the Court), section X (investigation and reporting requirements), and section XI (retention of jurisdiction by the Court).

It is anticipated that the relief provided by the proposed Final Judgment will have a salutary effect on competition in the retail food market in Cuyahoga County. Not only have the defendants been enjoined from future collusive behavior, but they are also required to provide copies of the Final Judgment to each of their officers, directors, and other persons with substantial responsibility for pricing of grocery products, meat items and produce items in Cuyahoga County. In addition, those people must meet annually to be instructed about their responsibilities under the Judgment. It is anticipated that these provisions will make future violations less likely.

IV

Remedies Available to Potential Private Plaintiffs

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as *prima facie* evidence in private litigation, pursuant to section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to John A. Weedon, Chief, Great Lakes Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216–522–4070). These comments and the Department's response to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is necessary. Further, section XI of the proposed Judgment provides that the Court retains jurisdiction over this action for the life of the Final Judgment and that the parties may apply to the Court for such

orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment after its entry.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b).

Respectively submitted,

John A. Weedon, David F. Hils, Paul L. Binder, *Attorney, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, Telephone: (216) 522–4063.*

[FR Doc. 85–21093 Filed 9–4–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that, on July 31, 1985, a proposed consent decree in *United States* v. *General Motors Corporation,* Civil Action No. 84–1583C(6), was lodged with the United States District Court for the Eastern District of Missouri. The proposed decree concerns General Motors' noncompliance with requirements imposed in a Prevention of Significant Deterioration (PSD) permit at its Wentzville, Missouri plant. The proposed consent decree requires the defendant to timely apply for and comply with new PSD limits and to pay $150,000 in past penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *General Motors Corporation,* D.J. Ref. 90–5–2–1–668.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Missouri, 414 United States Courthouse, 1114 Market Street, St. Louis, Missouri and at the Region VII, Office of the Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–21203 Filed 9–4–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Consent Decree Pursuant to Section 301 of the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 27, 1985, a proposed Consent Decree in *United States* v. *Texaco, Inc.,* Civil Action No. 85–2450–0, was lodged with the United States District Court for the Western District of Louisiana, Opelousas Division. The proposed Consent Decree concerns discharge of pollutants from off-shore oil and gas platforms, in excess of National Pollutant Discharge Elimination System permits.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Texaco, Inc.,* D.J. Ref. 90–5–1–1–2375.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building, 705 Jefferson St., Room 305, Lafayette, Louisiana, and at the Region VI office of the Environmental Protection Agency, Interfirst Building 2, Room 2735, 1201 Elm Street, Dallas, Texas. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–21204 Filed 9–4–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation of Dismissal Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 19, 1985 a proposed Stipulation of Dismissal in *United States* v. *Columbus Coated Fabrics, Division of Borden, Inc.,* Civil Action No. C2–78–966, was lodged with the United States District Court for the Southern District of Ohio. The proposed Stipulation dismisses the action upon payment of a $10,000 civil penalty.

The lawsuit was filed against Columbus Coated Fabrics (CCF) in September 1978 under section 113 of the Clean Air Act to enforce compliance with the State of Ohio's opacity and particulate emission regulations. In 1981, Ohio submitted revised regulations to the United States Environmental Protection Agency (U.S. EPA) for approval as part of an amended State Implementation Plan (SIP). The defendant has complied with these revised opacity and particulate emission regulations since July, 1981. In December 1982, the United States and CCF agreed on the terms of a Consent Decree that would have resolved the action upon payment of a $10,000 civil penalty. The Decree was to be entered upon U.S. EPA approval of the amended SIP. Several of the SIP provisions unrelated to the opacity and particulate emission revisions are still under review at U.S. EPA. In light of the Defendant's continued compliance with the revised regulations, and the delay in the approval of the SIP amendments, further delay in the resolution of the case is unnecessary.

The Department of Justice will receive comments relating to the proposed Stipulation of Dismissal for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v.

Columbus Coated Fabrics, Division of Borden, Inc., D.J. Ref. 90-5-2-1-99.

The proposed Stipulation of Dismissal may be examined at the office of the United States Attorney, Southern District of Ohio, 200 U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio, and at the office of the Regional Counsel, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois. Copies of the Stipulation for Dismissal may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Stipulation of Dismissal may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-21202 Filed 9-4-85; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correction Facility, Fairfield Township, Cumberland County, NJ

AGENCY: U.S. Department of Justice; Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

Summary

1. *Proposed Action.* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new medium security prison is needed in its system. A 280 acre tract of land in Fairfield Township, New Jersey is being evaluated for the site of the facility. The proposal calls for the construction of a 550-bed facility to house medium security inmates. Approximately 60-70 acres would be required for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, the following aspects will receive a detailed examination: Wetlands, threatened and endangered species, cultural resources, unique and prime farmlands, and socioeconomic impacts.

3. *Alternatives.* In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. *Scoping Process.* A number of meetings have been held with area officials and concerned citizens. Additional meetings including at least one public meeting will be held during September 1985.

5. *DEIS Preparation.* The DEIS should be available for public review and comment in November or December, 1985.

6. *Address.* Questions concerning the proposed action and the DEIS can be answered by:

Loy S. Hayes, Chief, Facilities Development and Operations, U.S. Bureau of Prisons, 320 First Street, N.W. Washington, D.C. 20534, Telephone: (202) 272-6535.

Dated: August 29, 1985.

Mary S. Galey,

Acting Chief, Office of Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice

[FR Doc. 85-21127 Filed 9-4-85; 8:45 am]

BILLING CODE 4410-05-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-56]

National Environmental Policy Act; Availability of Draft Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Aeronautics and Space Administration has prepared a draft Environmental Impact Statement (EIS) relating to Project Galileo. NASA has under development the Galileo mission to conduct detailed and long-term investigations of the Jupiter system. Comments on the draft EIS and on matters set forth therein are solicited from and may be submitted by State and local agencies and members of the public. Such comments should be submitted to Mr. Harry Mannheimer, Galileo Program Manager, Code EL, Washington, DC 20546. All comments must be received within 45 days of this Notice in order to be considered in the preparation of the final EIS.

Copies of the draft EIS may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue, SW, Washington, DC 20546.

(b) NASA/Ames Research Center (Building 201, Room 17), Moffett Field, CA 94035.

(c) NASA/Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(d) NASA/Goddard Space Flight Center (Building 8, Room 150), Greenbelt Road, Greenbelt, MD 20771.

(e) NASA/Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.

(f) NASA Johnson Space Center (Building 1, Room 136), Houston, TX 77058.

(g) NASA/Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.

(h) NASA/Langley Research Center (Building 1219, Room 304), Hampton, VA 23665.

(i) NASA/Lewis Research Center (Administration Building, Room 120), 2100 Brookpark Road, Cleveland, OH 44135.

(j) NASA/Marshall Space Flight Center (Building 4200, Room G-11), Marshall Space Flight Center, AL 35812.

(k) NASA/National Space Technology Laboratories (Building 1100, Room A-213), NSTL Station, MS 39529.

(l) NASA/GSFC-Wallops Flight Facility (Library Building, Room E-105), Wallops Island, VA 23337.

C. Robert Nysmith,

Associate Administrator for Management.

August 19, 1985.

[FR Doc. 85-21095 Filed 9-4-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the

Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 29th day of August 1985, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Acting Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total elements	Total isotope		
Transnuclear, Inc., Aug. 2, 1985, Aug. 2, 1985, XSNM02241.	93.3% enriched uranium	26.9	25.0	Fuel for HFR Grenoble	France.

[FR Doc. 85-21233 Filed 9-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8698]

Plateau Resources Limited; Draft Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA-1371 for Interim Shutdown of the Shootaring Canyon Uranium Processing Facility Located in Garfield County, Utah

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Draft Finding of No Significant Impact.

(1) *Proposed Action.* The proposed administrative action is to renew Source and Byproduct Material License SUA-1371 authorizing Plateau Resources Limited to maintain, in an interim shutdown mode, their Shootaring Canyon Uranium Processing Facility located in Garfield County, Utah.

(2) *Reasons for Draft Finding of No Significant Impact.* An Environmental Assessment was prepared and issued by the staff at the U.S. Nuclear Regulatory Commission's Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the interim shutdown period and during potential future operation. Documents used in preparing the assessment included operational data from the licensee's prior milling activities, the licensee's Environmental Report dated November 26, 1984, as revised by submittals of March 22, 1985, April 12, 1985, and August 13, 1985, and the Final Environmental Statement prepared by the Commission staff for the original Shootaring Canyon project license dated July, 1979. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment:

(a) The ground water monitoring program in effect at the Shootaring Canyon Facility is sufficient to detect releases and thereby minimize any impact on ground-water.

(b) Radiological effluents from the facility during indefinite shutdown of the mill will be continuously monitored, minimal, and well within regulatory limits.

(c) Environmental monitoring is comprehensive enough to detect any significant radiological releases from the mill during the shutdown mode.

(d) No additional radioactive wastes will be produced or disposed of in the tailings area during the shutdown period. The existing wastes will be reclaimed in accordance with applicable federal and state regulations.

In accordance with 10 CFR 51.339, the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the Federal Register.

This finding, together with the environmental assessment setting forth the basis for the finding, and other related environmental documents are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, CO and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 29th day of August, 1985.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, RIV.

[FR Doc. 85-21236 Filed 9-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos.: STN 50-454, STN 50-455 and STN 50-456]

Commonwealth Edison Co. Byron Station, Units 1 and 2, Braidwood Station, Unit 1; Exemption

I

Commonwealth Edison Company (the licensee) was issued Facility Operating License No. NPF-37 on February 14, 1985, which authorizes operation of Bryon Station, Unit 1 (the facility) at the steady-state power levels not in excess of 3411 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. Commonwealth Edison Company also owns Byron Station, Unit 2 and Braidwood Station, Units 1 and 2, which were issued Construction Permit Nos. CPPR-131, CPPR-132 and CPPR-133, respectively, on December 31, 1975. Byron Station, Units 1 and 2, and the Braidwood Station, Units 1 and 2, are pressurized water reactors located in Ogle and Will Counties, Illinois, respectively and each unit is designed for a core power level of 3411 megawatts thermal.

Section 50.71(e)(3)(i) of 10 CFR Part 50 requires that a revision of the original Final Safety Analysis Report (FSAR) be filed within 24 months of either July 22, 1980 or the date of issuance of the operating license, whichever is later. Thus, an updated FSAR for Byron Station, Unit 1, would have to be filed by February 14, 1987. By letter dated April 16, 1985, the licensee requested an exemption to defer submittal of the

updated FSAR for Byron Station, Unit 1, and two facilities that have not received their operating licenses, Byron Station, Unit 2, and Braidwood Station, Unit 1. The licensee proposed to delay submittal of the updated FSAR until approximately 12 months after Braidwood Station, Unit 2, receives its operating license on the basis that it is not practical to maintain an FSAR throughout the licensing of Byron Station, Unit 2, and Braidwood Station, Units 1 and 2, and also maintain an updated FSAR in accordance with 50.71(e)(3)(i) after each unit is licensed.

II

The staff has reviewed the licensee's request for the exemption. The licensee is maintaining a common FSAR for all four units—Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2. As stated in § 50.71(e), the FSAR is to be updated to assure that the information included in the FSAR contains the latest material developed. This intent will be met because the licensee will continue to update the present FSAR by providing periodic amendments throughout the licensing of the remaining units. Thus, the staff concludes that the requested exemption for Byron Station, Units 1 and 2, and Braidwood Station, Unit 1, is acceptable, and that the updated FSAR should be submitted within 12 months after Braidwood Station, Unit 2, receives its operating license.

The NRC staff considered safety aspects of the requested exemption from the updated FSAR submittal date. The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, the granting of the requested exemption will have no significant impact on plant safety.

The public interest will be served by granting the exemption since the purpose of maintaining a current FSAR will be met by compliance with 10 CFR 50.34 during the period of licensing review of Byron Unit 2 and Braidwood Units 1 and 2. In addition, the NRC review is simplified by granting the exemption.

Based on its review, the staff concludes that issuance of this exemption will have no significant effect on plant safety. Further, this action is in the public interest and good cause has been shown to support the exemption. Therefore, an exemption is being granted by the staff for the submittal of the updated FSAR for Byron Station, Units 1 and 2, and Braidwood Station, Unit 2, until 12 months after issuance of the operating license for Braidwood Station, Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (See 50 FR 24968, dated June 14, 1985).

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following temporary exemption from compliance with 50.71(e).

An updated FSAR for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, shall be filed within 12 months after issuance of the operating license for Braidwood Station, Unit 2. This updated FSAR, containing those original pages that are still applicable plus new replacement pages, shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the updated FSAR, with subsequent revisions no less frequently than annually thereafter. Any additional exemptions from compliance with 10 CFR 50.71 will be granted by the Director of Licensing only upon review and approval of a program plan containing comprehensive schedules or milestones for the submittal of an updated FSAR for Byron/Braidwood.

Dated at Bethesda, Maryland, this 27th day of August 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21235 Filed 9-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

River Bend Station, Unit No. 1 Gulf States Utilities and Cajun Electric Power Cooperative; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-40 to the Gulf States Utilities and Cajun Electric Power Cooperative (licensees), which authorizes operation of the River Bend Station Unit No. 1 (the facility) at reactor core power levels not in excess of 2894 megawatts thermal in accordance with provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of rated power (144.7 megawatts thermal). Authorization to operate beyond five percent rated power will require specific Commission approval.

The River Bend Station, Unit No. 1, is a boiling water nuclear reactor located approximately 2 miles east of the Mississippi River in West Feliciana Parish, Louisiana, approximately 2.7 miles southeast of St. Francisville, Louisiana and approximately 18 miles northwest of the city limits of Baton Rouge, Louisiana.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on September 4, 1981 (46 FR 44539-44540).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NPF-40 complete with Technical Specifications and the Environmental Protection Plan; (2) the interim report of the Advisory Committee on Reactor Safeguards, dated July 17, 1984; (3) the Commission's Safety Evaluation Report, dated May 1984, Supplement No. 1 dated October 1984, Supplement No. 2 dated August, 1985, and Supplement No. 3 dated August 1985; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated January 1985.

These items are available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW., Washington, D.C. 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of Facility Operating License NPF-40 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1, 2, and 3 (NUREG-0989) and the Final Environmental Statement (NUREG-1073) may be purchased at current rates

from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 29th day of August 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2 Division of Licensing.

[FR Doc. 85–21234 Filed 9–4–85; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Determination of Substantial Damage With Respect to Cessation of Contributions by DeHart Motor Lines, Inc., and United News Transportation Company to Trucking Employees of North Jersey Welfare Fund, Local 641

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Determination.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has made a determination of substantial damage under section 4203(d)(4) of the Employee Retirement Income Security Act with respect to the cessation of contributions under the Trucking Employees of North Jersey Welfare Fund, Local 641, by DeHart Motor Lines, Inc., and UNTCO, Inc. Section 4203(d) provides a special withdrawal rule for the trucking industry, under which a trucking employer that ceases contributions to a plan is considered not to have withdrawn from the plan if certain conditions are met, including the furnishing of a bond or escrow. After the bond/escrow requirement has been satisfied, the PBGC may make a finding under section 4203(d)(4) that the cessation (considered together with other cessations) has substantially damaged the plan's contribution base, in which case the employer will be treated as having withdrawn from the plan and the bond or escrow will be paid to the plan. Alternatively, the PBGC may find under section 4203(d)(5) that no substantial damage has been caused, in which case the bond will be canceled or the escrowed amount returned to the employer, and the employer will have no further liability under the plan. The effect of this notice is to advise interested persons of the PBGC's findings of substantial damage in these cases.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006; 202–254–4860 (202–254–8010 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203(d) of the Employee Retirement Income Security Act ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act ("MPPAA"), provides a special withdrawal rule for the trucking industry. That industry, for purposes of this rule, is considered to include the long and short haul trucking industry, the household goods moving industry, and the public warehousing industry. The rule is limited to trucking plans, *i.e.*, plans under which substantially all of the contributions required are made by employers primarily engaged in the trucking industry. The rule is also limited to trucking employers, *i.e.*, those employers that have an obligation to contribute under a trucking plan primarily for work in the trucking industry.

Under section 4203(d) ERISA, a trucking employer will not be considered to have withdrawn from a trucking plan merely because the employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, if certain conditions are met. One condition is that the employer must not continue to perform work within the jurisdiction of the plan. Another condition is that the employer must furnish a bond or establish an escrow account in an amount equal to 50 percent of its withdrawal liability.

After the bond is posted or the escrow established, the Pension Benefit Guaranty Corporation ("PBGC") may, within 60 months after the time when the employer's covered operations or obligation to contribute ceased, make a determination about the effect of the cessation (considered together with any cessations by other employers) on the plan's contribution base. If the PBGC makes a finding under section 4203(d)(4) that the contribution base has suffered substantial damage, the employer will be treated as having withdrawn from the plan on the date when the obligation to contribute or covered operations ceased. In that event, the bond or escrow will be paid to the plan, and the employer will be liable for the remainder of the withdrawal liability. If the PBGC finds under section 4203(d)(5) that no substantial damage has occurred, or if it does not make a finding of substantial damage under section 4203(d)(4) within the 60-month time period referred to above, then the bond will be cancelled or the escrow refunded and the employer will have no further liability under the plan.

The Requests

The Trucking Employees of North Jersey Welfare Fund, Local 641 (the "Fund") has determined that it is a trucking plan within the purview of ERISA section 4203(d). UNTCO, Inc. ("UNTCO") and DeHart Motor Lines, Inc. ("DeHart") were contributing employers under the Fund. They considered themselves, and were considered by the Fund, to be trucking employers subject to the provisions of section 4203(d). UNTCO ceased contributions to the Fund in September 1980; it has contributed for 24,570 base units in the plan year before its cessation. DeHart ceased contributions in March 1982; in the prior plan year it had contributed for 13,567 base units.

On April 16, 1984, the PBGC published (at 49 FR 15032) and 15033) a notice of the pendency of a request by DeHart for a finding that its cessation of contributions under the Fund had not substantially damaged the Fund's contribution base and a notice of the pendency of a request by the Fund for a finding that the cessation of contributions of UNTCO under the Fund had substantially damaged the Fund's contribution base. The Fund subsequently broadened its request for a finding of substantial damage to include the cessation of contributions by DeHart. (A request for a finding of no substantial damage was also made by TAF Delivery Systems, Inc., but has since been withdrawn.) The notices of pendency solicited comments by interested persons. The PBGC also corresponded with the Fund, DeHart and UNTCO to obtain information about the cessation of contributions by DeHart, UNTCO, and other employers, and the effect of those cessations on the Fund. The factual data in this notice are derived from information submitted by the parties. No other comments were received.

Decision

As noted above, each cessation must be considered within the context of other cessations under the same plan in determining its effect on the plan's contribution base. The statute does not limit this context to any specified time period, although, as a practical matter, the 60-month limitation on PBGC determinations restricts the context to five years after a cessation occurs. In these cases involving the Fund, DeHart and UNTCO, the PBGC has reviewed data from the period beginning five years before UNTCO's cessation and ending in 1984. However, because the issue in these determinations is the impact of the section 4203(d) trucking rule on the Fund, the PBGC has concentrated particularly on the period beginning on September 26, 1980, the effective date of MPPAA. (In other cases, the PBGC may find that other time periods are appropriate.)

For the plan year ended February 29, 1980 ("PYE 2/80"), the last plan year ending before September 26, 1980, the Fund's contribution base was about 5 million base units. The contribution base declined steadily from that level to about 2.7 million units in PYE 2/84. Thus, during the four-year period beginning with PYE 2/81 (when section 4203 became applicable) and ending with PYE 2/84, the Fund experienced a decline of about 2.3 million contribution base units, or approximately 46 percent.

During the same four-year period, 16 employers completely ceased contributions to the Fund. One of these cessations clearly occurred before September 26, 1980. The date of a second cessation—that of UNTCO—is a matter of controversy between the Fund and the employer. That controversy is discussed further below. However, the level of contribution base units for which UNTCO contributed—24,570 in PYE 2/80—is not high enough to change the analysis contained in this notice, whether UNTCO's cessation took place before September 26, 1980, or after September 25, 1980.

In almost every case, the number of base units contributed for by an employer that ceased contributing to the Fund declined over the period from PYE 2/77 to the last year before the cessation. The base units figure for an employer's last year of contributions is thus a conservative measure of the effect of the employer's withdrawal on the Fund's contribution base. On that basis, employers that completely ceased contributions to the Fund between September 26, 1980, and the end of PYE 2/84 accounted for about 1.3 million contribution base units, or approximately 26 percent of the Fund's total PYE 2/80 contribution base.

All but one of the employers that completely ceased contributing to the Fund between September 26, 1980, and the end of PYE 2/84 are characterized by the Fund as trucking employers. The one employer not so characterized is assumed for purposes of this discussion to be a non-trucking employer. Of the trucking employers, one paid its withdrawal liability in full and two settled the Fund's claims against them. The disposition of three other cases is unclear; they are assumed to have been settled. The remaining cessations represent a loss to the Fund of about 1 million contribution base units during the four-year period from PYE 2/81 to PYE 2/84, a decline of approximately 20 percent from the PYE 2/80 contribution base unit level.

The loss of contribution base units was accompanied by adverse financial circumstances during the period after September 25, 1980. As the Fund's contribution base declined steadily from PYE 2/80 through PYE 2/84, its average contribution rate steadily increased. Despite continually rising contribution rates, however, contributions dropped approximately 20 percent over the four years, from $6,370,604 in PYE 2/80 to $5,079,921 in PYE 2/84. The Fund's actuarial valuation as of March 1, 1984, warned that "[a]dequate funding of the [Fund] in the face of a reduced contribution base will require an increase in the average contribution rate." The valuation also noted that while the Fund was "expected to barely meet its scheduled actuarial cost for fiscal 1985," a pattern of borrowing against the next year's contributions would have to be continued in order to satisfy minimum funding requirements even if no further contraction were allowed for.

The PBGC finds that the cessation of contributions to the Fund by DeHart and UNTCO, considered together with cessations by other employers, has resulted in substantial damage to the Fund's contribution base. This finding is based on the following facts:

(1) Cessations of contributions accounted for a drop of about 26 percent in contribution base units over the period between the end of PYE 2/80 and the end of PYE 2/84; about three-quarters of this decline was attributable to cessations of contributions by trucking employers that have not paid withdrawal liability.

(2) The damage to the Fund's contribution base occurred at a time when the Fund's general financial condition was not good, despite significant increases in the average contribution rate.

As noted above, the date of UNTCO's cessation of contributions to the Fund is a matter of controversy between UNTCO and the Fund. If UNTCO's contentions are correct, its cessation of contributions occurred before September 26, 1980, and would thus not be subject to section 4203(d) of ERISA. The PBGC's determination of substantial damage in these cases does not constitute a finding that UNTCO ceased contributing to the Fund after September 25, 1980, or that UNTCO is subject to section 4203(d) (or to any provisions of MPPAA).

Issued at Washington, D.C., this 27th day of August, 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-21129 Filed 9-4-85; 8:45 am]
BILLING CODE 7708-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY:

(1) Collection title: Evidence of Maritial Relationship—Living With Requirements.

(2) Form(s) submitted: G–124, G–124a, G–237, G–238 and G–238a.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, State or local governments.

(6) Annual responses: 1,100.

(7) Annual reporting hours: 196.

(8) Collection description: Under the RRA, to obtain a benefit as the spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriages, termination of previous marriages, and residency requirements.

Additional information or comments: Copies of the proposed forms and supporting documents can be obtained

from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the infomation collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–21123 Filed 9–4–85; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–14200]

Application and Opportunity for Hearing; Wal-Mart Stores, Inc.

August 29, 1985.

Notice is hereby given that Wal-Mart Stores, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Art of 1939 (the "Act") for a finding that the trusteeship of Centerre Trust Company of St. Louis ("Centerre") under an existing indenture that has been qualified under the Act and another indenture that will be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Centerre from acting as trustee under either such indenture.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Applicant has entered into an indenture dated as of June 1, 1985 (the "June Indenture"), with Centerre, as trustee, pursuant to which the Applicant issued, on June 18, 1985, $15,500,000 principal amount of its Participating Mortgage Certificates due 2005 (the "PMC I's"). The PMC I's are secured by real estate mortgages covering the land, building, and improvements comprising nine of the Applicant's stores at various locations in Florida, set forth in Exhibit C to the application. All such PMC I's were registered under the Securities Act of 1933.

(2) The Applicant proposes to issue $25,000,000 principal amount of its Participation Mortgage Certificates II due 2005 (the "PMC II's") pursuant to an indenture dated August 1, 1985 (the "August Indenture") with Centerre as trustee. The PMC II's are secured by real estate mortgages covering the land, buildings and improvements comprising nine of the Applicant's stores at various locations in Florida, set forth in Exhibit D to the application.

(3) None of the stores comprising the security for the PMC II's issued under the August Indenture constitute security for the PMC I's issued under the June Indenture. Upon an event of default as defined in the August Indenture, Centerre may accelerate the maturity of the indebtedness evidenced by the PMC II's and foreclose only on the mortgaged properties covered by the August Indenture. Any proceeds realized from such foreclosures may be applied only towards the principal and interest evidenced by the PMC II's. The Applicant will be liable for any deficiency between any amounts realized from such foreclosure and any amounts due and payable to the PMC II holders under the terms of the August Indenture, and the amount of any such deficiency would be wholly unsecured obligations of the Applicant, ranking equally with any such unsecured amounts under the June Indenture.

(4) The terms of the June Indenture are substantially the same as those of the August Indenture, except that the mortgaged properties subject thereto are separate and distinct. The Applicant is not in default under the June Indenture.

(5) Such differences as may exist between the June Indenture and the August Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Centerre from acting as trustee under both such indentures.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document [File No. 22–14200] on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW. Washington, D.C.

Notice is further given that any interested person may, not later than September 23, 1985, request in writing that a hearing be held on such matter, stating the nauter of his interest, the reasons for such request, and the issues of fact or law raised by said application which be desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as th Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority

John Wheeler,

Secretary.

[FR Doc. 85–21156 Filed 9–4–85; 8:45 am.]

BILLING CODE 8010–01–M

[Release No. 34–22367; File No. S7–39–85]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2

AGENCY: Securities and Exchange Commission.

ACTION: Notice of filing of a plan between the Midwest Stock Exchange, Inc. ("MSE") and the Cincinnati Stock Exchange, Inc. ("CSE").

SUMMARY: The MSE and the CSE have filed a plan with the Securities and Exchange Commission which would allocate regulatory responsibility to the MSE with respect to a broker or dealer which is a member of the MSE and CSE ("dual member"). The plan would reduce regulatory duplication for dual members and would represent a more effective and efficient utilization of the

available resources of each self-regulatory organization.

DATE: Comments must be received by October 11, 1985.

ADDRESS: Persons wishing to submit written views, data and comments should file six (6) copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C 20549. All comments should refer to File No. S7–39–85. Copies of the submission and of all written comments will be available for public inspection at the Commission's Public Reference Room, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: France Maca at (202) 272–2789, Division of Market Regulatory, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Pursuant to Rule 17d–2(c) of the Securities Exchange Act of 1934 (the "Act"), 17 CFR 240.17d–2 (c), the Securities and Exchange Commission (the "Commission") is publishing notice that the MSE and CSE have filed with the Commission a plan for the allocation of regulatory responsibilities pursuant to Rule 17d–2.

I. Introduction

Section 19(g)(1) of the Act, among other things, requires every national securities exchange and registered securities association ("SRO") to examine for and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder and the SROs own rules unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2) of the Act. For a broker or dealer that maintains membership in more than one SRO ("common member"), the statutory obligation of the individual SROs, without this relief, could result in a pattern of multiple examinations of a common member. This would create unnecessary regulatory duplication and added expenses for a firm and the SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate overlaps and gaps in the regulatory pattern.[1] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

Rule 17d–1 under the Act, 17 CFR 240.17d–1, was adopted by the Commission on April 20, 1976.[2] The rule authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the Act and Commission and SRO rules and regulations relating to financial responsibility. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals with financial responsibility compliance snd no other aspect of an SRO's responsibilites. Thus, every SRO continues to be obligated, whether or not it is the DEA for the common member, to examine a common member for compliance with its own rules and provisions of the Act and rules and regulations thereunder governing matters other than financial responsibility. Such matters include sales practices and trading activities and practices.

On October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[3] The rule permits SROs to join in proposing plans for allocating the regulatory responsibilities imposed by the Act with respect to common members. Rule 17d–2(c) provides that the Commission will publish notice of the filing of the proposed plan and provide an opportunity for comment on the plan. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

The proposed plan filed by the exchanges is intended to reduce regulatory duplication for firms that are currently members of the MSE and CSE ("dual members"). A brief description of the general operation of the plan follows. The plan shall be applicable to those dual members for which the MSE has been appointed the DEA pursuant to Rule 17d–1.

A. Examination and Disciplinary Proceeding

The MSE will be responsible for examining for,[4] and enforcing compliance with the provisions of the Act, the rules and regulations thereunder, its own rules and comparable rules of the CSE ("comparable rules").[5] Each exchange will retain responsibility for marketplace surveillance. The MSE, however, will examine for compliance with, but not enforce, certain marketplace surveillance rules of the CSE.

Disciplinary investigations and poceedings involving dual members' and/or their associated persons' compliance with the provisions of the Act, the rules and regulations thereunder, the rules of the MSE and comparable rules of the CSE will be the responsibility of the MSE. Each exchange retains responsibility for conducting disciplinary investigations and proceedings related to marketplace surveillance rules. The MSE shall report to the CSE any apparent violations by a dual member and/or their associated persons of CSE's marketplace surveillance rules.

B. Membership Services

The MSE will be responsible for processing and approving or disapproving applications submitted by dual members on behalf of persons requiring approval by the rules of both the MSE and CSE. The MSE will be responsible for conducting appropriate examinations of a person subject to a statutory disqualification and for taking any action required. The MSE will be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices of dual members and any other applications required of dual members under the rules of both exchanges. The MSE will keep the CSE advised of its actions on branch offices and persons subject to a statutory disqualification. However,

---

[1] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 32 (1975).

[2] Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (1976).

[3] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[4] The MSE is responsible for condocting routine and cause on-site examinations, but the CSE reserves the right to participate in cause examinations.

Each exchange will retain responsibility for the granting and denying of extension requests received by it pursuant to Regulation T and Rule 15c3–3 under the Act, 17 CFR 240.15c3–3, and will make information regarding its action on extension requests available in writing to the other exchange on a periodic basis.

[5] The plan provides that dual members of the CSE and MSE that are also members of other self-regulatory organizations ("SROs") will be subject to the provisions of the allocation plans entered into by the MSE or CSE with other SROs.

applications to become a proprietary or access participant member of the CSE will continue to be the responsibility of, filed with and processed by, the CSE.

The MSE will be responsible for conducting appropriate investigations, and taking appropriate action, regarding the termination of associated persons for cause unless the termination relates to activities involving trades executed and other activities on the CSE in which case the CSE will be responsible for handling the matter.

The MSE will be responsible for reviewing advertisements, market letters, research reports, sales literature and other instances of public communication by dual members. The MSE will also be responsible for taking appropriate action with respect to all inquiries and complaints involving dual members, except for those inquiries or complaints involving trades executed and other activities on the CSE for which CSE will be responsible.

C. Exchanges Based Examinations

The MSE will be responsible for reviewing and subsequent action on dual members' Financial Operations Combined Uniform Single (FOCUS) Reports and any other generally applicable financial reporting requirements imposed by the Commission, the MSE or the CSE. The MSE will be responsible for the review, approval and retention of partnerships agreements, corporate certificates and bylaws, subordinated loan agreements and clearance arrangements.

D. Administration of the Plan

Each exchange agrees to keep the other informed on a timely basis regarding any information discovered by or made available to it which is of interest to the other exchange in fulfilling its regulatory obligations. Each exchange agrees to provide to the other exchange access to its files regarding dual members. Each exchange will give prompt notice to the other exchange when an adoption or amendment to the Constitution, rules or policies of that exchange or interpretation thereof becomes effective which will affect the plan. Whenever a change in the CSE provisions becomes effective, the MSE and CSE shall agree in writing as to which party or parties will be responsible for examining and enforcing compliance with such a change. No reimbursement of costs shall be required in the ordinary course of discharging allocated responsibilities under the plan. The MSE and the CSE will send out a joint notice to all persons affected by the plan.

Neither exchange assumes any liability to the other party to the plan for any loss or damage resulting from any delays, inaccuracies, errors or damage resulting from any delays, inaccuracies, erros or omissions with respect to the provision of regulatory functions provided in the plan, except in instances where the loss or damage is the result of willful misconduct. Both parties disclaim all warranties regarding performance of their respective responsibilities under the plan.

Neither exchange assumes any liability to the other party to the plan for any loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to the provision of regulatory functions provided in the plan, except in instances where the loss or damage is the result of willful misconduct. Both parties disclaim all warranties regarding performance of their respective responsibilities under the plan.

Disputes under the plan between the MSE and CSE will be settled through binding arbitration. Termination of the plan will occur only after prior written notification to the other party to the plan and upon the Commission relieving the MSE of the responsibilities allocated to it under the plan.

III. Request for Comment

In order to assist the Commission in determining whether to approve this plan and to relieve the CSE of responsibilities designated to the MSE, interested persons are invited to submit written data, views and comments concerning the submission by October 11, 1985. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. S7–39–85.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

August 29, 1985.

[FR Doc. 85–21157 Filed 9–4–85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35–23809; 70–7008]

National Fuel Gas Co., Seneca Resources Corp.; Proposed Issuance of Short-term Notes to Banks by Subsidiary, Guarantee By Holding Company, and Extension of Maturity

August 29, 1985.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, a registered holding company, and its wholly owned subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203, have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By order in this proceeding dated September 20, 1984 (HCAR 23427), Seneca was authorized to issue short-term notes to RepublicBank Houston, N.A. ("RepublicBank") and Citibank, N.A., up to an aggregate amount of $109,625,000 outstanding at any one time pursuant to a line of credit with each bank. All of the notes were to be guaranteed by National. Now, Seneca prosooes to borrow up to an aggregate principal amount of $119,625,000 under its lnen of credit with the two banks. Seneca will issue two separate, secured master notes to Republicbank and two separate, secured master notes to Citibank. One master note to each bank will be made for the benefit of the joint venture between Seneca's Houston Division and a group headed by Cashco Oil Company ("Joint Venture") and the other master note to each bank will be used to finance Seneca's other day-to-day operations. In no event will the aggregate amount of the borrowings exceed $119,625,000. National again proposes to guarantee repayment of all amounts borrowed by Seneca under its lines of credit.

Seneca also proposes to extend the maturity of said short-term borrowings from September 27, 1985, to December 31, 1985. All of the other terms of the credit arrangements will remain the same. The notes will be secured by a portion of Seneca's interest in oil and gas properties and a portion of Seneca's Pennsylvania hardwood timber acreage. It is stated that the effective cost of borrowing will be the prime rate at RepublicBank or the base rate at Citibank, both of which were 9.5% as of August 9, 1985. Seneca, at its option, may also borrow at an alternative rate of interest set by each bank. Seneca intends to use the proceeds from the lines of credit to refund existing short-term notes that will mature on September 27, 1985. The additional borrowings will be utilized for proposed capital expenditures in Seneca's exploration and development program.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public

Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or , in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be noticed of any hearing, if orderd, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effecive.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21226 Filed 9-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22369; File Nos. SR-OCC-85-9 and SR-OCC-85-11]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Changes

The Options Clearing Corporation ("OCC") on June 26 and July 9, 1985 submitted proposed rule changes (File Nos. SR-OCC-85-9 and SR-OCC-85-11, respectively) to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposals in the **Federal Register** on July 18 and July 30, 1985, respectively, to solicit public comment.[1] No comments were received. This Order approves the proposals.

I. Description

OCC's proposals would amend OCC By-Laws and Rules to enable OCC to issue, clear and settle European style options, which are options that may be exercised only on their expiration date. Under OCC's proposals, European style options would be issued, cleared and settled like American style options,[2] with only those changes necessary to accommodate the unique feature of European style options. In addition, OCC's proposals would expand the availability of an alternative settlement procedure for exercise settlement of foreign currency options.[3]

To accommodate European style options, OCC's proposals would amend OCC By-Laws and Rules regarding definitions, general rights and obligations of holders and writers, submission of trade reports, margin requirements, exercise procedures and exercise settlement procedures.[4] New definitions would distinguish European style options and options of varying units of trading as separate classes of options.[5] General rights and obligations of holders and writers would be amended to specify that European style options can be exercised on their expiration date only and that exercise restrictions cannot be imposed for European style options.[6] Trade reports now would be required to include the style of option.[7] Margin requirements would be clarified to prohibit deposit of foreign currency in lieu of OCC margin for short foreign currency options positions for both European style and American style options.[8] Exercise procedures are clarified to allow European style options to be exercised on Saturdays rather than on a business day, because OCC expiration dates always fall on Saturdays.[9] Finally, exercise settlement procedures would be amended to accommodate different units of trading.[10]

OCC's proposals also would expand and establish permanently OCC's pilot Delivery-Versus-Payment System (the "DVP System").[11] The DVP System, which is described in OCC Rule 1606A, is an alternative procedure for foreign currency option exercise settlement that can be used instead of the procedures in OCC Rule 1606. The DVP System enables a clearing member to instruct its agent bank to guarantee to OCC's correspondent bank delivery of the exercise settlement amount on exercise settlement date. That guarantee is made two business days before the exercise settlement date. Under OCC Rule 1606, clearing members would need to delivery the exercise settlement amount two days in advance of exercise settlement date. The DVP System was implemented on a pilot basis in September 1984, and currently is limited to: (1) Clearing members receiving more than 100 units of trading in a foreign currency or such lesser amounts as OCC authorizes, (2) payments of U.S. Dollars against receipt of foreign currency, and (3) such clearing members as OCC designates as pilot participants. OCC proposes to lift these pilot restrictions and to implement fully the DVP System.

OCC requests accelerated approval of one proposal, SR-OCC-85-9, to the extent necessary to allow OCC to issue, clear and settle European style options at the latest by the time the Commission approves any exchange proposal to list the trade European style options. OCC noted that trading in European style options has been proposed by the Chicago Board Options Exchange, Inc.[12]

II. OCC's Rationale

OCC believes that its proposal facilitate the prompt and accurate clearance and settlement of European style options by applying to those options substantially the same clearing system and rules currently used for American style options. That system, in OCC's view, already has been proven safe and efficient. OCC believes that expansion of the alternative foreign currency options settlement procedure, on a permanent basis, would reduce clearing members' financing costs and therefore would facilitate the prompt and accurate clearance and settlement of securities transactions. OCC thus believes that the proposals are consistent with section 17A of the Act.

III. Discussion

The Commission believes that the proposals are consistent with the Act and should be approved. The Commission believes that OCC, to the greatest extent possible, should apply its existing rules and procedures to European style options. The Commission agrees with OCC that OCC's current automated processing system for American style options has been proven safe and efficient. Application of that system to European style options premium and exercise settlement transactions whould help to ensure that such processing will be accomplished

---

[1] Securities Exchange Act Release No. 22236 (July 12, 1985), 50 FR 29289 (July 18, 1985), and Securities Exchange Act Release No. 22287 (July 24, 1985), 50 FR 30697 (July 30, 1985).

[2] American style options can be exercised at any time up to and including their expiration date.

[3] The proposals also amend OCC Rule 1604 to codify current price intervals for automatic exercise of index options.

[4] See the notices of the proposals, cited supra at note 1, for detailed description of the proposals.

[5] Proposed amendments are to OCC By-Law Article I, Section 1 and Article XV, Section 1.

[6] Proposed amendments are to OCC By-law Article VI, Sections 12 and 17; Article XVII, Section 2; and OCC Rule 801. Similar changes are proposed for By-Law Article XV, Section 2, concerning general rights and obligations for holders and writers of foreign currency options.

[7] Proposed amendments are to OCC By-Law Article VI, Section 7 and OCC Rule 401.

[8] Proposed amendments are to OCC Rule 1601.

[9] Proposed amendments are to OCC Rule 1605.

[10] Proposed amendments are to OCC Rule 1605.

[11] In Securities Exchange Act Release No. 21359 (September 27, 1984), 49 FR 39138 (October 3, 1984), the Commission published notice to solicit public comment on the DVP System under section 19(b)(3)(A) of the Act. No comments were received.

[12] See File No. SR-CBOE-84-31.

with the same degree of safety and efficiency.

The Commission also believes that expansion of OCC's DVP System and removal of its pilot status should be approved. In the Commission's view, the DVP System enables OCC clearing members to reduce significantly financing costs associated with foreign currency options exercise settlement without posing additional risk to OCC or other OCC clearing members. OCC tested the DVP System with a limited number of clearing members during the pilot phase, and the Commission is confident that the DVP System can be offered successfully to all OCC clearing members.

Although the Commission currently is considering an exchange proposal to trade European style options, no such proposal has been approved yet. Therefore, accelerated approval of OCC's proposal is not necessary.

IV Conclusion

For the reasons discussed above, the Commission finds that OCC's proposals are consistent with the Act, and in particular with Sections 17A of the Act. The proposals facilitate the prompt and accurate clearance and settlement of options transactions and ensure the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible.

Accordingly, It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-OCC-85-9 and SR-OCC-85-11) be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21227 Filed 9-4-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-23]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 16, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____ 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 30, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23962-1	Independent Air, Inc.	14 CFR 91.303	To allow petitioner to operate two B-707-300 aircrafts until hush kits are installed.

[FR Doc. 85-21133 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-13-M

[Docket S-775]

Farrell Lines Inc.; Application To Provide Service Between U.S. Gulf Ports and West Africa, TR 14—Service 2 and Between U.S. Pacific Ports and the Caribbean, the East Coast of South America, and the West Coast of South and Central America, TR 23, 24, 25

Farrell Lines Incorporated (Farrell), by application dated January 9, August 21, and August 28, 1985, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB-352 in order to permit service between U.S. gulf ports and West Africa, TR 14—Service 2, and between U.S. Pacific ports and the Caribbean, the east coast of South America, and the west coast of South and Central America, TR 23, 24, 25.

Farrell's intention is to incorporate the TR 14-2 service into its existing subsidized TR 14-1, U.S. Atlantic/West Africa service. The combined service will be operated with Farrell's existing vessels, and no increase in maximum sailings on the West African service is being requested. The TR 23, 24, 25 service is to be operated with a LASH vessel, at a level of service of up to nine sailings annually.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on September 23, 1985.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: August 30, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-21178 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-776]

Lykes Bros. Steamship Co., Inc., Application To Provide Service Between U.S. Gulf Ports and West Africa, TR 14—Service 2 and Between U.S. Atlantic Ports and the West Coast of South America, TR 2

Lykes Bros. Steamship Co., Inc. (Lykes), by letters dated January 16, 1985, and August 26, 1985, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB-451 in order to permit service between U.S. gulf ports and West Africa, TR 14—Service 2, and between U.S. Atlantic ports and the west coast of South America, TR 2, in conjunction with its TR 15-B U.S. gulf/South and East Africa service and in conjunction with its TR 31 U.S. gulf/west coast South America service, respectively.

In its January 16, 1985 letter, Lykes stated that it was seeking "to continue the subsidized liner services heretofore conducted by Delta Steamship Lines, Inc. in the event and only to the extent that Delta terminates its services as a subsidized operator." On January 11, 1985, United States Lines (S.A.) Inc. (USL(S.A.)), among other things, acquired the rights to Delta Steamship Lines, Inc.'s TR 2 and TR 14-2 services contingent upon USL(S.A.) commencing U.S.-flag service on these routes. Since USL(S.A.) did not commence service on these routes, USL(S.A.)'s authority to operate thereon terminated on August 20, 1985.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Comments must be received no later than 5:00 P.M. on September 23, 1985.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: August 30, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-21179 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-81-M

Maritime Administration

[Docket No. S-774]

United States Lines, Inc.; Application for Permission to Conduct Unsubsidized Operations

Pursuant to the Order of the United States District Court for the District of Columbia in the case of *Farrell Lines, Inc.* v. *Dole, et. al.* 84-3294 (D.D.C. filed August 1, 1985), by letter dated August 23, 1985, United States Lines, Inc. (USL) has requested permission to continue unsubsidized service with its 12 "Jumbo Econships" in its eastbound Round-the-World ("RTW") service up to a maximum of 52 sailings per year, in conjunction with a complement of dedicated feeder vessels operating to and from certain foreign ports. The request is without prejudice to USL's various litigation positions. The itinerary for the Jumbo Econships encompasses the ports of New York, Rotterdam, Fos, Jeddah, Khor Fakkan, Singapore, Hong Kong, Kaohsiung, Kobe Yokohama, Long Beach and Savannah. The ports served by the feeder operation are as follows:

Feeder Ports Served Through Use of Chartered Vessels or Space Charter Arrangements

A United Arab Emirates Port
Ad Dammam (Saudi Arabia)
Kuwait
Muscat, Matrah (Oman)
Cochin (India)
Bombay (India)
Karachi (Pakistan)
Colombo (Sri Lanka)
Madras (India)
Calcutta (India)
Chalna (Bangladesh)
Chittagong (Bangladesh)
Busan (Korean)
Greenock (Scotland)
Dublin (Ireland)
Hamburg (Germany)
Aarhus (Denmark)
Gotenburg (Sweden)
Southhampton (UK)
Felixstowe (UK)
Livorno (Italy)
Genoa (Italy)
Barcelona (Spain)
Valencia (Spain)
Bangkok (Thailand)
Port Kelang (Malaysia)
Panang (Malaysia)
Phuket (Thailand)
Surabaya (Indonesia)
Jakarta (Indonesia)
Philippine Islands

USL has also requested the flexibility to make round trip voyages on any constituent leg of the RTW service, such voyages counting toward the maximum sailings of 52 per annum, provided that any such round voyage does not become a regular service. Further, USL has requested the operating flexibility to omit any line-haul or feeder port on the RTW service as presently designated and to substitute or add new ports within the same trading range as the ports or areas set forth above.

USL is the holder of operating-differential subsidy ("ODS") Contract No. MA/MSB-483, as amended and restated, for subsidized service on Trade Route ("TR") 5-7-8-9/11 (Atlantic/UK & Continental Europe) and TR 12/29 (Atlantic & Pacific/Far East); under Addendum 4 to that contract, subsidy is authorized for operations on TR 16 (Atlnatic & Gulf/Australia-New Zealand). In addition, an affiliate of USL, United States Lines (S.A.) Inc., holds ODS Contract No. MA/MSB-338 for subsidized operations on TR's 1 and 15-A and MA/MSB-425 and 353 for subsidized operation on TR's (Atlantic/Caribbean) and 20 (Gulf/E.C. South America), respectively.

In support of its application USL briefly set out the background and significance of its Jumbo Econship RTW service. USL supplied supporting schedules with the names and technical characteristics of the Jumbo Econships, estimated cargo carryings for the Jumbo Econships, and itineraries and vessel configurations for its principal foreign-flag competitors in the RTW service.

USL requested that the permissions be granted under any applicable statutory, regulatory or contractual requirements. It asks confirmation from the Maritime Administration that at such time as USL, but not its affiliate, ceases to hold an ODS contract then neither the provisions of the Marchant Marine Act, 1936, as amended, nor Maritime Administration General Order 80 (46 CFR 281.11) would apply to any vessels owned or operated by USL itself.

USL also identified certain legal issued raised by the U.S. District Court decision, as described in the USL application, which it deemed relevant to its request.

Any person, firm, or corporation having any interest in the USL August 23, 1985 application and desiring to submit comments concerning that application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Comments must be received no later than 5:00 P.M. on October 7, 1985. Any responses to comments must be received no later than 5:00 P.M. on October 28, 1985.

The application submitted by USL is available for review in the Maritime Administration Secretary's office. The Maritime Administration will consider any relevant comments submitted and take such action with respect thereto as may be deemed appropriate, including entering a decision on such comments.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By order of the Maritime Administrator.

Dated: August 30, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-21177 Filed 9-4-85; 8:45 am]

BILLING CODE 4910-81-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held September 11, 1985, in Room 600, 301 4th Street SW., Washington, D.C. at 11:45 a.m.

The Commission will review public diplomacy programs in Europe with Mr. Marlin Remick, Deputy Director, Office of European Affairs and Mr. Alvin Perlman, Deputy Director (USSR, Eastern and Southern Europe), Office of European Affairs.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: August 29, 1985.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 85-21094 Filed 9-4-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L., 92-463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C. on September 23 through September 25, 1985. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administration regarding such activities.

The session will convene at 9:00 a.m. all three days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Office of the Administrator, Veterans Administration Central Office (phone 202/389-5518) prior to September 18, 1985.

Dated: August 28, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-21149 Filed 9-4-85; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on September 30, 1985, at 10:00 a.m., the Winston-Salem Regional Office Station Committee on Educational Allowances shall at Room 742, Federal Building, 251 North Main Street, Winston-Salem, North Carolina, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Shaw University, Raleigh, North Carolina, should be discondtinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Kenneth E. McDonald,

Director, Veterans Administration Regional Office 251 North Main Street, Winston-Salem, North Carolina 27155.

August 28, 1985

[FR Doc. 85-21223 Filed 9-4-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Futures Trading Commission	1–7
Equal Employment Opportunity Commission	8, 9
Federal Deposit Insurance Corporation	10, 11
Federal Mine Safety and Health Review Commission	12
Federal Election Commission	13
Federal Reserve System	14
Nuclear Regulatory Commission	15
Railroad Retirement Board	16
Securities and Exchange Commission	17
Synthetic Fuels Corporation	18

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 6, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–2124 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 11, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Philadelphia Board of Trade for designation in National Over-the-Counter Index Futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21242 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIMES AND DATE: 11:00 a.m., September 13, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21243 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 18, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing by the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21244 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 18, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21245 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 20, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21246 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 27, 1985.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–21247 Filed 9–3–85; 9:46 am]
BILLING CODE 6351–01–M

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (Eastern Time), Tuesday, September 10, 1985.

CHANGE IN THE MEETING: The following matter has been added to the closed portion of the September 10, 1985 meeting:

Request for Authorization of Contract for Special Masters in Support of a Court Case.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: August 30, 1985.

Johnnie L. Johnson, Jr.
Attorney Advisor, Executive Secretariat.
[FR Doc. 85–21265 Filed 9–3–85; 11:40 am]
BILLING CODE 6750–06–M

9

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (Eastern Time), Tuesday, September 10, 1985.

CHANGE IN THE MEETING: The following matters have been added to the open portion of the September 10, 1985 meeting:

Proposed Ninety-Day Notice on *TWA v. Thurston*

Proposed Contract for Expert Services in Connection with a Court Case

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: August 30, 1985.

Johnnie L. Johnson, Jr.,

Attorney Advisor, Executive Secretariat.

[FR Doc. 85–21266 Filed 9–3–85; 11:40 am]

BILLING CODE 6750–06–M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 9, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–21284 Filed 9–3–85; 1:07 pm]

BILLING CODE 6714–01–M

11

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) notice is hereby given that at 2:30 p.m. on Monday, September 9, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–21285 Filed 9–3–85; 1:07 pm]

BILLING CODE 6714–01–M

12

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 30, 1985.

TIME AND DATE: 10:00 a.m., Thursday, September 5, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Dilip K. Paul v. PB–KBB, Inc. Docket No. CENT 83–42–DM. (Issues include whether the administrative law judge erred in concluding that the complainant was a "miner" within the meaning of the Mine Act.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–21316 Filed 9–3–85; 3:57 pm]

BILLING CODE 6735–01–M

13

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 10, 1985, 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

The meeting scheduled for the date of September 12, 1985, has been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–21296 Filed 9–3–85; 2:18 pm]

BILLING CODE 6715–01–M

14

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 9, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building proposals regarding the Charlotte Branch of the Federal Reserve Bank of Richmond.
2. Proposed statement regarding nonbanking activities of State-chartered banks before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–21228 Filed 8–30–85; 4:38 pm]

BILLING CODE 6210–01–M

15

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 2, 9, 16, and 23, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 2

Tuesday, September 3

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Wednesday, September 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Continuation of 7/23 Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Thursday, September 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Policy Statement on Engineering Expertise on Shift
b. Final 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansions of Onsite Spent Fuel Storage Capacity at Civilian Power Reactors"
c. Mr Husted's Request for Hearing
d. Procedures to be Followed When a Subpoena or Other Demand for Disclosure of Records or Information is Served on NRC Employees (tentative)

Friday, September 6

9:30 a.m.
Oral Presentations of Timing of DOE's Preliminary Determination on Suitability of Sites for Development as Repositories (Public Meeting)

Week of September 9—Tentative

Monday, September 9

2:00 p.m.
Discussion on Earthquakes and Emergency Planning (Public Meeting)

Tuesday, September 10

10:00 a.m.
Discussion and Oral Presentations on Uranium Mill Tailings Regulations (Public Meeting) (tentative)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, September 11

1:30 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

3:00 p.m.
Discussion of Plant Issues with Regional Administration (Public Meeting)

Thursday, September 12

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 13

2:15 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of September 16—Tentative

Tuesday, September 17

2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Wednesday, September 18

9:00 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)

10:30 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Week of September 23—Tentative

Thursday, September 26

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: August 29, 1985.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85–21230 Filed 8–30–85; 4:44 p.m.]

BILLING CODE 7590–01–M

16

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 12, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Canadian Service
(3) Part 261 of the Board's Regulations—Reopening Final Decisions Under the Railroad Retirement Act
(4) Appeal of Nonwaiver of Overpayment, Wilson McCall, Sr.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: August 30, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85–21272 Filed 9–3–85; 1:06 pm]

BILLING CODE 7905–01–M

17

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 9, 1985.

An open meeting will be held on Tuesday, September 10, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or is designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, September 10, 1985, at 2:30 p.m., will be:

1. Consideration of whether to announce the terms and conditions for exchanges to trade certain over-the-counter securities pursuant to unlisted trading privileges, adopt amendments to Rules 11Aa2–1 and 11Aa3–1 under the Securities Act of 1934 ("Act") to permit, in certain circumstances, a security to be concurrently designated as a National Market System ("NMS") Security and traded on an exchange, and propose amendments to Rule 10a–1 under the Act that would exempt transactions in NMS securities traded on an exchange from short sale prohibitions. For further information, please contact William W. Uchimoto at (202) 272–2409.

2. Consideration of whether: (i) To issue a release requesting public comment on a proposed amendment to Rule 11Aa2–1 that would provide the national Association of Securities Dealers, Inc. ("NASD") with authority to sdopt, by rule, additional requirements for National Market System Securities; and (ii) to issue a release requesting public comment on a proposed rule change submitted by the NASD that would adopt certain corporate governance standards. For further information, please contact Sheila Barry at (202) 272–2410 or Leland Goss at 272–2827.

3. Consideration of whether or under what conditions to allow exchanges to participate in the integrated market making pilot discussed in Securities Exchange Act Release No. 22026 (May 8, 1985). For futher information, please contact Sharon Lawson at (202) 272–2825.

4. Consideration of whether to adopt a proposed amendment to Rule 10b–10 under the Securities Exchange Act of 1934. For further information, please contact Leland H. Goss II at (202) 272–2827.

5. Consideration of whether to adopt Rule 17f–5 under the Investment Company Act of 1940, which permits registered U.S. and Canadian investment companies to make foreign custody arrangements under certain conditions. The amendments would, if adopted, clarify the rule with regard to the extent to which investment companies are required to monitor the eligibility of their foreign custodians under the rule, and with regard to the length of time that investment companies have to make alternative arrangements when an existing arrangement no longer complies with the rule. For further information, please contact Jack W. Murphy at (202) 272–2048.

6. Consideration of whether to adopt revisions to Form ADV, the registration application form under the Investment Advisers Act of 1940, and related rule amendments, but defer taking final action until the North American Securities Administrators Association, Inc. adopts the form. For further information, please contact Jay Gould at (202) 272–2107.

7. Consideration of whether to adopt temporary Rule 0–11 under the Investment Company Act of 1940 and to amend the Edgar Temporary forms ID, ET and SE and Form N–SAR, the periodic reporting form for registered investment companies, to facilitate the participation of those companies in the Edgar Pilot. The Commission will also consider whether to adopt a rule amendment delegating authority to the Director of the Division of Investment management to adjust the filing date of certain documents filed electronically. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2048.

8. Consideration of whether to issue a release describing proposed rula changes by the American and New York Stock Exchanges and requesting public comment on the issues raised by the proposals. The proposed rule changes would allow retail broker-dealers to affiliate with specialists by easing restricitons imposed on such affiliates. For further information, please contact Pamela Konieczka at (202) 272–2855.

The subject matter of the closed meeting scheduled for Tuesday, September 10, 1985, following the 2:30 p.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

John Wheeler,

Secretary.

August 29, 1985.

[FR Doc. 85–21216 Filed 8–30–85; 4:12 pm]

BILLING CODE 8010–01–M

18

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetie Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Board Minutes
III. Approval of Financial Assistance Award for the Forest Hill Project
IV. Consideration of Key Terms for the Parachute Creek Project
V. Negotiations Update on Seep Ridge Project
VI. Resolution to Close Meeting

Closed Session

VII. Consideration of Key Terms for the Parachute Creek Project
VIII. Negotiations Update on Seep Ridge Project

TIME AND DATE: 1:30 p.m., September 10, 1985.

PLACE: 2121 K Street, NW., Rooms 503 and 403, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director—Media Relations, at (202) 822-6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate and Litigation.

September 3, 1985.

[FR Doc. 85–21319 Filed 9–3–85; 3:57 pm]

BILLING CODE 0000–00–M

L

O

S

2

E

5

MI

federal register

Thursday
September 5, 1985

Part II

Environmental Protection Agency

40 CFR Part 15

Administration of the Clean Air Act and the Clean Water Act With Respect to Federal Contracts, Loans, and Grants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 15

[FRL-2849-6]

Administration of the Clean Air Act and the Clean Water Act With Respect to Federal Contracts, Loans, and Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is promulgating revisions to 40 CFR Part 15. This regulation establishes a special suspension and debarment program under the Clean Air Act (CAA) and Clean Water Act (CWA). The facilities listing program authorizes EPA to bar facilities from federal contracts, assistance agreements or loans as a consequence of criminal or civil violations of the CAA or CWA. On July 31, 1984, EPA proposed revisions to 40 CFR Part 15 (49 FR 30628) to clarify the procedural opportunities which EPA will provide to parties to listing or removal actions and to provide for mandatory or automatic listing of facilities which give rise to criminal convictions under Section 113(c)(1) of the CAA or Section 309(c) of the CWA.

DATE: This regulation becomes effective on October 7, 1985.

ADDRESS: Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Room 3219 (LE-130A), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, (202) 475-8785.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306 of the Clean Air Act (CAA) [42 U.S.C. 7401 *et seq.*] and Section 508 of the Clean Water Act (CWA) [33 U.S.C. 1251 *et seq.*] as implemented by Executive Order 11738, [38 FR 25161, September 12, 1973] authorize EPA to bar (after appropriate Agency procedures) facilities which have given rise to violations of the CAA or the CWA from being used in the performance of any federal contract, grant or loan.

On April 16, 1975, EPA promulgated 40 CFR Part 15 (40 FR 17124) to provide procedures for ensuring that Executive Branch agencies conduct their procurement and assistance programs in accordance with the President's responsibility for ensuring compliance with CAA and CWA standards. 40 CFR Part 15 provides for a List of Violating Facilities, a list of facilities which are ineligible for any nonexempt contract, grants or loans issued by an Executive Branch agency. This Part also provides procedures for placing a facility on the List because of a criminal conviction under section 113(c)(1) of the CAA or section 309(c) of the CWA or because of a record of continuing or recurring noncompliance with CAA or CWA standards. On February 5, 1979, EPA appended to these regulations a procedural statement explaining the decisionmaking process within EPA relating to placement of facilities on the list. Finally, 40 CFR Part 15 provides procedures for removing a facility from the List where the CAA or CWA noncompliance problems at the facility have been corrected.

II. Public Comments

EPA received written comments on the July 31, 1984, proposed regulations (49 FR 30628) from twelve interested parties. EPA has carefully considered all submitted comments. A summary of these comments and EPA's response to them is set forth below.

Scope (40 CFR 15.2)

One commenter requested clarification on the scope of the listing prohibition as applied to government subcontractors. The listing extends to all types of contracts, grants and loans which involve the purchase of goods or performance of services at a violating facility. "Facility" includes a site of operations such as a developed tract of land, as well as any building, plant, installation, structure, mine, vessel or other floating craft. Further, a facility may not use items manufactured at another facility which is on the List to perform part of a government contract, unless an exemption under § 15.5 applies. To permit such a transaction would frustrate the congressional intent to bar listed facilities from federal contracts, grants or loans, and would create inconsistencies in the application of the listing rules.

Definitions (40 CFR 15.4)

Two commenters stated that EPA should provide a definition of "continuing or recurring" in the final regulation. EPA does not agree that such a definition is needed. "Continuing or recurring" is widely understood as either a violation which continues to exist or a series of violations over time. The Agency will determine on a case-by-case basis whether a series of violations constitutes proper grounds for listing.

Some commenters requested EPA to retain the three specific constraints of former 40 CFR Part 15, Subpart A, in the definition of "Case Examiner." The former rule provided that a Case Examiner could not be: (1) The Listing Official, (2) the Recommending Official, or (3) closely involved in the preparation of the enforcement case. EPA agrees that this change will ensure that the Case Examiner is an unbiased decisionmaker, and has revised the final regulation accordingly.

Two commenters stated that EPA should retain the existing regulation, 40 CFR 15.20(a)(1), which requires a "governor" to be the "recommending person" where the listing recommendation is based on a state or local civil adjudication or administrative finding. The proposed regulation, 40 CFR § 15.4, included a "governor" within the definition of "recommending party," but did not require the governor to be the only recommending party where a state or local civil adjudication or administrative finding is the basis for a listing recommendation. EPA does not see any need to restrict the recommending party in such a state enforcement action to a governor. Similarly, EPA does not believe that a listing recommendation based on a federal enforcement action under the CAA or CWA should be restricted to federal officials. In all cases, EPA will determine whether to initiate a listing proceeding pursuant to its initial review of a listing recommendation under § 15.11(c).

Some commenters stated that members of the public should not be included as "recommending parties," claiming that there would be a potential for abuse of the serious sanctions which may arise from such a proceeding. Also, a number of commenters felt that the proposed regulation did not provide for EPA reconsideration of a listing recommendation from a "member of the public."

The Agency disagrees. It is EPA policy to encourage public participation in the enforcement of the CAA and CWA. At the same time, 40 CFR 15.11(c)(1) requires the Assistant Administrator for Enforcement and Compliance Monitoring to review every discretionary listing recommendation, including those made by a "member of the public." The Assistant Administrator may decline to proceed under § 15.11(c)(i). This preliminary review ensures that EPA will not proceed with a listing action where the recommendation has no merit. Moveover, where the Assistant Administrator decides to proceed, the owner of the facility then has an

opportunity to request a hearing before a Case Examiner.

Exemptions (40 CFR 15.5)

Proposed § 15.5 provided that contracts, grants and loans not exceeding $100,000 in any single year are exempt from these regulations. "Contract," "grants" and "loans" are defined in § 15.4 to include "subcontracts," "subgrants" and "subloans," respectively. The exemption does not apply where the work under a contract is performed at a facility that has been placed on the List of Violating Facilities as a result of a criminal conviction under the CAA or CWA.

One commenter requested EPA's clarification on the scope of the $100,000 exemption as applied to subcontractors. A listed subcontractor is barred from receiving more than $100,000 in federal funds from a government contractor for products or services called for in the contract or used in production of the final product. However, the mere purchase by a contractor of services not required by a government contract would generally not be subject to the listing prohibition. For example, a subcontractor who receives more than $100,000 to construct a building for a contractor which is used to manufacture a product for the government would be barred only if the government contract calls for construction of such a building. Similarly, where a utility supplies greater than $100,000 worth of power to a government contractor, the utility would not be considered a "subcontractor" unless the contract, in part, acutally calls for the furnishing of electric power.

Mandatory Listing (40 CFR 15.10)

The proposed regulation provided for mandatory listing for criminal convictions under section 113(c)(1) of the CAA or section 309(c) of the CWA. Convictions include court and jury verdicts as well as nolo contendere pleas and guilty pleas. Convictions for violations of CAA section 113(c)(2) (knowing false statement in a required CAA application or report) are handled in discretionary listing, discussed below.

A number of commenters expressed concern about mandatory listing pursuant to proposed § 15.10. The commenters felt that it was "unfair" to automatically list a facility following criminal conviction without some further Agency consideration. One commenter suggested that the Agency should consider the severity of the crime. Another commenter suggested that the Agency should allow for the exhaustion of all criminal appeals prior to such a listing.

EPA disagrees. The CAA section 306 and CWA section 508 state that no federal agency shall enter into a contract with any person who has been convicted of any offense under CAA section 113(c)(1) or CWA section 309(c). The Agency cannot consider the relative "severity" of a criminal conviction given this clear congressional mandate. Further, while EPA does not agree that mandatory listing should await all appeals, the Agency has revised § 15.20 to provide for automatic removal from the List of Violating Facilities where a conviction is overturned. In addition, the Assistant Administrator for Enforcement and Compliance Monitoring may remove a facility from the list where the activities which led to the conviction at issue are corrected.

One commenter requested that the procedures for mandatory listing and discretionary listing be made prospective in nature. EPA agrees and has provided that the effective date of this regulation will be 30 days after publication in the Federal Register.

Bases for Discretionary Listing (40 CFR 15.11)

Several commenters contended that EPA lacks the authority to list a facility on the basis of federal judicial decisions or orders, administrative orders or notices of noncompliance as proposed in § 15.11. Some commenters further questioned EPA's authority to list a facility after EPA files an enforcement action since such action does not constitute a final judicial or administrative determination. They argued that such listings would violate constitutional due process since the affected party has no prior opportunity to be heard.

EPA disagrees. EPA addressed its authority to list a facility on the basis of civil violations in response to similar comments on the original proposed contractor listing regulations (40 FR 17124, April 16, 1975). EPA stated therein that "pursuant to section 306(c) of the Clean Air Act, section 508(c) of the Federal Water Pollution Control Act, and sections 1, 4, 5, and 7 of Executive Order 11738, EPA was delegated responsibility to carry out the purpose of those Acts and the Executive Order, including the responsibility for setting forth the bases for consideration of listing a facility."

In addition, three district courts have upheld EPA's authority to list facilities for civil violations of the CAA and CWA. *See U.S.* v. *Interlake, Inc.*, 432 F. Supp. 987 (N.D. Ill., 1977), *U.S.* v. *U.S. Steel*, 10 ERC 1971 (N.D. Ill. 1977), and *U.S.* v. *Del Monte*, 9 ERC 1495 (D.P.R. 1976). In these decisions, the courts relied on CAA section 306(c) and CWA section 508(c), and section 1 of Executive Order 11738, reasoning that Congress intended EPA to have authority to list for civil violations, and that the Executive Order is to be viewed as a remedial action.

Further, EPA disagrees with the assertion that it lacks authority to list a facility following the filing of an underlying CAA or CWA enforcement action. The court, in *Interlake* (cited above, at 989), noted that "[p]ursuant to 40 CFR 15.20(a)(1)(iii), plaintiff [EPA] has the authority to commence a listing proceeding once a civil suit has been initiated under subsection 113(b) of the [Clean Air] Act, 42 U.S.C. 1857(c)–8(b)." In addition, prior to being listed on the basis of a filed civil action (as well as for violation of an administrative order or a judicial decision), the affected business is provided an opportunity to request a listing proceeding, presided over by a Case Examiner. Where a listing proceeding is not requested, the Assistant Administrator for Enforcement and Compliance Monitoring must nonetheless make an independent finding that there have been continual and recurring violations of the CAA or CWA at the facility. Thus, the regulation clearly provides the affected business an opportunity and right to be heard, and thus satisfies due process.

One commenter asked EPA to add "noncompliance with a consent decree" to the items that can be used as a basis for a listing recommendation. EPA interprets proposed § 15.11(e)(3) to include consent decrees as a basis for a listing recommendation. A facility can be listed under this section where the consent decree is accompanied by continual or recurring violations of the CAA or CWA. Thus, it is unnecessary to use the phrase "noncompliance with." However, EPA has added a parenthetical to § 15.11(a)(3) to explicitly cover consent decrees.

Withdrawal of Listing Recommendation (40 CFR 15.11)

Proposed § 15.11(d) provided in part that "[t]he recommending person should withdraw a recommendation to list if the conditions which gave rise to the recommendation to list have been corrected . . ." Several commenters suggested that withdrawal of a recommendation to list under § 15.11(d) should be mandatory in the event that the conditions underlying the recommendation to list are corrected. The Agency disagrees. While the recommending party should make a good faith effort to determine if the

conditions which gave rise to the recommendation to list have in fact been corrected, there may be some cases where the recommending party may not be aware of a correction or may not believe that conditions have been corrected. EPA has revised this section to clarify that the recommending person must withdraw the listing recommendation if he or she determines that conditions have been corrected. Of course, where the listing recommendation does not establish a basis for listing (due to lack of a continuing or recurring violation), the Assistant Administrator will decline to proceed under § 15.11(c)(i).

Proposed § 15.11 provided that "the Listing Official must place a facility on the List of Violating Facilities if there is a final agency action. . . ." One commenter requested EPA to replace "must" with "may" on the rationale that this would conform with the "discretionary" nature of "discretionary listing." Another commenter added that EPA does not have sufficient flexibility under the proposed rule not to list a facility. The Agency disagrees. The Assistant Administrator's determination pursuant to § 15.11(c) that there is a record of continuing or recurring noncompliance, and that the requisite civil or administrative action has been taken, is discretionary. Where a hearing is requested pursuant to § 15.12, the Case Examiner makes this discretionary determination. The Listing Official must place the facility on the List of Violating Facilities only after the Assistant Administrator or the Case Examiner makes a determination. By comparison, mandatory listing provides for automatic listing of a facility upon a criminal conviction. Accordingly, the use of the term "must" (revised to read "shall") in §15.11 is appropriate.

Requests for Listing Proceeding and Removal Hearings (40 CFR 15.12 and 15.23).

One commenter asked EPA to provide a party named in the listing recommendation 30 days to request a listing proceeding following receipt of notice rather than the proposed 20 days. Another commenter asked EPA to provide a party 45 or 60 days to request a removal hearing under § 15.23(a), rather than the proposed 20 days. Upon reconsideration, EPA agrees that 30 calendar days is appropriate given the need to obtain and consult with counsel before making a decision to request a listing proceeding or a removal hearing. The final rule has been revised accordingly. This is consistent with the time allowed for requesting a hearing under 40 CFR Part 32 (EPA debarment and suspension regulations).

Notice of Listing Recommendation (40 CFR 15.12)

One commenter suggested that the Agency revise proposed § 15.12 to include a requirement that a complete copy of the listing recommendation be provided to the owner of the facility named in the recommendation as part of the written notice required by the regulation. EPA disagrees. Such a requirement may constitute an automatic waiver of the Agency's deliberative process privilege under the Freedom of Information Act. *See* 5 U.S.C. 552(b)(5) and (7). It would also be inconsistent with the procedures established by the Agency for determining whether information is entitled to confidential treatment. *See* 40 CFR Part 2.

Listing Proceeding (40 CFR 15.13)

Two commenters stated that the Case Examiner's authority to deny cross-examination denies due process. EPA disagrees. The Case Examiner's authority to limit the cross-examination of witnesses in both listing proceedings and removal hearings does not deny constitutional due process. A listing proceeding involves a contract action taken by the federal government in its proprietary capacity as a purchaser of goods and services. Moreover, since a discretionary listing is automatically dissolved after one year (unless there has been a subsequent conviction or court order) listing is analogous to temporary "suspension" of a contractor rather than a "debarment." *See United States* v. *Interlake*, 432 F. Supp. 987, 990 (N.D. Ill. 1977). Fundamental fairness in such cases requires only that the contractor receive specific notice of the charges against him and be given an opportunity to rebut those charges. *See Horne Brothers* v. Laird, 463 F.2d 1268, 1272 (D.C. Cir. 1972).

The listing regulation provides notice and an opportunity to be heard. In the listing proceeding, parties are granted the right to be represented by legal counsel and to present oral and written evidence relevant to the proceeding. The Constitution does not require the federal government to provide unrestricted use of cross-examination in these proceedings.

Further, as provided in § 15.13(b), the federal government has a legitimate interest in preventing premature disclosure of evidence and case strategy relating to its enforcement proceedings. To allow unlimited cross-examination could lead to an abuse of the system. Accordingly, the decision to allow cross-examination of a witness is properly reserved to the Case Examiner.

Agency Review of Request for Removal (40 CFR 15.22)

Proposed § 15.22 required the Assistant Administrator to review a request for removal from the list and issue a decision "as expeditiously as practicable." One commenter requested EPA to set a 20-day limit for Agency review of a request for removal from the List of Violating Facilities. Another commenter requested EPA to extend the time allowed for the Assistant Administrator's review of a request for removal.

The Agency believes that a decision on a removal request should be made expeditiously. EPA has modified § 15.22 to add that the failure of the Agency to make a decision within 45 calendar days constitutes a denial of the request which in turn authorizes the applicant to request a removal hearing.

Length of Listing Term (40 CFR 15.21, 15.31)

One commenter requested EPA to clarify the period of time during which a contractor must promise not to use any facility on the List of Violating Facilities. The proposed regulation clearly states EPA's intent that a listed facility will remain on the list until it is removed pursuant to § 15.20 or § 15.21. Therefore, under § 15.31(a), the contractor must promise not to use any facility on the List for the duration of time it remains on the List. EPA has added language to § 15.31(a) to clarify this intent.

Promise Not To Use Listed Facility (40 CFR 15.31)

A number of commenters expressed concern with the use of the term "promise" instead of the terms "stipulation" or "agreement" in proposed § 15.31 on the rationale that the breach of a "promise" rather than a "stipulation" would give rise to contractual remedies. Two commenters requested the Agency to retain the word "stipulation." It is EPA's intent that the breach of a "promise" between the federal government and the contractor will give rise to contractual liability. The use of the word "promise" in the proposed regulation clarifies EPA's intent to use contractual remedies where a contractor breaches such a promise. Accordingly, this provision is unchanged.

Notification of Use of Listed Facility (40 CFR 15.31)

Proposed § 15.31 required a contractor to promise that it will notify the

awarding agency if a facility it intends to use is on the List of Violating Facilities or has been recommended to be placed on the List of Violating Facilities. Three commenters stated that it would be difficult for a contractor to determine when a facility it intends to use has been recommended for placement on the List of Violating Facilities. EPA agrees and has revised the final regulation to require the contractor to notify the awarding agency only if the contractor knows that a facility it intends to use has been recommended to be placed on the List.

Minor Revisions

In addition, EPA has made the following clarifying revisions. The definition of "grant" has been clarified to include all subagreements under grants or cooperative agreements to ensure that contract awards under assistance are covered. Proposed § 15.26(c) has been deleted since it repeats the **Federal Register** notice requirement for removal of a facility from the List of Violating Facilities under § 15.27. EPA has corrected the reference in § 15.12(d) from "§ 15.12(b)" to "15.12(a)". In §§ 15.14 (a), (b), and 15.25(a) EPA has replaced "party adversely affected" with "owner, operator or supervisor of the facility" to clarify its intent that only the owner, operator or supervisor of a facility against whom a listing proceeding is brought may appeal the Case Examiner's decision. In § 15.13(b)(1), EPA has replaced "recommending person" with "EPA" to clarify its intent that EPA, rather than any non-Agency recommending party, would be required to prove a basis for listing at the listing proceeding. In proposed §§ 15.14(c) and 15.25(b), EPA has deleted "is based on this determination" and "be based on this determination" respectively, as redundant.

In providing notice to facilities of listing recommendations, placement on the List, and removal hearings, in §§ 15.12(a), 15.16(a), 15.16(b), 15.22(a), 15.23(a) and 15.27, EPA has clarified that notice should go to the "owner, operator or supervisor" of the facility. Proposed § 15.23(b) provided that "[i]f a timely request for a removal hearing under § 15.23 is not filed, any person who may make a request for removal under § 15.22(a) may file a new request under § 15.22(a) if a new basis for removal under § 15.20 or § 15.21 arises at a later date." EPA revised proposed § 15.23(b) and § 15.25(d) to clarify its intent that the owner or operator of a listed facility may reapply to be removed on the same regulatory basis (e.g., compliance plan approved by the Assistant Administrator), as long as there are new facts to support the removal application. Finally, EPA revised proposed § 15.40 to provide for transmittal of the List of Violating Facilities to Federal agencies with assistance responsibilities (as well as the General Services Administration) to ensure that these Agencies know that facilities are barred from assistance.

Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this is not a major regulation because it will not entail a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions.

Regulatory Flexibility Act

EPA has determined, pursuant to the Regulatory Flexibility Act, that this regulation will not have a significant economic impact on a substantial number of small entities because the decision to list any facility is made on a case-by-case basis.

List of Subjects in 40 CFR Part 15

Administrative practice and procedure, Air pollution control, Government contracts, Grant programs—environmental protection, Loan programs—environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 23, 1985.

Lee Thomas,

Administrator.

40 CFR Part 15, Chapter 1, is revised as follows:

PART 15—ADMINISTRATION OF THE CLEAN AIR ACT AND THE CLEAN WATER ACT WITH RESPECT TO CONTRACTS, GRANTS, AND LOANS—LIST OF VIOLATING FACILITIES

Subpart A—Administrative Matters

Sec.

15.1 Policy and purpose.
15.2 Scope.
15.3 Administrative responsibility.
15.4 Definitions.
15.5 Exemptions.

Subpart B—Procedures for Placing a Facility on the List of Violating Facilities

15.10 Mandatory listing.
15.11 Discretionary listing.
15.12 Notice of filing of recommendation to list and opportunity to have a listing proceeding.
15.13 Listing proceeding.
15.14 Review of the Case Examiner's decision.
15.15 Effective date of discretionary listing.
15.16 Notice of listing.

Subpart C—Procedures for Removing a Facility From the List of Violating Facilities

15.20 Removal of a mandatory listing.
15.21 Removal of a discretionary listing.
15.22 Request for removal from the list of violating facilities.
15.23 Request for removal hearing.
15.24 Removal hearing.
15.25 Request for review of the decision of the Case Examiner.
15.26 Effective date of removal.
15.27 Notice of removal.

Subpart D—Agency Coordination

15.30 Agency responsibilities.
15.31 Agency regulations.
15.32 Contacting the Assistant Administrator.
15.33 Investigation by the Assistant Administrator prior to awarding a contract, grant, or loan.
15.34 Referral by the Assistant Administrator to the Department of Justice.

Subpart E—Miscellaneous

15.40 Distribution of the List of Violating Facilities.
15.41 Reports.

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; Executive Order 11738 of September 10, 1973 (38 FR 28161).

Subpart A—Administrative Matters

§ 15.1 Policy and purpose.

(a) It is the policy of the Federal Government to improve and enhance environmental quality. This regulation is issued to ensure that each agency in the Executive Branch of the Federal Government that is empowered to enter into contracts for the procurement of goods, materials, or services or to extend Federal assistance by way of grant, loan, or contract undertakes such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, and the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, and does not favor firms where production costs may be lower due to noncompliance.

(b) This part establishes the List of Violating Facilities, procedures for placing a facility on the List of Violating Facilities, removing a facility from the List of Violating Facilities, and procedures for ensuring that agencies in the Executive Branch of the Federal Government undertake their procurement and assistance activities in a manner that will result in effective enforcement of the CAA and the CWA.

§ 15.2 Scope.

(a) This regulation applies to all agencies in the Executive Branch of the

Federal Government which award contracts, grants, or loans. This regulation also applies to government contractors and subcontractors and to recipients of funds under government grants and loans. The debarment or suspension that results from a mandatory or discretionary listing is facility-specific and does not apply to other facilities of the same company.

(b) This regulation only applies to contracts, grants, or loans involving the use of facilities located within the United States.

(c) The rights and remedies of the Government under these regulations are not exclusive and do not affect any other rights or remedies provided by law.

§ 15.3 Administrative responsibility.

(a) Except for the power to issue rules and regulations, the Assistant Administrator for Enforcement and Compliance Monitoring and the General Counsel are delegated authority and assigned responsibility to carry out the responsibilities assigned to the Administrator of the Environmental Protection Agency under Executive Order 11738.

(b) The Assistant Administrator and the General Counsel are authorized to redelegate the authority conferred by this regulation.

§ 15.4 Definitions.

"Administrator" means the Administrator of the United States Environmental Protection Agency or his or her designee.

"Agency" means any department, agency, establishment, or instrumentality in the Executive Branch of the Federal Government, including corporations wholly owned by the Federal Government which award contracts, grants, or loans.

"Air Pollution Control Agency" means any agency which is defined in section 302(b) or section 302(c) of the CAA.

"Applicant" means any person who has applied for but has not yet received a contract, grant, or loan and includes a bidder or proposer for a contract which is not yet awarded.

"Assistant Administrator" means the Assistant Administrator for Enforcement and Compliance Monitoring, United States Environmental Protection Agency, or his or her designee.

"Borrower" means any recipient of a loan as defined below.

"Case Examiner" means an EPA official familiar with pollution control issues who is designated by the Assistant Administrator to conduct a listing or removal proceeding and to determine whether a facility will be placed on the List of Violating Facilities or removed from such list. The Case Examiner may not be: (1) The Listing Official; (2) the Recommending Person or anyone subordinate to the Recommending Person; or (3) closely involved in the underlying enforcement action.

"Clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the CAA or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the CAA, an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the CAA or an approved implementation procedure under section 112(d) of the CAA.

"Clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is established pursuant to the CWA or contained in a permit issued to a discharger by the United States Environmental Protection Agency, or by a State under an approved program, as authorized by section 402 of the CWA, or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Clean Water Act.

"Compliance" means compliance with clean air standards or clean water standards. For the purpose of these regulations, compliance also shall mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the United States Environmental Protection Agency, or an air or water pollution control agency, in accordance with the requirements of the CAA or the CWA and regulations issued pursuant thereto.

"Contract" means any contract or other agreement made with an Executive Branch agency for the procurement of goods, materials, or services (including construction), and includes any subcontract made thereunder.

"Contractor" means any person with whom an Executive Branch agency has entered into, extended, or renewed a contract as defined above, and includes subcontractors or any person holding a subcontract.

"Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations owned, leased, or supervised by an applicant, contractor, grantee, or borrower to be used in the performance of a contract, grant, or loan. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Assistant Administrator determines that independent facilities are located in one geographic area.

"General Counsel" means the General Counsel of the U.S. Environmental Protection Agency, or his or her designee.

"Governor" means the governor or principal executive officer of a state.

"Grant" means any grant or cooperative agreement awarded by an Executive Branch agency including all subagreements awarded thereunder. This includes grants-in-aid, except where such assistance is solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*

"Grantee" means any person with whom an Executive Branch agency has entered into, extended, or renewed a grant, subgrant, or other assistance agreement defined under "grant" above.

"List of Violating Facilities" means a list of facilities which are ineligible for any agency contract, grant or loan.

"List Official" means an EPA official designated by the Assistant Administrator to maintain the List of Violating Facilities.

"Listing proceeding" means an informal hearing, conducted by the Case Examiner, held to determine whether a facility should be placed on the List of Violating Facilities.

"Loan" means an agreement or other arrangement under which any portion of a business, activity, or program is assisted under a loan issued by an agency and includes any subloan issued under a loan issued by an agency.

"Person" means any natural person, corporation, partnership, unincorporated association, State or local government, or any agency, instrumentality, or subdivision of such a government or any interstate body.

"Recommendation to list" means a written request which has been signed and sent by a recommending person to the Listing Official asking that EPA place a facility on the List of Violating Facilities.

"Recommending person" means a Regional Administrator, the Associate Enforcement Counsel for Air or the Associate Enforcement Counsel for Water or their successors, the Assistant Administrator for Air and Radiation or the Assistant Administrator for Water or their successors, a Governor, or a member of the public.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territories of the Pacific Islands.

"Water pollution control agency" means any agency which is defined in section 502(1) or section 502(2), 33 U.S.C. 1362 (1) or (2), of the CWA.

§ 15.5 Exemptions.

(a) (1) *Transactions of $100,000 and less.* Except as provided in § 15.5(b) below, contracts, grants, and loans not exceeding $100,000 are exempt from these regulations. This exemption includes contracts for indefinite quantities or service as long as the purchaser has reason to believe that the amount to be ordered in any year under such an agreement will not exceed $100,000.

(a) (2) *Assistance to abate, control, or prevent environmental pollution.* Except as provided in § 15.5(b) below, a contract, grant, or loan will be exempt from these regulations when the principal purpose of a contract, grant, or loan is to assist the facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control or prevention of environmental pollution.

(b) The exemption in § 15.5(a) do not apply where work under the contract is to be performed at a facility that has been placed on the List of Violating Facilities on the basis of a criminal conviction under section 113(c)(1) of the CAA or section 309(c) of the CWA and the person convicted owns, supervises, or leases the facility.

(c) *Authority of Agency Head to Grant Exemptions*—(1) *Individual exemptions.* Where an Agency head determines that it is in the paramount interest of the United States to enter into, renew, or extend a contract, grant, or loan in connection with any facility that is on the List of Violating Facilities, he or she may exempt the agreement from the provisions of this regulation for a period of one year. The Agency head granting the exemption shall notify the Assistant Administrator of the exemption as soon, before or after granting the exemption, as may be practicable. The justification for such an exemption, or any renewal thereof, shall fully describe the purpose of the contract, grant, or loan and shall show why the paramount interest of the United States requires the exemption.

(2) *Class exemptions.* Where an agency head determines that it is in the paramount interest of the United States for the agency to enter into, extend, or renew any class of contracts, grants, or loans, he or she may exempt the class of agency contracts, grants, or loans from the provisions of this regulation by rule or regulation after consultation with the Administrator.

Subpart B—Procedures for Placing a Facility on the List of Violating Facilities

§ 15.10 Mandatory listing.

The Listing Official shall place a facility on the List of Violating Facilities if the facility which gave rise to the conviction is owned, leased, or supervised by any person who has been convicted of a criminal offense under section 113(c)(1) of the CAA or section 309(c) of the CWA. The mandatory listing is automatically effective upon conviction.

§ 15.11 Discretionary listing.

(a) The Listing Official shall place a facility on the List of Violating Facilities if there is a final agency action under § 15.12(d), 15.13(c) 15.14(c), or 15.14(d) which determines that there is a record of continuing or recurring noncompliance with clean air standards or clean water standards at the facility recommended for listing and that:

(1) A federal court has convicted any person under section 113(c)(2) of the CAA if that person owns, leases, or supervises a facility recommended for listing;

(2) A state or local court has convicted any person of a criminal offense on the basis of noncompliance with clean air standards or clean water standards if that person owns, leases, or supervises a facility recommended for listing;

(3) A federal, state, or local court has issued an injunction, order, judgment, decree (including consent decrees), or other form of civil ruling as a result of noncompliance with clean air or clean water standards at a facility recommended for listing;

(4) The facility has violated any administrative order issued under section 113(a), 113(d), 167, or 303 of the CAA, or section 309(a) of the CWA, if the violator owns, leases, or supervises a facility recommended for listing;

(5) EPA has issued to the facility a Notice of Noncompliance under Section 120 of the CAA; or

(6) EPA has filed an enforcement action in federal court under sections 113(b), 167, 204, 205, or 211 of the CAA or section 309(b) of the CWA due to noncompliance with clean air standards or clean water standards at the facility recommended for listing.

(b) A recommendation to list from a recommending person initiates the process for discretionary listing. A recommendation to list must contain:

(1) The name, address, and telephone number of the person filing the recommendation;

(2) A description of the facility alleged to be in noncompliance with clean air standards or clean water standards, including the name and address of the facility;

(3) A description of the alleged continuing or recurring noncompliance, including any available data and any other pertinent information supporting the allegation of noncompliance; and

(4) A description of the criminal, civil, or administrative action or conviction under § 15.11 (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) which is pertinent to the facility and the alleged continuing or recurring noncompliance.

(c) The Listing Official shall review each recommendation to list to ensure that it complies with all of the requirements under § 15.11(b). If there is a deficiency in a recommendation the Listing Official must return it to the recommending person for correction. If there is no deficiency in the recommendation to list, the Listing Official shall transmit the recommendation to the Assistant Administrator. The Assistant Administrator, in his or her discretion, may:

(1)j Decline to list, or

(2) Designate a Case Examiner in accordance with § 15.12(a), or

(3) Decide to list the facility in accordance with § 15.12(d).

(d) A recommending person may withdraw a recommendation list at any time before the conclusion of the listing proceeding. The recommending person shall withdraw the recommendation to list if the recommending person determines that the conditions which gave rise to the recommendation to list have been corrected or if the facility recommended for listing is on an EPA-approved plan for compliance, which will ensure that the conditions(s) which gave rise to the recommendation to list will be corrected.

§ 15.12 Notice of filing of recommendation to list and opportunity to have a listing proceeding.

(a) The Listing Official shall send to the owner, operator or supervisor of the facility named in the recommendation to list written notice that a recommendation that the facility be placed on the List of Violating Facilities has been filed with the Listing Official and has been transmitted to the

Assistant Administrator. Within thirty (30) calendar days of the receipt of the notice, any person who owns, leases, or supervises the facility may request the Assistant Administrator to designate a Case Examiner to hold a listing proceeding for the purpose of determining the propriety of the proposed listing.

(b) If a listing proceeding is requested, the Listing Official shall schedule a listing proceeding and notify in writing the recommending person and the person requesting the listing proceeding of the date, time, and location of the listing proceeding.

(c) The Listing Official shall respond to any requests from the recommending person and the person requesting the listing proceeding concerning the procedures for discretionary listing.

(d) If there is no timely request for a listing proceeding under § 15.12(a) above, the Listing Official will place the facility named in the recommendation to list on the List of Violating Facilities on the basis of discretionary listing if, upon reviewing the recommendation to list and any other available information, the Assistant Administrator determines that there is a record of continuing or recurring noncompliance with clean air standards or clean water standards at the facility recommended for listing and the requisite criminal, civil, or administrative enforcement action has been taken or criminal conviction under CAA section 113(a)(2) or under State law has occurred. Such a determination by the Assistant Administrator constitutes final agency action.

§ 15.13 Listing proceeding.

(a) *No listing proceeding for mandatory listing.* Mandatory listing is effective upon conviction and no listing proceeding will be provided when a facility is listed on this basis. For purposes of updating the List of Violating Facilities, the Associate Enforcement Counsel for Criminal Enforcement shall notify the Listing Official of the conviction as soon as it occurs.

(b) *Listing proceeding for discretionary listing.* (1) A listing proceeding for discretionary listing shall be conducted in an informal manner without formal rules of evidence or procedure. The EPA and the person requesting the listing proceeding under § 15.12(a) above may be represented by legal counsel, present oral and written evidence relevant to the proposed listing, and, with the approval of the Case Examiner, may call, ask questions of, and cross-examine witnesses, except to the extent any testimony would prematurely reveal sensitive enforcement information which the government may legally withhold or would unduly extend the proceedings in light of the usefulness of any additional information likely to be produced. The Case Examiner may take official notice of facts, law, and any other information available to him or her. The Case Examiner may also request any party to supplement the record by submitting additional information.

(2) The listing proceeding shall be transcribed, and EPA shall make available at cost a transcribed record of the proceeding upon request by any person.

(3) To demonstrate an adequate basis for listing a facility, the record must show by a preponderance of the evidence that there is a record of continuing or recurring noncompliance at the facility named in the recommendation to list and that the requisite enforcement action has been taken.

(c) *Case Examiner's decision.* Not later than thirty (30) calendar days after conclusion of the listing proceeding and any supplementation of the record, the Case Examiner shall issue a written decision on whether or not to list the facility based on the record of the listing proceeding and shall file that decision with the Listing Official.

(d) *Notification of Case Examiner's decision.* The Listing Official shall notify in writing the recommending person and the person who requested the listing proceeding of the Case Examiner's decision and of the opportunity to request the General Counsel to review the Case Examiner's decision under § 15.14.

§ 15.14 Review of the Case Examiner's decision.

(a) Within thirty (30) calendar days after notice of the Case Examiner's decision, the owner, operator or supervisor of the facility may file with the Listing Official a written request asking the General Counsel to review the Case Examiner's decision. The request to review the Case Examiner's decision must contain:

(1) A statement of the case and the facts involved in the recommendation to list;

(2) A statement of the issues presented by the recommendation to list; and

(3) A statement showing why the decision of the Case Examiner is not correct based on the record of the listing proceeding considered as a whole.

(b) The owner, operator or supervisor of the facility may raise on review only those issues raised before the Case Examiner, unless the General Counsel determines that there is good cause to include consideration of any new issues.

(c) If the Listing Official receives a timely request for review of the Case Examiner's decision, the General Counsel shall review the record of the listing proceeding to determine if the decision of the Case Examiner is correct based on the record of the listing proceeding considered as a whole. As soon as practicable after receiving the request for review, the General Counsel shall issue a final decision in writing which explains the basis for the final decision. The General Counsel's decision shall constitute final agency action. The General Counsel shall file the decision with the Listing Official.

(d) The Case Examiner's decision constitutes a final agency action for purposes of discretionary listing unless a timely request for review of the Case Examiner's decision is filed with the Listing Official in accordance with § 15.14(a).

§ 15.15 Effective date of discretionary listing.

(a) Discretionary lising is effective immediately upon the issuance of a final agency action filed with the Listing Official to place the facility recommended for listing on the List of Violating Facilities, or upon a determination of the Assistant Administrator under § 15.12(d).

(b) Discretionary listing remains effective until a removal occurs under § 15.26.

§ 15.16 Notice of listing.

(a) *Mandatory listing.* The Listing Official shall send written notice to the owner, operator or supervisor of the facility which shall state that the facility has been placed on the List of Violating Facilities on the basis of mandatory listing and the effective date of such listing.

(b) *Discretionary listing.* The Listing Official shall send written notice to the recommending person and any person who requested a listing proceeding informing them of the effective date of the discretionary listing. The Listing Official shall send written notice to the owner, operator or supervisor of the facility if no listing proceeding was requested.

(c) *Federal Register notice.* The Listing Official shall publish the effective date of the placement of the facility on the List of Violating Facilities in the Federal Register in accordance with § 15.40.

Subpart C—Procedures for Removing a Facility From the List of Violating Facilities

§ 15.20 Removal of a mandatory listing.

When the Listing Official has placed a facility on the List of Violating Facilities on the basis of mandatory listing under § 15.10, the facility shall remain on the List of Violating Facilities until the Assistant Administrator certifies that the condition giving rise to mandatory listing has been corrected. Where a conviction has been overturned, removal shall be automatic.

§ 15.21 Removal of a discretionary listing.

(a) When the Listing Official has placed a facility on the List of Violating Facilities on the basis of discretionary listing under § 15.11, the Listing Official shall remove the facility from the List of Violating Facilities as provided below:

(1) If the conviction, decree, order, judgment, or other form of civil ruling or finding which formed the basis for discretionary listing under § 15.11(a) has been reversed or otherwise modified to remove the basis for discretionary listing;

(2) If the Assistant Administrator has determined that the condition(s) which gave rise to discretionary listing have been corrected; or,

(3) Automatically after one year of a discretionary listing under § 15.11 (a)(4), (a)(5) or (a)(6), unless before the expiration of the one-year period a basis for mandatory listing arises under § 15.10 or a basis for discretionary listing arises under § 15.11 (a)(1), (a)(2), or (a)(3).

(b) The Listing Official shall remove a facility from the List of Violating Facilities at the direction of the Assistant Administrator if the Assistant Administrator determines that the facility is on a plan for compliance which will ensure that the condition(s) which gave rise to discretionary listing will be corrected.

§ 15.22 Request for removal from the list of violating facilities.

(a) The original recommending person or any person who owns, operates or supervises a facility that is on the List of Violating Facilities may file with the Listing Official a request to remove the facility from the List. This request must set forth the proposed basis for removal from the List under §§ 15.20 or 15.21.

(b) The Assistant Administrator shall review the request for removal and shall issue a decision as expeditiously as practicable after receiving the request as to whether the facility will be removed from the List of Violating Facilities. Failure of the Agency to make a decision within 45 calendar days constitutes a denial of the request.

(c) The Listing Official shall send written notice to the person requesting removal informing that person of the Assistant Administrator's decision and of the opportunity to request a removal hearing under § 15.23 if the Assistant Administrator denies the request for removal.

§ 15.23 Request for removal hearing.

(a) Within thirty (30) calendar days after the Assistant Administrator denies a request for removal from the List of Violating Facilities, the owner, operator or supervisor of the facility or the original recommending person may file with the Listing Official a written request for a removal hearing under § 15.24. (b) If a timely request for a removal hearing under § 15.23(a) is not filed, any person who may make a request for removal under § 15.22(a) may file a new request for removal under § 15.22(a) based on new information.

§ 15.24 Removal hearing.

(a) A removal hearing shall be conducted by a Case Examiner designated by the Assistant Administrator. The person requesting the removal hearing must demonstrate at the removal hearing by a preponderance of the evidence that a basis for removal is present.

(1) The person requesting the removal hearing and the Agency may be represented by legal counsel, present oral and written evidence relevant to the proposed removal, and, with the approval of the Case Examiner, call, ask questions of, and confront witnesses to the extent it is relevant to the issue of removal and to the extent that any additional information produced will be useful in light of the additional time such procedures will take.

(2) The removal hearing shall be transcribed and a transcribed record of the proceeding shall be made available at cost upon request by the owner, operator, or lessee of the facility or any person represented at the hearing.

(b) The Federal, State, or local authority responsible for the enforcement of clean air standards or clean water standards with respect to the listed facility may participate in the removal hearing.

(c) The Case Examiner's decision concerning removal shall be based solely upon the record in the removal hearing.

(d) The Listing Official shall send written notice to the person requesting the removal hearing and the Federal, State, or local authority responsible for the enforcement of clean air standards or clean water standards with respect to the listed facility, informing them of the decision of the Case Examiner and of the opportunity to request the Administrator to review the Case Examiner's decision under § 15.25.

§ 15.25 Request for review of the decision of the Case Examiner.

(a) Within thirty (30) calendar days after the date of the Case Examiner's decision under § 15.24, the owner, operator or supervisor of the facility may file with the Listing Official a request for the Administrator to review the Case Examiner's decision. The request shall contain:

(1) A statement of the issues presented by the request for removal;

(2) A statement of the case and the facts involved in the request for removal; and

(3) A statement showing why the decision of the Case Examiner is not correct based upon the record of the removal hearing considered as a whole.

(b) Upon receiving a timely request for review of the decision of the Case Examiner, the Administrator shall review the record of the removal hearing to determine if the decision of the Case Examiner is correct based upon the record of the removal hearing considered as a whole. As soon as practicable after receiving the request for review, the Administrator shall issue a final decision in writing which shall set forth the reasons for the decision. The decision shall constitute final agency action.

(c) If the timely request for the Administrator to review the Case Examiner's decision under § 15.25(a) is not filed, the Case Examiner's decision constitutes final agency action at the expiration of such period.

(d) If the request for removal is denied upon review, any person who may file a request for removal under § 15.22(a) may file a new request for removal under § 15.22(a) based on new information.

§ 15.26 Effective date of removal.

(a) *Mandatory listing.* Removal of a facility placed on the List of Violating Facilities on the basis of mandatory listing shall be effective immediately upon the certification by the Assistant Administrator that the condition(s) which gave rise to the mandatory listing under § 15.10 has been corrected, or upon the issuance of a final agency action filed with the Listing Official to remove the listed facility from the List of Violating Facilities following a decision

by a Case Examiner under § 15.24 or by the Administrator under § 15.25.

(b) *Discretionary listing.* Removal of a facility placed on the List of Violating Facilities on the basis of discretionary listing shall be effective immediately upon the expiration of one year under § 15.21(a)(3), or upon the Assistant Administrator's decision to remove the listed facility based upon a timely written request for removal under § 15.22(a), or upon the issuance of a final agency action filed with the Listing Official to remove the listed facility from the List of Violating Facilities under §§ 15.24 or 15.25.

§ 15.27 Notice of removal.

The Listing Official shall send written notice to the owner, operator or supervisor of the facility, the recommending person, and any person who made a timely written request for removal under § 15.22(a), informing them of the effective date of the removal of the facility from the List of Violating Facilities. The Listing Official shall publish the effective date of the removal in the Federal Register in accordance with § 15.40.

Subpart D—Agency Coordination

§ 15.30 Agency responsibilities.

Each agency shall take appropriate steps to ensure that all officers and employees whose duties include ensuring that all agency contracts, grants, and loans are in compliance with applicable requirements are familiar with the requirements set forth in Executive Order 11738, this regulation, the Federal Acquisition Regulations (48 FR 42102, September 19, 1983), and the EPA Acquisition Regulations (49 FR 8834, March 8, 1984).

§ 15.31 Agency regulations.

Any agency responsible for promulgating contract, grant, or loan regulations, shall ensure that its regulations require every nonexempt agency contract, grant, or loan and every subagreement issued thereunder to include the following provisions:

(a) A promise by the contractor, grantee, or borrower that he or she will not use any facility on the List of Violating Facilities in the performance of any nonexempt contract, grant, or loan for the duration of time that the facility remains on the List.

(b) A promise by the contractor, grantee, or borrower that he or she will notify the awarding agency if a facility he or she intends to use in the performance of the contract, grant, or loan is on the List of Violating Facilities or knows that it has been recommended to be placed on the List of Violating Facilities.

(c) A promise by the contractor, grantee, or borrower that in the performace of the contract, grant, or loan, he or she will comply with all requirements of the CAA and the CWA, including the requirements of section 114 of the CAA and section 308 of the CWA, and all applicable clean air standards and clean water standards. *See* Federal Acquisition Regulation, 48 CFR 52.223–1 and 52.223–2.

§ 15.32 Contacting the Assistant Administrator.

(a) Any agency contracting officer or awarding official shall promptly report, to his or her agency head, or the designee of the Agency head any condition which may involve noncompliance with clean air standards or clean water standards at any facility that is being used, or will be used in an agency contract, grant, or loan. The report shall include at a minimum the following information:

(1) The name, telephone number, and agency of the employee discovering the condition.

(2) The name of the facility at which the condition exists.

(3) A description of the condition.

(4) The contract, grant, or loan the agency has issued or may issue, extend, or renew to the facility at which the condition exists.

(b) The agency head, or his or her designee, shall transmit any reports made under § 15.32(a) to the Assistant Administrator as soon as practicable, after he or she receives the report. In response to the report, the Assistant Administrator shall take any action that is consistent with the policy and purpose of this regulation.

§ 15.33 Investigation by the Assistant Administrator prior to awarding a contract, grant, or loan.

(a) If the Assistant Administrator is notified under § 15.32(b) that a condition which may involve noncompliance with clean air standards or clean water standards exists at a facility that is or may be used in the performance of any nonexempt agency contract, grant, or loan, the Assistant Administrator may, after consultation with the awarding agency involved, request that the award, extension, or renewal of the nonexempt contract, grant, or loan be withheld for fifteen (15) working days to determine if a basis exists for placing the facility on the List of Violating Facilities under §§ 15.10 or 15.11.

(b) If the Assistant Administrator requests that an award, extension, or renewal of a contract, grant, or loan be withheld under § 15.33(a), the awarding agency shall comply with the Assistant Administrator's request unless it determines that the delay is substantially contrary to the best interests of the government. The awarding agency shall promptly notify the Assistant Administrator of any such determination.

(c) At the end of the fifteen (15) working-day period, the Assistant Administrator shall notify the awarding agency and the applicant of the results of any investigation undertaken under § 15.33(a).

§ 15.34 Referral by the Assistant Administrator to the Department of Justice.

The Assistant Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever the Assistant Administrator becomes aware of a breach of any provision required to be included in a contract, grant, or loan under § 15.31.

Subpart E—Miscellaneous

§ 15.40 Distribution of the List of Violating Facilities.

The List of Violating Facilities shall be transmitted to the General Services Administration and Federal agencies with assistance responsibilities and published in the Federal Register on or about February 1 and August 1 of each year, and updated in the Federal Register as necessary to reflect changes to the List as they occur. The list shall contain the following information:

(a) The name of each facility on the List;

(b) The location of the facility;

(c) The basis for the listing;

(d) The effective date of the listing; and

(e) Any removal of any facility from the List.

§ 15.41 Reports.

(a) *Agency reports.* Each Agency head will report to the Administrator each exemption granted under § 15.5(b) to the Administrator. Reports should be made by November 1 of each year and should indicate all exemptions granted during the previous fiscal year.

(b) *Reports by the Administrator.* (1) The Administrator shall report annually to the President on the measures he or she has taken toward implementing the purpose and intent of section 306 of the CAA, section 508 of the CWA, Executive Order 11738, and this regulation, including but not limited to the progress and problems associated with such implementation.

(2) The Administrator shall notify the President and the Congress annually of all exemptions granted or in effect under § 15.5 during the preceding year.

[FR Doc. 85–21126 Filed 9–4–85; 8:45 am]
BILLING CODE 6560–50–M

federal register

Thursday
September 5, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Final Frameworks for Late Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Final Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits and other options for the 1985–86 migratory bird hunting season. The earliest of these seasons generally commences on or about October 1, 1985, and include most of those for waterfowl.

The Service annually prescribes hunting regulations frameworks to the States. The effects of this final rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for the 1985–86 season. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of 50 CFR Part 20.

EFFECTIVE DATE: This rule takes effect on September 5, 1985. Tentative State selections of seasons and other options based on the proposed frameworks were due no later than August 30, 1985.

ADDRESSES: Send State season selections to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, D.C. 20240. Comments received on the proposed late-season frameworks are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Telephone (202) 245–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703–711), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 14, 1985, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (50 FR 10278) proposals to amend 50 CFR Part 20, with comment periods ending June 20, July 15 and August 19 (later extended to August 22), 1985, respectively, for the 1985–86 Alaska, Hawaii, Puerto Rico and Virgin Islands hunting seasons; other early hunting seasons; and the late hunting seasons frameworks. That document dealt with the establishment of hunting seasons, shooting hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early and late season frameworks appeared in the **Federal Register** dated June 4, 1985 (50 FR 23459).

On July 5, 1985, the Service published for public comment in the **Federal Register** (50 FR 27638) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 26, 1985, the Service published in the **Federal Register** (50 FR 30424) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 13, 1985, the Service published in the **Federal Register** (50 FR 32587), a fifth document containing proposed frameworks for late-season migratory bird hunting regulations. On August 21, 1985 (50 FR 33737) a sixth document containing final frameworks for other early seasons for migratory bird hunting regulations from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1985–86 season. On August 30, 1985, the Service published in the **Federal Register** (50 FR 35358) a seventh document consisting of a final rule amending Subpart K of Title 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhen and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special extended falconry seasons. This document is the eighth in the series and establishes final frameworks for late-season migratory bird hunting regulations for the 1985–86 season.

These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments and the Service's Response

Written Comments Received

In the **Federal Register** dated June 4, 1985 (at 50 FR 23460), the Service responded to comments received up to that time on proposed late season frameworks. Twelve statements made at the public hearing on proposed late hunting frameworks and 246 additional written comments were summarized and responded to in the **Federal Register**, dated August 13, 1985 (at 50 FR 32589). Since then 684 written comments have been received. In several cases, more than one comment was received from the same respondent, and in some others views were offered on more than one regulatory subject. The new comments originated from 22 states, 21 organizations and a number of individuals. They are summarized and responded to according to the regulatory topics identified in the **Federal Register**, dated March 14, 1985 (50 FR 10276).

1. *Shooting hours.* A Massachusetts sportsmen's group requested that waterfowl shooting hours be one-half hour before sunrise to one-half hour after sunset.

Response. The Service does not favor a liberalization of the shooting hours because of the concern for the potential impact on the resource.

2. *Framework dates for ducks and geese in the continental 48 States.* This regulatory topic is broad and includes season framework dates, season length, and bag limits. The majority of the comments relate to the duck regulations. Many of the comments relate to the Service proposal to not accept an Atlantic Flyway proposal for a new duck management unit identified as the Northeast Zone. These comments are treated under frameworks since the Flyway proposal was developed in response to the reduced duck harvest objectives established at the Annual Waterfowl Status Meeting and subsequently relayed to the Flyway technical sections and councils.

Twelve States—Maine, New Hampshire, New York, Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, Maryland, Delaware, Georgia and North Carolina—submitted comments that object to the Flyway-wide regulations

proposed for the Atlantic Flyway and voice support for the establishment of a Northeast Zone in the Flyway. The State objections were reinforced by comments from 9 sportsmen's clubs or associations and 180 individuals. The reasons for these objections as indicated by one or more comments include the belief that Service regulatory proposals are unjustified biologically; that the source of ducks in the Northeast is from eastern production areas rather than prairie areas, and that the Flyway harvest includes few prairie ducks; that mallards are increasing in the Northeast and do not need protection and perhaps should not be protected in light of wood duck and black duck management actions; that the restrictions proposed destroy State black duck harvest reduction plans; that it is wrong to assume all ducks are in trouble; that precedence for the Northeast Zone can be found in special canvasback and goose regulations; that the Service's proposed regulations will not aid the resource and may harm it through reduced hunter interest and support; and finally that waterfowl regulations in eastern Canada in 1985 are unchanged from those of 1984.

In the Mississippi Flyway four States and 255 individuals voiced strong objections to the changed season framework dates. Minnesota, Michigan and Wisconsin recommended a return to an earlier framework opening date. Minnesota noted the frameworks have not been changed for many years and Wisconsin and Michigan stated there was no discussion of framework date changes by the Service at the Flyway Council's July meeting. Minnesota, Michigan and Wisconsin recommended an opening on the Saturday nearest October 1. All three States indicated that if a framework change was necessary October 5 would be acceptable. These States believe the fixed framework proposed are inequitable because States desiring to open early lose 10 days from the framework system in effect in 1984 while States interested in a late closing lose only 7. Further, northern States are much more impacted by the loss of opening days than are States elsewhere in the Flyway. Mississippi was concerned with the framework closing date and asked for continuation of the experimental late season closing of January 31 until the final report of their experiment is available. Comments from two individuals supported Mississippi's request. Thirty-four individuals from Louisiana requested that the Service stay with stabilized regulations in the hope that information from one or more non-drought years could be included in the analysis of stabilized regulations.

Five Central Flyway States and 6 individuals commented on one or more aspects of the proposed late season frameworks. Concern was expressed that the cooperative regulatory processes had broken down. It was noted that season framework date changes are unnecessary and that needed reductions in harvests could be achieved by bag limit adjustments; that the Service guideline of a 25% reduction was not uniformly applied to all Flyways and management units; that point values need reevaluation to insure that the 25% reduction is achieved while hunting opportunity is maintained; that Service actions showed lack of understanding of the goal of the High Plains Management Unit; and that the Service ignored Council input into development of regulations and the Service proposals appeared to be politically rather than biologically oriented. It was recommended that framework dates, including floating opening and closing dates, and season days be restored to 1984–85 levels that the High Plains Management Unit have 23 days in addition to the Low Plains or regular season length; and that mottled ducks be 100-point birds in the Mississippi Flyway as recommended for the Central and Atlantic Flyways.

Statements were received from the Pacific Flyway Council and 9 Flyway States concerning the late season proposals. Two organizations and 95 hunters commented in support of Council recommendations.

The Council believes that the Service departed from the flyway concept of administering the waterfowl resource. The Council noted their actions of the past two years to develop frameworks for recovery of breeding populations, which included pintail restrictions in 1985, were more realistic than Service actions in obtaining harvest restrictions. Arizona, California, Idaho, Nevada, Utah, Oregon, Washington, Colorado, and New Mexico all opposed the Service proposals for late season regulations and supported the Council's stand. One or more States offered comments that generalized nationwide harvest reductions are not appropriate and regulations should have flyway orientation; that many areas contributing ducks to the Flyway are unsurveyed and may be subjected to drought; that Council proposals allow for greater harvest of surplus drakes which will not inhibit population recovery; that States could be more restrictive under the Council's proposed frameworks; and finally that Service proposals are too restrictive and not necessary.

Five national organizations submitted comments on the proposed regulations.

The Wildlife Legislative Fund Of America (WLFA) stated that although the Service has decided hunting pressure must be reduced, the WLFA doubts that the decline in duck populations is due to hunting. The WLFA urged the Service to continue with stabilized regulations, focus on habitat needs and be careful to maintain hunter interest and support. WLFA noted duck populations have not dropped below the "triggering" levels for two years as presented in the stabilized regulations study.

Defenders of Wildlife applauded the Service for restrictive frameworks but believe the action proposed may not be enough. Defenders believe that the daily bag limit of 2 pintail hens proposed in the Atlantic and Mississippi Flyways is too liberal and that it should be reduced to only 1 hen and that the point value for hen pintails should be 100 points in the Atlantic, Mississippi and Central Flyways. Defenders believe the Service should set equitable harvest levels and offered other comments of a non-regulatory nature which will be addressed outside this document.

The Humane Society of the United States (HSUS) endorsed the Service's conclusion that harvest reductions are needed but believes the 25% goal is not adequate, that the harvest strategy cannot be based on black duck experience, that it appears to be based on the desire to maintain duck stamp sales, and that the best strategy would be to close the duck season.

The National Wildlife Federation expressed concern about mallards and pintails and support for regulations to reduce duck harvest but not on a nationwide basis. The Federation believes the Service ignored the correct biological solution to the problem (low duck populations) in favor of a political one. The Federation supports continued use of stabilized regulations with modifications.

The State of Maryland, the Waterfowl Habitat Owners Alliance (California) and several individuals noted that the restrictive regulations proposed for mallards will interfere with the harvest of captive-reared mallards released into the wild and may significantly impact on wetlands habitat restoration and maintenance programs. Maryland has provided incentives to private landowners to create wetland habitats. Many of the owners participating in the habitat program have also released mallards on those wetlands. The State

fears the restrictive regulations will cause landowners to lose interest in releasing birds and maintaining wetlands. Many Californians release mallards on game club properties in southern California and some of those sportsmen fear wetland habitats will be converted to other uses if the proposed mallard restrictions are sustained. It is requested that the Service grant special harvest status in one form or another for marked hand reared mallards.

Response. The support of the States, organizations, and individuals listed above for more liberal regulations for the Atlantic Flyway and for establishment of a Northeast Unit in the Flyway is noted by the Service. The arguments that many ducks in the proposed Northeast Unit originate from more eastern breeding grounds, that several of the ducks important in the harvest there are species for which annual breeding ground harvest information is limited or not available, and that mallard numbers are increasing in the Unit seemed to have merit. These facts were weighed against evidence that many ducks in the Northeast Unit are transients and subject to hunting pressure there and elsewhere in the Flyway and that 2 species important in the harvest presently warrant concern and are covered by restrictive regulations.

In consideration of this information, the Service has established a Northeast Unit on an experimental basis consisting of Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island. The Flyway proposal to include Connecticut, and parts of New York and New Jersey was modified based on limited information from the Service Resource Publication 147, *Population Ecology of the Mallard* that indicates an increased fraction of more mallards (and probably some other ducks as well) harvested in those 3 States are of western origin than those harvested in the 5 Northeast Unit States. It is obvious that more information is needed on this issue and the Flyway and the Service must strive to better define the boundaries and management objectives of the Unit in the coming year.

In regard to the rest of the Flyway there is evidence that a greater portion of the harvest is of western breeding origin—generally the further south a State is located in the Flyway the larger the fraction of its harvest is of ducks from western breeding grounds. The Service has repeatedly expressed concern about the status of duck populations, including declining mallard flocks in the southern part of the Flyway. The Service believes this situation calls for restrictive regulations in the Atlantic as well as other flyways in 1985. For these reasons, the final frameworks for the Atlantic Flyway, except Northeast Unit States, reflect no change in the season length, bag limit, and framework opening and closing date provisions contained in the August 13, 1985 proposals.

The Service notes the concern of the northern Mississippi Flyway States, that the proposed framework opening and closing dates of October 5 and January 13 translate into a loss of 10 days in relation to the opening date but only a 7-day loss in relation to the closing date. This is because of the option available to the Flyway since 1979 to open on the Saturday nearest the framework opening. In light of this, and the fact that a delayed opening is more restrictive to northern latitude States than mid- and southern-latitude States in the Flyway because of the climatic conditions characteristic to each, the final frameworks contained within this document reflect a change in the framework opening date in the Mississippi Flyway from a fixed date of October 8 to a fixed date of October 5.

Mississippi's request regarding the continuation of their experimental late duck season has been addressed by the Service in the June 4, and August 13, 1985, **Federal Register** (at 50 FR 23463 and 32591, respectively). The Service continues to believe general framework restrictions in all flyways this year are needed to help reduce duck harvest and that the 1985–86 framework closing date in Mississippi should return to the closing date established for the Mississippi Flyway.

The Service recognizes the support for continuation of stabilized duck hunting regulations as has been in effect since 1980; however, the Service believes that the current status of the duck resource is such that restrictions in the general regulations frameworks of opening and closing dates, season length and bag limits is necessary in the 1985–86 season in order to slow the decline of breeding populations and aid their recovery when habitat conditions improve.

The Service is concerned that the Central Flyway feels the cooperative approach to regulations development failed this year. During the course of the serious decline in the duck population the Service established a lengthy record expressing concern about the situation and sought comment on possible regulatory strategies. At the 1985 Waterfowl Status Meeting the Service recommended harvest guidelines for consideration during development of Council regulations proposals. Nearly all Technical Section and Council deliberations included Service employees. During the ten years in which the Flyway Consultant process has been in use, it has been customary for all parties to agree upon a set of regulations to be proposed at the public hearing. Because of differences in the assessment of duck population information, and differences in evaluation of how to achieve desired harvest reductions, agreement was not reached prior to the public hearing. All parties had their opportunity for comment and it was considered. A proposal was announced on August 1 that was basically a Fish and Wildlife Service proposal with one flyway supporting it. In the judgment of the Service, no basic change in the process occurred but some clear differences of opinion and judgment occurred about final actions that needed to be taken. The Service will seek advice in the coming year on ways to make the system function more effectively.

In regard to the Flyway's framework and bag limit comments, the Service agrees that harvest in the Central Flyway will decline as a result of the decreased fall flight. The Service does not agree, however, that sufficient reduction in harvest would be accomplished solely through the bag limit restrictions proposed by the Flyway and harvest reductions which may occur by chance because of lowered fall flights.

The establishment of compressed framework dates was a deliberate effort to reduce harvest. In the absence of a framework change the Service believes even more restrictive bag limits and/or season lengths would have been required. The Service has, however, advanced the opening date to October 5, 1985.

The Service has reevaluated the point value allocations and concludes that in view of the forecast duck situation the values proposed were appropriate and are therefore continued in these final frameworks. The Service recognizes the special features of the High Plains Unit but does not believe it should be exempt from the overall effort to reduce duck harvest. The suggestion that the point value for mottled ducks in the Mississippi Flyway needs to be 100 points deserves review and study by appropriate technical groups in the Central and Mississippi Flyways. This cannot be done prior to establishment of the 1985–86 hunting regulations.

The earlier comments in this section concerning cooperative development of regulations appear equally applicable to the flyway's view that development of

regulations by their Technical committee was ignored. The charge that the Service opted for politically oriented solutions represents a misunderstanding in the Service's view. The series of Service statements, proposals and actions regarding regulations have been based on all available survey and harvest information. The problems result from differences of opinion on how to respond to the biological information available to all of us. The Service believes there is a sound biological basis for the proposals offered and the decisions reached.

The Service endorses the concept of flyway oriented regulations expressed by the Pacific Flyway Council. The Service continues to believe that restrictions in the regulations frameworks for opening and closing dates, season length and bag limit are needed (including in the Pacific Flyway) in light of the current status of the duck resource, particularly mallards and pintails, in order to slow the decline in breeding populations and aid their recovery when breeding habitat conditions improve. The Service concurs with the comments submitted by the Council and States supporting regulations that reflect consideration of the derivation of the ducks harvested in the flyway, especially mallards and pintails, and that emphasize protection of the females of those species while allowing optimum recreation opportunity on the males. The final frameworks contained within this document reflect the Service's endorsement of a daily bag limit for ducks throughout the Pacific flyway of 5-daily, no more than 1 of which may be a female mallard and no more than 1 of which may be a female pintail.

The doubts of the WLFA that the decline in duck populations is due to hunting is shared by others. Their view that the focus needs to be on habitat is shared by many. The Service agrees that habitat quality and quantity is a major problem in waterfowl management. However, the Service must reaffirm its concern about the current status of duck populations. The Service's view of the developing situation this year and the kinds of actions required to address the problem were detailed in the Federal Register of June 4, 1985 (at 50 FR 23462). The subsequent confirmation of a record low fall flight forecast for ducks convinced the Service that restrictive regulations were required to reduce harvest and assist in the rebuilding of breeding stocks. It was therefore not acceptable to continue stabilized regulations at the level of recent years. Since 5 years of stabilized regulations were completed with the 1984–85 season the Service felt there was no conflict with study requirements as a result of the changes proposed.

The Service appreciates the concern expressed by Defenders of Wildlife for the additional protection that should be afforded hen pintails; however, the Service feels that the proposed bag limits/point values for pintails in the Atlantic, Mississippi and Central Flyways will provide optimum harvest opportunity of the species while achieving the harvest reduction objective.

The HSUS conclusion that the harvest reductions are needed but that those proposed are not adequate and appear to be designed to maintain hunter numbers is noted. The Service believes management should consider the needs of the resource first but continue to provide opportunities for resource use to the extent compatible with sound management. The Service believes that the goal of a 25% reduction in harvest is supportable as a strong effort to provide meaningful relief to duck populations at 1965 levels. A closed season represents action much more stringent than required in order to effect population increases and wastes available opportunities for recreational use of the resource.

Regarding the comment of the National Wildlife Federation, the Service believes reductions in harvest are necessary for ducks in general, with emphasis on mallards and pintails, across all flyways based on the most important indicators of breeding habitat and population status that are available on a long term basis. The Service feels the proposed regulations still reflect the differences between flyways and heavily studied management units that have been developed over the past several decades. The Federation's support for continued use of stabilized regulations in the 1985–86 season with modifications where necessary is noted. The Service supports the continuation of some form of a stabilzed regulations strategy but feels that the current status of the duck resource is such that restrictions in the general regulations frameworks of opening and closing dates, seasons length and bag limits are necessary in the 1985–86 season.

Regarding the issue of released mallards it is noted that they comprise a very small part of the annual harvest. Released mallards can be important in local areas and appear to augment the Maryland mallard harvest by 20%—a situation not reported from any other State. The Service believes that private initiatives to maintain waterfowl habitats are important but should not be contingent upon special bag limit provisions.

Captive-reared and properly marked mallards may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: provided that such birds may be killed by shooting, in any number, at any time, within the confines of any premise operated as a shooting preserve under State license, permit, or authorization (see 50 CFR 21.13). This regulation would not preclude captive-reared mallards from being shot in designated areas provided they meet those criteria prescribed by the State(s) for shooting preserves. These regulations appear to accommodate requests to permit added harvest of release ducks. To further change these regulations would require a change in Department policy toward hunting of game farm migratory birds, development of a new set of wildlife regulations, public notice and solicitation of comment and final decision on the issue.

It is noted that in the Atlantic Flyway there is concern that released mallards may interfere with efforts to restore the black duck. Because of this, the Atlantic Flyway Council has refused to endorse special harvest regulations for game farm mallards. The Atlantic Flyway Technical Section has recommended against the release of game farm mallards for the same reason.

3. *Black Duck*—Comments regarding the impact of proposed harvest restrictions on efforts to restrict the harvest of black ducks in the Atlantic Flyway were received from Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Virginia and North Carolina. These States expressed concern that proposed 1985–86 regulations would negate a previous agreement established before the 1983–84 season to reduce harvest of black ducks by 25 percent and would result in an increased harvest of black ducks. They argued that the previous plan proposed by the States and agreed to by the Service was effective in reducing the harvest in excess of 25 percent and that proposed changes in regulations for 1985–86 would unduly complicate our evaluation of the third year of harvest restrictions. Also, they point out that efforts to reduce the harvest of mallards in the Atlantic Flyway only serve to increase the rate of black duck x mallard hybridization and further contributes to the decline of black ducks.

The Humane Society of the United States (HSUS) commented that the black duck harvest restrictions to this point have been a failure since population estimates have not shown a positive response. They asked the Service for a full season closure citing our responsibility under the Migratory Bird Treaty Act but insist that short of this action, the Service must make restrictions which are demonstrably effective. Further, the HSUS requested that the Service make available for public review and comment specific proposals for harvest restrictions in the Atlantic and Mississippi Flyways.

Response: The shortened season length, reduced daily bag limits, hen restrictions on mallards and framework date changes will result in some alterations of harvest control strategies used since 1983. The effects of these regulation changes on the evaluation of black duck restrictions can not be fully assessed at this time but these regulations are designed to achieve greater uniformity among states. Atlantic Flyway States of the Northeast Management Unit are allowed variable bag limit options as in 1984–85 with 1 or 2 black ducks permitted daily; however, the 1985–86 frameworks for the remainder of the Atlantic Flyway States and all Mississippi Flyway States permit the taking of only 1 black duck daily. In addition to these changes, States are asked to continue some within season restrictions in order to achieve their goal of reducing the harvest 25% from the 1977–81 level. Harvest strategies that do not reach this goal will be reviewed and revised prior to the 1986–87 season. The Service notes the comments by the HSUS and will continue to work with the States to reduce the harvest of black ducks. Specific proposals outlining harvest restrictions have in the past been published in **Federal Register** documents (see 48 FR 27802) for public review and comment. The Service welcomes input and comment regarding black duck harvest management and will further advise the public of future regulation changes and results of current management strategies.

6. *September teal season.* A sportmen's group in Massachusetts requested the option for a September teal season.

Response. The option for a September teal season is not currently offered to Atlantic Flyway States and the Service does not favor expanding the option. However, States in the Atlantic Flyway not selecting the point system have the option to select an extra teal limit of no more than 2 blue-winged teal of 2 green-winged teal or 1 of each daily and 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

8. *Experimental September Duck Seasons.* One individual in Tennessee indicated that in light of the status of ducks, particularly mallards and pintails, the experimental September duck season in Tennessee should not allow the harvest of any species other than teal or wood duck.

Response. The Service acknowledges the individual's concern but notes that the limited harvest of ducks other than teal or wood duck that has occurred during the experimental season in Tennessee is such that it has little impact on the resource.

11. *Mergansers.* A sportmen's group in Massachusetts requested that mergansers be added to those species that may be harvested during the States 107-day sea duck season because mergansers are adversely impacting on the commercial and sport fishing industries of the State.

Response. The Service notes that no documentation of the conflict between mergansers and the local fishing industries was included with the request. The Service feels that the bag limit framework of 5 mergansers daily in the Atlantic Flyway in addition to the regular duck season bag limit provides maximum harvest opportunity on mergansers.

13. *Duck Zones.* The Central Flyway Council and Texas reiterated objections to the continuation of zoning in Louisiana. The Council recommended that the current zone boundary in Louisiana be abandoned, that the duck hunting regulations for the State be those which are established for the Mississippi Flyway and that any future zoning proposals be in conformance with the Service's criteria for duck zones. Oklahoma expressed concern for the rationale to reduce all 1985 Flyway duck season lengths by 20% and yet allow Louisiana to continue with an extra 5 days in their West Zone.

Response. The Service addressed similar comments on the proposed regulations for Louisiana in the August 13, 1985, **Federal Register** (50 FR 32593). An Environmental Assessment addressing the concerns expressed on the proposed duck hunting regulations in Louisiana will be completed prior to the establishment of the final 1986–87 regulations frameworks. Regarding the concerns expressed by Oklahoma, these and similar issues will be addressed in the months ahead. The Service notes that Louisiana's regular duck season was reduced from 50 days to 40 days as in the rest of the Mississippi Flyway.

14. *Goose and brant seasons.* Michigan, by letter dated August 8, 1985, reiterated the following requests:

1. A season for Canada geese in the State's Upper Peninsula that would close after 40 days or when a 4,000 bird Mississippi Valley Population Canada goose harvest objective has been reached.

2. A 3-day September (14–16) Canada goose season in the State's Southern Michigan Goose Management Area for the control of local nuisance giant Canada geese. The 3-day season would be taken in lieu of any December hunting days during the State's late extended season for the nuisance geese.

Response. The Service has reviewed Michigan's proposals for Canada geese in the Upper Pennisula (U.P.) and believe they have merit. However, the Service feels that the monitoring system proposed is new and needs to be tested before any quota system is made operational in the U.P. The Service recommends the State test the monitoring system during the coming season. If the test warrant, an operational program can be considered for the 1986–87 waterfowl season.

Michigan's recommendation for a mid-September season on giant Canada geese also has merit. The comment period on early season frameworks closed on July 15 and the final frameworks were published August 6. This request must be deferred to the 1986 regulations cycle.

By letter dated August 22, 1985, the Human Society of the United States expressed oposition to the proposed dusky Canada goose season for Sauvie Island Wildlife Management Area, Oregon, and Ridgefield National Wildlife Refuge, Washington, because: (1) A similar season last year failed to reduce the kill of these geese; (2) production this year was poor, estimated to be 510 young; and (3) the geese are probably "threatened" by definition under the Endangered Species Act of 1973.

Response. The offered season is intended to explore ways to effect a differential harvest among the several populations of geese, especially reducing the harvest of dusky Canada geese while increasing that of the more numerous Taverners Canada geese. A moratorium on goose hunting would not enable this to be done and would aggravate problems stemming from the increasing numbers of wintering geese in general. Unlike last year, the offered season has: (1) Established dusky Canada geese harvest quotas; (2) harvest estimates that are direct measurements rather than

extrapolations from check station information; (3) incentives of longer seasons by not shooting dusy Canada geese; and (4) hunter-training requirements for would-be goose hunters. The harvest is believed warranted because given reasonable production next year, the loss will be compensated. The Service and States annually assess the population status and harvest of these geese and implement various management procedures identified in National Species of Special Emphasis and Pacific Flyway management plans. In our opinion listing this population of geese as being "threatened" is neither warranted or in the best interest of improving the status at this time.

A sportsman's group in Massachusetts requested an extension of the State's Canada goose hunting season from 70 to 90 days and an increase in the daily bag limit from 3 to 4.

Response. The Service notes that the Atlantic Flyway Council recommended no change in the flyway's 1985–86 goose hunting regulations from those of 1984-85. The Service concurs with that recommendation.

Eighteen individuals and 3 hunting/conservation clubs (Wisconsin) expressed support for the proposed 70-day Canada goose season in Wisconsin's Mississippi River Zone.

15. *Tundra Swans.* Regarding the Service's proposed swan hunting regulations for North Carolina, 23 individuals and the Humane Society of the United States expressed opposition; 7 individuals, the National Wildlife Federation and the North Carolina Wildlife Federation expressed support.

The Humane Society indicated that the Service's proposal to continue the experimental swan season in North Carolina but increase the number of permits the State may issue demonstrates that the swan season was never a true experiment. The Humane Society urged the Service to cancel the swan season.

The National Wildlife Federation indicated that the season in North Carolina should be declared operational rather than experimental and that the option for a swan hunting season should be expanded to other Atlantic Flyway States where swans occur in numbers capable of supporting harvest. The North Carolina Wildlife Federation suggested that seasons in 1986–87 and subsequent years be structured to produce a harvest equal to the annual recruitment.

Response. Although the Service has increased the number of permits that North Carolina may issue for its experimental swan season it is not expected to result in a harvest that will adversely impact the resource or alter the experimental season such that it cannot be evaluated. The Service notes the support expressed for the experimental swan season in North Carolina.

21. *Woodcock.* New Jersey, by letter dated August 6, 1985, reiterated its objection to the 10-day zoning penalty imposed on their woodcock season.

Response. The Service addressed New Jersey's concern with the proposed woodcock hunting regulations in the June 4, 1985, **Federal Register** (at 50 FR 23466). The Service notes that the comment period on early-season regulations (including woodcock) closed July 15, 1985, and that final frameworks for early hunting seasons were signed by the Interior Department's Assistant Secretary for Fish and Wildlife and Parks on August 6, 1985.

Nontoxic Shot Regulations

In the February 12, 1985, **Federal Register** (50 FR 5759–5764) and more recently the May 7, 1985, **Federal Register** (50 FR 19178–19182), the Service published a list of zones and areas where nontoxic shot will be required for waterfowl hunting in the 1985–86 hunting season.

More recently, on June 14, 1985, the National Wildlife Federation sued the Department of the Interior to block use of lead shotgun ammunition for waterfowl hunting in parts of 22 counties in California, Illinois, Missouri, Oklahoma, and Oregon. The issues in the case involve the protection of the endangered bald eagle from lead poisoning. The federal court has ordered that lead shot may not be allowed for the hunting of migratory birds in the disputed areas of California, Illinois, Missouri, Oklahoma, and Oregon, and that this hunting may not be authorized unless and until the affected States authorize, agree to and aid the imposition of steel shot requirements by the Service.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). An environmental assessment addressing this rulemaking and a finding of no significant impact was signed on August 29, 1985. In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act "[and]" . . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, Mr. Conrad A. Fjetland, Acting Chief, Office of Endangered Species (OES), gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Other biological opinions of relevance were issued January 25, April 18, and July 24, 1985.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985, (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the

aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (at 50 FR 30425).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late hunting season rulemakings were published on March 14, June 4, and August 13, 1985, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the close of each period time would be of the essence. This is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates, shooting hours and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR Part 20 (§§ 20.104 through 20.107 and § 20.109) to reflect seasons, limits and shooting hours for the contiguous United States for the 1985–86 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703–711), as amended.

BILLING CODE 4310-55-M

Final Regulations Frameworks for 1985-86 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

GENERAL

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Blue-winged Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Extra teal: States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 5, 1985, and January 31, 1986, except for those States in the Atlantic Flyway outside of the Northeast Management Unit, where the season must fall between October 8, 1985, and January 31, 1986. All dates are inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1985.

4. These areas must be described and delineated in State hunting regulations.

OR

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, except if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Exceptions: Pursuant to an order of the district Court for the Eastern District of California, entered in National Wildlife Federation v. Hodel, on August 26, 1985, migratory bird hunting is not authorized for the following areas unless and until the appropriate State game conservation agencies authorize, agree to and aid the Service in establishing steel-shot only zones encompassing that area. If migratory bird hunting in these areas is subsequently permitted, the Service will publish a notice in the Federal Register.

California: That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the northwest corner of Indian Tom Lake; thence south and east of the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the northwest side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding Refuge lands on Sheepy Ridge) in the Tule Lake portion of the Klamath Basin.

Illinois: Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union, and Williamson counties.

Missouri: Holt, St. Charles, Pike, and Lincoln Counties, and those portions of Chariton, Livingston, Carroll, and Linn counties contained within the Swan Lake Goose Management Area.

Oklahoma: Sequoyah County.

Oregon: That portion of Klamath County lying west and south of a line commencing at the Oregon-California State line and proceeding along State Highways 39 and 39-140, U.S. Highway 97, and State Highway 62 to the Klamath County-Jackson County line.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits (except the Northeast Management Unit):

Outside Dates: Between October 8, 1985, and January 13, 1988.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards of which only 1 may be a hen, 2 pintails, 2 wood ducks, and 1 black duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 4 pintails, and 4 wood ducks, (except as noted below). Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit of redheads is 2 daily, except that in areas open to canvasback hunting the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback.

Hunting Seasons and Duck Limits for the Northeast Management Unit: Includes the States of Maine, Vermont, New Hampshire, Massachusetts, and Rhode Island.

Outside dates: Between October 5, 1985 and January 13, 1986.

Hunting Season: Not more than 40 days.

Duck limits: States may only select: (a) basic daily bag of 4 ducks and may include no more than 2 black ducks and 2 wood ducks. The possession limit is 8 ducks and may include no more than 4 black ducks and 4 wood ducks; or (b) basic daily bag of 5 ducks and may include no more than 1 black duck and 2 wood ducks. The possession limit is 10 ducks and may include no more than 2 black ducks and 4 wood ducks. Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit of redheads is 2 daily, except that in areas open to canvasback hunting the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback.

Point System Option for States in the Atlantic Flyway: As an alternative to conventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by Atlantic Flyway States not in the Northeast Management Unit during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas or during the special experimental season); the female mallard, black duck, and mottled duck (except South Carolina) count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall and

mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, pintail, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Areas closed to canvasback hunting are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey - Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia, and North Carolina - Those portions of each State lying east of U.S. Highway 1.

Experimental Canvasback Season: Areas or portions of areas as specified below, otherwise closed to taking of canvasbacks, may be opened to hunting of canvasbacks during an experimental season. The experimental season must occur during the last 11 days of the regular season in New York, New Jersey and North Carolina and the last 6 days of the regular duck season in Maryland and Virginia, the daily bag under conventional regulations may include no more than 4 canvasbacks, not more than 1 of which may be a female. Under the point system male canvasbacks are 25 points and females 100 points. Possession limits are twice the daily bag limits. The areas eligible for this experimental season are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls, and all waters of Lake Cayuga.

New Jersey - (1) east of the Garden State Parkway from Route 440, south to Route 36 (Raritan and Sandy Hook Bays, Navesink and Shrewsbury Rivers); (2) east of the Garden State Parkway from Route 88 south to Route 72 (Barnegat, Silver and Manahawkin Bays, Metedooonk and Toms Rivers).

Maryland - The waters of Chesapeake Bay and its tributaries to the first upstream bridge, except on the Patuxent River the boundary is the second upstream bridge (Maryland Route 231 bridge near Benedict, MD); includes Potomac River and its tributaries upstream to U.S. Route 301 bridge.

Virginia - Starting at the Virginia-Maryland line (301 bridge) these lands and waters enclosed in the areas bounded by: U.S. Highway 301 south to Route 207 and continuing to the junction of U.S. Route 1, south on Route 1 to Route 460, then southeast on 460 to Route 13, then east and north on Route 13 to the Maryland line, then westward on the Maryland-Virginia line to Route 301.

North Carolina - That portion of Pamlico Sound and its tributaries designated as coastal fishing waters within two miles of the mainland, extending from Long Shoal Point on the north side of Long Shoal River to that point of marsh near Whortonville on the north side of Broad Creek known as Piney Point and upstream in Pamlico River to the Aurora-Belhaven ferry crossing.

The remaining portions of areas in each of the five participating States presently closed to the taking of canvasback will remain closed.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 8 and October 16. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possesion limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restriction on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning:

New York: New York may, for Long Island Zone, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. North Zone - That portion of the State north of Interstate 95.

b. South Zone - That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. North Zone - Game Management Zones 1 through 5.

b. South Zone - Game Management Zones 6 through 8.

New Hampshire

Coastal Zone - That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone - That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. Allegheny Mountain Upland Zone - The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Routh 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to

Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I-64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intesection of I-79, and follows I-79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State - That portion outside the above boundaries.

Zoning Experiments:

Vermont will initiate a Lake Champlain Zone in 1985. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. Maryland, Massachusetts, New Jersey, and Pennsylvania, may continue zoning experiments now in progress as shown in the sections that follow. Maryland may be divided into two zones, Massachusetts and New Jersey may be divided into three zones, Pennsylvania into four zones and Vermont into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. Maryland must select the point system. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions:

Maryland

Inland Zone - That portion of the State north and west of U.S. Route 1 from its junction with the Maryland-Pennsylvania border south to its junction with I-95 north of Washington, D.C and east and south along I-95 to the Maryland-Virginia border.

Coastal Zone - That portion of the State south and east of the above described highway boundaries.

Massachusetts

Western Zone - That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone - That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I-93, south on I-93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I-195, west to the Rhode Island line. EXCEPT the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24

bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone - That portion of the State east and south of the Central Zone.

New Jersey

Coastal Zone - That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone - That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone - That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone - The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone - That portion of the State north of I-80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I-80, then west on I-80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone - That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I-80, and on the west by the Ohio line.

South Zone - The remaining portion of the State.

Vermont

Lake Champlain Zone - Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S.

Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Bermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone - The remainding portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point system daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1985, and January 20, 1986, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I-81 to Route 443, east on 443 to Leighton, then east via 209 to Stroudsburg, then east on I-80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1986. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut will be 3 and 6, respectively. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1985, to January 20, 1986, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1986, to January 31, 1985, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In South Carolina the season on Canada geese is closed in the counties of Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beauford, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartenburg, Sumter, Union and York.

Closures on Canada geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1985, and January 31, 1986, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1985, and January 20, 1986, States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag and possession limits are 4 and 8 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) the season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates: Between October 5, 1985, and January 13, 1986, in all States.

Hunting Season: Not more than 40 days.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below) and 2 pintails. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below) and 4 pintails. Except in closed areas, the limits of canvasbacks and redheads are 1 daily and 2 in possession for each species.

Closed Areas for Canvasback Hunting:

Mississippi River - (1) Entire river, both sides, from Lock and Dam 9 upstream to the confluence of the Chippewa River. (2) Pool 19 bordering Iowa and Illinois.

Michigan - Macomb and St. Clair Counties, including the adjacent Great Lakes waters and interconnecting waterways under the jurisdiction of the State of Michigan.

Wisconsin - In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad from Lock and Dam 9 north to the centerline of the Chippewa River.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: except in closed areas, the canvasback, female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The posession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 8 and October 16. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone - Mobile and Baldwin Counties. North Zone - The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone - That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I-280, east along I-280 to I-80, then east along I-80 to the Indiana border. Central Zone - That portion of the State between the North and South Zone boundaries. South Zone - That portion of the State south of a line running east from the Missouri border along Illinois Highway 155 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I-70, then east along I-70 to the Indiana border.

Indiana: North Zone: That portion of the State north of State Highway 18. Ohio River Zone: That portion of Indiana south of Interstate Highway 64. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone - That portion of Iowa north of Interstate 80. South Zone - the remainder of the State.

Michigan: North Zone - The Upper Peninsula. Southeast Zone - That portion of the Lower Peninsula south and east of a line running north from the Michigan-Ohio border along U.S. Highway 127 to US-27 to South County Line Road in Gratiot County, east along South County Line Road to McClelland Road, north along McClelland Road to M-57, west along M-57 to US-27, north along US-27 to M-20, east along M-20 to US-10, east along US-10 to M-13, north along M-13 to US-23, north and east along US-23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then due east ten miles into Saginaw Bay, and from that point along a northeast line to the Ontario border. Middle Zone - The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone - That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. Highway 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone - The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Pairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone - The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone - That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone - Lake and Obion Counties, or a designated portion of that area. State Zone - The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone - That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone - The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between September 28, 1985, and January 20, 1986, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Louisiana: Between September 28, 1985, and February 14, 1986, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits as described above.

Minnesota. In the:

(a) Lac Qui Parle Zone (described in State Regulations)—the season for Canada geese closes after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 50 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 70 days or when 18,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)— A 50-day season on Canada geese may be selected between December 1, 1985, and January 20, 1986, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 50 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: In the:

(a) Horicon - Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45) - the harvest of Canada geese is limited to 15,000 birds. The season may not exceed 40 days. In the Theresa Zone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 13 and 2 Canada geese per permittee thereafter. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Zone (that portion of the North Hunting Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1-31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Zone (that portion of the South Hunting Zone which includes part of Wood County, Juneau, Sauk, Dan and Green Counties and all counties or portions of counties eastward) - in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 16 and December 15. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Remainder of the State - the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Illinois: In the:

(a) Southern Illinois Quota Zone (described in State regulations) - The season for Canada geese will close after 40 days or when 17,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Vanner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County) - The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(c) Remainder of State - Seasons for Canada geese up to 20 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 15. The daily bag limit is 1 Canada goose and the possession limit is 4.

Michigan: In the:

(a) North Zone - In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is September 28. Throughout the North Zone, the season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Middle Zone:

(1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131) - the season for Canada geese closes after 40 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Remainder of Middle Zone — The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Southeast Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(d) Southern Michigan Goose Management Area (described in State regulations) - A late Canada goose season of up to 47 days may be held between January 1, 1986, and February 16, 1986. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: In:

(a) Posey County - The season for Canada geese will close after 40 days or when 1,800 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the:

(a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I-24, east on I-24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border) -

The season for Canada geese will close after 40 days or when 7,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1986.

(b) Remainder of the State - The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the:

(a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone) - The season will close after 40 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1986.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45) - The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1986. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas and Louisiana: The season for Canada geese is closed.

Mississippi: In the:

(a) Sardis Zone (described in State regulations) - The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1985. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State - The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1986.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone, the Swan Lake Zone in Missouri, Posey County in Indiana, and, if applicable, the West Kentucky Zone and the Northwest Zone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restrictions: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

CENTRAL FLYWAY

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outisde Dates: October 5, 1985, through January 13, 1986.

Hunting Season: Seasons in the Low Plains Unit may include no more than 50 days. Seasons in the High Plains Mallard Management Unit may include no more than 65 days. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridan, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits are 4 ducks daily, including no more than 3 mallards of which no more than 1 may be a female, 3 pintails of which no more than 1 may be a female, 1 canvasback, 1 redhead, 1 hooded merganser and 2 wood ducks; and 8 in possession, including no more than 6 mallards of which no more than 1 may be a female, 6 pintails of which no more than 2 may be females, 1 canvasback, 2 redheads, 2 hooded mergansers and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point values of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, canvasback, and mottled duck (Texas only) is 100 points; each wood duck, redhead and hooded merganser is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and of each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning: Duck and coot hunting seasons may be selected independently in described zones of the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweeetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N-67; north through Nemaha to U.S. 73-75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N-63; north and west to U.S. 77; north to N-92; west to U.S. 81; south to N-66; west to N-14; south to I-80; west to U.S. 34; west to N-10; south to the State Line; west to U.S. 283; north to N-23; west to N-47; north to U.S. 30; east to N-14; north to N-52; northwesterly to N-91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N-51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico:

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" include all others.

Outside Dates: September 28, 1985, through January 19, 1986, for dark geese and September 28, 1985, through February 16, 1986 (February 28, 1986, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits.

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 24 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I-70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183 and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 8 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 17 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 17 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 88 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 3 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For Dark Goose Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177, U.S. 177 to OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For Dark Goose Unit 2 (the remainder of Oklahoma), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson, east of SD Highway 65, Dewey, Gregory, Haakon, north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman, Potter, Stanley, Sully, Tripp east of Y.S. Highway 183, Walworth and Yankton west of U.S. Highway 81 Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 8 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks.

PACIFIC FLYWAY

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divde including the Great Divide Basin).

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 8, 1985, and January 13, 1986.

Hunting Seasons (except the Columbia Basin):

Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted.

Hunting Seasons for the Columbia Basin Portions of Washington, Oregon, and Idaho:

Concurrent seasons on ducks, coots, and common snipe may be selected.

In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons must run concurrently but may differ from the remainder of their respective States. The season length and duck limits are the same as those for the Pacific Flyway, except as subsequently noted.

In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be 88 days and must run concurrently.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 1 female mallard, 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1985, and February 28, 1986, and need not be concurrent with the duck season.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Between September 28, 1985, and January 19, 1986, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). The basic daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 19 and November 29, 1985, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Cackling Canada goose closure: There will be no open season on the cackling Canada geese in California, Oregon and Washington.

Canada goose closures in California: Three areas in California, described as follows, are restricted in the hunting of Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23.

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north of the Lane-Douglas county line, except for Sauvie Island in Columbia and Multnomah Counties, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the season in the Sauvie Island Wildlife Management Area must end upon attainment of the quota of 100 dusky Canada geese and the season in the remainder of Sauvie Island must end upon attainment of the quota of 60 dusky Canada geese. Hunting of Canada geese on Sauvie Island shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties) — geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Columbia Basin Portions of Washington and Oregon—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be of 100 days duration.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1986. In Clark, Cowlitz, and Wahkiakum Counties, except for Ridgefield National Wildlife Refuges and lands to be designated by the State, there shall be no open season on Canada geese. For Ridgefield National Wildlife Refuge the season must end upon attainment of the quota of 20 dusky Canada geese. For lands to be designated by the state in Clark, Cowlitz, and Wahkiakum Counties, the season must end upon attainment of the quota of 20 dusky Canada geese. The season in permitted areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

California (Northeastern Zone) — geese: In the Northeastern Zone of California the season may be from October 12 to January 12, except that white-fronted geese may be taken only during October 12 to November 3. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone) — geese: In the Balance of the State Zone the season may be from November 2 through January 19, except that white-fronted geese may be taken only during November 2 to January 5. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Pacific Population of Canada geese—Idaho, Oregon and Montana: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season for Canada geese may not extend beyond January 5, 1986.

Rocky Mountain Population of Canada Geese—Montana and Wyoming: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 5, 1986. In Lincoln County, Wyoming, the combined special sandhill crane-Canada goose season and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 5, 1986.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remeinder of the State. In Clark County the season on Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese throughout the State.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) the season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Sandhill Cranes

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

SPECIAL FALCONRY FRAMEWORKS

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

NOTE: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special beaup season, special seaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: August 29, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21212 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-C

federal register

Thursday
September 5, 1985

Part IV

The President

Proclamation 5365—To Implement Reductions in U.S. Rates of Duty Pursuant to the United States-Israel Free Trade Area Agreement, and for Other Purposes

Federal Register
Vol. 50, No. 172
Thursday, September 5, 1985

Presidential Documents

Title 3—

The President

Proclamation 5365 of August 30, 1985

To Implement Reductions in U.S. Rates of Duty Pursuant to the United States-Israel Free Trade Area Agreement, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 4 of the United States-Israel Free Trade Area Implementation Act of 1985 (the FTA Act) (19 U.S.C. 2112 note) confers authority upon the President to proclaim changes in tariff treatment which the President determines are required or appropriate to carry out the schedule of duty reductions for products of Israel set forth in Annex 1 to the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the Agreement), entered into on April 22, 1985, and submitted to the Congress on April 29, 1985. I have determined that the modifications to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) set forth in Annexes I, VIII, IX, AND X to this Proclamation are required or appropriate to carry out such duty reductions.

2. Previously, pursuant to Title V of the Trade Act of 1974, as amended, (the Trade Act) (19 U.S.C. 2461, *et seq.*), I designated certain articles provided for in the TSUS as eligible articles under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries, and determined that limitations on the preferential treatment for eligible articles from certain beneficiary developing countries were necessary or appropriate. Previously, pursuant to section 503(a)(2)(A) of the Trade Agreements Act of 1979 (the Trade Agreements Act) (19 U.S.C. 2119 note), I determined that certain articles provided for in the TSUS are not import sensitive and, if the product of a least developed developing country (LDDC), are eligible for full tariff reductions pursuant to certain trade agreements without staging. Previously, pursuant to sections 211 and 218 of the Caribbean Basin Economic Recovery Act (the CBERA) (19 U.S.C. 2701, 2706), I designated certain articles provided for in the TSUS as eligible articles under the CBERA when imported from designated beneficiary countries.

3. In order to provide, for purposes of the GSP, for the continued designation of eligible articles and beneficiary developing countries (including least developed beneficiary developing countries, pursuant to section 504(c)(6) of the Trade Act (19 U.S.C. 2464(c)(6)), and associations of countries to be treated as individual countries for purposes of limitations on preferential treatment), and for the continuation of existing limitations on preferential treatment for articles from certain beneficiary developing countries, and in accordance with Title V of the Trade Act, as amended, it is appropriate that such preferential treatment and designations be set forth in this Proclamation.

4. Section 604 of the Trade Act (19 U.S.C. 2483) confers authority upon the President to embody in the TSUS the substance of the relevant provisions of that Act, of other Acts affecting import treatment, and of actions taken thereunder. In addition, section 8(b)(2) of the FTA Act (which amends Title V of the Trade Act) confers authority upon the President to embody in the TSUS, by proclamation, actions taken with respect to the GSP. In order to implement the duty reductions authorized by the FTA Act and to facilitate the administration of the preferential tariff regimes described above, it is necessary or

appropriate to incorporate the duty treatment provided pursuant to the relevant provisions of the GSP, the Trade Agreements Act, the CBERA, and the FTA Act, in a rate of duty column in the TSUS entitled "Special", and to make other necessary and conforming changes as set forth in Annexes I through XI to this Proclamation.

5. In Proclamation 5291 of December 28, 1984, I determined that modifications in the TSUS were appropriate in order to provide duty-free coverage comparable to the expanded coverage provided by other signatories to the Agreement on Trade in Civil Aircraft (31 UST (pt. 1) 619). Through technical error, the staged reductions in rates of duty for certain tariff items redesignated by the Proclamation were omitted. Accordingly, I have determined that due to the implementation of Proclamation 5291 that further modifications to Annex III to Proclamation 4707 of December 11, 1979, set forth in Annex XII to this Proclamation, are appropriate in order to ensure the application of such reductions in customs duties for articles classified in those tariff items.

6. In order to make technical corrections in the preferential treatment under the GSP for articles that are imported from countries designated as beneficiary developing countries consistent with the changes to the TSUS which have resulted from the implementation of Proclamation 5291 of December 28, 1984, and Proclamation 5305 of February 21, 1985, I have determined that the technical corrections to Executive Order No. 11888 of November 24, 1975, as amended, and general headnote 3 set forth in sections A and B, respectively, of Annex XIII to this Proclamation, are appropriate.

7. In Proclamation 5133 of November 30, 1983, as amended by Proclamation 5142 of December 29, 1983, and Proclamation 5306 of March 14, 1985, I designated certain countries and territories as "beneficiary countries" under section 212 of the CBERA. Section 213(c)(2)(A) of the CBERA provides that duty-free treatment under the CBERA for sugar and beef products that are the product of a beneficiary country shall be suspended if such beneficiary country, within the ninety-day period beginning on the date of its designation as a beneficiary country, does not submit a stable food production plan to the President. I have not received stable food production plans from five beneficiary countries (Antigua and Barbuda, Montserrat, Netherlands Antilles, St. Lucia, and St. Vincent and the Grenadines) within the required ninety-day period. As provided by section 213(c)(3) of the CBERA, I have entered into consultations with these five beneficiary countries. These countries do not export sugar or beef products to the United States and, therefore, have determined not to submit stable food production plans at this time. Should they wish to export either sugar or beef products in the future, they may submit a stable food production plan for review by the United States Government at that time. In accordance with section 213(c)(2)(A) of the CBERA, I am suspending duty-free treatment extended under the CBERA to sugar and beef products that are the product of these five beneficiary countries. I will terminate the suspension of duty-free treatment under the CBERA imposed by this Proclamation with regard to any affected beneficiary countries which take appropriate action to remedy the factors on which the suspension was based.

8. In Proclamation 5021 of February 14, 1983, as amended by Proclamation 5291 of December 28, 1984, I proclaimed temporary duty reductions on certain articles pursuant to legislation implementing the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials. And, pursuant to section 604 of the Trade Act, I modified the Appendix to the TSUS by inserting a new part 4 to such Appendix providing temporary duty reductions for such articles which were entered, or withdrawn from warehouse for consumption, on and after February 11, 1983, and before the close of August 11, 1985, as set forth in the Annex to Proclamation 5021. The effective period for the temporary reduction of such duties having expired on August 11, 1985, I am modifying the Appendix to the TSUS, pursuant to section 604 of the Trade Act, by deleting part 4 thereof.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 4 and 8(b)(2) of the FTA Act, section 213(c) of the CBERA, and section 604 of the Trade Act, do proclaim that:

(1) The rate of duty column in the TSUS entitled "LDDC" is retitled "Special" each place it appears, including part 1B of the Appendix to the TSUS.

(2) Part 1 of the Appendix to the TSUS is further modified by inserting a rate of duty column entitled "Special", following the rate of duty column numbered 1, opposite each item for which a rate of duty column entitled "LDDC" is not set forth.

(3) The column in the TSUS entitled "GSP" is deleted.

(4) The modifications to the TSUS made by Annex I to this Proclamation, including the designations of eligible articles and beneficiary developing countries and the limitations on preferential treatment necessary to continue existing GSP treatment incorporated therein, and the suspension of duty-free treatment extended under the CBERA to sugar and beef products of certain beneficiary countries, shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after the effective date of this Proclamation.

(5) Products of Israel provided for in TSUS items which are enumerated in Annex VIII to this Proclamation and which are imported into the customs territory of the United States in accordance with general headnote 3 of the TSUS (as modified by Annex I to this Proclamation) on or after the effective date of this Proclamation are eligible for duty-free treatment, and a rate of duty of "Free" applicable to such products is inserted in the column in the TSUS entitled "Special" followed by the symbol "I" in parentheses.

(6) Products of Israel provided for in TSUS items which are enumerated in Annex IX to this Proclamation and which are imported into the customs territory of the United States in accordance with general headnote 3 (as modified by Annex I) on or after the effective date of this Proclamation are subject to duty as described in such Annex IX, and the rate of duty applicable to such products is inserted in the column in the TSUS entitled "Special" followed by the symbol "I" in parentheses.

(7) Products of Israel provided for in TSUS items which are enumerated in Annex X to this Proclamation and which are imported into the customs territory of the United States in accordance with general headnote 3 (as modified by Annex I) on or after January 1, 1995, are eligible for duty-free treatment, and a rate of duty of "Free" applicable to such products shall be inserted on such date in the column in the TSUS entitled "Special" followed by the symbol "I" in parentheses. Until January 1, 1995, products of Israel provided for in the TSUS items enumerated in Annex X are subject to the rate of duty in column numbered 1 of the TSUS unless the tariff treatment of such products is expressly modified in accordance with section 5(c)(2) of the FTA Act.

(8) In order to provide duty-free treatment to articles hereby designated as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country, for each of the TSUS items enumerated in Annex III to this Proclamation, a rate of duty of "Free" is inserted in the column in the TSUS entitled "Special" followed by the symbol "A" in parentheses for each such item.

(9) In order to provide duty-free treatment to articles hereby designated as eligible articles for purposes of the GSP, except when imported from the designated beneficiary countries set forth opposite those TSUS items enumerated in general headnote 3 (as modified by Annex I to this Proclamation), for each of the TSUS items enumerated in Annex IV to this Proclamation, a rate

of duty of "Free" is inserted in the column in the TSUS entitled "Special" followed by the symbol "A*" in parentheses for each such item.

(10) For each of the TSUS items which are enumerated in section A of Annex V to this Proclamation, the rates of duty set forth for each item in such section A of Annex V is inserted in the column in the TSUS entitled "Special" followed by the symbol "D" in parentheses.

(11) For each of the TSUS items which are enumerated in sections B and C of Annex V to this Proclamation, effective as of the dates provided in such sections B and C, the rates of duty set forth for each item in such sections B and C of Annex V shall be inserted in the column in the TSUS entitled "Special" followed by the symbol "D" in parentheses.

(12) For each of the TSUS items which are enumerated in Annex VI to this Proclamation, a rate of duty of "Free" is inserted in the column in the TSUS entitled "Special" followed by the symbol "E" in parentheses.

(13) For each of this TSUS items which are enumerated in Annex VII to this Proclamation, a rate of duty of "Free" is inserted in the column in the TSUS entitled "Special" followed by the symbol "E*" in parentheses.

(14) For each of the TSUS items which are enumerated in Annex XI to this Proclamation, the rate status set forth for each item in such Annex XI is inserted in the column in the TSUS entitled "Special".

(15) Annex III to Proclamation 4707 of December 11, 1979, is amended as set forth in Annex XII to this Proclamation effective as to articles entered, or withdrawn from warehouse for consumption, on and after the effective date specified in Annex XII to this Proclamation.

(16) Annexes II and III of Executive Order No. 11888, as amended, and general headnote 3 are further amended as set forth in sections A and B, respectively, of Annex XIII to this Proclamation effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on and after the effective dates specified in sections A and B of Annex XIII to this Proclamation.

(17) Annex III of Proclamation 4707 and Annex III of Proclamation 4768 of June 28, 1980, are amended as set forth in Annex II to this Proclamation as of the effective date of this Proclamation.

(18) Except for articles provided for in items which are enumerated in Annex IV to Proclamation 4707 and Annex IV to Proclamation 4768 and which are not enumerated in Annex V to this Proclamation, Annex IV to Proclamation 4707 and Annex IV to Proclamation 4768 are superseded by Annex V to this Proclamation, to the extent inconsistent therewith, as of the effective date of this Proclamation.

(19) Executive Order No. 11888, as amended by subsequent Executive orders for purposes of the GSP, and as amended by subsequent proclamation to the extent they amend Executive Order No. 11888 for purposes of the GSP, is superseded by this Proclamation as of the effective date of this Proclamation.

(20) Proclamations 4707, 4768, 5133, 5142, 5291, 5305, and 5308, are superseded to the extent inconsistent with this Proclamation.

(21) Part 4 of the Appendix to the TSUS is deleted effective August 12, 1985.

(22) Except as provided in paragraphs (11), (15), (16), and (21), the provisions of this Proclamation shall be effective as to articles entered, or withdrawn from warehouse for consumption, on and after September 1, 1985.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

Billing code 3195-01

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

Notes:

1. Bracketed matter and footnotes are included to assist in the understanding of ordered modifications.
2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", "Rates of Duty Special", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

Effective as to articles entered, or withdrawn from warehouse for consumption, on and after September 1, 1985.

1.(a) General headnote 3 is modified as follows:

(1) The words "column designated LDDC" are changed to "column designated Special" in the first sentence of this headnote.

(2) Subdivisions (c), (d), and (g) are deleted.

(3) Subdivisions (e), (f), and (h) are redesignated as subdivisions (c), (d), and (f), respectively.

(4) Add in alphabetical sequence the following subdivision:

"(e) Products Eligible for Special Tariff Treatment.

(i) The "Special" column reflects rates of duty available under one or more special tariff treatment programs which are provided for in subdivision (e) of this headnote and which are identified in parentheses immediately following the rate(s) of duty set out in such column. Upon application in proper form by a person who possesses the right to make entry for the imported article, a special rate shall be applied to such article only if--

(A) it is classified in an item for which a special rate (or rates) is set out in the "Special" column opposite such item;

(B) it is imported from a country--

(1) which is designated as an eligible country with respect to such item under a program designated in the "Special" column opposite such item, and

(2) which is otherwise eligible for column 1 rates of duty; and

(C) it has satisfied all other requirements for eligibility for such program or programs.

(ii) Programs under which special tariff treatment may be provided to imported articles, and the corresponding symbols for such programs as they are indicated in the "Special" column, are as follows:

Generalized System of Preferences	A or A*
Least Developed Developing Countries	D
Caribbean Basin Economic Recovery Act	E or E*
United States-Israel Free Trade Area Implementation Act of 1985	I

(iii)(A) Articles which are eligible for the special tariff treatment provided for in subdivision (e) of this headnote and which are subject to temporary modification under any provision of part 1 of the Appendix to these schedules shall be subject, for the period indicated in the "Effective Period" column in the Appendix, to rates of duty as follows:

(1) If the "Special" column in the Appendix is blank, the rate of duty in column numbered 1 therein shall apply;

(2) if a rate of duty for which the article may be eligible is set forth in the "Special" column in the Appendix followed by one or more symbols described above, such rate shall apply in lieu of the rate followed by the corresponding symbol(s) set forth for such article in the "Special" column in schedules 1 to 8; or

(3) if "No change" followed by one or more symbols described above appears in the "Special" column in the Appendix and subdivision (iii)(A)(2) above does not apply, the rate of duty in column numbered 1 in the Appendix or the applicable rate(s) of duty set forth in the "Special" column in schedules 1 to 8, whichever is lower, shall apply.

(B) Unless the context requires otherwise, articles which are eligible for the special tariff treatment provided for in subdivision (e) of this headnote and which are subject to temporary modification under any provision of parts 2 or 3 of the Appendix to these schedules shall be subject, for the period indicated in the Appendix, to the rates of duty in column numbered 1 therein.

(iv) Whenever any rate of duty set forth in the "Special" column in schedules 1 to 8 is equal to, or higher than, the corresponding rate of duty provided in column numbered 1 in such schedules, such rate of duty in the "Special" column shall be deleted; except that, if the rate of duty in the "Special" column is an intermediate stage in a series of staged rate reductions for that item, such rate shall be treated as a suspended rate and shall be set forth in the "Special" column, followed by one or more symbols described above, and followed by an "s" in parentheses. If no rate of duty for which the article may be eligible is provided in the "Special" column for a particular item in schedules 1 to 8, the rate of duty provided in column numbered 1 shall apply.

(v) Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP).

(A) The following countries, territories, and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) are designated beneficiary developing countries for the purposes of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.):

Independent Countries 1/

Angola
Antigua and Barbuda
Argentina
Bahamas
Bahrain
Bangladesh
Barbados
Belize
Benin
Bhutan
Bolivia
Botswana
Brazil
Brunei Darussalam
Burkina Faso
Burma
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo
Costa Rica
Cyprus
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Fiji
Gambia
Ghana
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Honduras
India
Indonesia
Israel
Ivory Coast
Jamaica
Jordan
Kenya
Kiribati
Korea, Republic of
Lebanon
Lesotho
Liberia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Morocco
Mozambique
Nauru
Nepal
Nicaragua
Niger
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Portugal
Romania
Rwanda
Saint Lucia
Saint Vincent and the Grenadines
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
Somalia
Sri Lanka
Sudan
Suriname
Swaziland
Syria
Taiwan
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Uganda
Uruguay
Vanuatu
Venezuela
Western Somoa
Yemen Arab Republic (Sanaá)
Yugoslavia
Zaire
Zambia
Zimbabwe

1/ Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

ANNEX I

-3-

Non-Independent Countries & Territories

Anguilla
Bermuda
British Indian Ocean Territory
Cayman Islands
Christmas Island (Australia)
Cocos (Keeling) Islands
Cook Islands
Falkland Islands (Islas Malvinas)
French Polynesia
Gibraltar
Heard Island and McDonald Islands
Hong Kong
Macau
Montserrat
Netherlands Antilles
New Caledonia
Niue
Norfolk Island
Pitcairn Islands
Saint Christopher-Nevis
Saint Helena
Tokelau
Trust Territory of the Pacific Islands
Turks and Caicos Islands
Virgin Islands, British
Wallis and Futuna
Western Sahara

Associations of Countries (treated as one country)

Member Countries of the Cartagena Agreement (Andean Group)

Consisting of:

Bolivia
Colombia
Ecuador
Peru
Venezuela

Association of South East Asian Nations (ASEAN)

Consisting of:

Brunei
Indonesia
Malaysia
Philippines
Singapore
Thailand

Member Countries of the Caribbean Common Market (CARICOM)

Consisting of:

Antigua and Barbuda
Bahamas
Barbados
Belize
Dominica
Grenada
Guyana
Jamaica
Montserrat
Saint Christopher-Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago

(B) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the Trade Act of 1974, as amended:

Bangladesh
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Equatorial Guinea
Gambia
Guinea
Guinea-Bissau
Haiti
Lesotho
Malawi
Maldives
Mali
Nepal
Niger
Rwanda
Sao Tome and Principe
Sierra Leone
Somalia
Sudan
Tanzania
Togo
Uganda
Western Samoa
Yemen Arab Republic (Sanaá)

ANNEX I

-4-

Whenever an eligible article is imported into the customs territory of the United States directly from one of the countries designated as a least-developed beneficiary developing country, it shall be entitled to receive the duty-free treatment provided for in subdivision (e)(v)(C) of this headnote without regard to the limitations on preferential treatment of eligible articles in section 504(c) of the Trade Act, as amended (19 U.S.C. 2464(c)).

(C) Articles provided for in an item for which a rate of duty appears in the "Special" column followed by the symbols "A" or "A*" in parentheses are those designated by the President to be eligible articles for purposes of the GSP pursuant to section 503 of the Trade Act of 1974. The symbol "A" indicates that all beneficiary developing countries are eligible for preferential treatment with respect to all articles provided for in the designated TSUS item. The symbol "A*" indicates that certain beneficiary developing countries, specifically enumerated in subdivision (e)(v)(D) of this headnote, are not eligible for such preferential treatment with regard to any article provided for in the designated TSUS item. Whenever an eligible article is imported into the customs territory of the United States directly from a country or territory listed in subdivision (e)(v)(A) of this headnote, it shall be eligible for duty-free treatment as set forth in the "Special" column, unless excluded from such treatment by subdivision (e)(v)(D) of this headnote; provided that, in accordance with regulations promulgated by the Secretary of the Treasury the sum of (1) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3) of the Trade Act of 1974, plus (2) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

(D) Articles provided for in an item for which a rate of duty appears in the "Special" column followed by the symbol "A*" in parentheses, if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not eligible for the duty-free treatment provided in subdivision (e)(v)(C) of this headnote:

TSUS item No.	Country or Territory 1/	TSUS item No.	Country or Territory 1/
107.48	Brazil	155.20	Argentina, Brazil, Dominican Republic, Philippines
121.61	Argentina	167.05	Mexico
121.65	Argentina	176.15	Brazil
130.37	Argentina	192.17	Colombia
130.40	Argentina	192.21	Colombia
135.51	Mexico	202.62	Mexico
135.90	Mexico	204.40	Taiwan
135.95	Mexico	206.60	Mexico
136.20	Mexico	206.98	Taiwan
136.22	Mexico	207.00	Taiwan
136.30	Mexico	222.10	Hong Kong
136.61	Mexico	222.50	Taiwan
137.10	Mexico	245.20	Brazil
137.40	Mexico	245.30	Brazil
137.50	Mexico	256.60	Republic of Korea
137.63	Mexico	256.87	Mexico
137.71	Mexico	319.05	India
138.05	Mexico	337.40	Hong Kong, Republic of Korea
141.77	Mexico	355.81	Taiwan
146.22	Turkey	389.61	Hong Kong, Taiwan
146.44	Philippines	406.20	Israel
146.76	Mexico		
148.03	Mexico		
148.12	Mexico		
148.17	Mexico		
148.72	Chile		

1/ Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

ANNEX I

-5-

TSUS item No.	Country or Territory 1/
407.16	Mexico
413.24	Republic of Korea
417.23	Israel
418.13	Israel
428.96	Brazil
429.49	Israel
445.42	Taiwan
452.44	Brazil
470.85	Mexico
473.52	Mexico
473.56	Mexico
511.64	Mexico
522.21	Mexico
532.22	Republic of Korea
532.31	Mexico
534.84	Taiwan
534.91	Taiwan
534.94	Taiwan
535.31	Mexico
545.25	Mexico
545.53	Mexico
545.87	Taiwan
602.10	Peru
603.40	Chile
606.36	Brazil
606.37	Brazil
606.44	Brazil
610.65	Republic of Korea
610.70	Taiwan
610.74	Republic of Korea
	Taiwan
610.82	Republic of Korea
610.88	Taiwan
612.03	Chile
612.06	Chile
	Peru
	Zambia
613.18	Taiwan
618.15	Venezuela
642.14	Republic of Korea
642.16	Republic of Korea
642.17	Republic of Korea
646.32	Republic of Korea
646.90	Mexico
646.92	Taiwan
648.97	Taiwan
649.37	Taiwan
650.89	Hong Kong
	Taiwan
651.21	Taiwan
651.33	Hong Kong
651.37	Taiwan
651.46	Republic of Korea
	Taiwan
651.49	Taiwan
652.03	Republic of Korea
652.60	Taiwan
652.70	Republic of Korea
652.84	Mexico
653.00	Republic of Korea
653.38	Taiwan
653.39	Taiwan
653.48	Taiwan
653.85	Taiwan
653.93	Taiwan
653.94	Republic of Korea
654.08	Taiwan
654.30	Republic of Korea
	Taiwan
654.40	Taiwan
654.60	Hong Kong
657.24	Taiwan
657.25	Taiwan
657.35	Taiwan
660.42	Brazil
660.48	Brazil
	Mexico
661.06	Hong Kong
	Taiwan
661.09	Singapore
661.65	Israel
661.94	Hong Kong
	Taiwan
662.35	Mexico
664.10	Taiwan
672.16	Taiwan
674.31	Taiwan
674.35	Taiwan
676.15	Taiwan
676.20	Taiwan
676.30	Republic of Korea
	Taiwan
676.52	Hong Kong
	Malaysia
	Mexico
	Republic of Korea
	Singapore
	Taiwan
678.50	Hong Kong
	Mexico
	Republic of Korea
	Taiwan
680.14	Taiwan
682.35	Mexico

1/ Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

ANNEX I

-6-

TSUS item No.	Country or Territory 1/
682.60	Hong Kong, Mexico, Taiwan
683.01	Republic of Korea, Taiwan
683.15	Mexico
683.70	Hong Kong, Taiwan
683.80	Hong Kong
684.10	Taiwan
684.15	Singapore
684.25	Republic of Korea, Singapore
684.48	Hong Kong
684.53	Taiwan
684.55	Mexico
684.58	Hong Kong, Taiwan
684.59	Hong Kong, Taiwan
684.70	Republic of Korea, Taiwan
685.14	Hong Kong, Republic of Korea, Singapore, Taiwan
685.16	Hong Kong, Republic of Korea, Taiwan
685.18	Republic of Korea, Taiwan
685.25	Hong Kong, Republic of Korea, Taiwan
685.32	Hong Kong, Republic of Korea, Taiwan
685.40	Republic of Korea, Taiwan
685.70	Singapore
685.90	Hong Kong, Mexico, Taiwan
686.30	Taiwan
687.70	Malaysia
688.10	Taiwan
688.12	Mexico, Taiwan
688.17	Mexico
688.18	Mexico
688.41	Hong Kong, Taiwan
688.42	Hong Kong, Taiwan
692.32	Brazil, Mexico, Taiwan
692.60	Taiwan
696.10	Taiwan
696.35	Taiwan
696.40	Taiwan
700.90	Mexico
703.14	Mexico
706.61	Hong Kong, Taiwan
708.45	Taiwan
708.47	Hong Kong
709.09	Mexico
709.40	Hong Kong
711.38	Mexico
713.15	Mexico
722.08	Hong Kong, Republic of Korea, Taiwan
722.11	Hong Kong, Republic of Korea, Taiwan
725.01	Republic of Korea
725.03	Republic of Korea
725.32	Taiwan
725.50	Taiwan
726.25	Taiwan
727.06	Mexico
727.23	Taiwan
727.29	Taiwan
727.35	Taiwan
727.70	Taiwan
728.22	Taiwan
730.94	Republic of Korea
732.60	Taiwan
734.15	Taiwan
734.25	Hong Kong
734.70	Republic of Korea
734.86	Taiwan
734.87	Taiwan
734.90	Taiwan
735.07	Republic of Korea
735.09	Taiwan
735.12	Taiwan
735.20	Taiwan
737.07	Hong Kong
737.15	Hong Kong
737.21	Hong Kong
737.23	Hong Kong, Taiwan

1/ Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

ANNEX I

-7-

TSUS item No.	Country or Territory 1/	TSUS item No.	Country or Territory 1/
737.28	Republic of Korea Taiwan	748.21	Taiwan
		750.20	Taiwan
737.30	Republic of Korea Taiwan	750.40	Hong Kong
		750.45	Republic of Korea
737.40	Hong Kong Republic of Korea	751.05	Taiwan
		755.25	Hong Kong
737.42	Republic of Korea	771.41	Taiwan
737.47	Republic of Korea	771.43	Taiwan
737.49	Hong Kong Taiwan	771.45	Taiwan
		772.35	Taiwan
737.51	Republic of Korea	772.51	Brazil Republic of Korea
737.60	Hong Kong		
737.80	Hong Kong	772.60	Republic of Korea
737.95	Hong Kong Taiwan	773.05	Taiwan
		774.45	Hong Kong
740.11	Hong Kong Israel	774.55	Taiwan
		790.03	Taiwan
740.12	Hong Kong	790.10	Taiwan
740.13	Hong Kong	790.39	Taiwan
740.14	Hong Kong	790.70	Republic of Korea
740.15	Hong Kong	791.15	Hong Kong Republic of Korea
740.38	Hong Kong Taiwan		
		791.28	Mexico
741.25	Hong Kong	792.50	Philippines
745.70	Taiwan	792.60	Hong Kong
748.20	Taiwan		

(vi) Products of Least Developed Developing Countries.

(A) The following countries are designated least developed developing countries (LDDC's):

Bangladesh
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Gambia
Guinea
Haiti
Lesotho
Malawi
Maldives
Mali
Nepal
Niger
Rwanda
Somalia
Sudan
Tanzania
Uganda
Western Samoa
Yemen Arab Republic (Sanaá)

(B) Products of such countries imported into the customs territory of the United States, whether imported directly or indirectly, and entered under an item for which a rate of duty appears in the "Special" column followed by the symbol "D" in parentheses are eligible for full tariff reductions without staging, as set forth in the "Special" column, in accordance with section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251).

1/ Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

(vii) Products of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA).

(A) The following countries and territories or successor political entities are designated beneficiary countries for the purposes of the CBERA, pursuant to section 212 of that Act (19 U.S.C. 2702):

Antigua and Barbuda	Honduras
Bahamas	Jamaica
Barbados	Montserrat
Belize	Netherlands Antilles
Costa Rica	Panama
Dominica	Saint Christopher-Nevis
Dominican Republic	Saint Lucia
El Salvador	Saint Vincent and the Grenadines
Grenada	Trinidad and Tobago
Guatemala	Virgin Islands, British
Haiti	

(B)(1) Unless otherwise excluded from eligibility by the provisions of subdivisions (e)(vii)(D) or (e)(vii)(E) of this headnote, any article which is the growth, product, or manufacture of a beneficiary country shall be eligible for duty-free treatment if that article is provided for in an item for which a rate of duty appears in the "Special" column followed by the symbols "E" or "E*" in parentheses, and if--

(i) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(ii) the sum of (A) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (B) the direct costs of processing operations performed in a beneficary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered. For purposes of determining the percentage referred to in (ii)(B) above, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which subdivision (e)(vii) of this headnote applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in (ii)(B) above.

(2) Pursuant to subsection 213(a)(2) of the CBERA, the Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out subdivision (e)(vii) of this headnote including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under the CBERA, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country, and must be stated as such in a declaration by the appropriate party; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone--

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in subdivision (e)(vii)(B) of this headnote, the phrase "direct costs of processing operations" includes, but is not limited to--

(i) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(ii) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(C) Articles provided for in an item for which a rate of duty appears in the "Special" column followed by the symbols "E" or "E*" in parentheses are those designated by the President to be eligible articles for purposes of the CBERA pursuant to section 213 of that Act. The symbol "E" indicates that all articles provided for in the designated TSUS item are eligible for preferential treatment. The symbol "E*" indicates that some articles provided for in the designated TSUS item are not eligible for preferential treatment, as further described in subdivision (e)(vii)(D) of this headnote. Whenever an eligible article is imported into the customs territory of the United States in accordance with the provisions of subdivision (e)(vii)(B) of this headnote from a country or territory listed in subdivision (e)(vii)(A) of this headnote, it shall be eligible for duty-free treatment as set forth in the "Special" column, unless excluded from such treatment by subdivisions (e)(vii)(D) or (e)(vii)(E) of this headnote.

(D) Articles provided for in an item for which a rate of duty appears in the "Special" column followed by the symbol "E*" in parentheses shall be eligible for the duty-free treatment provided for in subdivision (e)(vii) of this headnote, except--

(1) articles of beef or veal, however provided for in subpart B of part 2 of schedule 1, and sugars, sirups, and molasses, provided for in items 155.20 or 155.30, if a product of the following countries, pursuant to section 213(c) of the CBERA:

Antigua and Barbuda	Saint Lucia
Montserrat	Saint Vincent and the Grenadines
Netherlands Antilles	

(2) sugars, sirups, and molasses, provided for in items 155.20 or 155.30, to the extent that importation and duty-free treatment of such articles are limited by headnote 4, subpart A, part 10, schedule 1, pursuant to section 213(d) of the CBERA; or

(3) textile and apparel articles--

(i) in chief value of cotton, wool, man-made fibers, or blends thereof in which those fibers, in the aggregate, exceed in value each other single component fiber thereof; or

(ii) in which either the cotton content or the man-made fiber content equals or exceeds 50 percent by weight of all component fibers thereof; or

(iii) in which the wool content exceeds 17 percent by weight of all component fibers thereof; or

(iv) containing blends of cotton, wool, or man-made fibers, which fibers, in the aggregate, amount to 50 percent or more by weight of all compooent fibers thereof;

provided, that beneficiary country exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textiles products, if such products are properly certified under an arrangement established between the United States and such beneficiary country, are eligible for the duty-free treatment provided for in subdivision (e)(vii) of this headnote.

(E) The duty-free treatment provided under the CBERA shall not apply to watches, and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which column 2 rates of duty apply.

(viii) United States-Israel Free Trade Area Implementation Act of 1985.

(A) The products of Israel described in Annex 1 of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, are subject to duty as provided herein. Products of Israel, as defined in subdivision (e)(viii)(B) of this headnote, imported into the customs territory of the United States and entered under an item for which a rate of duty appears in the "Special" column followed by the symbol "I" in parentheses are eligible for tariff treatment, as set forth in the "Special" column, in accordance with Section 4(a) of the United States-Israel Free Trade Area Implementation Act of 1985 (99 Stat. 82).

(B) For purposes of subdivision (e)(viii) of this headnote, articles imported into the customs territory of the United States are eligible for treatment as "products of Israel" only if--

(1) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

(2) that article is imported directly from Israel into the customs territory of the United States; and

(3) the sum of--

(i) the cost or value of the materials produced in Israel, plus

(ii) the direct costs of processing operations performed in Israel, is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which subdivision (e)(viii) of this headnote applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subdivision (e)(viii)(B)(3) of this headnote.

(C) No article may be considered to meet the requirements of subdivision (e)(viii)(B)(1) of this headnote by virtue of having merely undergone--

(1) simple combining or packaging operations; or

(2) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(D) As used in subdivision (e)(viii) of this headnote, the phrase "direct costs of processing operations" includes, but is not limited to--

(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(E) The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out subdivision (e)(viii) of this headnote."

(b) Conforming changes:

(1) The first sentence of general headnote 4 is modified by inserting after the words "provided in" the phrase "general headnote 3(e) or in".

(2) In the first sentence and subdivision (a)(i) of headnote 4 to subpart A of part 10 of schedule 4 the phrase "general headnote 3(g)" is changed to "general headnote 3(e)(vii)".

(3) In subdivision (a) of headnote 2 to subpart B of part 6 of schedule 6 the phrase "general headnote 3(e)" is changed to "general headnote 3(c)".

(4) In the article descriptions of items 692.03, 692.07, and 692.11 the phrase "(see general headnote 3(e))" is changed to "(see general headnote 3(c))".

2.(a) Item 307.68 is superseded by:

	[Yarns of wool or hair:]			
	[Other:]			
	[Other:]			
	"Other:			
307.70	Fancy yarns and yarns put up for handwork.....	[See Annex II]	[See Annex VIII]	55.5% ad val.
307.80	Other.....	[See Annex II]	[See Annex IX]	55.5% ad val."

(b) Conforming change: The headnotes to subpart C of part 1 of schedule 3 are modified by adding thereto:

"8. For the purposes of item 307.70, the term "fancy yarns" means yarns constructed with novelty effects, including such yarns as slub yarns, loop yarns, boucle yarns, thick-and-thin yarns, core yarns, and gimp yarns, all the foregoing whether or not of novelty color effects; the term does not embrace yarns having novelty effects imparted solely from color or from combinations of different colors."

3. Item 309.31 is superseded by:

	[Grouped filaments and strips...:]			
	[Wholly of grouped filaments...:]			
	[Other:]			
	"Valued over 80 cents per pound:			
309.32	Of nylon.....	[See Annex II]	[See Annexes V and IX]	45% ad val.
309.33	Other.....	[See Annex II]	[See Annexes V and IX]	45% ad val."

4.(a) Item 310.11 is superseded by:

	[Yarns of man-made fibers:]			
	[Other:]			
	[Wholly of continuous man-made fibers...:]			
	[Plied:]			
	[With not over 20 turns per inch...:]			
	"Valued over $1 per pound:			
310.12	Textured yarns, of nylon.....	[See Annex II]	[See Annex IX]	55% ad val.
310.15	Other.....	[See Annex II]	[See Annex IX]	55% ad val."

(b) Conforming change: The headnotes to subpart E of part 1 of schedule 3 are modified by adding thereto:

"4. For the purpose of this subpart, the term "textured" refers to (a) yarns of continuous man-made fibers having special characteristics of bulk or elasticity, or both, which have been imparted to the filaments, by twisting and untwisting, false twisting, crimping, curling, or other additional processing subsequent to the extrusion of the filaments from the spinneret and (b) yarns of discontinuous man-made fibers which have been heavily brushed subsequent to spinning."

5. Item 310.91 is superseded by:

	[Yarns put up for handwork,...:]			
	"Valued over 90 cents per pound:			
310.93	Yarns put up for handwork.....	[See Annex II]	[See Annex VIII]	55% ad val.
310.95	Sewing thread.....	[See Annex II]	[See Annex IX]	55% ad val."

6. Headnote 4 of subpart A of part 3 of schedule 3 is modified by deleting "With respect only to the fabrics provided for in items 319.21 through 319.25 and 320.01 through 320.98," and inserting in lieu thereof "With respect only to the fabrics provided for in items 319.21 through 319.25 and 320.01 through 320.98 other than such fabrics which are products of Israel as defined by general headnote 3(e)(viii)(B)".

7. Item 332.40 is superseded by:

	[Woven fabrics, in chief value, but not wholly, of cotton:]			
	"Other:			
332.30	Not combed.....	[See Annex II]	[See Annex IX]	40% ad val.
332.50	Combed.....	[See Annex II]	[See Annex VIII]	40% ad val."

ANNEX I

-12-

8. Item 345.50 is superseded by:

	[Knit fabrics:]			
	"Of man-made fibers:			
345.40	Fabrics, of nylon, not containing over 17 percent of wool by weight, and not of circular knit construction.....	[See Annex II]	[See Annex VIII]	113.5% ad val.
345.55	Other.....	[See Annex II]	[See Annex IX]	113.5% ad val."

9. Item 346.60 is superseded by:

	[Fabrics of pile construction,...:]			
	"Of man-made fibers:			
346.58	Fabrics of velveteen construction (whether or not the filling floats are cut) or velvets.....	[See Annex II]	[See Annex VIII]	79.5% ad val.
346.62	Other.....	[See Annex II]	[See Annex IX]	79.5% ad val."

10. Item 360.15 is superseded by:

	[Floor coverings of pile...:]			
	[In which the pile was inserted or knotted...:]			
	[With pile hand-inserted...:]			
	[Other:]			
	"Valued over 66-2/3 cents per square foot:			
360.12	Of wool.....	5.1% ad val.	[See Annex VIII]	45% ad val.
360.17	Other.....	5.1% ad val.	[See Annexes VII and IX]	45% ad val."

11. Item 360.44 is superseded by:

	[Floor coverings of pile...:]			
	[In which the pile was inserted or knotted...:]			
	[With pile not hand-inserted...:]			
	[Other:]			
	[Wilton (including brussels) and velvet...:]			
	"Other:			
360.45	Imitation oriental.....	[See Annex II]	[See Annexes III, VII, and VIII]	60% ad val.
360.47	Other.....	[See Annex II]	[See Annexes III, VII, and IX]	60% ad val."

12. Item 361.56 is superseded by:

	[Floor coverings not specially provided for,...:]			
	[Other:]			
	[Other:]			
	"Other:			
361.60	Of man-made fibers, except nonwoven.....	[See Annex II]	[See Annex VIII]	40% ad val.
361.70	Other.....	[See Annex II]	[See Annexes VII and IX]	40% ad val."

ANNEX I

-13-

13. Item 363.51 is superseded by:

	[Other bedding, not ornamented:]				
	[Of vegetable fibers:]				
	[Bedspreads, coverlets, quilts and comforters:]				
	[Not jacquard-figured:]				
	"Not block-printed by hand:				
363.52	Bedspreads	[See Annex II]	[See Annexes VII and IX]	25% ad val.	
363.53	Other	[See Annex II]	[See Annexes VII and VIII]	25% ad val."	

14.(a) Item 365.78 is superseded by:

[Lace or net furnishings,...:]				
[Net furnishings made on a lace,...:]				
[Of cotton:]				
"365.64	Towels and washcloths, except dish towels	[See Annex II]	[See Annex IX]	90% ad val.
365.66	Other	[See Annex II]	[See Annex IX]	90% ad val."

(b) Conforming changes:

Items 365.68, 365.72, 365.74, 365.76, and 365.77 are redesignated items 365.52, 365.54, 365.56, 365.58, and 365.62, respectively.

15. Item 365.86 is superseded by:

[Lace or net furnishings,...:]				
[Net furnishings made on a lace,...:]				
[Other:]				
"Of wool or man-made fibers:				
365.87	Curtains or drapes, of man-made fibers	[See Annex II]	[See Annex IX]	90% ad val.
365.89	Other	[See Annex II]	[See Annex IX]	90% ad val."

16. Item 366.18 is superseded by:

[Other furnishings, not ornamented:]				
[Of vegetable fibers:]				
[Towels:]				
[Of cotton:]				
[Pile or tufted construction:]				
"Valued not over 45 cents each:				
366.17	Dish towels	[See Annex II]	[See Annex IX]	40% ad val.
366.19	Other	[See Annex II]	[See Annex IX]	40% ad val."

17. Item 366.21 is superseded by:

[Other furnishings, not ornamented:]				
[Of vegetable fibers:]				
[Towels:]				
[Of cotton:]				
[Pile or tufted construction:]				
[Valued over 45 cents each:]				
"Valued not over $1.45 per pound:				
366.20	Dish towels	[See Annex II]	[See Annex IX]	40% ad val.
366.22	Other	[See Annex II]	[See Annex IX]	40% ad val."

ANNEX I

-14-

18. Item 366.27 is superseded by:

	{Other furnishings, not ornamented:}			
	{Of vegetable fibers:}			
	{Towels:}			
	{Of cotton:}			
	"Other:			
366.26	Towels, not jacquard-figured, but not including shop towels (dedicated to use in garages, filling stations, and machine shops), and not including dish towels.....	{See Annex II}	{See Annex IX}	40% ad val.
366.28	Other.....	{See Annex II}	{See Annex IX}	40% ad val."

19. Item 367.34 is superseded by:

	{Other furnishings, not ornamented:}			
	{Of wool:}			
	{Other:}			
	"Other:			
367.32	Wall hangings.....	7.5% ad val.	{See Annex VIII}	50% ad val.
367.33	Other.....	7.5% ad val.	{See Annex IX}	50% ad val."

20. Item 367.60 is superseded by:

	{Other furnishings, not ornamented:}			
	{Of man-made fibers:}			
	{Other:}			
	"Other:			
367.61	Curtains or drapes.....	{See Annex II}	{See Annex IX}	72.5% ad val.
367.63	Other.....	{See Annex II}	{See Annex IX}	72.5% ad val."

21.(a) Items 379.00 through 383.95, including the superior headings thereto, are superseded by:

	"Men's or boy's lace or net wearing apparel, whether or not ornamented, and other men's or boys' wearing apparel, ornamented:			
	Of cotton:			
381.00	Certified hand-loomed and folklore products.....	{See Annex II}	{See Annexes VII and IX}	90% ad val.
	Other:			
	Knit:			
381.02	Coats, suits, vests, trousers, slacks, shorts, shirts, and sweaters.....	{See Annex II}	{See Annex IX}	90% ad val.
381.03	Parts of sweaters.....	{See Annex II}	{See Annex IX}	90% ad val.
381.04	Other.....	{See Annex II}	{See Annex IX}	90% ad val.
	Not knit:			
381.05	Coats (other than suit-type coats and jackets, not imported as parts of suits), shirts, suits, vests, trousers, slacks, and shorts.....	{See Annex II}	{See Annex IX}	90% ad val
381.06	Suit-type coats and jackets, not imported as parts of suits.....	{See Annex II}	{See Annex IX}	90% ad val.
381.08	Other.....	{See Annex II}	{See Annex IX}	90% ad val.

ANNEX I

-15-

	[Men's or boys'...:]				
	Of wool:				
381.11	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	90% ad val.	
	Other:				
	Knit:				
381.13	Coats, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.	
381.15	Other	[See Annex II]	[See Annex IX]	90% ad val.	
	Not knit:				
381.17	Coats, shirts, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.	
381.20	Other	[See Annex II]	[See Annex IX]	90% ad val.	
	Of man-made fibers:				
	Knit:				
381.23	Coats, suits, swimming trunks and other swimwear, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.	
381.24	Shirts	[See Annex II]	[See Annex IX]	90% ad val.	
381.25	Sweaters	[See Annex II]	[See Annex IX]	90% ad val.	
381.28	Other	[See Annex II]	[See Annex IX]	90% ad val.	
	Not knit:				
381.31	Coats, shirts, suits, swimming trunks and other swimwear, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.	
381.32	Judo, karate, and other oriental martial arts uniforms	[See Annex II]	[See Annex VIII]	90% ad val.	
381.33	Other	[See Annex II]	[See Annex IX]	90% ad val.	
381.35	Other	[See Annex II]	[See Annexes VII and IX]	90% ad val.	
	Other men's or boys' wearing apparel, not ornamented:				
	Of cotton:				
	Knit:				
381.37	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	45% ad val.	
	Other:				
381.39	Coats, suits, vests, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	45% ad val.	
	Shirts and sweaters:				
381.40	T-shirts, except all white; sweatshirts	21% ad val.	[See Annex IX]	45% ad val.	
381.41	Other	21% ad val.	[See Annex IX]	45% ad val.	
	Other:				
381.42	Parts of sweaters	[See Annex II]	[See Annex IX]	45% ad val.	
381.43	Other	[See Annex II]	[See Annex IX]	45% ad val.	
	Not knit:				
	Coats:				
	Valued not over $4 each:				
381.44	Suit-type coats and jackets, not imported as parts of suits	[See Annex II]	[See Annex IX]	37.5% ad val.	
381.45	Other	[See Annex II]	[See Annex IX]	37.5% ad val.	
	Valued over $4 each:				
381.46	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and VIII]	37.5% ad val.	

ANNEX I

-16-

	[Other men's or boys'...:]			
	[Of cotton:]			
	[Not knit:]			
	[Coats:]			
	[Valued...:]			
	Other:			
381.47	Raincoats, 3/4-length or longer, not of corduroy; suit-type sport coats and jackets, not imported as parts of suits, and other coats, all the foregoing not of corduroy or denim.....	8% ad val.	[See Annex IX]	37.5% ad val.
381.48	Other.....	8% ad val.	[See Annex IX]	37.5% ad val.
	Dressing gowns, including bathrobes, and beach robes:			
381.49	Valued not over $2.50 each.....	[See Annex II]	[See Annex IX]	37.5% ad val.
381.50	Valued over $2.50 each.....	8% ad val.	[See Annex IX]	37.5% ad val.
	Pajamas:			
381.51	Valued not over $1.50 per suit...	[See Annex II]	[See Annex IX]	37.5% ad val.
381.52	Valued over $1.50 per suit.....	8% ad val.	[See Annex IX]	37.5% ad val.
	Shirts:			
381.54	Certified hand-loomed and folklore products.....	[See Annex II]	[See Annexes VII and IX]	45% ad val.
	Other:			
381.55	Men's sport shirts, with two or more colors in the warp and/or the filling, except corduroy.....	21% ad val.	[See Annex IX]	45% ad val.
381.56	Other.....	21% ad val.	[See Annex IX]	45% ad val.
381.57	Shirt collars and cuffs.....	[See Annex II]	[See Annex VIII]	20% ad val.
	Vests:			
381.58	Valued not over $2 each.....	[See Annex II]	[See Annex IX]	37.5% ad val.
381.59	Valued over $2 each.....	8% ad val.	[See Annex IX]	37.5% ad val.
	Other:			
381.60	Certified hand-loomed and folklore products.....	[See Annex II]	[See Annexes VII and IX]	37.5% ad val.
	Other:			
381.62	Suits, trousers, slacks, and shorts.....	16.5% ad val.	[See Annex IX]	37.5% ad val.
381.63	Judo, karate, and other oriental martial arts uniforms.....	[See Annex II]	[See Annex VIII]	37.5% ad val.
	Other:			
381.64	Other parts of shirts..	[See Annex II]	[See Annex IX]	37.5% ad val.
381.65	Other.....	[See Annex II]	[See Annex IX]	37.5% ad val.

ANNEX I

-17-

	[Other men's or boys'...:]				
	Of vegetable fibers, except cotton:				
381.66	Knit	5% ad val.	[See Annexes VII and IX]	45% ad val.
	Not knit:				
381.68	Shirt collars and cuffs	[See Annex II]	[See Annexes VII and IX]	10% ad val.
381.69	Other	[See Annex II]	[See Annexes VII and IX]	35% ad val.
	Of wool:				
	Knit:				
	Valued not over $5 per pound:				
381.71	Coats, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	63% ad val.
381.72	Other	[See Annex II]	[See Annex IX]	63% ad val.
	Valued over $5 per pound:				
381.74	Sweaters valued over $18 per pound wholly of cashmere	[See Annex II]	[See Annex IX]	52% ad val.
381.75	Coats, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	54.5% ad val.
381.76	Other	[See Annex II]	[See Annex IX]	54.5% ad val.
	Not knit:				
	Valued not over $4 per pound:				
381.78	Coats, shirts, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	58% ad val.
381.79	Other	[See Annex II]	[See Annex IX]	58% ad val.
	Valued over $4 per pound:				
381.81	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	58.5% ad val.
	Other:				
381.83	Coats, shirts, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	58.5% ad val.
381.84	Other	[See Annex II]	[See Annex IX]	58.5% ad val.
	Of silk:				
381.85	Knit	[See Annex II]	[See Annexes VII and IX]	60% ad val.
381.86	Not knit	[See Annex II]	[See Annexes VII and IX]	65% ad val.
	Of man-made fibers:				
	Knit:				
	Coats, suits, trousers, slacks, and shorts:				
381.87	Jogging, warm-up, and similar athletic jackets, trousers, and slacks	[See Annex II]	[See Annex IX]	72% ad val.
381.88	Other	[See Annex II]	[See Annex IX]	72% ad val.

ANNEX I

-18-

	[Other men's or boys'...:]			
	[Of man-made fibers:]			
	[Knit:]			
381.89	Shirts	[See Annex II]	[See Annex IX]	72% ad val.
381.90	Sweaters	[See Annex II]	[See Annex IX]	72% ad val.
381.91	Swimming trunks and other swimwear	[See Annex II]	[See Annex IX]	72% ad val.
381.92	Other	[See Annex II]	[See Annex IX]	72% ad val.
	Not knit:			
381.93	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	76% ad val.
	Other:			
	Coats, shirts, suits, swimming trunks and other swimwear, trousers, slacks, and shorts:			
381.94	Sport shirts not having two or more colors in the warp and/or the filling	[See Annex II]	[See Annex IX]	76% ad val.
381.95	Other	[See Annex II]	[See Annex IX]	76% ad val.
	Other:			
381.96	Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories, or contaminated areas	[See Annex II]	[See Annex IX]	76% ad val.
381.97	Judo, karate, and other oriental martial arts uniforms	[See Annex II]	[See Annex VIII]	76% ad val.
381.98	Other	[See Annex II]	[See Annex IX]	76% ad val.
381.99	Other	[See Annex II]	[See Annexes VII and IX]	40% ad val.
	Women's, girls', or infants' lace or net wearing apparel, whether or not ornamented, and other women's, girls', or infants' wearing apparel, ornamented:			
	Of cotton:			
384.00	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	90% ad val.
	Other:			
	Knit:			
384.02	Blouses, shirts, sweaters, coats, suits, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.

ANNEX I

-19-

	[Women's, girls', or infants'...:]			
	[Of cotton:]			
	[Other:]			
	[Knit:]			
384.03	Dressing gowns, including bath-robes, beach robes, lounging robes, and similar apparel; parts of garments	[See Annex II]	[See Annex IX]	90% ad val.
384.04	Other	[See Annex II]	[See Annex IX]	90% ad val.
	Not knit:			
384.05	Blouses, coats, and shirts	[See Annex II]	[See Annex IX]	90% ad val.
	Suits, vests, trousers, slacks, and shorts:			
384.06	Denim (including brushed denim) trousers and slacks; vests	[See Annex II]	[See Annex IX]	90% ad val.
384.07	Other trousers and slacks; suits; shorts	[See Annex II]	[See Annex IX]	90% ad val.
384.08	Infants' sets up to and including 24 months of age	[See Annex II]	[See Annex IX]	90% ad val.
384.09	Other	[See Annex II]	[See Annex IX]	90% ad val.
	Of wool:			
384.10	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	90% ad val.
	Other:			
	Knit:			
384.12	Coats	[See Annex II]	[See Annex IX]	90% ad val.
384.13	Other	[See Annex II]	[See Annex IX]	90% ad val.
	Not knit:			
384.15	Blouses, coats, and shirts	[See Annex II]	[See Annex IX]	90% ad val.
384.16	Other	[See Annex II]	[See Annex IX]	90% ad val.
	Of man-made fibers:			
	Knit:			
384.18	Blouses, body suits and body shirts, shirts, and sweaters	[See Annex II]	[See Annex IX]	90% ad val.
384.19	Coats; suits; swimming suits and other swimwear; tops; shorts; women's trousers and slacks (other than jogging, warm-up, and similar athletic trousers and slacks for women)	[See Annex II]	[See Annex IX]	90% ad val.
384.20	Other trousers and slacks	[See Annex II]	[See Annex IX]	90% ad val.
384.21	Infants' sets up to and including 24 months of age	[See Annex II]	[See Annex IX]	90% ad val.

ANNEX I

-20-

	[Women's, girls', or infants'...:]			
	[Of man-made fibers:]			
	[Knit:]			
384.22	Other	[See Annex II]	[See Annex IX]	90% ad val.
	Not knit:			
384.23	Blouses, coats, shirts, suits, swimming suits and other swimwear, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.
384.24	Judo, karate, and other oriental martial arts uniforms	[See Annex II]	[See Annex VIII]	90% ad val.
384.25	Dresses; dressing gowns, including bathrobes, beach robes, lounging robes, and similar apparel; pajamas and other nightwear; coveralls, overalls, jumpsuits, and similar apparel; other playsuits, washsuits, sunsuits, and similar apparel; skirts; vests with attachments for sleeves; parts of garments except parts of trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	90% ad val.
384.26	Other	[See Annex II]	[See Annex IX]	90% ad val.
384.27	Other	[See Annex II]	[See Annexes VII and IX]	90% ad val.
	Other women's, girls', or infants' wearing apparel, not ornamented:			
	Of cotton:			
	Knit:			
384.28	Blouses and sweaters	21% ad val.	[See Annex IX]	45% ad val.
384.29	Shirts	21% ad val.	[See Annex IX]	45% ad val.
	Coats, suits, trousers, slacks, and shorts:			
384.30	Jogging, warm-up, and similar athletic jackets; suits; trousers and slacks	[See Annex II]	[See Annex IX]	45% ad val.
384.31	Other coats and jackets; shorts	[See Annex II]	[See Annex IX]	45% ad val.
384.32	Dresses	[See Annex II]	[See Annex IX]	45% ad val.
384.33	Parts of sweaters	[See Annex II]	[See Annex IX]	45% ad val.
384.34	Other	[See Annex II]	[See Annex IX]	45% ad val.
	Not knit:			
	Coats:			
384.35	Valued not over $4 each	[See Annex II]	[See Annex IX]	37.5% ad val.
	Valued over $4 each:			
384.36	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	37.5% ad val.
384.37	Other	8% ad val.	[See Annex IX]	37.5% ad val.
	Dressing gowns, including bathrobes, and beach robes:			
384.38	Valued not over $2.50 each	[See Annex II]	[See Annex IX]	37.5% ad val.

	[Other women's, girls', or infants'...:]				
	[Of cotton:]				
	[Not knit:]				
	[Dressing gowns,...:]				
384.39	Valued over $2.50 each:				
384.40	Corduroy.....	8% ad val.	[See Annex IX]	37.5% ad val.	
	Other.....	8% ad val.	[See Annex IX]	37.5% ad val.	
	Pajamas:				
384.41	Valued not over $1.50 per suit...	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.42	Valued over $1.50 per suit.....	8% ad val.	[See Annex IX]	37.5% ad val.	
	Vests:				
384.43	Valued not over $2 each.....	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.44	Valued over $2 each.....	8% ad val.	[See Annex IX]	37.5% ad val.	
	Other:				
384.45	Certified hand-loomed and folklore products.....	[See Annex II]	[See Annexes VII and IX]	37.5% ad val.	
	Other:				
	Blouses, shirts, suits, trousers, slacks, and shorts:				
384.46	Blouses; shirts for male infants; denim (including brushed denim) trousers and slacks.....	16.5% ad val.	[See Annex IX]	37.5% ad val.	
384.47	Other shirts; suits; other trousers and slacks; shorts.....	16.5% ad val.	[See Annex IX]	37.5% ad val.	
	Dresses:				
384.48	Corduroy.....	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.49	Other.....	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.50	Judo, karate, and other oriental martial arts uniforms.....	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.51	Women's and girls' playsuits (other than coveralls, overalls, jumpsuits, and similar apparel), washsuits, sunsuits, and similar apparel, all the foregoing of corduroy; skirts (other than divided skirts and culottes) of corduroy, denim, or velveteen; skirts (other than divided skirts and culottes) of any fabric construction (other than corduroy, denim, or velveteen) for girls and infants; infants' sets up to and including 24 months of age.....	[See Annex II]	[See Annex IX]	37.5% ad val.	
384.52	Other (including coveralls, jumpsuits, and similar apparel).....	[See Annex II]	[See Annex IX]	37.5% ad val.	

ANNEX I

-22-

	[Other women's, girls', or infants'...:]			
	Of vegetable fibers, except cotton:			
	Knit:			
384.53	Sweaters subject to wool restraints; wearing apparel not subject to cotton, wool, or man-made fiber restraints	[See Annex II]	[See Annexes VII and IX]	45% ad val.
384.54	Other	[See Annex II]	[See Annex IX]	45% ad val.
	Not knit:			
384.55	Wearing apparel subject to cotton or wool restraints; blouses, shirts, coats, jackets, dresses, skirts, and culottes, all the foregoing subject to man-made fiber restraints	[See Annex II]	[See Annex IX]	35% ad val.
384.56	Other	[See Annex II]	[See Annexes VII and IX]	35% ad val.
	Of wool:			
	Knit:			
384.57	Infants' outerwear	[See Annex II]	[See Annex IX]	78.5% ad val.
	Other:			
	Valued not over $5 per pound:			
384.58	Coats	[See Annex II]	[See Annex IX]	63% ad val.
384.59	Other	[See Annex II]	[See Annex IX]	63% ad val.
	Valued over $5 per pound:			
384.60	Sweaters valued over $18 per pound wholly of cashmere	[See Annex II]	[See Annex IX]	52% ad val.
384.62	Coats	[See Annex II]	[See Annex IX]	54.5% ad val.
384.63	Other	[See Annex II]	[See Annex IX]	54.5% ad val.
	Not knit:			
	Valued not over $4 per pound:			
384.65	Blouses, coats, and shirts	[See Annex II]	[See Annex IX]	58% ad val.
384.66	Other	[See Annex II]	[See Annex IX]	58% ad val.
	Valued over $4 per pound:			
384.68	Certified hand-loomed and folk-lore products	[See Annex II]	[See Annexes VII and IX]	58.5% ad val.
	Other:			
384.70	Blouses and shirts	37.5¢ per lb. + 21% ad val.	[See Annex IX]	58.5% ad val.
384.72	Coats	[See Annex II]	[See Annex IX]	58.5% ad val.
384.75	Other	[See Annex II]	[See Annex IX]	58.5% ad val.
	Of silk:			
384.77	Knit	[See Annex II]	[See Annexes VII and IX]	60% ad val.
384.78	Not knit	[See Annex II]	[See Annexes VII and IX]	65% ad val.
	Of man-made fibers:			
	Knit:			
384.8f	Blouses, body suits and body shirts, shirts (other than sweatshirts), and sweaters	[See Annex II]	[See Annex IX]	72% ad val.

ANNEX I

-23-

	[Other women's, girls', or infants'...:]			
	[Of man-made fibers:]			
	[Knit:]			
384.81	Sweatshirts	[See Annex II]	[See Annex IX]	72% ad val.
384.82	Coats, suits, tops, trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	72% ad val.
	Swimming suits and other swimwear:			
384.83	Valued not over $10 each	[See Annex II]	[See Annex VIII]	72% ad val.
384.84	Valued over $10 each	[See Annex II]	[See Annex VIII]	72% ad val.
384.86	Other	[See Annex II]	[See Annex IX]	72% ad val.
	Not knit:			
384.88	Certified hand-loomed and folklore products	[See Annex II]	[See Annexes VII and IX]	76% ad val.
	Other:			
	Blouses, coats, shirts, suits, trousers, slacks, and shorts:			
384.90	Women's trousers and slacks (other than nonwoven disposable trousers and slacks designed for use in hospitals, clinics, laboratories, or contaminated areas)	[See Annex II]	[See Annex IX]	76% ad val.
384.91	Other	[See Annex II]	[See Annex IX]	76% ad val.
	Other:			
384.92	Judo, karate, and other oriental martial arts uniforms	[See Annex II]	[See Annex VIII]	76% ad val.
384.93	Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas; coveralls, overalls, jumpsuits and similar apparel; women's dresses with two or more colors in the warp and/or the filling; swimming suits and other swimwear; infants' sets up to and including 24 months of age; parts of trousers, slacks, and shorts	[See Annex II]	[See Annex IX]	76% ad val.
384.94	Other	[See Annex II]	[See Annex IX]	76% ad val.
	Other:			
384.95	Subject to cotton restraints	[See Annex II]	[See Annex IX]	40% ad val.
384.96	Other	[See Annex II]	[See Annexes VII and IX]	40% ad val."

ANNEX I

-24-

(b) Conforming change: The schedule 3 headnotes are modified by adding thereto:

"10. For the purposes of this schedule and in schedule 7:
(a) the term "Subject to cotton restraints" refers to--
(i) articles in which the cotton component equals or exceeds 50 percent by weight of all component fibers thereof; or
(ii) articles in which the cotton with wool and/or man-made fibers in the aggregate equal or exceed 50 percent by weight of the component fibers thereof and the cotton component equals or exceeds the weight of each of the total wool and/or total man-made fiber components.
(b) The term "Subject to wool restraints" refers to articles in which the wool content exceeds 17 percent by weight of all component fibers and which are not provided for in (a) above.
(c) The term "Subject to man-made fiber restraints" refers to articles not meeting the requirements of (a) or (b) above, but qualifying as--
(i) articles in which the man-made fiber components equal or exceed 50 percent by weight of all component fibers thereof; or
(ii) articles in which the man-made fibers in combination with cotton and/or wool in the aggregate equal or exceed 50 percent by weight of the component fibers thereof and the man-made fiber component exceeds the weight of the total wool and/or total cotton component."

22. Item 386.50 is superseded by:

	[Articles not specially provided for...:]			
	[Other articles, not ornamented:]			
	[Of cotton:]			
	"Other:			
386.51	Tents and tarpaulins.....	[See Annex II]	[See Annex IX]	40% ad val.
386.52	Shoe uppers; inked ribbons; kerosene heater wicks; laparotomy sponges.....	[See Annex II]	[See Annex IX]	40% ad val.
386.53	Other.....	[See Annex II]	[See Annex VIII]	40% ad val."

23.(a) Item 402.80 and the superior heading thereto are superseded by:

	[Cyclic organic chemical products...:]			
	[Other:]			
	[Halogenated hydrocarbons:]			
"402.78	Pentabromomethylbenzene; Tribromocumene.....	[See Annex II]	[See Annexes V, VI, and X]	7¢ per lb. + 71% ad val.
	Other:			
402.81	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex II]	[See Annexes V, VI, and IX]	7¢ per lb. + 71% ad val."

(b) Conforming change:

Item 402.82 is redesignated as 402.83.

24. Item 403.56 and the superior heading thereto are superseded by:

	[Cyclic organic chemical products...:]			
	[Other:]			
	[Alcohols, phenols, ethers...:]			
	[Other:]			
	[Halogenated, sulfonated:]			
"403.54	Tetrabromobisphenol A.....	[See Annex II]	[See Annexes V, VI, and X]	7¢ per lb. + 62% ad val.
	Other:			
403.57	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex II]	[See Annexes V, VI, and IX]	7¢ per lb. + 62% ad val."

ANNEX I

-25-

25. Item 403.64 and the superior heading thereto are superseded by:

	{Cyclic organic chemical products:}			
	{Other:}			
	{Alcohols, phenols, ethers...:}			
	{Other:}			
	{Ethers, ether-alcohols,...:}			
"403.62	Decabromodiphenyl oxide; Octabromodiphenyl oxide.....	{See Annex II}	{See Annexes V, VI, and X}	7¢ per lb. + 70.5% ad val.
	Other:			
403.65	Products provided for in the Chemical Appendix to the Tariff Schedules.....	{See Annex II}	{See Annexes V, VI, and IX}	7¢ per lb. + 70.5% ad val."

26. Item 404.36 and the superior heading thereto are superseded by:

	{Cyclic organic chemical products...:}			
	{Other:}			
	{Carboxylic acids, anhydrides,...:}			
	{Other:}			
	{Polycarboxylic acids and...:}			
"404.33	Tetrabromophthalic anhydride.....	{See Annex II}	{See Annexes V, VI, and X}	7¢ per lb. + 73% ad val.
	Other:			
404.37	Products provided for in the Chemical Appendix to the Tariff Schedules.....	{See Annex II}	{See Annexes V, VI, and IX}	7¢ per lb. + 73% ad val."

27. Item 405.52 is superseded by:

	{Cyclic organic chemical products...:}			
	{Other:}			
	{Other nitrogen-function compounds...:}			
	{Other:}			
	"Carboxyimide-function compounds (including orthobenzoic sulfimide and its salts) and imine-function compounds:			
405.51	Ethylenebistetra-bromophthalimide.....	{See Annex II}	{See Annexes V, VI, and X}	7¢ per lb. + 61% ad val.
405.53	Other.....	{See Annex II}	{See Annexes V, VI, and IX}	7¢ per lb. + 61% ad val."

28. Item 407.07 and the superior heading thereto are superseded by:

	{All other products, by whatever name known,...:}			
"407.01	Dibromoethyldibromocyclohexane.....	13.5% ad val.	{See Annexes VI and X}	7¢ per lb. + 53.5% ad val.
	Other:			
	{Articles provided for in item 407.05}			
407.06	Other.....	13.5% ad val.	{See Annexes VI and IX}	7¢ per lb. + 53.5% ad val."

ANNEX I

-26-

29. Headnote 3 to part 5 of schedule 6 is modified by:

(a) striking out "685.11 through 685.19" and inserting in lieu thereof "684.92 through 685.08"; and
(b) modifying subparagraph (b) by striking out "685.15" each place it appears therein and inserting in lieu thereof "684.98", and by striking out "685.16" and inserting in lieu thereof "685.00".

30. The superior heading to items 740.30 through 740.38 is modified by changing the words "this part" in the parenthetical phrase to "this subpart".

31. The first sentence of headnote 1 to subpart A of part 1 of the Appendix is modified by deleting "The duties" and inserting in lieu thereof "Except as provided in general headnote 3(a)(iii)(A)), the duties".

32. Headnote 1 to subpart B of part 1 of the Appendix is modified by deleting "inclusive." and inserting in lieu thereof "inclusive, except as provided in general headnote 3(e)(iii)(A)."

33. In the article description for item 905.50 change the reference of "items 379.96 and 383.92" to "items 381.96 and 384.93".

34. In the article description for item 906.50 change the reference of "item 405.52" to "item 405.53".

35. In the article description for item 906.97 change the reference of "item 403.56" to "item 403.57".

36. In the article description for item 907.08 change the refereoce of "item 403.56" to "item 403.57".

37. Subpart B of part 2 of the Appendix is modified by adding a new headnote, as follows:

"1. Any article described in the provisions of this subpart is subject to duty at the rate set forth herein in lieu of the rate provided therefor in schedules 1 to 8, inclusive, unless a lower rate of duty is provided for such article in the "Special" column set forth in schedules 1 to 8, inclusive.".

38. Headnote 1 to subpart C of part 2 of the Appendix is modified by deleting "elsewhere in the Tariff Schedules." and inserting in lieu thereof "elsewhere in the Tariff Schedules, or in the "Special" column set forth in schedules 1 to 8, inclusive.".

39. Headnote 1 to subpart D of part 2 of the Appendix is modified by deleting "inclusive." and inserting in lieu thereof "inclusive, unless a lower rate of duty is provided for such article in the "Special" column set forth in schedules 1 to 8, inclusive.".

40. The second sentence of headnote 1 to part 4 of the Appendix is modified by deleting "The provisions" and inserting in lieu thereof "Except as provided in general headnote 3(e)(iii)(A), the provisions".

ANNEX II

A. Annex III to Presidential Proclamation 4707 of December 11, 1979, as amended, is further amended—

a) by deleting from Section A of that Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

307.68	379.11	379.69	383.00	383.55
309.31	379.13	379.71	383.60	383.57
310.11	379.15	379.72	383.12	383.58
310.91	379.17	379.74	383.13	383.60
332.40	379.20	379.75	383.15	383.62
345.50	379.23	379.76	383.16	383.63
346.60	379.26	379.78	383.18	383.65
360.64	379.28	379.79	383.19	383.66
361.56	379.31	379.81	383.20	383.68
363.51	379.33	379.83	383.22	383.72
365.68	379.35	379.84	383.23	383.73
365.72	379.37	379.86	383.25	383.77
365.74	379.39	379.87	383.26	383.78
365.76	379.41	379.89	383.29	383.80
365.77	379.43	379.90	383.30	383.81
365.78	379.45	379.91	383.32	383.83
365.86	379.48	379.92	383.33	383.84
366.18	379.51	379.94	383.36	383.86
366.21	379.54	379.95	383.39	383.88
366.27	379.56	379.96	383.42	383.90
367.60	379.57	379.98	383.45	383.92
379.00	379.60	383.00	383.48	383.95
379.02	379.63	383.02	383.49	388.50
379.04	379.64	383.03	383.50	
379.06	379.66	383.05	383.52	
379.08	379.68	383.06	383.53	

b) by inserting in Section A of that Annex the following TSUS item numbers, in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
307.68 2/	30c per lb. + 15% ad val.	30c/lb. + 15%	30c/lb. + 15%	18c/lb. + 15%	6c/lb. + 15%	13.5%	10.5% 2/	2/	2/
307.70 2/	2/	2/	2/	2/	2/	2/	10.5% 2/	9%	9%
307.80 2/	2/	2/	2/	2/	2/	2/	10.5% 2/	9%	9%
309.31 3/	10.5% ad val.	10.5%	10.5%	10.4%	10.3%	10.3%	10.2% 3/	3/	3/
309.32 3/	3/	3/	3/	3/	3/	3/	10.2% 3/	10.1%	10%
309.33 3/	3/	3/	3/	3/	3/	3/	10.2% 3/	10.1%	10%
310.11 4/	13.5% ad val.	13.5%	13.5%	12.7%	12%	11.2%	10.4% 4/	4/	4/
310.12 4/	4/	4/	4/	4/	4/	4/	10.4% 4/	9.7%	9.9%
310.15 4/	4/	4/	4/	4/	4/	4/	10.4% 4/	9.7%	8.9%
310.91 3/	22% ad val.	22%	22%	20.5%	19%	17.5%	16% 3/	3/	3/
310.93 3/	3/	3/	3/	3/	3/	3/	16% 3/	14.5%	13%
310.95 3/	3/	3/	3/	3/	3/	3/	16% 3/	14.5%	13%
332.30 5/	5/	5/	5/	5/	5/	5/	12% 5/	11.3%	10.5%
332.40 5/	15% ad val.	15%	15%	14.3%	13.5%	12.6%	12% 5/	5/	5/
332.50 5/	5/	5/	5/	5/	5/	5/	12% 5/	11.3%	10.5%
345.40 5/	5/	5/	5/	5/	5/	5/	8c/lb. + 16% 5/	4c/lb. + 15%	14%
345.50 5/	25c per lb. + 20% ad val.	25c/lb. + 20%	25c/lb. + 20%	21c/lb. + 19%	16c/lb. + 18%	12c/lb. + 17%	8c/lb. + 16% 5/	5/	5/
345.55 5/	5/	5/	5/	5/	5/	5/	8c/lb. + 16% 5/	4c/lb. + 15%	14%
346.58 6/	6/	6/	6/	6/	6/	6/	5c/lb. + 21.3% 6/	2c/lb. + 20.4%	19.5%
346.60 6/	15c per lb. + 25% ad val.	15c/lb. + 25%	15c/lb. + 25%	12c/lb. + 24.1%	10c/lb. + 23.2%	7c/lb. + 22.3%	5c/lb. + 21.3% 6/	6/	6/
346.62 6/	6/	6/	6/	6/	6/	6/	5c/lb. + 21.3% 6/	2c/lb. + 20.4%	19.5%

Footnote 2 for items 307.68, 307.70, and 307.80:
2/ Item 307.68 is discontinued effective September 1, 1985, and is superseded by items 307.70 and 307.80.

Footnote 3 for items 309.31, 309.32, and 309.33:
3/ Item 309.31 is discontinued effective September 1, 1985, and is superseded by items 309.32 and 309.33.

Footnote 4 for items 310.11, 310.12, and 310.15:
4/ Item 310.11 is discontinued effective September 1, 1985, and is superseded by items 310.12 and 310.15.

Footnote 3 for items 310.91, 310.93, and 310.95:
3/ Item 310.91 is discontinued effective September 1, 1985, and is superseded by items 310.93 and 310.95.

Footnote 5 for items 332.30, 332.40, and 332.50:
5/ Item 332.40 is discontinued effective September 1, 1985, and is superseded by items 332.30 and 332.50.

Footnote 5 for items 345.40, 345.50, and 345.55:
5/ Item 345.50 is discontinued effective September 1, 1985, and is superseded by items 345.40 and 345.55.

Footnote 6 for items 346.58, 346.60, and 346.62:
6/ Item 346.60 is discontinued effective September 1, 1985, and is superseded by items 346.58 and 346.62.

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
360.44 7/	7/	7/	7/	19.2%	17.3%	15.5%	13.7% 7/	7/	7/
360.45 7/	7/	7/	7/	7/	7/	7/	13.7% 7/	11.8%	10%
360.47 7/	7/	7/	7/	7/	7/	7/	13.7% 7/	11.8%	10%
361.56 8/	8.5% ad val.	8.5%	8.5%	8%	7.4%	6.9%	6.4% 8/	8/	8/
361.60 8/	8/	8/	8/	8/	8/	8/	6.4% 8/	5.8%	5.3%
361.70 8/	8/	8/	8/	8/	8/	8/	6.4% 8/	5.8%	5.3%
363.51 7/	6% ad val.	6%	6%	5.8%	5.7%	5.5%	5.3% 7/	7/	7/
363.52 7/	7/	7/	7/	7/	7/	7/	5.3% 7/	5.2%	5%
363.53 7/	7/	7/	7/	7/	7/	7/	5.3% 7/	5.2%	5%
365.52 7/	7/	7/	7/	7/	7/	7/	16% 7/	14.6%	12.8%
365.54 7/	7/	7/	7/	7/	7/	7/	16% 7/	14.6%	12.8%
365.56 3/	3/	3/	3/	3/	3/	3/	21% 3/	18.3%	15.5% 3/
365.58 3/	3/	3/	3/	3/	3/	3/	21% 3/	18.3%	15.5% 3/
365.62 8/	8/	8/	8/	8/	8/	8/	15.2% 8/	14%	12.8%
365.64 4/	4/	4/	4/	4/	4/	4/	20.2% 4/	17.7%	15.3% 4/
365.66 4/	4/	4/	4/	4/	4/	4/	20.2% 4/	17.7%	15.3% 4/
365.68 7/	7/	22.5% 7/	22.5%	20.8%	19.3%	17.7%	16% 7/	7/	7/
365.72 7/	7/	22.5% 7/	22.5%	20.8%	19.3%	17.7%	16% 7/	7/	7/
365.74 3/	3/	32% 3/	32%	29.3%	26.5%	23.8%	21% 3/	3/	3/
365.76 3/	3/	32% 3/	32%	29.3%	26.5%	23.8%	21% 3/	3/	3/
365.77 8/	20% ad val.	20%	20%	18.8%	17.6%	16.4%	15.2% 8/	8/	8/
365.78 4/	30% ad val.	30%	30%	27.5%	25.1%	22.6%	20.2% 4/	4/	4/
365.86 9/	21% ad val.	21%	21%	19.6%	18.3%	16.9%	15.5% 9/	9/	9/
365.87 9/	9/	9/	9/	9/	9/	9/	15.5% 9/	14.2%	12.8%
365.89 9/	9/	9/	9/	9/	9/	9/	15.5% 9/	14.2%	12.8%
366.17 10/	10/	10/	10/	10/	10/	10/	11.7% 10/	11.1%	10.5%
366.18 10/	14% ad val.	14%	14%	13.4%	12.8%	12.3%	11.7% 10/	10/	10/
366.19 10/	10/	10/	10/	10/	10/	10/	11.7% 10/	11.1%	10.5%
366.20 11/	11/	11/	11/	11/	11/	11/	13.7¢/lb. 11/	13.0¢/lb.	13.5¢/lb.
366.21 11/	14¢ per lb.	14¢/lb.	14¢/lb.	13.9¢/lb	13.8¢/lb.	13.7¢/lb.	13.7¢/lb. 11/	11/	11/
366.22 11/	11/	11/	11/	11/	11/	11/	13.7¢/lb. 11/	13.0¢/lb.	13.5¢/lb.
366.26 12/	12/	12/	12/	12/	12/	12/	12% 12/	11.3%	10.5%
366.27 12/	15% ad val.	15%	15%	14.3%	13.5%	12.8%	12% 12/	12/	12/
366.28 12/	12/	12/	12/	12/	12/	12/	12% 12/	11.3%	10.5%

Footnote 7 for items 360.44, 360.45, and 360.47:
7/ Item 360.46 is discontinued effective March 31, 1982, and is superseded by items 360.62, 360.63, and 360.64.
Item 360.46 is discontinued effective September 1, 1985, and is superseded by items 360.45 and 360.47.

Footnote 8 for items 361.56, 361.60, and 361.70:
8/ Item 361.56 is discontinued effective September 1, 1985, and is superseded by items 361.60 and 361.70.

Footnote 7 for items 363.51, 363.52, and 363.53:
7/ Item 363.51 is discontinued effective September 1, 1985, and is superseded by items 363.52 and 363.53.

Footnote 7 for items 365.52, 365.54, 365.68, and 365.72:
7/ Item 365.70 is discontinued effective March 30, 1980, and is superseded by items 365.68 and 365.72.
Effective September 1, 1985, items 365.68 and 365.72 are redesignated items 365.52 and 365.54, respectively.

Footnote 3 for items 365.56, 365.58, 365.74, and 365.76:
3/ Item 365.75 is discontinued effective March 30, 1980, and is superseded by items 365.74 and 365.76.
Effective September 1, 1985, items 365.74 and 365.76 are redesignated items 365.56 and 365.58, respectively.
For items 365.56 and 365.58, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 12.8%.

Footnote 8 for items 365.62 and 365.77:
8/ Item 365.77 is redesignated item 365.62 effective September 1, 1985.

Footnote 4 for items 365.64, 365.66, and 365.78:
4/ Item 365.78 is discontinued effective September 1, 1985, and is superseded by items 365.64 and 365.66.
For items 365.64 and 365.66 the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 12.8%.

Footnote 9 for items 365.86, 365.87, and 365.89:
9/ Item 365.86 is discontinued effective September 1, 1985, and is superseded by items 365.87 and 365.89.

Footnote 10 for items 366.17, 366.18, and 366.19:
10/ Item 366.18 is discontinued effective September 1, 1985, and is superseded by items 366.17 and 366.19.

Footnote 11 for items 366.20, 366.21, and 366.22:
11/ Item 366.21 is discontinued effective September 1, 1985, and is superseded by items 366.20 and 366.22.

Footnote 12 for items 366.26, 366.27, and 366.28:
12/ Item 366.27 is discontinued effective September 1, 1985, and is superseded by items 366.26 and 366.28.

ANNEX II

-3-

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
367.60 4/	25c per lb. + 17% ad val.	25c/lb. + 17%	25c/lb. + 17%	20c/lb. + 13.6%	16c/lb. + 14.2%	12c/lb. + 12.8%	8c/lb. + 11.3% 4/	4/	4/
367.61 4/	4/	4/	4/	4/	4/	4/	8c/lb. + 11.3% 4/	4c/lb. + 9.9%	4.5%
367.63 4/	4/	4/	4/	4/	4/	4/	8c/lb. + 11.3% 4/	4c/lb. + 9.9%	4.5%
379.00 3/ 5/	35% ad val.	4/	4/	32%	29%	26%	23% 3/	3/	3/
379.02 5/ 6/	35% ad val.	4/	4/	32.7%	30.3%	28%	25.7% 5/	5/	5/
379.04 6/ 7/	35% ad val.	4/	4/	32%	29%	26%	23% 6/	4/	4/
379.06 7/ 8/	35% ad val.	4/	4/	32.7%	30.3%	28%	25.7% 7/	7/	7/
379.08 8/ 9/	35% ad val.	4/	4/	32%	29%	26%	23% 8/	8/	8/
379.11 9/ 10/	42.5% ad val.	4/	4/	39.7%	36.8%	34%	31.2% 9/	9/	9/
379.13 10/ 11/	42.5% ad val.	4/	4/	39.7%	36.9%	34.1%	31.4% 10/	10/	10/
379.15 11/ 12/	42.5% ad val.	4/	4/	39.7%	36.8%	34%	31.2% 11/	11/	11/
379.17 12/ 13/	42.5% ad val.	4/	4/	39.7%	36.9%	34.1%	31.4% 12/	12/	12/
379.20 13/ 14/	42.5% ad val.	4/	4/	39.7%	36.8%	34%	31.2% 13/	13/	13/
379.23 14/ 15/	42.5% ad val.	4/	4/	40.4%	38.3%	36.3%	34.2% 14/	14/	14/
379.26 15/ 16/	42.5% ad val.	4/	4/	41.3%	40%	38.8%	37.5% 15/	15/	15/
379.28 16/ 17/	42.5% ad val.	4/	4/	39.7%	36.8%	34%	31.2% 16/	16/	16/
379.31 17/ 18/	42.5% ad val.	4/	4/	40.4%	38.3%	36.3%	34.2% 17/	17/	17/
379.33 18/	42.5% ad val.	4/	4/	39.7%	36.8%	34%	31.2% 18/	18/	18/

Footnote 4 for items 367.60, 367.61, and 367.63:
4/ Item 367.60 is discontinued effective September 1, 1985, and is superseded by items 367.61 and 367.63.

Footnote 3 for item 379.00:
3/ Item 379.00 is redesignated item 381.00 effective September 1, 1985.

Footnote 5 for item 379.02:
5/ Item 379.02 is redesignated item 381.02 effective September 1, 1985.

Footnote 6 for item 379.04:
6/ Item 379.04 is discontinued effective September 1, 1985, and is superseded by items 381.03 and 381.04.

Footnote 7 for item 379.06:
7/ Item 379.06 is discontinued effective September 1, 1985, and is superseded by items 381.05 and 381.06.

Footnote 8 for item 379.08:
8/ Item 379.08 is redesignated item 381.08 effective September 1, 1985.

Footnote 9 for item 379.11:
9/ Item 379.11 is redesignated item 381.11 effective September 1, 1985.

Footnote 10 for item 379.13:
10/ Item 379.13 is redesignated item 381.13 effective September 1, 1985.

Footnote 11 for item 379.15:
11/ Item 379.15 is redesignated item 381.15 effective September 1, 1985.

Footnote 12 for item 379.17:
12/ Item 379.17 is redesignated item 381.17 effective September 1, 1985.

Footnote 13 for item 379.20:
13/ Item 379.20 is redesignated item 381.20 effective September 1, 1985.

Footnote 14 for item 379.23:
14/ Item 379.23 is redesignated item 381.23 effective September 1, 1985.

Footnote 15 for item 379.26:
15/ Item 379.26 is discontinued effective September 1, 1985, and is superseded by items 381.24 and 381.25.

Footnote 16 for item 379.28:
16/ Item 379.28 is redesignated 381.28 effective September 1, 1985.

Footnote 17 for item 379.31:
17/ Item 379.31 is redesignated 381.31 effective September 1, 1985.

Footnote 18 for item 379.33:
18/ Item 379.33 is discontinued effective September 1, 1985, and is superseded by items 381.32 and 381.33.

ANNEX II

-4-

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1980	1981	1982	1983	1984	1985	1986	1987
379.35 19	21% ad val.	4/	4/	18%	15%	12%	9% 19/	19/	19/
379.37 20	21% ad val.	4/	4/	18.9%	16.8%	14.8%	12.7% 20/	20/	20/
379.39 21	21% ad val.	4/	4/	20.3%	19.5%	18.8%	18% 21/	21/	21/
379.41 22	21% ad val.	4/	4/	18.8%	16.7%	14.5%	12.3% 22/	22/	22/
379.43 23	16.5% ad val.	4/	4/	15.1%	13.7%	12.3%	10.8% 23/	23/	23/
379.45 24	8% ad val.	4/	4/	7.5%	7%	6.5%	6% 24/	24/	24/
379.48 25	16.5% ad val.	4/	4/	15.1%	13.7%	12.3%	10.8% 25/	25/	25/
379.51 26	16.5% ad val.	4/	4/	15.1%	13.7%	12.3%	10.8% 26/	26/	26/
379.54 27	21% ad val.	4/	4/	18.9%	16.8%	14.7%	12.6% 27/	27/	27/
379.56 28	7% ad val.	4/	4/	6.6%	6.2%	5.8%	5.3% 28/	28/	28/
379.57 2/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 2/	2/	2/
379.60 4/	16.5% ad val.	3/	3/	15%	13.5%	12%	10.5% 4/	4/	4/
379.63 5/	16.5% ad val.	3/	3/	14.8%	13.2%	11.5%	9.8% 5/	5/	5/
379.64 6/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 6/	6/	6/
379.68 7/	2.5% ad val.	3/	3/	2.4%	2.3%	2.3%	2.2% 7/	7/	7/
379.69 8/	7.5% ad val.	3/	3/	6.8%	6%	5.3%	6.5% 8/	8/	8/
379.71 9/	17.5c per lb. + 30% ad val.	3/	3/	31c/lb. + 28.8%	25c/lb. + 27.7%	18c/lb. + 26.5%	12c/lb. + 25.3% 9/	9/	9/
379.72 10/	17.5c per lb. + 30% ad val.	3/	3/	32c/lb. + 28.4%	28c/lb. + 26.8%	23c/lb. + 25.1%	18c/lb. + 23.5% 10/	10/	10/

Footnote 19 for item 379.35:
19/ Item 379.35 is redesignated 381.35 effective September 1, 1985.

Footnote 20 for item 379.37:
20/ Item 379.37 is redesignated 381.37 effective September 1, 1985.

Footnote 21 for item 379.39:
21/ Item 379.39 is redesignated 381.39 effective September 1, 1985.

Footnote 22 for item 379.41:
22/ Item 379.41 is discontinued effective September 1, 1985, and is superseded by items 381.42 and 381.43.

Footnote 23 for item 379.43:
23/ Item 379.43 is discontinued effective September 1, 1985, and is superseded by items 381.44 and 381.45.

Footnote 24 for item 379.45:
24/ Item 379.45 is redesignated 381.46 effective September 1, 1985.

Footnote 25 for item 379.48:
25/ Item 379.48 is redesignated 381.49 effective September 1, 1985.

Footnote 26 for item 379.51:
26/ Item 379.51 is redesignated 381.51 effective September 1, 1985.

Footnote 27 for item 379.54:
27/ Item 379.54 is redesignated 381.54 effective September 1, 1985.

Footnote 28 for item 379.56:
28/ Item 379.56 is redesignated 381.57 effective September 1, 1985.

Footnote 2 for item 379.57:
2/ Item 379.57 is redesignated 381.58 effective September 1, 1985.

Footnote 3 for items 379.57 through 379.98:
3/ This item is not established until January 1, 1982.

Footnote 4 for item 379.60:
4/ Item 379.60 is redesignated item 381.60 effective September 1, 1985.

Footnote 5 for item 379.63:
5/ Item 379.63 is redesignated item 381.63 effective September 1, 1985.

Footnote 6 for item 379.64:
6/ Item 379.64 is discontinued effective September 1, 1985, and is superseded by items 381.64 and 381.65.

Footnote 7 for item 379.68:
7/ Item 379.68 is redesignated item 381.68 effective September 1, 1985.

Footnote 8 for item 379.69:
8/ Item 379.69 is redesignated item 381.69 effective September 1, 1985.

Footnote 9 for item 379.71:
9/ Item 379.71 is redesignated item 381.71 effective September 1, 1985.

Footnote 10 for item 379.72:
10/ Item 379.72 is redesignated item 381.72 effective September 1, 1985.

ANNEX II

-5-

A.(con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1990	1991	1992	1993	1994	1995	1996	1997
379.74[11]	37.5¢ per lb. + 15.5% ad val.	3/	3/	31¢/lb. + 14.2%	25¢/lb. + 12.8%	19¢/lb. + 11.5%	12¢/lb. + 10.2% 11/	11/	11/
379.75[12]	37.5¢ per lb. + 20% ad val.	3/	3/	37.1¢/lb. + 20%	36.7¢/lb. + 20%	36.3¢/lb. + 20%	35.8¢/lb. + 20% 12/	12/	12/
379.76[13]	37.5¢ per lb. + 20% ad val.	3/	3/	31¢/lb. + 19.5%	25¢/lb. + 19%	19¢/lb. + 18.5%	12¢/lb. + 18% 13/	13/	13/
379.78[14]	25¢ per lb. + 21% ad val.	3/	3/	21¢/lb. + 21%	18¢/lb. + 21%	14¢/lb. + 21%	11¢/lb. + 21% 14/	14/	14/
379.79[15]	25¢ per lb. + 21% ad val.	3/	3/	21¢/lb. + 20.3%	17¢/lb. + 19.7%	13¢/lb. + 19%	8¢/lb. + 18.3% 15/	15/	15/
379.81[16]	37.5¢ per lb. + 21% ad val.	3/	3/	31¢/lb. + 19.1%	25¢/lb. + 17.2%	19¢/lb. + 15.3%	12¢/lb. + 13.3% 16/	16/	16/
379.83[17]	37.5¢ per lb. + 21% ad val.	3/	3/	35¢/lb. + 21%	33¢/lb. + 21%	31¢/lb. + 21%	28¢/lb. + 21% 17/	17/	17/
379.84[18]	37.5¢ per lb. + 21% ad val.	3/	3/	31¢/lb. + 20.3%	25¢/lb. + 19.7%	19¢/lb. + 19%	12¢/lb. + 18.3% 18/	18/	18/
379.86[19]	10% ad val.	3/	3/	9.3%	8.7%	8%	7.3% 19/	19/	19/
379.87[20]	16% ad val.	3/	3/	14.6%	13.2%	11.8%	10.3% 20/	20/	20/
379.89[21]	25¢ per lb. + 32.5% ad val.	3/	3/	20¢/lb. + 32.1%	16¢/lb. + 31.7%	12¢/lb. + 31.3%	8¢/lb. + 30.8% 21/	21/	21/
379.90[22]	25¢ per lb. + 32.3% ad val.	3/	3/	23¢/lb. + 32.5%	21¢/lb. + 32.5%	19¢/lb. + 32.5%	17¢/lb. + 32.5% 22/	22/	22/
379.91[23]	25¢ per lb. + 32.5% ad val.	3/	3/	20¢/lb. + 31.3%	16¢/lb. + 30%	12¢/lb. + 28.8%	8¢/lb. + 27.5% 23/	23/	23/
379.92[24]	25¢ per lb. + 32.5% ad val.	3/	3/	21¢/lb. + 30.3%	17¢/lb. + 28.1%	14¢/lb. + 25.9%	10¢/lb. + 23.6% 24/	24/	24/
379.94[25]	25¢ per lb. + 27.5% ad val.	3/	3/	21¢/lb. + 25.4%	17¢/lb. + 23.4%	14¢/lb. + 21.3%	10¢/lb. + 19.2% 25/	25/	25/

Footnote 11 for item 379.74:
11/ Item 379.74 is redesignated item 381.74 effective September 1, 1985.

Footnote 12 for item 379.75:
12/ Item 379.75 is redesignated item 381.75 effective September 1, 1985.

Footnote 13 for item 379.76:
13/ Item 379.76 is redesignated item 381.76 effective September 1, 1985.

Footnote 14 for item 379.78:
14/ Item 379.78 is redesignated item 381.78 effective September 1, 1985.

Footnote 15 for item 379.79:
15/ Item 379.79 is redesignated item 381.79 effective September 1, 1985.

Footnote 16 for item 379.81:
16/ Item 379.81 is redesignated item 381.81 effective September 1, 1985.

Footnote 17 for item 379.83:
17/ Item 379.83 is redesignated item 381.83 effective September 1, 1985.

Footnote 18 for item 379.84:
18/ Item 379.84 is redesignated item 381.84 effective September 1, 1985.

Footnote 19 for item 379.86:
19/ Item 379.86 is redesignated item 381.85 effective September 1, 1985.

Footnote 20 for item 379.87:
20/ Item 379.87 is redesignated item 381.86 effective September 1, 1985.

Footnote 21 for item 379.89:
21/ Item 379.89 is discontinued effective September 1, 1985, and is superseded by items 381.87 and 381.88.

Footnote 22 for item 379.90:
22/ Item 379.90 is discontinued effective September 1, 1985, and is superseded by items 381.89 and 381.90.

Footnote 23 for item 379.91:
23/ Item 379.91 is redesignated item 381.91 effective September 1, 1985.

Footnote 24 for item 379.92:
24/ Item 379.92 is redesignated item 381.92 effective September 1, 1985.

Footnote 25 for item 379.94:
25/ Item 379.94 is redesignated item 381.93 effective September 1, 1985.

ANNEX II

-6-

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1980	1981	1982	1983	1984	1985	1986	[illegible]
379.95[26]	25c per lb. + 27.5% ad val.	3/	3/	23c/lb. + 27.5%	21c/lb. + 27.5%	19c/lb. + 27.5%	17c/lb. + 27.5% 26/	26/	26/
379.96[27]	25c per lb. + 27.5% ad val.	3/	3/	20c/lb. + 23.8%	16c/lb. + 24%	12c/lb. + 22.3%	8c/lb. + 20.5% 27/	27/	27/
379.98[28]	10% ad val.	3/	3/	9%	8%	7%	6% 28/	28/	26/
381.00[29]	29/	29/	29/	29/	29/	29/	23% 29/	20%	17% 29/
381.02[30]	30/	30/	30/	30/	30/	30/	25.7% 30/	23.3%	21%
381.03[31]	31/	31/	31/	31/	31/	31/	23% 31/	20%	17% 31/
381.04[31]	31/	31/	31/	31/	31/	31/	23% 31/	20%	17% 31/
381.05[32]	32/	32/	32/	32/	32/	32/	25.7% 32/	23%	21%
381.06[32]	32/	32/	32/	32/	32/	32/	25.7% 32/	23%	21%
381.08[33]	33/	33/	33/	33/	33/	33/	23% 33/	20%	17% 33/
381.11[34]	34/	34/	34/	34/	34/	34/	31.2% 34/	28.3%	25.3% 34/
381.13[35]	35/	35/	35/	35/	35/	35/	31.4% 35/	28.6%	25.8% 35/
381.15[36]	36/	36/	36/	36/	36/	36/	31.2% 36/	28.3%	25.5% 36/

Footnote 26 for item 379.95:
26/ Item 379.95 is discontinued effective September 1, 1985, and is superseded by items 381.94 and 381.95.

Footnote 27 for item 379.96:
27/ Item 379.96 is discontinued effective September 1, 1985, and is superseded by items 381.96, 381.97, and 381.98.

Footnote 28 for item 379.98:
28/ Item 379.98 is redesignated item 381.99 effective September 1, 1985.

Footnote 29 for item 381.00:
29/ Item 379.00 is redesignated item 381.00 effective September 1, 1985.
For item 381.00, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 30 for item 381.02:
30/ Item 379.02 is redesignated item 381.02 effective September 1, 1985.

Footnote 31 for items 381.03 and 381.04:
31/ Item 379.04 is discontinued effective September 1, 1985, and is superseded by items 381.03 and 381.04.
For items 381.03 and 381.04, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 32 for items 381.05 and 381.06:
32/ Item 379.06 is discontinued effective September 1, 1985, and is superseded by items 381.05 and 381.06.

Footnote 33 for item 381.08:
33/ Item 379.08 is redesignated item 381.08 effective September 1, 1985.
For item 381.08, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 34 for item 381.11:
34/ Item 379.11 is redesignated item 381.11 effective September 1, 1985.
For item 381.11, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 35 for item 381.13:
35/ Item 379.13 is redesignated item 381.13 effective September 1, 1985.
For item 381.13, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 23%.

Footnote 36 for item 381.15:
36/ Item 379.15 is redesignated item 381.15 effective September 1, 1985.
For item 381.15, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

*/ (cont.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1--							
		1987	1988	1989	1990	1991	1992	1993	1994
381.17 37	37/	37/	37/	37/	37/	37/	31.4% 37/	28.0%	25.6% 37/
381.20 38	38/	38/	38/	38/	38/	38/	31.2% 38/	28.3%	25.3% 38/
381.23 39	39/	39/	39/	39/	39/	39/	34.2% 39/	32.1%	30%
381.24 40	40/	40/	40/	40/	40/	40/	37.5% 40/	36.3%	35%
381.25 40	40/	40/	40/	40/	40/	40/	37.5% 40/	36.3%	35%
381.28 41	41/	41/	41/	41/	41/	41/	31.2% 41/	28.3%	25.3% 41/
381.31 42	42/	42/	42/	42/	42/	42/	34.2% 42/	32.1%	30%
381.32 43	43/	43/	43/	43/	43/	43/	31.2% 43/	28.3%	25.3% 43/
381.33 43	43/	43/	43/	43/	43/	43/	31.2% 43/	28.3%	25.3% 43/
381.35 44	44/	44/	44/	44/	44/	44/	9% 44/	8%	8%
381.37 45	45/	45/	45/	45/	45/	45/	12.7% 45/	10.8%	8.3%
381.39 46	46/	46/	46/	46/	46/	46/	18% 46/	17.3%	16.3%
381.42 47	47/	47/	47/	47/	47/	47/	12.3% 47/	10.2%	8%
381.43 47	47/	47/	47/	47/	47/	47/	12.3% 47/	10.2%	8%
381.44 48	48/	48/	48/	48/	48/	48/	10.8% 48/	9.4%	8%
381.45 48	48/	48/	48/	48/	48/	48/	10.8% 48/	9.4%	8%
381.46 49	49/	49/	49/	49/	49/	49/	6% 49/	5.5%	5%
381.49 50	50/	50/	50/	50/	50/	50/	10.8% 50/	9.4%	8%
381.51 51	51/	51/	51/	51/	51/	51/	10.8% 51/	9.4%	8%
381.54 52	52/	52/	52/	52/	52/	52/	12.6% 52/	10.5%	8.4%
381.57 53	53/	53/	53/	53/	53/	53/	5.3% 53/	4.9%	4.5%

Footnote 37 for item 381.17:
37/ Item 379.17 is redesignated item 381.17 effective September 1, 1985.
For item 381.17, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 23%.

Footnote 38 for item 381.20:
38/ Item 379.20 is redesignated item 381.20 effective September 1, 1985.
For item 381.20, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 39 for item 381.23:
39/ Item 379.23 is redesignated item 381.23 effective September 1, 1985.

Footnote 40 for items 381.24 and 381.25:
40/ Item 379.24 is discontinued effective September 1, 1985, and is superseded by items 381.24 and 381.25.

Footnote 41 for item 381.28:
41/ Item 379.28 is redesignated item 381.28 effective September 1, 1985.
For item 381.28, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 42 for item 381.31:
42/ Item 379.31 is redesignated item 381.31 effective September 1, 1985.

Footnote 43 for items 381.32 and 381.33:
43/ Item 379.33 is discontinued effective September 1, 1985, and is superseded by items 381.32 and 381.33.
For items 381.32 and 381.33, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 44 for item 381.35:
44/ Item 379.33 is redesignated item 381.35 effective September 1, 1985.

Footnote 45 for item 381.37:
45/ Item 379.37 is redesignated item 381.37 effective September 1, 1985.

Footnote 46 for item 381.39:
46/ Item 379.39 is redesignated item 381.39 effective September 1, 1985.

Footnote 47 for items 381.42 and 381.43:
47/ Item 379.41 is discontinued effective September 1, 1985, and is superseded by items 381.42 and 381.43.

Footnote 48 for items 381.44 and 381.45:
48/ Item 379.43 is discontinued effective September 1, 1985, and is superseded by items 381.44 and 381.45.

Footnote 49 for item 381.46:
49/ Item 379.45 is redesignated item 381.46 effective September 1, 1985.

Footnote 50 for item 381.49:
50/ Item 379.48 is redesignated item 381.49 effective September 1, 1985.

Footnote 51 for item 381.51:
51/ Item 379.51 is redesignated item 381.51 effective September 1, 1985.

Footnote 52 for item 381.54:
52/ Item 379.54 is redesignated item 381.54 effective September 1, 1985.

Footnote 53 for item 381.57:
53/ Item 379.56 is redesignated item 381.57 effective September 1, 1985.

ANNEX II

-8-

A.(con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
381.58 2/	2/	2/	2/	2/	2/	2/	10.8% 2/	9.4%	8%
381.60 4/	4/	4/	4/	4/	4/	4/	10.5% 4/	9%	7.5%
381.63 5/	5/	5/	5/	5/	5/	5/	9.8% 5/	8.2%	6.5%
381.64 6/	6/	6/	6/	6/	6/	6/	10.8% 6/	9.4%	8%
381.65 6/	6/	6/	6/	6/	6/	6/	10.8% 6/	9.4%	8%
381.68 7/	7/	7/	7/	7/	7/	7/	2.2% 7/	2.1%	2%
381.69 8/	8/	8/	8/	8/	8/	8/	4.5% 8/	3.8%	3%
381.71 9/	9/	9/	9/	9/	9/	9/	12¢/lb. + 25.3% 9/	6¢/lb. + 24.2%	23%
381.72 10/	10/	10/	10/	10/	10/	10/	18¢/lb. + 23.5% 10/	14¢/lb. + 21.9%	9¢/lb. + 20.3% 10/
381.74 11/	11/	11/	11/	11/	11/	11/	12¢/lb. + 10.2% 11/	6¢/lb. + 8.8%	7.5%
381.75 12/	12/	12/	12/	12/	12/	12/	35.4¢/lb. + 20% 12/	35.4¢/lb. + 20%	35¢/lb. + 20%
381.76 13/	13/	13/	13/	13/	13/	13/	12¢/lb. + 18% 13/	6¢/lb. + 17.5%	17%
381.78 14/	14/	14/	14/	14/	14/	14/	11¢/lb. + 21% 14/	7¢/lb. + 21%	4¢/lb. + 21%
381.79 15/	15/	15/	15/	15/	15/	15/	4¢/lb. + 18.3% 15/	4¢/lb. + 17.7%	17%
381.81 16/	16/	16/	16/	16/	16/	16/	12¢/lb. + 13.3% 16/	6¢/lb. + 11.4%	9.5% 20.3%
381.83 17/	17/	17/	17/	17/	17/	17/	28¢/lb. + 21% 17/	24¢/lb. + 21%	24¢/lb. + 21%
381.84 18/	18/	18/	18/	18/	18/	18/	12¢/lb. + 18.3% 18/	6¢/lb. + 17.7%	17%
381.85 19/	19/	19/	19/	19/	19/	19/	7.3% 19/	6.7%	6%
381.86 20/	20/	20/	20/	20/	20/	20/	10.3% 20/	8.9%	7.5%

Footnote 2 for item 381.58:
2/ Item 379.57 is redesignated item 381.58 effective September 1, 1985.

Footnote 4 for item 381.60:
4/ Item 379.60 is redesignated item 381.60 effective September 1, 1985.

Footnote 5 for item 381.63:
5/ Item 379.63 is redesignated item 381.63 effective September 1, 1985.

Footnote 6 for items 381.64 and 381.65:
6/ Item 379.64 is discontinued effective September 1, 1985, and is superseded by items 381.64 and 381.65.

Footnote 7 for item 381.68:
7/ Item 379.68 is redesignated item 381.68 effective September 1, 1985.

Footnote 8 for item 381.69:
8/ Item 379.69 is redesignated item 381.69 effective September 1, 1985.

Footnote 9 for item 381.71:
9/ Item 379.71 is redesignated item 381.71 effective September 1, 1985.

Footnote 10 for item 381.72:
10/ Item 379.72 is redesignated item 381.72 effective September 1, 1985.
For item 381.72, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--4¢/lb. + 18.6%.
Effective with respect to articles entered on and after January 1, 1989--17%.

Footnote 11 for item 381.74:
11/ Item 379.74 is redesignated item 381.74 effective September 1, 1985.

Footnote 12 for item 381.75:
12/ Item 379.75 is redesignated item 381.75 effective September 1, 1985.

Footnote 13 for item 381.76:
13/ Item 379.76 is redesignated item 381.76 effective September 1, 1985.

Footnote 14 for item 381.78:
14/ Item 379.78 is redesignated item 381.78 effective September 1, 1985.

Footnote 15 for item 381.79:
15/ Item 379.79 is redesignated item 381.79 effective September 1, 1985.

Footnote 16 for item 381.81:
16/ Item 379.81 is redesignated item 381.81 effective September 1, 1985.

Footnote 17 for item 381.83:
17/ Item 379.83 is redesignated item 381.83 effective September 1, 1985.

Footnote 18 for item 381.84:
18/ Item 379.84 is redesignated item 381.84 effective September 1, 1985.

Footnote 19 for item 381.85:
19/ Item 379.86 is redesignated item 381.85 effective September 1, 1985.

Footnote 20 for item 381.86:
20/ Item 379.87 is redesignated item 381.86 effective September 1, 1985

ANNEX II

-9-

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1980	1981	1982	1983	1984	1985	1986	1987
381.87 [21]	21/	21/	21/	21/	21/	21/	8¢/lb. + 30.8% 21/	4¢/lb. + 30.4%	30%
381.88 [21]	21/	21/	21/	21/	21/	21/	8¢/lb. + 30.8% 21/	4¢/lb. + 30.4%	30%
381.89 [22]	22/	22/	22/	22/	22/	22/	17¢/lb. + 32.5% 22/	15¢/lb. + 32.5%	13¢/lb. + 32.5%
381.90 [22]	22/	22/	22/	22/	22/	22/	17¢/lb. + 32.5% 22/	15¢/lb. + 32.5%	13¢/lb. + 32.5%
381.91 [23]	23/	23/	23/	23/	23/	23/	8¢/lb. + 27.5% 23/	4¢/lb. + 26.3%	25%
381.92 [24]	24/	24/	24/	24/	24/	24/	10¢/lb. + 23.6% 24/	7¢/lb. + 21.4%	3¢/lb. + 19.2% 24/
381.93 [25]	25/	25/	25/	25/	25/	25/	10¢/lb. + 19.2% 25/	7¢/lb. + 17.1%	3¢/lb. + 15.1% 25/
381.94 [26]	26/	26/	26/	26/	26/	26/	17¢/lb. + 27.5% 26/	15¢/lb. + 27.5%	14¢/lb. + 27.5%
381.95 [26]	26/	26/	26/	26/	26/	26/	17¢/lb. + 27.5% 26/	15¢/lb. + 27.5%	14¢/lb. + 27.5%
381.96 [27]	27/	27/	27/	27/	27/	27/	8¢/lb. + 20.5% 27/	4¢/lb. + 18.8%	17%
381.97 [27]	27/	27/	27/	27/	27/	27/	8¢/lb. + 20.5% 27/	4¢/lb. + 18.8%	17%
381.98 [27]	27/	27/	27/	27/	27/	27/	8¢/lb. + 20.5% 27/	4¢/lb. + 18.8%	17%
381.99 [28]	28/	28/	28/	28/	28/	28/	6% 28/	5%	4%
383.00 [54]	35% ad val.	3/	3/	32%	29%	26%	23% 54/	54/	54/
383.02 [55]	35% ad val.	3/	3/	32.7%	30.3%	28%	25.7% 55/	55/	55/
383.03 [56]	35% ad val.	3/	3/	32%	29%	26%	23% 56/	56/	56/
383.05 [2]	35% ad val.	3/	3/	31.9%	28.8%	25.8%	22.9% 2/	2/	2/
383.06 [4]	35% ad val.	3/	3/	32.7%	30.3%	28%	25.7% 4/	4/	4/

Footnote 21 for items 381.87 and 381.88:
21/ Item 379.89 is discontinued effective September 1, 1985, and is superseded by items 381.87 and 381.88.

Footnote 22 for items 381.89 and 381.90:
22/ Item 379.90 is discontinued effective September 1, 1985, and is superseded by items 381.89 and 381.90.

Footnote 23 for item 381.91:
23/ Item 379.91 is redesignated item 381.91 effective September 1, 1985.

Footnote 24 for item 381.92:
24/ Item 379.92 is redesignated item 381.92 effective September 1, 1985.
For item 381.92, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 17%.

Footnote 25 for item 381.93:
25/ Item 379.94 is redesignated item 381.93 effective September 1, 1985.
For item 381.93, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 13%.

Footnote 26 for items 381.94 and 381.95:
26/ Item 379.95 is discontinued effective September 1, 1985, and is superseded by items 381.94 and 381.95.

Footnote 27 for items 381.96, 381.97, and 381.98:
27/ Item 379.96 is discontinued effective September 1, 1985, and is superseded by items 381.96, 381.97, and 381.98.

Footnote 28 for item 381.99:
28/ Item 379.98 is redesignated item 381.99 effective September 1, 1985.

Footnote 54 for item 383.00:
54/ Item 383.00 is redesignated item 384.00 effective September 1, 1985.

Footnote 55 for item 383.02:
55/ Item 383.02 is redesignated item 384.02 effective September 1, 1985.

Footnote 56 for item 383.03:
56/ Item 383.03 is discontinued effective September 1, 1985, and is superseded by items 384.03 and 384.04.

Footnote 2 for item 383.05:
2/ Item 383.05 is redesignated item 384.05 effective September 1, 1985.

Footnote 3 for items 383.05 through 383.58:
3/ This item is not established until January 1, 1982.

Footnote 4 for item 383.06:
4/ Item 383.06 is discontinued effective September 1, 1985, and is superseded by items 384.06 and 384.07.

A.(con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1980	1981	1982	1983	1984	1985	1986	1987
383.08 3/	35% ad val.	3/	3/	32%	29%	26%	23% 5/	5/	5/
383.10 6/	42.5% ad val.	3/	3/	39.7%	36.8%	34%	31.2% 6/	6/	6/
383.12 7/	42.5% ad val.	3/	3/	39.7%	36.8%	34.1%	31.4% 7/	7/	7/
383.13 8/	42.5% ad val.	3/	3/	39.7%	36.8%	34%	31.2% 8/	8/	8/
383.15 9/	42.5% ad val.	3/	3/	39.7%	36.8%	34.1%	31.4% 9/	9/	9/
383.16 10/	42.5% ad val.	3/	3/	39.7%	36.8%	34%	31.2% 10/	10/	10/
383.18 11/	42.5% ad val.	3/	3/	41.3%	40%	38.8%	37.5% 11/	11/	11/
383.19 12/	42.5% ad val.	3/	3/	40.6%	38.3%	36.3%	34.2% 12/	12/	12/
383.20 13/	42.5% ad val.	3/	3/	39.7%	36.8%	34%	31.2% 13/	13/	13/
383.22 14/	42.5% ad val.	3/	3/	40.6%	38.3%	36.3%	34.2% 14/	14/	14/
383.23 15/	42.5% ad val.	3/	3/	39.7%	36.8%	34%	31.2% 15/	15/	15/
383.25 16/	21% ad val.	3/	3/	18.8%	16.7%	14.5%	12.3% 16/	16/	16/
383.28 17/	21% ad val.	3/	3/	20.3%	19.5%	18.8%	18% 17/	17/	17/
383.29 18/	21% ad val.	3/	3/	19.5%	18%	16.5%	15% 18/	18/	18/
383.30 19/	21% ad val.	3/	3/	18.8%	16.7%	14.5%	12.3% 19/	19/	19/
383.32 20/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 20/	20/	20/
383.33 21/	8% ad val.	3/	3/	7.5%	7%	6.5%	6% 21/	21/	21/
383.36 22/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 22/	22/	22/
383.39 23/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 23/	23/	23/
383.42 24/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 24/	24/	24/
383.45 25/	16.5% ad val.	3/	3/	15%	13.5%	12%	10.5% 25/	25/	25/

Footnote 5 for item 383.08:
5/ Item 383.08 is discontinued effective September 1, 1985, and is superseded by items 384.08 and 384.09.

Footnote 6 for item 383.10:
6/ Item 383.10 is redesignated item 384.10 effective September 1, 1985.

Footnote 7 for item 383.12:
7/ Item 383.12 is redesignated item 384.10 effective September 1, 1985.

Footnote 8 for item 383.13:
8/ Item 383.13 is redesignated item 384.13 effective September 1, 1985.

Footnote 9 for item 383.15:
9/ Item 383.15 is redesignated item 384.15 effective September 1, 1985.

Footnote 10 for item 383.16:
10/ Item 383.16 is redesignated item 384.16 effective September 1, 1985.

Footnote 11 for item 383.18:
11/ Item 383.18 is redesignated item 384.18 effective September 1, 1985.

Footnote 12 for item 383.19:
12/ Item 383.19 is discontinued effective September 1, 1985, and is superseded by items 384.19 and 384.20.

Footnote 13 for item 383.20:
13/ Item 383.20 is discontinued effective September 1, 1985, and is superseded by items 384.21 and 384.22.

Footnote 14 for item 383.22:
14/ Item 383.22 is redesignated item 384.23 effective September 1, 1985.

Footnote 15 for item 383.23:
15/ Item 383.23 is discontinued effective September 1, 1985, and is superseded by items 384.24, 384.25, and 384.26.

Footnote 16 for item 383.25:
16/ Item 383.25 is redesignated item 384.27 effective September 1, 1985.

Footnote 17 for item 383.28:
17/ Item 383.28 is discontinued effective September 1, 1985, and is superseded by items 384.30 and 384.31.

Footnote 18 for item 383.29:
18/ Item 383.29 is redesignated item 384.32 effective September 1, 1985.

Footnote 19 for item 383.30:
19/ Item 383.30 is discontinued effective September 1, 1985, and is superseded by items 384.33 and 384.34.

Footnote 20 for item 383.32:
20/ Item 383.32 is redesignated item 384.35 effective September 1, 1985.

Footnote 21 for item 383.33:
21/ Item 383.33 is redesignated item 384.36 effective September 1, 1985.

Footnote 22 for item 383.36:
22/ Item 383.36 is redesignated item 384.38 effective September 1, 1985.

Footnote 23 for item 383.39:
23/ Item 383.39 is redesignated item 384.41 effective September 1, 1985.

Footnote 24 for item 383.42:
24/ Item 383.42 is redesignated item 384.43 effective September 1, 1985.

Footnote 25 for item 383.45:
25/ Item 383.45 is redesignated item 384.45 effective September 1, 1985.

ANNEX II

-41-

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1							
		1990	1991	1992	1993	1994	1995	1996	1997
383.48 26/ 27/	16.5% ad val.	3/	3/	15.8%	15%	14.3%	13.5% 26/	26/	26/ 27/
383.49 27/ 28/	16.5% ad val.	3/	3/	14.8%	13.2%	11.5%	9.8% 27/	27/	27/ 28/
383.50 28/ 29/	16.5% ad val.	3/	3/	15.1%	13.7%	12.3%	10.8% 28/	28/	28/ 29/
383.52 29/ 30/	12.5% ad val.	3/	3/	11.3%	10%	8.8%	7.5% 29/	29/	29/ 30/
383.53 30/	7.5% ad val.	3/	3/	6.8%	6%	5.3%	4.5% 30/	30/	30/
383.55 31/	37.5¢ per lb. + 32% ad val.	3/	3/	32¢/lb. + 29.9%	27¢/lb. + 27.7%	21¢/lb. + 25.6%	16¢/lb. + 23.4% 31/	31/	31/
383.57 32/	37.5¢ per lb. + 30% ad val.	3/	3/	32¢/lb. + 29%	26¢/lb. + 28%	21¢/lb. + 27%	16¢/lb. + 26% 32/	32/	32/
383.58 33/	37.5¢ per lb. + 30% ad val.	3/	3/	32¢/lb. + 28.6%	28¢/lb. + 26.6%	23¢/lb. + 25.1%	18¢/lb. + 23.5% 33/	33/	33/
383.60 2/	37.5¢ per lb. + 15.5% ad val.	3/	3/	31¢/lb. + 14.2%	25¢/lb. + 12.8%	19¢/lb. + 11.5%	12¢/lb. + 10.2% 2/	2/	2/
383.62 4/	37.5¢ per lb. + 20% ad val.	3/	3/	36¢/lb. + 20%	35¢/lb. + 20%	34¢/lb. + 20%	33¢/lb. + 20% 4/	4/	4/
383.63 5/	37.5¢ per lb. + 20% ad val.	3/	3/	31¢/lb. + 19.5%	25¢/lb. + 19%	19¢/lb. + 18.5%	12¢/lb. + 18% 5/	5/	5/
383.65 6/	25¢ per lb. + 21% ad val.	3/	3/	21¢/lb. + 21%	18¢/lb. + 21%	15¢/lb. + 21%	12¢/lb. + 21% 6/	6/	6/
383.66 7/	25¢ per lb. + 21% ad val.	3/	3/	20¢/lb. + 20.3%	16¢/lb. + 19.7%	12¢/lb. + 19%	8¢/lb. + 18.3% 7/	7/	7/
383.68 8/	37.5¢ per lb. + 21% ad val.	3/	3/	31¢/lb. + 20.3%	25¢/lb. + 19.7%	19¢/lb. + 19%	12¢/lb. + 18.3% 8/	8/	8/
383.72 9/	37.5¢ per lb. + 21% ad val.	3/	3/	35¢/lb. + 21%	32¢/lb. + 21%	29¢/lb. + 21%	26¢/lb. + 21% 9/	9/	9/
383.75 10/	37.5¢ per lb. + 21% ad val.	3/	3/	31¢/lb. + 20.3%	25¢/lb. + 19.7%	19¢/lb. + 19%	12¢/lb. + 18.3% 10/	10/	10/

Footnote 26 for item 383.48:
26/ Item 383.48 is discontinued effective September 1, 1985, and is superseded by items 384.48 and 384.49.

Footnote 27 for item 383.49:
27/ Item 383.49 is redesignated 384.50 effective September 1, 1985.

Footnote 28 for item 383.50:
28/ Item 383.50 is discontinued effective September 1, 1985, and is superseded by items 384.51 and 384.52.

Footnote 29 for item 383.52:
29/ Item 383.52 is discontinued effective September 1, 1985, and is superseded by items 384.53 and 384.54.

Footnote 30 for item 383.53:
30/ Item 383.53 is discontinued effective September 1, 1985, and is superseded by items 384.55 and 384.56.

Footnote 31 for item 383.55:
31/ Item 383.55 is redesignated item 384.57 effective September 1, 1985.

Footnote 32 for item 383.57:
32/ Item 383.57 is redesignated item 384.58 effective September 1, 1985.

Footnote 33 for item 383.58:
33/ Item 383.58 is redesignated item 384.59 effective September 1, 1985.

Footnote 2 for item 383.60:
2/ Item 383.60 is redesignated item 384.60 effective September 1, 1985.

Footnote 3 for item 383.60 through 383.95:
3/ This item is not established until January 1, 1982.

Footnote 4 for item 383.62:
4/ Item 383.62 is redesignated item 384.62 effective September 1, 1985.

Footnote 5 for item 383.63:
5/ Item 383.63 is redesignated item 384.63 effective September 1, 1985.

Footnote 6 for item 383.65:
6/ Item 383.65 is redesignated item 384.65 effective September 1, 1985.

Footnote 7 for item 383.66:
7/ Item 383.66 is redesignated item 384.66 effective September 1, 1985.

Footnote 8 for item 383.68:
8/ Item 383.68 is redesignated item 384.68 effective September 1, 1985.

Footnote 9 for item 383.72:
9/ Item 383.72 is redesignated item 384.72 effective September 1, 1985.

Footnote 10 for item 383.75:
10/ Item 383.75 is redesignated item 384.75 effective September 1, 1985.

ANNEX II

-12-

A.(con.)

Item No TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1985	1986	1987	1988	1989	1990	1991	1992
383.77[11]	10% ad val.	3/	3/	9.3%	8.7%	8%	7.3% 11/	11/	11/
383.78[12]	16% ad val.	3/	3/	14.6%	13.2%	11.8%	10.3% 12/	12/	12/
383.80[13]	25¢ per lb. + 32.5% ad val.	3/	3/	23¢/lb. + 32.5%	21¢/lb. + 32.5%	19¢/lb. + 32.5%	17¢/lb. + 32.5% 13/	13/	13/
383.81[14]	25¢ per lb. + 32.5% ad val.	3/	3/	20¢/lb. + 32.1%	16¢/lb. + 31.7%	12¢/lb. + 31.3%	8¢/lb. + 30.8% 14/	14/	14/
383.83[15]	25¢ per lb. + 32.5% ad val.	3/	3/	20¢/lb. + 32.1%	16¢/lb. + 31.7%	12¢/lb. + 31.3%	8¢/lb. + 30.8% 15/	15/	15/
383.84[16]	25¢ per lb. + 32.5% ad val.	3/	3/	21¢/lb. + 29.9%	16¢/lb. + 27.3%	12¢/lb. + 24.8%	8¢/lb. + 22.2% 16/	16/	16/
383.86[17]	25¢ per lb. + 32.5% ad val.	3/	3/	21¢/lb. + 30.3%	17¢/lb. + 28.1%	14¢/lb. + 25.9%	10¢/lb. + 23.6% 17/	17/	17/
383.88[18]	25¢ per lb. + 27.5% ad val.	3/	3/	21¢/lb. + 25.3%	17¢/lb. + 23.1%	14¢/lb. + 20.9%	10¢/lb. + 18.6% 18/	18/	18/
383.90[19]	25¢ per lb. + 27.5% ad val.	3/	3/	23¢/lb. + 27.5%	22¢/lb. + 27.5%	21¢/lb. + 27.5%	19¢/lb. + 27.5% 19/	19/	19/
383.92[20]	25¢ per lb. + 27.5% ad val.	3/	3/	20¢/lb. + 25.8%	16¢/lb. + 24%	12¢/lb. + 22.3%	8¢/lb. + 20.5% 20/	20/	20/
383.95[21]	10% ad val.	3/	3/	9%	8%	7%	6% 21/	21/	21/
384.00[22]	22/	22/	22/	22/	22/	22/	23% 22/	20%	17% 22/
384.02[23]	23/	23/	23/	23/	23/	23/	25.7% 23/	23.3%	21%
384.03[24]	24/	24/	24/	24/	24/	24/	23% 24/	20%	17% 24/
384.04[24]	24/	24/	24/	24/	24/	24/	23% 24/	20%	17% 24/
384.05[25]	25/	25/	25/	25/	25/	25/	22.7% 25/	19.6%	16.5%
384.06[26]	26/	26/	26/	26/	26/	26/	25.7% 26/	23.3%	21%
384.07[26]	26/	26/	26/	26/	26/	26/	25.7% 26/	23.3%	21%

Footnote 11 for item 383.77:
11/ Item 383.77 is redesignated item 384.77 effective September 1, 1985.

Footnote 12 for item 383.78:
12/ Item 383.78 is redesignated item 384.78 effective September 1, 1985.

Footnote 13 for item 383.80:
13/ Item 383.80 is discontinued effective September 1, 1985, and is superseded by items 384.80 and 384.81.

Footnote 14 for item 383.81:
14/ Item 383.81 is redesignated item 384.82 effective September 1, 1985.

Footnote 15 for item 383.83:
15/ Item 383.83 is redesignated item 384.83 effective September 1, 1985.

Footnote 16 for item 383.84:
16/ Item 383.84 is redesignated item 384.84 effective September 1, 1985.

Footnote 17 for item 383.86:
17/ Item 383.86 is redesignated item 384.86 effective September 1, 1985.

Footnote 18 for item 383.88:
18/ Item 383.88 is redesignated item 384.88 effective September 1, 1985.

Footnote 19 for item 383.90:
19/ Item 383.90 is discontinued effective September 1, 1985, and is superseded by items 384.90 and 384.91.

Footnote 20 for item 383.92:
20/ Item 383.92 is discontinued effective September 1, 1985, and is superseded by items 384.92, 384.93, and 384.94.

Footnote 21 for item 383.95:
21/ Item 383.95 is discontinued effective September 1, 1985, and is superseded by items 384.95 and 384.96.

Footnote 22 for item 384.00:
22/ Item 383.00 is redesignated item 384.00 effective September 1, 1985.
For item 384.00, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 23 for item 384.02:
23/ Item 383.02 is redesignated item 384.02 effective September 1, 1985.

Footnote 24 for items 384.03 and 384.04:
24/ Item 383.03 is discontinued effective September 1, 1985, and is superseded by items 384.03 and 384.04.
For items 384.03 and 384.04, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 25 for item 384.05:
25/ Item 383.05 is redesignated item 384.05 effective September 1, 1985.

Footnote 26 for items 384.06 and 384.07.
26/ Item 383.06 is discontinued effective September 1, 1985, and is superseded by items 384.06 and 384.07.

A.(con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1990	1991	1992	1993	1994	1995	1996	1997
384.08 27	27/	27/	27/	27/	27/	27/	23% 27/	20%	17% 27/
384.09 27	27/	27/	27/	27/	27/	27/	23% 27/	20%	17% 27/
384.10 28	28/	28/	28/	28/	28/	28/	31.2% 28/	28.3%	25.5% 28/
384.12 29	29/	29/	29/	29/	29/	29/	31.4% 29/	26.6%	25.8% 29/
384.13 30	30/	30/	30/	30/	30/	30/	31.2% 30/	28.3%	25.5% 30/
384.15 31	31/	31/	31/	31/	31/	31/	31.4% 31/	28.6%	25.8% 31/
384.16 32	32/	32/	32/	32/	32/	32/	31.2% 32/	28.3%	25.5% 32/
384.18 33	33/	33/	33/	33/	33/	33/	37.5% 33/	36.3%	35%
384.19 34	34/	34/	34/	34/	34/	34/	34.2% 34/	32.1%	30%
384.20 34	34/	34/	34/	34/	34/	34/	34.2% 34/	32.1%	30%
384.21 35	35/	35/	35/	35/	35/	35/	31.2% 35/	28.3%	25.5% 35/
384.22 35	35/	35/	35/	35/	35/	35/	31.2% 35/	28.3%	25.5% 35/
384.23 36	36/	36/	36/	36/	36/	36/	34.2% 36/	32.1%	30%
384.24 37	37/	37/	37/	37/	37/	37/	31.2% 37/	28.3%	25.5% 37/
384.25 37	37/	37/	37/	37/	37/	37/	31.2% 37/	28.3%	25.5% 37/
384.26 37	37/	37/	37/	37/	37/	37/	31.2% 37/	28.3%	25.5% 37/
384.27 38	38/	38/	38/	38/	38/	38/	12.5% 38/	10.2%	8%

Footnote 27 for items 384.08 and 384.09:
27/ Item 383.08 is discontinued effective September 1, 1985, and is superseded by 384.08 and 384.09. For items 384.08 and 384.09, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 14%.

Footnote 28 for item 384.10:
28/ Item 383.10 is redesignated item 384.10 effective September 1, 1985. For item 384.10, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 29 for item 384.12:
29/ Item 383.12 is redesignated item 384.12 effective September 1, 1985. For item 384.12, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 23%.

Footnote 30 for item 384.13:
30/ Item 383.13 is redesignated item 384.13 effective September 1, 1985. For item 384.13, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 31 for item 384.15:
31/ Item 383.15 is redesignated item 384.15 effective September 1, 1985. For item 384.15, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 23%.

Footnote 32 for item 384.16:
32/ Item 383.16 is redesignated item 384.16 effective September 1, 1985. For item 384.16, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 33 for item 384.18:
33/ Item 383.18 is redesignated item 384.18 effective September 1, 1985.

Footnote 34 for item 384.19 and 384.20:
34/ Item 383.19 is discontioued effective September 1, 1985, and is superseded by items 384.19 and 384.20.

Footnote 35 for items 384.21 and 384.22:
35/ Item 383.20 is discontinued effective September 1, 1985, and is superseded by items 384.21 and 384.22. For items 384.21 and 384.22, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%
Effective with respect to articles entered on and after January 1, 1989--19.8%
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 36 for item 384.23:
36/ Item 383.22 is redesignated item 384.23 effective September 1, 1985.

Footnote 37 for items 384.24, 384.25 and 384.26:
37/ Item 383.23 is discontinued effective September 1, 1985, and is superseded by items 384.24, 384.25 and 384.26. For items 384.24, 384.25 and 384.26, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--22.7%.
Effective with respect to articles entered on and after January 1, 1989--19.8%.
Effective with respect to articles entered on and after January 1, 1990--17%.

Footnote 38 for item 384.27:
38/ Item 383.25 is redesignated item 384.27 effective September 1, 1985.

ANNEX II

-14-

Action 1

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 --							
		1949	1931	1982	1983	1984	1985	1986	1987
384.30 39	39/	39/	39/	39/	39/	39/	18% 39/	17.3%	16.3%
384.31 39	39/	39/	39/	39/	39/	39/	18% 39/	17.3%	16.5%
384.32 40	40/	40/	40/	40/	40/	40/	15% 40/	13.5%	12%
384.33 41	41/	41/	41/	41/	41/	41/	13.3% 41/	10.2%	8%
384.34 41	41/	41/	41/	41/	41/	41/	12.3% 41/	10.2%	8%
384.35 42	42/	42/	42/	42/	42/	42/	10.8% 42/	9.4%	8%
384.36 43	43/	43/	43/	43/	43/	43/	8% 43/	5.5%	5%
384.38 44	44/	44/	44/	44/	44/	44/	10.8% 44/	9.4%	8%
384.41 45	45/	45/	45/	45/	45/	45/	10.8% 45/	9.4%	8%
384.43 46	46/	46/	46/	46/	46/	46/	10.8% 46/	9.4%	8%
384.45 47	47/	47/	47/	47/	47/	47/	10.5% 47/	9%	7.5%
384.48 48	48/	48/	48/	48/	48/	48/	13.5% 48/	12.8%	12%
384.49 48	48/	48/	48/	48/	48/	48/	13.5% 48/	12.8%	12%
384.50 49	49/	49/	49/	49/	49/	49/	9.8% 49/	8.2%	6.5%
384.51 50	50/	50/	50/	50/	50/	50/	10.8% 50/	9.4%	8%
384.52 50	50/	50/	50/	50/	50/	50/	10.8% 50/	9.4%	8%
384.53 51	51/	51/	51/	51/	51/	51/	7.5% 51/	6.3%	5%
384.54 51	51/	51/	51/	51/	51/	51/	7.5% 51/	6.3%	5%
384.55 52	52/	52/	52/	52/	52/	52/	4.5% 52/	3.8%	3%
384.56 52	52/	52/	52/	52/	52/	52/	4.5% 52/	3.8%	3%
384.57 53	53/	53/	53/	53/	53/	53/	16c/lb. + 23.4% 53/	11c/lb. + 21.3%	5c/lb. + 19.8% 53/
384.58 54	54/	54/	54/	54/	54/	54/	16c/lb. + 26% 54/	10c/lb. + 25%	5c/lb. + 24% 54/
384.59 55	55/	55/	55/	55/	55/	55/	18c/lb. + 23.5% 55/	14c/lb. + 21.9%	9c/lb. + 20.3% 55/

Footnote 39 for item 384.30 and 384.31:
39/ Item 383.28 is discontinued effective September 1, 1985, and is superseded by items 384.30 and 384.31.

Footnote 40 for item 384.32:
40/ Item 383.29 is redesignated item 384.32 effective September 1, 1985.

Footnote 41 for items 384.33 and 384.34:
41/ Item 383.30 is discontinued effective September 1, 1985, and is superseded by items 384.33 and 384.34.

Footnote 42 for item 384.35:
42/ Item 383.32 is redesignated item 384.35 effective September 1, 1985.

Footnote 43 for item 384.36:
43/ Item 383.33 is redesignated item 384.36 effective September 1, 1985.

Footnote 44 for item 384.38:
44/ Item 383.36 is redesignated item 384.38 effective September 1, 1985.

Footnote 45 for item 384.41:
45/ Item 383.39 is redesignated item 384.41 effective September 1, 1985.

Footnote 46 for item 384.43:
46/ Item 383.42 is redesignated item 384.43 effective September 1, 1985.

Footnote 47 for item 384.45:
47/ Item 383.45 is redesignated item 384.45 effective September 1, 1985.

Footnote 48 for items 384.48 and 384.49:
48/ Item 383.48 is discontinued effective September 1, 1985, and is superseded by items 384.48 and 384.49.

Footnote 49 for item 384.50
49/ Item 383.49 is redesignated item 384.50 effective September 1, 1985.

Footnote 50 for items 384.51 and 384.52:
50/ Item 383.50 is discontinued effective September 1, 1985, and is superseded by items 384.51 and 384.52.

Footnote 51 for items 384.53 and 384.54:
51/ Item 383.52 is discontinued effective September 1, 1985, and is superseded by items 384.53 and 384.54.

Footnote 52 for items 384.55 and 384.56.
52/ Item 383.53 is discontinued effective September 1, 1985, and is superseded by items 384.55 and 384.56.

Footnote 53 for item 384.57:
53/ Item 383.55 is redesignated item 384.57 effective September 1, 1985.
For item 384.57, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 17%.

Footnote 54 for item 384.58:
54/ Item 383.57 is designated item 384.58 effective September 1, 1985.
For item 384.58, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 23%.

Footnote 55 for item 384.59:
55/ Item 383.58 is redesignated item 384.59 effective September 1, 1985.
For item 384.59, the rates of duty after 1987 will be as follows:
Effective with respect to articles entered on and after January 1, 1988--4c/lb. + 18.6%.
Effective with respect to articles entered on and after January 1, 1989--17%.

ANNEX II

-15-

A.(con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
384.60 2/	2/	2/	2/	2/	2/	2/	12c/lb. + 10.2% 2/	6c/lb. + 6.8%	7.5%
384.62 4/	4/	4/	4/	4/	4/	4/	33c/lb. + 20% 4/	32c/lb. + 20%	31c/lb. + 20%
384.63 5/	5/	5/	5/	5/	5/	5/	12c/lb. + 18% 5/	6c/lb. + 17.5%	17%
384.65 6/	6/	6/	6/	6/	6/	6/	12c/lb. + 21% 6/	9c/lb. + 21%	6c/lb. + 21%
384.66 7/	7/	7/	7/	7/	7/	7/	6c/lb. + 18.3% 7/	4c/lb. + 17.7%	17%
384.68 8/	8/	8/	8/	8/	8/	8/	12c/lb. + 18.3% 8/	6c/lb. + 17.7%	17%
384.72 9/	9/	9/	9/	9/	9/	9/	26c/lb. + 21% 9/	24c/lb. + 21%	21c/lb. + 21%
384.75 10/	10/	10/	10/	10/	10/	10/	12c/lb. + 18.3% 10/	6c/lb. + 17.7%	17%
384.77 11/	11/	11/	11/	11/	11/	11/	7.3% 11/	6.7%	6%
384.78 12/	12/	12/	12/	12/	12/	12/	10.3% 12/	8.9%	7.5%
384.80 13/	13/	13/	13/	13/	13/	13/	17c/lb. + 32.5% 13/	15c/lb. + 32.5%	13c/lb. + 32.5%
384.81 13/	13/	13/	13/	13/	13/	13/	17c/lb. + 32.5% 13/	15c/lb. + 32.5%	13c/lb. + 32.5%

Footnote 2 for item 384.60:
2/ Item 383.60 is redesignated item 384.60 effective September 1, 1985.

Footnote 4 for item 384.62:
4/ Item 383.62 is redesignated item 384.62 effective September 1, 1985.

Footnote 5 for item 384.63:
5/ Item 383.63 is redesignated item 384.63 effective September 1, 1985.

Footnote 6 for item 384.65:
6/ Item 384.65 is redesignated item 384.65 effective September 1, 1985.

Footnote 7 for item 384.66:
7/ Item 383.66 is redesignated item 384.66 effective September 1, 1985.

Footnote 8 for item 384.68:
8/ Item 383.68 is redesignated item 384.68 effective September 1, 1985.

Footnote 9 for item 384.72:
9/ Item 383.72 is redesignated item 384.72 effective September 1, 1985.

Footnote 10 for item 384.75:
10/ Item 383.75 is redesignated item 384.75 effective September 1, 1985.

Footnote 11 for item 384.77:
11/ Item 383.77 is redesignated item 384.77 effective September 1, 1985.

Footnote 12 for item 384.78:
12/ Item 383.78 is redesignated item 384.78 effective September 1, 1985.

Footnote 13 for items 384.80 and 384.81:
13/ Item 383.80 is discontinued effective September 1, 1985, and is superseded by items 384.80 and 384.81.

A. (con.)

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1 —							
		98	'98	1982	1983	1984	1985	1986	1987
384.82[14]	14/	14/	14/	14/	14/	14/	8¢/lb. + 30.8% 14/	4¢/lb. + 30.4%	3%
384.83[15]	15/	15/	15/	15/	15/	15/	8¢/lb. + 30.8% 15/	4¢/lb. + 30.4%	3%
384.84[16]	16/	16/	16/	16/	16/	16/	8¢/lb. + 22.2% 16/	4¢/lb. + 19.6%	17%
384.86[17]	17/	17/	17/	17/	17/	17/	10¢/lb. + 23.6% 17/	7¢/lb. + 21.4%	3¢/lb. + 19.2% 17/
384.88[18]	18/	18/	18/	18/	18/	18/	10¢/lb. + 18.6% 18/	7¢/lb. + 16.4%	3¢/lb. + 14.2% 18/
384.90[19]	19/	19/	19/	19/	19/	19/	19¢/lb. + 27.5% 19/	18¢/lb. + 27.5%	17¢/lb. + 27.5%
384.91[19]	19/	19/	19/	19/	19/	19/	19¢/lb. + 27.5% 19/	18¢/lb. + 27.5%	17¢/lb. + 27.5%
384.92[20]	20/	20/	20/	20/	20/	20/	8¢/lb. + 20.5% 20/	4¢/lb. + 18.8%	17%
384.93[20]	20/	20/	20/	20/	20/	20/	8¢/lb. + 20.5% 20/	4¢/lb. + 18.8%	17%
384.94[20]	20/	20/	20/	20/	20/	20/	8¢/lb. + 20.5% 20/	4¢/lb. + 18.8%	17%
384.95[21]	21/	21/	21/	21/	21/	21/	6% 21/	5%	4%
384.96[21]	21/	21/	21/	21/	21/	21/	6% 21/	5%	4%
386.50[3]	14% ad val.	14%	14%	12.8%	11.7%	10.5%	9.3% 3/	3/	3/
386.51[3]	3/	3/	3/	3/	3/	3/	9.3% 3/	8.2%	7%
386.52[3]	3/	3/	3/	3/	3/	3/	9.3% 3/	8.2%	7%
386.53[3]	3/	3/	3/	3/	3/	3/	9.3% 3/	8.2%	7%

Footnote 14 for item 384.82:
14/ Item 383.81 is redesignated item 384.82 effective September 1, 1985.

Footnote 15 for item 384.83:
15/ Item 383.83 is redesignated item 384.83 effective September 1, 1985.

Footnote 16 for item 384.84:
16/ Item 383.84 is redesignated item 384.84 effective September 1, 1985.

Footnote 17 for item 384.86:
17/ Item 383.86 is redesignated item 384.86 effective September 1, 1985.
For item 384.86, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 17%.

Footnote 18 for item 384.88:
18/ Item 383.88 is redesignated 384.88 effective September 1, 1985.
For item 384.88, the rate of duty effective with respect to articles entered on and after January 1, 1988, will be 12%.

Footnote 19 for items 384.90 and 384.91:
19/ Item 383.90 is discontinued effective September 1, 1985, and is superseded by items 384.90 and 384.91.

Footnote 20 for items 384.92, 384.93, and 384.94:
20/ Item 383.92 is discontinued effective September 1, 1985, and is superseded by items 384.92, 384.93, and 384.94.

Footnote 21 for item 384.95 and 384.96:
21/ Item 383.95 is discontinued effective September 1, 1985, and is superseded by items 384.95 and 384.96.

Footnote 3 for items 386.50, 386.51, 386.52, and 386.53:
3/ Item 386.50 is discontinued effective September 1, 1985, and is superseded by items 386.51, 386.52, and 386.53.

ANNEX II

-17-

a. Annex III to Presidential Proclamation 4768 of June 28, 1980, as amended, is further amended—

a) by deleting from Section A of that Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

402.80 403.56 403.64 404.36 405.52

b) by inserting in Section A of that Annex the following TSUS item numbers, in numerical sequence, with their corresponding rates of duty and footnotes as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles exported to the United States on and after July 1, 1980, and entered on and after—							
		July 1, 1980	January 1, 1981	January 1, 1982	January 1, 1983	January 1, 1984	January 1, 1985	January 1, 1986	January 1, 1987
402.78 2/	2/	2/	2/	2/	2/	2/	12.5% 2/	10.8%	9.1%
402.80 2/	1.7¢ per lb. + 22.3% ad val.	21.1%	19.4%	17.7%	16%	14.2%	12.5% 2/	2/	2/
402.81 2/	2/	2/	2/	2/	2/	2/	12.5% 2/	10.8%	9.1%
403.54 4/	4/	4/	4/	4/	4/	4/	0.9¢/lb. + 19.4% 4/	0.8¢/lb. + 19.4%	0.7¢/lb. + 19.4%
403.56 4/	1.7¢ per lb. + 19.4% ad val.	1.6¢/lb. + 19.4%	1.4¢/lb. + 19.4%	1.3¢/lb. + 19.4%	1.2¢/lb. + 19.4%	1.1¢/lb. + 19.4%	0.9¢/lb. + 19.4% 4/	4/	4/
403.57 4/	4/	4/	4/	4/	4/	4/	0.9¢/lb. + 19.4% 4/	0.8¢/lb. + 19.4%	0.7¢/lb. + 19.4%
403.62 5/	5/	5/	5/	5/	5/	5/	21.4% 5/	20.7%	20%
403.64 5/	1.7¢ per lb. + 22% ad val.	1.3¢/lb. + 22%	1¢/lb. + 22%	0.7¢/lb. + 22%	0.3¢/lb. + 22%	22%	21.4% 5/	5/	5/
403.65 5/	5/	5/	5/	5/	5/	5/	21.4% 5/	20.7%	20%
404.33 6/	6/	6/	6/	6/	6/	6/	20.8% 6/	20.1%	20%
404.36 6/	1.7¢ per lb. + 22.7% ad val.	22.7%	22.3%	21.9%	21.6%	21.2%	20.8% 6/	6/	6/
404.37 6/	6/	6/	6/	6/	6/	6/	20.8% 6/	20.1%	20%
405.51 2/	2/	2/	2/	2/	2/	2/	16.5% 2/	15.8%	15%
405.52 2/	1.7¢ per lb. + 19.1% ad val.	1¢/lb. + 19.1%	0.4¢/lb. + 19.1%	18.0%	18%	17.9%	16.5% 2/	2/	2/
405.53 2/	2/	2/	2/	2/	2/	2/	16.5% 2/	15.8%	15%

Footnote 2 for items 402.78, 402.80, and 402.81:
2/ Item 402.80 is discontinued effective September 1, 1985, and is superseded by items 402.78 and 402.81.

Footnote 4 for items 403.54, 403.56, and 403.57:
4/ Item 403.56 is discontinued effective September 1, 1985, and is superseded by items 403.54 and 403.57.

Footnote 5 for items 403.62, 403.64, and 403.65:
5/ Item 403.64 is discontinued effective September 1, 1985, and is superseded by items 403.62 and 403.65.

Footnote 6 for items 404.33, 404.36, and 404.37:
6/ Item 404.36 is discontinued effective September 1, 1985, and is superseded by items 404.33 and 404.37.

Footnote 2 for items 405.51, 405.52, and 405.53:
2/ Item 405.52 is discontinued effective September 1, 1985, and is superseded by items 405.51 and 405.53.

ANNEX III

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

100.25	121.64	137.93	148.19
100.31	123.50	138.35	148.25
105.30	124.20	138.41	148.30
105.60	124.25	140.10	148.35
105.84	124.30	140.11	148.52
106.70	124.40	140.14	148.65
106.75	124.60	140.16	148.77
107.10	124.65	140.20	148.81
107.15	124.70	140.21	149.15
107.20	124.80	140.35	149.50
107.25	125.01	140.38	149.60
107.40	125.10	140.46	152.00
107.45	125.15	140.54	152.05
107.65	125.20	140.56	152.30
107.70	125.32	140.70	152.40
107.78	125.34	140.76	152.43
107.80	125.50	141.05	152.54
110.28	125.82	141.20	152.58
110.35	125.84	141.30	152.60
110.45	126.01	141.35	152.72
111.10	126.41	141.45	152.78
111.15	127.10	141.50	153.03
111.18	130.20	141.82	153.05
111.56	130.30	141.85	153.16
111.60	130.32	141.87	153.20
112.03	130.45	141.98	153.24
112.21	130.63	144.14	153.28
112.36	131.20	145.02	153.32
112.40	131.35	145.09	154.10
112.94	131.80	145.24	154.40
113.01	132.55	145.26	154.43
113.30	135.12	145.28	154.53
113.40	135.14	145.30	154.60
113.50	135.30	145.50	155.30
113.60	135.41	145.52	155.35
114.04	135.50	145.53	155.40
114.06	135.60	145.54	155.60
114.25	135.70	145.65	155.75
114.55	135.80	145.70	156.25
117.65	135.99	146.12	156.30
117.67	136.00	146.42	156.40
118.35	136.10	146.66	156.47
118.45	136.40	146.69	157.10
119.50	136.50	146.74	161.05
119.55	136.60	146.78	161.06
120.17	136.80	146.82	161.37
121.10	136.90	146.87	161.43
121.15	136.92	147.21	161.45
121.25	136.95	147.29	161.53
121.30	136.97	147.33	161.57
121.35	137.02	147.36	161.60
121.52	137.04	147.53	161.61
121.54	137.75	147.54	161.65
121.55	137.79	147.80	161.69
121.56	137.88	147.85	161.71
121.62	137.89	148.08	161.75

ANNEX III

-2-

161.83	176.49	202.38	240.38
161.84	176.50	202.54	240.40
161.88	176.70	202.56	240.50
161.92	177.12	202.60	240.52
161.96	177.16	202.66	240.54
162.03	177.22	203.10	240.56
162.07	177.24	203.20	240.58
162.11	177.26	203.30	240.60
162.15	177.40	204.05	245.00
165.55	177.58	204.10	245.10
166.10	177.62	204.20	245.45
166.20	177.69	204.30	245.50
166.30	177.72	204.35	245.60
166.40	178.30	206.30	245.70
167.15	182.05	206.45	245.80
167.25	182.10	206.47	251.10
167.34	182.11	206.50	251.15
167.40	182.15	206.52	251.20
167.50	182.20	206.53	251.25
168.12	182.30	206.54	251.30
168.13	182.32	206.65	251.45
168.14	182.35	206.95	252.05
168.16	182.36	220.10	252.10
168.36	182.40	220.15	252.13
168.37	182.45	220.20	252.15
168.39	182.46	220.25	252.17
168.41	182.49	220.31	252.20
168.42	182.52	220.35	252.25
168.54	182.58	220.36	252.27
168.57	182.90	220.37	252.30
168.59	182.96	220.39	252.35
168.61	183.01	220.41	252.40
168.96	183.05	220.47	252.42
168.98	184.50	220.48	252.45
169.04	184.51	220.50	252.50
169.07	184.53	222.30	252.57
169.08	184.58	222.32	252.59
169.32	184.65	222.34	252.61
169.37	186.10	222.36	252.63
169.38	186.15	222.40	252.70
169.39	186.20	222.41	252.73
169.42	186.30	222.42	252.75
169.44	186.40	222.44	252.77
169.47	186.50	222.55	252.81
169.48	188.30	222.57	252.84
169.49	188.34	222.60	252.86
169.58	188.50	222.62	252.90
169.59	190.10	222.64	253.05
170.10	190.25	240.10	253.10
170.15	190.68	240.12	253.15
170.63	190.85	240.14	253.20
170.67	191.18	240.16	253.25
170.70	192.45	240.19	253.30
175.36	192.85	240.21	253.35
176.01	193.10	240.30	253.40
176.14	200.06	240.32	253.45
176.29	200.45	240.34	254.05
176.30	200.91	240.36	254.09

ANNEX III

-3-

254.15	274.10	312.30	365.05
254.18	274.15	312.40	365.14
254.20	274.20	312.50	365.15
254.25	274.23	315.25	365.25
254.30	274.27	315.30	365.29
254.35	274.29	315.55	365.54
254.40	274.33	315.75	365.58
254.42	274.35	315.80	365.84
254.44	274.60	315.85	365.91
254.46	274.65	315.90	366.84
254.48	274.70	315.95	367.28
254.50	274.75	316.50	367.31
254.54	274.80	316.70	370.17
254.56	274.85	319.01	370.19
254.58	274.90	319.03	370.22
254.63	304.10	319.07	372.60
254.65	304.12	335.50	372.65
254.70	304.14	335.70	385.95
254.80	304.22	335.85	386.13
254.85	304.40	337.20	387.25
254.90	304.44	337.72	387.32
254.95	304.48	339.10	387.33
256.05	305.20	347.20	390.16
256.10	305.22	347.28	402.00
256.13	305.28	347.30	402.04
256.15	305.30	347.35	402.08
256.20	305.40	347.72	402.12
256.25	305.50	347.75	402.16
256.30	306.11	355.04	402.20
256.35	306.42	355.20	402.24
256.40	306.53	355.42	402.28
256.42	306.60	355.55	402.32
256.44	306.61	356.25	403.27
256.48	306.70	356.40	404.04
256.52	306.71	358.06	404.42
256.54	306.72	358.14	405.02
256.56	306.80	360.04	405.31
256.58	306.81	360.35	406.16
256.65	306.82	360.36	406.37
256.67	307.02	360.45	406.47
256.70	307.04	360.47	406.72
256.75	307.06	360.77	406.81
256.80	307.08	360.79	406.86
256.84	307.16	360.82	406.96
256.90	308.06	360.84	407.00
270.45	308.10	361.21	407.09
270.50	308.16	361.23	408.00
273.30	308.18	361.26	408.08
273.50	308.20	361.43	408.12
273.55	308.30	361.53	408.16
273.65	308.35	361.85	408.17
273.70	308.45	363.02	408.19
273.75	308.47	364.09	408.23
273.85	308.51	364.14	408.24
273.90	308.55	364.18	408.28
273.95	308.80	364.21	408.29
274.00	308.90	364.25	408.31
274.05	312.10	364.35	408.32

ANNEX III

-4-

408.36	412.31	418.18	420.30
408.38	412.67	418.22	420.34
408.41	412.72	418.24	420.36
408.44	412.76	418.26	420.40
408.48	412.80	418.28	420.54
408.54	412.84	418.35	420.60
408.61	412.88	418.40	420.68
408.64	412.92	418.42	420.70
408.68	412.96	418.44	420.78
408.72	413.00	418.50	420.82
408.76	413.04	418.52	420.84
408.81	413.08	418.60	420.86
408.84	413.12	418.62	420.88
408.88	413.16	418.68	420.94
408.92	413.20	418.72	420.98
408.96	413.28	418.74	421.04
409.02	413.30	418.76	421.06
409.06	413.32	418.78	421.08
409.10	413.36	418.80	421.10
409.14	413.40	418.94	421.14
409.18	413.50	419.00	421.16
409.22	413.51	419.02	421.18
409.26	415.20	419.04	421.22
409.28	415.27	419.10	421.34
409.30	415.50	419.20	421.36
409.34	416.05	419.22	421.44
409.38	416.10	419.24	421.46
409.42	416.30	419.28	421.52
410.36	416.45	419.32	421.54
410.40	417.10	419.34	421.60
410.44	417.14	419.38	421.62
410.48	417.16	419.40	421.72
410.52	417.18	419.42	421.74
410.56	417.20	419.44	421.76
410.60	417.22	419.50	421.84
410.64	417.24	419.52	421.86
410.66	417.26	419.54	421.90
410.68	417.28	419.60	422.00
410.72	417.32	419.70	422.10
410.76	417.34	419.74	422.12
410.80	417.36	419.76	422.14
410.84	417.38	419.80	422.20
410.88	417.42	419.82	422.24
410.92	417.45	419.84	422.26
410.96	417.50	419.90	422.30
411.00	417.52	420.00	422.58
411.04	417.54	420.02	422.60
411.08	417.64	420.04	422.62
411.10	417.70	420.06	422.70
411.20	417.72	420.08	422.72
411.24	417.74	420.14	422.74
411.26	417.76	420.16	422.76
411.53	417.78	420.18	422.78
411.64	417.80	420.20	422.80
411.80	417.90	420.22	422.82
411.82	417.92	420.24	422.90
411.91	418.00	420.26	422.92
412.22	418.14	420.28	422.94

ANNEX III

-5-

423.00	426.54	428.24	437.12
423.80	426.56	428.26	437.13
423.84	426.58	428.30	437.14
423.86	426.62	428.32	437.16
423.88	426.64	428.34	437.18
423.94	426.72	428.36	437.20
423.96	426.76	428.38	437.22
425.00	426.77	428.40	437.30
425.02	426.78	428.41	437.32
425.04	426.82	428.42	437.36
425.06	426.84	428.44	437.38
425.08	426.86	428.47	437.40
425.09	426.88	428.50	437.44
425.10	426.92	428.52	437.47
425.12	426.94	428.54	437.49
425.14	426.96	428.58	437.50
425.18	426.98	428.62	437.51
425.20	427.02	428.64	437.52
425.22	427.04	428.66	437.54
425.24	427.06	428.68	437.55
425.26	427.08	428.72	437.56
425.28	427.12	428.80	437.57
425.32	427.14	428.82	437.58
425.34	427.16	428.84	437.60
425.36	427.18	428.86	437.64
425.38	427.20	428.88	437.65
425.41	427.22	428.90	437.68
425.42	427.24	428.92	437.69
425.52	427.25	428.94	437.70
425.70	427.28	429.00	437.72
425.72	427.30	429.10	437.74
425.74	427.40	429.12	437.82
425.76	427.42	429.19	437.84
425.78	427.44	429.22	437.86
425.82	427.45	429.24	438.01
425.84	427.46	429.26	438.02
425.86	427.48	429.29	439.30
425.87	427.53	429.30	439.50
425.88	427.54	429.32	440.00
425.94	427.56	429.34	445.05
426.00	427.58	429.38	445.10
426.04	427.60	429.42	445.15
426.08	427.62	429.44	445.20
426.10	427.64	429.46	445.25
426.12	427.70	429.47	445.30
426.14	427.72	429.51	445.35
426.18	427.74	429.60	445.44
426.22	427.82	429.70	445.46
426.24	427.84	429.85	445.48
426.26	427.92	429.95	445.52
426.28	427.94	432.15	445.54
426.32	427.97	432.25	445.56
426.34	427.98	435.10	445.75
426.36	428.04	436.00	446.10
426.42	428.06	437.02	446.12
426.44	428.12	437.04	446.15
426.46	428.20	437.06	446.30
426.52	428.22	437.10	450.10

ANNEX III

-6-

450.20	465.75	473.88	495.15
452.24	465.80	473.90	495.20
452.28	465.85	474.02	511.11
452.48	465.87	474.04	511.25
452.54	465.90	474.06	511.31
452.58	465.92	474.08	511.41
452.80	465.95	474.20	511.51
455.02	466.05	474.22	511.65
455.06	466.10	474.26	511.71
455.16	466.15	474.30	512.24
455.18	466.20	474.35	512.31
455.20	466.25	474.40	512.35
455.22	466.30	474.42	512.41
455.24	470.18	474.44	512.44
455.30	472.06	474.46	513.21
455.32	472.10	474.50	513.36
455.34	472.12	474.62	513.41
455.36	472.14	475.55	513.51
455.38	472.24	475.60	513.74
455.44	472.30	485.10	513.81
455.46	472.40	485.20	513.84
460.10	472.42	485.30	513.94
460.15	472.44	490.05	514.21
460.25	472.48	490.10	514.24
460.30	472.50	490.12	514.34
460.35	473.02	490.24	514.41
460.45	473.06	490.30	514.44
460.50	473.10	490.32	514.51
460.55	473.12	490.40	514.54
460.60	473.14	490.42	514.57
460.65	473.16	490.44	514.61
460.70	473.18	490.46	514.65
460.75	473.19	490.48	514.81
460.80	473.20	490.50	515.11
460.85	473.24	490.90	515.14
460.90	473.28	490.92	515.24
461.05	473.30	490.94	515.31
461.10	473.32	493.10	515.34
461.15	473.36	493.14	515.51
461.20	473.38	493.17	515.54
461.30	473.44	493.18	515.61
461.35	473.46	493.20	515.64
461.40	473.48	493.22	516.21
461.45	473.50	493.25	516.24
465.05	473.54	493.26	516.71
465.10	473.58	493.30	516.73
465.15	473.60	493.46	516.74
465.20	473.62	493.47	516.76
465.25	473.66	493.50	516.91
465.30	473.70	493.67	516.94
465.35	473.72	493.68	517.11
465.40	473.74	493.82	517.21
465.45	473.76	494.04	517.24
465.50	473.78	494.40	517.51
465.55	473.80	494.52	517.61
465.60	473.82	494.60	517.71
465.65	473.84	495.05	517.74
465.70	473.86	495.10	517.81

ANNEX III

-7-

517.91	534.97	545.37	606.60
518.21	535.11	545.55	606.62
518.41	535.12	545.57	606.64
518.51	535.13	545.61	606.71
519.11	535.14	545.63	606.73
519.14	535.21	545.65	606.75
519.31	535.24	545.67	606.77
519.37	535.27	545.81	609.14
519.51	535.41	545.85	609.15
519.83	536.11	546.21	609.88
519.84	536.15	546.23	609.90
519.86	540.11	546.25	610.56
519.91	540.13	546.39	610.58
519.93	540.14	546.47	610.62
519.95	540.15	547.11	610.63
519.97	540.21	547.13	610.66
520.31	540.37	547.15	610.71
520.37	540.41	547.21	610.84
520.39	540.43	547.31	610.86
520.51	540.47	547.37	610.89
520.54	540.51	547.41	610.90
520.61	540.55	547.43	610.92
520.71	540.61	547.51	612.02
521.87	540.63	547.53	612.05
522.41	540.65	547.55	612.08
522.45	540.67	548.01	612.10
522.61	540.71	548.03	612.15
522.71	541.11	548.05	612.17
522.81	541.21	601.33	612.20
523.31	541.31	601.54	612.30
523.33	542.57	602.20	612.31
523.37	542.67	602.28	612.32
523.51	542.71	603.10	612.34
523.61	542.73	603.15	612.35
523.91	542.75	603.25	612.36
523.94	542.77	603.30	612.38
531.01	542.92	603.45	612.39
531.04	542.94	603.49	612.40
531.11	542.96	603.50	612.41
531.21	542.98	603.54	612.43
531.24	543.11	603.55	612.44
531.33	544.11	603.70	612.45
531.35	544.14	605.03	612.50
531.37	544.16	605.05	612.52
531.39	544.18	605.06	612.55
532.14	544.31	605.08	612.56
532.41	544.41	605.27	612.60
532.61	544.51	605.48	612.61
533.11	544.54	605.60	612.62
533.15	544.61	605.65	612.63
533.54	544.64	605.66	612.64
534.11	545.11	606.15	612.70
534.21	545.17	606.26	612.71
534.31	545.21	606.28	612.72
534.74	545.31	606.33	612.73
534.76	545.34	606.48	612.80
534.81	545.35	606.57	612.81
534.87		606.59	612.82

ANNEX III

-8-

613.02	626.15	642.20	644.88
613.03	626.17	642.25	644.92
613.04	626.18	642.27	644.95
613.06	626.20	642.31	644.98
613.08	626.22	642.34	646.02
613.10	626.24	642.45	646.04
613.11	626.30	642.47	646.06
613.12	626.31	642.50	646.17
613.15	626.35	642.52	646.20
618.02	626.40	642.54	646.22
618.06	626.42	642.56	646.27
618.10	626.45	642.58	646.28
618.17	628.05	642.60	646.30
618.20	628.10	642.62	646.34
618.22	628.15	642.64	646.36
618.25	628.20	642.66	646.40
618.27	628.25	642.68	646.41
618.29	628.30	642.70	646.42
618.40	628.35	642.72	646.45
618.42	628.40	642.74	646.47
618.47	628.45	642.76	646.51
620.08	628.50	642.78	646.53
620.10	628.55	642.80	646.57
620.12	628.59	642.82	646.65
620.16	628.70	642.85	646.72
620.20	628.74	642.87	646.74
620.22	628.90	642.93	646.75
620.26	628.95	644.02	646.76
620.30	629.05	644.06	646.77
620.40	629.10	644.08	646.78
620.42	629.20	644.09	646.82
620.46	629.25	644.11	646.85
620.50	629.26	644.12	646.86
622.15	629.50	644.15	646.87
622.17	629.60	644.17	646.88
622.20	629.65	644.18	646.89
622.22	632.02	644.20	646.95
622.25	632.04	644.22	646.97
622.35	632.12	644.24	646.98
622.40	632.18	644.26	647.01
624.02	632.34	644.28	647.03
624.04	632.42	644.30	647.05
624.10	632.60	644.32	647.10
624.12	632.62	644.36	648.51
624.14	632.66	644.38	648.53
624.16	633.00	644.40	648.55
624.18	640.05	644.42	648.57
624.20	640.10	644.46	648.61
624.22	640.20	644.48	648.63
624.24	640.25	644.52	648.67
624.30	640.30	644.56	648.69
624.32	640.35	644.60	648.71
624.34	640.40	644.64	648.73
624.40	642.06	644.68	648.75
624.42	642.08	644.72	648.80
624.50	642.09	644.76	648.85
624.52	642.15	644.80	648.89
624.54	642.18	644.84	648.91

ANNEX III

-9-

648.93	650.53	652.88	660.22
648.95	650.56	652.90	660.25
649.01	650.57	652.92	660.30
649.03	650.61	652.93	660.35
649.05	650.63	653.01	660.56
649.07	650.65	653.03	660.59
649.11	650.71	653.05	660.62
649.14	650.73	653.07	660.67
649.17	650.75	653.10	660.71
649.19	650.77	653.15	660.74
649.21	650.79	653.20	660.76
649.23	650.81	653.25	660.77
649.24	650.83	653.30	660.80
649.25	650.85	653.35	660.85
649.26	650.87	653.37	660.92
649.27	650.90	653.45	660.96
649.29	651.01	653.47	660.97
649.31	651.03	653.52	661.05
649.32	651.04	653.60	661.10
649.33	651.07	653.62	661.15
649.35	651.09	653.65	661.20
649.41	651.11	653.70	661.25
649.43	651.13	653.75	661.30
649.44	651.15	653.80	661.35
649.46	651.23	653.90	661.40
649.47	651.25	653.96	661.45
649.48	651.27	653.99	661.50
649.49	651.29	654.00	661.54
649.53	651.31	654.16	661.56
649.57	651.45	654.25	661.67
649.67	651.48	654.35	661.68
649.71	651.51	654.45	661.85
649.73	651.53	654.50	661.90
649.75	651.55	654.55	661.92
649.77	651.60	654.65	661.95
649.79	651.62	654.70	662.10
649.81	652.06	654.75	662.15
649.83	652.09	656.05	662.18
649.85	652.13	656.10	662.20
649.87	652.14	656.15	662.26
649.89	652.15	656.20	662.30
649.91	652.18	656.25	662.50
650.01	652.21	656.30	664.06
650.05	652.24	656.35	664.07
650.07	652.27	657.10	664.08
650.13	652.35	657.15	666.10
650.15	652.36	657.30	666.25
650.17	652.38	657.40	668.00
650.19	652.41	657.50	668.02
650.21	652.42	657.60	668.04
650.31	652.45	657.70	668.06
650.35	652.50	657.75	668.07
650.37	652.55	657.80	668.10
650.43	652.65	657.90	668.15
650.45	652.72	658.00	668.21
650.47	652.75	660.10	668.23
650.48	652.80	660.15	668.32
650.51	652.86	660.20	668.34

ANNEX III

-10-

668.36	674.90	683.90	694.61
668.38	676.07	683.95	694.63
668.50	676.10	684.20	694.64
670.00	676.12	684.28	694.65
670.02	676.22	684.40	694.66
670.04	676.23	684.57	694.67
670.06	676.25	684.65	694.70
670.12	676.50	684.66	696.05
670.14	678.20	684.67	696.15
670.16	678.30	684.90	696.30
670.17	678.32	685.06	696.50
670.18	678.35	685.10	696.60
670.19	678.40	685.20	700.54
670.21	678.45	685.22	702.08
670.22	680.05	685.24	702.14
670.23	680.07	685.28	702.15
670.25	680.12	685.30	702.20
670.27	680.13	685.37	702.25
670.29	680.17	685.38	702.28
670.33	680.19	685.39	702.30
670.35	680.25	685.42	702.32
670.40	680.27	685.60	702.35
670.41	680.42	686.18	702.37
670.42	680.46	686.24	702.40
670.43	680.49	686.40	702.45
670.50	680.59	686.50	702.47
670.52	680.62	686.60	702.85
670.54	680.92	686.70	702.90
670.56	681.10	686.80	702.95
670.58	681.13	686.90	703.20
670.64	681.15	687.10	703.25
670.66	681.21	687.20	703.30
670.68	681.27	687.30	703.35
670.70	681.33	687.42	703.40
670.72	681.36	688.04	703.45
670.74	681.39	688.06	703.50
670.90	682.05	688.20	703.55
672.10	682.07	688.25	703.60
672.14	682.20	688.30	703.65
672.20	682.25	688.32	703.70
672.22	682.30	688.34	703.72
672.25	682.41	690.05	703.75
674.10	682.45	690.10	703.80
674.20	682.50	690.15	703.85
674.30	682.52	690.20	704.34
674.33	682.55	690.35	704.75
674.34	682.70	690.40	704.80
674.40	682.80	692.04	704.95
674.42	682.90	692.14	705.30
674.50	682.95	692.16	705.82
674.52	683.12	692.29	705.83
674.53	683.20	692.35	705.90
674.55	683.30	692.40	706.04
674.56	683.32	692.45	706.19
674.60	683.40	692.53	706.33
674.70	683.50	692.55	706.37
674.75	683.60	694.31	706.42
674.80	683.65	694.50	706.44

ANNEX III

-11-

706.45	710.04	712.27	724.10
706.47	710.06	712.47	724.12
706.50	710.08	712.49	724.20
707.90	710.12	713.05	724.25
708.01	710.14	713.07	724.35
708.03	710.16	713.09	724.40
708.05	710.20	713.11	724.45
708.07	710.21	713.17	725.04
708.10	710.26	713.19	725.05
708.21	710.27	715.20	725.07
708.23	710.30	715.55	725.08
708.25	710.34	720.34	725.12
708.27	710.36	720.80	725.14
708.30	710.40	720.92	725.16
708.41	710.42	721.10	725.18
708.43	710.46	722.02	725.20
708.56	710.50	722.04	725.22
708.58	710.60	722.06	725.24
708.61	710.61	722.09	725.26
708.63	710.63	722.13	725.30
708.65	710.65	722.14	725.34
708.71	710.67	722.16	725.36
708.72	710.68	722.18	725.40
708.73	710.70	722.30	725.46
708.75	710.72	722.32	725.47
708.76	710.76	722.34	725.52
708.78	710.78	722.40	726.05
708.80	710.80	722.42	726.10
708.82	710.86	722.44	726.15
708.85	710.88	722.46	726.20
708.87	710.90	722.50	726.40
708.89	711.04	722.52	726.45
708.91	711.08	722.55	726.50
708.93	711.25	722.56	726.52
709.01	711.30	722.60	726.55
709.03	711.31	722.64	726.63
709.05	711.32	722.70	726.65
709.06	711.40	722.72	726.70
709.07	711.42	722.75	726.75
709.10	711.45	722.78	726.90
709.11	711.47	722.80	727.02
709.13	711.49	722.82	727.04
709.15	711.55	722.83	727.11
709.17	711.60	722.85	727.13
709.19	711.67	722.86	727.14
709.21	711.70	722.88	727.15
709.23	711.72	722.90	727.25
709.25	711.78	722.92	727.27
709.27	711.86	722.94	727.40
709.45	711.88	722.96	727.45
709.50	711.90	723.05	727.47
709.54	711.98	723.10	727.59
709.55	712.05	723.15	727.65
709.56	712.10	723.20	727.86
709.57	712.12	723.25	728.05
709.61	712.15	723.30	728.10
709.63	712.20	723.32	728.15
709.66	712.25	723.35	728.20
			728.24

ANNEX III

-12-

728.27	734.42	745.42	756.30
730.05	734.45	745.45	756.35
730.23	734.51	745.50	756.40
730.25	734.54	745.52	756.45
730.27	734.56	745.54	756.50
730.29	734.60	745.56	756.55
730.31	734.71	745.58	756.60
730.37	734.72	745.60	760.10
730.39	734.75	745.62	760.12
730.41	734.77	745.65	760.15
730.43	734.80	745.66	760.20
730.45	734.85	745.67	760.30
730.51	734.88	745.68	760.32
730.53	734.91	748.05	760.34
730.55	734.93	748.10	760.36
730.57	734.95	748.12	760.38
730.59	735.01	748.15	760.40
730.63	735.02	748.25	760.42
730.65	735.04	748.32	760.45
730.67	735.06	748.34	760.50
730.71	735.10	748.36	760.52
730.73	735.11	748.50	760.54
730.74	735.15	748.55	760.56
730.75	735.17	750.05	760.58
730.77	735.18	750.10	766.20
730.80	737.09	750.15	770.05
730.81	737.26	750.22	770.07
730.85	737.35	750.25	770.10
730.86	737.43	750.32	770.30
730.88	737.55	750.35	770.40
730.95	737.65	750.47	770.45
730.96	737.70	750.50	770.70
730.97	740.05	750.55	770.80
730.98	740.30	750.60	771.05
730.99	740.34	750.65	771.20
731.05	740.50	750.70	771.25
731.06	740.55	750.75	771.30
731.10	740.60	750.80	771.31
731.24	740.70	751.10	771.35
731.26	740.75	751.11	771.40
731.30	740.80	751.15	771.50
731.42	741.06	751.20	771.55
731.44	741.10	751.25	772.03
731.50	741.15	755.05	772.06
731.70	741.20	755.10	772.09
732.35	741.30	755.20	772.15
732.38	741.35	755.30	772.20
732.43	741.40	755.40	772.25
732.50	741.50	755.45	772.29
732.52	745.04	755.50	772.40
732.62	745.08	756.02	772.42
734.05	745.10	756.04	772.45
734.10	745.20	756.06	772.54
734.20	745.25	756.10	772.65
734.30	745.28	756.15	772.70
734.32	745.30	756.21	772.80
734.34	745.32	756.23	772.85
734.40	745.34	756.25	772.95

ANNEX III

-13-

772.97
773.10
773.15
773.20
773.25
773.30
773.35
774.20
774.25
774.35
774.40
774.50
790.00
790.07
790.15
790.23
790.25
790.30
790.37
790.40
790.45
790.47
790.50
790.55
790.59
790.60
790.61
790.62
790.63
791.05
791.10
791.17
791.19
791.20
791.27
791.30
791.35
791.45
791.48
791.50
791.54
791.57
791.60
791.65
791.70
791.80
791.90
792.10
792.24
792.26
792.30
792.32
792.40
792.70
792.75
799.00

ANNEX IV

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM BENEFICIARY DEVELOPING COUNTRIES OTHER THAN THOSE SPECIFIED IN GENERAL HEADNOTE 3(e)(v)(D) OF THE TSUS

107.48	418.13	652.84	685.25	735.12
121.61	428.96	653.00	685.32	735.20
121.65	429.49	653.38	685.40	737.07
130.37	445.42	653.39	685.70	737.15
130.40	452.44	653.48	685.90	737.21
135.51	470.85	653.85	686.30	737.23
135.90	473.52	653.93	687.70	737.28
135.95	473.56	653.94	688.10	737.30
136.20	511.64	654.08	688.12	737.40
136.22	522.21	654.30	688.17	737.42
136.30	532.22	654.40	688.18	737.47
136.61	532.31	654.60	688.41	737.49
137.10	534.84	657.24	688.42	737.51
137.40	534.91	657.25	692.32	737.60
137.50	534.94	657.35	692.60	737.80
137.63	535.31	660.42	696.10	737.95
137.71	545.25	660.48	696.35	740.11
138.05	545.53	661.06	696.40	740.12
141.77	545.87	661.09	700.90	740.13
146.22	602.10	661.65	703.14	740.14
146.44	603.40	661.94	706.61	740.15
146.76	606.36	662.35	708.45	740.38
148.03	606.37	664.10	708.47	741.25
148.12	606.44	672.16	709.09	745.70
148.17	610.65	674.31	709.40	748.20
148.72	610.70	674.35	711.38	748.21
155.20	610.74	676.15	713.15	750.20
167.05	610.82	676.20	722.08	750.40
176.15	610.88	676.30	722.11	750.45
192.17	612.03	676.52	725.01	751.05
192.21	612.06	678.50	725.03	755.25
202.62	613.18	680.14	725.32	771.41
204.40	618.15	682.35	725.50	771.43
206.60	642.14	682.60	726.25	771.45
206.98	642.16	683.01	727.06	772.35
207.00	642.17	683.15	727.23	772.51
222.10	646.32	683.70	727.29	772.60
222.50	646.90	683.80	727.35	773.05
245.20	646.92	684.10	727.70	774.45
245.30	648.97	684.15	728.22	774.55
256.60	649.37	684.25	730.94	790.03
256.87	650.89	684.48	732.60	790.10
319.05	651.21	684.53	734.15	790.39
337.40	651.33	684.55	734.25	790.70
355.81	651.37	684.58	734.70	791.15
389.61	651.46	684.59	734.86	791.28
406.20	651.49	684.70	734.87	792.50
407.16	652.03	685.14	734.90	792.60
413.24	652.60	685.16	735.07	
417.23	652.70	685.18	735.09	

ANNEX V

PRODUCTS OF LEAST DEVELOPED DEVELOPING COUNTRIES

Imported articles, the products of least developed developing countries specified in general headnote 3(e)(vi)(A), which are provided for in the following TSUS item numbers, are eligible for the rates of duty set opposite thereto on and after the effective dates specified below (except when such articles are subject to temporary modifications as specified in general headnote 3(e)(iii) of the TSUS):

(A) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after September 1, 1985:

TSUS Item No.	Rate of duty
106.22	1.5¢ per lb.
106.25	Free
107.40	1¢ per lb.
107.70	0.6¢ per lb.
107.80	Free
110.28	Free
110.55	1.875¢ per lb.
110.65	Free
111.37	4% ad val.
111.48	3% ad val.
111.60	10% ad val.
111.76	Free
111.84	2.5% ad val.
112.03	Free
112.12	Free
112.18	3% ad val.
112.20	2.5% ad val.
112.42	4.9% ad val.
112.46	8% ad val.
112.54	12% ad val.
112.79	4% ad val.
112.86	20% ad val.
112.94	6.5% ad val.
113.01	Free
113.05	6.6% ad val.
113.40	Free
113.50	5% ad val.
114.04	14% ad val.
114.06	7% ad val.
114.25	5% ad val.
114.34	Free
114.55	Free
117.44	19% ad val.
117.60	6.4% ad val.
117.86	7.5% ad val.
120.17	Free
121.10	4.9% ad val.
121.15	3.7% ad val.
121.25	4.2% ad val.
121.30	5.5% ad val.
121.35	3.1% ad val.
121.40	3.7% ad val.
121.45	5.5% ad val.
121.50	4.2% ad val.
121.52	Free
121.55	3.7% ad val.
121.62	3.7% ad val.
121.64	4.2% ad val.
121.65	2.4% ad val.
123.50	8% ad val.
124.20	5.3% ad val.
124.25	2.1% ad val.
124.30	3.7% ad val.
124.60	5.8% ad val.
124.65	3.1% ad val.
124.70	4.9% ad val.
124.80	2.4% ad val.
125.50	Free
125.82	3% ad val.
126.23	Free
126.27	Free
126.29	Free
126.33	Free
126.35	Free
130.08	5¢ per bu. of 48 lbs.
130.30	Free
130.32	5¢ per bu. of 56 lbs.
130.45	Free
130.60	Free
131.20	30¢ per 100 lbs.
136.92	0.7¢ per lb.
137.20	35¢ per 100 lbs.
137.21	35¢ per 100 lbs.
137.25	35¢ per 100 lbs.
137.28	35¢ per 100 lbs.
140.40	25% ad val.
141.82	10% ad val.
141.83	12.5% ad val.
141.85	3.4% ad val.
141.86	10% ad val..
144.14	1.3¢ per lb. + 4% ad val.
144.16	1.3¢ per lb. + 4% ad val.
146.30	6¢ per lb.
147.33	3.4% ad val.
147.61	4¢ per cu. ft. of such bulk or the capacity of the package

ANNEX V

-2-

TSUS Item No.	Rate of duty
147.77	7% ad val.
147.85	Free
148.22	14% ad val.
148.72	Free
148.81	Free
148.83	Free
148.98	0.25¢ per lb.
149.18	Free
149.50	3.4% ad val.
152.14	Free
152.42	12.5% ad val.
152.54	2.8% ad val.
154.40	5.4% ad val.
154.45	3.4% ad val.
155.75	6% ad val.
156.25	Free
161.58	Free
161.61	Free
161.71	2¢ per lb.
161.75	6% ad val.
168.36	25¢ per proof gal.
168.37	50¢ per proof gal.
168.39	20¢ per proof gal.
168.41	40¢ per proof gal.
168.57	50¢ per proof gal.
168.61	40¢ per proof gal.
168.78	50¢ per proof gal.
168.82	40¢ per proof gal.
169.13	$1.40 per proof gal.
169.14	$1.40 per proof gal.
169.21	25¢ per proof gal.
169.22	25¢ per proof gal.
169.38	50¢ per proof gal.
170.35	20¢ per lb.
175.39	0.4¢ per lb.
176.24	0.5¢ per lb. + 2% ad val.
176.45	0.7¢ per lb.
176.46	Free
176.47	7.5% ad val.
178.15	9% ad val.
182.20	Free
182.35	Free
182.36	Free
182.92	16% ad val.
182.96	8% ad val.
184.51	0.12¢ per lb.
184.58	4% ad val.
186.50	3.1% ad val.
188.34	2¢ per lb.
190.10	Free
190.25	7.7% ad val.
190.68	3% ad val.
190.85	Free
190.93	3% ad val.
200.06	3.7% ad val.
200.20	2.4% ad val.
200.25	5.1% ad val.
200.45	Free
200.95	7.6% ad val.
202.38	Free
202.54	Free
202.56	Free
202.60	3.2% ad val.
202.66	4.5% ad val.
203.10	5.8% ad val.
203.20	4.5¢ per lb. + 3.5% ad val.
203.30	4.5¢ per lb. + 3.5% ad val.
204.05	7.7% ad val.
204.10	2.8% ad val.
204.20	5.1% ad val.
204.40	6.7% ad val.
204.50	1¢ per lb. + 2.9% ad val.
206.45	4.5% ad val.
206.50	Free
206.52	Free
206.53	4.4% ad val.
206.85	4.2% ad val.
206.96	5.1% ad val.
207.00	5.1% ad val.
220.10	1¢ per lb.
220.15	0.4¢ per lb.
220.20	2.5¢ per lb.
220.25	3.7% ad val.
220.31	2¢ per lb.
220.35	20¢ per lb.
220.36	8.5¢ per lb.
220.37	10¢ per lb.
220.39	7¢ per lb.
220.41	7¢ per lb.
220.48	7¢ per lb.
222.10	3.1% ad val.
222.30	7% ad val.
222.32	6.6% ad val.
222.36	3.5% ad val.
222.41	5.8% ad val.
222.42	10% ad val.
222.55	Free
222.60	6.6% ad val.
240.10	8% ad val.
240.12	5% ad val.
240.14	3% ad val.
240.16	5.3% ad val.
240.19	8% ad val.
240.25	8% ad val.
240.30	8% ad val.
240.32	6.6% ad val.

ANNEX V

-3-

TSUS Item No.	Rate of duty
240.34	3% ad val.
240.36	5.3% ad val.
240.50	8.2% ad val.
240.52	6.6% ad val.
240.54	3% ad val.
240.56	5.3% ad val.
240.58	4% ad val.
240.60	4% ad val.
245.00	3% ad val.
245.10	3% ad val.
245.20	3% ad val.
245.30	6% ad val.
245.45	4% ad val.
245.50	4% ad val.
245.60	4% ad val.
245.70	2.4% ad val.
245.80	1.3¢ per lb. + 2.3% ad val.
251.10	3.7% ad val.
251.15	4.9% ad val.
251.20	5.8% ad val.
251.25	2.8% ad val.
251.30	Free
251.45	Free
252.05	Free
252.10	Free
252.13	3.8% ad val.
252.15	3.2% ad val.
252.17	Free
252.20	1.6% ad val.
252.25	2.6% ad val.
252.27	2% ad val.
252.30	3.5% ad val.
252.35	4.9% ad val.
252.40	4.3% ad val.
252.42	2% ad val.
252.45	1.6% ad val.
252.50	4.2% ad val.
252.57	2.4% ad val.
252.59	3.8% ad val.
252.61	4.8% ad val.
252.63	1.8% ad val.
252.70	2.7% ad val.
252.73	3.1% ad val.
252.75	2.4% ad val.
252.77	1.5% ad val.
252.81	Free
252.84	2.4% ad val.
252.86	Free
252.90	4% ad val.
253.05	2.4% ad val.
253.10	3.9% ad val.
253.15	3.4% ad val.
253.20	Free
253.25	Free
253.30	Free
253.35	2.4% ad val.
253.40	3.7% ad val.
253.45	3.3% ad val.
254.09	2.6% ad val.
254.15	2.8% ad val.
254.18	Free
254.20	1.6% ad val.
254.25	4.9% ad val.
254.30	2.8% ad val.
254.35	3.4% ad val.
254.40	3.8% ad val.
254.42	3.3% ad val.
254.44	Free
254.46	2.5% ad val.
254.48	2.2% ad val.
254.50	1.3% ad val.
254.54	3.4% ad val.
254.56	4.4% ad val.
254.58	2.4% ad val.
254.63	2.9% ad val.
254.65	Free
254.70	2% ad val.
254.80	Free
254.85	1.9% ad val.
254.90	2% ad val.
254.95	Free
256.05	Free
256.10	4.9% ad val.
256.15	3.7% ad val.
256.20	3.2% ad val.
256.25	3.2% ad val.
256.30	3% ad val.
256.35	4.2% ad val.
256.40	5.1% ad val.
256.42	3% ad val.
256.44	4% ad val.
256.48	2.5% ad val.
256.52	3% ad val.
256.54	2.8% ad val.
256.56	4% ad val.
256.58	Free
256.65	3.2% ad val.
256.67	5.8% ad val.
256.70	Free
256.75	3.1% ad val.
256.80	3.6% ad val.
256.84	4% ad val.
256.90	5.3% ad val.
270.45	Free
270.50	Free
273.30	5.3% ad val.
273.55	Free
273.65	18¢ per lb. + 2.4% ad val.

ANNEX V

-4-

TSUS Item No.	Rate of duty
273.70	6¢ per lb. + 3.5% ad val.
273.75	7¢ per lb.
273.85	4% ad val.
273.90	4.2% ad val.
273.95	3.1% ad val.
274.05	4.9% ad val.
274.10	Free
274.15	2¢ per lb.
274.20	3% ad val.
274.23	12¢ per lb.
274.27	28¢ per lb.
274.29	4¢ per lb.
274.33	11¢ per lb.
274.35	4.2% ad val.
274.65	Free
274.70	3.1% ad val.
274.75	Free
274.85	1.8% ad val.
274.90	4.9% ad val.
304.22	0.3¢ per lb.
304.26	3.1% ad val.
304.34	0.6¢ per lb.
304.40	Free
304.44	Free
304.52	3.1% ad val.
305.04	3.1% ad val.
305.06	6.6% ad val.
305.08	4.2% ad val.
305.09	6% ad val.
305.10	6% ad val.
305.12	3.1% ad val.
305.14	7.8% ad val.
305.16	4.2% ad val.
305.18	5.1% ad val.
305.50	5.8% ad val.
306.14	4¢ per lb.
306.20	3¢ per clean lb.
306.24	5¢ per lb.
306.40	4.5¢ per clean lb.
306.41	5¢ per clean lb.
306.42	5¢ per clean lb.
306.43	5¢ per clean lb.
306.44	7¢ per lb.
306.53	1.5¢ per clean lb.
306.54	2¢ per lb.
306.60	3¢ per clean lb.
306.61	3.5¢ per clean lb.
306.62	3.5¢ per clean lb.
306.63	4¢ per clean lb.
306.64	5.5¢ per lb.
306.70	4¢ per clean lb.
306.71	4.5¢ per clean lb.
306.72	4.5¢ per clean lb.
306.73	5¢ per clean lb.
306.74	6.5¢ per lb.
306.80	6.5¢ per clean lb.
306.81	7¢ per clean lb.
306.82	7¢ per clean lb.
306.83	7¢ per clean lb.
306.84	9¢ per lb.
307.02	2¢ per lb.
307.04	3¢ per lb.
307.06	2.5¢ per lb.
307.08	3¢ per lb.
307.10	5.5¢ per lb.
307.12	2.5¢ per lb.
307.16	2¢ per lb.
307.18	2¢ per lb.
308.10	4.7% ad val.
308.16	5.3% ad val.
308.18	5.8% ad val.
308.20	2.8% ad val.
308.35	5% ad val.
308.45	5% ad val.
308.47	5% ad val.
308.55	5% ad val.
308.80	5% ad val.
308.90	5% ad val.
309.02	8¢ per lb.
309.03	10% ad val.
309.05	6¢ per lb.
309.06	7.8% ad val.
309.10	7.5% ad val.
309.20	5¢ per lb.
309.21	6.6% ad val.
309.25	7.5% ad val.
309.28	6% ad val.
309.29	7.2% ad val.
309.30	6¢ per lb.
309.31	10% ad val.
309.35	5¢ per lb. + 6% ad val.
309.43	4.9% ad val.
309.50	5.5¢ per lb. + 7% ad val.
309.60	4.2% ad val.
309.65	2.5¢ per lb.
309.66	2.1% ad val.
309.70	6% ad val.
309.75	4.9% ad val.
309.80	8% ad val.
309.90	6.5% ad val.
312.10	3.7% ad val.
312.30	2.5% ad val.
312.40	5.3% ad val.
312.50	5.8% ad val.
315.25	7.2% ad val.
315.30	4.9% ad val.
315.35	6.8% ad val.
315.40	7% ad val.

ANNEX V

-5-

TSUS Item No.	Rate of duty	TSUS Item No.	Rate of duty
315.50	Free	356.80	3.7% ad val.
315.55	0.8¢ per lb.	357.30	7.2% ad val.
315.75	7% ad val.	357.40	6% ad val.
315.80	4% ad val.	357.90	4.5% ad val.
315.85	5% ad val.	357.95	6.5% ad val.
316.05	6% ad val.	358.02	5.1% ad val.
316.10	6% ad val.	358.06	5.1% ad val.
316.20	6% ad val.	358.08	6% ad val.
316.25	6% ad val.	358.09	7.5% ad val.
316.30	2.5% ad val.	358.11	5.4% ad val.
316.50	7% ad val.	358.14	8% ad val.
316.70	5.3% ad val.	358.16	2.4% ad val.
319.01	6% ad val.	358.24	5.8% ad val.
319.03	6% ad val.	358.26	7% ad val.
319.05	6% ad val.	358.40	6.9% ad val.
319.07	6% ad val.	358.50	7.5% ad val.
335.70	3% ad val.	358.60	5.8% ad val.
335.75	3% ad val.	359.20	4.4% ad val.
335.85	3% ad val.	359.60	3.4% ad val.
335.95	3% ad val.	360.36	3.5% ad val.
337.10	6% ad val.	360.77	5% ad val.
337.30	6% ad val.	360.79	5% ad val.
339.10	5.3% ad val.	360.82	7.6% ad val.
345.60	5.3% ad val.	360.84	7.6% ad val.
346.65	5.3% ad val.	361.21	5.1% ad val.
346.80	4.2% ad val.	361.53	4.7% ad val.
346.86	5.3% ad val.	361.85	3.4% ad val.
346.95	5.3% ad val.	363.02	7.2% ad val.
347.20	4.7% ad val.	363.35	3.1% ad val.
347.28	5.8% ad val.	363.80	5.4% ad val.
347.35	4.7% ad val.	363.90	5.3% ad val.
347.45	5.3% ad val.	364.09	7.2% ad val.
347.50	3% ad val.	364.14	7.2% ad val.
347.72	4.2% ad val.	364.25	6.9% ad val.
347.75	5.3% ad val.	364.35	5.3% ad val.
351.44	18% ad val.	365.05	14% ad val.
355.04	8% ad val.	365.14	14% ad val.
355.20	6.9% ad val.	365.15	5.7% ad val.
355.42	6.2% ad val.	365.25	16% ad val.
355.55	3.9% ad val.	365.29	16% ad val.
355.65	5.3% ad val.	365.80	12.8% ad val.
355.70	14% ad val.	365.81	12.8% ad val.
355.75	6.9% ad val.	365.83	12.8% ad val.
355.81	4.2% ad val.	365.84	12.8% ad val.
355.85	5.3% ad val.	365.91	12.8% ad val.
356.05	5.4% ad val.	366.12	2.4% ad val.
356.10	3.7% ad val.	366.30	8% ad val.
356.15	6.6% ad val.	366.33	8% ad val.
356.20	4.7% ad val.	366.36	3.1% ad val.
356.25	4.7% ad val.	366.39	4.4% ad val.
356.30	16% ad val.	366.48	3.7% ad val.
356.35	6.9% ad val.	366.51	4.4% ad val.
356.40	8% ad val.	366.54	3.7% ad val.
356.45	5.3% ad val.	366.72	4.2% ad val.
356.70	8.2% ad val.	366.81	3.7% ad val.

ANNEX V

-6-

TSUS Item No.	Rate of duty
367.35	5.8% ad val.
367.40	5.3% ad val.
367.65	3.4% ad val.
385.15	5.1% ad val.
385.50	0.1¢ per lb. + 2.5% ad val.
385.63	6.9% ad val.
385.90	4% ad val.
386.11	10% ad val.
386.13	10% ad val.
386.15	7.8% ad val.
386.20	14% ad val.
386.30	11.2% ad val.
386.40	7.8% ad val.
387.10	6.6% ad val.
387.25	4.4% ad val.
387.32	4.4% ad val.
387.33	4.4% ad val.
387.37	4.4% ad val.
389.10	5.8% ad val.
389.20	5.3% ad val.
389.30	6.9% ad val.
389.40	12.5% ad val.
389.50	11% ad val.
389.61	9% ad val.
389.70	5.8% ad val.
390.14	2.1% ad val.
390.16	2.1% ad val.
390.30	Free
390.40	2.8¢ per lb.
390.50	Free
402.00	0.8¢ per lb. + 5.5% ad val.
402.04	0.8¢ per lb. + 6.1% ad val.
402.08	0.5¢ per lb. + 2.7% ad val.
402.16	7.4% ad val.
402.24	0.5¢ per lb. + 3.3% ad val.
402.28	0.5¢ per lb. + 3.7% ad val.
402.32	1¢ per lb. + 4.9% ad val.
402.36	0.5¢ per lb. + 17.3% ad val.
402.40	7.6% ad val.
402.44	9.5% ad val.
402.48	7.8% ad val.
402.52	10.4% ad val.
402.56	7.9% ad val.
402.60	7.4% ad val.
402.64	20% ad val.
402.68	15.2% ad val.
402.72	6.8% ad val.
402.76	7.6% ad val.
402.78	9.1% ad val.
402.81	9.1% ad val.
402.84	10% ad val.
402.88	15% ad val.
402.96	7.2% ad val.
402.98	1.3¢ per lb. + 12.5% ad val.
403.00	10.8% ad val.
403.05	7% ad val.
403.09	5.8% ad val.
403.16	7.1% ad val.
403.20	11% ad val.
403.24	6.3% ad val.
403.27	20% ad val.
403.29	20% ad val.
403.32	7.2% ad val.
403.36	8.1% ad val.
403.41	7.1% ad val.
403.45	6.6% ad val.
403.51	7.2% ad val.
403.52	6% ad val.
403.54	0.7¢ per lb. + 19.4% ad val.
403.57	0.7¢ per lb. + 19.4% ad val.
403.61	6.9% ad val.
403.62	20% ad val.
403.65	20% ad val.
403.68	6.9% ad val.
403.72	6.9% ad val.
403.74	6.9% ad val.
403.76	10.6% ad val.
403.81	20% ad val.
403.88	5.8% ad val.
403.92	6.1% ad val.
403.96	11% ad val.
404.00	7.5% ad val.
404.04	8% ad val.
404.08	7.9% ad val.
404.12	8.1% ad val.
404.16	20% ad val.
404.20	1.3¢ per lb. + 13.1% ad val.
404.24	6.7% ad val.
404.32	6.9% ad val.
404.33	20% ad val.
404.37	20% ad val.
404.40	5.8% ad val.
404.42	7% ad val.
404.43	7% ad val.
404.48	7.2% ad val.
404.52	6.9% ad val.
404.56	5.9% ad val.
404.64	10.5% ad val.
404.68	12.4% ad val.
404.72	6.1% ad val.
404.76	7.1% ad val.

ANNEX V

-7-

TSUS Item No.	Rate of duty
404.80	7% ad val.
404.84	5.8% ad val.
404.88	1.1¢ per lb. + 18.8% ad val.
404.92	5.8% ad val.
404.96	7.8% ad val.
405.00	6.8% ad val.
405.01	6.1% ad val.
405.12	6.9% ad val.
405.16	7.2% ad val.
405.21	6.7% ad val.
405.24	5.3% ad val.
405.28	5.8% ad val.
405.36	7.3% ad val.
405.41	6.6% ad val.
405.44	7.2% ad val.
405.48	6.2% ad val.
405.51	15% ad val.
405.53	15% ad val.
405.56	6.8% ad val.
405.60	20% ad val.
405.64	5.8% ad val.
405.68	19.9% ad val.
405.72	7.2% ad val.
405.76	5.8% ad val.
405.80	1.3¢ per lb. + 16.2% ad val.
405.84	6.7% ad val.
405.88	7.3% ad val.
405.92	5.8% ad val.
405.96	6.1% ad val.
406.00	6.7% ad val.
406.05	6.6% ad val.
406.08	17.7% ad val.
406.12	6.9% ad val.
406.16	15% ad val.
406.24	7.8% ad val.
406.28	0.4¢ per lb. + 12.5% ad val.
406.32	5.8% ad val.
406.36	5.8% ad val.
406.44	17.5% ad val.
406.47	6.8% ad val.
406.49	6.8% ad val.
406.52	7.4% ad val.
406.64	0.1¢ per lb. + 18.7% ad val.
406.68	0.1¢ per lb. + 19.8% ad val.
406.73	5.8% ad val.
406.76	0.9¢ per lb. + 12.5% ad val.
406.81	1.1¢ per lb. + 12.5% ad val.
406.84	20% ad val.
406.86	7.1% ad val.
406.92	20% ad val.
406.96	1¢ per lb. + 15.6% ad val.
407.00	5.9% ad val.
407.09	7.4% ad val., but not less than the highest rate applicable to any component material
408.00	8.9% ad val.
408.08	6.5% ad val.
408.12	6.2% ad val.
408.16	11.1% ad val.
408.17	6.8% ad val.
408.18	13.5% ad val.
408.19	13.5% ad val.
408.24	6.9% ad val.
408.28	12.5% ad val.
408.31	6.9% ad val.
408.32	10.7% ad val.
408.36	0.8¢ per lb. + 9.7% ad val.
408.41	8.5% ad val.
408.44	5.9% ad val.
408.48	5.9% ad val.
408.54	6.1% ad val.
408.61	6.3% ad val.
408.64	5.8% ad val.
408.72	0.3¢ per lb. + 9.4% ad val.
408.76	7.6% ad val.
408.81	0.5¢ per lb. + 9.1% ad val.
408.84	0.4¢ per lb. + 9.2% ad val.
408.88	6.1% ad val.
408.96	5.8% ad val.
409.02	6.1% ad val.
409.06	6.5% ad val.
409.10	0.4¢ per lb. + 9% ad val.
409.14	6.3% ad val.
409.18	5.8% ad val.
409.22	6.6% ad val.
409.26	6.1% ad val.
409.30	7.7% ad val.
409.34	0.1¢ per lb. + 17.7% ad val.
409.38	8.2% ad val.
409.42	14.3% ad val.
409.54	20% ad val.
409.58	14.2% ad val.
409.62	9.2% ad val.

ANNEX V

-8-

TSUS Item No.	Rate of duty
409.66	20% ad val.
409.70	9% ad val.
409.74	20% ad val.
409.78	9.5% ad val.
409.82	20% ad val.
409.86	9% ad val.
409.90	20% ad val.
409.94	8.1% ad val.
409.96	8.2% ad val.
410.00	20% ad val.
410.04	8.3% ad val.
410.08	20% ad val.
410.12	8.4% ad val.
410.16	20% ad val.
410.20	20% ad val.
410.24	20% ad val.
410.28	8.3% ad val.
410.32	20% ad val.
410.36	12.5% ad val.
410.40	12.5% ad val.
410.44	14% ad val.
410.48	10.8% ad val.
410.52	7.2% ad val.
410.56	8.6% ad val.
410.60	7% ad val.
410.64	5.9% ad val.
410.66	8.7% ad val.
410.68	6.7% ad val.
410.72	10.2% ad val.
410.76	7.2% ad val.
410.80	7.6% ad val.
410.84	10% ad val.
410.88	5.3% ad val.
410.92	6.7% ad val.
410.96	6.7% ad val.
411.00	6.4% ad val.
411.04	5.9% ad val.
411.08	6% ad val.
411.12	7.4% ad val.
411.16	6.8% ad val.
411.20	6.8% ad val.
411.24	8% ad val.
411.26	11.6% ad val.
411.27	11.6% ad val.
411.30	7.6% ad val.
411.31	3.7% ad val.
411.40	11.6% ad val.
411.44	7% ad val.
411.48	9.8% ad val.
411.52	6.6% ad val.
411.53	9.2% ad val.
411.55	9.2% ad val.
411.60	6.9% ad val.
411.64	6.9% ad val.
411.68	5.8% ad val.
411.72	7.4% ad val.
411.76	6.6% ad val.
411.80	15% ad val.
411.82	10.8% ad val.
411.87	10.8% ad val.
411.90	6.7% ad val.
411.91	8.1% ad val.
411.93	8.1% ad val.
411.98	6.7% ad val.
412.02	8.2% ad val.
412.06	5.8% ad val.
412.10	8% ad val.
412.14	7.2% ad val.
412.18	13.4% ad val.
412.22	6.8% ad val.
412.26	6.9% ad val.
412.30	6.6% ad val.
412.31	16.6% ad val.
412.35	16.6% ad val.
412.38	7.6% ad val.
412.42	6.9% ad val.
412.48	8.7% ad val.
412.52	7.8% ad val.
412.56	16.2% ad val.
412.60	7.9% ad val.
412.64	6.9% ad val.
412.67	6.9% ad val.
412.69	6.9% ad val.
412.72	9.1% ad val.
412.76	8% ad val.
412.80	23.5% ad val.
412.84	18.9% ad val.
412.88	11.8% ad val.
412.92	16.3% ad val.
412.96	7% ad val.
413.00	6.6% ad val.
413.04	12.2% ad val.
413.08	6.5% ad val.
413.12	9.4% ad val.
413.16	8.4% ad val.
413.20	16.3% ad val.
413.24	6.9% ad val.
413.28	11.9% ad val.
413.32	20% ad val.
413.36	15.7% ad val.
413.40	8.5% ad val.
413.50	10% ad val.
413.51	10% ad val., but not less than the highest rate applicable to any component material
415.05	2¢ per lb.

ANNEX V

-9-

TSUS Item No.	Rate of duty
415.10	5.3% ad val.
415.20	Free
415.27	6¢ per lb.
415.30	6.6% ad val.
415.35	Free
415.40	3.7% ad val.
415.50	3.7% ad val.
416.30	Free
416.40	10.5% ad val.
416.45	4.2% ad val.
417.10	1.6% ad val.
417.16	Free
417.18	Free
417.20	3.1% ad val.
417.22	2.8% ad val.
417.23	3.1% ad val.
417.24	1.7% ad val.
417.26	2.9% ad val.
417.28	4.3% ad val.
417.34	1.5% ad val.
417.36	3.7% ad val.
417.38	3.1% ad val.
417.40	10% ad val.
417.42	11.2% ad val.
417.45	3.1% ad val.
417.50	Free
417.52	4.2% ad val.
417.54	5.8% ad val.
417.64	3.7% ad val.
417.70	4.2% ad val.
417.72	2.5% ad val.
417.74	2% ad val.
417.76	2% ad val.
417.78	2% ad val.
417.80	3.7% ad val.
417.92	3.7% ad val.
418.00	7% ad val.
418.13	Free
418.14	1.8% ad val.
418.18	3.7% ad val.
418.22	2.4% ad val.
418.26	4.7% ad val.
418.28	Free
418.30	10% ad val.
418.35	Free
418.40	7.2% ad val.
418.42	7.2% ad val.
418.44	7.2% ad val.
418.50	4% ad val.
418.52	4% ad val.
418.68	4.2% ad val.
418.72	4.1% ad val.
418.74	4.3% ad val.
418.78	3.9% ad val.
418.94	3.7% ad val.
419.00	3.7% ad val.
419.02	1.9% ad val.
419.04	4.8% ad val.
419.10	3.7% ad val.
419.20	3.1% ad val.
419.24	Free
419.28	1.5% ad val.
419.32	Free
419.34	3.7% ad val.
419.38	3.1% ad val.
419.40	3.7% ad val.
419.42	3.7% ad val.
419.44	4.7% ad val.
419.50	6¢ per lb. + 4% ad val.
419.52	6¢ per lb. + 4% ad val.
419.54	6¢ per lb. + 4% ad val.
419.60	3.2% ad val.
419.70	3.7% ad val.
419.74	3.2% ad val.
419.76	3.7% ad val.
419.80	3.3% ad val.
419.82	6.6% ad val.
419.84	Free
419.90	3.7% ad val.
420.02	1.5¢ per lb.
420.04	1.9% ad val.
420.06	3.3% ad val.
420.08	1.5% ad val.
420.14	1.5¢ per lb.
420.18	Free
420.20	2.8% ad val.
420.22	3% ad val.
420.24	2.4% ad val.
420.26	Free
420.28	5% ad val.
420.30	3.1% ad val.
420.32	10% ad val.
420.34	11.2% ad val.
420.36	3.1% ad val.
420.40	3.7% ad val.
420.54	3.7% ad val.
420.60	3.7% ad val.
420.68	3.1% ad val.
420.78	0.03¢ per lb.
420.82	3¢ per lb.
420.88	Free
420.92	3.7% ad val.
420.94	Free
420.98	2.4% ad val.
421.04	1.7% ad val.
421.08	Free
421.10	3.7% ad val.

ANNEX V

-10-

TSUS Item No.	Rate of duty
421.14	8.6% ad val.
421.16	1.4% ad val.
421.18	2.5% ad val.
421.22	3.7% ad val.
421.36	4.1% ad val.
421.44	33¢ per ton
421.46	2.5% ad val.
421.52	2.9% ad val.
421.54	1.5% ad val.
421.56	10% ad val.
421.60	11.2% ad val.
421.62	3.7% ad val.
421.72	4.2% ad val.
421.74	4.2% ad val.
421.76	4.2% ad val.
421.84	3.7% ad val.
421.86	3.7% ad val.
421.90	3.7% ad val.
422.00	3.7% ad val.
422.10	7.8% ad val.
422.12	7.8% ad val.
422.14	7.8% ad val.
422.20	4.2% ad val.
422.24	4.2% ad val.
422.26	4.2% ad val.
422.30	4.9% ad val.
422.40	10.5% ad val.
422.42	10% ad val.
422.58	4.2% ad val.
422.70	4.2% ad val.
422.72	1.6% ad val.
422.78	3.7% ad val.
422.80	3.7% ad val.
422.82	3.7% ad val.
422.90	3.7% ad val.
422.92	4.2% ad val.
422.94	4.2% ad val.
423.00	3.7% ad val.
423.80	7% ad val.
423.86	6¢ per lb. + 4% ad val.
423.88	2.8% ad val.
423.92	10% ad val.
423.94	7.4% ad val.
423.96	Free
425.02	5.4% ad val.
425.04	4.2% ad val.
425.06	3.7% ad val.
425.08	3.7% ad val.
425.09	3.1% ad val.
425.10	3.5% ad val.
425.14	5.8% ad val.
425.18	6.3% ad val.
425.20	3.7% ad val.
425.22	3.7% ad val.
425.24	3.7% ad val.
425.26	3.7% ad val.
425.28	4.2% ad val.
425.30	12% ad val.
425.32	3.7% ad val.
425.34	4.2% ad val.
425.36	3.7% ad val.
425.38	5.5% ad val.
425.41	3.7% ad val.
425.42	Free
425.70	1.8% ad val.
425.72	1.8% ad val.
425.74	6% ad val.
425.82	5.1% ad val.
425.84	3.7% ad val.
425.86	3.1% ad val.
425.87	4.2% ad val.
425.94	4.3% ad val.
425.99	4.2% ad val.
426.00	3.5% ad val.
426.04	4.2% ad val.
426.08	3.1% ad val.
426.12	1.5% ad val.
426.14	3.1% ad val.
426.18	3.7% ad val.
426.22	7.2% ad val.
426.24	4.2% ad val.
426.26	4.2% ad val.
426.28	1¢ per lb. on copper content
426.32	4.4% ad val.
426.34	4.1% ad val.
426.36	1.1% ad val.
426.42	2.5% ad val.
426.44	4.9% ad val.
426.52	3.7% ad val.
426.54	4.7% ad val.
426.56	4.8% ad val.
426.58	3.7% ad val.
426.62	3.7% ad val.
426.64	3.7% ad val.
426.72	1.8% ad val.
426.76	4.6% ad val.
426.77	5.1% ad val.
426.78	5.1% ad val.
426.82	4.1% ad val.
426.84	3.1% ad val.
426.86	3.7% ad val.
426.88	4.2% ad val.
426.92	3.7% ad val.
426.94	8.4% ad val.
426.98	5.5% ad val.
427.04	3.7% ad val.
427.06	3.7% ad val.
427.08	3.7% ad val.
427.12	3.7% ad val.

ANNEX V

-11-

TSUS Item No.	Rate of duty
427.14	7.8% ad val.
427.16	4.2% ad val.
427.18	4.9% ad val.
427.20	4.9% ad val.
427.22	7.5% ad val.
427.25	3.7% ad val.
427.28	3.7% ad val.
427.30	3.7% ad val.
427.42	5.1% ad val.
427.44	20% ad val.
427.45	3.7% ad val.
427.46	7.2% ad val.
427.53	3.7% ad val.
427.54	5.8% ad val.
427.56	5.1% ad val.
427.58	5.6% ad val.
427.60	Free
427.62	3.1% ad val.
427.70	7.5% ad val.
427.72	7.2% ad val.
427.82	6% ad val.
427.84	3.7% ad val.
427.92	1.3¢ per lb.
427.94	3.7% ad val.
427.97	18% ad val.
427.98	3.7% ad val.
428.04	5.5% ad val.
428.12	3.7% ad val.
428.20	5.4% ad val.
428.22	5.7% ad val.
428.24	4.9% ad val.
428.26	5.3% ad val.
428.32	3.7% ad val.
428.34	12% ad val.
428.40	3.7% ad val.
428.41	6.7% ad val.
428.42	3.7% ad val.
428.44	3.7% ad val.
428.54	3.7% ad val.
428.58	3.7% ad val.
428.62	3.7% ad val.
428.64	3.7% ad val.
428.66	3.7% ad val.
428.68	3.8% ad val.
428.72	3.7% ad val.
428.80	4.6% ad val.
428.82	3.7% ad val.
428.84	9% ad val.
428.86	12% ad val.
428.88	4.8% ad val.
428.92	3.7% ad val.
428.94	7.8% ad val.
428.96	5.6% ad val.
429.00	5.5% ad val.
429.10	4% ad val.
429.12	4% ad val.
429.19	0.9¢ per lb. + 4.6% ad val.
429.26	20% ad val.
429.28	0.7¢ per lb. + 3.5% ad val.
429.29	0.6¢ per lb. + 3% ad val.
429.30	3.7% ad val.
429.32	3.7% ad val.
429.34	3.4% ad val.
429.38	4.9% ad val.
429.42	4.2% ad val.
429.44	12% ad val.
429.46	4.6% ad val.
429.49	3.7% ad val.
429.51	3.7% ad val.
429.56	3.7% ad val.
429.60	3.7% ad val.
429.70	7.2% ad val.
429.85	6% ad val.
429.95	3.7% ad val.
430.20	3.7% ad val., but not less than the highest rate applicable to any component compound
432.15	3.7% ad val., but not less than the highest rate applicable to any component material
432.25	3.7% ad val., but not less than the highest rate applicable to any component material
436.00	The rate provided for such product in this subpart, but not less than 3.7% ad val.
437.02	6% ad val.
437.04	20¢ per lb.
437.06	6.6% ad val.
437.10	83¢ per oz.
437.12	3.7% ad val.
437.13	3.7% ad val.

ANNEX V

-12-

TSUS Item No.	Rate of duty
437.14	$1 per oz.
437.16	2¢ per oz.
437.18	9¢ per lb.
437.20	3.7% ad val.
437.22	1.8% ad val.
437.30	1.8% ad val.
437.32	3.7% ad val.
437.36	5% ad val.
437.38	50¢ per lb.
437.40	3.7% ad val.
437.44	4.7% ad val.
437.52	3.7% ad val.
437.54	5.3% ad val.
437.55	4.2% ad val.
437.56	6% ad val.
437.57	3.2% ad val.
437.58	1.8% ad val.
437.60	3.7% ad val.
437.65	3.7% ad val.
437.68	1.5% ad val.
437.69	1.5% ad val.
437.70	7% ad val.
437.72	4.2% ad val.
437.74	12% ad val.
437.82	3.1% ad val.
437.84	Free
437.86	2.7% ad val.
438.01	3.1% ad val.
438.02	The rate provided for such product in this subpart, but not less than 3.7% ad val.
440.00	The rate provided for such product in this subpart, but not less than 3.7% ad val.
445.05	6.3% ad val.
445.10	6.3% ad val.
445.15	6.3% ad val.
445.20	5.6% ad val.
445.25	5.2% ad val.
445.30	12.5% ad val.
445.35	6.9% ad val.
445.42	3.2% ad val.
445.48	5.3% ad val.
445.52	12.5% ad val.
445.54	0.7¢ per lb. + 5.7% ad val.
445.56	1¢ per lb. + 7.7% ad val.
446.10	Free
446.12	Free
446.15	Free
446.30	Free
450.10	4.2% ad val.
452.24	2.8% ad val.
452.48	2.5% ad val.
452.54	6.6% ad val.
452.58	Free
452.80	Free
455.02	3% ad val.
455.06	5.3% ad val.
455.30	0.2¢ per lb. + 2.4% ad val.
455.32	1.2¢ per lb. + 3.6% ad val.
455.36	Free
455.38	0.8¢ per lb. + 2.4% ad val.
460.15	6.4% ad val.
460.25	6.4% ad val.
460.35	3% ad val.
460.40	4.8% ad val.
460.45	4.8% ad val.
460.50	6.4% ad val.
460.65	6.4% ad val.
460.70	7.2% ad val.
460.75	6.4% ad val.
460.80	4.8% ad val.
460.85	5¢ per lb. + 4.1% ad val.
460.90	5¢ per lb. + 4.7% ad val.
461.10	5.8% ad val.
461.15	4¢ per lb. + 6.1% ad val.
461.20	Free
461.30	5% ad val.
461.35	5% ad val.
461.40	4.9% ad val.
461.45	5¢ per lb. + 4.5% ad val.
465.05	0.9¢ per lb. + 4.3% ad val.
465.10	1¢ per lb. + 4.5% ad val.
465.15	1¢ per lb. + 4.5% ad val.
465.20	1¢ per lb. + 4.5% ad val.
465.25	3.7% ad val.
465.30	0.5¢ per lb. + 3.4% ad val.
465.35	3.7% ad val.
465.40	0.5¢ per lb. + 3.4% ad val.
465.45	3.7% ad val.

ANNEX V

-13-

TSUS Item No.	Rate of duty
465.50	0.5¢ per lb. + 3.5% ad val.
465.55	3.7% ad val.
465.60	0.2¢ per lb. + 3.6% ad val.
465.65	2.8% ad val.
465.70	3.2% ad val.
465.75	0.4¢ per lb. + 2.8% ad val.
465.80	0.4¢ per lb. + 4.3% ad val.
465.85	4.7% ad val.
465.87	6.4% ad val.
465.90	3.7% ad val.
465.92	Free
465.95	3.7% ad val.
466.05	3.1% ad val.
466.15	0.5¢ per lb. + 3.6% ad val.
466.20	4.7% ad val.
466.25	0.4¢ per lb. + 2.9% ad val.
466.30	Free
470.18	3.1% ad val.
470.85	3.1% ad val.
472.04	4.2% ad val.
472.22	1.4% ad val.
472.24	Free
472.30	5.3% ad val.
472.44	2% ad val.
472.50	5.8% ad val.
473.02	3.7% ad val.
473.06	3.7% ad val.
473.10	3.7% ad val.
473.12	3.7% ad val.
473.14	3.7% ad val.
473.16	3.7% ad val.
473.18	3.7% ad val.
473.19	3.7% ad val.
473.20	3.7% ad val.
473.24	5% ad val.
473.30	3.7% ad val.
473.44	5.8% ad val.
473.50	5.8% ad val.
473.54	2.3% ad val.
473.70	6% ad val.
473.72	2.2% ad val.
473.74	3.8% ad val.
473.76	Free
473.80	2.8% ad val.
473.82	3.4% ad val.
473.84	1.5% ad val.
473.86	5.3% ad val.
473.88	3.1% ad val.
473.90	5.8% ad val.
474.02	0.15¢ per piece
474.04	0.5¢ per piece + 2.8% ad val.
474.06	0.4¢ per piece + 3.6% ad val.
474.08	6.5% ad val. on the entire set
474.20	Free
474.22	3.1% ad val.
474.26	1.8% ad val.
474.30	3.1% ad val.
474.35	4.9% ad val.
474.40	3.1% ad val.
474.42	Free
474.44	4¢ per lb.
474.46	Free
474.50	3.1% ad val.
474.62	3.7% ad val.
475.55	5.8% ad val.
475.60	0.6¢ per lb. + 5.7% ad val.
485.10	Free
485.20	3¢ per lb.
485.30	7.2% ad val.
490.05	7.4% ad val.
490.14	0.5¢ per lb. + 3.2% ad val.
490.30	3.7% ad val.
490.32	4.2% ad val.
490.42	5.8% ad val.
490.44	6.2% ad val.
490.46	4% ad val.
490.48	3.7% ad val.
490.50	3.7% ad val.
490.90	3.8% ad val.
490.92	3.7% ad val.
490.94	3.7% ad val.
493.10	2.5% ad val.
493.22	2.6% ad val.
493.25	5.8% ad val.
493.26	4.8% ad val.
493.30	0.5¢ per lb.
493.46	5.1% ad val.
493.66	15% ad val.
493.67	3.4% ad val.
493.68	5.8% ad val.
493.82	Free
494.52	Free
494.60	2.1% ad val.
495.05	2.4% ad val.
495.10	3.5% ad val.
495.15	3.1% ad val.
495.20	5.8% ad val.
511.25	4.9% ad val.

ANNEX V

-14-

TSUS Item No.	Rate of duty
511.41	5.2% ad val.
511.64	4.9% ad val.
511.65	4.9% ad val.
511.71	6.9% ad val.
512.24	42¢ per ton
512.31	$2.55 per ton
512.35	$2.80 per ton
513.11	Free
513.21	Free
513.31	Free
513.36	Free
513.41	Free
513.51	3.1% ad val.
513.74	4.2% ad val.
513.81	4.9% ad val.
513.84	6.9% ad val.
513.94	5.3% ad val.
514.21	Free
514.24	6% ad val.
514.34	3.7% ad val.
514.41	4.9% ad val.
514.44	6.9% ad val.
514.51	12¢ per cu. ft.
514.57	20¢ per cu. ft.
514.61	2.1% ad val.
514.65	2.8% ad val.
514.81	6% ad val.
515.11	6.6% ad val.
515.14	3.7% ad val.
515.21	4¢ per cu. ft.
515.24	6% ad val.
515.31	4.9% ad val.
515.34	6.9% ad val.
515.51	Free
515.54	6% ad val.
516.21	4.2% ad val.
516.81	2.4% ad val.
516.91	5.3% ad val.
517.11	Free
517.21	3% ad val.
517.51	3% ad val.
517.61	2.4% ad val.
517.71	2.8% ad val.
517.74	2.4% ad val.
517.81	3.7% ad val.
517.91	4.9% ad val.
518.21	Free
518.51	Free
519.31	0.13¢ per lb.
519.51	2.5% ad val.
519.83	4.9% ad val.
519.84	4.5¢ per lb. + 3.9% ad val.
519.86	3.7% ad val.
519.91	3.7% ad val.
519.93	4.7% ad val.
519.95	Free
519.97	4.9% ad val.
520.21	3% ad val.
520.31	4.9% ad val.
520.37	Free
520.39	2.1% ad val.
520.54	6% ad val.
520.71	3.1% ad val.
520.75	6% ad val.
521.71	38¢ per ton
521.74	77¢ per ton
521.87	2.5% ad val.
522.41	2.8% ad val.
522.45	4.9% ad val.
522.61	Free
522.71	1.8% ad val.
522.81	4.9% ad val.
523.33	2.4% ad val.
523.61	2.8% ad val.
523.91	4.9% ad val.
523.94	6.9% ad val.
531.01	0.16¢ per lb.
531.11	3% ad val.
531.21	6.6% ad val.
531.24	Free
531.33	4.9% ad val.
531.35	3.7% ad val.
531.37	9% ad val.
531.39	4.9% ad val.
532.14	Free
532.20	20% ad val.
532.22	20% ad val.
532.24	19% ad val.
532.27	20% ad val.
532.41	4.2% ad val.
532.61	4.9% ad val.
533.11	Free
533.15	2.5% ad val.
533.20	35% ad val.
533.22	11.5% ad val.
533.24	4.5% ad val.
533.29	5.5% ad val.
533.32	5.5% ad val.
533.34	4.5% ad val.
533.39	11.5% ad val.
533.52	35% ad val.
533.54	8% ad val.
533.62	26% ad val.
533.64	8% ad val.
533.72	9% ad val.
533.74	17.5% ad val.
533.76	9% ad val.
533.78	8% ad val.

ANNEX V

-15-

TSUS Item No.	Rate of duty
534.11	3.1% ad val.
534.21	4.2% ad val.
534.31	2.1% ad val.
534.74	2.5% ad val.
534.76	2.5% ad val.
534.81	2¢ per doz. pcs. + 7% ad val.
534.84	7% ad val.
534.87	7% ad val.
534.91	6.6% ad val.
534.94	9% ad val.
534.97	6.9% ad val.
535.11	6% ad val.
535.12	4.9% ad val.
535.14	6% ad val.
535.21	12% ad val.
535.24	8.2% ad val.
535.27	4% ad val.
535.31	7.2% ad val.
535.41	4.7% ad val.
536.11	9% ad val.
536.15	8% ad val.
540.11	4.9% ad val.
540.13	6% ad val.
540.14	Free
540.15	4.9% ad val.
540.27	13.6% ad val.
540.32	7.8% ad val.
540.37	5% ad val.
540.41	4.7% ad val.
540.43	7.5% ad val.
540.51	5.3% ad val.
540.55	7.2% ad val.
540.61	Free
540.63	4% ad val.
540.65	8.2% ad val.
540.67	10% ad val.
540.71	6.2% ad val.
541.31	0.2¢ per lb. + 0.9% ad val.
542.33	0.4¢ per lb.
542.35	0.4¢ per lb.
542.37	0.7¢ per lb.
542.44	0.5¢ per lb.
542.46	0.6¢ per lb.
542.48	0.6¢ per lb.
542.67	3.5¢ per lb.
542.71	0.6¢ per lb. + 2% ad val.
542.73	0.6¢ per lb. + 2% ad val.
542.75	0.6¢ per lb. + 2% ad val.
542.77	0.6¢ per lb. + 2% ad val.
542.92	0.6¢ per lb. + 2% ad val.
542.94	0.6¢ per lb. + 2% ad val.
542.96	0.6¢ per lb. + 2% ad val.
542.98	0.6¢ per lb. + 2% ad val.
543.11	3¢ per sq. ft.
543.23	2¢ per sq. ft.
543.27	1.5¢ per sq. ft.
543.31	6% ad val.
543.61	Free
543.63	1¢ per sq. ft. + 0.4% ad val.
543.67	1.5¢ per sq. ft. + 0.4% ad val.
543.69	6.3% ad val.
544.14	6.3% ad val.
544.16	7.2% ad val.
544.18	4.9% ad val.
544.31	6.2% ad val.
544.41	5.5% ad val.
544.51	7.8% ad val.
544.61	4.4% ad val.
544.64	7.2% ad val.
545.11	3.7% ad val.
545.17	7.5% ad val.
545.21	Free
545.25	Free
545.31	1.6¢ each + 8% ad val.
545.34	2.8¢ each + 8% ad val.
545.35	4¢ each + 8% ad val.
545.37	6¢ each + 8% ad val.
545.55	6.5% ad val.
545.57	6.5% ad val.
545.61	6.7% ad val.
545.63	6.5% ad val.
545.67	6.5% ad val.
545.81	2.4% ad val.
545.87	6.6% ad val.
546.20	6% ad val.
546.21	6.5% ad val.
546.23	8% ad val.
546.25	6.6% ad val.
546.39	9% ad val.
546.47	7.8% ad val.
546.52	38% ad val.
546.64	7.2% ad val.
546.68	7.2% ad val.
547.11	4.9% ad val.

ANNEX V

-16-

TSUS Item No.	Rate of duty
547.13	9.6% ad val.
547.15	5% ad val.
547.21	5.8% ad val.
547.31	3.7% ad val.
547.37	6.6% ad val.
547.41	4.9% ad val.
547.43	5.8% ad val.
547.53	5.8% ad val.
547.55	8.4% ad val.
548.01	4.7% ad val.
548.03	7.5% ad val.
548.05	6.6% ad val.
601.33	9¢ per lb. on molybdenum content
602.20	0.3¢ per lb. on zinc content
603.15	30¢ per ton
603.25	0.9¢ per lb. on lead content
603.30	0.6¢ per lb.
603.40	6¢ per lb. on molybdenum content + 1.9% ad val.
603.49	0.7¢ per lb. on copper content + 0.5¢ per lb. on lead content + 0.5¢ per lb. on zinc content
603.50	0.32¢ per lb. on copper content + 0.3¢ per lb. on lead content + 0.3¢ per lb. on zinc content
603.54	0.6¢ per lb. on copper content + 0.4¢ per lb. on lead content + 0.4¢ per lb. on zinc content
603.55	Free
603.70	5% ad val.
605.03	8.2% ad val.
605.05	10% ad val.
605.06	6.5% ad val.
605.08	8.2% ad val.
605.27	7.5% ad val.
605.28	8.2% ad val.
605.46	7.5% ad val.
605.47	10% ad val.
605.48	6% ad val.
605.60	6.5% ad val.
605.65	6% ad val.
606.22	3.1% ad val.
606.26	2.3% ad val.
606.31	4.5% ad val.
606.33	2.4% ad val.
606.37	1.5% ad val.
606.40	5.8% ad val.
606.44	3.9% ad val.
606.46	3.7% ad val.
606.48	5.6% ad val.
606.50	4.2% ad val.
606.51	4.2% ad val.
606.57	Free
606.59	Free
606.62	4% ad val.
606.67	4.2% ad val.
606.69	5.1% ad val. + additional duties
606.71	4.2% ad val.
606.73	4% ad val. + additional duties
606.75	2% ad val.
606.77	2.3% ad val. + additional duties
606.79	4.9% ad val.
606.81	5.7% ad val. + additional duties
606.83	4.7% ad val.
606.86	3.2% ad val.
606.91	6% ad val. + additional duties
606.97	6% ad val. + additional duties
606.99	7.5% ad val. + additional duties
607.05	5.3% ad val.
607.07	4.9% ad val.
607.09	5.7% ad val. + additional duties
607.22	5.8% ad val.
607.32	2% ad val. + additional duties
607.41	4.5% ad val. + additional duties

ANNEX V

-17-

TSUS Item No.	Rate of duty
607.48	4.1% ad val. + additional duties
607.59	4.5% ad val. + additional duties
607.62	5.5% ad val.
607.64	3.2% ad val.
607.66	6% ad val.
607.67	4.9% ad val.
607.69	3.8% ad val. + additional duties
607.78	3.8% ad val. + additional duties
607.83	5.1% ad val.
607.86	4% ad val. + additional duties
607.91	5.8% ad val. + additional duties
607.92	5.8% ad val. + additional duties
607.93	4% ad val. + additional duties
607.94	6.5% ad val.
607.97	5.1% ad val.
607.99	3.5% ad val.
608.01	4% ad val.
608.07	5.5% ad val.
608.11	5.4% ad val.
608.13	6.5% ad val.
608.14	6.2% ad val. + additional duties
608.19	2.4% ad val.
608.21	3.4% ad val.
608.23	5.7% ad val.
608.26	5.1% ad val. + additional duties
608.31	5.1% ad val. + additional duties
608.38	5.1% ad val. + additional duties
608.39	7% ad val. + additional duties
608.47	6% ad val. + additional duties
608.55	6% ad val. + additional duties
608.59	6.3% ad val. + additional duties
608.67	6.3% ad val. + additional duties
609.14	5.1% ad val.
609.15	5.8% ad val. + additional duties
609.17	5.7% ad val.
609.20	4.2% ad val.
609.21	3.2% ad val.
609.22	5.1% ad val.
609.25	4.2% ad val.
609.28	5.2% ad val.
609.30	3.2% ad val. + additional duties
609.33	5.8% ad val. + additional duties
609.35	5.2% ad val. + additional duties
609.36	5.9% ad val. + additional duties
609.37	6% ad val. + additional duties
609.40	5.3% ad val.
609.43	5.3% ad val.
609.45	9% ad val. + additional duties
609.70	5.5% ad val.
609.72	5.6% ad val.
609.75	6.2% ad val. + additional duties
609.76	6.2% ad val. + additional duties
609.82	2% ad val. + additional duties
609.84	4.4% ad val.

ANNEX V

-18-

TSUS Item No.	Rate of duty
609.86	5.3% ad val. + additional duties
609.88	4.9% ad val.
609.90	5.7% ad val. + additional duties
609.98	1.8% ad val. + additional duties
610.21	3.5% ad val. + additional duties
610.26	3.1% ad val. + additional duties
610.30	4.5% ad val.
610.31	2.6% ad val.
610.35	3.7% ad val. + additional duties
610.36	3.5% ad val. + additional duties
610.40	3.3% ad val. + additional duties
610.42	6% ad val.
610.43	6.2% ad val. + additional duties
610.45	6.2% ad val.
610.46	6.7% ad val. + additional duties
610.48	6.2% ad val.
610.49	8% ad val.
610.51	7.5% ad val. + additional duties
610.52	7.5% ad val. + additional duties
610.56	4% ad val.
610.58	6.5% ad val. + additional duties
610.62	5.8% ad val.
610.63	6.5% ad val. + additional duties
610.65	2.5% ad val.
610.66	3.7% ad val. + additional duties
610.70	5.1% ad val.
610.71	5.8% ad val. + additional duties
610.74	6.2% ad val.
610.82	6.2% ad val.
610.84	6.2% ad val.
610.86	6.2% ad val.
610.88	6.2% ad val.
610.89	6.2% ad val.
610.90	6.2% ad val.
610.92	6.2% ad val.

TSUS Item No.	Rate of duty	
	Column 1-a	Column 1-b
612.03	1% ad val. on the value of the copper content	0.7¢ per lb. on 99.6% of the copper content
612.05	4.6% ad val.	0.7¢ per lb. on copper content + 3.5% ad val.
612.08	2.4% ad val.	0.4¢ per lb. on 99.6% of the copper content + 2% ad val.
612.10	Free	0.4¢ per lb. on 99.6% of the copper content
612.17	5.3% ad val.	0.5¢ per lb. + 3.5% ad val.
612.20	6% ad val.	0.4¢ per lb. + 5.5% ad val.

ANNEX V

-19-

TSUS Item No.	Rate of duty Column 1-a	Column 1-b
612.30	6.7% ad val.	0.4¢ per lb. + 6.5% ad val.
612.31	1% ad val.	1¢ per lb.
612.32	4.7% ad val.	0.3¢ per lb. + 4.5% ad val.
612.34	6.5% ad val.	0.4¢ per lb. + 6.5% ad val.
612.35	6.2% ad val.	0.4¢ per lb. on copper content + 6% ad val.
612.36	6.2% ad val.	0.4¢ per lb. + 6% ad val.
612.38	6.7% ad val.	0.4¢ per lb. + 6.5% ad val.
612.40	6.7% ad val.	0.4¢ per lb. + 6% ad val.
612.41	6.3% ad val.	0.4¢ per lb. + 6% ad val.
612.43	6.7% ad val.	0.4¢ per lb. + 6.5% ad val.
612.45	5.1% ad val.	0.5¢ per lb. + 5% ad val.
612.50	6.3% ad val.	0.4¢ per lb. + 6% ad val.
612.52	5.2% ad val.	0.5¢ per lb. + 4.5% ad val.
612.55	3% ad val.	4.5¢ per lb.
612.56	5.4% ad val.	0.5¢ per lb. + 5% ad val.
612.60	1% ad val.	1¢ per lb.
612.61	7.3% ad val.	0.5¢ per lb. on copper content + 7% ad val.
612.62	2.2% ad val.	
612.63	6.2% ad val.	0.4¢ per lb. + 6% ad val.
612.64	1.6% ad val.	
612.70	7.3% ad val.	0.5¢ per lb. on copper content + 7.2% ad val.
612.71	7.4% ad val.	0.5¢ per lb. on copper content + 0.02¢ per lb. + 7% ad val.
612.72	4% ad val.	0.6¢ per lb. on copper content + 3.5% ad val.
612.73	4.4% ad val.	0.7¢ per lb. on copper content + 0.03¢ per lb. + 4% ad val.
612.80	6.3% ad val.	0.4¢ per lb. + 6% ad val.

ANNEX V

-20-

TSUS Item No.	Rate of duty Column 1-a	Column 1-b
612.81	3.2% ad val.	0.8¢ per lb. on copper content + 2¢ per lb.
612.82	5.2% ad val.	0.5¢ per lb. + 4.5% ad val.
613.02	1.5% ad val.	1.4¢ per lb.
613.03	2.1% ad val.	
613.04	5% ad val.	0.3¢ per lb. + 5% ad val.
613.06	6.2% ad val.	0.4¢ per lb. + 6% ad val.
613.08	5.1% ad val.	0.5¢ per lb. + 4.5% ad val.
613.11	0.6¢ per lb. on copper content + 2.3¢ per lb.	0.8¢ per lb. on copper content + 2.3¢ per lb.
613.12	4.5% ad val.	0.4¢ per lb. + 4.5% ad val.
613.18	3.2% ad val.	0.3¢ per lb. + 3% ad val.

TSUS Item No.	Rate of duty
618.01	2.6% ad val.
618.02	Free
618.04	2.1% ad val.
618.06	Free
618.15	2.6% ad val.
618.17	5% ad val.
618.20	4.2% ad val.
618.22	4.2% ad val.
618.29	6.5% ad val.
618.42	5.7% ad val.
618.47	5.7% ad val.
620.08	6% ad val.
620.10	3.5% ad val.
620.12	4.7% ad val.
620.16	5.5% ad val.
620.20	3.7% ad val.
620.22	4.7% ad val.
620.26	5.5% ad val.
620.30	Free
620.40	2.5% ad val.
620.42	3% ad val.
620.46	3.6% ad val.
620.50	3.7% ad val.
622.15	2.4% ad val.
622.17	4.8% ad val.
622.22	4.2% ad val.
622.25	4.2% ad val.
622.35	4.2% ad val.
622.40	2.4% ad val.

TSUS Item No.	Rate of duty
624.04	2.3% ad val. on the value of the lead content
624.10	2.7% ad val.
624.14	3.9% ad val.
624.16	6.5% ad val.
624.18	4.2% ad val.
624.20	3.9% ad val.
624.22	2.5% ad val.
624.24	3.9% ad val.
624.32	6.3% ad val.
624.34	6.2% ad val.
624.50	2% ad val.
624.52	4.2% ad val.
624.54	3.9% ad val.
626.02	1.5% ad val.
626.10	2.1% ad val.
626.15	5.7% ad val.
626.18	4.2% ad val.
626.20	5.7% ad val.
626.22	5.7% ad val.
626.24	6.5% ad val.
626.30	4.2% ad val.
626.31	4.2% ad val.
626.35	5.7% ad val.
626.45	3.8% ad val.
628.15	3.7% ad val.
528.17	4.9% ad val.

ANNEX V

-21-

TSUS Item No.	Rate of duty
628.20	5.5% ad val.
628.25	3.7% ad val.
628.30	5.5% ad val.
628.35	Free
628.45	Free
628.50	3.6% ad val.
628.55	8% ad val.
628.57	6.5% ad val.
628.59	4.5¢ per lb. on magnesium content + 2.5% ad val.
628.70	6% ad val.
628.72	6.3¢ per lb. on molybdenum content + 1.9% ad val.
628.74	6.6% ad val.
628.90	3.7% ad val.
628.95	5.5% ad val.
629.05	3.7% ad val.
629.07	4.9% ad val.
629.10	5.5% ad val.
629.12	7.2% ad val.
629.14	15% ad val.
629.20	15% ad val.
629.25	4.9% ad val.
629.28	10.5% ad val.
629.29	6% ad val.
629.30	6.6% ad val.
629.32	4.7% ad val.
629.33	6.6% ad val.
629.35	6.5% ad val.
629.50	5% ad val.
629.60	4.2% ad val.
629.62	4.9% ad val.
629.65	5.5% ad val.
632.02	Free
632.04	Free
632.06	Free
632.12	3.7% ad val.
632.16	3% ad val.
632.18	3.7% ad val.
632.24	3.7% ad val.
632.28	5.6% ad val.
632.34	7.5¢ per lb.
632.38	3.7% ad val.
632.43	3.7% ad val.
632.46	3.7% ad val.
632.48	Free
632.50	Free
632.52	4.2% ad val.
632.58	3.7% ad val.
632.60	Free
632.62	5.5% ad val.
632.66	5.5% ad val.
632.68	3% ad val.
632.78	32¢ per lb.
632.79	20¢ per lb. + 2.4% ad val.
632.88	5.5% ad val.
633.00	5.5% ad val.
640.20	3% ad val.
640.25	5.7% ad val.
640.30	Free
640.35	2.6% ad val.
640.40	2.4% ad val.
642.06	4.7% ad val.
642.08	5.8% ad val.
642.09	4.9% ad val.
642.11	4.9% ad val.
642.12	3.5% ad val.
642.14	4.4% ad val.
642.18	4.9% ad val.
642.20	5.7% ad val.
642.25	10% ad val.
642.27	7.8% ad val.
642.31	10% ad val.
642.34	10% ad val.
642.45	6% ad val.
642.47	6.6% ad val.
642.50	5.4% ad val.
642.52	4.9% ad val.
642.56	4% ad val.
642.58	4.5% ad val.
642.60	3.7% ad val.
642.62	4.9% ad val.
642.64	4.9% ad val.
642.66	3.9% ad val.
642.68	4% ad val.
642.70	4.6% ad val.
642.72	3.7% ad val.
642.74	7.2% ad val.
642.76	6.7% ad val.
642.78	6.6% ad val.
642.80	5.7% ad val.
642.82	3.2% ad val.
642.85	4.6% ad val.
642.87	4.7% ad val.
642.91	5.7% ad val.
642.97	5.3% ad val.
644.02	1% ad val.
644.06	5.3% ad val.
644.08	9.8% ad val.
644.09	5.8% ad val.
644.11	5.8% ad val.
644.12	5.3% ad val.
644.15	7% ad val.
644.17	4.7% ad val.
644.18	3.9% ad val.

ANNEX V

-22-

TSUS Item No.	Rate of duty
644.20	3.8% ad val.
644.22	3.6% ad val.
644.24	6% ad val.
644.26	5.7% ad val.
644.28	2.2% ad val.
644.30	5.7% ad val.
644.32	5.5% ad val.
644.36	3.3% ad val.
644.38	3.7% ad val.
644.40	Free
644.42	Free
644.48	38.5¢ for each 1,140 sq. in.
644.52	5.2% ad val.
644.60	8.2% ad val.
644.64	2.7% ad val.
644.68	3.8% ad val.
644.80	3.7% ad val.
644.84	4.8% ad val.
644.98	1.8% ad val.
646.17	4.9% ad val.
646.22	5.7% ad val.
646.27	3.1% ad val.
646.30	3.2% ad val.
646.34	5.1% ad val.
646.36	5.7% ad val.
646.41	4.7% ad val.
646.42	5.7% ad val.
646.45	2.6% ad val.
646.47	3.8% ad val.
646.51	6.3% ad val.
646.53	5.5% ad val.
646.57	4.7% ad val.
646.58	0.45¢ per lb.
646.60	6.2% ad val.
646.65	5.8% ad val.
646.72	5.7% ad val.
646.74	1.4% ad val.
646.75	6.3% ad val.
646.76	5.5% ad val.
646.77	5.1% ad val.
646.78	5.7% ad val.
646.80	2.3% ad val.
646.81	3.8% ad val.
646.82	4.6% ad val.
646.83	6.1% ad val.
646.84	4.8% ad val.
646.85	4.2% ad val.
646.86	5.3% ad val.
646.87	5.6% ad val.
646.88	12.3% ad val.
646.89	5.3% ad val.
646.90	6.2% ad val.
646.92	5.7% ad val.
646.95	3.9% ad val.
646.97	4.2% ad val.
647.01	3.1% ad val.
647.03	5.7% ad val.
647.05	5.1% ad val.
647.10	8% ad val.
648.51	3% ad val.
648.53	2.8% ad val.
648.55	3% ad val.
648.57	3% ad val.
648.61	2.8% ad val.
648.67	6.2% ad val.
648.69	Free
648.71	0.6¢ each + 3.8% ad val.
648.73	2¢ each + 5.1% ad val.
648.75	1¢ each + 2.8% ad val.
648.80	12% ad val.
648.82	12% ad val.
648.85	1¢ each + 5.5% ad val.
648.89	5.7% ad val.
648.91	2¢ each + 4.4% ad val.
648.93	6% ad val.
648.95	4.2% ad val.
648.97	9% ad val.
649.01	5¢ per doz.
649.03	9¢ per doz.
649.05	12¢ per doz.
649.07	7¢ per doz.
649.11	Free
649.14	3.1% ad val.
649.17	3.1% ad val.
649.19	3.7% ad val.
649.21	8¢ per gross
649.23	7.2% ad val.
649.24	3.4% ad val.
649.25	Free
649.26	4.9% ad val.
649.27	5.7% ad val.
649.29	3.7% ad val.
649.31	3.7% ad val.
649.32	5.7% ad val.
649.35	5.5% ad val.
649.41	2.5% ad val.
649.43	7.2% ad val.
649.44	8.4% ad val.
649.46	6% ad val.
649.47	6.2% ad val.
649.48	4.9% ad val.
649.49	3.7% ad val.
649.53	7% ad val.
649.57	5.3% ad val.

ANNEX V

-23-

TSUS Item No.	Rate of duty
649.67	3.7% ad val.
649.73	10% ad val.
649.75	10% ad val.
649.77	2¢ each + 5% ad val.
649.79	2.5¢ each + 5% ad val.
649.81	2¢ each + 5% ad val.
649.83	3¢ each + 5.4% ad val.
649.85	1¢ each + 5.4% ad val.
649.87	3¢ each + 5.4% ad val.
649.89	1¢ each + 5.4% ad val.
649.91	8% ad val.
650.01	0.2¢ each + 2.8% ad val.
650.03	1¢ each + 4.9% ad val.
650.05	5.5% ad val.
650.07	0.6¢ each + 4.7% ad val.
650.13	1¢ each + 4% ad val.
650.15	1¢ each + 5.7% ad val.
650.17	1¢ each + 4.6% ad val.
650.19	4.4% ad val.
650.21	0.4¢ each + 6.1% ad val.
650.31	0.3¢ each + 3.2% ad val.
650.35	5.4% ad val.
650.37	0.3¢ each + 4% ad val.
650.43	1¢ each + 4% ad val.
650.45	0.5¢ each + 3.2% ad val.
650.48	0.3¢ each + 4.5% ad val.
650.50	0.3¢ each + 4.5% ad val.
650.51	6.6% ad val.
650.53	6% ad val.
650.56	7.5% ad val.
650.57	4.4% ad val.
650.61	0.7¢ each + 4.1% ad val.
650.63	1¢ each + 5.1% ad val.
650.65	1¢ each + 4% ad val.
650.71	0.4¢ each + 1% ad val.
650.73	3.1% ad val.
650.75	0.06¢ each + 1.8% ad val.
650.77	3.4% ad val.
650.79	3¢ each + 3% ad val.
650.81	4.5¢ each + 3.2% ad val.
650.83	8% ad val.
650.85	2¢ each + 4.6% ad val.
650.87	0.35¢ each + 4.4% ad val.
650.89	2¢ each + 5.1% ad val.
650.90	10¢ each + 10% ad val.
650.92	10¢ each + 10% ad val.
651.01	7.6% ad val.
651.03	6.6% ad val.
651.04	5.7% ad val.
651.07	7.2% ad val.
651.09	5.8% ad val.
651.11	4% ad val.
651.13	8.1% ad val.
651.15	5% ad val.
651.21	6.2% ad val.
651.23	2.1% ad val.
651.25	0.2¢ per lb.
651.27	6.2% ad val.
651.29	7.2% ad val.
651.31	6.2% ad val.
651.33	5.3% ad val.
651.37	6.2% ad val.
651.45	Free
651.46	5.3% ad val.
651.48	5.3% ad val.
651.49	3.7% ad val.
651.51	4.9% ad val.
651.53	1¢ per lb. + 5% ad val.
651.55	5.3% ad val.
651.60	6.6% ad val.
651.62	8.2% ad val.
651.64	3.8% ad val.
652.03	4.2% ad val.
652.06	2.1% ad val.
652.09	5.8% ad val.
652.13	6.6% ad val.
652.14	5% ad val.

ANNEX V

-24-

TSUS Item No.	Rate of duty
652.15	4.2% ad val.
652.18	4.2% ad val.
652.21	Free
652.24	1.5% ad val.
652.27	Free
652.35	5.7% ad val.
652.36	5.1% ad val.
652.38	5.7% ad val.
652.41	Free
652.42	5.7% ad val.
652.45	1¢ per lb. + 6% ad val.
652.55	8% ad val.
652.65	4.2% ad val.
652.70	5.3% ad val.
652.72	8.2% ad val.
652.75	3.8% ad val.
652.80	3.8% ad val.
652.86	3.7% ad val.
652.88	5.7% ad val.
652.90	3.4% ad val.
652.92	2.4% ad val.
652.94	2.8% ad val.
652.95	4.2% ad val.
652.96	3.9% ad val.
652.97	5.7% ad val.
653.00	5.7% ad val.
653.01	5.7% ad val.
653.05	2¢ per lb.
653.15	Free
653.20	5.7% ad val.
653.25	5.7% ad val.
653.30	3.7% ad val.
653.35	3.7% ad val.
653.37	5.7% ad val.
653.38	7.6% ad val.
653.39	7.6% ad val.
653.45	5.7% ad val.
653.60	6.6% ad val.
653.62	6% ad val.
653.65	8.2% ad val.
653.70	7.5% ad val.
653.75	8.2% ad val.
653.80	4% ad val.
653.85	Free
653.90	3.1% ad val.
653.93	5.3% ad val.
653.94	3.4% ad val.
653.96	3.4% ad val.
653.99	5.3% ad val.
654.00	3.4% ad val.
654.08	2.7% ad val.
654.16	2.7% ad val.
654.25	3.7% ad val.
654.30	4.9% ad val.
654.35	4.9% ad val.
654.40	3.9% ad val.
654.45	4% ad val.
654.50	3.8% ad val.
654.55	3.9% ad val.
654.60	5.7% ad val.
654.65	3.8% ad val.
654.70	3.1% ad val.
654.75	3.4% ad val.
656.05	8% ad val.
656.10	8.2% ad val.
656.15	6% ad val.
656.20	7.5% ad val.
656.25	10% ad val.
656.35	6.5% ad val.
657.10	3.1% ad val.
657.15	2.4% ad val.
657.24	3.8% ad val.
657.25	5.7% ad val.
657.30	6.3% ad val.
657.35	5% ad val.
657.40	5.7% ad val.
657.50	5.5% ad val.
657.60	4.2% ad val.
657.75	3.9% ad val.
657.80	5.7% ad val.
658.00	5.5% ad val.
660.20	3.1% ad val.
660.22	2.8% ad val.
660.42	3.7% ad val.
660.48	3.1% ad val.
660.56	Free
660.67	3.1% ad val.
660.71	3.7% ad val.
660.80	4% ad val.
660.85	3.4% ad val.
660.92	2.5% ad val.
660.96	Free
660.97	3% ad val.
661.05	Free
661.06	4.7% ad val.
661.09	3.4% ad val.
661.10	3.4% ad val.
661.15	3.7% ad val.
661.20	2.2% ad val.
661.25	3.4% ad val.
661.30	5.7% ad val.
661.35	2.9% ad val.
661.40	5.6% ad val.
661.45	Free
661.50	5.1% ad val.
661.54	Free
661.56	3.7% ad val.
661.65	4% ad val.
661.67	2.4% ad val.

ANNEX V

-25-

TSUS Item No.	Rate of duty
661.68	4.2% ad val.
661.85	3.7% ad val.
661.90	3.9% ad val.
661.92	Free
661.94	3.9% ad val.
661.95	3.9% ad val.
662.10	3.4% ad val.
662.15	4.5% ad val.
662.18	1.3% ad val.
662.20	3.6% ad val.
662.26	3.7% ad val.
662.30	5.5% ad val.
662.35	5.7% ad val.
662.50	3.7% ad val.
664.06	Free
664.07	2% ad val.
664.08	2.5% ad val.
664.10	2% ad val.
666.10	4% ad val.
666.25	3.5% ad val.
668.00	Free
668.02	2% ad val.
668.04	4.7% ad val.
668.06	Free
668.07	3% ad val.
668.10	3.7% ad val.
668.15	5.1% ad val.
668.21	2.4% ad val.
668.23	3.3% ad val.
668.32	80¢ each + 8% ad val.
668.34	8% ad val.
668.36	3.7% ad val.
668.38	Free
670.00	4.7% ad val.
670.02	3.1% ad val.
670.04	4.7% ad val.
670.06	4.2% ad val.
670.12	4.7% ad val.
670.14	4.7% ad val.
670.16	4.4% ad val.
670.17	4.2% ad val.
670.18	5.1% ad val.
670.19	5.1% ad val.
670.21	4.7% ad val.
670.22	4.2% ad val.
670.23	3.7% ad val.
670.25	4.7% ad val.
670.27	4.2% ad val.
670.29	4.4% ad val.
670.33	5.1% ad val.
670.35	4.4% ad val.
670.40	2.8% ad val.
670.41	3.9% ad val.
670.42	3.9% ad val.
670.43	5.1% ad val.
670.50	4.4% ad val.
670.52	3.7% ad val.
670.54	6.6% ad val.
670.56	7% ad val.
670.58	10% ad val.
670.60	19¢ per 1,000 + 6.4% ad val.
670.62	23¢ per 1,000 + 8.2% ad val.
670.64	21¢ per 1,000 + 5.6% ad val.
670.66	4.8% ad val.
670.68	7.8% ad val.
670.70	5.8% ad val.
670.72	4¢ per 1,000 + 5% ad val.
670.90	4.2% ad val.
672.10	Free
672.14	2.5% ad val.
672.16	3.7% ad val.
672.20	6% ad val.
672.22	6.5% ad val.
672.25	2.5% ad val.
674.10	Free
674.20	4.9% ad val.
674.30	5.8% ad val.
674.31	4.2% ad val.
674.33	4.2% ad val.
674.34	4.2% ad val.
674.35	4.4% ad val.
674.40	3.9% ad val.
674.42	3% ad val.
674.50	4.9% ad val.
674.52	5.8% ad val.
674.53	4.7% ad val.
674.55	3.7% ad val.
674.60	4.5% ad val.
674.70	2.5% ad val.
674.75	Free
674.80	5.7% ad val.
674.90	Free
676.07	2.2% ad val.
676.10	4.2% ad val.
676.12	Free
676.15	3.9% ad val.
676.20	3.7% ad val.
676.22	Free
676.23	4.2% ad val.
676.25	3.9% ad val.
676.30	3.7% ad val.
676.50	4% ad val.
676.52	3.9% ad val.
678.20	2.9% ad val.
678.30	3.9% ad val.

ANNEX V

-26-

TSUS Item No.	Rate of duty
678.32	3.7% ad val.
678.35	3.9% ad val.
678.40	3.9% ad val.
678.45	4.2% ad val.
678.50	3.7% ad val.
680.05	5.7% ad val.
680.07	4.2% ad val.
680.12	3.9% ad val.
680.13	3.9% ad val.
680.14	5.6% ad val.
680.17	8% ad val.
680.19	4.4% ad val.
680.25	3.9% ad val.
680.27	3.7% ad val.
680.30	4.9% ad val.
680.33	4.2% ad val.
680.39	6.5% ad val.
680.42	4.2% ad val.
680.46	Free
680.49	2.5% ad val.
680.59	50¢ each + 7.7% ad val.
680.62	9% ad val.
680.92	5.7% ad val.
680.95	5.7% ad val.
681.04	5.7% ad val.
681.07	5.7% ad val.
681.10	5.7% ad val.
681.13	5.7% ad val.
681.15	3.4% ad val.
681.21	5.7% ad val.
681.27	5.7% ad val.
681.36	3.7% ad val.
681.39	5.7% ad val.
682.05	6.6% ad val.
682.07	2.4% ad val.
682.20	10% ad val.
682.25	6.6% ad val.
682.30	4.2% ad val.
682.41	3.7% ad val.
682.45	Free
682.50	4.2% ad val.
682.52	3.7% ad val.
682.55	10% ad val.
682.60	3% ad val.
682.70	3.2% ad val.
682.80	4.9% ad val.
682.90	3.9% ad val.
682.95	5.3% ad val.
683.01	5.3% ad val.
683.12	5.3% ad val.
683.15	5.1% ad val.
683.20	2.2% ad val.
683.30	3.4% ad val.
683.32	4.2% ad val.
683.40	4% ad val.
683.50	4.4% ad val.
683.60	3.1% ad val.
683.65	Free
683.70	25% ad val.
683.80	6.9% ad val.
683.90	2% ad val.
683.95	2.5% ad val.
684.10	2.2% ad val.
684.15	6.8% ad val.
684.20	5.3% ad val.
684.28	Free
684.40	3.7% ad val.
684.48	3.9% ad val.
684.53	3.9% ad val.
684.55	3.9% ad val.
684.65	4.7% ad val.
684.66	4.7% ad val.
684.67	4.7% ad val.
684.70	4.9% ad val.
684.90	4.2% ad val.
684.94	3.7% ad val.
685.00	3.7% ad val.
685.04	3.7% ad val.
685.06	3.7% ad val.
685.08	3.7% ad val.
685.12	8% ad val.
685.14	6% ad val.
685.16	6% ad val.
685.22	2.4% ad val.
685.36	4.4% ad val.
685.37	3.9% ad val.
685.38	3.9% ad val.
685.39	3.9% ad val.
685.40	3.9% ad val.
685.42	4.9% ad val.
685.48	4.9% ad val.
685.49	4.9% ad val.
685.60	4.9% ad val.
685.70	2.7% ad val.
685.90	5.3% ad val.
686.18	3.1% ad val.
686.24	4.9% ad val.
686.40	3.1% ad val.
686.50	3.1% ad val.
686.60	3.1% ad val.
686.70	7.9% ad val.
686.80	Free
687.10	3.7% ad val.
687.20	3.9% ad val.
687.30	2% ad val.
687.42	7.2% ad val.
687.43	7.2% ad val.
687.66	4.2% ad val.
687.79	4.2% ad val.

ANNEX V

-27-

TSUS Item No.	Rate of duty
687.83	4.2% ad val.
688.06	4.9% ad val.
688.17	5.3% ad val.
688.18	5.3% ad val.
688.25	4.2% ad val.
688.30	5.8% ad val.
688.32	5.8% ad val.
688.34	3.9% ad val.
688.36	3.9% ad val.
688.41	3.9% ad val.
688.42	3.9% ad val.
690.05	3.9% ad val.
690.10	6.3% ad val.
690.20	3.7% ad val.
690.35	5.5% ad val.
690.40	3.9% ad val.
692.04	3.1% ad val.
692.10	2.5% ad val.
692.14	5.3% ad val.
692.16	3.7% ad val.
692.22	2.5% ad val.
692.32	3.1% ad val.
692.35	2.2% ad val.
692.40	Free
692.45	Free
692.52	3.7% ad val.
692.53	3.7% ad val.
692.55	4.2% ad val.
692.60	3.2% ad val.
694.31	5% ad val.
694.50	3.7% ad val.
694.61	Free
694.65	5% ad val.
694.67	Free
694.70	6% ad val.
696.05	1.5% ad val.
696.10	1.5% ad val.
696.15	4.2% ad val.
696.30	Free
696.40	4% ad val.
696.50	3.7% ad val.
696.60	3.8% ad val.
700.51	6.6% ad val.
700.54	2.4% ad val.
700.90	7.5% ad val.
702.08	8.4% ad val.
702.14	8% ad val.
702.28	37¢ per doz. + 3.2% ad val.
702.30	50¢ per doz. + 3.8% ad val.
702.32	30¢ per doz. + 5.2% ad val.
702.37	4% ad val.
702.85	16¢ each + 3% ad val.
702.90	5.8% ad val.
702.95	7.5% ad val.
703.20	11% ad val.
703.25	9.4% ad val.
703.30	8.2% ad val.
703.35	$1.10 per doz. + 1.6% ad val.
703.40	22% ad val.
703.45	26% ad val.
703.50	8.2% ad val.
703.55	$1.92 per doz. + 2.8% ad val.
703.60	6.6% ad val.
703.70	4¢ per lb. + 3.4% ad val.
703.80	Free
703.85	Free
704.34	20% ad val.
704.75	6.5% ad val.
704.80	7.5% ad val.
704.95	4% ad val.
705.30	4% ad val.
705.40	$2.45 per doz. pairs
705.42	14% ad val.
705.43	$2 per doz. pairs
705.45	14% ad val.
705.46	14% ad val.
705.48	$2.42 per doz. pairs
705.50	14% ad val.
705.51	$2.35 per doz. pairs
705.53	14% ad val.
705.54	14% ad val.
705.55	$2.35 per doz. pairs
705.57	14% ad val.
705.58	14% ad val.
705.60	$2.40 per doz. pairs
705.63	14% ad val.
705.66	$2.40 per doz. pairs
705.67	$2.40 per doz. pairs
705.68	15% ad val.
705.70	14% ad val.
705.72	$3.75 per doz. pairs
705.73	14% ad val.

ANNEX V

-28-

TSUS Item No.	Rate of duty
705.74	14% ad val.
705.76	$3.50 per doz. pairs
705.78	14% ad val.
705.82	3.7% ad val.
705.83	3.7% ad val.
705.85	14% ad val.
705.86	14% ad val.
705.90	3.7% ad val.
706.04	4.7% ad val.
706.06	5.3% ad val.
706.09	9% ad val.
706.13	8% ad val.
706.16	5.8% ad val.
706.19	18% ad val.
706.21	18% ad val.
706.29	5.3% ad val.
706.42	5.5¢ per lb. + 4.6% ad val.
706.43	5.5¢ per lb. + 4.6% ad val.
706.44	8.2% ad val.
706.45	7.8% ad val.
706.47	7.8% ad val.
706.50	8.8% ad val.
706.55	7.8% ad val.
707.90	8.4% ad val.
708.01	5.6% ad val.
708.03	5.6% ad val.
708.05	8% ad val.
708.07	8% ad val.
708.10	8.4% ad val.
708.21	7% ad val.
708.23	6.6% ad val.
708.25	8% ad val.
708.27	8% ad val.
708.30	8.4% ad val.
708.41	9% ad val.
708.43	7.2% ad val.
708.45	7.2% ad val.
708.47	7.2% ad val.
708.58	8% ad val.
708.61	2.2% ad val.
708.63	9% ad val.
708.71	8% ad val.
708.72	8% ad val.
708.73	9% ad val.
708.75	9% ad val.
708.76	4.9% ad val.
708.78	4.4% ad val.
708.80	7.2% ad val.
708.82	6.2% ad val.
708.85	6.6% ad val.
708.87	5.8% ad val.
708.89	9% ad val.
708.91	6% ad val.
708.93	9% ad val.
709.01	9% ad val.
709.03	6.6% ad val.
709.05	10% ad val.
709.06	5.7% ad val.
709.07	6.2% ad val.
709.09	4.2% ad val.
709.10	5.7% ad val.
709.11	3.4% ad val.
709.13	8.4% ad val.
709.15	7.9% ad val.
709.17	4.2% ad val.
709.19	6.2% ad val.
709.21	5.3% ad val.
709.23	6.4% ad val.
709.25	4.7% ad val.
709.27	7.9% ad val.
709.40	4.2% ad val.
709.45	3.7% ad val.
709.50	4.2% ad val.
709.55	9% ad val.
709.56	7.2% ad val.
709.57	5.8% ad val.
709.61	2.5% ad val.
709.63	2.1% ad val.
709.66	4% ad val.
710.04	6% ad val.
710.06	9% ad val.
710.08	5.6% ad val.
710.12	5.6% ad val.
710.14	3.9% ad val.
710.16	5.7% ad val.
710.20	18¢ each + 2.8% ad val.
710.21	10% ad val.
710.26	47¢ each + 7.4% ad val.
710.27	9% ad val.
710.30	3.9% ad val.
710.34	2.2% ad val.
710.36	4.4% ad val.
710.40	5.1% ad val.
710.42	5.6% ad val.
710.46	Free
710.50	4.4% ad val.
710.60	4.4% ad val.
710.61	6.2% ad val.
710.63	6.2% ad val.
710.65	5.8% ad val.
710.67	6.7% ad val.
710.68	6.5% ad val.
710,70	5.8% ad val.
710.72	5.3% ad val.
710.76	5.8% ad val.

ANNEX V

-29-

TSUS Item No.	Rate of duty
710.78	3.9% ad val.
710.80	4.9% ad val.
710.86	7% ad val.
710.88	9% ad val.
710.90	10% ad val.
711.04	5.7% ad val.
711.08	6.6% ad val.
711.25	4.7% ad val.
711.30	8.4% ad val.
711.31	17% ad val.
711.32	8.4% ad val.
711.38	4.7% ad val.
711.40	10% ad val.
711.42	4.2% ad val.
711.45	5.6% ad val.
711.47	2.8% ad val.
711.49	4.6% ad val.
711.55	3.9% ad val.
711.60	3% ad val.
711.67	4.7% ad val.
711.70	49¢ each + 7.6% ad val.
711.72	9% ad val.
711.78	4.7% ad val.
711.86	10% ad val.
711.88	6.2% ad val.
711.90	15% ad val.
711.93	17% ad val.
711.98	Free
712.05	10% ad val.
712.10	4.8% ad val.
712.12	10% ad val.
712.15	4.7% ad val.
712.20	4.9% ad val.
712.25	49¢ each + 7.6% ad val.
712.27	9% ad val.
712.49	4.9% ad val.
713.05	30¢ each + 6.4% ad val.
713.09	45¢ each + 4.4% ad val.
713.11	45¢ each + 7% ad val.
713.15	9% ad val.
713.17	45¢ each + 7% ad val.
715.20	34¢ each + 5% ad val. + 2¢ for each jewel, if any
715.25	5.5¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.27	10¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.29	15¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.31	30¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.33	45¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.40	36¢ each + 5.2% ad val. + 2¢ for each jewel, if any
715.45	5.5¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.47	10¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.49	15¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.51	30¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.55	45¢ each + 7% ad val. + 2.5¢ for each jewel, if any
715.57	45¢ each + 7% ad val. + 2.5¢ for each jewel, if any
715.60	5.5¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.62	10¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
715.64	15¢ each + 4% ad val. + 2.5¢ for each jewel, if any

ANNEX V

-30-

TSUS Item No.	Rate of duty
715.66	30¢ each + 4% ad val. + 2.5¢ for each jewel, if any
715.68	45¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.02	30¢ each
720.04	53¢ each + 5.5¢ for each jewel over 7
720.06	60¢ each
720.08	85¢ each + 5.5¢ for each jewel over 7
720.10	5.5¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.12	10¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.14	15¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.16	30¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.18	45¢ each + 6.4% ad val. + 2.5¢ for each jewel, if any
720.20	15¢ each + 6% ad val.
720.21	8% ad val.
720.22	8% ad val.
720.24	8¢ each + 6% ad val.
720.25	4¢ each + 6% ad val.
720.26	6% ad val.
720.28	4¢ each + 8.5% ad val.
720.29	2¢ each + 8.5% ad val.
720.30	8.1% ad val.
720.32	7.4% ad val.
720.33	4% ad val.
720.34	6.9% ad val.
720.36	6% ad val.
720.40	0.5¢ each + 9% ad val.
720.42	6.6% ad val.
720.44	10% ad val.
720.60	Free
720.70	7¢ each assembly
720.75	9% ad val.
720.80	The column 1 rate specified in item 720.67 for the plate or plates + 5¢ for each jewel (if any) + 1¢ for each other part or piece (if any), but the total duty on the assembly or subassembly shall not exceed the column 1 duty for the complete movement
720.82	The column 1 rate specified in item 720.67 for the plate or plates + 2.5¢ for each jewel (if any) + 0.5¢ for each other part or piece (if any), but the total duty on the assembly or subassembly shall not exceed the column 1 duty for the complete movement
720.84	13% ad val. + 5¢ for each jewel (if any) + 0.6¢ for each other piece or part
720.86	6.4% ad val. + 2.5¢ for each jewel (if any) + 0.3¢ for each other piece or part

ANNEX V

-31-

TSUS Item No.	Rate of duty
720.90	11% ad val.
720.92	10% ad val.
720.94	6.4% ad val.
721.05	9% ad val.
721.10	2.4% ad val.
721.12	4.4% ad val.
722.02	4.5% ad val.
722.04	4.5% ad val.
722.06	5% ad val.
722.08	4% ad val.
722.09	4% ad val.
722.11	4% ad val.
722.13	4% ad val.
722.14	6.8% ad val.
722.16	3% ad val.
722.18	4.9% ad val.
722.30	5% ad val.
722.32	4.9% ad val.
722.34	5.8% ad val.
722.40	7% ad val.
722.42	2.2% ad val.
722.44	7% ad val.
722.46	7% ad val.
722.50	7% ad val.
722.52	7.8% ad val.
722.55	9% ad val.
722.56	4.7% ad val.
722.60	5.7% ad val.
722.64	5.8% ad val.
722.70	4% ad val.
722.72	3.9% ad val.
722.75	3.4% ad val.
722.78	5% ad val.
722.80	5.7% ad val.
722.82	3.8% ad val.
722.83	3.1% ad val.
722.85	6.9% ad val.
722.86	2.2% ad val.
722.88	5¢ per lb. + 4.5% ad val.
722.90	3.8% ad val.
722.92	3.8% ad val.
722.94	3.7% ad val.
722.96	3.7% ad val.
723.05	3.7% ad val.
723.10	Free
723.15	3.7% ad val.
723.20	3% ad val.
723.25	4.9% ad val.
723.30	3.7% ad val.
723.32	3.1% ad val.
723.35	2.8% ad val.
724.10	Free
724.12	0.2¢ per lin. ft.
724.20	0.2¢ per lin. ft.
724.25	3.7% ad val.
724.35	0.2¢ per lin. ft.
724.45	4.2% ad val.
725.01	5.3% ad val.
725.03	5.3% ad val.
725.04	4.9% ad val.
725.05	6.8% ad val.
725.07	13% ad val.
725.08	7% ad val.
725.12	5.3% ad val.
725.14	4.7% ad val.
725.16	5.1% ad val.
725.18	4.7% ad val.
725.22	5.8% ad val.
725.24	4.9% ad val.
725.26	3.4% ad val.
725.30	Free
725.32	5.3% ad val.
725.34	3.7% ad val.
725.36	2.8% ad val.
725.40	5.3% ad val.
725.46	6.8% ad val.
725.47	6.8% ad val.
725.50	3.2% ad val.
725.52	5.3% ad val.
726.05	5.3% ad val.
726.10	4.7% ad val.
726.15	4.2% ad val.
726.20	8.2% ad val.
726.25	5.7% ad val.
726.40	4.7% ad val.
726.45	10¢ per 1,000 pins + 3.5% ad val.
726.50	4% ad val.
726.52	4.4% ad val.
726.55	6.6% ad val.
726.63	4% ad val.
726.65	5% ad val.
726.70	4.9% ad val.
726.75	3.2% ad val.
726.85	5.3% ad val.
726.90	5.3% ad val.
727.02	3.9% ad val.
727.04	5.3% ad val.
727.06	3.1% ad val.
727.11	7.5% ad val.
727.13	7.5% ad val.
727.14	7.5% ad val.
727.15	6.6% ad val.
727.23	5.3% ad val.
727.25	5.3% ad val.
727.27	3.4% ad val.
727.29	5.3% ad val.

ANNEX V

-32-

TSUS Item No.	Rate of duty
727.35	2.5% ad val.
727.40	5.3% ad val.
727.45	7% ad val.
727.47	6% ad val.
727.65	4.2% ad val.
727.70	4% ad val.
727.86	6% ad val.
728.05	4.2% ad val.
728.10	4.2% ad val.
728.15	3.7% ad val.
728.20	Free
728.22	5.3% ad val.
728.24	5.3% ad val.
728.27	5.3% ad val.
730.05	5.3% ad val.
730.15	40¢ each + 11% ad val.
730.17	27¢ each + 6% ad val.
730.19	27¢ each + 6% ad val.
730.23	8.1% ad val.
730.25	9.1% ad val.
730.27	6.3% ad val.
730.29	7.5% ad val.
730.31	4.7% ad val.
730.37	10% ad val.
730.39	8.4% ad val.
730.41	5.3% ad val.
730.43	3.3% ad val.
730.45	5.1% ad val.
730.51	6.9% ad val.
730.53	6.9% ad val.
730.55	6.9% ad val.
730.57	5.4% ad val.
730.59	5.4% ad val.
730.61	8.4% ad val.
730.63	7% ad val.
730.65	32¢ each + 4% ad val.
730.67	3.6% ad val.
730.71	2.8% ad val.
730.73	2.1% ad val.
730.74	2.3% ad val.
730.75	2.4% ad val.
730.77	5.4% ad val.
730.80	8.4% ad val.
730.81	3.4% ad val.
730.85	7.8% ad val.
730.86	3.4% ad val.
730.88	5.7% ad val.
730.94	5% ad val.
730.95	5% ad val.
730.96	5% ad val.
730.97	4.2% ad val.
730.98	3.2% ad val.
730.99	3.6% ad val.
731.06	6% ad val.
731.15	7.6% ad val.
731.20	9.2% ad val.
731.22	30¢ each
731.24	4.9% ad val.
731.26	5.4% ad val.
731.30	7% ad val.
731.40	5.8% ad val.
731.42	4.4% ad val.
731.44	5.4% ad val.
731.50	5% ad val.
731.65	9% ad val.
731.70	9% ad val.
732.04	45¢ each
732.10	60¢ each
732.16	65¢ each
732.21	7.2% ad val.
732.30	7.2% ad val.
732.32	36¢ each
732.34	4.9% ad val.
732.35	6% ad val.
732.38	6% ad val.
732.41	6% ad val.
732.42	10% ad val.
732.43	7.8% ad val.
732.50	Free
732.52	3.6% ad val.
732.60	4.9% ad val.
732.62	2.4% ad val.
734.05	8.2% ad val.
734.20	3.9% ad val.
734.25	0.8¢ per pack + 0.8% ad val.
734.30	5.1% ad val.
734.32	5.8% ad val.
734.34	5.1% ad val.
734.40	5.1% ad val.
734.42	3.8% ad val.
734.45	3.4% ad val.
734.48	5.6% ad val.
734.54	6% ad val.
734.56	3% ad val.
734.60	3.2% ad val.
734.70	Free
734.71	3.1% ad val.
734.72	4.9% ad val.
734.75	2.4% ad val.
734.77	4.9% ad val.
734.80	Free
734.85	4.2% ad val.
734.86	3.9% ad val.
734.88	3.1% ad val.
734.90	Free

ANNEX V

-33-

TSUS Item No.	Rate of duty
734.91	5.8% ad val.
734.93	2% ad val.
734.95	Free
735.01	3.5% ad val.
735.02	5.1% ad val.
735.04	3.5% ad val.
735.06	5.5% ad val.
735.07	4.9% ad val.
735.10	7.8% ad val.
735.12	4.9% ad val.
735.15	Free
735.17	Free
735.18	Free
737.07	5.1% ad val.
737.09	5.7% ad val.
737.15	7.8% ad val.
737.21	8% ad val.
737.23	12% ad val.
737.24	12% ad val.
737.26	12% ad val.
737.27	12% ad val.
737.28	11.2% ad val.
737.30	5.5% ad val.
737.35	4.2% ad val.
737.40	7% ad val.
737.42	5.8% ad val.
737.43	8.8% ad val.
737.47	7% ad val.
737.49	7% ad val.
737.51	7% ad val.
737.55	6% ad val.
737.60	6.4% ad val.
737.65	5.8% ad val.
737.80	8.8% ad val.
737.85	7.8% ad val.
737.95	7% ad val.
740.11	6.5% ad val.
740.12	6.5% ad val.
740.13	6.5% ad val.
740.14	6.5% ad val.
740.15	6.5% ad val.
740.30	7.2% ad val.
740.34	14% ad val.
740.35	14% ad val.
740.38	11% ad val.
740.50	4.9% ad val.
740.55	7.8% ad val.
740.60	5.8% ad val.
740.70	7% ad val.
740.75	8% ad val.
740.80	11% ad val.
741.06	2.1% ad val.
741.10	8% ad val.
741.15	2.1% ad val.
741.20	4% ad val.
741.25	6.7% ad val.
741.35	2.8% ad val.
741.40	8% ad val.
741.50	6.6% ad val.
745.04	3.6% ad val.
745.08	3.7% ad val.
745.10	11% ad val.
745.25	4.9% ad val.
745.28	5.5% ad val.
745.30	5.3% ad val.
745.32	0.4¢ per line per gross + 6.4% ad val.
745.34	5.7% ad val.
745.42	11.4% ad val.
745.45	5.7% ad val.
745.50	10% ad val.
745.52	8.2% ad val.
745.54	5.1% ad val.
745.56	9% ad val.
745.58	3.4% ad val.
745.60	1¢ per lb. (including weight of cards, cartons, and immediate wrappings and labels) + 5.8% ad val.
745.61	11% ad val.
745.62	11% ad val.
745.65	6.9% ad val.
745.66	6.5% ad val.
745.67	11% ad val.
745.68	5.3% ad val.
745.70	15% ad val.
745.72	15% ad val.
745.74	23% ad val.
748.05	2¢ per lb. + 3.6% ad val.
748.10	5.1% ad val.
748.12	2.4% ad val.
748.15	7% ad val.
748.20	8.4% ad val.
748.21	17% ad val.
750.05	0.1¢ each + 2% ad val.
750.10	7.8% ad val.
750.15	0.2¢ each + 4.6% ad val.
750.20	5.3% ad val.
750.25	8.1% ad val.
750.29	8% ad val.
750.40	0.2¢ each + 3.4% ad val.

ANNEX V

-34-

TSUS Item No.	Rate of duty
750.45	0.2¢ each + 7% ad val.
750.47	0.3¢ each + 3.6% ad val.
750.55	0.3¢ each
750.60	3.1% ad val.
750.70	5.6% ad val.
750.75	5.6% ad val.
750.80	7.5% ad val.
751.11	5.8% ad val.
751.15	4.8% ad val.
751.25	7.5% ad val.
755.05	Free
755.10	Free
755.15	5¢ per lb., including the weight of all coverings, packing material, and wrappings
755.20	7.5% ad val.
755.25	5.8% ad val.
755.30	6.9% ad val.
755.35	22¢ per lb. + 2.6% ad val.
755.45	0.1¢ each + 0.025¢ each for each 0.5 gram of explosive over 1.5 grams per cap
755.50	36¢ per 1,000 feet
756.02	7.2% ad val.
756.04	10% ad val.
756.06	9% ad val.
756.10	4.8% ad val.
756.15	10% ad val.
756.21	1¢ each + 16% ad val.
756.23	0.5¢ each + 8% ad val.
756.25	0.5¢ each + 4% ad val.
756.35	0.5¢ each + 6.4% ad val.
756.40	7% ad val.
756.45	0.5¢ each + 3% ad val.
756.50	7.8% ad val.
756.55	0.2¢ each + 3% ad val.
756.60	3.7% ad val.
760.05	0.8¢ each + 5.4% ad val.
760.10	6.6% ad val.
760.12	3.4% ad val.
760.15	8% ad val.
760.20	4.9% ad val.
760.30	5.8% ad val.
760.32	Free
760.34	40¢ per 1,000 + 7% ad val.
760.36	0.8¢ each + 5.4% ad val.
760.38	3.8% ad val.
760.40	0.9¢ each + 6.1% ad val.
760.42	3.8% ad val.
760.45	Free
760.48	14¢ per gross + 4.3% ad val.
760.50	0.8¢ per gross
760.52	Free
760.56	5.1% ad val.
760.58	5.5¢ per gross + 3.4% ad val.
766.30	A duty of 6.6% ad val. in addition to any other duty imposed on such article under these schedules
770.07	4.4% ad val.
770.10	6.3% ad val.
770.30	5.3% ad val.
770.40	4.2% ad val.
770.45	8.1% ad val.
770.70	4.2% ad val.
770.80	6.6% ad val.
771.05	1.5¢ per lb.
771.20	2.9% ad val.
771.25	3.1% ad val.
771.30	6.2% ad val.
771.31	3.7% ad val.
771.40	3.1% ad val.
771.43	4.2% ad val.
771.50	2.7% ad val.
771.55	5.8% ad val.
772.03	3.4% ad val.
772.06	7% ad val.
772.09	5.3% ad val.
772.15	3.4% ad val.
772.20	3% ad val.
772.25	3.4% ad val.
772.29	5% ad val.
772.31	5% ad val.
772.40	3.1% ad val.
772.42	4.2% ad val.
772.45	Free

ANNEX V

-35-

TSUS Item No.	Rate of duty	TSUS Item No.	Rate of duty
772.54	Free	790.55	5.8% ad val.
772.60	3.7% ad val.	790.59	9% ad val.
772.65	3.1% ad val.	790.61	8.7% ad val.
772.70	4.2% ad val.	790.62	8.7% ad val.
772.80	6.5% ad val.	790.63	9% ad val.
772.85	5.3% ad val.	791.05	7.4% ad val.
772.95	5% ad val.	791.10	5.3% ad val.
772.97	5.3% ad val.	791.15	5.8% ad val.
773.10	5.3% ad val.	791.17	7.4% ad val.
773.20	10.5% ad val.	791.20	2.8% ad val.
773.25	3.5% ad val.	791.27	3.7% ad val.
773.30	3.7% ad val.	791.30	3.7% ad val.
773.35	4.2% ad val.	791.35	3.7% ad val.
774.20	6% ad val.	791.45	2.5% ad val.
774.25	4.2% ad val.	791.48	4.2% ad val.
774.40	Free	791.50	Free
774.45	3.4% ad val.	791.54	2.8% ad val.
774.50	5.3% ad val.	791.57	2.8% ad val.
774.55	5.3% ad val.	791.60	5.3% ad val.
790.00	6.4% ad val.	791.65	5.8% ad val.
790.03	5.7% ad val.	791.70	4.7% ad val.
790.07	5.3% ad val.	791.90	Free
790.10	2.4% ad val.	792.10	4.2% ad val.
790.15	2.8% ad val.	792.24	3.5% ad val.
790.23	Free	792.26	7.7% ad val.
790.30	4.2% ad val.	792.30	4% ad val.
790.37	2.4% ad val.	792.32	2.5% ad val.
790.40	Free	792.40	Free
790.45	6.6% ad val.	792.60	4.2% ad val.
790.47	4.2% ad val.	792.75	4.7% ad val.
790.50	6.6% ad val.	799.00	3.7% ad val.

(B) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after the date (published in the Federal Register) not more than 30 days after the date on which the United States Trade Representative has determined that satisfactory progress has been made toward the development of a common North American standard for softwood plywood:

TSUS Item No.	Rate of duty
240.21	8% ad val.

(C) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after the date (published in the Federal Register) not more than 30 days after the date on which the United States Trade Representative has determined that other major countries provide adequate entity coverage under the Agreement on Government Procurement, entered into on April 12, 1979:

TSUS Item No.	Rate of duty
660.10	4.4% ad val.
660.15	4.7% ad val.
660.25	3.1% ad val.
660.30	4.9% ad val.
660.35	3.4% ad val.
660.59	Free
660.62	3.7% ad val.
660.74	8% ad val.
660.76	4.9% ad val.
684.57	5.3% ad val.
684.58	5.3% ad val.
684.59	5.3% ad val.

ANNEX VI

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE CBERA WITHOUT EXCEPTION WHEN IMPORTED FROM ANY BENEFICIARY COUNTRY

100.07	112.01	115.20	121.40
100.09	112.03	115.25	121.45
100.20	112.05	115.30	121.50
100.25	112.08	115.35	121.52
100.30	112.12	115.40	121.54
100.31	112.14	115.45	121.55
100.35	112.18	115.50	121.56
100.40	112.20	115.55	121.61
100.43	112.21	115.60	121.62
100.45	112.23	116.00	121.63
100.53	112.24	116.05	121.64
100.55	112.36	116.10	121.65
100.60	112.40	116.15	123.50
100.63	112.42	116.20	124.20
100.65	112.46	116.25	124.25
100.77	112.48	116.30	124.30
100.79	112.50	117.00	124.40
105.10	112.52	117.05	124.60
105.20	112.54	117.10	124.65
105.30	112.58	117.15	124.70
105.40	112.62	117.20	124.80
105.50	112.66	117.25	125.01
105.55	112.71	117.30	125.05
105.60	112.73	117.35	125.10
105.70	112.74	117.42	125.15
105.82	112.79	117.44	125.20
105.84	112.80	117.45	125.25
106.22	112.82	117.50	125.32
106.25	112.86	117.55	125.34
106.30	112.94	117.60	125.50
106.55	113.01	117.65	125.60
106.70	113.05	117.67	125.67
106.75	113.11	117.70	125.82
107.10	113.15	117.75	125.84
107.15	113.20	117.81	126.01
107.30	113.25	117.86	126.07
107.35	113.30	117.88	126.09
107.65	113.35	118.00	126.11
110.28	113.40	118.05	126.19
110.35	113.50	118.10	126.23
110.45	113.56	118.15	126.27
110.50	113.60	118.25	126.29
110.55	114.01	118.30	126.31
110.65	114.04	118.35	126.33
111.10	114.06	118.45	126.35
111.15	114.15	119.50	126.41
111.18	114.20	119.55	126.53
111.37	114.25	119.65	126.55
111.44	114.34	119.70	126.57
111.48	114.36	120.17	126.59
111.52	114.50	121.10	126.63
111.56	114.55	121.15	126.65
111.60	115.00	121.20	126.67
111.76	115.05	121.25	126.77
111.84	115.10	121.30	126.79
111.88	115.15	121.35	126.81

ANNEX VI

-2-

126.83	135.51	140.21	145.54
126.89	135.60	140.30	145.55
126.91	135.61	140.35	145.58
126.93	135.70	140.38	145.65
127.10	135.75	140.40	145.70
130.08	135.80	140.46	145.90
130.11	135.90	140.50	146.12
130.20	135.95	140.54	146.14
130.30	135.97	140.56	146.20
130.32	135.99	140.60	146.22
130.37	136.00	140.65	146.24
130.40	136.10	140.70	146.30
130.45	136.20	140.74	146.42
130.50	136.22	140.76	146.44
130.56	136.30	141.05	146.56
130.58	136.40	141.15	146.58
130.60	136.50	141.20	146.60
130.63	136.60	141.25	146.64
130.66	136.61	141.30	146.66
130.70	136.70	141.35	146.69
131.10	136.80	141.40	146.70
131.12	136.90	141.45	146.71
131.20	136.92	141.50	146.74
131.25	136.93	141.60	146.76
131.27	136.95	141.65	146.78
131.30	136.97	141.66	146.79
131.33	137.02	141.76	146.82
131.35	137.04	141.77	146.83
131.38	137.10	141.82	146.84
131.40	137.20	141.83	146.85
131.45	137.21	141.85	146.86
131.50	137.25	141.86	146.87
131.57	137.28	141.87	146.91
131.60	137.40	141.89	146.93
131.65	137.50	141.92	146.95
131.67	137.60	141.93	146.96
131.70	137.62	141.98	146.97
131.72	137.63	144.10	146.99
131.75	137.71	144.14	147.02
131.80	137.75	144.16	147.03
131.85	137.78	144.20	147.05
131.90	137.79	145.02	147.07
132.15	137.80	145.09	147.09
132.20	137.88	145.12	147.15
132.25	137.89	145.18	147.17
132.30	137.93	145.20	147.19
132.50	137.97	145.22	147.21
132.55	138.05	145.24	147.22
135.03	138.25	145.26	147.26
135.05	138.30	145.28	147.29
135.10	138.35	145.30	147.30
135.12	138.41	145.40	147.31
135.14	138.46	145.41	147.33
135.16	140.10	145.46	147.36
135.30	140.11	145.48	147.38
135.41	140.14	145.50	147.41
135.42	140.16	145.52	147.42
135.50	140.20	145.53	147.44

ANNEX VI

-3-

147.46	149.24	155.65	167.25
147.48	149.26	155.70	167.30
147.50	149.28	155.75	167.32
147.51	149.50	156.25	167.34
147.53	149.60	156.30	167.35
147.54	150.02	156.40	167.37
147.60	150.05	156.47	167.40
147.61	150.50	157.10	167.42
147.64	152.00	160.35	167.50
147.66	152.05	160.40	167.90
147.68	152.14	161.05	168.04
147.70	152.18	161.06	168.06
147.72	152.22	161.08	168.09
147.75	152.26	161.23	168.11
147.77	152.30	161.37	168.12
147.80	152.34	161.41	168.13
147.85	152.38	161.43	168.14
148.03	152.40	161.45	168.16
148.06	152.42	161.53	168.36
148.08	152.43	161.57	168.37
148.10	152.50	161.58	168.39
148.12	152.54	161.60	168.41
148.17	152.58	161.61	168.42
148.19	152.60	161.65	168.54
148.22	152.62	161.69	168.57
148.25	152.65	161.71	168.59
148.28	152.72	161.75	168.61
148.30	152.78	161.80	168.74
148.32	152.88	161.83	168.76
148.35	153.03	161.84	168.78
148.40	153.05	161.88	168.80
148.42	153.07	161.92	168.82
148.44	153.16	161.96	168.96
148.46	153.20	162.03	168.98
148.48	153.24	162.07	169.04
148.50	153.28	162.11	169.07
148.52	153.32	162.15	169.08
148.54	154.05	165.25	169.13
148.56	154.10	165.27	169.14
148.60	154.15	165.29	169.21
148.65	154.20	165.32	169.22
148.70	154.25	165.36	169.37
148.72	154.30	165.40	169.38
148.74	154.35	165.44	169.39
148.77	154.40	165.46	169.44
148.78	154.43	165.50	169.47
148.81	154.45	165.55	169.48
148.82	154.50	165.65	169.49
148.83	154.53	165.70	169.58
148.86	154.60	166.10	169.59
148.90	154.90	166.20	170.01
148.93	155.10	166.30	170.05
148.96	155.12	166.40	170.10
148.98	155.15	167.05	170.15
149.15	155.35	167.10	170.20
149.18	155.40	167.15	170.25
149.21	155.60	167.20	

ANNEX VI

-4-

170.28	177.52	190.10	206.96
170.32	177.56	190.25	206.98
170.35	177.58	190.57	207.00
170.40	177.62	190.68	220.10
170.45	177.67	190.85	220.15
170.55	177.69	190.87	220.20
170.60	177.72	190.90	220.25
170.63	178.05	190.93	220.31
170.65	178.15	191.18	220.35
170.67	178.20	192.07	220.36
170.68	178.25	192.15	220.37
170.70	178.30	192.17	220.39
170.72	182.05	192.18	220.41
170.78	182.10	192.21	220.47
170.80	182.11	192.25	220.48
175.03	182.15	192.30	220.50
175.15	182.20	192.35	222.10
175.18	182.30	192.45	222.20
175.21	182.32	192.55	222.25
175.33	182.33	192.75	222.30
175.36	182.35	192.85	222.32
175.39	182.36	192.90	222.34
176.01	182.40	193.10	222.36
176.14	182.45	200.06	222.40
176.15	182.46	200.20	222.41
176.16	182.49	200.25	222.42
176.18	182.50	200.45	222.44
176.22	182.52	200.91	222.50
176.24	182.53	200.95	222.55
176.26	182.58	202.38	222.57
176.29	182.60	202.54	222.60
176.30	182.70	202.56	222.62
176.38	182.90	202.60	222.64
176.40	182.92	202.62	240.10
176.42	182.96	202.66	240.12
176.45	183.00	203.10	240.14
176.46	183.01	203.20	240.16
176.47	183.05	203.30	240.17
176.49	184.50	204.05	240.19
176.50	184.51	204.10	240.21
176.52	184.52	204.20	240.23
176.54	184.53	204.30	240.25
176.55	184.54	204.35	240.30
176.70	184.58	204.40	240.32
177.04	184.65	204.50	240.34
177.12	184.80	206.30	240.36
177.16	184.85	206.45	240.38
177.20	186.10	206.47	240.40
177.22	186.15	206.50	240.50
177.24	186.20	206.52	240.52
177.26	186.30	206.53	240.54
177.30	186.40	206.54	240.56
177.32	186.50	206.60	240.58
177.34	186.60	206.65	240.60
177.36	188.20	206.67	245.00
177.40	188.30	206.85	245.10
177.50	188.34	206.87	245.20
	188.50	206.95	245.30

ANNEX VI

-5-

245.45	254.48	274.60	306.73
245.50	254.50	274.65	306.74
245.60	254.54	274.70	306.80
245.70	254.56	274.75	306.81
245.80	254.58	274.80	306.82
251.10	254.63	274.85	306.83
251.15	254.65	274.90	306.84
251.20	254.70	300.15	307.02
251.25	254.80	300.20	307.04
251.30	254.85	300.45	307.06
251.45	254.90	300.50	307.08
252.05	254.95	304.08	307.10
252.10	256.05	304.10	307.12
252.13	256.10	304.12	307.16
252.15	256.13	304.14	307.18
252.17	256.15	304.16	307.40
252.20	256.20	304.18	308.06
252.25	256.25	304.22	308.10
252.27	256.30	304.24	308.16
252.30	256.35	304.26	308.18
252.35	256.40	304.34	308.20
252.40	256.42	304.40	308.30
252.42	256.44	304.44	308.35
252.45	256.48	304.48	308.45
252.50	256.52	304.52	308.47
252.57	256.54	306.01	308.51
252.59	256.56	306.02	308.55
252.61	256.58	306.04	312.10
252.63	256.60	306.10	312.30
252.70	256.65	306.11	312.40
252.73	256.67	306.12	312.50
252.75	256.70	306.13	319.01
252.77	256.75	306.14	319.03
252.81	256.80	306.20	319.05
252.84	256.84	306.21	319.07
252.86	256.87	306.22	335.50
252.90	256.90	306.23	337.10
253.05	270.45	306.24	337.20
253.10	270.50	306.30	337.30
253.15	273.30	306.31	337.40
253.20	273.50	306.32	337.72
253.25	273.55	306.33	365.54
253.30	273.65	306.34	365.58
253.35	273.70	306.40	385.95
253.40	273.75	306.41	390.14
253.45	273.85	306.42	390.16
254.05	273.90	306.43	390.30
254.09	273.95	306.44	390.40
254.15	274.00	306.53	390.50
254.18	274.05	306.54	402.00
254.20	274.10	306.60	402.04
254.25	274.15	306.61	402.08
254.30	274.20	306.62	402.12
254.35	274.23	306.63	402.16
254.40	274.27	306.64	402.20
254.42	274.29	306.70	402.24
254.44	274.33	306.71	402.28
254.46	274.35	306.72	402.32

ANNEX VI

-6-

402.36	404.30	406.00	408.48
402.40	404.32	406.05	408.54
402.44	404.33	406.08	408.61
402.48	404.37	406.09	408.64
402.52	404.38	406.12	408.68
402.54	404.40	406.16	408.72
402.56	404.42	406.20	408.76
402.60	404.43	406.24	408.81
402.64	404.46	406.28	408.84
402.68	404.47	406.32	408.88
402.72	404.48	406.36	408.92
402.76	404.52	406.37	408.96
402.78	404.56	406.39	409.02
402.81	404.60	406.42	409.06
402.83	404.64	406.44	409.10
402.84	404.68	406.47	409.14
402.88	404.72	406.49	409.18
402.96	404.76	406.52	409.22
402.98	404.80	406.56	409.26
403.00	404.84	406.58	409.28
403.05	404.88	406.61	409.30
403.09	404.90	406.63	409.34
403.12	404.92	406.64	409.38
403.14	404.96	406.68	409.42
403.16	405.00	406.72	409.46
403.20	405.01	406.73	409.50
403.24	405.02	406.76	409.54
403.27	405.07	406.81	409.58
403.29	405.09	406.82	409.62
403.32	405.12	406.83	409.66
403.36	405.16	406.84	409.68
403.41	405.21	406.86	409.70
403.45	405.24	406.92	409.74
403.49	405.28	406.96	409.76
403.51	405.31	407.00	409.78
403.52	405.33	407.01	409.82
403.54	405.34	407.05	409.84
403.57	405.36	407.06	409.86
403.59	405.41	407.09	409.90
403.61	405.44	407.14	409.92
403.62	405.48	407.16	409.94
403.65	405.51	408.00	409.96
403.66	405.53	408.08	410.00
403.68	405.56	408.12	410.02
403.72	405.60	408.16	410.04
403.74	405.62	408.17	410.08
403.76	405.64	408.18	410.10
403.81	405.68	408.19	410.12
403.88	405.70	408.23	410.16
403.92	405.72	408.24	410.18
403.96	405.76	408.28	410.19
404.00	405.80	408.29	410.20
404.04	405.82	408.31	410.22
404.08	405.84	408.32	410.24
404.12	405.85	408.36	410.28
404.16	405.88	408.38	410.32
404.20	405.92	408.41	410.34
404.24	405.96	408.44	410.36
404.28			

ANNEX VI

-7-

410.40	412.18	417.20	419.34
410.44	412.22	417.22	419.38
410.48	412.26	417.23	419.40
410.52	412.30	417.24	419.42
410.56	412.31	417.26	419.44
410.60	412.35	417.28	419.50
410.64	412.36	417.32	419.52
410.66	412.38	417.34	419.54
410.68	412.40	417.36	419.60
410.72	412.42	417.38	419.70
410.76	412.48	417.40	419.74
410.80	412.50	417.42	419.76
410.84	412.52	417.45	419.80
410.88	412.56	417.50	419.82
410.92	412.60	417.52	419.84
410.96	412.64	417.54	419.90
411.00	412.66	417.64	420.00
411.04	412.67	417.70	420.02
411.08	412.69	417.72	420.04
411.10	412.70	417.74	420.06
411.12	412.72	417.76	420.08
411.16	412.76	417.78	420.14
411.20	412.80	417.80	420.16
411.24	412.84	417.90	420.18
411.26	412.88	417.92	420.20
411.27	412.92	418.00	420.22
411.30	412.96	418.13	420.24
411.31	413.00	418.14	420.26
411.40	413.04	418.18	420.28
411.42	413.08	418.22	420.30
411.44	413.12	418.24	420.32
411.48	413.16	418.26	420.34
411.50	413.20	418.28	420.36
411.52	413.24	418.30	420.40
411.53	413.28	418.35	420.54
411.55	413.30	418.40	420.60
411.58	413.32	418.42	420.68
411.60	413.36	418.44	420.70
411.64	413.40	418.50	420.78
411.68	413.50	418.52	420.82
411.72	413.51	418.60	420.84
411.74	415.05	418.62	420.86
411.76	415.10	418.68	420.88
411.80	415.20	418.72	420.92
411.82	415.27	418.74	420.94
411.87	415.30	418.76	420.98
411.88	415.35	418.78	421.04
411.90	415.40	418.80	421.06
411.91	415.50	418.94	421.08
411.93	416.05	419.00	421.10
411.96	416.10	419.02	421.14
411.98	416.30	419.04	421.16
412.02	416.40	419.10	421.18
412.04	416.45	419.20	421.22
412.06	417.10	419.22	421.34
412.10	417.14	419.24	421.36
412.12	417.16	419.28	421.44
412.14	417.18	419.32	421.46

ANNEX VI

-8-

421.52	425.32	427.12	428.72
421.54	425.34	427.14	428.80
421.56	425.36	427.16	428.82
421.60	425.38	427.18	428.84
421.62	425.41	427.20	428.86
421.72	425.42	427.22	428.88
421.74	425.52	427.24	428.90
421.76	425.70	427.25	428.92
421.84	425.72	427.28	428.94
421.86	425.74	427.30	428.96
421.90	425.76	427.40	429.00
422.00	425.78	427.42	429.10
422.10	425.82	427.44	429.12
422.12	425.84	427.45	429.19
422.14	425.86	427.46	429.22
422.20	425.87	427.48	429.24
422.24	425.88	427.53	429.26
422.26	425.94	427.54	429.28
422.30	425.99	427.56	429.29
422.40	426.00	427.58	429.30
422.42	426.04	427.60	429.32
422.58	426.08	427.62	429.34
422.60	426.10	427.64	429.38
422.62	426.12	427.70	429.42
422.70	426.14	427.72	429.44
422.72	426.18	427.74	429.46
422.74	426.22	427.82	429.47
422.76	426.24	427.84	429.49
422.78	426.26	427.88	429.51
422.80	426.28	427.92	429.54
422.82	426.32	427.94	429.56
422.90	426.34	427.97	429.60
422.92	426.36	427.98	429.70
422.94	426.42	428.04	429.85
423.00	426.44	428.06	429.95
423.80	426.46	428.12	430.10
423.84	426.52	428.20	430.20
423.86	426.54	428.22	432.10
423.88	426.56	428.24	432.15
423.92	426.58	428.26	432.25
423.94	426.62	428.30	435.10
423.96	426.64	428.32	435.45
425.00	426.72	428.34	436.00
425.02	426.76	428.36	437.02
425.04	426.77	428.38	437.04
425.06	426.78	428.40	437.06
425.08	426.82	428.41	437.10
425.09	426.84	428.42	437.12
425.10	426.86	428.44	437.13
425.12	426.88	428.47	437.14
425.14	426.92	428.50	437.16
425.18	426.94	428.52	437.18
425.20	426.96	428.54	437.20
425.22	426.98	428.58	437.22
425.24	427.02	428.62	437.30
425.26	427.04	428.64	437.32
425.28	427.06	428.66	437.36
425.30	427.08	428.68	437.38

ANNEX VI

-9-

437.40	452.58	465.75	473.76
437.44	452.80	465.80	473.78
437.47	455.02	465.85	473.80
437.49	455.04	465.87	473.82
437.50	455.06	465.90	473.84
437.51	455.16	465.92	473.86
437.52	455.18	465.95	473.88
437.54	455.20	466.05	473.90
437.55	455.22	466.10	474.02
437.56	455.24	466.15	474.04
437.57	455.30	466.20	474.06
437.58	455.32	466.25	474.08
437.60	455.34	466.30	474.20
437.64	455.36	470.18	474.22
437.65	455.38	470.85	474.26
437.68	455.40	472.04	474.30
437.69	455.42	472.06	474.35
437.70	455.44	472.10	474.40
437.72	455.46	472.12	474.42
437.74	460.10	472.14	474.44
437.82	460.15	472.22	474.46
437.84	460.20	472.24	474.50
437.86	460.25	472.30	474.62
438.01	460.30	472.40	485.10
438.02	460.35	472.42	485.20
439.30	460.40	472.44	485.30
439.50	460.45	472.48	490.05
440.00	460.50	472.50	490.10
445.05	460.55	473.02	490.12
445.10	460.60	473.06	490.14
445.15	460.65	473.10	490.20
445.20	460.70	473.12	490.22
445.25	460.75	473.14	490.24
445.30	460.80	473.16	490.26
445.35	460.85	473.18	490.30
445.42	460.90	473.19	490.32
445.44	461.05	473.20	490.40
445.46	461.10	473.24	490.42
445.48	461.15	473.28	490.44
445.52	461.20	473.30	490.46
445.54	461.30	473.32	490.48
445.56	461.35	473.36	490.50
445.75	461.40	473.38	490.65
446.10	461.45	473.40	490.73
446.12	465.05	473.44	490.75
446.15	465.10	473.46	490.90
446.30	465.15	473.48	490.92
450.10	465.20	473.50	490.94
450.20	465.25	473.52	491.00
450.30	465.30	473.54	493.10
450.40	465.35	473.56	493.14
450.50	465.40	473.58	493.17
452.24	465.45	473.60	493.18
452.28	465.50	473.62	493.20
452.34	465.55	473.66	493.22
452.44	465.60	473.70	493.25
452.48	465.65	473.72	493.26
452.54	465.70	473.74	493.30

ANNEX VI

-10-

493.42
493.46
493.47
493.50
493.65
493.66
493.67
493.68
493.82
494.04
494.06
494.30
494.40
494.52
494.60
495.05
495.10
495.15
495.20
511.11
511.25
511.31
511.41
511.51
511.64
511.65
511.71
512.24
512.31
512.35
512.41
512.44
513.11
513.21
513.31
513.36
513.41
513.51
513.74
513.81
513.84
513.94
514.21
514.24
514.34
514.41
514.44
514.51
514.54
514.57
514.61
514.65
514.81
515.11
515.14
515.21
515.24
515.31
515.34
515.51
515.54
515.61
515.64
516.21
516.24
516.71
516.73
516.74
516.76
516.81
516.91
516.94
517.11
517.21
517.24
517.51
517.61
517.71
517.74
517.81
517.91
518.21
518.41
518.51
519.11
519.14
519.31
519.37
519.51
519.83
519.84
519.86
519.91
519.93
519.95
519.97
520.21
520.31
520.37
520.39
520.51
520.54
520.61
520.71
520.75
521.41
521.51
521.54
521.61
521.71
521.74
521.84
521.87
522.21
522.24
522.41
522.45
522.61
522.64
522.71
522.81
523.31
523.33
523.37
523.51
523.61
523.91
523.94
531.01
531.04
531.11
531.21
531.24
531.33
531.35
531.37
531.39
532.14
532.20
532.22
532.24
532.27
532.31
532.41
532.61
533.11
533.15
533.20
533.22
533.24
533.29
533.30
533.32
533.34
533.39
533.52
533.54
533.62
533.64
533.72
533.74
533.76
533.78
533.79
534.11
534.21
534.31
534.74
534.76
534.81
534.84
534.87
534.91
534.94
534.97
535.11
535.12
535.13
535.14
535.21
535.24
535.27
535.31
535.41
536.11
536.15
540.11
540.13
540.14
540.15
540.21
540.27
540.30
540.32
540.37
540.41
540.43
540.47
540.51
540.55
540.61
540.63
540.65
540.67
540.71
541.11
541.21
541.31
542.11
542.13
542.21
542.23
542.25
542.31
542.33
542.35
542.37
542.42
542.44
542.46
542.48
542.57
542.67
542.71
542.73
542.75
542.77
542.92
542.94
542.96
542.98
543.11

ANNEX VI

-11-

543.21
543.23
543.27
543.31
543.61
543.63
543.67
543.69
544.11
544.14
544.16
544.18
544.31
544.41
544.51
544.54
544.61
544.64
545.11
545.17
545.21
545.25
545.31
545.34
545.35
545.37
545.53
545.55
545.57
545.61
545.63
545.65
545.67
545.81
545.85
545.87
546.11
546.13
546.18
546.20
546.21
546.23
546.25
546.35
546.38
546.39
546.47
546.52
546.60
546.62
546.64
546.66
546.68
547.11
547.13
547.15
547.21
547.31
547.37
547.41
547.43
547.51
547.53
547.55
548.01
548.03
548.05
601.33
601.54
602.10
602.20
602.28
603.10
603.15
603.25
603.30
603.40
603.45
603.49
603.50
603.54
603.55
603.70
605.03
605.05
605.06
605.08
605.27
605.28
605.46
605.47
605.48
605.60
605.65
605.66
606.00
606.02
606.04
606.06
606.15
606.17
606.19
606.22
606.24
606.26
606.28
606.30
606.31
606.33
606.36
606.37
606.39
606.40
606.42
606.44
606.46
606.48
606.50
606.51
606.53
606.57
606.59
606.60
606.62
606.64
606.67
606.69
606.71
606.73
606.75
606.77
606.79
606.81
606.83
606.86
606.88
606.90
606.91
606.93
606.94
606.95
606.97
606.99
607.05
607.07
607.09
607.14
607.17
607.22
607.23
607.26
607.28
607.32
607.34
607.41
607.43
607.46
607.48
607.54
607.59
607.62
607.64
607.66
607.67
607.69
607.72
607.76
607.78
607.81
607.83
607.86
607.88
607.90
607.91
607.92
607.93
607.94
607.97
607.99
608.01
608.07
608.11
608.13
608.14
608.19
608.21
608.23
608.26
608.29
608.31
608.34
608.38
608.39
608.43
608.47
608.49
608.55
608.57
608.59
608.64
608.67
609.14
609.15
609.17
609.20
609.21
609.22
609.25
609.28
609.30
609.33
609.35
609.36
609.37
609.40
609.41
609.43
609.45
609.70
609.72
609.75
609.76
609.80
609.82
609.84
609.86
609.88
609.90
609.96
609.98
610.20
610.21

ANNEX VI

-12-

610.25	612.55	622.40	629.14
610.26	612.56	624.02	629.20
610.30	612.60	624.03	629.25
610.31	612.61	624.04	629.26
610.32	612.62	624.10	629.28
610.35	612.63	624.12	629.29
610.36	612.64	624.14	629.30
610.37	612.70	624.16	629.32
610.39	612.71	624.18	629.33
610.40	612.72	624.20	629.35
610.42	612.73	624.22	629.50
610.43	612.80	624.24	629.60
610.45	612.81	624.30	629.62
610.46	612.82	624.32	629.65
610.48	613.02	624.34	632.02
610.49	613.03	624.40	632.04
610.51	613.04	624.42	632.06
610.52	613.06	624.50	632.12
610.56	613.08	624.52	632.16
610.58	613.10	624.54	632.18
610.62	613.11	626.02	632.24
610.63	613.12	626.04	632.28
610.65	613.15	626.10	632.30
610.66	613.18	626.15	632.34
610.70	618.01	626.17	632.38
610.71	618.02	626.18	632.42
610.74	618.04	626.20	632.43
610.82	618.06	626.22	632.46
610.84	618.10	626.24	632.48
610.86	618.15	626.30	632.50
610.88	618.17	626.31	632.52
610.89	618.20	626.35	632.58
610.90	618.22	626.40	632.60
610.92	618.25	626.42	632.62
612.02	618.27	626.45	632.66
612.03	618.29	628.05	632.68
612.05	618.40	628.10	632.78
612.06	618.42	628.15	632.79
612.08	618.45	628.17	632.86
612.10	618.47	628.20	632.88
612.15	620.08	628.25	633.00
612.17	620.10	628.30	640.05
612.20	620.12	628.35	640.10
612.30	620.16	628.40	640.20
612.31	620.20	629.45	640.25
612.32	620.22	628.50	640.30
612.34	620.26	628.55	640.35
612.35	620.30	628.57	640.40
612.36	620.40	628.59	642.06
612.38	620.42	628.70	642.08
612.39	620.46	628.72	642.09
612.40	620.50	628.74	642.11
612.41	622.15	628.90	642.12
612.43	622.17	628.95	642.14
612.44	622.20	629.05	642.15
612.45	622.22	629.07	642.16
612.50	622.25	629.10	642.17
612.52	622.35	629.12	642.18

ANNEX VI

-13-

642.20	644.72	647.01	649.81
642.25	644.76	647.03	649.83
642.27	644.80	647.05	649.85
642.31	644.84	647.10	649.87
642.34	644.88	648.51	649.89
642.35	644.92	648.53	649.91
642.45	644.95	648.55	650.01
642.47	644.98	648.57	650.03
642.50	646.02	648.61	650.05
642.52	646.04	648.63	650.07
642.54	646.06	648.67	650.08
642.56	646.17	648.69	650.09
642.58	646.20	648.71	650.10
642.60	646.22	648.73	650.12
642.62	646.25	648.75	650.13
642.64	646.26	648.80	650.15
642.66	646.27	648.82	650.17
642.68	646.28	648.85	650.19
642.70	646.30	648.89	650.21
642.72	646.32	648.91	650.31
642.74	646.34	648.93	650.35
642.76	646.36	648.95	650.37
642.78	646.40	648.97	650.38
642.80	646.41	649.01	650.39
642.82	646.42	649.03	650.40
642.85	646.45	649.05	650.42
642.87	646.47	649.07	650.43
642.91	646.49	649.11	650.45
642.93	646.51	649.14	650.47
642.96	646.53	649.17	650.48
642.97	646.54	649.19	650.50
644.02	646.56	649.21	650.51
644.06	646.57	649.23	650.53
644.08	646.58	649.24	650.54
644.09	646.60	649.25	650.55
644.11	646.63	649.26	650.56
644.12	646.65	649.27	650.57
644.15	646.72	649.29	650.61
644.17	646.74	649.31	650.63
644.18	646.75	649.32	650.65
644.20	646.76	649.33	650.71
644.22	646.77	649.35	650.73
644.24	646.78	649.37	650.75
644.26	646.80	649.41	650.77
644.28	646.81	649.43	650.79
644.30	646.82	649.44	650.81
644.32	646.83	649.46	650.83
644.36	646.84	649.47	650.85
644.38	646.85	649.48	650.87
644.40	646.86	649.49	650.89
644.42	646.87	649.53	650.90
644.46	646.88	649.57	650.92
644.48	646.89	649.67	651.01
644.52	646.90	649.71	651.03
644.56	646.92	649.73	651.04
644.60	646.95	649.75	651.07
644.64	646.97	649.77	651.09
644.68	646.98	649.79	651.11

ANNEX VI

-14-

651.13	653.05	657.75	664.08
651.15	653.07	657.80	664.10
651.21	653.10	657.90	666.10
651.23	653.15	658.00	666.25
651.25	653.20	660.10	668.00
651.27	653.25	660.15	668.02
651.29	653.30	660.20	668.04
651.31	653.35	660.22	668.06
651.33	653.37	660.25	668.07
651.37	653.38	660.30	668.10
651.45	653.39	660.35	668.15
651.46	653.45	660.42	668.21
651.48	653.47	660.48	668.23
651.49	653.48	660.56	668.32
651.51	653.52	660.59	668.34
651.53	653.60	660.62	668.36
651.55	653.62	660.67	668.38
651.60	653.65	660.71	668.50
651.62	653.70	660.74	670.00
651.64	653.75	660.76	670.02
651.75	653.80	660.77	670.04
652.03	653.85	660.80	670.06
652.06	653.90	660.85	670.12
652.09	653.93	660.92	670.14
652.13	653.94	660.96	670.16
652.14	653.96	660.97	670.17
652.15	653.99	661.05	670.18
652.18	654.00	661.06	670.19
652.21	654.08	661.09	670.21
652.24	654.16	661.10	670.22
652.27	654.25	661.15	670.23
652.35	654.30	661.20	670.25
652.36	654.35	661.25	670.27
652.38	654.40	661.30	670.29
652.41	654.45	661.35	670.33
652.42	654.50	661.40	670.35
652.45	654.55	661.45	670.40
652.50	654.60	661.50	670.41
652.55	654.65	661.54	670.42
652.60	654.70	661.56	670.43
652.65	654.75	661.65	670.50
652.70	656.05	661.67	670.52
652.72	656.10	661.68	670.54
652.75	656.15	661.85	670.56
652.80	656.20	661.90	670.58
652.84	656.25	661.92	670.60
652.86	656.30	661.94	670.62
652.88	656.35	661.95	670.64
652.90	657.10	662.10	670.66
652.92	657.15	662.15	670.68
652.93	657.24	662.18	670.70
652.94	657.25	662.20	670.72
652.95	657.30	662.26	670.74
652.96	657.35	662.30	670.90
652.97	657.40	662.35	672.10
653.00	657.50	662.50	672.14
653.01	657.60	664.06	672.16
653.03	657.70	664.07	672.20

ANNEX VI

-15-

672.22	681.04	684.94	688.17
672.25	681.07	684.96	688.18
674.10	681.10	684.98	688.20
674.20	681.13	685.00	688.25
674.30	681.15	685.02	688.30
674.31	681.21	685.04	688.32
674.33	681.27	685.06	688.34
674.34	681.33	685.08	688.36
674.35	681.36	685.10	688.41
674.40	681.39	685.12	688.42
674.42	682.05	685.14	690.05
674.50	682.07	685.16	690.10
674.52	682.20	685.18	690.15
674.53	682.25	685.20	690.20
674.55	682.30	685.22	690.25
674.56	682.35	685.24	690.35
674.60	682.41	685.25	690.40
674.70	682.45	685.28	692.02
674.75	682.50	685.30	692.04
674.80	682.52	685.32	692.10
674.90	682.55	685.36	692.14
676.07	682.60	685.37	692.16
676.10	682.70	685.38	692.20
676.12	682.80	685.39	692.22
676.15	682.90	685.40	692.29
676.20	682.95	685.42	692.32
676.22	683.01	685.48	692.35
676.23	683.12	685.49	692.40
676.25	683.15	685.60	692.45
676.30	683.20	685.70	692.52
676.50	683.30	685.80	692.53
676.52	683.32	685.90	692.55
678.20	683.40	686.10	692.60
678.30	683.50	686.18	694.31
678.32	683.60	686.24	694.50
678.35	683.65	686.30	694.61
678.40	683.70	686.40	694.63
678.45	683.80	686.50	694.64
678.50	683.90	686.60	694.65
680.05	683.95	686.70	694.66
680.07	684.10	686.80	694.67
680.12	684.15	686.90	694.70
680.13	684.20	687.10	696.05
680.14	684.25	687.20	696.10
680.17	684.28	687.30	696.30
680.19	684.40	687.35	696.35
680.25	684.48	687.42	696.40
680.27	684.53	687.43	696.50
680.30	684.55	687.54	696.60
680.33	684.57	687.66	700.54
680.37	684.58	687.70	700.90
680.39	684.59	687.79	702.15
680.42	684.65	687.83	702.25
680.46	684.66	687.87	702.28
680.49	684.67	688.04	702.30
680.59	684.70	688.06	702.32
680.62	684.90	688.10	702.35
680.92	684.92	688.12	702.37
680.95			

ANNEX VI

-16-

702.40	709.06	711.31	716.17
702.45	709.07	711.32	716.37
702.47	709.09	711.38	716.38
703.20	709.10	711.40	716.39
703.25	709.11	711.42	716.40
703.30	709.13	711.45	716.45
703.35	709.15	711.47	719.--
703.40	709.17	711.49	720.02
703.45	709.19	711.55	720.04
703.50	709.21	711.60	720.06
703.55	709.23	711.67	720.08
703.60	709.25	711.70	720.10
703.70	709.27	711.72	720.12
705.30	709.40	711.78	720.14
705.82	709.45	711.86	720.16
706.04	709.50	711.88	720.18
706.19	709.54	711.90	720.20
706.42	709.55	711.93	720.21
706.44	709.56	711.98	720.22
706.45	709.57	712.05	720.24
706.47	709.61	712.10	720.25
706.50	709.63	712.12	720.26
706.61	709.66	712.15	720.28
707.90	710.04	712.20	720.29
708.01	710.06	712.25	720.30
708.03	710.08	712.27	720.32
708.05	710.12	712.47	720.33
708.07	710.14	712.49	720.34
708.10	710.16	713.05	720.36
708.21	710.20	713.07	720.40
708.23	710.21	713.09	720.42
708.25	710.26	713.11	720.44
708.27	710.27	713.15	720.60
708.30	710.30	713.17	720.65
708.41	710.34	713.19	720.67
708.43	710.36	715.05	720.70
708.45	710.40	715.15	720.75
708.47	710.42	715.20	720.80
708.56	710.46	715.25	720.82
708.58	710.50	715.27	720.84
708.61	710.60	715.29	720.86
708.63	710.61	715.31	720.90
708.71	710.63	715.33	720.92
708.72	710.65	715.40	720.94
708.73	710.67	715.45	721.05
708.75	710.68	715.47	721.10
708.76	710.70	715.49	721.12
708.78	710.72	715.51	722.02
708.80	710.76	715.55	722.04
708.82	710.78	715.57	722.06
708.85	710.80	715.60	722.08
708.87	710.86	715.62	722.09
708.89	710.88	715.64	722.11
708.91	710.90	715.66	722.13
708.93	711.04	715.68	722.14
709.01	711.08	716.04	722.16
709.03	711.25	716.06	722.18
709.05	711.30	716.09	722.30

ANNEX VI

-17-

722.32	725.36	730.39	732.34
722.34	725.40	730.41	732.35
722.40	725.46	730.43	732.38
722.42	725.47	730.45	732.41
722.44	725.50	730.51	732.42
722.46	725.52	730.53	732.43
722.50	726.05	730.55	732.50
722.52	726.10	730.57	732.52
722.55	726.15	730.59	732.60
722.56	726.20	730.61	732.62
722.60	726.25	730.63	734.05
722.64	726.40	730.65	734.10
722.70	726.45	730.67	734.15
722.72	726.50	730.71	734.20
722.75	726.52	730.73	734.25
722.78	726.55	730.74	734.30
722.80	726.63	730.75	734.32
722.82	726.65	730.77	734.34
722.83	726.70	730.80	734.40
722.85	726.75	730.81	734.42
722.86	726.85	730.85	734.45
722.88	726.90	730.86	734.48
722.90	727.02	730.88	734.51
722.92	727.04	730.94	734.54
722.94	727.06	730.95	734.56
722.96	727.11	730.96	734.60
723.05	727.13	730.97	734.70
723.10	727.14	730.98	734.71
723.15	727.15	730.99	734.72
723.20	727.23	731.05	734.75
723.25	727.25	731.06	734.77
723.30	727.27	731.10	734.80
723.32	727.29	731.15	734.85
723.35	727.35	731.20	734.86
724.10	727.40	731.22	734.87
724.12	727.45	731.24	734.88
724.20	727.47	731.26	734.90
724.25	727.53	731.30	734.91
724.35	727.59	731.40	734.93
724.40	727.65	731.42	734.95
724.45	727.70	731.44	735.01
725.01	728.05	731.50	735.02
725.03	728.10	731.65	735.04
725.04	728.15	731.70	735.06
725.05	728.20	732.02	735.07
725.07	728.22	732.04	735.09
725.08	728.24	732.06	735.10
725.12	728.27	732.08	735.11
725.14	730.05	732.10	735.12
725.16	730.15	732.12	735.15
725.18	730.17	732.14	735.17
725.20	730.19	732.16	735.18
725.22	730.23	732.18	735.20
725.24	730.25	732.21	737.07
725.26	730.27	732.24	737.09
725.30	730.29	732.26	737.15
725.32	730.31	732.30	737.23
725.34	730.37	732.32	737.24

ANNEX VI

-18-

737.26
737.27
737.28
737.30
737.35
737.40
737.42
737.43
737.47
737.49
737.55
737.60
737.65
737.70
737.80
737.85
737.95
740.05
740.11
740.12
740.13
740.14
740.15
740.30
740.34
740.35
740.38
740.50
740.55
740.60
740.70
740.75
740.80
741.06
741.10
741.15
741.20
741.25
741.30
741.35
741.40
741.50
745.04
745.08
745.10
745.20
745.25
745.28
745.30
745.32
745.34
745.42
745.45
745.50
745.52
745.54
745.56
745.58
745.60
745.61
745.62
745.65
745.66
745.67
745.68
745.70
745.72
745.74
748.05
748.10
748.12
748.15
748.20
748.21
748.25
748.32
748.34
748.36
750.05
750.10
750.15
750.20
750.22
750.25
750.26
750.27
750.28
750.29
750.30
750.31
750.32
750.35
750.40
750.45
750.47
750.50
750.55
750.60
750.65
750.70
750.75
750.80
751.05
751.10
751.11
751.15
751.20
751.25
755.05
755.10
755.15
755.20
755.25
755.30
755.35
755.40
755.45
755.50
756.02
756.04
756.06
756.10
756.15
756.21
756.23
756.25
756.30
756.35
756.40
756.45
756.50
756.55
756.60
760.05
760.10
760.12
760.15
760.20
760.30
760.32
760.34
760.36
760.38
760.40
760.42
760.45
760.48
760.50
760.52
760.54
760.56
760.58
766.20
766.30
770.05
770.07
770.10
770.30
770.40
770.45
770.70
770.80
771.05
771.20
771.25
771.30
771.31
771.35
771.40
771.41
771.43
771.45
771.50
771.55
772.03
772.06
772.09
772.15
772.20
772.25
772.29
772.40
772.42
772.45
772.48
772.51
772.54
772.57
772.60
772.65
772.70
772.80
772.85
772.95
772.97
773.05
773.10
773.15
773.20
773.25
773.30
773.35
774.20
774.25
774.35
774.40
774.45
774.50
774.55
790.00
790.03
790.05
790.07
790.08
790.10
790.15
790.23
790.25
790.30
790.37
790.39
790.40
790.45
790.47
790.50
790.55
790.57
790.59
790.60
790.61

ANNEX VI

-19-

790.62
790.63
790.70
791.05
791.10
791.15
791.17
791.19
791.20
791.27
791.28
791.30
791.35
791.50
791.54
791.57
791.60
791.65
792.10
792.24
792.26
792.30
792.32
792.40
792.50
792.60
792.70
792.75
798.00
798.50
799.00
804.10
804.20
806.20
806.30
807.00
869.00
869.10
870.50
870.55

ANNEX VII

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE CBERA EXCEPT AS LIMITED BY GENERAL HEADNOTE 3(e)(vii)(D) OF THE TSUS

106.10	335.75	356.15	363.60
107.20	335.85	356.25	363.80
107.25	335.95	356.35	363.90
107.40	337.60	356.45	364.09
107.45	337.80	356.70	364.14
107.48	337.90	356.80	364.16
107.52	339.10	357.05	364.18
107.55	345.10	357.30	364.21
107.61	345.35	357.40	364.25
107.62	345.60	357.60	364.35
107.63	346.50	357.70	365.05
107.70	346.56	357.80	365.14
107.78	346.65	357.90	365.15
107.80	346.80	357.95	365.25
155.20	346.86	358.02	365.29
155.30	346.95	358.05	365.31
305.04	347.20	358.06	365.35
305.06	347.28	358.11	365.40
305.08	347.30	358.16	365.45
305.09	347.35	358.24	365.50
305.10	347.45	358.26	365.80
305.12	347.50	358.40	365.81
305.14	347.72	358.60	365.83
305.16	347.75	359.20	365.84
305.18	348.00	359.40	365.91
305.20	348.05	359.60	366.12
305.22	349.10	360.04	366.15
305.28	349.25	360.10	366.30
305.30	349.30	360.17	366.33
305.40	350.00	360.35	366.36
305.50	351.10	360.36	366.39
308.60	351.20	360.40	366.48
308.65	351.25	360.45	366.49
308.66	351.40	360.47	366.51
308.70	351.44	360.48	366.54
308.71	351.46	360.77	366.57
308.75	351.50	360.79	366.72
308.80	351.60	360.82	366.81
308.90	351.70	360.84	366.84
315.25	351.80	361.05	367.28
315.30	351.90	361.21	367.31
315.35	352.10	361.23	367.35
315.40	352.20	361.26	367.40
315.45	352.30	361.43	367.45
315.55	352.40	361.53	367.65
315.75	352.80	361.54	370.12
315.80	353.10	361.70	370.17
315.85	353.50	361.85	370.19
315.90	355.04	363.02	370.22
315.95	355.20	363.05	370.72
316.05	355.42	363.25	370.76
316.10	355.45	363.35	370.80
316.20	355.55	363.40	370.84
316.25	355.65	363.45	370.92
316.30	355.75	363.50	372.08
316.50	355.85	363.52	372.10
316.70	356.05	363.53	
335.70	356.10	363.55	

ANNEX VII

-2-

372.20	384.88	705.54
372.50	384.96	705.55
372.55	385.15	705.57
372.60	385.50	705.58
372.65	385.55	705.60
372.80	385.60	705.63
373.05	385.63	705.66
373.10	385.70	705.67
373.20	385.75	705.68
373.22	385.80	705.69
373.30	385.90	705.70
374.05	386.07	705.72
374.10	386.13	705.73
374.15	387.10	705.74
374.35	387.20	705.76
374.40	387.25	705.78
374.45	387.32	705.83
374.55	387.33	705.85
374.65	387.37	705.86
376.04	389.10	705.90
376.12	389.20	706.33
376.16	389.30	706.37
376.20	389.70	706.39
376.24	696.15	727.86
376.28	702.08	735.20
376.56	702.12	737.21
378.05	702.14	737.51
378.10	702.20	748.55
378.15	702.85	772.31
378.30	702.90	772.35
378.50	702.95	791.45
378.55	703.65	791.48
378.70	703.72	791.70
381.00	703.75	791.80
381.11	703.80	791.90
381.35	703.85	
381.37	703.90	
381.46	703.95	
381.54	704.05	
381.60	704.10	
381.66	704.15	
381.68	704.34	
381.69	704.40	
381.81	704.45	
381.85	704.50	
381.86	704.75	
381.93	704.80	
381.99	704.95	
384.00	705.35	
384.10	705.40	
384.27	705.42	
384.36	705.43	
384.45	705.45	
384.53	705.46	
384.56	705.48	
384.68	705.50	
384.77	705.51	
384.78	705.53	

ANNEX VIII

ARTICLES THAT ARE ELIGIBLE FOR DUTY FREE TREATMENT
EFFECTIVE SEPTEMBER 1, 1985, WHEN IMPORTED FROM ISRAEL

100.07	111.10	115.20	125.10
100.09	111.15	115.25	125.15
100.20	111.18	115.30	125.20
100.25	111.37	115.35	125.25
100.30	111.44	115.40	125.32
100.31	111.48	115.45	125.34
100.40	111.52	115.50	125.50
100.43	111.56	115.55	125.60
100.45	111.60	115.60	125.67
100.53	111.76	116.00	125.82
100.55	111.84	116.05	125.84
100.60	111.88	116.10	126.01
100.63	112.01	116.15	126.07
100.65	112.03	116.20	126.09
100.77	112.05	116.25	126.11
105.10	112.08	117.10	126.19
105.20	112.12	117.30	126.23
105.30	112.14	117.45	126.27
105.40	112.18	117.65	126.29
105.60	112.20	117.67	126.31
105.70	112.21	117.86	126.33
105.82	112.23	118.00	126.35
105.84	112.24	118.45	126.41
106.10	112.30	120.17	126.53
106.22	112.36	121.10	126.55
106.25	112.40	121.15	126.57
106.30	112.42	121.20	126.59
106.55	112.46	121.25	126.63
106.70	112.48	121.30	126.65
107.10	112.79	121.35	126.67
107.15	112.94	121.40	126.77
107.20	113.01	121.45	126.79
107.25	113.05	121.50	126.81
107.30	113.11	121.52	126.83
107.35	113.15	121.54	126.89
107.40	113.35	121.55	126.91
107.48	113.40	121.56	126.93
107.52	113.50	121.61	127.10
107.55	113.56	121.62	130.08
107.61	113.60	121.63	130.11
107.63	114.01	121.64	130.20
107.65	114.06	121.65	130.30
107.70	114.15	124.20	130.32
107.78	114.25	124.25	130.40
107.80	114.34	124.30	130.45
110.28	114.36	124.40	130.50
110.35	114.50	124.60	130.56
110.45	114.55	124.65	130.58
110.50	115.00	124.70	130.60
110.55	115.05	124.80	130.63
110.65	115.10	125.01	130.66
	115.15	125.05	130.70

ANNEX VIII

-2-

131.10	137.25	145.50	148.10
131.12	137.28	145.52	148.12
131.20	137.40	145.53	148.17
131.27	137.50	145.54	148.19
131.30	137.60	145.58	148.22
131.33	137.62	145.90	148.30
131.35	137.63	146.12	148.32
131.38	137.71	146.14	148.40
131.40	137.89	146.20	148.52
131.50	137.93	146.22	148.54
131.57	137.97	146.42	148.60
131.60	138.05	146.44	148.65
131.65	138.25	146.56	148.70
131.67	138.30	146.58	148.72
131.70	140.10	146.60	148.74
131.72	140.11	146.64	148.81
131.75	140.14	146.66	148.82
131.90	140.16	146.69	148.83
132.15	140.20	146.71	148.90
132.20	140.21	146.74	148.93
132.25	140.35	146.76	148.96
132.50	140.38	146.79	148.98
132.55	140.46	146.82	149.15
135.03	140.50	146.84	149.18
135.05	140.54	146.85	149.21
135.12	140.56	146.87	149.24
135.14	140.70	146.91	149.26
135.16	141.05	146.95	149.50
135.30	141.15	146.97	150.50
135.41	141.20	147.02	152.00
135.42	141.25	147.05	152.14
135.50	141.30	147.09	152.18
135.60	141.35	147.17	152.22
135.61	141.40	147.21	152.26
135.70	141.45	147.29	152.30
135.75	141.50	147.30	152.34
135.80	141.77	147.33	152.38
136.00	141.83	147.38	152.40
136.10	141.85	147.41	152.43
136.20	141.87	147.42	152.54
136.22	141.89	147.44	152.58
136.30	141.98	147.46	152.62
136.40	144.14	147.48	152.72
136.50	144.16	147.50	152.88
136.60	145.02	147.51	153.03
136.61	145.09	147.53	153.05
136.70	145.12	147.60	153.07
136.90	145.20	147.61	153.16
136.92	145.22	147.64	153.20
136.93	145.24	147.66	153.24
136.95	145.26	147.68	153.28
136.97	145.28	147.70	153.32
137.02	145.30	147.72	154.10
137.04	145.40	147.75	154.15
137.10	145.41	147.80	154.20
137.20	145.46	147.85	154.25
137.21	145.48	148.08	154.30

ANNEX VIII

-3-

154.35	167.05	175.36	182.49
154.40	167.15	175.39	182.50
154.43	167.25	176.01	182.52
154.45	167.34	176.15	182.53
154.50	167.35	176.16	182.58
154.90	167.37	176.18	182.60
155.10	167.40	176.22	182.70
155.12	167.42	176.24	182.90
155.15	167.50	176.26	182.96
155.20	167.90	176.29	184.50
155.30	168.04	176.30	184.51
155.35	168.06	176.38	184.52
155.40	168.11	176.40	184.53
155.70	168.12	176.42	184.54
155.75	168.13	176.45	184.58
156.25	168.14	176.46	184.65
156.30	168.16	176.47	184.80
156.40	168.36	176.49	184.85
156.47	168.37	176.50	186.10
157.10	168.39	176.54	186.15
160.35	168.41	176.55	186.30
160.40	168.42	176.70	186.40
161.23	168.54	177.04	186.50
161.37	168.57	177.12	188.20
161.41	168.59	177.16	188.34
161.43	168.61	177.20	188.50
161.45	168.78	177.22	190.10
161.53	168.82	177.24	190.57
161.57	168.96	177.26	190.68
161.58	168.98	177.30	190.85
161.60	169.04	177.32	190.87
161.61	169.07	177.34	190.90
161.65	169.21	177.36	190.93
161.69	169.38	177.40	191.18
161.71	169.39	177.50	192.07
161.75	169.44	177.56	192.15
161.80	169.48	177.58	192.17
161.83	169.58	177.62	192.21
161.84	169.59	177.69	192.25
161.88	170.05	177.72	192.35
161.92	170.10	178.05	192.45
161.96	170.15	178.15	192.55
162.03	170.28	178.20	192.75
162.07	170.45	178.25	192.85
162.11	170.63	182.05	192.90
162.15	170.65	182.11	193.10
165.40	170.67	182.15	200.06
165.46	170.68	182.20	200.20
165.50	170.70	182.30	200.25
165.55	170.78	182.32	200.45
165.65	170.80	182.33	200.91
165.70	175.03	182.35	202.38
166.10	175.15	182.36	202.54
166.20	175.18	182.40	202.56
166.30	175.21	182.45	202.60
166.40	175.33	182.46	202.62
			202.66

ANNEX VIII

-4-

203.10	240.38	254.09	273.90
203.20	240.40	254.15	273.95
203.30	240.52	254.18	274.00
204.10	240.54	254.20	274.05
204.20	240.56	254.25	274.10
204.35	240.58	254.30	274.15
204.50	240.60	254.35	274.20
206.30	245.00	254.40	274.23
206.45	245.10	254.42	274.27
206.47	245.20	254.44	274.29
206.50	245.45	254.46	274.33
206.52	245.50	254.48	274.35
206.53	245.60	254.50	274.60
206.54	245.70	254.54	274.65
206.60	245.80	254.56	274.70
206.67	251.10	254.58	274.75
206.85	251.15	254.63	274.80
206.87	251.20	254.65	274.85
206.95	251.25	254.70	274.90
206.96	251.30	254.80	300.15
206.98	251.45	254.85	300.20
207.00	252.05	254.90	300.45
220.10	252.10	254.95	300.50
220.15	252.13	256.05	304.08
220.20	252.15	256.10	304.10
220.25	252.17	256.13	304.12
220.31	252.20	256.15	304.14
220.35	252.25	256.20	304.16
220.36	252.27	256.25	304.18
220.37	252.30	256.30	304.22
220.39	252.35	256.35	304.24
220.41	252.40	256.40	304.26
220.47	252.42	256.42	304.34
220.48	252.45	256.44	304.40
222.10	252.50	256.48	304.44
222.20	252.57	256.52	304.48
222.25	252.59	256.54	304.52
222.30	252.61	256.56	306.01
222.32	252.63	256.58	306.02
222.34	252.70	256.60	306.04
222.36	252.73	256.65	306.10
222.41	252.75	256.67	306.11
222.44	252.77	256.70	306.12
222.50	252.81	256.75	306.13
222.55	252.84	256.80	306.14
222.57	252.86	256.84	306.20
222.60	252.90	256.87	306.21
222.62	253.05	256.90	306.22
222.64	253.10	270.45	306.23
240.12	253.15	270.50	306.24
240.14	253.20	273.30	306.30
240.16	253.25	273.50	306.31
240.17	253.30	273.55	306.32
240.23	253.35	273.65	306.33
240.32	253.40	273.70	306.34
240.34	253.45	273.75	306.40
240.36	254.05	273.85	306.41

ANNEX VIII

-5-

306.42	337.72	402.24	405.24
306.43	338.15	402.28	405.28
306.44	345.10	402.32	405.33
306.53	345.40	402.36	405.34
306.54	346.15	402.56	405.41
306.60	346.35	402.64	405.48
306.61	346.58	402.72	405.56
306.62	347.70	402.96	405.60
306.63	356.25	402.98	405.62
306.64	356.40	403.00	405.64
306.70	358.02	403.05	405.76
306.71	360.12	403.09	405.82
306.72	360.42	403.12	405.84
306.73	360.43	403.14	405.92
306.74	360.45	403.16	405.96
306.80	360.48	403.20	406.00
306.81	360.83	403.24	406.05
306.82	361.60	403.27	406.08
306.83	363.05	403.36	406.09
306.84	363.30	403.41	406.12
307.02	363.45	403.45	406.16
307.04	363.53	403.52	406.20
307.06	363.85	403.61	406.32
307.08	364.23	403.68	406.36
307.10	364.30	403.72	406.42
307.12	366.03	403.74	406.47
307.16	367.32	403.81	406.49
307.18	374.35	403.88	406.58
307.40	374.45	403.92	406.61
307.70	374.60	403.96	406.63
308.06	374.65	404.04	406.73
308.10	378.15	404.08	406.84
308.16	378.25	404.12	406.86
308.18	378.65	404.16	406.92
308.20	381.32	404.24	407.00
308.30	381.46	404.28	407.05
308.35	381.57	404.30	408.08
308.45	381.63	404.32	408.12
308.47	381.97	404.40	408.16
308.51	384.24	404.42	408.17
308.55	384.83	404.43	408.19
309.43	384.84	404.46	408.23
310.02	384.92	404.47	408.24
310.93	385.95	404.52	408.28
312.10	386.13	404.56	408.29
312.30	386.30	404.68	408.31
312.40	386.53	404.72	408.36
312.50	390.14	404.76	408.38
319.01	390.16	404.80	408.44
319.03	390.30	404.84	408.48
319.05	390.40	404.90	408.54
332.50	390.50	404.92	408.61
335.50	402.00	405.00	408.64
337.10	402.04	405.01	408.68
337.20	402.08	405.09	408.72
337.30	402.12	405.12	408.81
337.40	402.16	405.21	408.84

ANNEX VIII

-6-

408.88	412.35	417.92	420.26
408.92	412.36	418.00	420.28
408.96	412.38	418.13	420.30
409.02	412.40	418.14	420.36
409.06	412.42	418.18	420.40
409.10	412.48	418.22	420.54
409.14	412.50	418.24	420.60
409.18	412.60	418.26	420.68
409.22	412.64	418.28	420.70
409.26	412.66	418.35	420.78
409.28	412.67	418.50	420.84
409.34	412.69	418.52	420.86
410.60	412.70	418.60	420.88
410.64	412.76	418.62	420.92
410.68	412.96	418.68	420.94
410.88	413.00	418.72	420.98
410.92	413.08	418.74	421.04
410.96	413.24	418.76	421.08
411.00	413.28	418.78	421.10
411.04	413.40	418.80	421.16
411.08	415.05	418.94	421.18
411.10	415.10	419.00	421.22
411.16	415.20	419.02	421.34
411.20	415.27	419.04	421.36
411.27	415.30	419.10	421.44
411.30	415.35	419.20	421.46
411.31	415.40	419.22	421.52
411.40	415.50	419.24	421.54
411.42	416.05	419.28	421.62
411.44	416.10	419.32	421.72
411.48	416.30	419.34	421.74
411.50	417.10	419.38	421.76
411.52	417.14	419.40	421.84
411.53	417.16	419.42	421.86
411.55	417.18	419.44	421.90
411.58	417.20	419.50	422.00
411.60	417.22	419.52	422.20
411.64	417.23	419.54	422.24
411.68	417.24	419.60	422.26
411.74	417.26	419.70	422.30
411.76	417.28	419.74	422.58
411.88	417.32	419.76	422.70
411.90	417.34	419.80	422.72
411.93	417.36	419.82	422.76
411.96	417.38	419.84	422.80
411.98	417.45	419.90	422.82
412.02	417.50	420.00	422.90
412.04	417.52	420.02	422.92
412.06	417.54	420.04	422.94
412.10	417.64	420.06	423.00
412.12	417.70	420.08	423.80
412.14	417.72	420.14	423.86
412.18	417.74	420.16	423.88
412.22	417.76	420.18	423.96
412.26	417.78	420.20	425.02
412.30	417.80	420.22	425.04
412.31	417.90	420.24	425.06

ANNEX VIII

-7-

425.08	426.88	428.90	437.82
425.09	426.92	428.92	437.84
425.10	426.98	428.96	437.86
425.14	427.02	429.00	438.01
425.18	427.04	429.10	438.02
425.20	427.06	429.12	439.30
425.22	427.08	429.19	439.50
425.26	427.12	429.22	440.00
425.28	427.16	429.29	445.05
425.32	427.18	429.30	445.10
425.34	427.20	429.32	445.15
425.36	427.25	429.34	445.20
425.38	427.28	429.38	445.25
425.41	427.30	429.42	445.35
425.42	427.40	429.46	445.42
425.52	427.42	429.54	445.44
425.70	427.45	429.56	445.48
425.72	427.48	429.60	445.54
425.74	427.53	429.85	445.56
425.76	427.54	430.10	445.75
425.78	427.56	430.20	446.10
425.82	427.58	432.10	446.12
425.84	427.60	432.15	446.15
425.86	427.62	435.10	446.30
425.87	427.64	435.45	450.10
425.88	427.70	436.00	450.20
425.94	427.72	437.02	450.30
425.99	427.74	437.06	450.40
426.00	427.82	437.10	450.50
426.04	427.84	437.12	452.24
426.08	427.88	437.13	452.28
426.10	427.94	437.14	452.34
426.12	427.98	437.16	452.44
426.14	428.04	437.18	452.48
426.18	428.12	437.20	452.54
426.24	428.20	437.22	452.58
426.26	428.22	437.30	452.80
426.28	428.24	437.32	455.02
426.32	428.26	437.36	455.04
426.34	428.32	437.40	455.06
426.36	428.36	437.44	455.16
426.42	428.38	437.49	455.18
426.44	428.40	437.50	455.20
426.46	428.41	437.51	455.22
426.52	428.42	437.52	455.24
426.54	428.44	437.54	455.30
426.56	428.50	437.55	455.32
426.58	428.54	437.56	455.34
426.62	428.58	437.57	455.36
426.64	428.62	437.58	455.38
426.72	428.64	437.60	455.40
426.76	428.66	437.64	455.42
426.77	428.68	437.65	455.44
426.78	428.72	437.68	455.46
426.82	428.80	437.69	460.10
426.84	428.82	437.70	460.15
426.86	428.88	437.72	460.25
			460.30

ANNEX VIII

-8-

460.35
460.40
460.45
460.50
460.65
460.75
460.80
460.85
460.90
461.05
461.10
461.15
461.20
461.30
461.35
461.40
461.45
465.05
465.10
465.15
465.20
465.25
465.30
465.35
465.40
465.45
465.50
465.55
465.60
465.65
465.70
465.75
465.80
465.85
465.87
465.90
465.92
465.95
466.05
466.10
466.15
466.20
466.25
466.30
470.18
470.85
472.04
472.06
472.10
472.12
472.14
472.22
472.24
472.30
472.40
472.42
472.44
472.48
472.50
473.02
473.06
473.10
473.12
473.14
473.16
473.18
473.19
473.20
473.24
473.28
473.30
473.32
473.36
473.38
473.44
473.46
473.48
473.50
473.52
473.54
473.56
473.60
473.66
473.70
473.72
473.74
473.76
473.78
473.80
473.82
473.84
473.86
473.88
473.90
474.04
474.06
474.08
474.20
474.22
474.26
474.30
474.35
474.40
474.42
474.44
474.46
474.50
474.62
475.05
475.10
475.25
475.30
475.35
475.40
475.45
475.55
475.60
475.65
485.10
485.20
490.10
490.12
490.14
490.20
490.22
490.24
490.26
490.30
490.32
490.40
490.42
490.44
490.46
490.48
490.50
490.65
490.73
490.75
490.90
490.92
490.94
491.00
493.10
493.14
493.17
493.18
493.20
493.22
493.25
493.26
493.30
493.46
493.47
493.50
493.67
493.68
493.82
494.04
494.06
494.30
494.40
494.52
494.60
495.05
495.10
495.15
495.20
511.11
511.25
511.41
511.51
511.64
511.65
511.71
512.24
512.31
512.35
512.41
512.44
513.11
513.21
513.31
513.36
513.41
513.51
513.74
513.81
513.84
513.94
514.21
514.24
514.34
514.41
514.44
514.51
514.54
514.57
514.61
514.65
514.81
515.11
515.14
515.21
515.24
515.31
515.34
515.51
515.54
515.61
515.64
516.21
516.24
516.71
516.73
516.74
516.76
516.81
516.91
516.94
517.11
517.21
517.24
517.51
517.61
517.71
517.74
517.81
517.91
518.21
518.41
518.51
519.11

ANNEX VIII

-9-

519.14	533.29	542.67	601.33
519.31	533.30	542.71	601.54
519.37	533.32	542.73	602.10
519.51	533.34	542.75	602.20
519.83	533.39	542.77	602.28
519.84	533.52	542.92	603.10
519.86	533.62	542.94	603.15
519.91	533.64	542.96	603.25
519.93	533.72	542.98	603.30
519.95	533.74	543.11	603.40
519.97	533.76	543.21	603.45
520.21	533.78	543.27	603.49
520.31	533.79	543.31	603.50
520.37	534.11	543.61	603.54
520.39	534.21	543.63	603.55
520.51	534.31	543.67	603.70
520.54	534.74	543.69	605.06
520.71	534.76	544.11	605.48
521.41	534.87	544.14	605.60
521.51	534.91	544.18	605.65
521.54	534.97	544.31	606.00
521.61	535.11	544.41	606.02
521.71	535.12	544.61	606.04
521.74	535.13	545.11	606.06
521.84	535.14	545.21	606.15
521.87	535.27	545.25	606.17
522.21	535.41	545.55	606.19
522.41	536.11	545.57	606.22
522.45	540.11	545.61	606.24
522.61	540.13	545.63	606.26
522.64	540.14	545.67	606.28
522.71	540.15	545.81	606.30
522.81	540.21	545.85	606.31
523.31	540.32	545.87	606.33
523.33	540.37	546.11	606.36
523.37	540.41	546.13	606.37
523.51	540.51	546.20	606.39
523.61	540.61	546.21	606.40
523.91	540.63	546.25	606.44
523.94	540.71	546.35	606.46
531.01	541.11	546.52	606.48
531.04	541.21	546.60	606.50
531.11	541.31	546.62	606.51
531.21	542.11	546.64	606.53
531.24	542.13	546.66	606.57
531.33	542.21	546.68	606.59
531.35	542.23	547.11	606.60
531.39	542.25	547.15	606.62
532.14	542.31	547.21	606.64
532.20	542.33	547.31	606.67
532.41	542.35	547.37	606.69
532.61	542.37	547.41	606.71
533.11	542.42	547.43	606.73
533.15	542.44	547.51	606.75
533.20	542.46	547.53	606.77
533.22	542.48	548.01	606.79
533.24	542.57	548.05	606.81

ANNEX VIII

-10-

606.83
606.86
606.88
606.91
606.93
606.97
606.99
607.05
607.07
607.09
607.14
607.17
607.22
607.23
607.26
607.28
607.32
607.34
607.41
607.43
607.46
607.48
607.54
607.59
607.62
607.64
607.66
607.67
607.69
607.72
607.76
607.78
607.81
607.83
607.86
607.91
607.92
607.93
607.94
607.97
607.99
608.01
608.07
608.11
608.13
608.14
608.19
608.21
608.23
608.26
608.29
608.31
608.34
608.38
608.39
608.47
608.55
608.59
608.67
609.14
609.15
609.17
609.20
609.21
609.22
609.25
609.28
609.30
609.33
609.35
609.36
609.37
609.40
609.41
609.43
609.45
609.70
609.72
609.75
609.76
609.80
609.82
609.84
609.86
609.88
609.90
609.96
609.98
610.20
610.21
610.25
610.26
610.30
610.31
610.32
610.35
610.36
610.37
610.39
610.40
610.42
610.43
610.45
610.46
610.48
610.49
610.51
610.52
610.56
610.58
610.62
610.63
610.65
610.66
610.70
610.71
610.74
610.82
610.84
610.86
610.88
610.89
610.90
610.92
612.02
612.03
612.05
612.06
612.08
612.10
612.15
612.17
612.20
612.30
612.31
612.32
612.34
612.35
612.36
612.38
612.39
612.40
612.41
612.43
612.44
612.45
612.50
612.52
612.55
612.56
612.60
612.62
612.63
612.64
612.72
612.73
612.80
612.81
612.82
613.02
613.03
613.04
613.06
613.08
613.10
613.11
613.12
613.18
618.01
618.02
618.04
618.06
618.10
618.15
618.17
618.20
618.22
618.25
618.27
618.29
618.40
618.42
618.45
618.47
620.08
620.10
620.12
620.16
620.20
620.22
620.26
620.30
620.40
620.42
620.46
620.50
622.15
622.17
622.20
622.22
622.25
622.35
622.40
624.02
624.03
624.04
624.10
624.12
624.14
624.16
624.18
624.20
624.22
624.24
624.30
624.32
624.34
624.50
624.52
624.54
626.02
626.10
626.15
626.17
626.18
626.20
626.22
626.24

ANNEX VIII

-11-

626.30	632.66	644.17	646.75
626.31	632.68	644.18	646.76
626.35	632.79	644.20	646.77
626.40	632.86	644.22	646.78
626.42	632.88	644.24	646.80
626.45	633.00	644.26	646.81
628.05	640.05	644.28	646.82
628.10	640.10	644.30	646.83
628.15	640.20	644.32	646.84
628.17	640.25	644.36	646.85
628.20	640.30	644.38	646.86
628.25	640.35	644.40	646.87
628.30	640.40	644.42	646.89
628.35	642.06	644.46	646.90
628.40	642.08	644.48	646.92
628.45	642.09	644.52	646.95
628.50	642.11	644.56	646.97
628.57	642.12	644.64	646.98
628.59	642.14	644.68	647.01
628.70	642.15	644.72	647.03
628.72	642.16	644.76	647.05
628.74	642.17	644.80	648.51
628.90	642.18	644.84	648.53
628.95	642.20	644.88	648.55
629.05	642.31	644.92	648.57
629.07	642.34	644.95	648.61
629.10	642.35	644.98	648.63
629.25	642.45	646.02	648.67
629.26	642.47	646.04	648.69
629.29	642.50	646.06	648.71
629.30	642.52	646.17	648.73
629.32	642.54	646.20	648.75
629.33	642.56	646.22	648.85
629.35	642.58	646.25	648.89
629.50	642.60	646.26	648.91
629.60	642.62	646.27	648.93
629.62	642.64	646.28	648.95
629.65	642.66	646.30	648.97
632.02	642.68	646.32	649.01
632.04	642.70	646.34	649.03
632.06	642.72	646.36	649.05
632.12	642.76	646.40	649.07
632.16	642.78	646.41	649.11
632.18	642.80	646.42	649.14
632.24	642.82	646.45	649.17
632.28	642.85	646.47	649.19
632.34	642.87	646.51	649.21
632.38	642.91	646.53	649.24
632.42	642.93	646.54	649.25
632.43	642.96	646.56	649.26
632.46	642.97	646.57	649.27
632.48	644.02	646.58	649.29
632.50	644.06	646.60	649.31
632.52	644.08	646.63	649.32
632.58	644.09	646.65	649.33
632.60	644.11	646.72	649.35
632.62	644.12	646.74	649.37

ANNEX VIII

649.41
649.46
649.47
649.48
649.49
649.57
649.67
649.77
649.79
649.81
649.83
649.85
649.87
649.89
650.01
650.03
650.05
650.07
650.09
650.12
650.13
650.15
650.17
650.19
650.21
650.31
650.35
650.37
650.38
650.39
650.40
650.42
650.43
650.45
650.47
650.48
650.50
650.51
650.53
650.55
650.57
650.61
650.63
650.65
650.71
650.73
650.75
650.77
650.79
650.81
650.85
650.87
650.89
651.03
651.04
651.09
651.11
651.15
651.21
651.23
651.25
651.27
651.29
651.31
651.33
651.37
651.45
651.46
651.48
651.49
651.51
651.53
651.55
651.60
651.64
652.03
652.06
552.09
652.13
652.14
652.15
652.18
652.21
652.24
652.27
652.35
652.36
652.38
652.41
652.42
652.45
652.50
652.60
652.65
652.70
652.75
652.80
652.84
652.86
652.88
652.90
652.92
652.93
652.94
652.95
652.96
652.97
653.00
653.01
653.03
653.05
653.07
653.10
653.15
653.20
653.25
653.30
653.35
653.37
653.38
653.45
653.47
653.48
653.52
653.60
653.62
653.80
653.85
653.90
653.93
653.94
653.96
653.99
654.00
654.08
654.16
654.25
654.30
654.35
654.40
654.45
654.50
654.55
654.60
654.65
654.70
654.75
656.10
656.15
656.35
657.10
657.15
657.24
657.25
657.30
657.35
657.40
657.50
657.60
657.70
657.75
657.80
657.90
658.00
660.10
660.15
660.20
660.22
660.25
660.30
660.35
660.42
660.48
660.56
660.59
660.62
660.67
660.71
660.76
660.77
660.80
660.85
660.92
660.96
660.97
661.05
661.06
661.09
661.10
661.15
661.20
661.25
661.30
661.35
661.40
661.45
661.50
661.54
661.56
661.65
661.67
661.68
661.85
661.92
661.94
661.95
662.10
662.15
662.18
662.20
662.26
662.30
662.35
662.50
664.06
664.07
664.08
664.10
666.10
666.25
668.00
668.02
668.04
668.06
668.07
668.10
668.15
668.21
668.23

ANNEX VIII

-13-

668.36	676.07	682.80	685.40
668.38	676.10	682.90	685.42
668.50	676.12	682.95	685.48
670.00	676.15	683.01	685.49
670.02	676.20	683.12	685.60
670.04	676.22	683.15	685.70
670.06	676.23	683.20	685.90
670.12	676.25	683.30	686.10
670.14	676.30	683.32	686.18
670.16	676.50	683.40	686.24
670.17	676.52	683.50	686.30
670.18	678.20	683.60	686.40
670.19	678.30	683.65	686.50
670.21	678.32	683.80	686.60
670.22	678.35	683.90	686.80
670.23	678.40	683.95	686.90
670.25	678.45	684.10	687.10
670.27	678.50	684.20	687.20
670.29	680.05	684.25	687.30
670.33	680.07	684.28	687.42
670.35	680.12	684.40	687.43
670.40	680.13	684.48	687.54
670.41	680.14	684.53	687.66
670.42	680.17	684.55	687.70
670.43	680.19	684.57	687.79
670.50	680.25	684.58	687.83
670.52	680.27	684.59	687.87
670.54	680.30	684.65	688.04
670.56	680.33	684.66	688.06
670.60	680.39	684.67	688.10
670.64	680.42	684.70	688.12
670.66	680.46	684.90	688.17
670.70	680.49	684.92	688.18
670.72	680.92	684.94	688.20
670.74	680.95	684.96	688.25
670.90	681.04	684.98	688.30
672.10	681.07	685.00	688.32
672.14	681.10	685.02	688.34
672.16	681.13	685.04	688.36
672.20	681.15	685.06	688.41
672.22	681.21	685.08	688.42
672.25	681.27	685.10	690.05
674.10	681.33	685.12	690.10
674.20	681.36	685.14	690.20
674.40	681.39	685.18	690.25
674.42	682.05	685.20	690.35
674.50	682.07	685.22	690.40
674.52	682.25	685.24	692.02
674.53	682.30	685.25	692.04
674.55	682.35	685.28	692.10
674.56	682.41	685.30	692.14
674.60	682.45	685.32	692.16
674.70	682.50	685.36	692.20
674.75	682.52	685.37	692.22
674.80	682.60	685.38	692.29
674.90	682.70	685.39	692.32

ANNEX VIII

-14-

692.35	708.91	711.98	722.56
692.40	709.03	712.05	722.60
692.45	709.06	712.10	722.64
692.52	709.07	712.15	722.70
692.53	709.09	712.20	722.72
692.55	709.10	712.47	722.75
692.60	709.11	712.49	722.78
694.31	709.15	713.07	722.80
694.50	709.17	713.09	722.82
694.61	709.19	713.11	722.83
694.63	709.21	713.19	722.85
694.64	709.25	715.15	722.86
694.65	709.40	715.20	722.88
694.66	709.45	715.40	722.90
694.67	709.50	715.62	722.92
694.70	709.54	715.64	722.94
696.05	709.57	715.66	722.96
696.10	709.61	716.04	723.05
696.30	709.63	716.06	723.10
696.35	709.66	716.38	723.15
696.40	710.04	716.39	723.20
696.50	710.08	716.45	723.25
696.60	710.12	720.04	723.30
700.54	710.14	720.06	723.32
702.15	710.16	720.08	723.35
702.25	710.20	720.20	724.10
702.28	710.30	720.24	724.12
702.30	710.34	720.25	724.25
702.32	710.36	720.26	724.40
702.35	710.40	720.28	724.45
702.37	710.42	720.29	725.01
702.40	710.46	720.30	725.03
702.47	710.50	720.33	725.04
703.35	710.60	720.34	725.05
703.55	710.61	720.36	725.07
703.60	710.63	720.42	725.12
703.70	710.65	720.60	725.14
705.30	710.67	720.65	725.16
705.82	710.68	720.67	725.18
706.04	710.70	720.70	725.22
706.06	710.72	720.80	725.24
706.09	710.76	720.82	725.26
706.16	710.78	721.10	725.30
706.29	710.80	721.12	725.32
706.38	711.04	722.02	725.34
706.42	711.08	722.04	725.36
706.43	711.25	722.06	725.40
708.01	711.38	722.08	725.50
708.03	711.42	722.09	725.52
708.23	711.45	722.11	726.05
708.61	711.47	722.13	726.10
708.76	711.49	722.16	726.15
708.78	711.55	722.18	726.25
708.82	711.60	722.30	726.40
708.85	711.67	722.32	726.45
708.87	711.78	722.34	726.50
708.89	711.88	722.42	726.52

ANNEX VIII

-15-

726.63	730.99	735.07	745.58
726.65	731.05	735.09	745.60
726.70	731.06	735.11	745.65
726.75	731.10	735.12	745.66
726.85	731.22	735.15	745.68
726.90	731.24	735.17	745.70
727.02	731.26	735.18	745.72
727.04	731.40	735.20	745.74
727.06	731.42	737.07	748.05
727.15	731.44	737.09	748.10
727.23	731.50	737.23	748.12
727.25	732.04	737.24	748.21
727.27	732.10	737.26	748.25
727.29	732.16	737.27	748.34
727.35	732.18	737.28	748.55
727.40	732.32	737.30	750.05
727.47	732.34	737.35	750.15
727.53	732.35	737.42	750.20
727.59	732.38	737.43	750.26
727.65	732.41	737.47	750.28
727.70	732.50	737.49	750.30
728.05	732.52	737.51	750.31
728.10	732.60	737.55	750.35
728.15	732.62	737.65	750.40
728.20	734.10	737.70	750.47
728.22	734.15	737.80	750.50
728.24	734.20	737.85	750.55
728.27	734.25	737.95	750.60
730.05	734.30	740.05	750.65
730.17	734.32	740.14	750.70
730.19	734.34	740.15	750.75
730.27	734.40	740.30	751.05
730.31	734.42	740.34	751.10
730.41	734.45	740.35	751.11
730.43	734.48	740.38	751.15
730.45	734.51	740.50	755.05
730.51	734.54	740.55	755.10
730.53	734.56	740.60	755.15
730.55	734.60	740.80	755.25
730.57	734.70	741.06	755.35
730.59	734.71	741.15	755.40
730.63	734.72	741.20	755.45
730.65	734.75	741.25	755.50
730.67	734.77	741.30	756.10
730.71	734.80	741.35	756.25
730.73	734.85	741.50	756.30
730.74	734.86	745.04	756.35
730.75	734.87	745.08	756.45
730.77	734.88	745.20	756.55
730.81	734.90	745.25	756.60
730.86	734.91	745.28	760.05
730.88	734.93	745.30	760.12
730.94	734.95	745.32	760.20
730.95	735.01	745.34	760.30
730.96	735.02	745.42	760.32
730.97	735.04	745.45	760.36
730.98	735.06	745.54	760.38

ANNEX VIII

-16-

760.40
760.42
760.45
760.48
760.50
760.52
760.54
760.56
760.58
766.20
766.30
770.05
770.07
770.10
770.30
770.40
770.70
770.80
771.20
771.25
771.30
771.31
771.35
771.40
771.41
771.43
771.45
771.50
771.55
772.03
772.06
772.09
772.15
772.20
772.25
772.40
772.42
772.45
772.48
772.51
772.54
772.60
772.65
772.70
772.80
772.85
772.95
772.97
773.05
773.10
773.15
773.25
773.30
773.35
774.20
774.25
774.40
774.45
774.50
774.55
790.03
790.05
790.07
790.08
790.10
790.15
790.23
790.30
790.37
790.39
790.40
790.45
790.47
790.50
790.55
790.57
790.60
790.70
791.10
791.15
791.17
791.19
791.20
791.27
791.28
791.30
791.35
791.50
791.54
791.57
791.60
791.65
791.76
791.90
792.10
792.24
792.30
792.32
792.40
792.50
792.60
792.70
792.75
798.00
798.50
799.00
804.10
804.20
806.20
806.30
807.00
869.10

ANNEX IX

STAGED RATE MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES FOR PRODUCTS OF ISRAEL

Notes:

1. Each rate in the following table, opposite the number of an item in the TSUS identified therein, is inserted with the symbol "I" in parentheses in the rate of duty column entitled "Special" for such item, effective for articles provided for therein which are products of Israel and entered on and after the date at the head of the column in which such rate is set forth, and such rate shall be superseded by the rate, if any, for that item in the immediately following column, effective for articles which are entered on and after the date at the head of such latter column.

2. For purposes of this Annex, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

ANNEX IX
-2-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
100.35	12%	12%	4.8%	4.8%	Free	Free	Free	Free
100.79	8%	8%	3.2%	3.2%	Free	Free	Free	Free
105.50	4¢/lb.	4¢/lb.	1.6¢/lb.	1.6¢/lb.	Free	Free	Free	Free
105.55	10%	10%	4%	4%	Free	Free	Free	Free
106.75	8%	8%	3.2%	3.2%	Free	Free	Free	Free
107.45	8%	8%	3.2%	3.2%	Free	Free	Free	Free
107.62	8%	8%	3.2%	3.2%	Free	Free	Free	Free
112.34	10%	10%	4%	4%	Free	Free	Free	Free
112.50	10%	10%	4%	4%	Free	Free	Free	Free
112.52	10%	10%	4%	4%	Free	Free	Free	Free
112.54	12%	12%	4.8%	4.8%	Free	Free	Free	Free
112.58	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
112.62	16%	16%	6.4%	6.4%	Free	Free	Free	Free
112.66	16%	16%	6.4%	6.4%	Free	Free	Free	Free
112.71	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
112.73	12%	12%	4.8%	4.8%	Free	Free	Free	Free
112.74	24%	24%	9.6%	9.6%	Free	Free	Free	Free
112.80	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
112.82	12%	12%	4.8%	4.8%	Free	Free	Free	Free
112.86	20%	20%	8%	8%	Free	Free	Free	Free
112.90	28%	28%	11.2%	11.2%	Free	Free	Free	Free
113.20	8%	8%	3.2%	3.2%	Free	Free	Free	Free
113.25	12%	12%	4.8%	4.8%	Free	Free	Free	Free
113.30	12%	12%	4.8%	4.8%	Free	Free	Free	Free
114.04	14%	14%	5.6%	5.6%	Free	Free	Free	Free
114.20	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
116.30	5.6¢/lb.	5.6¢/lb.	2.2¢/lb.	2.2¢/lb.	Free	Free	Free	Free
117.00	12%	12%	4.8%	4.8%	Free	Free	Free	Free
117.05	16%	16%	6.4%	6.4%	Free	Free	Free	Free
117.15	12%	12%	4.8%	4.8%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-3-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
117.20	16%	16%	6.4%	6.4%	Free	Free	Free	Free
117.25	12%	12%	4.8%	4.8%	Free	Free	Free	Free
117.35	8%	8%	3.2%	3.2%	Free	Free	Free	Free
117.42	20%	20%	8%	8%	Free	Free	Free	Free
117.44	19%	19%	7.6%	7.6%	Free	Free	Free	Free
117.50	8%	8%	3.2%	3.2%	Free	Free	Free	Free
117.55	15%	15%	6%	6%	Free	Free	Free	Free
117.60	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
117.70	12%	12%	4.8%	4.8%	Free	Free	Free	Free
117.75	4¢/lb.	4¢/lb.	1.6¢/lb.	1.6¢/lb.	Free	Free	Free	Free
117.81	16%	16%	6.4%	6.4%	Free	Free	Free	Free
117.88	8%	8%	3.2%	3.2%	Free	Free	Free	Free
118.05	1.2¢/lb.	1.2¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
118.10	16%	16%	6.4%	6.4%	Free	Free	Free	Free
118.15	16%	16%	6.4%	6.4%	Free	Free	Free	Free
118.25	16%	16%	6.4%	6.4%	Free	Free	Free	Free
118.30	14%	14%	5.6%	5.6%	Free	Free	Free	Free
118.35	8%	8%	3.2%	3.2%	Free	Free	Free	Free
119.50	2.8¢/doz.	2.8¢/doz.	1.1¢/doz.	1.1¢/doz.	Free	Free	Free	Free
119.55	2.8¢/doz.	2.8¢/doz.	1.1¢/doz.	1.1¢/doz.	Free	Free	Free	Free
119.65	21.6¢/lb.	21.6¢/lb.	8.6¢/lb.	8.6¢/lb.	Free	Free	Free	Free
119.70	4.4¢/lb.	4.4¢/lb.	1.8¢/lb.	1.8¢/lb.	Free	Free	Free	Free
123.50	8%	8%	3.2%	3.2%	Free	Free	Free	Free
130.37	20¢/bu. of 56 lbs.	20¢/bu. of 56 lbs.	8¢/bu. of 56 lbs.	8¢/bu. of 56 lbs.	Free	Free	Free	Free
131.25	8%	8%	3.2%	3.2%	Free	Free	Free	Free
131.45	16%	16%	6.4%	6.4%	Free	Free	Free	Free
131.80	8%	8%	3.2%	3.2%	Free	Free	Free	Free
131.85	16%	16%	6.4%	6.4%	Free	Free	Free	Free
132.30	12%	12%	4.8%	4.8%	Free	Free	Free	Free
135.10	2.8¢/lb.	2.8¢/lb.	1.1¢/lb.	1.1¢/lb.	Free	Free	Free	Free
135.51	10%	10%	4%	4%	Free	Free	Free	Free
135.90	1.8¢/lb.	1.8¢/lb.	0.7¢/lb.	0.7¢/lb.	Free	Free	Free	Free
135.95	2.4¢/lb.	2.4¢/lb.	1¢/lb.	1¢/lb.	Free	Free	Free	Free
135.97	2.4¢/lb.	2.4¢/lb.	1¢/lb.	1¢/lb.	Free	Free	Free	Free
135.99	1.2¢/lb.	1.2¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
136.80	20%	20%	8%	8%	Free	Free	Free	Free
137.75	10%	10%	4%	4%	Free	Free	Free	Free
137.78	10%	10%	4%	4%	Free	Free	Free	Free
137.79	20%	20%	8%	8%	Free	Free	Free	Free
137.80	10%	10%	4%	4%	Free	Free	Free	Free
137.88	10%	10%	4%	4%	Free	Free	Free	Free
138.35	14%	14%	5.6%	5.6%	Free	Free	Free	Free
138.41	14%	14%	5.6%	5.6%	Free	Free	Free	Free
138.46	14%	14%	5.6%	5.6%	Free	Free	Free	Free
140.76	10.4%	10.4%	4.2%	4.2%	Free	Free	Free	Free
141.60	9.5%	9.5%	3.8%	3.8%	Free	Free	Free	Free
141.76	9.6%	8.4%	7.2%	6%	4.8%	3.6%	1.2%	Free
141.82	10%	10%	4%	4%	Free	Free	Free	Free
141.86	10%	10%	4%	4%	Free	Free	Free	Free
141.92	14%	12.3%	10.5%	8.8%	7%	5.3%	1.8%	Free
141.93	14%	14%	5.6%	5.6%	Free	Free	Free	Free
144.10	4¢/lb. + 20%	4¢/lb. + 20%	1.6¢/lb. + 8%	1.6¢/lb. + 8%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-4-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
144.20	2.6¢/lb. on drained weight + 8%	2.6¢/lb. on drained weight + 8%	1¢/lb. on drained weight + 3.2%	1¢/lb. on drained weight + 3.2%	Free	Free	Free	Free
145.18	4¢/lb.	4¢/lb.	1.6¢/lb.	1.6¢/lb.	Free	Free	Free	Free
145.55	12¢/lb.	12¢/lb.	4.8¢/lb.	4.8¢/lb.	Free	Free	Free	Free
145.65	14%	14%	5.6%	5.6%	Free	Free	Free	Free
145.70	22.4%	22.4%	9%	9%	Free	Free	Free	Free
146.24	28%	28%	11.2%	11.2%	Free	Free	Free	Free
146.30	5¢/lb.	4.3¢/lb.	3.6¢/lb.	3¢/lb.	2.4¢/lb.	1.8¢/lb.	0.6¢/lb.	Free
146.70	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
146.78	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
146.83	10%	10%	4%	4%	Free	Free	Free	Free
146.86	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
146.93	4.8¢/lb.	4.8¢/lb.	1.9¢/lb.	1.9¢/lb.	Free	Free	Free	Free
146.96	7.6¢/lb.	7.6¢/lb.	3¢/lb.	3¢/lb.	Free	Free	Free	Free
146.99	5.6¢/lb. + 8%	5.6¢/lb. + 8%	2.2¢/lb. + 3.2%	2.2¢/lb. + 3.2%	Free	Free	Free	Free
147.03	0.8¢/lb.	0.7¢/lb.	0.6¢/lb.	0.5¢/lb.	0.4¢/lb.	0.3¢/lb.	0.1¢/lb.	Free
147.07	0.6¢/lb.	0.6¢/lb.	0.5¢/lb.	0.4¢/lb.	0.3¢/lb.	0.2¢/lb.	0.1¢/lb.	Free
147.15	1¢/lb.	0.9¢/lb.	0.8¢/lb.	0.7¢/lb.	0.5¢/lb.	0.4¢/lb.	0.1¢/lb.	Free
147.19	1¢/lb.	1¢/lb.	0.4¢/lb.	0.4¢/lb.	Free	Free	Free	Free
147.22	0.8¢/lb.	0.8¢/lb.	0.3¢/lb.	0.3¢/lb.	Free	Free	Free	Free
147.26	14%	14%	5.6%	5.6%	Free	Free	Free	Free
147.31	0.8¢/lb.	0.8¢/lb.	0.3¢/lb.	0.3¢/lb.	Free	Free	Free	Free
147.36	17.5%	17.5%	7%	7%	Free	Free	Free	Free
147.54	9.6%	9.6%	3.8%	3.8%	Free	Free	Free	Free
147.77	7%	7%	2.8%	2.8%	Free	Free	Free	Free
148.03	3¢/lb.	3¢/lb.	1.2¢/lb.	1.2¢/lb.	Free	Free	Free	Free
148.06	3¢/lb.	3¢/lb.	1.2¢/lb.	1.2¢/lb.	Free	Free	Free	Free
148.25	16%	16%	6.4%	6.4%	Free	Free	Free	Free
148.28	16%	16%	6.4%	6.4%	Free	Free	Free	Free
148.35	17.5%	17.5%	7%	7%	Free	Free	Free	Free
148.77	8%	8%	3.2%	3.2%	Free	Free	Free	Free
148.78	16%	16%	6.4%	6.4%	Free	Free	Free	Free
148.86	14.4%	14.4%	5.8%	5.8%	Free	Free	Free	Free
149.28	14%	14%	5.6%	5.6%	Free	Free	Free	Free
149.60	7%	7%	2.8%	2.8%	Free	Free	Free	Free
150.02	7%	7%	2.8%	2.8%	Free	Free	Free	Free
150.05	14%	14%	5.6%	5.6%	Free	Free	Free	Free
152.05	12%	12%	4.8%	4.8%	Free	Free	Free	Free
152.42	12.5%	12.5%	5%	5%	Free	Free	Free	Free
152.50	4¢/lb.	4¢/lb.	1.6¢/lb.	1.6¢/lb.	Free	Free	Free	Free
152.60	12%	12%	4.8%	4.8%	Free	Free	Free	Free
152.65	14%	14%	5.6%	5.6%	Free	Free	Free	Free
152.78	12%	12%	4.8%	4.8%	Free	Free	Free	Free
154.05	5.6¢/lb. + 8%	5.6¢/lb. + 8%	2.2¢/lb. + 3.2%	2.2¢/lb. + 3.2%	Free	Free	Free	Free
154.53	8%	8%	3.2%	3.2%	Free	Free	Free	Free
154.60	16%	16%	6.4%	6.4%	Free	Free	Free	Free
155.60	1.3¢/lb.	1.3¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
155.65	1.3¢/lb.	1.3¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
161.05	8%	8%	3.2%	3.2%	Free	Free	Free	Free
161.06	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
161.08	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-5-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
165.25	8¢/gal.	8¢/gal.	3.2¢/gal.	3.2¢/gal.	Free	Free	Free	Free
165.44	16¢/gal.	16¢/gal.	6.4¢/gal.	6.4¢/gal.	Free	Free	Free	Free
167.10	94¢/gal.	94¢/gal.	37.6¢/gal.	37.6¢/gal.	Free	Free	Free	Free
167.20	20.8¢/gal. + $1.48/ proof gallon on ethyl alcohol content	20.8¢/gal. + $1.48/ proof gallon on ethyl alcohol content	8.3¢/gal. + 59¢/ proof gallon on ethyl alcohol content	8.3¢/gal. + 59¢/ proof gallon on ethyl alcohol content	Free	Free	Free	Free
167.30	30¢/gal.	30¢/gal.	12¢/gal.	12¢/gal.	Free	Free	Free	Free
167.32	50¢/gal.	50¢/gal.	20¢/gal.	20¢/gal.	Free	Free	Free	Free
168.09	$2.28/proof gallon	$2.28/proof gallon	91¢/proof gallon	91¢/proof gallon	Free	Free	Free	Free
168.74	$3.40/proof gallon	$3.40/proof gallon	$1.36/proof gallon	$1.36/proof gallon	Free	Free	Free	Free
168.76	$1.25/proof gallon	$1.25/proof gallon	50¢/proof gallon	50¢/proof gallon	Free	Free	Free	Free
168.80	50¢/proof gallon	50¢/proof gallon	20¢/proof gallon	20¢/proof gallon	Free	Free	Free	Free
169.08	50¢/proof gallon	50¢/proof gallon	20¢/proof gallon	20¢/proof gallon	Free	Free	Free	Free
169.13	$1.40/proof gallon	$1.40/proof gallon	56¢/proof gallon	56¢/proof gallon	Free	Free	Free	Free
169.14	$1.40/proof gallon	$1.40/proof gallon	56¢/proof gallon	56¢/proof gallon	Free	Free	Free	Free
169.22	25¢/proof gallon	25¢/proof gallon	10¢/proof gallon	10¢/proof gallon	Free	Free	Free	Free
169.37	$2.56/proof gallon	$2.56/proof gallon	$1.02/proof gallon	$1.02/proof gallon	Free	Free	Free	Free
169.47	$1.25/proof gallon	$1.25/proof gallon	50¢/proof gallon	50¢/proof gallon	Free	Free	Free	Free
169.49	$1.25/proof gallon	$1.25/proof gallon	50¢/proof gallon	50¢/proof gallon	Free	Free	Free	Free
170.01	$1.82/lb.	$1.82/lb.	73¢/lb.	73¢/lb.	Free	Free	Free	Free
170.20	36¢/lb.	36¢/lb.	14.4¢/lb.	14.4¢/lb.	Free	Free	Free	Free
170.25	$1.24/lb.	$1.24/lb.	50¢/lb.	50¢/lb.	Free	Free	Free	Free
170.32	10.2¢/lb.	10.2¢/lb.	4.1¢/lb.	4.1¢/lb.	Free	Free	Free	Free
170.35	20¢/lb.	20¢/lb.	8¢/lb.	8¢/lb.	Free	Free	Free	Free
170.40	12.9¢/lb.	12.9¢/lb.	5.2¢/lb.	5.2¢/lb.	Free	Free	Free	Free
170.55	44¢/lb.	44¢/lb.	17.6¢/lb.	17.6¢/lb.	Free	Free	Free	Free
170.60	12.9¢/lb.	12.9¢/lb.	5.2¢/lb.	5.2¢/lb.	Free	Free	Free	Free
170.72	$1.53/lb. + 8.4%	$1.53/lb. + 8.4%	61¢/lb. + 3.4%	61¢/lb. + 3.4%	Free	Free	Free	Free
176.14	1.2¢/lb.	1.2¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
176.52	18%	18%	7.2%	7.2%	Free	Free	Free	Free
177.52	1.6¢/lb.	1.6¢/lb.	0.6¢/lb.	0.6¢/lb.	Free	Free	Free	Free
177.67	8%	8%	3.2%	3.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-6-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
178.30	8%, but not less than the rate applicable to component material subject to the highest rate of duty	8%, but not less than the rate applicable to component material subject to the highest rate of duty	3.2%, but not less than the rate applicable to component material subject to the highest rate of duty	3.2%, but not less than the rate applicable to component material subject to the highest rate of duty	Free	Free	Free	Free
182.10	8%	8%	3.2%	3.2%	Free	Free	Free	Free
182.92	16%	16%	6.4%	6.4%	Free	Free	Free	Free
183.00	8%	8%	3.2%	3.2%	Free	Free	Free	Free
183.01	8%	8%	3.2%	3.2%	Free	Free	Free	Free
183.05	8%	8%	3.2%	3.2%	Free	Free	Free	Free
186.20	12%	12%	4.8%	4.8%	Free	Free	Free	Free
186.60	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
188.30	20¢/lb.	20¢/lb.	8¢/lb.	8¢/lb.	Free	Free	Free	Free
190.25	7.7%	7.7%	3.1%	3.1%	Free	Free	Free	Free
192.30	72¢/lb.	72¢/lb.	28.8¢/lb.	28.8¢/lb.	Free	Free	Free	Free
200.95	7.6%	7.6%	3%	3%	Free	Free	Free	Free
204.05	7.7%	7.7%	3.1%	3.1%	Free	Free	Free	Free
204.30	13.3%	13.3%	5.3%	5.3%	Free	Free	Free	Free
204.40	6.7%	6.7%	2.7%	2.7%	Free	Free	Free	Free
206.65	13.3%	13.3%	5.3%	5.3%	Free	Free	Free	Free
220.50	14.4%	14.4%	5.8%	5.8%	Free	Free	Free	Free
222.40	10%	10%	4%	4%	Free	Free	Free	Free
222.42	10%	10%	4%	4%	Free	Free	Free	Free
240.10	8%	8%	3.2%	3.2%	Free	Free	Free	Free
240.19	8%	8%	3.2%	3.2%	Free	Free	Free	Free
240.21	16%	16%	6.4%	6.4%	Free	Free	Free	Free
240.25	8%	8%	3.2%	3.2%	Free	Free	Free	Free
240.30	8%	8%	3.2%	3.2%	Free	Free	Free	Free
240.50	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
245.30	6%	6%	2.4%	2.4%	Free	Free	Free	Free
300.60	9.6%	8%	6.5%	5.4%	4.3%	3.2%	1.1%	Free
301.01	2.6%	2.2%	1.9%	1.6%	1.2%	0.9%	0.3%	Free
301.02	2.7%	2.3%	2%	1.7%	1.3%	1%	0.3%	Free
301.03	2.7%	2.4%	2%	1.7%	1.3%	1%	0.3%	Free
301.04	2.9%	2.5%	2.1%	1.8%	1.4%	1.1%	0.4%	Free
301.05	3%	2.6%	2.2%	1.8%	1.4%	1.1%	0.4%	Free
301.06	3.1%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
301.07	3.3%	2.8%	2.3%	2%	1.6%	1.2%	0.4%	Free
301.08	3.3%	2.8%	2.3%	2%	1.6%	1.2%	0.4%	Free
301.09	3.4%	2.9%	2.5%	2.1%	1.6%	1.2%	0.4%	Free
301.10	3.5%	3%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
301.11	3.7%	3.2%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
301.12	3.8%	3.2%	2.7%	2.3%	1.8%	1.4%	0.5%	Free
301.13	3.8%	3.3%	2.8%	2.3%	1.8%	1.4%	0.5%	Free
301.14	4%	3.4%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
301.15	4.1%	3.4%	2.9%	2.4%	1.9%	1.4%	0.5%	Free
301.16	4.2%	3.6%	3%	2.5%	2%	1.5%	0.5%	Free
301.17	4.3%	3.6%	3.1%	2.6%	2%	1.5%	0.5%	Free
301.18	4.4%	3.8%	3.1%	2.6%	2.1%	1.6%	0.5%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-7-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
301.19	4.5%	3.9%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
301.20	4.6%	3.9%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
301.21	4.7%	4.1%	3.4%	2.8%	2.2%	1.7%	0.6%	Free
301.22	4.9%	4.1%	3.4%	2.9%	2.3%	1.7%	0.6%	Free
301.23	5%	4.2%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
301.24	5%	4.3%	3.5%	3%	2.4%	1.8%	0.6%	Free
301.25	5.1%	4.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
301.26	5.2%	4.4%	3.7%	3.1%	2.4%	1.8%	0.6%	Free
301.27	5.4%	4.6%	3.8%	3.2%	2.5%	1.9%	0.6%	Free
301.28	5.4%	4.6%	3.8%	3.2%	2.6%	1.9%	0.6%	Free
301.29	5.6%	4.7%	3.9%	3.3%	2.6%	2%	0.7%	Free
301.30	5.6%	4.8%	3.9%	3.3%	2.6%	2%	0.7%	Free
301.31	5.8%	4.9%	4%	3.4%	2.7%	2%	0.7%	Free
301.32	5.8%	5%	4.1%	3.4%	2.7%	2%	0.7%	Free
301.33	5.9%	5%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
301.34	6.1%	5.2%	4.3%	3.6%	2.8%	2.1%	0.7%	Free
301.35	6.2%	5.2%	4.3%	3.6%	2.8%	2.1%	0.7%	Free
301.36	6.2%	5.3%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
301.37	6.4%	5.4%	4.4%	3.7%	3%	2.2%	0.7%	Free
301.38	6.5%	5.5%	4.5%	3.8%	3%	2.3%	0.8%	Free
301.39	6.6%	5.5%	4.6%	3.8%	3%	2.3%	0.8%	Free
301.40	6.6%	5.5%	4.6%	3.8%	3%	2.3%	0.8%	Free
301.41	6.8%	5.7%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
301.42	6.9%	5.7%	4.7%	4%	3.2%	2.4%	0.8%	Free
301.43	7%	5.9%	4.8%	4%	3.2%	2.4%	0.8%	Free
301.44	7%	6%	4.9%	4.1%	3.2%	2.4%	0.8%	Free
301.45	7.1%	6%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
301.46	7.3%	6.1%	5%	4.2%	3.3%	2.5%	0.8%	Free
301.47	7.4%	6.2%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
301.48	7.4%	6.2%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
301.49	7.6%	6.4%	5.2%	4.4%	3.5%	2.6%	0.9%	Free
301.50	7.6%	6.4%	5.2%	4.4%	3.5%	2.6%	0.9%	Free
301.51	7.8%	6.5%	5.3%	4.5%	3.6%	2.7%	0.9%	Free
301.52	7.9%	6.6%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
301.53	8%	6.7%	5.5%	4.6%	3.6%	2.7%	0.9%	Free
301.54	8.1%	6.7%	5.5%	4.6%	3.7%	2.8%	0.9%	Free
301.55	8.2%	6.9%	5.6%	4.7%	3.7%	2.8%	0.9%	Free
301.56	8.2%	6.9%	5.6%	4.7%	3.8%	2.8%	0.9%	Free
301.57	8.4%	7%	5.7%	4.8%	3.8%	2.9%	1%	Free
301.58	8.5%	7.1%	5.8%	4.8%	3.8%	2.9%	1%	Free
301.59	8.6%	7.1%	5.8%	4.9%	3.9%	2.9%	1%	Free
301.60	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.70	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.80	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.82	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.84	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.86	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.88	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-8-

Item in TSUS as modified by Annex I	Rates of duty,[1/] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
301.90	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.92	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.94	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.96	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
301.98	2.4¢/lb. + 8.7%	2¢/lb. + 7.3%	1.6¢/lb. + 5.9%	1.4¢/lb. + 5%	1.1¢/lb. + 4%	0.8¢/lb. + 3%	0.3¢/lb. + 1%	Free
302.--	Base rate + 2%	Base rate + 1.6%	Base rate + 1.3%	Base rate + 1.1%	Base rate + 0.8%	Base rate + 0.6%	Base rate + 0.2%	Free
303.10	9.6%	8%	6.5%	5.4%	4.3%	3.2%	1.1%	Free
303.20	0.8¢/lb. + 4.8%	0.7¢/lb. + 3.9%	3%	2.5%	2%	1.5%	0.5%	Free
305.04	2.7%	2.3%	1.9%	1.6%	1.2%	0.9%	0.3%	Free
305.06	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
305.08	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
305.09	5%	4.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
305.10	7.2%	5.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
305.12	2.7%	2.3%	1.9%	1.6%	1.2%	0.9%	0.3%	Free
305.14	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
305.16	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
305.18	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
305.20	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
305.22	3.5%	3.1%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
305.28	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.4%	Free
305.30	4%	3.5%	3%	2.5%	2%	1.5%	0.5%	Free
305.40	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.4%	Free
305.50	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
307.30	1.2¢/lb.	1.1¢/lb.	0.9¢/lb.	0.8¢/lb.	0.6¢/lb.	0.5¢/lb.	0.2¢/lb.	Free
307.50	8.8¢/lb. + 5%	4.9¢/lb. + 4.4%	2.1¢/lb. + 3.8%	1.8¢/lb. + 3.1%	1.4¢/lb. + 2.5%	1.1¢/lb. + 1.9%	0.4¢/lb. + 0.6%	Free
307.52	8.8¢/lb. + 5%	4.9¢/lb. + 4.4%	2.1¢/lb. + 3.8%	1.8¢/lb. + 3.1%	1.4¢/lb. + 2.5%	1.1¢/lb. + 1.9%	0.4¢/lb. + 0.6%	Free
307.62	5.6¢/lb. + 4%	2.1¢/lb. + 3.5%	3%	2.5%	2%	1.5%	0.5%	Free
307.66	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
307.80	8.4%	6.3%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
308.60	4.7%	3.8%	3%	2.5%	2%	1.5%	0.5%	Free
308.65	5.5%	4.1%	3%	2.5%	2%	1.5%	0.5%	Free
308.66	5%	3.9%	3%	2.5%	2%	1.5%	0.5%	Free
308.70	5.5%	4.1%	3%	2.5%	2%	1.5%	0.5%	Free
308.71	5%	3.9%	3%	2.5%	2%	1.5%	0.5%	Free
308.75	5.7%	4.3%	3%	2.5%	2%	1.5%	0.5%	Free
308.80	6.2%	4.5%	3%	2.5%	2%	1.5%	0.5%	Free
308.90	5%	3.9%	3%	2.5%	2%	1.5%	0.5%	Free
309.02	11.2¢/lb.	8.8¢/lb.	6.6¢/lb.	4.8¢/lb.	3.2¢/lb.	2.4¢/lb.	0.8¢/lb.	Free
309.03	12%	8.8%	6%	5%	4%	3%	1%	Free
309.05	7.2¢/lb.	5.3¢/lb.	3.6¢/lb.	3¢/lb.	2.4¢/lb.	1.8¢/lb.	0.6¢/lb.	Free
309.06	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
309.10	3.2¢/lb. + 8%	1.4¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
309.20	6¢/lb.	4.2¢/lb.	3¢/lb.	2.5¢/lb.	2¢/lb.	1.5¢/lb.	0.5¢/lb.	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-9-

Item in TSUS as modified by Annex I	Rates of duty,[1/] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
309.21	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
309.25	3.2¢/lb. + 8%	1.4¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
309.28	5.7%	4.6%	3.6%	3%	2.4%	1.8%	0.6%	Free
309.29	7.4%	5.7%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
309.30	5.4¢/lb.	4.5¢/lb.	3.6¢/lb.	3¢/lb.	2.4¢/lb.	1.8¢/lb.	0.6¢/lb.	Free
309.32	10%	10%	4%	4%	Free	Free	Free	Free
309.33	8.2%	7.1%	6%	5%	4%	3%	1%	Free
309.35	5.6¢/lb. + 7.2%	4.2¢/lb. + 5.3%	3¢/lb. + 3.6%	2.5¢/lb. + 3%	2¢/lb. + 2.4%	1.5¢/lb. + 1.8%	0.5¢/lb. + 0.6%	Free
309.41	0.8¢/lb.	0.7¢/lb.	0.6¢/lb.	0.5¢/lb.	0.4¢/lb.	0.3¢/lb.	0.1¢/lb.	Free
309.50	6¢/lb. + 7.8%	4.6¢/lb. + 5.8%	3.3¢/lb. + 4.2%	2.8¢/lb. + 3.5%	2.2¢/lb. + 2.8%	1.7¢/lb. + 2.1%	0.6¢/lb. + 0.7%	Free
309.60	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
309.65	2.3¢/lb.	1.9¢/lb.	1.5¢/lb.	1.3¢/lb.	1¢/lb.	0.8¢/lb.	0.3¢/lb.	Free
309.66	1.8%	1.5%	1.3%	1.1%	0.8%	0.6%	0.2%	Free
309.70	0.6¢/lb. + 4.8%	0.3¢/lb. + 4.2%	3.6%	3%	2.4%	1.8%	0.6%	Free
309.75	4.6%	3.7%	2.9%	2.5%	2%	1.5%	0.5%	Free
309.80	3.2¢/lb. + 8.2%	1.4¢/lb. + 6.4%	4.8%	4%	3.2%	2.4%	0.8%	Free
309.90	0.6¢/lb. + 5.4%	0.3¢/lb. + 4.7%	3.9%	3.3%	2.6%	2%	0.7%	Free
309.98	6.6%	5.5%	4.4%	3.7%	3%	2.2%	0.7%	Free
309.99	8.8%	7.2%	5.8%	4.8%	3.8%	2.9%	1%	Free
310.01	7.6¢/lb.	6¢/lb.	4.8¢/lb.	4¢/lb.	3.2¢/lb.	2.4¢/lb.	0.8¢/lb.	Free
310.05	16.8¢/lb.	14¢/lb.	11.4¢/lb.	9.5¢/lb.	7.6¢/lb.	5.7¢/lb.	1.9¢/lb.	Free
310.06	2.8¢/lb. + 9.4%	1.1¢/lb. + 8.2%	6.9%	5.8%	4.6%	3.5%	1.2%	Free
310.10	8.8¢/lb.	7¢/lb.	5.4¢/lb.	4.5¢/lb.	3.6¢/lb.	2.7¢/lb.	0.9¢/lb.	Free
310.12	8.9%	8.9%	3.6%	3.6%	Free	Free	Free	Free
310.15	8.3%	6.8%	5.3%	4.5%	3.6%	2.7%	0.9%	Free
310.20	14.4¢/lb.	11.2¢/lb.	8.7¢/lb.	7.3¢/lb.	5.8¢/lb.	4.4¢/lb.	1.5¢/lb.	Free
310.21	2.8¢/lb. + 10%	1.1¢/lb. + 8.6%	7.2%	6%	4.8%	3.6%	1.2%	Free
310.40	11%	11%	4.4%	4.4%	Free	Free	Free	Free
310.50	0.8¢/lb. + 9.8%	0.4¢/lb. + 8.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
310.60	3.2¢/lb. + 12%	1.4¢/lb. + 10.5%	9%	7.5%	6%	4.5%	1.5%	Free
310.80	3.2¢/lb. + 10.2%	1.4¢/lb. + 8.5%	6.9%	5.8%	4.6%	3.5%	1.2%	Free
310.90	11.2¢/lb.	8.8¢/lb.	6.9¢/lb.	5.8¢/lb.	4.6¢/lb.	3.5¢/lb.	1.2¢/lb.	Free
310.95	12.8%	10.2%	7.8%	6.5%	5.2%	3.9%	1.3%	Free
315.05	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
315.10	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
315.15	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
315.25	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
315.30	4.6%	3.7%	2.9%	2.5%	2%	1.5%	0.5%	Free
315.35	5.4%	4.8%	4.1%	3.4%	2.7%	2%	0.7%	Free
315.40	0.2¢/lb. + 5.8%	0.1¢/lb. + 5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
315.45	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
315.55	0.7¢/lb.	0.6¢/lb.	0.5¢/lb.	0.4¢/lb.	0.3¢/lb.	0.2¢/lb.	0.1¢/lb.	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-10-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
315.75	6.4%	5.3%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
315.80	4.8%	3.5%	2.4%	2%	1.6%	1.2%	0.4%	Free
315.85	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
315.90	3.4%	2.9%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
315.95	4.2%	3.6%	3.1%	2.6%	2.1%	1.6%	0.5%	Free
316.05	7.2%	5.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
316.10	5.4%	4.4%	3.6%	3%	2.4%	1.8%	0.6%	Free
316.20	7.2%	5.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
316.25	5.4%	4.4%	3.6%	3%	2.4%	1.8%	0.6%	Free
316.30	2.2%	1.8%	1.5%	1.3%	1%	0.8%	0.3%	Free
316.40	6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
316.50	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
316.55	3.2¢/lb. + 8.2%	1.4¢/lb. + 6.4%	4.8%	4%	3.2%	2.4%	0.8%	Free
316.58	10¢/lb. + 12%	8.8¢/lb. + 10.5%	7.5¢/lb. + 9%	6.3¢/lb. + 7.5%	5¢/lb. + 6%	3.8¢/lb. + 4.5%	1.3¢/lb. + 1.5%	Free
316.70	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
319.07	6%	6%	2.4%	2.4%	Free	Free	Free	Free
319.21	4.8% + 0.2% for each number	3.9% + 0.2% for each number	3.1% + 0.1% for each number	2.6% + 0.1% for each number	2.1% + 0.1% for each number	1.6% + 0.1% for each number	0.5% + 0.1% for each number	Free
319.23	3.2¢/lb. + 4.8% + 0.2% for each number	2.6¢/lb. + 3.9% + 0.2% for each number	2.1¢/lb. + 3.1% + 0.1% for each number	1.8¢/lb. + 2.6% + 0.1% for each number	1.4¢/lb. + 2.1% + 0.1% for each number	1.1¢/lb. + 1.6% + 0.1% for each number	0.4¢/lb. + 0.5% + 0.1% for each number	Free
319.25	3.2¢/lb. + 17.6%	2.6¢/lb. + 14.4%	2.1¢/lb. + 11.5%	1.8¢/lb. + 9.6%	1.4¢/lb. + 7.7%	1.1¢/lb. + 5.8%	0.4¢/lb. + 1.9%	Free
319.27	Base rate + 1.6%	Base rate + 1.3%	Base rate + 1.1%	Base rate + 0.9%	Base rate + 0.7%	Base rate + 0.5%	Base rate + 0.2%	Free
319.29	Base rate + 2.9%	Base rate + 2.4%	Base rate + 1.9%	Base rate + 1.6%	Base rate + 1.2%	Base rate + 1%	Base rate + 0.3%	Free
320.01	4.3%	3.6%	3.1%	2.6%	2%	1.5%	0.5%	Free
320.02	4.4%	3.7%	3.1%	2.6%	2.1%	1.6%	0.5%	Free
320.03	4.5%	3.9%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
320.04	4.6%	4%	3.3%	2.8%	2.2%	1.7%	0.6%	Free
320.05	4.8%	4.1%	3.4%	2.8%	2.2%	1.7%	0.6%	Free
320.06	5%	4.2%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
320.07	5%	4.3%	3.5%	3%	2.4%	1.8%	0.6%	Free
320.08	5.1%	4.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
320.09	5.2%	4.4%	3.7%	3.1%	2.4%	1.8%	0.6%	Free
320.10	5.4%	4.6%	3.8%	3.2%	2.5%	1.9%	0.6%	Free
320.11	5.5%	4.6%	3.8%	3.2%	2.6%	1.9%	0.6%	Free
320.12	5.7%	4.8%	4%	3.3%	2.6%	2%	0.7%	Free
320.13	5.8%	4.8%	4%	3.4%	2.7%	2%	0.7%	Free
320.14	5.8%	5%	4.1%	3.4%	2.7%	2%	0.7%	Free
320.15	6%	5.1%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
320.16	6.2%	5.2%	4.3%	3.6%	2.8%	2.1%	0.7%	Free
320.17	6.2%	5.3%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
320.18	6.3%	5.3%	4.4%	3.7%	2.9%	2.2%	0.7%	Free
320.19	6.5%	5.5%	4.5%	3.8%	3%	2.3%	0.8%	Free
320.20	6.6%	5.5%	4.6%	3.8%	3%	2.3%	0.8%	Free
320.21	6.7%	5.6%	4.6%	3.9%	3.1%	2.3%	0.8%	Free
320.22	6.9%	5.7%	4.7%	4%	3.2%	2.4%	0.8%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-11-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
320.23	7%	5.8%	4.8%	4%	3.2%	2.4%	0.8%	Free
320.24	7%	6%	4.9%	4.1%	3.2%	2.4%	0.8%	Free
320.25	7.2%	6.1%	5%	4.2%	3.3%	2.5%	0.8%	Free
320.26	7.4%	6.2%	5%	4.2%	3.4%	2.5%	0.8%	Free
320.27	7.4%	6.2%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
320.28	7.5%	6.3%	5.2%	4.3%	3.4%	2.6%	0.9%	Free
320.29	7.6%	6.4%	5.2%	4.4%	3.5%	2.6%	0.9%	Free
320.30	7.8%	6.4%	5.3%	4.4%	3.5%	2.6%	0.9%	Free
320.31	7.9%	6.6%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
320.32	8%	6.7%	5.5%	4.6%	3.6%	2.7%	0.9%	Free
320.33	8.2%	6.8%	5.6%	4.7%	3.7%	2.8%	0.9%	Free
320.34	8.2%	6.9%	5.6%	4.7%	3.8%	2.8%	0.9%	Free
320.35	8.4%	7%	5.7%	4.8%	3.8%	2.9%	1%	Free
320.36	8.5%	7.1%	5.8%	4.8%	3.8%	2.9%	1%	Free
320.37	8.6%	7.1%	5.8%	4.9%	3.9%	2.9%	1%	Free
320.38	8.6%	7.2%	5.9%	4.9%	3.9%	2.9%	1%	Free
320.39	8.8%	7.4%	6%	5%	4%	3%	1%	Free
320.40	9%	7.4%	6.1%	5.1%	4%	3%	1%	Free
320.41	9%	7.6%	6.1%	5.1%	4.1%	3.1%	1%	Free
320.42	9.1%	7.6%	6.2%	5.2%	4.1%	3.1%	1%	Free
320.43	9.3%	7.8%	6.3%	5.3%	4.2%	3.2%	1.1%	Free
320.44	9.4%	7.8%	6.4%	5.3%	4.2%	3.2%	1.1%	Free
320.45	9.5%	7.9%	6.4%	5.4%	4.3%	3.2%	1.1%	Free
320.46	9.6%	8%	6.5%	5.4%	4.3%	3.2%	1.1%	Free
320.47	9.7%	8.1%	6.5%	5.5%	4.4%	3.3%	1.1%	Free
320.48	9.8%	8.1%	6.6%	5.5%	4.4%	3.3%	1.1%	Free
320.49	9.9%	8.3%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
320.50	10%	8.3%	6.7%	5.6%	4.5%	3.4%	1.1%	Free
320.51	10.2%	8.5%	6.8%	5.7%	4.6%	3.4%	1.1%	Free
320.52	10.3%	8.5%	6.9%	5.8%	4.6%	3.5%	1.2%	Free
320.53	10.4%	8.6%	7%	5.8%	4.6%	3.5%	1.2%	Free
320.54	10.6%	8.8%	7.1%	5.9%	4.7%	3.5%	1.2%	Free
320.55	10.6%	8.8%	7.1%	6%	4.8%	3.6%	1.2%	Free
320.56	10.8%	8.9%	7.2%	6%	4.8%	3.6%	1.2%	Free
320.57	10.9%	9%	7.3%	6.1%	4.8%	3.6%	1.2%	Free
320.58	11%	9.1%	7.3%	6.1%	4.9%	3.7%	1.2%	Free
320.59	11%	9.2%	7.4%	6.2%	4.9%	3.7%	1.2%	Free
320.60	2.5¢/lb. + 11%	2¢/lb. + 9%	1.6¢/lb. + 7.2%	1.4¢/lb. + 6%	1.1¢/lb. + 4.8%	0.8¢/lb. + 3.6%	0.3¢/lb. + 1.2%	Free
320.61	2.5¢/lb. + 11%	2¢/lb. + 9.1%	1.6¢/lb. + 7.3%	1.4¢/lb. + 6.1%	1.1¢/lb. + 4.8%	0.8¢/lb. + 3.6%	0.3¢/lb. + 1.2%	Free
320.62	2.5¢/lb. + 11.2%	2¢/lb. + 9.2%	1.6¢/lb. + 7.3%	1.4¢/lb. + 6.1%	1.1¢/lb. + 4.9%	0.8¢/lb. + 3.7%	0.3¢/lb. + 1.2%	Free
320.63	2.5¢/lb. + 11.4%	2¢/lb. + 9.3%	1.6¢/lb. + 7.4%	1.4¢/lb. + 6.2%	1.1¢/lb. + 5%	0.8¢/lb. + 3.7%	0.3¢/lb. + 1.2%	Free
320.64	2.5¢/lb. + 11.4%	2¢/lb. + 9.4%	1.6¢/lb. + 7.5%	1.4¢/lb. + 6.3%	1.1¢/lb. + 5%	0.8¢/lb. + 3.8%	0.3¢/lb. + 1.3%	Free
320.65	2.5¢/lb. + 11.5%	2¢/lb. + 9.5%	1.6¢/lb. + 7.6%	1.4¢/lb. + 6.3%	1.1¢/lb. + 5%	0.8¢/lb. + 3.8%	0.3¢/lb. + 1.3%	Free
320.66	2.5¢/lb. + 11.7%	2¢/lb. + 9.6%	1.6¢/lb. + 7.7%	1.4¢/lb. + 6.4%	1.1¢/lb. + 5.1%	0.8¢/lb. + 3.8%	0.3¢/lb. + 1.3%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-12-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
320.67	2.5¢/lb. + 11.8%	2¢/lb. + 9.7%	1.6¢/lb. + 7.7%	1.4¢/lb. + 6.5%	1.1¢/lb. + 5.2%	0.8¢/lb. + 3.9%	0.3¢/lb. + 1.3%	Free
320.68	2.5¢/lb. + 11.9%	2¢/lb. + 9.7%	1.6¢/lb. + 7.8%	1.4¢/lb. + 6.5%	1.1¢/lb. + 5.2%	0.8¢/lb. + 3.9%	0.3¢/lb. + 1.3%	Free
320.69	2.5¢/lb. + 12.1%	2¢/lb. + 9.9%	1.6¢/lb. + 7.9%	1.4¢/lb. + 6.6%	1.1¢/lb. + 5.3%	0.8¢/lb. + 4%	0.3¢/lb. + 1.3%	Free
320.70	2.5¢/lb. + 12.2%	2¢/lb. + 10%	1.6¢/lb. + 8%	1.4¢/lb. + 6.7%	1.1¢/lb. + 5.3%	0.8¢/lb. + 4%	0.3¢/lb. + 1.3%	Free
320.71	2.5¢/lb. + 12.2%	2¢/lb. + 10.1%	1.6¢/lb. + 8%	1.4¢/lb. + 6.7%	1.1¢/lb. + 5.4%	0.8¢/lb. + 4%	0.3¢/lb. + 1.3%	Free
320.72	2.5¢/lb. + 12.4%	2¢/lb. + 10.2%	1.6¢/lb. + 8.2%	1.4¢/lb. + 6.8%	1.1¢/lb. + 5.4%	0.8¢/lb. + 4.1%	0.3¢/lb. + 1.4%	Free
320.73	2.5¢/lb. + 12.6%	2¢/lb. + 10.4%	1.6¢/lb. + 8.3%	1.4¢/lb. + 6.9%	1.1¢/lb. + 5.5%	0.8¢/lb. + 4.1%	0.3¢/lb. + 1.4%	Free
320.74	2.5¢/lb. + 12.6%	2¢/lb. + 10.4%	1.6¢/lb. + 8.3%	1.4¢/lb. + 6.9%	1.1¢/lb. + 5.5%	0.8¢/lb. + 4.1%	0.3¢/lb. + 1.4%	Free
320.75	2.5¢/lb. + 12.7%	2¢/lb. + 10.4%	1.6¢/lb. + 8.3%	1.4¢/lb. + 7%	1.1¢/lb. + 5.6%	0.8¢/lb. + 4.2%	0.3¢/lb. + 1.4%	Free
320.76	2.5¢/lb. + 12.9%	2¢/lb. + 10.6%	1.6¢/lb. + 8.5%	1.4¢/lb. + 7.1%	1.1¢/lb. + 5.6%	0.8¢/lb. + 4.2%	0.3¢/lb. + 1.4%	Free
320.77	2.5¢/lb. + 13%	2¢/lb. + 10.6%	1.6¢/lb. + 8.5%	1.4¢/lb. + 7.1%	1.1¢/lb. + 5,7%	0.8¢/lb. + 4.3%	0.3¢/lb. + 1.4%	Free
320.78	2.5¢/lb. + 13.1%	2¢/lb. + 10.8%	1.6¢/lb. + 8.6%	1.4¢/lb. + 7.2%	1.1¢/lb. + 5.8%	0.8¢/lb. + 4.3%	0.3¢/lb. + 1.4%	Free
320.79	2.5¢/lb. + 13.3%	2¢/lb. + 10.9%	1.6¢/lb. + 8.7%	1.4¢/lb. + 7.3%	1.1¢/lb. + 5.8%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.80	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.82	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.84	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.86	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.88	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.90	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.92	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.94	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.96	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
320.98	2.5¢/lb. + 13.4%	2¢/lb. + 11.1%	1.6¢/lb. + 8.8%	1.4¢/lb. + 7.4%	1.1¢/lb. + 5.9%	0.8¢/lb. + 4.4%	0.3¢/lb. + 1.5%	Free
321.—	Base rate + 1.1%	Base rate + 0.9%	Base rate + 0.7%	Base rate + 0.6%	Base rate + 0.5%	Base rate + 0.4%	Base rate + 0.1%	Free
322.—	Base rate + 2.3%	Base rate + 1.8%	Base rate + 1.4%	Base rate + 1.2%	Base rate + 1%	Base rate + 0.7%	Base rate + 0.2%	Free
323.—	Base rate + 1.1%	Base rate + 0.9%	Base rate + 0.7%	Base rate + 0.6%	Base rate + 0.5%	Base rate + 0.4%	Base rate + 0.1%	Free
324.—	Base rate + 2.3%	Base rate + 1.8%	Base rate + 1.4%	Base rate + 1.2%	Base rate + 1%	Base rate + 0.7%	Base rate + 0.2%	Free
325.—	Base rate + 3.1%	Base rate + 2.5%	Base rate + 1.9%	Base rate + 1.6%	Base rate + 1.3%	Base rate + 1%	Base rate + 0.3%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-13-

Item in TSUS as modified by Annex X	Rates of duty,[1/] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
326.--	Base rate + 1.1%	Base rate + 0.9%	Base rate + 0.7%	Base rate + 0.6%	Base rate + 0.5%	Base rate + 0.4%	Base rate + 0.1%	Free
327.--	Base rate + 2.3%	Base rate + 1.8%	Base rate + 1.4%	Base rate + 1.2%	Base rate + 1%	Base rate + 0.7%	Base rate + 0.2%	Free
328.--	Base rate + 3.1%	Base rate + 2.5%	Base rate + 1.9%	Base rate + 1.6%	Base rate + 1.3%	Base rate + 1%	Base rate + 0.3%	Free
329.--	Base rate + 2.3%	Base rate + 1.8%	Base rate + 1.4%	Base rate + 1.2%	Base rate + 1%	Base rate + 0.7%	Base rate + 0.2%	Free
330.--	Base rate + 3.4%	Base rate + 2.7%	Base rate + 2%	Base rate + 1.7%	Base rate + 1.4%	Base rate + 1%	Base rate + 0.3%	Free
331.--	Base rate + 4.3%	Base rate + 3.4%	Base rate + 2.6%	Base rate + 2.2%	Base rate + 1.8%	Base rate + 1.3%	Base rate + 0.4%	Free
332.10	9.6%	7.9%	6.3%	5.3%	4.2%	3.2%	1.1%	Free
332.30	9.6%	7.9%	6.3%	5.3%	4.2%	3.2%	1.1%	Free
335.55	12.8¢/lb. + 28.9%	9.1¢/lb. + 23.7%	6¢/lb. + 19%	3¢/lb. + 14.8%	1.2¢/lb. + 10.9%	7.5%	2.5%	Free
335.60	3.2¢/lb. + 6.6%	1.4¢/lb. + 5.4%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
335.70	2.5%	2.1%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
335.75	2.5%	2.1%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
335.85	3%	2.3%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
335.95	3%	2.3%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
336.10	17.6¢/lb. + 10%	14¢/lb. + 8.8%	10.8¢/lb. + 7.5%	9¢/lb. + 6.3%	7.2¢/lb. + 5%	5.4¢/lb. + 3.8%	1.8¢/lb. + 1.3%	Free
336.15	14.4¢/lb. + 10%	9.1¢/lb. + 8.8%	4.8¢/lb. + 7.5%	4¢/lb. + 6.3%	3.2¢/lb. + 5%	2.4¢/lb. + 3.8%	0.8¢/lb. + 1.3%	Free
336.20	8¢/lb. + 7%	3.5¢/lb. + 5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
336.25	9.6¢/lb. + 7%	4.2¢/lb. + 5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
336.30	14.4¢/lb. + 22.1%	10.5¢/lb. + 18.9%	7.2¢/lb. + 15.8%	4.5¢/lb. + 12.9%	2.4¢/lb. + 10.1%	0.9¢/lb. + 7.4%	2.4%	Free
336.35	37.6¢/lb.	29.4¢/lb.	22.2¢/lb.	18.5¢/lb.	14.8¢/lb.	11.1¢/lb.	3.7¢/lb.	Free
336.40	8¢/lb. + 9.6%	3.5¢/lb. + 7.2%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
336.50	17.6¢/lb. + 44.5%	13¢/lb. + 38.2%	9¢/lb. + 32%	5.5¢/lb. + 26.2%	2.8¢/lb. + 20.5%	1.1¢/lb. + 15%	4.9%	Free
336.55	73.6¢/lb.	60.9¢/lb.	49.2¢/lb.	41¢/lb.	32.8¢/lb.	24.6¢/lb.	8.2¢/lb.	Free
336.62	21.6¢/lb. + 30.4%	16.8¢/lb. + 26.6%	13.2¢/lb. + 22.8%	11¢/lb. + 19%	8.8¢/lb. + 15.2%	6.6¢/lb. + 11.4%	2.2¢/lb. + 3.8%	Free
336.64	9.6¢/lb. + 27.8%	4.2¢/lb. + 23.7%	19.8%	16.5%	13.2%	9.9%	3.3%	Free
337.50	8.3%	6.4%	4.8%	4%	3.2%	2.4%	0.8%	Free
337.55	8.5%	6.5%	4.8%	4%	3.2%	2.4%	0.8%	Free
337.60	4.8%	4.2%	3.6%	3%	2.4%	1.8%	0.6%	Free
337.68	6.2%	4.8%	3.6%	3%	2.4%	1.8%	0.6%	Free
337.80	6.9%	5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
337.90	7.4%	5.7%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
338.10	4¢/lb. + 19.4%	1.4¢/lb. + 16.9%	14.4%	12%	9.6%	7.2%	2.4%	Free
338.25	7.1%	6%	5%	4.2%	3.3%	2.5%	0.8%	Free
338.27	9.7%	8.1%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
338.40	9.6¢/lb. + 18%	8.1¢/lb. + 15.8%	6.6¢/lb. + 13.5%	5.5¢/lb. + 11.3%	4.4¢/lb. + 9%	3.3¢/lb. + 6.8%	1.1¢/lb. + 2.3%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-14-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
338.50	3.2¢/lb. + 15%	1.4¢/lb. + 12.5%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
339.05	14.4¢/lb. + 30.7%	10.5¢/lb. + 24.9%	7.2¢/lb. + 19.6%	4.5¢/lb. + 14.9%	2.4¢/lb. + 10.7%	0.9¢/lb. + 7.2%	2.1%	Free
339.10	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
345.30	9.6¢/lb. + 15.4%	4.2¢/lb. + 13.4%	11.4%	9.5%	7.6%	5.7%	1.9%	Free
345.35	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
345.55	6.4¢/lb. + 12.8%	2.8¢/lb. + 10.5%	8.4%	7%	5.6%	4.2%	1.4%	Free
345.60	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
346.05	18.4%	16.1%	13.8%	11.5%	9.2%	6.9%	2.3%	Free
346.10	22.4%	17.9%	13.8%	11.5%	9.2%	6.9%	2.3%	Free
346.20	18.6%	15.2%	12%	10%	8%	6%	2%	Free
346.22	17.4¢/sq. yd	14.6¢/sq. yd.	12¢/sq. yd.	10¢/sq. yd.	8¢/sq. yd.	6¢/sq. yd.	2¢/sq. yd.	Free
346.24	16.6%	14.3%	12%	10%	8%	6%	2%	Free
346.30	10.8¢/lb.	9¢/lb.	7.2¢/lb.	6¢/lb.	4.8¢/lb.	3.6¢/lb.	1.2¢/lb.	Free
346.32	9.9%	8.3%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
346.40	11.4%	9.4%	7.6%	6.3%	5%	3.8%	1.3%	Free
346.45	9.9%	8.3%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
346.50	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
346.52	8.8¢/lb. + 7.6%	3.9¢/lb. + 6.2%	4.8%	4%	3.2%	2.4%	0.8%	Free
346.56	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
346.62	4¢/lb. + 17%	1.4¢/lb. + 14.3%	11.7%	9.8%	7.8%	5.9%	2%	Free
346.65	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
346.70	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	0.8%	Free
346.80	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
346.82	8.8¢/lb. + 7%	3.5¢/lb. + 5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
346.86	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
346.90	1.6¢/lb. + 7%	0.7¢/lb. + 5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
346.95	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
347.10	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
347.15	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
347.20	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
347.26	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
347.28	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
347.30	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	0.6%	Free
347.33	8.9%	7.4%	6%	5%	4%	3%	1%	Free
347.35	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
347.40	9.6¢/lb. + 6.6%	4.2¢/lb. + 5.5%	4.5%	3.8%	3%	2.3%	0.8%	Free
347.45	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
347.50	3.6%	2.7%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
347.55	4¢/lb. + 8%	1.4¢/lb. + 6.9%	5.7%	4.8%	3.8%	2.9%	1%	Free
347.60	3.2¢/lb. + 7.4%	1.4¢/lb. + 6.4%	5.4%	4.5%	3.6%	2.7%	0.9%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-15-

Item in TSUS as modified by Annex I	Rates of duty,[1/] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
347.65	3.2¢/lb. + 6.7%	1.4¢/lb. + 5.4%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
347.68	5.7%	4.6%	3.6%	3%	2.4%	1.8%	0.6%	Free
347.69	7.4%	5.7%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
347.72	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
347.75	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
348.00	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
348.05	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
349.10	7.4%	5.7%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
349.15	9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
349.25	8.2%	6.4%	4.8%	4%	3.2%	2.4%	0.8%	Free
349.30	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
350.00	7%	5.5%	4%	3.4%	2.7%	2%	0.7%	Free
351.05	21.2%	16.5%	12.5%	9%	6%	4.5%	1.5%	Free
351.10	12%	10.5%	9%	7.5%	6%	4.5%	1.5%	Free
351.20	13.4%	11.1%	9%	7.5%	6%	4.5%	1.5%	Free
351.25	5.6%	4.4%	3.4%	2.9%	2.3%	1.7%	0.6%	Free
351.30	20.2%	15.8%	11.9%	8.5%	5.8%	4.3%	1.4%	Free
351.40	12%	8.8%	6%	5%	4%	3%	1%	Free
351.44	15.6%	13.2%	10.8%	9%	7.2%	5.4%	1.8%	Free
351.46	26.4%	21%	16.2%	12%	6.4%	5.4%	1.8%	Free
351.50	15.2%	12.3%	9.6%	8%	6.4%	4.8%	1.6%	Free
351.60	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
351.70	15.2%	12.3%	9.6%	8%	6.4%	4.8%	1.6%	Free
351.80	22.4%	17.5%	13.2%	9.5%	6.4%	4.8%	1.6%	Free
351.90	17%	13.1%	9.6%	8%	6.4%	4.8%	1.6%	Free
352.10	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
352.20	12%	9.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
352.30	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
352.40	10.4%	8.8%	7.2%	6%	4.8%	3.6%	1.2%	Free
352.50	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
352.80	9.6%	8.4%	7.2%	6%	4.8%	3.6%	1.2%	Free
353.10	14.6%	12%	9.6%	8%	6.4%	4.8%	1.6%	Free
353.50	7.2%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	5.9%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	5%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	4.2%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	3.4%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	2.5%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	0.8%, but in the case of ornamented fabrics not less than the rate which would apply to such fabrics if not ornamented	Free
355.02	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
355.04	9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
355.15	13.2¢/lb. + 8%	10.5¢/lb. + 7%	8.1¢/lb. + 6%	6.8¢/lb. + 5%	5.4¢/lb. + 4%	4.1¢/lb. + 3%	1.4¢/lb. + 1%	Free
355.16	24¢/lb. + 8%	21¢/lb. + 7%	18¢/lb. + 6%	15¢/lb. + 5%	12¢/lb. + 4%	9¢/lb. + 3%	3¢/lb. + 1%	Free
355.18	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
355.20	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
355.25	12.5%	12.5%	5%	5%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-16-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
355.35	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
355.42	6.2%	4.9%	3.7%	3.1%	2.5%	1.9%	0.6%	Free
355.45	9.6¢/lb. + 19.8%	6.3¢/lb. + 16%	3.6¢/lb. + 12.5%	1.5¢/lb. + 9.5%	6.8%	5.1%	1.7%	Free
355.50	4.6%	3.7%	2.9%	2.5%	2%	1.5%	0.5%	Free
355.55	3.5%	2.9%	2.3%	2%	1.6%	1.2%	0.4%	Free
355.60	4¢/lb. + 8.6%	2.1¢/lb. + 6.7%	0.9¢/lb. + 5.2%	3.8%	3%	2.3%	0.8%	Free
355.65	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
355.70	17.6¢/lb. + 19.8%	12.6¢/lb. + 16.1%	9¢/lb. + 12.7%	5.5¢/lb. + 9.7%	2.8¢/lb. + 7%	0.9¢/lb. + 4.7%	1.4%	Free
355.75	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
355.81	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
355.82	3.2¢/lb. + 8.6%	1.4¢/lb. + 6.7%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
355.85	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
356.05	6.5%	4.8%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
356.10	3.3%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
356.15	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
356.20	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
356.30	12.8¢/lb. + 18.3%	7¢/lb. + 14.4%	3¢/lb. + 11%	8%	6.4%	4.8%	1.6%	Free
356.35	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
356.45	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
356.70	9.7%	7.1%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
356.80	3.3%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
357.05	10.8%	7.9%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
357.10	21.2¢/lb. + 7.2%	16.5¢/lb. + 6.3%	12.6¢/lb. + 5.4%	9¢/lb. + 4.5%	6.2¢/lb. + 3.6%	3.8¢/lb. + 2.7%	1¢/lb. + 0.9%	Free
357.15	9.6¢/lb. + 5.6%	4.2¢/lb. + 4.9%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
357.20	12.8¢/lb. + 16.2%	7¢/lb. + 12.5%	3¢/lb. + 9.2%	6.5%	5.2%	3.9%	1.3%	Free
357.30	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
357.35	3.2¢/lb. + 6.4%	1.4¢/lb. + 5.1%	3.9%	3.3%	2.6%	2%	0.7%	Free
357.40	7.2%	5.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
357.45	3.2¢/lb. + 6.4%	1.4¢/lb. + 5.1%	3.9%	3.3%	2.6%	2%	0.7%	Free
357.60	10.1%, but not less than the rate which would apply to such fabrics without tucks	7.4%, but not less than the rate which would apply to such fabrics without tucks	5%, but not less than the rate which would apply to such fabrics without tucks	4.2%, but not less than the rate which would apply to such fabrics without tucks	3.4%, but not less than the rate which would apply to such fabrics without tucks	2.5%, but not less than the rate which would apply to such fabrics without tucks	0.8%, but not less than the rate which would apply to such fabrics without tucks	Free
357.70	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
357.80	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
357.90	2.4¢/lb. + 4.4%	1.1¢/lb. + 3.5%	2.7%	2.3%	1.8%	1.4%	0.5%	Free
357.95	3.2¢/lb. + 6.4%	1.4¢/lb. + 5.1%	3.9%	3.3%	2.6%	2%	0.7%	Free
358.05	4.6%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-17-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
358.06	4.6%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
358.08	3.2¢/lb. + 5.1%	1.4¢/lb. + 4.3%	3.6%	3%	2.4%	1.8%	0.6%	Free
358.09	7.7%	6%	4.5%	3.8%	3%	2.3%	0.8%	Free
358.11	5.9%	4.5%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
358.14	2.4¢/lb. + 7.8%	0.7¢/lb. + 6.2%	4.8%	4%	3.2%	2.4%	0.8%	Free
358.16	2.6%	2%	1.4%	1.2%	1%	0.7%	0.2%	Free
358.24	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
358.26	7.4%	5.7%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
358.30	10¢/lb. + 5.2%	4.2¢/lb. + 4.4%	3.6%	3%	2.4%	1.8%	0.6%	Free
358.35	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
358.40	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
358.50	3.2¢/lb. + 8%	1.4¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
358.60	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
359.10	5.8%	5%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
359.20	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
359.30	15.2¢/lb. + 18.8%	9.8¢/lb. + 15%	5.4¢/lb. + 11.6%	2.5¢/lb. + 8.6%	6%	4.5%	1.5%	Free
359.40	4.3%	3.8%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
359.50	8.4¢/lb. + 17.6%	4.9¢/lb. + 14%	1.8¢/lb. + 10.8%	8%	6.4%	4.8%	1.6%	Free
359.60	4.1%	3%	2%	1.7%	1.4%	1%	0.3%	Free
360.04	3.1%	2.7%	2.3%	2%	1.6%	1.2%	0.4%	Free
360.06	3.1%	2.7%	2.3%	2%	1.6%	1.2%	0.4%	Free
360.10	3.6¢/sq. ft.	2.6¢/sq. ft.	1.9¢/sq. ft.	1.6¢/sq. ft.	1.3¢/sq. ft.	1¢/sq. ft.	0.3¢/sq. ft.	Free
360.17	4.1%	3.6%	3.1%	2.6%	2%	1.5%	0.5%	Free
360.20	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
360.25	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
360.30	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
360.35	1.6¢/sq. ft.	1.4¢/sq. ft.	1.2¢/sq. ft.	1¢/sq. ft.	0.8¢/sq. ft.	0.6¢/sq. ft.	0.2¢/sq. ft.	Free
360.36	3.8%	2.9%	2.1%	1.8%	1.4%	1.1%	0.4%	Free
360.40	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
360.47	11%	8.3%	6%	5%	4%	3%	1%	Free
360.65	3.9%	3.4%	2.9%	2.5%	2%	1.5%	0.5%	Free
360.70	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
360.76	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
360.77	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
360.78	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
360.79	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
360.81	8.5%	6.4%	4.6%	3.8%	3%	2.3%	0.8%	Free
360.82	8.5%	6.4%	4.6%	3.8%	3%	2.3%	0.8%	Free
360.84	8.5%	6.4%	4.6%	3.8%	3%	2.3%	0.8%	Free
361.05	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
361.07	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
361.10	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
361.18	6.6%	5.2%	3.9%	3.3%	2.6%	2%	0.7%	Free
361.21	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
361.23	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-18-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
361.24	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
361.26	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
361.42	3.9%	3.4%	2.9%	2.5%	2%	1.5%	0.5%	Free
361.43	5.5%	4.1%	2.9%	2.5%	2%	1.5%	0.5%	Free
361.45	5.5%	4.1%	2.9%	2.5%	2%	1.5%	0.5%	Free
361.46	4.6%	3.7%	2.9%	2.5%	2%	1.5%	0.5%	Free
361.48	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
361.50	10.8%	7.9%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
361.53	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
361.54	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	0.8%	Free
361.70	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
361.80	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
361.85	4.1%	3%	2%	1.7%	1.4%	1%	0.3%	Free
363.01	23.8%	23.8%	9.5%	9.5%	Free	Free	Free	Free
363.02	8.6%	6.3%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
363.10	8¢/lb. + 12%	3.5¢/lb. + 10.5%	9%	7.5%	6%	4.5%	1.5%	Free
363.15	20.8¢/lb. + 10%	16.8¢/lb. + 8.8%	12.6¢/lb. + 7.5%	10.5¢/lb. + 6.3%	8.4¢/lb. + 5%	6.3¢/lb. + 3.8%	2.1¢/lb. + 1.3%	Free
363.20	13.5%	11.1%	8.9%	7.4%	5.9%	4.4%	1.5%	Free
363.25	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
363.35	2.7%	2.3%	1.9%	1.6%	1.2%	0.9%	0.3%	Free
363.40	3.8¢/lb.	3¢/lb.	2.4¢/lb.	2¢/lb.	1.6¢/lb.	1.2¢/lb.	0.4¢/lb.	Free
363.50	4%	3.5%	3%	2.5%	2%	1.5%	0.5%	Free
363.52	4.2%	3.6%	3%	2.5%	2%	1.5%	0.5%	Free
363.55	9.9%	8.3%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
363.60	9.9%	8.3%	6.7%	5.6%	4.4%	3.3%	1.1%	Free
363.65	8.8¢/lb. + 12%	4.2¢/lb. + 10.5%	1.2¢/lb. + 9%	1¢/lb. + 7.5%	0.8¢/lb. + 6%	0.6¢/lb. + 4.5%	0.2¢/lb. + 1.5%	Free
363.70	14.4¢/lb. + 10%	9.1¢/lb. + 8.8%	4.8¢/lb. + 7.5%	4¢/lb. + 6.3%	3.2¢/lb. + 5%	2.4¢/lb. + 3.8%	0.8¢/lb. + 1.3%	Free
363.75	10.5%	8.7%	7%	5.9%	4.7%	3.5%	1.2%	Free
363.80	6.5%	4.8%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
363.90	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
364.07	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.09	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.13	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.14	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.16	5.8%	5%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.18	5.8%	5%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
364.20	12.8¢/lb. + 7.2%	7¢/lb. + 6.3%	3¢lb. + 5.4%	2.5¢/lb. + 4.5%	2¢/lb. + 3.6%	1.5¢/lb. + 2.7%	0.5¢/lb. + 0.9%	Free
364.21	9.6¢/lb. + 3.8%	4.2¢/lb. + 2.9%	2.1%	1.8%	1.4%	1.1%	0.4%	Free
364.25	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
364.35	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
365.00	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
365.05	11.4%	9.9%	8.4%	7%	5.6%	4.2%	1.4%	Free
365.11	12.8%	10.5%	8.4%	7%	5.6%	4.2%	1.4%	Free
365.14	12.8%	10.5%	8.4%	7%	5.6%	4.2%	1.4%	Free
365.15	5.6%	4.4%	3.4%	2.9%	2.3%	1.7%	0.6%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-19-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
365.20	13.4%	11.4%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.25	14.2%	11.8%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.29	14.6%	12%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.31	22.4%	17.5%	13.2%	9.5%	6.4%	4.8%	1.6%	Free
365.35	13.8%	11.7%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.40	15.2%	12.3%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.45	15.2%	12.3%	9.6%	8%	6.4%	4.8%	1.6%	Free
365.50	22.4%	17.5%	13.2%	9.5%	6.4%	4.8%	1.6%	Free
365.52	12.8%	10.1%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.54	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
365.56	16.8%	12.8%	9.3%	7.8%	6.2%	4.7%	1.6%	Free
365.58	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
365.62	12.2%	9.8%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.64	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
365.66	16.2%	12.4%	9.2%	6.4%	5.1%	3.8%	1.3%	Free
365.80	10.8%	9.2%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.81	12.2%	9.8%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.83	12.2%	9.8%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.84	12.2%	9.8%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.87	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
365.89	12.4%	9.9%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
365.91	12.4%	9.9%	7.7%	6.4%	5.1%	3.8%	1.3%	Free
366.06	21.2%	16.5%	12.5%	9%	6%	4.5%	1.5%	Free
366.09	13%	11%	9%	7.5%	6%	4.5%	1.5%	Free
366.12	2.9%	2.1%	1.4%	1.2%	1%	0.7%	0.2%	Free
366.15	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
366.17	9.4%	7.8%	6.3%	5.3%	4.2%	3.2%	1.1%	Free
366.19	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
366.20	11¢/lb.	9.5¢/lb.	8.1¢/lb.	6.8¢/lb.	5.4¢/lb.	4.1¢/lb.	1.4¢/lb.	Free
366.22	13.5¢/lb.	13.5¢/lb.	5.4¢/lb.	5.4¢/lb.	Free	Free	Free	Free
366.24	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
366.26	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
366.28	9.6%	7.9%	6.3%	5.3%	4.2%	3.2%	1.1%	Free
366.30	9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
366.33	7.8%	6.2%	4.8%	4%	3.2%	2.4%	0.8%	Free
366.36	2.7%	2.3%	1.9%	1.6%	1.2%	0.9%	0.3%	Free
366.39	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
366.42	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
366.45	6.6%	5.7%	4.9%	4.1%	3.3%	2.5%	0.8%	Free
366.46	4.4%	3.9%	3.3%	2.8%	2.2%	1.7%	0.6%	Free
366.47	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
366.48	3.3%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
366.51	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
366.54	3.3%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
366.57	9.1%	6.7%	4.6%	3.8%	3%	2.3%	0.8%	Free
366.60	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
366.63	21.3%	16.7%	12.5%	9.1%	6.1%	4.6%	1.5%	Free
366.65	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
366.69	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
366.72	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-20-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
366.75	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
366.77	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
366.79	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
366.81	3.3%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
366.84	2%	1.8%	1.5%	1.3%	1%	0.8%	0.3%	Free
367.05	9.6¢/lb. + 8.8%	4.2¢/lb. + 7%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
367.10	9.6¢/lb. + 7.4%	4.2¢/lb. + 6.4%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
367.15	8.8¢/lb. + 7%	3.5¢/lb. + 5.8%	4.8%	4%	3.2%	2.4%	0.8%	Free
367.20	6.8¢/lb. + 8%	3.5¢/lb. + 7%	1.2¢/lb. + 6%	1¢/lb. + .5%	0.8¢/lb. + 4%	0.6¢/lb. + 3%	0.2¢/lb. + 1%	Free
367.25	8¢/lb. + 6.6%	3.5¢/lb. + 5.5%	4.5%	3.8%	3%	2.3%	0.8%	Free
367.28	6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
367.31	6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
367.33	6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
367.35	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
367.40	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
367.45	4.3%	3.8%	3.2%	2.7%	2.2%	1.6%	0.5%	Free
367.50	3.2¢/lb. + 8.6%	1.4¢/lb. + 6.5%	4.8%	4%	3.2%	2.4%	0.8%	Free
367.55	1.6¢/lb. + 7%	0.7¢/lb. + 5.5%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
367.59	6.9%	5.4%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
367.61	8.5%	8.5%	3.4%	3.4%	Free	Free	Free	Free
367.63	6.4¢/lb. + 9%	2.8¢/lb. + 6.9%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
367.65	4.1%	3%	2%	1.7%	1.4%	1%	0.3%	Free
370.04	6.8%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
370.08	0.08¢ each + 6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
370.12	0.08¢ each + 6%	5.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
370.16	1.9¢ each + 26.1%	1.4¢ each + 21.6%	1¢ each + 17.3%	0.6¢ each + 13.6%	0.3¢ each + 10.1%	0.1¢ each + 7%	2.2%	Free
370.17	0.4¢ each + 15.8%	0.2¢ each + 13.7%	11.7%	9.8%	7.8%	5.9%	2%	Free
370.19	0.2¢ each + 5%	0.1¢ each + 3.8%	2.7%	2.3%	1.8%	1.4%	0.5%	Free
370.21	0.2¢ each + 5%	0.1¢ each + 3.8%	2.7%	2.3%	1.8%	1.4%	0.5%	Free
370.22	0.2¢ each + 5%	0.1¢ each + 3.8%	2.7%	2.3%	1.8%	1.4%	0.5%	Free
370.24	9%	6.7%	4.8%	4%	3.2%	2.4%	0.8%	Free
370.28	0.8¢/lb. + 9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
370.32	0.8¢/lb. + 9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
370.36	9%	6.7%	4.8%	4%	3.2%	2.4%	0.8%	Free
370.40	0.8¢/lb. + 9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-21-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
370.44	0.8¢/lb. + 9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
370.48	14.2%	11.1%	8.4%	7%	5.6%	4.2%	1.4%	Free
370.52	1.6¢/lb. + 18.4%	0.7¢/lb. + 14%	0.6¢/lb. + 10.2%	7%	5.6%	4.2%	1.4%	Free
370.56	1.6¢/lb. + 19.6%	1.4¢/lb. + 15.3%	0.6¢/lb. + 11.6%	8.3%	5.6%	4.2%	1.4%	Free
370.60	14.2%	11.1%	8.4%	7%	5.6%	4.2%	1.4%	Free
370.64	1.6¢/lb. + 18.4%	0.7¢/lb. + 14%	0.6¢/lb. + 10.2%	7%	5.6%	4.2%	1.4%	Free
370.68	1.6¢/lb. + 18.4%	0.7¢/lb. + 14%	0.6¢/lb. + 10.4%	7%	5.6%	4.2%	1.4%	Free
370.72	2.2%	1.8%	1.5%	1.3%	1%	0.8%	0.3%	Free
370.76	0.2¢ each + 11.8%	0.1¢ each + 8.6%	6%	5%	4%	3%	1%	Free
370.80	5.4%	4.3%	3.3%	2.8%	2.2%	1.7%	0.6%	Free
370.84	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
370.88	6.4¢/lb. + 12.8%	2.8¢/lb. + 11.2%	9.6%	8%	6.4%	4.8%	1.6%	Free
370.92	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
372.04	11.8%	9.3%	7.2%	6%	4.8%	3.6%	1.2%	Free
372.06	13.4%	9.8%	7.2%	6%	4.8%	3.6%	1.2%	Free
372.08	9.8%	8.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
372.10	14.4%	10.5%	7.2%	6%	4.8%	3.6%	1.2%	Free
372.15	11%	9%	7.2%	6%	4.8%	3.6%	1.2%	Free
372.20	4.6%	3.7%	2.9%	2.5%	2%	1.5%	0.5%	Free
372.25	9.6¢/lb. + 17%	4.2¢/lb. + 13.1%	9.6%	8%	6.4%	4.8%	1.6%	Free
372.30	12.8¢/lb. + 17.6%	7¢/lb. + 14%	3¢/lb. + 10.8%	8%	6.4%	4.8%	1.6%	Free
372.35	9.6¢/lb. + 10.2%	4.2¢/lb. + 7.6%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
372.40	6.4¢/lb. + 14.2%	2.8¢/lb. + 11.8%	9.6%	8%	6.4%	4.8%	1.6%	Free
372.45	9.6¢/lb. + 14.2%	4.2¢/lb. + 11.8%	9.6%	8%	6.4%	4.8%	1.6%	Free
372.50	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
372.55	9.6%	7%	4.8%	4%	3.2%	2.4%	0.8%	Free
372.60	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
372.65	8.6%	6.5%	4.8%	4%	3.2%	2.4%	0.8%	Free
372.70	8.8¢/lb. + 18%	4.9¢/lb. + 14%	1.8¢/lb. + 10.5%	7.5%	6%	4.5%	1.5%	Free
372.75	6.4¢/lb. + 9%	2.8¢/lb. + 7.5%	6%	5%	4%	3%	1%	Free
372.80	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
373.05	13.5%	11.1%	8.9%	7.5%	6%	4.5%	1.5%	Free
373.10	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
373.15	9.6¢/lb. + 7%	4.2¢/lb. + 5.9%	4.8%	4%	3.2%	2.4%	0.8%	Free
373.20	7%	5.8%	4.8%	4%	3.2%	2.4%	0.8%	Free
373.22	8.6%	6.5%	4.8%	4%	3.2%	2.4%	0.8%	Free
373.25	3.2¢/lb. + 8.6%	1.4¢/lb. + 6.5%	4.8%	4%	3.2%	2.4%	0.8%	Free
373.27	9.6¢/lb. + 10.8%	8.4¢/lb. + 9.5%	7.2¢/lb. + 8.1%	6¢/lb. + 6.8%	4.8¢/lb. + 5.4%	3.6¢/lb. + 4.1%	1.2¢/lb. + 1.4%	Free
373.30	7%	5.8%	4.8%	4%	3.2%	2.4%	0.8%	Free
374.05	20%	20%	8%	8%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-22-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
374.10	20%	20%	8%	8%	Free	Free	Free	Free
374.15	20%	20%	8%	8%	Free	Free	Free	Free
374.20	20%	20%	8%	8%	Free	Free	Free	Free
374.25	20%	20%	8%	8%	Free	Free	Free	Free
374.30	20%	20%	8%	8%	Free	Free	Free	Free
374.40	14.4%	14.4%	5.8%	5.8%	Free	Free	Free	Free
374.50	12%	12%	4.8%	4.8%	Free	Free	Free	Free
374.55	6.5%	6.5%	2.6%	2.6%	Free	Free	Free	Free
376.04	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
376.08	9.6¢/lb. + 7.8%	4.2¢/lb. + 6.7%	5.7%	4.8%	3.8%	2.9%	1%	Free
376.12	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
376.16	3.2¢/lb. + 6.2%	1.4¢/lb. + 5.2%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
376.20	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
376.24	25.6%	22.4%	19.2%	16%	12.8%	9.6%	3.2%	Free
376.28	14.4%	12.6%	10.8%	9%	7.2%	5.4%	1.8%	Free
376.54	6.6%	6.6%	2.6%	2.6%	Free	Free	Free	Free
376.56	7.6%	7.6%	3%	3%	Free	Free	Free	Free
378.05	17%	17%	6.8%	6.8%	Free	Free	Free	Free
378.10	10%	10%	4%	4%	Free	Free	Free	Free
378.20	6.5%	6.5%	2.6%	2.6%	Free	Free	Free	Free
378.30	5.4%	4.7%	3.9%	3.3%	2.6%	2%	0.7%	Free
378.35	6%	6%	2.4%	2.4%	Free	Free	Free	Free
378.40	8%	8%	3.2%	3.2%	Free	Free	Free	Free
378.45	6.5%	6.5%	2.6%	2.6%	Free	Free	Free	Free
378.50	6.6%	5.2%	3.9%	3.3%	2.6%	2%	0.7%	Free
378.55	7.8%	5.7%	3.9%	3.3%	2.6%	2%	0.7%	Free
378.60	9.6¢/lb. + 20.2%	6.3¢/lb. + 16%	3.6¢/lb. + 12.2%	1.5¢/lb. + 9%	6.2%	4.7%	1.6%	Free
378.70	5.8%	5.8%	2.3%	2.3%	Free	Free	Free	Free
381.00	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
381.02	20.6%	16.3%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
381.03	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
381.04	14%	14%	5.6%	5.6%	Free	Free	Free	Free
381.05	20.6%	16.1%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
381.06	21%	21%	8.4%	8.4%	Free	Free	Free	Free
381.08	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
381.11	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
381.13	25.1%	20%	15.5%	11.5%	9.2%	6.9%	2.3%	Free
381.15	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
381.17	25.1%	20%	15.5%	11.5%	9.2%	6.9%	2.3%	Free
381.20	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
381.23	27.4%	22.5%	18%	15%	12%	9%	3%	Free
381.24	35%	35%	14%	14%	Free	Free	Free	Free
381.25	30%	25.4%	21%	17.5%	14%	10.5%	3.5%	Free
381.28	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
381.31	27.4%	22.5%	18%	15%	12%	9%	3%	Free
381.33	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
381.35	8%	8%	3.2%	3.2%	Free	Free	Free	Free
381.37	10.2%	7.4%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
381.39	16.5%	16.5%	6.6%	6.6%	Free	Free	Free	Free
381.40	16.8%	16.8%	6.7%	6.7%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-23-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
381.41	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
381.42	9.8%	7.1%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.43	8%	8%	3.2%	3.2%	Free	Free	Free	Free
381.44	8%	8%	3.2%	3.2%	Free	Free	Free	Free
381.45	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.47	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
381.48	6.4%	5.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.49	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.50	6.4%	5.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.51	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.52	6.4%	5.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.54	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
381.55	16.8%	16.8%	6.7%	6.7%	Free	Free	Free	Free
381.56	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
381.58	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.59	6.4%	5.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.60	8.4%	6.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
381.62	13.2%	11.6%	9.9%	8.3%	6.6%	5%	1.7%	Free
381.64	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
381.65	8%	8%	3.2%	3.2%	Free	Free	Free	Free
381.66	4%	3.5%	3%	2.5%	2%	1.5%	0.5%	Free
381.68	1.8%	1.5%	1.2%	1%	0.8%	0.6%	0.2%	Free
381.69	3.6%	2.7%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
381.71	9.6¢/lb. + 20.2%	4.2¢/lb. + 16.9%	13.8%	11.5%	9.2%	6.9%	2.3%	Free
381.72	14.4¢/lb. + 18.8%	9.8¢/lb. + 15.3%	5.4¢/lb. + 12.2%	2¢/lb. + 9.3%	6.8%	5.1%	1.7%	Free
381.74	9.6¢/lb. + 8.2%	4.2¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
381.75	28.6¢/lb. + 16%	24.8¢/lb. + 14%	21¢/lb. + 12%	17.5¢/lb. + 10%	14¢/lb. + 8%	10.5¢/lb. + 6%	3.5¢/lb. + 2%	Free
381.76	9.6¢/lb. + 14.4%	4.2¢/lb. + 12.3%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
381.78	8.8¢/lb. + 16.8%	4.9¢/lb. + 14.7%	2.4¢/lb. + 12.6%	2¢/lb. + 10.5%	1.6¢/lb. + 8.4%	1.2¢/lb. + 6.3%	0.4¢/lb. + 2.1%	Free
381.79	6.4¢/lb. + 14.6%	2.8¢/lb. + 12.4%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
381.81	9.6¢/lb. + 10.6%	4.2¢/lb. + 8%	5.7%	4.8%	3.8%	2.9%	1%	Free
381.83	22.4¢/lb. + 16.8%	18.2¢/lb. + 14.7%	14.4¢/lb. + 12.6%	12¢/lb. + 10.5%	9.6¢/lb. + 8.4%	7.2¢/lb. + 6.3%	2.4¢/lb. + 2.1%	Free
381.84	9.6¢/lb. + 14.6%	4.2¢/lb. + 12.4%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
381.85	5.8%	4.7%	3.6%	3%	2.4%	1.8%	0.6%	Free
381.86	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
381.87	30%	30%	12%	12%	Free	Free	Free	Free
381.88	6.4¢/lb. + 24.6%	2.8¢/lb. + 21.3%	18%	15%	12%	9%	3%	Free
381.89	13¢/lb. + 32.5%	13¢/lb. + 32.5%	5.2¢/lb. + 13%	5.2¢/lb. + 13%	Free	Free	Free	Free
381.90	13.6¢/lb. + 26%	10.5¢/lb. + 22.8%	7.8¢/lb. + 19.5%	6.5¢/lb. + 16.3%	5.2¢/lb. + 13%	3.9¢/lb. + 9.8%	1.3¢/lb. + 3.3%	Free
381.91	6.4¢/lb. + 22%	2.8¢/lb. + 18.4%	15%	12.5%	10%	7.5%	2.5%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-24-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
381.92	8¢/lb. + 18.9%	4.9¢/lb. + 15%	1.8¢/lb. + 11.5%	8.5%	6.8%	5.1%	1.7%	Free
381.93	8¢/lb. + 15.4%	4.9¢/lb. + 12%	1.8¢/lb. + 9.1%	6.5%	5.2%	3.9%	1.3%	Free
381.94	14¢/lb. + 27.5%	14¢/lb. + 27.5%	5.6¢/lb. + 11%	5.6¢/lb. + 11%	Free	Free	Free	Free
381.95	13.6¢/lb. + 22%	10.5¢/lb. + 19.3%	8.4¢/lb. + 16.5%	7¢/lb. + 13.8%	5.6¢/lb. + 11%	4.2¢/lb. + 8.3%	1.4¢/lb. + 2.8%	Free
381.96	6.4¢/lb. + 16.4%	2.8¢/lb. + 13.2%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
381.98	17%	17%	6.8%	6.8%	Free	Free	Free	Free
381.99	4.8%	3.5%	2.4%	2%	1.6%	1.2%	0.4%	Free
384.00	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
384.02	20.6%	16.3%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
384.03	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
384.04	14%	14%	5.6%	5.6%	Free	Free	Free	Free
384.05	18.2%	13.7%	9.9%	8.3%	6.6%	5%	1.7%	Free
384.06	20.6%	16.3%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
384.07	21%	21%	8.4%	8.4%	Free	Free	Free	Free
384.08	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
384.09	14%	14%	5.6%	5.6%	Free	Free	Free	Free
384.10	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
384.12	25.1%	20%	15.5%	11.5%	9.2%	6.9%	2.3%	Free
384.13	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
384.15	25.1%	20%	15.5%	11.5%	9.2%	6.9%	2.3%	Free
384.16	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
384.18	30%	25.4%	21%	17.5%	14%	10.5%	3.5%	Free
384.19	30%	30%	12%	12%	Free	Free	Free	Free
384.20	27.4%	22.5%	18%	15%	12%	9%	3%	Free
384.21	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
384.22	17%	17%	6.8%	6.8%	Free	Free	Free	Free
384.23	27.4%	22.5%	18%	15%	12%	9%	3%	Free
384.25	17%	17%	6.8%	6.8%	Free	Free	Free	Free
384.26	25%	19.8%	15.3%	11.4%	7.9%	5.1%	1.7%	Free
384.27	8%	8%	3.2%	3.2%	Free	Free	Free	Free
384.28	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	2.1%	Free
384.29	16.8%	16.8%	6.7%	6.7%	Free	Free	Free	Free
384.30	16.5%	16.5%	6.6%	6.6%	Free	Free	Free	Free
384.31	14.4%	12.1%	9.9%	8.3%	6.6%	5%	1.7%	Free
384.32	12%	12%	4.8%	4.8%	Free	Free	Free	Free
384.33	9.8%	7.1%	4.8%	4%	3.2%	2.4%	0.8%	Free
384.34	8%	8%	3.2%	3.2%	Free	Free	Free	Free
384.35	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
384.36	4.8%	3.9%	3%	2.5%	2%	1.5%	0.5%	Free
384.37	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
384.38	8%	8%	3.2%	3.2%	Free	Free	Free	Free
384.39	6.4%	5.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
384.40	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
384.41	8%	8%	3.2%	3.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-25-

Item in TSUS as modified by Annex I	Rates of duty,[1/] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
384.42	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
384.43	8%	8%	3.2%	3.2%	Free	Free	Free	Free
384.44	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
384.45	8.4%	6.3%	4.5%	3.8%	3%	2.3%	0.8%	Free
384.46	13.2%	11.6%	9.9%	8.3%	6.6%	5%	1.7%	Free
384.47	13.2%	13.2%	5.3%	5.3%	Free	Free	Free	Free
384.48	10.8%	9%	7.2%	6%	4.8%	3.6%	1.2%	Free
384.49	12%	12%	4.8%	4.8%	Free	Free	Free	Free
384.50	6.5%	6.5%	2.6%	2.6%	Free	Free	Free	Free
384.51	8.6%	6.6%	4.8%	4%	3.2%	2.4%	0.8%	Free
384.52	8%	8%	3.2%	3.2%	Free	Free	Free	Free
384.53	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
384.54	5%	5%	2%	2%	Free	Free	Free	Free
384.55	3.6%	2.7%	1.8%	1.5%	1.2%	0.9%	0.3%	Free
384.56	3%	3%	1.2%	1.2%	Free	Free	Free	Free
384.57	12.8¢/lb. + 18.7%	7.7¢/lb. + 14.9%	3¢/lb. + 11.5%	8.5%	6.8%	5.1%	1.7%	Free
384.58	12.8¢/lb. + 20.8%	7¢/lb. + 17.5%	3¢/lb. + 14.4%	11.5%	9.2%	6.9%	2.3%	Free
384.59	14.4¢/lb. + 18.8%	9.8¢/lb. + 15.3%	5.4¢/lb. + 12.2%	2¢/lb. + 9.3%	6.8%	5.1%	1.7%	Free
384.60	9.6¢/lb. + 8.2%	4.2¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
384.62	26.4¢/lb. + 16%	22.4¢/lb. + 14%	18.6¢/lb. + 12%	15.5¢/lb. + 10%	12.4¢/lb. + 8%	9.3¢/lb. + 6%	3.1¢/lb. + 2%	Free
384.63	9.6¢/lb. + 14.4%	4.2¢/lb. + 12.3%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
384.65	9.6¢/lb. + 16.8%	6.3¢/lb. + 14.7%	3.6¢/lb. + 12.6%	3¢/lb. + 10.5%	2.4¢/lb. + 8.4%	1.8¢/lb. + 6.3%	0.6¢/lb. + 2.1%	Free
384.66	6.4¢/lb. + 14.6%	2.8¢/lb. + 12.4%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
384.68	9.6¢/lb. + 14.6%	4.2¢/lb. + 12.4%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
384.70	30¢/lb. + 16.8%	26.3¢/lb. + 14.7%	22.5¢/lb. + 12.6%	18.8¢/lb. + 10.5%	15¢/lb. + 8.4%	11.3¢/lb. + 6.3%	3.8¢/lb. + 2.1%	Free
384.72	20.8¢/lb. + 16.8%	16.8¢/lb. + 14.7%	12.6¢/lb. + 12.6%	10.5¢/lb. + 10.5%	8.4¢/lb. + 8.4%	6.3¢/lb. + 6.3%	2.1¢/lb. + 2.1%	Free
384.75	9.6¢/lb. + 14.6%	4.2¢/lb. + 12.4%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
384.77	5.8%	4.7%	3.6%	3%	2.4%	1.8%	0.6%	Free
384.78	7.5%	7.5%	3%	3%	Free	Free	Free	Free
384.80	13.6¢/lb. + 26%	10.5¢/lb. + 22.8%	7.8¢/lb. + 19.5%	6.5¢/lb. + 16.3%	5.2¢/lb. + 13%	3.9¢/lb. + 9.8%	1.3¢/lb. + 3.3%	Free
384.81	13¢/lb. + 32.5%	13¢/lb. + 32.5%	5.2¢/lb. + 13%	5.2¢/lb. + 13%	Free	Free	Free	Free
384.82	30%	30%	12%	12%	Free	Free	Free	Free
384.86	17%	17%	6.8%	6.8%	Free	Free	Free	Free
384.88	8¢/lb. + 14.9%	4.9¢/lb. + 11.5%	1.8¢/lb. + 8.5%	6%	4.8%	3.6%	1.2%	Free
384.90	17¢/lb. + 27.5%	17¢/lb. + 27.5%	6.8¢/lb. + 11%	6.8¢/lb. + 11%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-26-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
384.91	15.2¢/lb. + 22%	12.6¢/lb. + 19.3%	10.2¢/lb. + 16.5%	8.5¢/lb. + 13.8%	6.8¢/lb. + 11%	5.1¢/lb. + 8.3%	1.7¢/lb. + 2.8%	Free
384.93	6.4¢/lb. + 16.4%	2.8¢/lb. + 13.2%	10.2%	8.5%	6.8%	5.1%	1.7%	Free
384.94	17%	17%	6.8%	6.8%	Free	Free	Free	Free
384.95	4%	4%	1.6%	1.6%	Free	Free	Free	Free
384.96	4.8%	3.5%	2.4%	2%	1.6%	1.2%	0.4%	Free
385.15	4.9%	3.9%	3.1%	2.6%	2%	1.5%	0.5%	Free
385.20	3.8%	3.2%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
385.25	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
385.30	4.4%	3.6%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
385.40	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
385.50	0.1¢/lb. + 2%	0.1¢/lb. + 1.8%	0.1¢/lb. + 1.5%	0.1¢/lb. + 1.3%	1%	0.8%	0.3%	Free
385.53	3.2¢/lb. + 9%	1.4¢/lb. + 7.3%	5.7%	4.8%	3.8%	2.9%	1%	Free
385.55	7.4%	5.7%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
385.60	5.4%	4.3%	3.3%	2.8%	2.2%	1.7%	0.6%	Free
385.61	6.4¢/lb. + 9.8%	2.8¢/lb. + 7.5%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
385.63	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
385.70	7.8%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
385.75	10.1%	7.4%	5%	4.2%	3.4%	2.5%	0.8%	Free
385.80	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
385.85	3.2¢/lb. + 8%	1.4¢/lb. + 6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
385.90	4.8%	3.5%	2.4%	2%	1.6%	1.2%	0.4%	Free
386.04	22.4%	17.5%	13.2%	9.5%	6.4%	4.8%	1.6%	Free
386.06	12%	8.8%	6%	5%	4%	3%	1%	Free
386.07	12%	8.8%	6%	5%	4%	3%	1%	Free
386.11	10%	10%	4%	4%	Free	Free	Free	Free
386.15	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
386.20	18.4%	14%	10.2%	7%	5.6%	4.2%	1.4%	Free
386.25	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
386.40	8.8%	6.6%	4.7%	3.9%	3.1%	2.3%	0.8%	Free
386.51	7%	7%	2.8%	2.8%	Free	Free	Free	Free
386.52	7.4%	5.7%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
387.10	6.9%	5.3%	4%	3.3%	2.6%	2%	0.7%	Free
387.20	1.9%	1.7%	1.4%	1.2%	1%	0.7%	0.2%	Free
387.25	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
387.32	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
387.33	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
387.37	4.1%	3.4%	2.6%	2.2%	1.8%	1.3%	0.4%	Free
388.10	9.6¢/lb. + 10.4%	4.2¢/lb. + 8.8%	7.2%	6%	4.8%	3.6%	1.2%	Free
388.20	9.6¢/lb. + 6.4%	4.2¢/lb. + 5.3%	4.2%	3.5%	2.8%	2.1%	0.7%	Free
388.30	8.8¢/lb. + 6.4%	3.5¢/lb. + 5.3%	4.2%	3.5%	2.8%	2.1%	0.7%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX 1A
-27-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
388.40	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
389.10	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
389.20	5.1%	4.1%	3.2%	2.7%	2.1%	1.6%	0.5%	Free
389.30	7.3%	5.6%	4.1%	3.5%	2.8%	2.1%	0.7%	Free
389.40	6.4¢/lb. + 13.4%	2.8¢/lb. + 10.2%	7.5%	6.3%	5%	3.8%	1.3%	Free
389.50	4¢/lb. + 12.6%	1.4¢/lb. + 9.3%	6.6%	5.5%	4.4%	3.3%	1.1%	Free
389.61	6.4¢/lb. + 8.8%	2.8¢/lb. + 7%	5.4%	4.5%	3.6%	2.7%	0.9%	Free
389.62	9%	9%	3.6%	3.6%	Free	Free	Free	Free
389.70	5.8%	4.6%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
402.20	1.3¢/lb. + 12.5%	1.3¢/lb. + 12.5%	0.5¢/lb. + 5%	0.5¢/lb. + 5%	Free	Free	Free	Free
402.40	7.6%	7.6%	3%	3%	Free	Free	Free	Free
402.44	9.5%	9.5%	3.8%	3.8%	Free	Free	Free	Free
402.48	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
402.52	10.4%	10.4%	4.2%	4.2%	Free	Free	Free	Free
402.54	10.4%	10.4%	4.2%	4.2%	Free	Free	Free	Free
402.60	7.4%	7.4%	3%	3%	Free	Free	Free	Free
402.68	15.2%	15.2%	6.1%	6.1%	Free	Free	Free	Free
402.76	7.6%	7.6%	3%	3%	Free	Free	Free	Free
402.81	10%	7.6%	5.5%	4.6%	3.6%	2.7%	0.9%	Free
402.83	7.3%	6.4%	5.5%	4.6%	3.6%	2.7%	0.9%	Free
402.84	10%	10%	4%	4%	Free	Free	Free	Free
402.88	15%	15%	6%	6%	Free	Free	Free	Free
403.29	20%	20%	8%	8%	Free	Free	Free	Free
403.32	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
403.49	1.7¢/lb. + 13.7%	1.7¢/lb. + 13.7%	0.7¢/lb. + 5.5%	0.7¢/lb. + 5.5%	Free	Free	Free	Free
403.57	0.7¢/lb. + 15.5%	0.6¢/lb. + 13.6%	0.4¢/lb. + 11.6%	0.4¢/lb. + 9.7%	0.3¢/lb. + 7.8%	0.2¢/lb. + 5.8%	0.1¢/lb. + 1.9%	Free
403.65	17.1%	14.5%	12%	10%	8%	6%	2%	Free
403.66	10.8%	9.5%	8.1%	6.8%	5.4%	4.1%	1.4%	Free
403.76	10.6%	10.6%	4.2%	4.2%	Free	Free	Free	Free
404.00	7.5%	7.5%	3%	3%	Free	Free	Free	Free
404.20	1.3¢/lb. + 13.1%	1.3¢/lb. + 13.1%	0.5¢/lb. + 5.2%	0.5¢/lb. + 5.2%	Free	Free	Free	Free
404.37	16.6%	14.3%	12%	10%	8%	3%	2%	Free
404.38	13.5%	13.5%	5.4%	5.4%	Free	Free	Free	Free
404.48	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
404.60	1.7¢/lb. + 13.6%	1.7¢/lb. + 13.6%	0.7¢/lb. + 5.4%	0.7¢/lb. + 5.4%	Free	Free	Free	Free
404.64	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
404.88	1.1¢/lb. + 18.8%	1.1¢/lb. + 18.8%	0.4¢/lb. + 7.5%	0.4¢/lb. + 7.5%	Free	Free	Free	Free
404.96	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
405.02	1.7¢/lb. + 15.6%	1.7¢/lb. + 15.6%	0.7¢/lb. + 6.2%	0.7¢/lb. + 6.2%	Free	Free	Free	Free
405.07	1.7¢/lb. + 15.6%	1.7¢/lb. + 15.6%	0.7¢/lb. + 6.2%	0.7¢/lb. + 6.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IA
-28-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
405.16	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
405.31	1.7¢/lb. + 18.1%	1.7¢/lb. + 18.1%	0.7¢/lb. + 7.2%	0.7¢/lb. + 7.2%	Free	Free	Free	Free
405.36	7.3%	7.3%	2.9%	2.9%	Free	Free	Free	Free
405.44	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
405.53	13.2%	11.1%	9%	7.5%	6%	4.5%	1.5%	Free
405.68	19.9%	19.9%	8%	8%	Free	Free	Free	Free
405.70	13.5%	13.5%	5.4%	5.4%	Free	Free	Free	Free
405.72	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
405.80	1.3¢/lb. + 16.2%	1.3¢/lb. + 16.2%	0.5¢/lb. + 6.5%	0.5¢/lb. + 6.5%	Free	Free	Free	Free
405.85	1.7¢/lb. + 12.5%	1.7¢/lb. + 12.5%	0.7¢/lb. + 5%	0.7¢/lb. + 5%	Free	Free	Free	Free
405.88	7.3%	7.3%	2.9%	2.9%	Free	Free	Free	Free
406.24	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
406.28	0.4¢/lb. + 12.5%	0.4¢/lb. + 12.5%	0.2¢/lb. + 5%	0.2¢/lb. + 5%	Free	Free	Free	Free
406.37	1.7¢/lb. + 16.2%	1.7¢/lb. + 16.2%	0.7¢/lb. + 6.5%	0.7¢/lb. + 6.5%	Free	Free	Free	Free
406.39	1.7¢/lb. + 16.2%	1.7¢/lb. + 16.2%	0.7¢/lb. + 6.5%	0.7¢/lb. + 6.5%	Free	Free	Free	Free
406.44	17.5%	17.5%	7%	7%	Free	Free	Free	Free
406.52	7.4%	7.4%	3%	3%	Free	Free	Free	Free
406.56	1.7¢/lb. + 18%	1.7¢/lb. + 18%	0.7¢/lb. + 7.2%	0.7¢/lb. + 7.2%	Free	Free	Free	Free
406.64	0.1¢/lb. + 18.7%	0.1¢/lb. + 18.7%	7.5%	7.5%	Free	Free	Free	Free
406.68	0.1¢/lb. + 19.8%	0.1¢/lb. + 19.8%	7.9%	7.9%	Free	Free	Free	Free
406.72	1.5¢/lb. + 10%	1.5¢/lb. + 10%	0.6¢/lb. + 4%	0.6¢/lb. + 4%	Free	Free	Free	Free
406.76	0.9¢/lb. + 12.5%	0.9¢/lb. + 12.5%	0.4¢/lb. + 5%	0.4¢/lb. + 5%	Free	Free	Free	Free
406.81	1.1¢/lb. + 12.5%	1.1¢/lb. + 12.5%	0.4¢/lb. + 5%	0.4¢/lb. + 5%	Free	Free	Free	Free
406.82	1.7¢/lb. + 12.5%	1.7¢/lb. + 12.5%	0.7¢/lb. + 5%	0.7¢/lb. + 5%	Free	Free	Free	Free
406.83	1.7¢/lb. + 12.5%	1.7¢/lb. + 12.5%	0.7¢/lb. + 5%	0.7¢/lb. + 5%	Free	Free	Free	Free
406.96	1¢/lb. + 15.6%	1¢/lb. + 15.6%	0.4¢/lb. + 6.2%	0.4¢/lb. + 6.2%	Free	Free	Free	Free
407.06	10.8%	9.5%	8.1%	6.8%	5.4%	4.1%	1.4%	Free
407.09	7.4%, but not less than the highest rate applicable to any component material	7.4%, but not less than the highest rate applicable to any component material	3%, but not less than the highest rate applicable to any component material	3%, but not less than the highest rate applicable to any component material	Free	Free	Free	Free
407.14	1.7¢/lb. + 12.5%	1.7¢/lb. + 12.5%	0.7¢/lb. + 5%	0.7¢/lb. + 5%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
407.16	1.7¢/lb. + 13.6%, but not less than the highest rate applicable to any component material	1.7¢/lb. + 13.6%, but not less than the highest rate applicable to any component material	0.7¢/lb. + 5.4%, but not less than the highest rate applicable to any component material	0.7¢/lb. + 5.4%, but not less than the highest rate applicable to any component material	Free	Free	Free	Free
408.00	8.9%	8.9%	3.6%	3.6%	Free	Free	Free	Free
408.18	13.5%	13.5%	5.4%	5.4%	Free	Free	Free	Free
408.32	10.7%	10.7%	4.3%	4.3%	Free	Free	Free	Free
408.41	8.5%	8.5%	3.4%	3.4%	Free	Free	Free	Free
408.76	7.6%	7.6%	3%	3%	Free	Free	Free	Free
409.30	7.7%	7.7%	3.1%	3.1%	Free	Free	Free	Free
409.38	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
409.42	14.3%	14.3%	5.7%	5.7%	Free	Free	Free	Free
409.46	1.5¢/lb. + 14%	1.5¢/lb. + 14%	0.6¢/lb. + 5.6%	0.6¢/lb. + 5.6%	Free	Free	Free	Free
409.50	1.5¢/lb. + 14.4%	1.5¢/lb. + 14.4%	0.6¢/lb. + 5.8%	0.6¢/lb. + 5.8%	Free	Free	Free	Free
409.54	20%	20%	8%	8%	Free	Free	Free	Free
409.58	14.2%	14.2%	5.7%	5.7%	Free	Free	Free	Free
409.62	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
409.66	20%	20%	8%	8%	Free	Free	Free	Free
409.68	15%	15%	6%	6%	Free	Free	Free	Free
409.70	9%	9%	3.6%	3.6%	Free	Free	Free	Free
409.74	20%	20%	8%	8%	Free	Free	Free	Free
409.76	15%	15%	6%	6%	Free	Free	Free	Free
409.78	9.5%	9.5%	3.8%	3.8%	Free	Free	Free	Free
409.82	20%	20%	8%	8%	Free	Free	Free	Free
409.84	15%	15%	6%	6%	Free	Free	Free	Free
409.86	9%	9%	3.6%	3.6%	Free	Free	Free	Free
409.90	20%	20%	8%	8%	Free	Free	Free	Free
409.92	15%	15%	6%	6%	Free	Free	Free	Free
409.94	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
409.96	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
410.00	20%	20%	8%	8%	Free	Free	Free	Free
410.02	15%	15%	6%	6%	Free	Free	Free	Free
410.04	8.3%	8.3%	3.3%	3.3%	Free	Free	Free	Free
410.08	20%	20%	8%	8%	Free	Free	Free	Free
410.10	15%	15%	6%	6%	Free	Free	Free	Free
410.12	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
410.16	20%	20%	8%	8%	Free	Free	Free	Free
410.18	15%	15%	6%	6%	Free	Free	Free	Free
410.19	9%	9%	3.6%	3.6%	Free	Free	Free	Free
410.20	20%	20%	8%	8%	Free	Free	Free	Free
410.22	15%	15%	6%	6%	Free	Free	Free	Free
410.24	20%	20%	8%	8%	Free	Free	Free	Free
410.28	8.3%	8.3%	3.3%	3.3%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-30-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
410.32	20%	20%	8%	8%	Free	Free	Free	Free
410.34	15%	15%	6%	6%	Free	Free	Free	Free
410.36	12.5%	12.5%	5%	5%	Free	Free	Free	Free
410.40	12.5%	12.5%	5%	5%	Free	Free	Free	Free
410.44	14%	14%	5.6%	5.6%	Free	Free	Free	Free
410.48	10.8%	10.8%	4.3%	4.3%	Free	Free	Free	Free
410.52	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
410.56	8.6%	8.6%	3.4%	3.4%	Free	Free	Free	Free
410.66	8.7%	8.7%	3.5%	3.5%	Free	Free	Free	Free
410.72	10.2%	10.2%	4.1%	4.1%	Free	Free	Free	Free
410.76	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
410.80	7.6%	7.6%	3%	3%	Free	Free	Free	Free
410.84	10%	10%	4%	4%	Free	Free	Free	Free
411.12	7.4%	7.4%	3%	3%	Free	Free	Free	Free
411.24	8%	8%	3.2%	3.2%	Free	Free	Free	Free
411.26	11.6%	11.6%	4.6%	4.6%	Free	Free	Free	Free
411.72	7.4%	7.4%	3%	3%	Free	Free	Free	Free
411.80	15%	15%	6%	6%	Free	Free	Free	Free
411.82	10.8%	10.8%	4.3%	4.3%	Free	Free	Free	Free
411.87	10.8%	10.8%	4.3%	4.3%	Free	Free	Free	Free
411.91	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
412.52	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
412.56	16.2%	16.2%	6.5%	6.5%	Free	Free	Free	Free
412.72	9.1%	9.1%	3.6%	3.6%	Free	Free	Free	Free
412.80	23.5%	23.5%	9.4%	9.4%	Free	Free	Free	Free
412.84	18.9%	18.9%	7.6%	7.6%	Free	Free	Free	Free
412.88	11.8%	11.8%	4.7%	4.7%	Free	Free	Free	Free
412.92	16.3%	16.3%	6.5%	6.5%	Free	Free	Free	Free
413.04	12.2%	12.2%	4.9%	4.9%	Free	Free	Free	Free
413.12	9.4%	9.4%	3.8%	3.8%	Free	Free	Free	Free
413.16	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
413.20	16.3%	16.3%	6.5%	6.5%	Free	Free	Free	Free
413.30	11.9%	11.9%	4.8%	4.8%	Free	Free	Free	Free
413.32	20%	20%	8%	8%	Free	Free	Free	Free
413.36	15.7%	15.7%	6.3%	6.3%	Free	Free	Free	Free
413.50	10%	10%	4%	4%	Free	Free	Free	Free
413.51	10%, but not less than the highest rate applicable to any component material	10%, but not less than the highest rate applicable to any component material	4%, but not less than the highest rate applicable to any component material	4%, but not less than the highest rate applicable to any component material	Free	Free	Free	Free
416.40	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
416.45	4.2%	4.2%	1.7%	1.7%	Free	Free	Free	Free
417.40	10%	10%	4%	4%	Free	Free	Free	Free
417.42	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
418.30	10%	10%	4%	4%	Free	Free	Free	Free
418.40	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
418.42	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
418.44	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-31-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
420.32	10%	10%	4%	4%	Free	Free	Free	Free
420.34	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
421.06	14%	14%	5.6%	5.6%	Free	Free	Free	Free
421.14	8.6%	8.6%	3.4%	3.4%	Free	Free	Free	Free
421.56	10%	10%	4%	4%	Free	Free	Free	Free
421.60	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
422.10	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
422.12	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
422.14	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
422.40	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
422.42	10%	10%	4%	4%	Free	Free	Free	Free
422.60	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
422.62	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
422.74	14%	14%	5.6%	5.6%	Free	Free	Free	Free
422.78	3.2%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
423.84	14%	14%	5.6%	5.6%	Free	Free	Free	Free
423.92	10%	10%	4%	4%	Free	Free	Free	Free
423.94	7.4%	7.4%	3%	3%	Free	Free	Free	Free
425.00	11.6%	11.6%	4.6%	4.6%	Free	Free	Free	Free
425.12	11.3%	11.3%	4.5%	4.5%	Free	Free	Free	Free
425.24	3.7%	3.7%	1.5%	1.5%	Free	Free	Free	Free
425.30	12%	12%	4.8%	4.8%	Free	Free	Free	Free
426.22	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
426.94	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
426.96	14%	14%	5.6%	5.6%	Free	Free	Free	Free
427.14	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
427.22	7.5%	7.5%	3%	3%	Free	Free	Free	Free
427.24	14%	14%	5.6%	5.6%	Free	Free	Free	Free
427.44	20%	20%	8%	8%	Free	Free	Free	Free
427.46	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
427.92	1.3¢/lb.	1.3¢/lb.	0.5¢/lb.	0.5¢/lb.	Free	Free	Free	Free
427.97	18%	18%	7.2%	7.2%	Free	Free	Free	Free
428.06	14%	14%	5.6%	5.6%	Free	Free	Free	Free
428.30	11.5%	11.5%	4.6%	4.6%	Free	Free	Free	Free
428.34	12%	12%	4.8%	4.8%	Free	Free	Free	Free
428.47	12.3%	12.3%	4.9%	4.9%	Free	Free	Free	Free
428.52	15.9%	15.9%	6.4%	6.4%	Free	Free	Free	Free
428.84	9%	9%	3.6%	3.6%	Free	Free	Free	Free
428.86	12%	12%	4.8%	4.8%	Free	Free	Free	Free
428.94	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
429.24	15.9%	15.9%	6.4%	6.4%	Free	Free	Free	Free
429.26	20%	20%	8%	8%	Free	Free	Free	Free
429.28	0.6¢/lb. + 3.3%	0.5¢/lb. + 2.7%	0.4¢/lb. + 2.1%	0.4¢/lb. + 1.8%	0.3¢/lb. + 1.4%	0.2¢/lb. + 1.1%	0.1¢/lb. + 0.4%	Free
429.44	12%	12%	4.8%	4.8%	Free	Free	Free	Free
429.47	18%	18%	7.2%	7.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-32-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
429.49	3.7%	3.7%	1.5%	1.5%	Free	Free	Free	Free
429.51	3.7%	3.7%	1.5%	1.5%	Free	Free	Free	Free
429.70	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
429.95	3.7%	3.7%	1.5%	1.5%	Free	Free	Free	Free
432.25	3.7%, but not less than the highest rate applicable to any component material	3.7%, but not less than the highest rate applicable to any component material	1.5%, but not less than the highest rate applicable to any component material	1.5%, but not less than the highest rate applicable to any component material	Free	Free	Free	Free
437.04	20¢/lb.	20¢/lb.	8¢/lb.	8¢/lb.	Free	Free	Free	Free
437.38	50¢/lb.	50¢/lb.	20¢/lb.	20¢/lb.	Free	Free	Free	Free
437.47	8%	8%	3.2%	3.2%	Free	Free	Free	Free
437.74	12%	12%	4.8%	4.8%	Free	Free	Free	Free
445.30	12.5%	12.5%	5%	5%	Free	Free	Free	Free
445.46	10.1%	10.1%	4%	4%	Free	Free	Free	Free
445.52	12.5%	12.5%	5%	5%	Free	Free	Free	Free
460.20	8%	8%	3.2%	3.2%	Free	Free	Free	Free
460.55	14.4%	14.4%	5.8%	5.8%	Free	Free	Free	Free
460.60	8%	8%	3.2%	3.2%	Free	Free	Free	Free
460.70	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
473.40	8%	8%	3.2%	3.2%	Free	Free	Free	Free
473.58	12%	12%	4.8%	4.8%	Free	Free	Free	Free
473.62	8%	8%	3.2%	3.2%	Free	Free	Free	Free
474.02	0.15¢/piece	0.15¢/piece	0.1¢/piece	0.1¢/piece	Free	Free	Free	Free
485.30	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
490.05	7.4%	7.4%	3%	3%	Free	Free	Free	Free
493.42	12.8%	12.8%	5.1%	5.1%	Free	Free	Free	Free
493.65	8%	8%	3.2%	3.2%	Free	Free	Free	Free
493.66	15%	15%	6%	6%	Free	Free	Free	Free
511.31	16.8%	16.8%	6.7%	6.7%	Free	Free	Free	Free
520.61	16.8%	16.8%	6.7%	6.7%	Free	Free	Free	Free
520.75	6%	6%	2.4%	2.4%	Free	Free	Free	Free
522.24	13.5%	13.5%	5.4%	5.4%	Free	Free	Free	Free
531.37	9%	9%	3.6%	3.6%	Free	Free	Free	Free
532.22	20%	20%	8%	8%	Free	Free	Free	Free
532.24	19%	19%	7.6%	7.6%	Free	Free	Free	Free
532.27	20%	20%	8%	8%	Free	Free	Free	Free
532.31	10.8%	10.8%	4.3%	4.3%	Free	Free	Free	Free
533.54	8%	8%	3.2%	3.2%	Free	Free	Free	Free
534.81	2¢/doz. pcs. + 7%	2¢/doz. pcs. + 7%	0.8¢/doz. pcs. + 2.8%	0.8¢/doz. pcs. + 2.8%	Free	Free	Free	Free
534.84	7%	7%	2.8%	2.8%	Free	Free	Free	Free
534.94	9%	9%	3.6%	3.6%	Free	Free	Free	Free
535.21	12%	12%	4.8%	4.8%	Free	Free	Free	Free
535.24	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
535.31	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-33-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
536.15	8%	8%	3.2%	3.2%	Free	Free	Free	Free
540.27	13.6%	13.6%	5.4%	5.4%	Free	Free	Free	Free
540.30	14%	14%	5.6%	5.6%	Free	Free	Free	Free
540.43	7.5%	7.5%	3%	3%	Free	Free	Free	Free
540.47	9.6%	9.6%	3.8%	3.8%	Free	Free	Free	Free
540.55	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
540.65	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
540.67	10%	10%	4%	4%	Free	Free	Free	Free
543.23	2¢/sq. ft.	2¢/sq. ft.	0.8¢/sq. ft.	0.8¢/sq. ft.	Free	Free	Free	Free
544.16	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
544.51	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
544.54	8%	8%	3.2%	3.2%	Free	Free	Free	Free
544.64	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
545.17	7.5%	7.5%	3%	3%	Free	Free	Free	Free
545.31	1.6¢ each + 8%	1.6¢ each + 8%	0.6¢ each + 3.2%	0.6¢ each + 3.2%	Free	Free	Free	Free
545.34	2.8¢ each + 8%	2.8¢ each + 8%	1.1¢ each + 3.2%	1.1¢ each + 3.2%	Free	Free	Free	Free
545.35	4¢ each + 8%	4¢ each + 8%	1.6¢ each + 3.2%	1.6¢ each + 3.2%	Free	Free	Free	Free
545.37	6¢ each + 8%	6¢ each + 8%	2.4¢ each + 3.2%	2.4¢ each + 3.2%	Free	Free	Free	Free
545.53	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
545.65	12%	12%	4.8%	4.8%	Free	Free	Free	Free
546.18	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
546.23	8%	8%	3.2%	3.2%	Free	Free	Free	Free
546.38	10%	10%	4%	4%	Free	Free	Free	Free
546.39	9%	9%	3.6%	3.6%	Free	Free	Free	Free
546.47	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
547.13	9.6%	9.6%	3.8%	3.8%	Free	Free	Free	Free
547.55	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
548.03	7.5%	7.5%	3%	3%	Free	Free	Free	Free
605.03	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
605.05	10%	10%	4%	4%	Free	Free	Free	Free
605.08	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
605.27	7.5%	7.5%	3%	3%	Free	Free	Free	Free
605.28	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
605.46	7.5%	7.5%	3%	3%	Free	Free	Free	Free
605.47	10%	10%	4%	4%	Free	Free	Free	Free
605.66	16%	16%	6.4%	6.4%	Free	Free	Free	Free
606.42	8%	8%	3.2%	3.2%	Free	Free	Free	Free
606.90	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
606.94	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
606.95	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
607.88	8%	8%	3.2%	3.2%	Free	Free	Free	Free
607.90	8%	8%	3.2%	3.2%	Free	Free	Free	Free
608.43	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
608.49	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
608.57	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-34-

Item in TSUS as modified by 2/ Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
608.64	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
612.61A	7.3%	7.3%	2.9%	2.9%	Free	Free	Free	Free
612.61B	0.5¢/lb. on copper content + 7%	0.5¢/lb. on copper content + 7%	0.2¢/lb. on copper content + 2.8%	0.2¢/lb. on copper content + 2.8%	Free	Free	Free	Free
612.70A	7.3%	7.3%	2.9%	2.9%	Free	Free	Free	Free
612.70B	0.5¢/lb. on copper content + 7.2%	0.5¢/lb. on copper content + 7.2%	0.2¢/lb. on copper content + 2.9%	0.2¢/lb. on copper content + 2.9%	Free	Free	Free	Free
612.71A	7.4%	7.4%	3%	3%	Free	Free	Free	Free
612.71B	0.5¢/lb. on copper content + 0.02¢/lb. + 7%	0.5¢/lb. on copper content + 0.02¢/lb. + 7%	0.2¢/lb. on copper content + 2.8%	0.2¢/lb. on copper content + 2.8%	Free	Free	Free	Free
613.15A	11.2%	11.2%	4.5%	4.5%	Free	Free	Free	Free
613.15B	0.6¢/lb. + 8.8%	0.6¢/lb. + 8.8%	0.2¢/lb. + 3.5%	0.2¢/lb. + 3.5%	Free	Free	Free	Free
624.40	11.9%	11.9%	4.8%	4.8%	Free	Free	Free	Free
624.42	9%	9%	3.6%	3.6%	Free	Free	Free	Free
626.04	15.2%	15.2%	6.1%	6.1%	Free	Free	Free	Free
628.55	8%	8%	3.2%	3.2%	Free	Free	Free	Free
629.12	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
629.14	15%	15%	6%	6%	Free	Free	Free	Free
629.20	15%	15%	6%	6%	Free	Free	Free	Free
629.28	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
632.30	14%	14%	5.6%	5.6%	Free	Free	Free	Free
632.78	32¢/lb.	32¢/lb.	12.8¢/lb.	12.8¢/lb.	Free	Free	Free	Free
642.25	10%	10%	4%	4%	Free	Free	Free	Free
642.27	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
642.74	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
644.15	7%	7%	2.8%	2.8%	Free	Free	Free	Free
644.60	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
646.49	10%	10%	4%	4%	Free	Free	Free	Free
646.88	12.3%	12.3%	4.9%	4.9%	Free	Free	Free	Free
647.10	8%	8%	3.2%	3.2%	Free	Free	Free	Free
648.80	12%	12%	4.8%	4.8%	Free	Free	Free	Free
648.82	12%	12%	4.8%	4.8%	Free	Free	Free	Free
649.23	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
649.43	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
649.44	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
649.53	7%	7%	2.8%	2.8%	Free	Free	Free	Free
649.71	10%	10%	4%	4%	Free	Free	Free	Free
649.73	10%	10%	4%	4%	Free	Free	Free	Free
649.75	10%	10%	4%	4%	Free	Free	Free	Free
649.91	8%	8%	3.2%	3.2%	Free	Free	Free	Free
650.08	0.8¢ each + 10%	0.8¢ each + 10%	0.3¢ each + 4%	0.3¢ each + 4%	Free	Free	Free	Free
650.10	0.8¢ each + 14%	0.8¢ each + 14%	0.3¢ each + 5.6%	0.3¢ each + 5.6%	Free	Free	Free	Free
650.54	13.6%	13.6%	5.4%	5.4%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.
2/ The letter "A" or "B" following an item number in this column is for purposes of identifying the staged rate of duty to be inserted in Special column a or Special column b, as the case may be, of the corresponding item in the Tariff Schedules of the United States.

ANNEX IX
-35-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
650.56	7.5%	7.5%	3%	3%	Free	Free	Free	Free
650.83	8%	8%	3.2%	3.2%	Free	Free	Free	Free
650.90	10¢ each + 10%	10¢ each + 10%	4¢ each + 4%	4¢ each + 4%	Free	Free	Free	Free
650.92	10¢ each + 10%	10¢ each + 10%	4¢ each + 4%	4¢ each + 4%	Free	Free	Free	Free
651.01	7.6%	7.6%	3%	3%	Free	Free	Free	Free
651.07	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
651.13	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
651.62	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
651.75	The rate of duty, if any, applicable to each article in the set	The rate of duty, if any, applicable to each article in the set	The rate of duty, if any, applicable to each article in the set	The rate of duty, if any, applicable to each article in the set	Free	Free	Free	Free
652.55	8%	8%	3.2%	3.2%	Free	Free	Free	Free
652.72	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
653.39	7.6%	7.6%	3%	3%	Free	Free	Free	Free
653.65	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
653.70	7.5%	7.5%	3%	3%	Free	Free	Free	Free
653.75	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
656.05	8%	8%	3.2%	3.2%	Free	Free	Free	Free
656.20	7.5%	7.5%	3%	3%	Free	Free	Free	Free
656.25	10%	10%	4%	4%	Free	Free	Free	Free
656.30	8%	8%	3.2%	3.2%	Free	Free	Free	Free
660.74	90¢ each + 14%	90¢ each + 14%	36¢ each + 5.6%	36¢ each + 5.6%	Free	Free	Free	Free
661.90	3.9%	3:9%	1.6%	1.6%	Free	Free	Free	Free
668.32	80¢ each + 8%	80¢ each + 8%	32¢ each + 3.2%	32¢ each + 3.2%	Free	Free	Free	Free
668.34	8%	8%	3.2%	3.2%	Free	Free	Free	Free
670.58	10%	10%	4%	4%	Free	Free	Free	Free
670.62	23¢/1,000 + 8.2%	23¢/1,000 + 8.2%	9.2¢/1,000 + 3.3%	9.2¢/1,000 + 3.3%	Free	Free	Free	Free
670.68	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
674.30	5.8%	5.8%	2.3%	2.3%	Free	Free	Free	Free
674.31	4.2%	4.2%	1.7%	1.7%	Free	Free	Free	Free
674.33	4.2%	4.2%	1.7%	1.7%	Free	Free	Free	Free
674.34	4.2%	4.2%	1.7%	1.7%	Free	Free	Free	Free
674.35	4.4%	4.4%	1.8%	1.8%	Free	Free	Free	Free
680.37	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	1.1%	Free
680.59	50¢ each + 7.7%	50¢ each + 7.7%	20¢ each + 3.1%	20¢ each + 3.1%	Free	Free	Free	Free
680.62	9%	9%	3.6%	3.6%	Free	Free	Free	Free
682.20	10%	10%	4%	4%	Free	Free	Free	Free
682.55	10%	10%	4%	4%	Free	Free	Free	Free
683.70	25%	25%	10%	10%	Free	Free	Free	Free
684.15	6.8%	6.8%	2.7%	2.7%	Free	Free	Free	Free
685.16	6%	6%	2.4%	2.4%	Free	Free	Free	Free
685.80	8%	8%	3.2%	3.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-36-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
686.70	7.9%	7.9%	3.2%	3.2%	Free	Free	Free	Free
687.35	12%	12%	4.8%	4.8%	Free	Free	Free	Free
690.15	14.4%	14.4%	5.8%	5.8%	Free	Free	Free	Free
696.15	3.8%	3.1%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
700.05	16%	16%	6.4%	6.4%	Free	Free	Free	Free
700.10	8%	8%	3.2%	3.2%	Free	Free	Free	Free
700.15	8%	8%	3.2%	3.2%	Free	Free	Free	Free
700.20	2%	2%	0.8%	0.8%	Free	Free	Free	Free
700.25	13.6%	13.6%	5.4%	5.4%	Free	Free	Free	Free
700.26	13.6¢/pair	13.6¢/pair	5.4¢/pair	5.4¢/pair	Free	Free	Free	Free
700.27	4%	4%	1.6%	1.6%	Free	Free	Free	Free
700.29	4%	4%	1.6%	1.6%	Free	Free	Free	Free
700.30	4%	4%	1.6%	1.6%	Free	Free	Free	Free
700.32	4%	4%	1.6%	1.6%	Free	Free	Free	Free
700.35	6.8%	6.8%	2.7%	2.7%	Free	Free	Free	Free
700.41	8%	8%	3.2%	3.2%	Free	Free	Free	Free
700.43	12%	12%	4.8%	4.8%	Free	Free	Free	Free
700.45	8%	8%	3.2%	3.2%	Free	Free	Free	Free
700.51	6.6%	6.6%	2.6%	2.6%	Free	Free	Free	Free
700.52	20%	20%	8%	8%	Free	Free	Free	Free
700.53	30%	30%	12%	12%	Free	Free	Free	Free
700.56	4.8%	4.8%	1.9%	1.9%	Free	Free	Free	Free
700.57	37.5%	37.5%	15%	15%	Free	Free	Free	Free
700.59	37.5%	37.5%	15%	15%	Free	Free	Free	Free
700.61	37.5%	37.5%	15%	15%	Free	Free	Free	Free
700.62	90¢/pair + 20%	90¢/pair + 20%	36¢/pair + 8%	36¢/pair + 8%	Free	Free	Free	Free
700.63	20%	20%	8%	8%	Free	Free	Free	Free
700.64	48%	48%	19.2%	19.2%	Free	Free	Free	Free
700.67	90¢/pair + 37.5%	90¢/pair + 37.5%	36¢/pair + 15%	36¢/pair + 15%	Free	Free	Free	Free
700.69	90¢/pair + 20%	90¢/pair + 20%	36¢/pair + 8%	36¢/pair + 8%	Free	Free	Free	Free
700.71	20%	20%	8%	8%	Free	Free	Free	Free
700.72	12%	12%	4.8%	4.8%	Free	Free	Free	Free
700.73	8%	8%	3.2%	3.2%	Free	Free	Free	Free
700.74	6%	6%	2.4%	2.4%	Free	Free	Free	Free
700.75	2.8%	2.8%	1.1%	1.1%	Free	Free	Free	Free
700.80	10%	10%	4%	4%	Free	Free	Free	Free
700.83	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
700.90	7.5%	7.5%	3%	3%	Free	Free	Free	Free
700.95	10%	10%	4%	4%	Free	Free	Free	Free
702.06	9.3%	7%	5%	4.2%	3.4%	2.5%	0.8%	Free
702.08	9.3%	7%	5%	4.2%	3.4%	2.5%	0.8%	Free
702.12	8.8%	6.7%	4.8%	4%	3.2%	2.4%	0.8%	Free
702.14	8.8%	6.7%	4.8%	4%	3.2%	2.4%	0.8%	Free
702.20	4%	3.5%	3%	2.5%	2%	1.5%	0.5%	Free
702.45	20%	20%	8%	8%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX I%
-37-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
702.54	16.8¢/lb. + 9.3%	13.5¢/lb. + 7.4%	10.2¢/lb. + 5.6%	8.5¢/lb. + 4.7%	6.8¢/lb. + 3.8%	5.1¢/lb. + 2.8%	1.7¢/lb. + 0.9%	Free
702.56	20.8¢/lb. + 14.2%	17.5¢/lb. + 11.6%	13.8¢/lb. + 9.2%	11.5¢/lb. + 7.7%	9.2¢/lb. + 6.2%	6.9¢/lb. + 4.6%	2.3¢/lb. + 1.5%	Free
702.60	4.8¢/lb. + 12.1%	4.2¢/lb. + 9.2%	3¢/lb. + 6.6%	2.5¢/lb. + 5.5%	2¢/lb. + 4.4%	1.5¢/lb. + 3.3%	0.5¢/lb. + 1.1%	Free
702.65	6.6¢/lb. + 8.8% + 2¢/article	5¢/lb. + 6.7% + 1.5¢/article	3.6¢/lb. + 4.8% + 1.2¢/article	3¢/lb. + 4% + 1¢/article	2.4¢/lb. + 3.2% + 0.8¢/article	1.8¢/lb. + 2.4% + 0.6¢/article	0.6¢/lb. + 0.8% + 0.2¢/article	Free
702.70	6.6¢/lb. + 7% + 2¢/article	5¢/lb. + 5.4% + 1.5¢/article	3.9¢/lb. + 4% + 1.2¢/article	3.3¢/lb. + 3.4% + 1¢/article	2.6¢/lb. + 2.7% + 0.8¢/article	2¢/lb. + 2% + 0.6¢/article	0.7¢/lb. + 0.7% + 0.2¢/article	Free
702.75	10.4¢/lb. + 9.3%	7.7¢/lb. + 7%	6¢/lb. + 5%	5¢/lb. + 4.2%	4¢/lb. + 3.4%	3¢/lb. + 2.5%	1¢/lb. + 0.8%	Free
702.80	16¢/lb. + 9.3%	11.9¢/lb. + 7%	9¢/lb. + 5%	7.5¢/lb. + 4.2%	6¢/lb. + 3.4%	4.5¢/lb. + 2.5%	1.5¢/lb. + 0.8%	Free
702.85	17.6¢ each + 3.4%	13.3¢ each + 2.5%	9.6¢ each + 1.8%	8¢ each + 1.5%	6.4¢ each + 1.2%	4.8¢ each + 0.9%	1.6¢ each + 0.3%	Free
702.90	5.5%	4.4%	3.5%	2.9%	2.3%	1.7%	0.6%	Free
702.95	7.7%	6%	4.5%	3.8%	3%	2.3%	0.8%	Free
703.05	7.9%	6%	4.3%	3.6%	2.9%	2.2%	0.7%	Free
703.10	15.2¢/lb. + 12.5%	13.3¢/lb. + 10.4%	10.8¢/lb. + 8.5%	9¢/lb. + 7.1%	7.2¢/lb. + 5.6%	5.4¢/lb. + 4.2%	1.8¢/lb. + 1.4%	Free
703.14	10.4¢/lb. + 8.8%	8.4¢/lb. + 6.7%	6¢/lb. + 4.8%	5¢/lb. + 4%	4¢/lb. + 3.2%	3¢/lb. + 2.4%	1¢/lb. + 0.8%	Free
703.16	10.4¢/lb. + 8.8%	8.4¢/lb. + 6.7%	6¢/lb. + 4.8%	5¢/lb. + 4%	4¢/lb. + 3.2%	3¢/lb. + 2.4%	1¢/lb. + 0.8%	Free
703.20	11%	11%	4.4%	4.4%	Free	Free	Free	Free
703.25	9.4%	9.4%	3.8%	3.8%	Free	Free	Free	Free
703.30	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
703.40	22%	22%	8.8%	8.8%	Free	Free	Free	Free
703.45	26%	26%	10.4%	10.4%	Free	Free	Free	Free
703.50	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
703.65	4.8%	4.2%	3.6%	3%	2.4%	1.8%	0.6%	Free
703.72	1.9%	1.7%	1.4%	1.2%	1%	0.7%	0.2%	Free
703.75	6.8%	6%	5.1%	4.3%	3.4%	2.6%	0.9%	Free
703.80	0.4%	0.2%	Free	Free	Free	Free	Free	Free
703.85	1%	0.4%	Free	Free	Free	Free	Free	Free
703.90	1%	0.4%	Free	Free	Free	Free	Free	Free
703.95	4%	3%	2.2%	1.8%	1.4%	1.1%	0.4%	Free
704.05	17.4%	14.6%	12%	10%	8%	6%	2%	Free
704.10	17.4%	14.6%	12%	10%	8%	6%	2%	Free
704.15	17.4%	14.6%	12%	10%	8%	6%	2%	Free
704.20	30.4%	24.5%	19.2%	14.5%	10.4%	6.9%	2%	Free
704.25	27.1%	21.8%	17%	12.8%	9.1%	6%	2%	Free
704.30	30.4%	24.5%	19.2%	14.5%	10.4%	6.9%	2%	Free
704.32	18.6%	15.2%	12%	10%	8%	6%	2%	Free
704.34	18.6%	15.2%	12%	10%	8%	6%	2%	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-38-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
704.40	20%	17.5%	15%	12.5%	10%	7.5%	2.5%	Free
704.45	20%	17.5%	15%	12.5%	10%	7.5%	2.5%	Free
704.50	12%	8.8%	6%	5%	4%	3%	1%	Free
704.55	12.8¢/lb. + 11.4%	9.8¢/lb. + 8.6%	7.2¢/lb. + 6.2%	6¢/lb. + 5.2%	4.8¢/lb. + 4.2%	3.6¢/lb. + 3.1%	1.2¢/lb. + 1%	Free
704.56	9.6¢/lb. + 8.6%	7¢/lb. + 6.4%	5.1¢/lb. + 4.5%	4.3¢/lb. + 3.8%	3.4¢/lb. + 3%	2.6¢/lb. + 2.3%	0.9¢/lb. + 0.8%	Free
704.60	22.4¢/lb. + 30.4%	18.2¢/lb. + 24.5%	14.4¢/lb. + 19.2%	10.5¢/lb. + 14.5%	7.6¢/lb. + 10.4%	5.1¢/lb. + 6.9%	1.5¢/lb. + 2%	Free
704.65	17.6¢/lb. + 8.9%	12.6¢/lb. + 6.4%	9¢/lb. + 4.4%	7.5¢/lb. + 3.7%	6¢/lb. + 3%	4.5¢/lb. + 2.2%	1.5¢/lb. + 0.7%	Free
704.70	17.6¢/lb. + 7.2%	12.6¢/lb. + 5.3%	9¢/lb. + 3.6%	7.5¢/lb. + 3%	6¢/lb. + 2.4%	4.5¢/lb. + 1.8%	1.5¢/lb. + 0.6%	Free
704.75	6.6%	5.2%	3.9%	3.3%	2.6%	2%	0.7%	Free
704.80	8.2%	6.2%	4.5%	3.8%	3%	2.3%	0.8%	Free
704.85	13.6¢/lb. + 17.8%	10.5¢/lb. + 13.8%	7.8¢/lb. + 10.3%	6.5¢/lb. + 8.6%	5.2¢/lb. + 6.8%	3.9¢/lb. + 5.1%	1.3¢/lb. + 1.7%	Free
704.90	12.8¢/lb. + 14.5%	9.8¢/lb. + 11%	7.2¢/lb. + 8%	5¢/lb. + 5.5%	4¢/lb. + 4.4%	3¢/lb. + 3.3%	1¢/lb. + 1.1%	Free
704.95	4.8%	3.5%	2.4%	2%	1.6%	1.2%	0.4%	Free
705.35	12%	10.5%	8.4%	7%	5.6%	4.2%	1.4%	Free
705.40	$2.78/doz. pairs	$2.25/doz. pairs	$1.78/doz. pairs	$1.35/doz. pairs	98¢/doz. pairs	74¢/doz. pairs	25¢/doz. pairs	Free
705.42	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.43	$2.56/doz. pairs	$2.03/doz. pairs	$1.56/doz. pairs	$1.15/doz. pairs	80¢/doz. pairs	60¢/doz. pairs	20¢/doz. pairs	Free
705.45	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.46	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.48	$2.76/doz. pairs	$2.23/doz. pairs	$1.76/doz. pairs	$1.34/doz. pairs	97¢/doz. pairs	73¢/doz. pairs	24¢/doz. pairs	Free
705.50	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.51	$2.73/doz. pairs	$2.20/doz. pairs	$1.73/doz. pairs	$1.31/doz. pairs	94¢/doz. pairs	71¢/doz. pairs	24¢/doz. pairs	Free
705.53	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.54	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.55	$2.73/doz. pairs	$2.20/doz. pairs	$1.73/doz. pairs	$1.31/doz. pairs	94¢/doz. pairs	71¢/doz. pairs	24¢/doz. pairs	Free
705.57	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.58	14.7%	12.1%	9.7%	7.6%	5.6%	4.2%	1.4%	Free
705.60	$3.07/doz. pairs	$2.44/doz. pairs	$1.87/doz. pairs	$1.38/doz. pairs	96¢/doz. pairs	72¢/doz. pairs	24¢/doz. pairs	Free
705.63	16.3%	13.2%	10.3%	7.8%	5.6%	4.2%	1.4%	Free
705.66	$3.07/doz. pairs	$2.44/doz. pairs	$1.87/doz. pairs	$1.38/doz. pairs	96¢/doz. pairs	72¢/doz. pairs	24¢/doz. pairs	Free
705.67	$3.07/doz. pairs	$2.44/doz. pairs	$1.87/doz. pairs	$1.38/doz. pairs	96¢/doz. pairs	72¢/doz. pairs	24¢/doz. pairs	Free
705.68	16%	12.3%	9%	7.5%	6%	4.5%	1.5%	Free
705.69	$4.80/doz. pairs	$4.20/doz. pairs	$3.60/doz. pairs	$3.00/doz. pairs	$2.40/doz. pairs	$1.80/doz. pairs	60¢/doz. pairs	Free
705.70	16.3%	13.2%	10.3%	7.8%	5.6%	4.2%	1.4%	Free
705.72	$4.04/doz. pairs	$3.30/doz. pairs	$2.64/doz. pairs	$2.04/doz. pairs	$1.50/doz. pairs	$1.13/doz. pairs	38¢/doz. pairs	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-39-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
705.73	13.8%	11.5%	9.4%	7.4%	5.6%	4.2%	1.4%	Free
705.74	13.8%	11.5%	9.4%	7.4%	5.6%	4.2%	1.4%	Free
705.76	$3.92/doz. pairs	$3.19/doz. pairs	$2.52/doz. pairs	$1.93/doz. pairs	$1.40/doz. pairs	$1.05/doz. pairs	35¢/doz. pairs	Free
705.78	13.8%	11.5%	9.4%	7.4%	5.6%	4.2%	1.4%	Free
705.83	3.2%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
705.85	11.4%	9.9%	8.4%	7%	5.6%	4.2%	1.4%	Free
705.86	15.4%	11.6%	8.4%	7%	5.6%	4.2%	1.4%	Free
705.90	3.2%	2.7%	2.2%	1.9%	1.5%	1.1%	0.4%	Free
706.05	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
706.07	8%	8%	3.2%	3.2%	Free	Free	Free	Free
706.13	8%	8%	3.2%	3.2%	Free	Free	Free	Free
706.15	10%	10%	4%	4%	Free	Free	Free	Free
706.19	18%	18%	7.2%	7.2%	Free	Free	Free	Free
706.21	18%	18%	7.2%	7.2%	Free	Free	Free	Free
706.32	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
706.33	9.3%	7%	5%	4.2%	3.4%	2.5%	0.8%	Free
706.34	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
706.36	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
706.37	5.2%	4.6%	3.9%	3.3%	2.6%	2%	0.7%	Free
706.39	16%	14%	12%	10%	8%	6%	2%	Free
706.41	16%	16%	6.4%	6.4%	Free	Free	Free	Free
706.44	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
706.45	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
706.47	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
706.50	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
706.55	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
706.61	16%	16%	6.4%	6.4%	Free	Free	Free	Free
706.62	16%	16%	6.4%	6.4%	Free	Free	Free	Free
707.90	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
708.05	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.07	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.10	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
708.21	7%	7%	2.8%	2.8%	Free	Free	Free	Free
708.25	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.27	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.30	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
708.41	9%	9%	3.6%	3.6%	Free	Free	Free	Free
708.43	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
708.45	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
708.47	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
708.56	16%	16%	6.4%	6.4%	Free	Free	Free	Free
708.58	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.63	9%	9%	3.6%	3.6%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-40-

Item in TSUS as modified by Annex I	Rates of duty 1/ effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
708.65	The rate applicable to the articles of which the frames and mountings are parts	The rate applicable to the articles of which the frames and mountings are parts	The rate applicable to the articles of which the frames and mountings are parts	The rate applicable to the articles of which the frames and mountings are parts	Free	Free	Free	Free
708.71	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.72	8%	8%	3.2%	3.2%	Free	Free	Free	Free
708.73	9%	9%	3.6%	3.6%	Free	Free	Free	Free
708.75	9%	9%	3.6%	3.6%	Free	Free	Free	Free
708.80	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
708.93	9%	9%	3.6%	3.6%	Free	Free	Free	Free
709.01	9%	9%	3.6%	3.6%	Free	Free	Free	Free
709.05	10%	10%	4%	4%	Free	Free	Free	Free
709.13	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
709.23	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
709.27	7.9%	7.9%	3.2%	3.2%	Free	Free	Free	Free
709.55	9%	9%	3.6%	3.6%	Free	Free	Free	Free
709.56	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
710.06	9%	9%	3.6%	3.6%	Free	Free	Free	Free
710.21	10%	10%	4%	4%	Free	Free	Free	Free
710.26	47¢ each + 7.4%	47¢ each + 7.4%	18.8¢ each + 3%	18.8¢ each + 3%	Free	Free	Free	Free
710.27	9%	9%	3.6%	3.6%	Free	Free	Free	Free
710.86	7%	7%	2.8%	2.8%	Free	Free	Free	Free
710.88	9%	9%	3.6%	3.6%	Free	Free	Free	Free
710.90	10%	10%	4%	4%	Free	Free	Free	Free
711.30	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
711.31	17%	17%	6.8%	6.8%	Free	Free	Free	Free
711.32	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
711.40	10%	10%	4%	4%	Free	Free	Free	Free
711.70	49¢ each + 7.6%	49¢ each + 7.6%	19.6¢ each + 3%	19.6¢ each + 3%	Free	Free	Free	Free
711.72	9%	9%	3.6%	3.6%	Free	Free	Free	Free
711.86	10%	10%	4%	4%	Free	Free	Free	Free
711.90	15%	15%	6%	6%	Free	Free	Free	Free
711.93	17%	17%	6.8%	6.8%	Free	Free	Free	Free
712.12	10%	10%	4%	4%	Free	Free	Free	Free
712.25	49¢ each + 7.6%	49¢ each + 7.6%	19¢ each + 3%	19¢ each + 3%	Free	Free	Free	Free
712.27	9%	9%	3.6%	3.6%	Free	Free	Free	Free
713.05	30¢ each + 6.4%	30¢ each + 6.4%	12¢ each + 2.6%	12¢ each + 2.6%	Free	Free	Free	Free
713.15	9%	9%	3.6%	3.6%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-41-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
713.17	45¢ each + 7%	45¢ each + 7%	18¢ each + 2.8%	18¢ each + 2.8%	Free	Free	Free	Free
715.05	The rates applicable to the cases, plus the rates applicable to the movements, if such cases and movements were imported separately	The rates applicable to the cases, plus the rates applciable to the movements, if such cases and movements were imported separately	The rates applicable to the cases, plus the rates applicable to the movements, if such cases and movements were imported separately	The rates applicable to the cases, plus the rates applicable to the movements, if such cases and movements were imported separately	Free	Free	Free	Free
715.25	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.27	10¢ each + 6.4% + 2.5¢ for each jewel, if any	10¢ each + 6.4% + 2.5¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.29	15¢ each + 6.4% + 2.5¢ for each jewel, if any	15¢ each + 6.4% + 2.5¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.31	30¢ each + 6.4% + 2.5¢ for each jewel, if any	30¢ each + 6.4% + 2.5¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.33	45¢ each + 6.4% + 2.5¢ for each jewel, if any	45¢ each + 6.4% + 2.5¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.45	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.47	10¢ each + 6.4% + 2.5¢ for each jewel, if any	10¢ each + 6.4% + 2.5¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-42-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
715.49	15¢ each + 6.4% + 2.5¢ for each jewel, if any	15¢ each + 6.4% + 2.5¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.51	30¢ each + 6.4% + 2.5¢ for each jewel, if any	30¢ each + 6.4% + 2.5¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.55	45¢ each + 7% + 2.5¢ for each jewel, if any	45¢ each + 7% + 2.5¢ for each jewel, if any	18¢ each + 2.8% + 1¢ for each jewel, if any	18¢ each + 2.8% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.57	45¢ each + 7% + 2.5¢ for each jewel, if any	45¢ each + 7% + 2.5¢ for each jewel, if any	18¢ each + 2.8% + 1¢ for each jewel, if any	18¢ each + 2.8% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.60	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
715.68	45¢ each + 6.4% + 2.5¢ for each jewel, if any	45¢ each + 6.4% + 2.5¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
716.09	36¢ each	36¢ each	14.4¢ each	14.4¢ each	Free	Free	Free	Free
716.17	72¢ each	72¢ each	28.8¢ each	28.8¢ each	Free	Free	Free	Free
716.37	$1.80 each + 9¢ for each jewel over 7	$1.80 each + 9¢ for each jewel over 7	72¢ each + 3.6¢ for each jewel over 7	72¢ each + 3.6¢ for each jewel over 7	Free	Free	Free	Free
716.40	90¢ each + 9¢ for each jewel over 7	90¢ each + 9¢ for each jewel over 7	36¢ each + 3.6¢ for each jewel over 7	36¢ each + 3.6¢ for each jewel over 7	Free	Free	Free	Free
719.--	Base rate + 35¢ each, if self-winding + 35¢ each adjustment	Base rate + 35¢ each, if self-winding + 35¢ each adjustment	Base rate + 14¢ each, if self-winding + 14¢ each adjustment	Base rate + 14¢ each, if self-winding + 14¢ each adjustment	Free	Free	Free	Free
720.02	30¢ each	30¢ each	12¢ each	12¢ each	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-43-

Item in TSUS as modified by Annex I	Rates of duty,1/ effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
720.10	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	5.5¢ each + 6.4% + 2.5¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	2.2¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
720.12	10¢ each + 6.4% + 2.5¢ for each jewel, if any	10¢ each + 6.4% + 2.5¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	4¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
720.14	15¢ each + 6.4% + 2.5¢ for each jewel, if any	15¢ each + 6.4% + 2.5¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	6¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
720.16	30¢ each + 6.4% + 2.5¢ for each jewel, if any	30¢ each + 6.4% + 2.5¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	12¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
720.18	45¢ each + 6.4% + 2.5¢ for each jewel, if any	45¢ each + 6.4% + 2.5¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	18¢ each + 2.6% + 1¢ for each jewel, if any	Free	Free	Free	Free
720.21	8%	8%	3.2%	3.2%	Free	Free	Free	Free
720.22	8%	8%	3.2%	3.2%	Free	Free	Free	Free
720.32	7.4%	7.4%	3%	3%	Free	Free	Free	Free
720.40	0.5¢ each + 9%	0.5¢ each + 9%	0.2¢ each + 3.6%	0.2¢ each + 3.6%	Free	Free	Free	Free
720.44	10%	10%	4%	4%	Free	Free	Free	Free
720.75	9%	9%	3.6%	3.6%	Free	Free	Free	Free
720.84	13% + 5¢ for each jewel (if any) + 0.6¢ for each other piece or part	13% + 5¢ for each jewel (if any) + 0.6¢ for each other piece or part	5.2% + 2¢ for each jewel (if any) + 0.2¢ for each other piece or part	5.2% + 2¢ for each jewel (if any) + 0.2¢ for each other piece or part	Free	Free	Free	Free
720.86	6.4% + 2.5¢ for each jewel (if any) + 0.3¢ for each other piece or part	6.4% + 2.5¢ for each jewel (if any) + 0.3¢ for each other piece or part	2.6% + 1¢ for each jewel (if any) + 0.1¢ for each other piece or part	2.6% + 1¢ for each jewel (if any) + 0.1¢ for each other piece or part	Free	Free	Free	Free
720.90	11%	11%	4.4%	4.4%	Free	Free	Free	Free
720.92	10%	10%	4%	4%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-44-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
720.94	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
721.05	9%	9%	3.6%	3.6%	Free	Free	Free	Free
722.14	6.8%	6.8%	2.7%	2.7%	Free	Free	Free	Free
722.40	7%	7%	2.8%	2.8%	Free	Free	Free	Free
722.44	7%	7%	2.8%	2.8%	Free	Free	Free	Free
722.46	7%	7%	2.8%	2.8%	Free	Free	Free	Free
722.50	7%	7%	2.8%	2.8%	Free	Free	Free	Free
722.52	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
722.55	9%	9%	3.6%	3.6%	Free	Free	Free	Free
724.20	0.2¢/lin. ft.	0.2¢/lin. ft.	0.1¢/lin. ft.	0.1¢/lin. ft.	Free	Free	Free	Free
724.35	0.2¢/lin. ft.	0.2¢/lin. ft.	0.1¢/lin. ft.	0.1¢/lin. ft.	Free	Free	Free	Free
725.08	7%	7%	2.8%	2.8%	Free	Free	Free	Free
725.20	12%	12%	4.8%	4.8%	Free	Free	Free	Free
725.46	6.8%	6.8%	2.7%	2.7%	Free	Free	Free	Free
725.47	6.8%	6.8%	2.7%	2.7%	Free	Free	Free	Free
726.20	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
726.55	6.6%	6.6%	2.6%	2.6%	Free	Free	Free	Free
727.11	7.5%	7.5%	3%	3%	Free	Free	Free	Free
727.13	7.5%	7.5%	3%	3%	Free	Free	Free	Free
727.14	7.5%	7.5%	3%	3%	Free	Free	Free	Free
727.45	7%	7%	2.8%	2.8%	Free	Free	Free	Free
727.82	4.8%	4.2%	3.6%	3%	2.4%	1.8%	0.6%	Free
727.86	6.6%	5%	3.6%	3%	2.4%	1.8%	0.6%	Free
730.15	40¢ each + 11%	40¢ each + 11%	16¢ each + 4.4%	16¢ each + 4.4%	Free	Free	Free	Free
730.23	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
730.25	9.1%	9.1%	3.6%	3.6%	Free	Free	Free	Free
730.29	7.5%	7.5%	3%	3%	Free	Free	Free	Free
730.37	10%	10%	4%	4%	Free	Free	Free	Free
730.39	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
730.61	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
730.80	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
730.85	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
731.15	7.6%	7.6%	3%	3%	Free	Free	Free	Free
731.20	9.2%	9.2%	3.7%	3.7%	Free	Free	Free	Free
731.30	7%	7%	2.8%	2.8%	Free	Free	Free	Free
731.65	9%	9%	3.6%	3.6%	Free	Free	Free	Free
731.70	9%	9%	3.6%	3.6%	Free	Free	Free	Free
732.02	12%	12%	4.8%	4.8%	Free	Free	Free	Free
732.06	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
732.08	12%	12%	4.8%	4.8%	Free	Free	Free	Free
732.12	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
732.14	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
732.21	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
732.24	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
732.26	12%	12%	4.8%	4.8%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IX
-45-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after--							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
732.30	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
732.42	10%	10%	4%	4%	Free	Free	Free	Free
732.43	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
734.05	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
735.10	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
737.15	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
737.21	8.3%	6.4%	4.8%	4%	3.2%	2.4%	0.8%	Free
737.40	7%	7%	2.8%	2.8%	Free	Free	Free	Free
737.60	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
740.75	8%	8%	3.2%	3.2%	Free	Free	Free	Free
741.10	8%	8%	3.2%	3.2%	Free	Free	Free	Free
741.40	8%	8%	3.2%	3.2%	Free	Free	Free	Free
745.10	11%	11%	4.4%	4.4%	Free	Free	Free	Free
745.50	10%	10%	4%	4%	Free	Free	Free	Free
745.52	8.2%	8.2%	3.3%	3.3%	Free	Free	Free	Free
745.56	9%	9%	3.6%	3.6%	Free	Free	Free	Free
745.61	11%	11%	4.4%	4.4%	Free	Free	Free	Free
745.62	11%	11%	4.4%	4.4%	Free	Free	Free	Free
745.67	11%	11%	4.4%	4.4%	Free	Free	Free	Free
748.15	7%	7%	2.8%	2.8%	Free	Free	Free	Free
748.20	8.4%	8.4%	3.4%	3.4%	Free	Free	Free	Free
748.32	8.8%	8.8%	3.5%	3.5%	Free	Free	Free	Free
748.36	10%	10%	4%	4%	Free	Free	Free	Free
748.45	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
748.50	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
750.10	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free
750.22	11%	11%	4.4%	4.4%	Free	Free	Free	Free
750.25	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
750.27	9.6¢ each	9.6¢ each	3.8¢ each	3.8¢ each	Free	Free	Free	Free
750.29	8%	8%	3.2%	3.2%	Free	Free	Free	Free
750.32	10%	10%	4%	4%	Free	Free	Free	Free
750.45	0.2¢ each + 7%	0.2¢ each + 7%	0.1¢ each + 2.8%	0.1¢ each + 2.8%	Free	Free	Free	Free
750.80	7.5%	7.5%	3%	3%	Free	Free	Free	Free
751.20	12%	12%	4.8%	4.8%	Free	Free	Free	Free
751.25	7.5%	7.5%	3%	3%	Free	Free	Free	Free
755.20	7.5%	7.5%	3%	3%	Free	Free	Free	Free
755.30	6.9%	6.9%	2.8%	2.8%	Free	Free	Free	Free
756.02	7.2%	7.2%	2.9%	2.9%	Free	Free	Free	Free
756.04	10%	10%	4%	4%	Free	Free	Free	Free
756.06	9%	9%	3.6%	3.6%	Free	Free	Free	Free
756.15	10%	10%	4%	4%	Free	Free	Free	Free
756.21	1¢ each + 16%	1¢ each + 16%	0.4¢ each + 6.4%	0.4¢ each + 6.4%	Free	Free	Free	Free
756.23	0.5¢ each + 8%	0.5¢ each + 8%	0.2¢ each + 3.2%	0.2¢ each + 3.2%	Free	Free	Free	Free
756.40	7%	7%	2.8%	2.8%	Free	Free	Free	Free
756.50	7.8%	7.8%	3.1%	3.1%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX IA
-46-

Item in TSUS as modified by Annex I	Rates of duty,[1] effective with respect to articles which are products of Israel and entered on or after—							
	September 1, 1985	January 1, 1986	January 1, 1987	January 1, 1988	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
760.10	6.6%	6.6%	2.6%	2.6%	Free	Free	Free	Free
760.15	8%	8%	3.2%	3.2%	Free	Free	Free	Free
760.34	40¢/1,000 + 7%	40¢/1,000 + 7%	16¢/1,000 + 2.8%	16¢/1,000 + 2.8%	Free	Free	Free	Free
770.45	8.1%	8.1%	3.2%	3.2%	Free	Free	Free	Free
771.05	1.5¢/lb.	1.5¢/lb.	0.6¢/lb.	0.6¢/lb.	Free	Free	Free	Free
772.29	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
772.31	6%	4.4%	3%	2.5%	2%	1.5%	0.5%	Free
772.35	3%	2.5%	2%	1.7%	1.3%	1%	0.3%	Free
772.57	12%	12%	4.8%	4.8%	Free	Free	Free	Free
773.20	10.5%	10.5%	4.2%	4.2%	Free	Free	Free	Free
774.35	11.6%	11.6%	4.6%	4.6%	Free	Free	Free	Free
790.00	6.4%	6.4%	2.6%	2.6%	Free	Free	Free	Free
790.25	13.6%	13.6%	5.4%	5.4%	Free	Free	Free	Free
790.59	9%	9%	3.6%	3.6%	Free	Free	Free	Free
790.61	8.7%	8.7%	3.5%	3.5%	Free	Free	Free	Free
790.62	8.7%	8.7%	3.5%	3.5%	Free	Free	Free	Free
790.63	9%	9%	3.6%	3.6%	Free	Free	Free	Free
791.05	7.4%	7.4%	3%	3%	Free	Free	Free	Free
791.45	2.1%	1.8%	1.5%	1.3%	1%	0.8%	0.3%	Free
791.48	3.8%	3.1%	2.5%	2.1%	1.7%	1.3%	0.4%	Free
791.70	4.2%	3.5%	2.8%	2.4%	1.9%	1.4%	0.5%	Free
791.74	4.8%	4.2%	3.6%	3%	2.4%	1.8%	0.6%	Free
791.80	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	0.6%	Free
792.26	7.7%	7.7%	3.1%	3.1%	Free	Free	Free	Free
869.00	8%	8%	3.2%	3.2%	Free	Free	Free	Free

1/ The symbol "%" indicates percent ad valorem. The symbol "/" indicates per stated unit of quantity.

ANNEX X

ARTICLES THAT ARE ELIGIBLE FOR DUTY FREE TREATMENT
EFFECTIVE JANUARY 1, 1995, WHEN IMPORTED FROM ISRAEL

140.30	165.36
140.40	192.18
140.60	402.78
140.65	403.51
140.74	403.54
141.65	403.59
141.66	403.62
148.42	404.33
148.44	405.51
148.46	407.01
148.48	420.82
148.50	740.11
148.56	740.12
165.27	740.13
165.29	740.70
165.32	

ANNEX XI

SPECIAL RATES APPLICABLE TO ITEMS IN
PART 1 OF THE APPENDIX TO THE TSUS

The rate of duty column entitled "Special" for each item set forth below which appears in part 1 of the Appendix is modified by inserting the rate status set forth below opposite each such item, as follows:

901.50	No change (E, I)
903.15	No change (A*, E*, I)
903.29	No change (A*, E, I)
903.33	No change (E, I)
905.50	No change (I)
907.15	6.9% ad val. (D) No change (A, E, I)
907.22	No change (A, D, E, I)
909.40	4.9% ad val. (D) No change (A, E, I)
911.02	No change (A, D, E, I)
911.50	No change (E, I)

ANNEX XII

Annex III to Presidential Proclamation 4707 of December 11, 1979, as amended, is further amended effective April 29, 1985--

a) by deleting from Section A of that Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

683.05 683.07 711.75 711.77

b) by inserting in Section A of that Annex the following TSUS item numbers, in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1--							
		1981	1982	1983	1984	1985	1986	1987
683.01 2/	3/	3/	3/	3/	3/	6.1% 3/	5.7%	5.3%
683.05 2/	3/	3/	7.3% 3/	6.9%	6.5%	6.1% 3/	3/	3/
683.07 2/	3/	3/	7.3% 3/	6.9%	6.5%	6.1% 3/	3/	3/
683.12 2/	3/	3/	3/	3/	3/	6.1% 3/	5.7%	5.3%
711.70 3/	3/	3/	3/	3/	3/	64¢ each + 10.1% 3/	56¢ each + 8.8%	49¢ each + 7.6%
711.72 4/	4/	4/	4/	4/	4/	12.4% 4/	10.7%	9%
711.75 3/	$1.12 each + 17.5% ad val.	$1.04 each + 16.3%	96¢ each + 15%	88¢ each + 13.8%	80¢ each + 12.6%	72¢ each + 11.3%	64¢ each + 10.1% 3/	3/	3/
711.77 4/	22.5% ad val.	20.8%	19.1%	17.4%	15.8%	14.1%	12.4% 4/	4/	4/

Footnote 3 for items 683.01, 683.05, 683.07, and 683.12:
3/ Item 683.10 is discontinued effective March 31, 1982, and is superseded by items 683.05 and 683.07. Effective April 29, 1985, items 683.05 and 683.07 are redesignated items 683.01 and 683.12, respectively.

Footnote 3 for items 711.70 and 711.75:
3/ Item 711.75 is redesignated item 711.70 effective April 29, 1985.

Footnote 4 for items 711.72 and 711.77:
4/ Item 711.77 is redesignated item 711.72 effective April 29, 1985.

ANNEX XIII

A. Executive Order No. 11888 of November 24, 1975, as amended, is further amended--

a) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after March 1, 1985 by deleting from Annex II of Executive Order No. 11888 TSUS item number "687.72".

b) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after April 29, 1985:

(1) by deleting from Annex II of Executive Order No. 11888 TSUS item numbers "683.07", "711.75", and "711.77" and inserting in lieu thereof "683.12", "711.70", and "711.72", respectively; and

(2) by deleting from Annex III of Executive Order No. 11888 TSUS item number "683.05" and inserting in lieu thereof "683.01".

c) Effective as to articles entered, or withdrawn from warehouse for consumption, on and after July 1, 1985:

(1) by deleting from Annex II of Executive Order No. 11888 TSUS item numbers "683.07", "711.75", and "711.77" and inserting in lieu thereof "683.12", "711.70", and "711.72", respectively; and

(2) by deleting from Annex III of Executive Order No. 11888 TSUS item numbers "683.05" and "687.72" and inserting in numerical sequence TSUS item number "683.01".

B. General headnote 3(c)(iii) of the TSUS in effect--

a) On April 29, 1985 is modified effective on and after that date by deleting TSUS item number "683.05" and inserting in lieu thereof "683.01".

b) On July 1, 1985 is modified effective on and after that date by deleting TSUS item number "683.05" and inserting in lieu thereof "683.01" and by deleting TSUS item number and country "687.72 Mexico".

[FR Doc. 85-21297
Filed 9-3-85; 2:22 pm]
Billing code 3190-01-C

Reader Aids

Federal Register

Vol 50, No. 172

Thursday, September 5, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033

Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041
319.....35533
736.....35535
908.....35767
981.....35767
989.....35769
1135.....36043
1472.....35772

Proposed Rules:
52.....36094
917.....35828
920.....35828
999.....35564
1135.....35829

9 CFR

Proposed Rules:
77.....35564
309.....36094

14 CFR

39.....35772, 36044-36046
71.....36047
108.....35535

Proposed Rules:
39.....35820-35839, 36095-36102
71.....35840

16 CFR

4.....36048

Proposed Rules:
13.....35565

17 CFR

1.....36049

Proposed Rules:
1.....36104
3.....36104

18 CFR

385.....36051

20 CFR

Proposed Rules:
295.....35568
416.....36108

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
510.....35535
558.....35535, 35536

Proposed Rules:
74.....35841
82.....35841
170.....35571

26 CFR

1.....35536, 35540
6a.....35540
602.....35536, 35540

Proposed Rules:
1.....35572
602.....35572

28 CFR

0.....36054

30 CFR

Proposed Rules:
817.....35573

31 CFR

51.....36055
206.....35547

Proposed Rules:
223.....36115

32 CFR

155.....35790

33 CFR

100.....35552-35554
165.....35555

Proposed Rules:
207.....35573

34 CFR

Proposed Rules:
682.....35964
683.....35964

36 CFR

327.....35555

39 CFR

Proposed Rules:

111.....35843

40 CFR

15.....36188
52.....35796
61.....35561
271.....35798

Proposed Rules:

147.....35574
180.....35844

42 CFR

505.....35646
512.....35646

43 CFR

1820.....36055

44 CFR

59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

47 CFR

Ch. I.....36056
0.....36061
2.....36061
18.....36061
25.....36071
73.....35562, 35799–35800
97.....36060

Proposed Rules:

73.....35574–35581, 35845

49 CFR

15.....35815
52.....35815
501.....36060
502.....36060
504.....36060
505.....36060
506.....36060
507.....36060
509.....36060
510.....36060
514.....36060
515.....36060
525.....36060
536.....36060
549.....36060
914.....35956
915.....35956
952.....35956

Proposed Rules:

549.....35582
552.....35582

49 CFR

Ch. X.....35562
571.....36084
1033.....36085
1065.....35563

Proposed Rules:

192.....36116
218.....35636
221.....35636
232.....35640, 35643
571.....35583

50 CFR

17.....36085, 36089
20.....35762, 36198
32.....35563, 35815
33.....35563
611.....35825
630.....35563
661.....35827, 36092
672.....35825
675.....35825

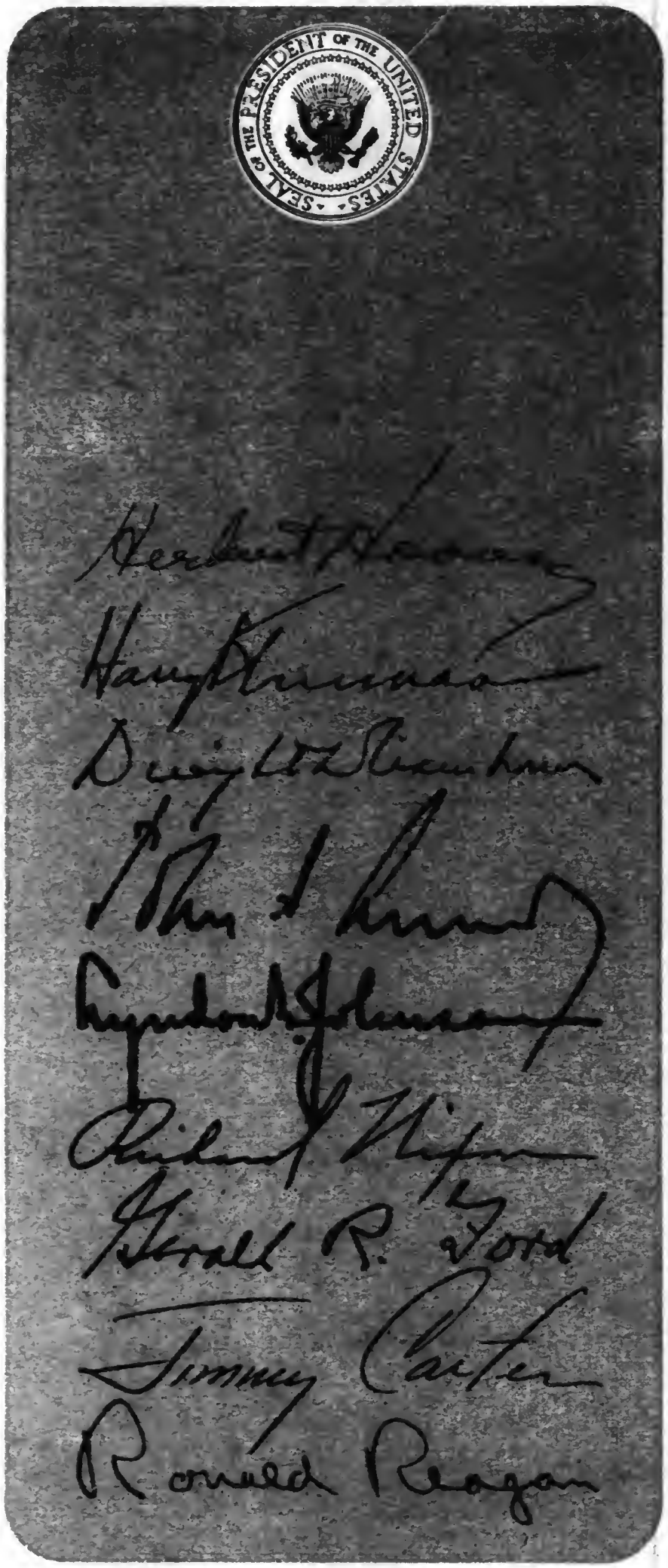
Proposed Rules:

17.....35584, 36118

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1985



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available:

Herbert Hoover

1929	$19.00
1930	$19.00
1931	$20.00
1932–33	$24.00
Proclamations & Executive Orders-March 4, 1929 to March 4, 1933 2 Volume set	$32.00

Harry Truman

1945	Out of print
1946	Out of print
1947	$17.00
1948	Out of print
1949	$18.00
1950	$19.00
1951	$20.00
1952–53	$24.00

Dwight D. Eisenhower

1953	Out of print
1954	$23.00
1955	$20.00
1956	$23.00
1957	Out of print
1958	Out of print
1959	Out of print
1960–61	Out of print

John Kennedy

1961	Out of print
1962	Out of print
1963	Out of print

Lyndon B. Johnson

1963–64 (Book I)	$21.00
1963–64 (Book II)	Out of print
1965 (Book I)	Out of print
1965 (Book II)	$18.00
1966 (Book I)	Out of print
1966 (Book II)	$20.00
1967 (Book I)	$19.00
1967 (Book II)	Out of print
1968–69 (Book I)	$20.00
1968–69 (Book II)	$19.00

Richard Nixon

1969	$23.00
1970	Out of print
1971	Out of print
1972	Out of print
1973	Out of print
1974	$18.00

Gerald R. Ford

1974	$19.00
1975 (Book I)	$22.00
1975 (Book II)	$22.00
1976–77 (Book I)	$23.00
1976–77 (Book II)	Out of print
1976–77 (Book III)	$22.00

Jimmy Carter

1977 (Book I)	$23.00
1977 (Book II)	$22.00
1978 (Book I)	$24.00
1978 (Book II)	$25.00
1979 (Book I)	$24.00
1979 (Book II)	$24.00
1980–81 (Book I)	$21.00
1980–81 (Book II)	$22.00
1980–81 (Book III)	$24.00

Ronald Reagan

1981	$25.00
1982 (Book I)	Out of print
1982 (Book II)	$25.00
1983 (Book I)	$31.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

VOL
50

ISS
73

S E
6

985

UMI

9-6-85
Vol. 50 No. 173

federal register

Friday
September 6, 1985

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

******** ******** 45-01611 48106

A FR SERIALOUS NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
173

SE

6

985

UMI

9-6-85
Vol. 50 No. 173
Pages 36405-36562

Federal Register

Friday
September 6, 1985

Selected Subjects

Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Chemicals
Environmental Protection Agency
Commodity Futures
Commodity Futures Trading Commission
Fisheries
National Oceanic and Atmospheric Administration
Health Facilities
Public Health Service
Hunting
Fish and Wildlife Service
Marketing Agreements
Agricultural Marketing Service
Medical Devices
Food and Drug Administration
Military Personnel
Air Force Department
Navigation (Water)
Navy Department.
Postal Service
Postal Service

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Prisoners
Parole Commission

Radiation Protection
Food and Drug Administration

Surface Mining
Surface Mining Reclamation and Enforcement Office

Vessels
Panama Canal Commission

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 50, No. 173
Friday, September 6, 1985

Agricultural Marketing Service
PROPOSED RULES
36436 Raisins produced from grapes grown in California and hearing

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Forest Service; Rural Electrification Administration; Soil Conservation Service.

Air Force Department
RULES
Personnel review boards:
36426 Military records correction; application procedures
NOTICES
Environmental statements; availability, etc.:
36464 Ground wave emergency network

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
36500 J.P. Stevens & Co., Inc.
36500 Rocky Mountain Motor Tariff Bureau, Inc.

Architectural and Transportation Barriers Compliance Board
NOTICES
36459 Meetings

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
36463 Procurement list, 1985; additions and deletions

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
36458 Soybean

Commodity Futures Trading Commission
RULES
36405 Leverage transactions
NOTICES
Contract market proposals:
36463 New York Cotton Exchange; orange juice, concentrated

Consumer Product Safety Commission
NOTICES
36511 Meetings; Sunshine Act (2 documents)

Defense Department
See Air Force Department; Engineers Corps; Navy Department.

Drug Enforcement Administration
NOTICES
Registration applications, etc.:
36501 Hoffmann La Roche, Inc.

Economic Regulatory Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
36469 Fairfield Energy Venture et al.
Natural gas exportation and importation petitions:
36470 Vermont Gas Systems, Inc.

Employment Standards Administration
NOTICES
36516 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (CA, CT, DC, MD, MA, MO, NJ, NC, SC, TX, VA)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Atomic energy agreements; subsequent arrangements:
36468 Austria and European Atomic Energy Community
36468, 36469 European Atomic Energy Community (3 documents)
36469 Switzerland (2 documents)
36468 Taiwan and European Atomic Energy Community

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
36465 Sacramento River, CA
36464 Yakima-Union Gap flood damage reduction project, WA
Meetings:
36467 Environmental Advisory Board

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
36540 Porcelain enameling
PROPOSED RULES
Toxic substances:
36446 Benzyl butyl Phthalate; testing requirements
Water pollution; effluent guidelines for point source categories:
36444 Pulp, paper, and paperboard
NOTICES
Environmental statements; availability, etc.:
36480 Agency statements; comment availability
36480 Agency statements; weekly receipts
Toxic substances:
36476 Alkyl epoxides; decision not to test

Equal Employment Opportunity Commission
NOTICES
36511 Meetings; Sunshine Act (2 documents)

Federal Aviation Administration
PROPOSED RULES
Aircraft products and parts, certification:
36437 Avions Marcel Dassault-Breguet
Airworthiness directives:
36441 SIAI; Marchetti

Federal Communications Commission
RULES
Common carrier services:
36432 Domestic fixed-satellite service; space station licensing (reduced orbital spacing) and antenna performance standards; correction
NOTICES
Hearings, etc.:
36481 Big Chief Broadcasting et al.
36482 Owens, Dorothy J., et al.

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
36471 EUA Power Corp.
36512 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
36514 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
36484 Colson, Inc., et al.
36485 New Superior Financial Corp. et al.
36511 Meetings; Sunshine Act

Fish and Wildlife Service
RULES
Migratory bird hunting:
36432, 36433 Waterfowl hunting; nontoxic shot zones (2 documents)
NOTICES
Environmental statements; availability, etc.:
36498 Lake Champlain, NY and VT; sea lamprey control

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
36419 Tylosin
Radiological health:
36548 Sunlamp products; performance standards
PROPOSED RULES
Medical devices:
36441 Hearing aids; exemption from preemption of State and local requirements; West Virginia
36443 Hearing aids; exemption from preemption of State and local requirements; West Virginia; hearing
NOTICES
Human drugs:
36486 International drug scheduling; convention on psychotropic substances; stimulant or hallucinogenic drugs; inquiry and meeting

Forest Service
NOTICES
Meetings:
36458 Chalis National Forest Grazing Advisory Board

Health and Human Services Department
See also Food and Drug Administration; Public Health Service.
NOTICES
36485 Agency information collection activities under OMB review

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
36471 Cases filed
36472 Special refund procedures; implementation and inquiry

Housing and Urban Development Department
NOTICES
36494 Agency information collection activities under OMB review

Indian Affairs Bureau
NOTICES
Indian tribes; acknowledgment of existence determinations, ec.:
36495 Northern Cherokee Tribe of Indians

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
Meetings:
36494 National Strategic Materials and Minerals Program Advisory Committee

Internal Revenue Service
NOTICES
Authority delegations:
36509 Revenue Agents et al.

International Trade Administration
NOTICES
Countervailing duties:
36460 Carbon steel products from Brazil

Interstate Commerce Commission
RULES
Practice and procedure:
36432 Rail abandonments; offers of financial assistance; technical amendment
NOTICES
Motor carriers:
36500 Armstrong World Industries, Inc.; declatory order petition; extension of time
Railroad operation, acquisition, construction, etc.:
36500 Grand Trunk Western Railroad Co.

Justice Department
See Antitrust Division; Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office; Parole Commission.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements:
36558 Nonparticipating State initiative

Labor Department
See Employment Standards Administration.

Land Management Bureau
NOTICES
Airport leases:
36495 Nevada
Exchange of lands:
36495 California
36496 Colorado
Meetings:
36496 Grand Junction District Advisory Council
Oil and gas leases:
36496 California
Sale of public lands:
36498 California
36497 Nebraska (2 documents)
Survey plat filings and opening of public lands:
36496 Nevada

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
36499 Exxon Co., U.S.A.

National Archives and Records Administration
NOTICES
36501 Agency records schedules; availability and inquiry

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
36434 Civil procedures; enforcement policy; technical amendment
NOTICES
Permits:
36461 Marine mammals

National Technical Information Service
NOTICES
36461 Products and services; price changes, 1986 FY

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
36424 Landing Craft Air Cushion (LCAC) class amphibious vessels
36425 USS John A Moore, et al.
NOTICES
Environmental statements; availability, etc.:
36466 Carrier battle group homeport, Everett, WA
36466 Naval Air Station, Miramar, CA
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
36502 Northeast Nuclear Energy Co. et al.
Meetings:
36503 Enforcement Policy Review Advisory Committee

Occupational Safety and Health Review Commission
NOTICES
36514 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plan amendments:
36504 Northwest conservation and electric power plan; hearing

Panama Canal Commission
PROPOSED RULES
Shipping and navigation:
36444 Tolls; vessels in ballast

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
36420 Court-ordered financial obligations; child support or alimony payments, etc.; clarification of requirements
36422 Information considered; submitted to Commission; procedures
36419 Prison overcrowding, relief; referral of cases to Prison Bureau; program discontinued
36423 Study prior to sentencing, etc.; obsolete provisions removed

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer plans:
36504 Withdrawal liability in fully funded plans; inquiry

Postal Service
RULES
International Mail Manual; Express Mail Service:
36431 Bahamas and Greece

Public Health Service
PROPOSED RULES
Health planning and resources development:
36454 Medical facility construction and modernization; uncompensated services assurance
NOTICES
Meetings:
36491 National Toxicology Program; conference
36491 Privacy Act; systems of records

Rural Electrification Administration
NOTICES
Loan guarantees, proposed:
36459 South Mississippi Electric Power Association

Securities and Exchange Commission
NOTICES
Applications, etc.:
36506 American Electric Power Co., Inc., et al.
36507 Blackstone Valley Electric Co.
36507 Middle South Utilities, Inc., et al.
36508 Northeast Nuclear Energy Co. et al.

Self-regulatory organizations; proposed rule changes:
36505 Municipal Securities Rulemaking Board

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
36459 Madison–Cypress Creek Watershed, TN

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
36554 Utah

Synthetic Fuels Corporation
NOTICES
36509 Comprehensive strategy, appendices availability

Textile Agreements Implementation Agreements
NOTICES
Cotton, wool, and man-made textiles:
36462 Turkey

Transportation Department
See Federal Aviation Administration.

Treasury Department
See also Internal Revenue Service.
NOTICES
Notes, Treasury:
36509 M–1990 series

Separate Parts in This Issue

Part II
36516 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
36540 Environmental Protection Agency

Part IV
36548 Department of Health and Human Services, Food and Drug Administration

Part V
36554 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part VI
36558 Department of Justice, Office of Juvenile Justice and Delinquency Prevention

---

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
989.....36436

14 CFR
Proposed Rules:
21.....36437
39.....36441

17 CFR
31.....36405
190.....36405

21 CFR
558.....36419
1040.....36548
Proposed Rules:
808 (2 documents).....36441–36443

28 CFR
2 (4 documents).....36419–36423

30 CFR
944.....36554

32 CFR
706 (2 documents).....36424–36425
865.....36426

35 CFR
Proposed Rules:
133.....36444

39 CFR
10.....36431

40 CFR
466.....36540
Proposed Rules:
430.....36444
799.....36446

42 CFR
Proposed Rules:
124.....36454

47 CFR
25.....36432

49 CFR
1152.....36432

50 CFR
20 (2 documents).....36432–36433
621.....36434

VOL
50

ISS
73

SE
6

985

UMI

Rules and Regulations

Federal Register
Vol. 50, No. 173
Friday, September 6, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 31 and 190

Regulation of Certain Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is hereby announcing the adoption of certain substantive amendments to its interim final rules governing the offer and sale to the public of certain leverage contracts, as well as two new rules. The amendments to the interim final rules consist of a definition of a proprietary leverage account for certain purposes, an increase in the minimum financial requirement for a leverage transaction merchant ("LTM") related to the amount of short leverage contracts entered into, an additional element of an LTM's repurchase/resale requirement, amendments to an LTM's disclosure requirements, and a prescribed order of liquidation of leverage contracts due to a margin deficiency. The two new rules require an LTM to use uniform bid and ask prices for long and short leverage contracts involving the same leverage commodity, to apply carrying charges within one percent per annum to long and short contracts, except for leverage contracts involving a foreign currency, and to report quarterly to the Commission on closed out leverage contracts.

The definition of a proprietary leverage account essentially will require an LTM to treat and deal with the funds of an owner of such an account separately from the funds of other leverage customers. An LTM must cover leverage contracts entered into with proprietary persons to the same extent as other leverage contracts, but the cover for customer and proprietary leverage contracts must be separately maintained and identified.

The amendment to the minimum financial requirement for an LTM increases the requirement by an amount equal to 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the LTM which are covered. The Commission adopted this amendment to compensate for the fact that an LTM will be unable to cover its obligations to leverage customers under short leverage contracts by means of physical commodities, as it is required to do with respect to 25 percent of its obligations to leverage customers under long leverage contracts.

The Commission also adopted as an additional element of an LTM's repurchase/resale requirement a provision which requires that at any time an LTM is offering to enter into or entering into a new leverage contract, either long or short, involving a particular leverage commodity, the LTM must also offer to repurchase any previously-entered long leverage contract *and* resell any previously-entered short leverage contract involving the same leverage commodity.

The amendments to an LTM's disclosure requirements modify the current format of the customer Confirmation Statement for a long leverage contract, specify the format required to be used for the customer Confirmation Statement for a short leverage contract, and replace the Illustrative Transaction currently required to be included in an LTM's Disclosure Document for a long leverage contract with a filled-in version of the proposed customer Confirmation Statements for long and short leverage contracts.

Rule 31.18 generally provides that an LTM cannot liquidate a leverage contract because of a margin deficiency without contacting the leverage customer and allowing 24 hours for the customer to respond. Rule 31.18(b) allows an LTM, in the event a leverage customer's account equity falls below 50 percent of aggregate minimum margin with respect to the leverage contracts in the account, to liquidate sufficient contracts to restore minimum margin without prior notice to the customer. The amendment to that rule requires an LTM to liquidate contracts in declining order of loss, beginning with the position reflecting the greatest loss first.

The first new rule requires an LTM to use the same set of bid and ask prices for both a long and a short leverage contract involving the same leverage commodity, and also requires an LTM to apply carrying charge rates on a short leverage contract and a long leverage contract that are within one percent per annum of each other, except for leverage contracts involving a foreign currency. The second new rule requires each LTM to file a quarterly report with the Commission containing information with repect to every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or delivery, including the profit or loss to the leverage customer on any contract which is repurchased, resold or liquidated.

EFFECTIVE DATE: November 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–8955; David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–9880; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 2, 1985, the Commission published in the **Federal Register** certain proposed substantive amendments to its leverage rules, two proposed new rules, and a request for comment on two other issues (50 FR 102).[1] The proposals included a proposed definition of a proprietary leverage account for certain purposes, a proposed increase in the

[1] On the same day, the Commission also published in the **Federal Register** (50 FR 22) technical and conforming amendments to its leverage rules so as to encompass and accommodate the regulation of short leverage contracts, since the leverage rules as originally promulgated (49 FR 5498, February 13, 1984) governed only long leverage contracts.

minimum financial requirement for an LTM, a proposed additional element of an LTM's repurchase/resale requirement, and proposed amendments to an LTM's disclosure requirements. The Commission also proposed two new rules which would require an LTM (1) to use uniform bid and ask prices and carrying charges for long and short leverage transactions, and (2) to report quarterly to the Commission on closed out leverage contracts. The Commission also requested comment as to the appropriate carrying charge for leverage contracts involving a foreign currency and with respect to the order of liquidation of leverage contracts pursuant to Rule 31.18(b).

The Commission permitted thirty days within which interested persons could submit written comments on the proposals. The Commission received five written comments on the proposals. Two contract markets submitted written comments, as did an LTM and two applicants for registration as an LTM. The Commission carefully considered all of the written comments and has determined to adopt the proposals essentially in the manner proposed, with certain minor adjustments explained more fully below.

II. Customer/Proprietary Account Distinction

When the Commission originally adopted the interim final leverage rules, it did not adopt a proprietary account definition with respect to leverage contracts. The Commission stated at that time, however, that under Part 190, the Commission's bankruptcy rules, claims of insiders such as principals or associated persons would be subordinate to customer claims in the case of a bankruptcy of an LTM. 49 FR 5498, 5516 (February 13, 1984). The Commission reconsidered this issue, and its staff also reviewed the Disclosure Documents of the three applicants for registration as an LTM, two of which indicate that principals of the firm have entered into leverage contracts for their own account with the firm. Upon that reconsideration and review, the Commission determined to propose a distinction between customer and proprietary accounts for purposes of Rule 31.12, which requires the segregation of leverage customer funds from an LTM's other funds, Rule 31.11, which requires an LTM to provide a Disclosure Document to prospective leverage customers, and Rule 31.26, an LTM's quarterly reporting requirement. None of the commenters opposed the concept of a customer/proprietary account distinction, and the Commission has determined to adopt this proposal as it was proposed.

The definition of a proprietary leverage account is set forth in Rule 31.4(e) and it parallels the proprietary account definition for futures commission merchants set forth in Rule 1.3(y) (17 CFR 1.3(y) (1985)). Essentially, a proprietary leverage account is an account which is at least ten percent owned by a principal, an associated person or a manager of the LTM, or by someone involved with handling leverage customer funds or recordkeeping related to such funds. The Commission is also adopting, as proposed, a conforming change to the definition of the term "leverage customer" in Rule 31.4(d) and a conforming change to the definition of the term "non-public customer" under § 190.01(bb) of the Bankruptcy Rules to include the owner of a proprietary leverage account. The Commission has also determined to adopt a conforming change to Rule 31.9(b)(2) to make distinctions between customers, non-customers and proprietary accounts for financial rule purposes, which would parallel the distinctions made under Rule 1.17. The Commission believes that these distinctions will avoid confusion and unnecessary capital charges. Under the financial rule, a proprietary account would be an account of the LTM itself or its general partners. All accounts owned by persons who otherwise fall under the general proprietary leverage account definition in Rule 31.4(e) would be deemed non-customers under Rule 31.9. Thus, there will be a capital charge if their leverage accounts are undermargined pursuant to Rule 31.9(b)(9) (as there is now, since those persons have been treated as customers), but other capital charges for proprietary accounts will be applicable only to accounts of the LTM or its general partners.

The Commission stated when it proposed the customer/proprietary account distinction that such a rule amendment would help to ensure appropriate treatment of leverage customers in the case of the bankruptcy of an LTM, and make the treatment of leverage customer funds more consistent with the treatment of customer funds by futures commission merchants.

The Commission further stated that its intent in proposing the customer/proprietary account distinction was to make sure that the funds of the owners of proprietary leverage accounts are not commingled with the funds of other leverage customers, and that the cover for an LTM's obligations to leverage customers is held separate from and can be separately identified from cover for leverage contracts of proprietary leverage account owners. The customer/proprietary account distinction, therefore, does not apply to Rule 31.8 regarding cover, and an LTM must cover leverage contracts held by owners of proprietary leverage accounts to the same extent as leverage contracts held by other customers. Such cover for proprietary leverage accounts, however, must be maintained in an account with a futures commission merchant which is separate from the account containing cover for leverage customers, in the case of futures and exchange-traded options used as cover. Physical cover for leverage contracts held by leverage customers also must be separately identifiable from physical cover for leverage contracts held by owners of proprietary leverage accounts. This will ensure that all leverage contracts entered into by an LTM are properly covered so as to enhance the LTM's financial condition and at the same time further ensure that if an LTM becomes bankrupt, leverage customers receive priority treatment over the owners of proprietary leverage accounts.

The customer/proprietary account distinction also applies to Rule 31.11, which sets forth an LTM's disclosure requirements, except for paragraph (k) of Rule 31.11, which requires an LTM to send a Confirmation Statement to a leverage customer within 24 hours after entry into a leverage contract. An LTM, therefore, need not provide the owner of a proprietary leverage account with a Disclosure Document. (An LTM is free to do so, however.) The owner of a proprietary account, such as an associated person or a principal of an LTM, should be familiar with the information contained in such a Document based upon the person's affiliation with the LTM. An LTM must, however, send a Confirmation Statement to an owner of a proprietary account who enters into a leverage contract just as it does for any other customer. The customer/proprietary account distinction also applies to new Rule 31.26, which is discussed more fully below, and therefore an LTM must indicate on the quarterly report whether a particular leverage contract was held by a leverage customer or by a proprietary person.

The customer/proprietary account distinction does not apply to the remainder of the leverage rules. For example, the repurchase and resale rule (Rule 31.10), the margin call rule (Rule 31.18) and the limited right to rescind rule (Rule 31.23) apply to proprietary persons as well as leverage customers,

and the same is true with respect to the rules regarding unlawful representations and prohibiting guarantees against loss (Rules 31.19 and 31.20.[2] An LTM must maintain the same records regarding a leverage contract with, and make the same reports to, the owner of a proprietary account (Rules 31.14, 31.15 and 31.17). An LTM need make no distinction on its monthly report (Rule 31.16) between customer and proprietary leverage accounts, and all leverage contracts entered into by the LTM should be reported together. The Commission may, however, make a special call for information to compare proprietary leverage accounts with leverage customer accounts (*see* Rule 31.14(a)), and Commission auditors may also examine an LTM's records to make such a comparison. The Commission's adoption of the customer/proprietary account distinction, therefore, leaves most of an LTM's operations unchanged with respect to leverage contracts entered into by proprietary persons, except to the extent changes are necessary to ensure that funds and cover for leverage contracts of leverage customers are segregated from funds and cover for leverage contracts of proprietary leverage account owners.[3]

Although none of the commenters objected to the principle of a customer/proprietary account distinction, two commenters made technical suggestions as to how to achieve this. One commenter suggested that the Commission simply amend Rule 1.3(y), the definition of proprietary account with respect to a futures commission merchant, rather than adopt a separate definition with respect to an LTM. The Commission did not adopt this suggestion because the definition of a proprietary leverage account is interrelated with the definition of a leverage customer, which is set forth in Rule 31.4(d),[4] and the Commission does not believe that these two definitions should be contained in different Parts of the regulations promulgated under the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 1 *et seq.* (1982)). Almost all of the definitions which are relevant to leverage transactions are contained in Part 31, except for such definitions as LTM and associated person of an LTM, which appear in the general definition provision, Rule 1.3, because they are also referred to in the registration rules set forth in Part 3.

Another commenter suggested that the Commission's stated purposes for making a customer/proprietary account distinction could be achieved under the existing leverage recordkeeping rules and by adopting the proposed amendment to the definition of non-public customer set forth in § 190.01(bb) of the Bankruptcy Rules, without making the proposed amendments to Rule 31.4 (d) and (e). The Commission has also not adopted this suggestion. The definition in § 190.01(bb) is merely derivative of the definitions set forth in Rules 1.3(y) and 31.4(e). Unless the concept of a proprietary leverage account were contained in Rule 1.3(y), which is not the case for the reasons discussed in the preceding paragraph, or in Rule 31.4(e), an amendment to § 190.01(bb) would be meaningless.[5]

III. Minimum Financial Requirement

The Commission proposed an amendment to the minimum financial requirement for an LTM set forth in Rule 31.9(a) which would increase the requirement by an amount equal to 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the LTM which are covered. The Commission proposed this amendment to compensate for the fact that an LTM will be unable to cover its obligations to leverage customers under short leverage contracts by means of physical commodities, as it is required to do with respect to 25 percent of its obligations to leverage customers under long leverage contracts.[6] Only two of the commenters addressed this issue, with one in favor and one opposed, and the Commission has determined to adopt the amendment as proposed.

The commenter which opposed the amendment to an LTM's minimum financial requirement made the following erroneous statement in its comment letter:

> If the LTM entered short leverage contracts that were not covered, the LTM would be required to increase its minimum net capital by an amount equal to 20 percent of the market value of the commodities subject to uncovered leverage contracts. Thus, this 2.5 percent requirement would be in addition to the 20 percent rule.

The Commission clearly noted when it proposed the additional 2½ percent adjusted net capital requirement that the amendment would apply only to covered short leverage contracts. As is the case with long leverage contracts, an LTM must cover 90 percent of its total obligations to leverage customers under short leverage contracts, and, accordingly, up to 10 percent of such obligations could be uncovered. For any uncovered short leverage contracts, the LTM's minimum adjusted net capital requirement is increased by an amount equal to 20 percent of the market value of the physical commodities subject to such uncovered leverage contracts under existing Rule 31.9(a). 17 CFR 31.9(a) (1985). As the Commission further stated when it proposed the amendment: "This would be unchanged by the proposed amendment, and the proposed amendment would also not be cumulative for uncovered short leverage contracts, *i.e., the appropriate addition to the LTM's minimum adjusted net capital requirement for its uncovered obligations would remain at 20 percent, and would not increase to 22½ percent.*" 50 FR 102, 105 (January 2, 1985) (emphasis added).

The effect of the amendment can be illustrated by assuming that an LTM has entered into $5 million worth of long leverage contracts, with $100,000 of that amount uncovered, and $1,050,000 worth of short leverage contracts, with $50,000 of that amount uncovered. Such an LTM's minimum adjusted net capital requirement would be $2,500,000, plus $30,000 (20 percent of the uncovered amount of $150,000), plus $25,000 (2½ percent of the $1,000,000 covered short

---

[2] The owner of a proprietary leverage account should also be subject to the same margin requirements and other charges related to a leverage contract, and the same bid and ask prices, as any other customer.

[3] When the Commission proposed the customer/proprietary account distinction, the Commission stated that it might determine to make certain minor, technical changes to Form 2–FR, the LTM financial reporting form, to reflect the distinction, particularly with respect to the cover schedules. *See also* Rule 31.8(c) (17 CFR 31.8(c) (1985)), which requires an LTM to maintain a daily cover computation in a format identical to the Form 2–FR cover schedules. Such changes, as well as appropriate changes in the Statement of the Computation of the Minimum Capital Requirements on Form 2–FR to reflect the amendment to the minimum financial requirement (Rule 31.9(a)) discussed below, have been made. Since Form 2–FR does not appear in the Code of Federal Regulations, those changes are not being published in this release. The Commission will, however, send copies of the amended Form 2–FR and this release to appropriate persons, and they will also be available upon request to the Commission.

[4] A similar interrelationship exists between the definition of the term "customer" which is set forth in Rule 1.3(k) (17 CFR 1.3(k) (1985)) and the definition of a proprietary account in Rule 1.3(y).

[5] These two commenters also noted that accounting and computer software changes would be necessary to implement the customer/proprietary account distinction, and one of the commenters requested that if the proposal were adopted, the effective date be no sooner than 60 days after publication in the Federal Register. As indicated above, the effective date for all of the rule changes discussed in this notice is sixty days following publication.

[6] A more complete explanation of the Commission's reasons for proposing this increase in an LTM's minimum financial requirement is set forth in the release announcing the proposal. 50 FR 102, 105 (January 2, 1985).

leverage contracts), for a total of $2,555,000.

IV. Repurchase/Resale of Leverage Contracts

The Commission received two comments, one in support of and one opposed to, the proposed repurchase/resale requirement for long and short leverage contracts. The one commenter who expressed opposition to the proposed repurchase/resale provision stated that the Commission should not mandate a repurchase/resale requirement since circumstances beyond the control of an LTM could arise which would make the suspension of trading necessary. Accordingly, the LTM should be free to act to protect the firm and its customers in the event of adverse circumstances which were beyond the control of the LTM, such as in the case of *force majeure*.

With respect to circumstances which are beyond the control of an LTM and which could make the suspension of trading necessary, the Commission notes that Rule 31.11(a)(2)(ix) requires an LTM to set forth clearly the circumstances which constitute a basis for invoking *force majeure*. Thus, the Commission believes that the rules already provide a method by which an LTM can protect itself and its customers in the event that this class of adverse circumstances arises.

Further, the Commission wishes to point out that the proposed amendment to Rule 31.10 does not mandate that a leverage transaction merchant continually offer to enter into or enter into leverage contracts with customers. The proposed amendment simply requires that any time an LTM is offering to enter into or enters into a new leverage contract, either long or short, involving a particular leverage commodity, the LTM also be required at that time to offer to repurchase previously entered into long leverage contracts and to resell previously entered into short leverage contracts involving the same leverage commodity.[7] As the Commission has noted, an LTM would be permitted to enter into new long leverage contracts without also entering into new short leverage contracts involving the same leverage commodity and vice versa (50 FR 102, 105, January 2, 1985).

V. Disclosure Document and Customer Confirmation Statement

The Commission has adopted certain conforming language in the bold-faced risk disclosure statement required by Rule 31.11(a)(1) which incorporates references to short leverage contracts. One commenter objected to the language contained in the required risk disclosure statement, stating that referencing both long and short leverage contracts in the bold-faced disclosure would imply that the LTM or prospective LTM is offering to enter into both types of contracts when in fact the LTM may be offering, for example, only long leverage contracts. In such a case, the commenter contends that reference to both types of leverage contracts could confuse leverage customers or prospective leverage customers. This commenter suggested that the Commission either permit an LTM to delete from the bold-faced disclosure statement language referencing short leverage contracts if the LTM is not offering this type of contract, or, alternatively, permit an LTM to adopt separate disclosure statements for each type of leverage contract offered.

The Commission has determined to let stand the previously adopted language in the bold-faced risk disclosure statement which references both long and short leverage contracts. However, if an LTM believes, for example, that it would be more appropriate to delete reference to a specific type of leverage contract if such type of contract is not offered, the LTM may petition the Commission pursuant to Rule 31.24 for an exemption from this requirement.[8]

The Commission also requested comment on a proposal to revise the Confirmation Statement and the requirement that an LTM provide in the Disclosure Document a filled-in version of the Confirmation Statement which includes a formula for the customer independently to calculate his or her own break-even point for both long and short leverage contracts.

All of the commenters generally supported the proposal to provide in the Disclosure Document a filled-in version of the Confirmation Statement and a formula for the break-even calculation. However, two commenters, while supporting the inclusion of the break-even formula, stated that the rule should also require an LTM to provide an actual break-even calculation using the figures in the representative Confirmation Statement printed in the Disclosure Document.

The Commission has carefully considered these comments but is not persuaded that requiring an actual break-even calculation for a representative long and short leverage contract would necessarily provide a leverage customer or prospective leverage customer with more accurate information about the risks of leverage trading than providing a formula with which the customer can independently make such a calculation. In this regard, the currently required break-even calculation assumes that the representative leverage contract would be held open for one year. Since at least one component of the cost of a leverage contract (carrying charges) is a function of the length of time the contract is open, and since it is reasonable to expect that different customers will have different time horizons with respect to their holding periods, this one-year holding period could, in itself, be misleading. Therefore, the Commission believes it is more appropriate that the break-even point for each customer be determined using the customer's own choice of assumptions regarding the time frame in which the leverage contract will be held.

One commenter stated that the format proposed by the Commission for the Confirmation Statement presented certain technical problems relating to the ability of its computer to produce Confirmation Statements in such form and the ability to include with that format a pre-printed name and address for use in windowed envelopes. The commenter suggested that an LTM could avoid potential data processing formatting problems if it were permitted to use a Confirmation Statement in a format different from that in the regulations but containing all the information required by Commission rule in the same basic order. This commenter suggested that LTMs could submit a sample format of the Confirmation Statement for Commission approval.

---

[7] In this regard, the Commission is also adopting a rule requiring LTMs to use the same set of bid and ask prices for long and short leverage contracts, as discussed more fully below. Therefore, if an LTM is offering to enter into or entering into new long leverage contracts at its ask price, the resale price of a short leverage contract would be the same as the LTM's current ask price for long leverage contracts. If an LTM is offering to enter into or entering into new short leverage contracts at its bid price, the repurchase price of a long leverage contract would be the same as the LTM's current bid price for short leverage contracts.

[8] The Commission further notes that if such a petition were granted and the petitioning firm later decided to begin offering short leverage contracts, the firm's Disclosure Document would have to be amended to incorporate short leverage contracts. The terms and conditions of the firm's leverage contracts would also have to be amended, and these amendments would have to be submitted to the Commission in accordance with Rule 31.6(c) and, therefore, the amendments would have to be submitted at least 45 days prior to their effective date.

The Commission beleives that the Confirmation Statement utilized by LTMs should be standardized to the maximum extent possible. Such standardization will allow customers or prospective customers to compare the various costs associated with leverage contracts offered by different LTMs. However, if an LTM believes that the Commission's required format for the Confirmation Statement creates a data processing problem, the LTM could petition the Commission pursuant to Rule 31.24 for an exemption from the required format. Such exemption requests would be considered on a case-by-case basis.

This commenter also suggested that the word "value" appearing in the Confirmation Statement and the break-even formula be replaced with the word "price" because in the commenter's opinion price is more descriptive and would be helpful in determining whether a customer had reached a break-even point. The Commission believes, however, that the word "value" is more appropriate since the amounts appearing on the Confirmation Statement and the amounts used in the break-even formula involve calculations of price times quantity. Since this product varies with the numbers of contracts as well as the price of the leverage commodity, the product is more accurately termed the "value" rather than the "price" of the contract.

In addition, one commenter objected to the proposed requirement that an LTM must include the unpaid balance applicable to a leverage purchase in the Confirmation Statement. In the absence of transaction-by-transaction accounting, the commenter stated that this would be impossible if there is another open long position in the customer's leverage account. However, the commenter has misunderstood the Commission's proposed requirement. Rule 31.11(k)(1)(ii)(F) states that the Confirmation Statement must show "the total unpaid balance *for the transaction.*" (Emphasis added). This figure should be readily available to the LTM. Nevertheless, in order to avoid confusion, the Commission is amending Rule 31.11(k)(1)(ii)(F) and the sample Confirmation Statement to read "Total unpaid balance for this transaction." Transaction-by-transaction accounting is further discussed below in this release.

This commenter also objected to the proposal to require an LTM to give the current equity in the customer's account on the Confirmation Statement. The commenter claims that this information is already provided in the monthly statements to customers and that it may mislead customers if it is also included on the Confirmation Statement. Another commenter recommended that the Confirmation Statement be clarified to reflect the fact that the equity shown is for the customer's existing aggregate positions, excluding the specific confirmed transaction. In addition, this commenter stated that the Confirmation Statement for a first-Time Customer should show that the customer has no equity in the account until the LTM receives the down payment.

With regard to the former commenter's statements, customer complaints received by the Commission indicate that information on current equity is often difficult for a customer to obtain. For this reason, the Commission believes this information should be included in the Confirmation Statement, since customers normally undertake leverage transactions between monthly statements. Second, the line immediately above "Current Equity" in the Confirmation Statement is entitled "Total Amount Due Now to Initiate This Transaction," which should avoid any confusion as to whether or not a customer has to transmit funds to the LTM.

Further, the Commission notes that Rule 31.11(k)(1)(ii)(J) states that the Confirmation Statement must give the "current equity in the individual customer's account as of the date of the transaction," thus providing a customer with a "snapshot" of his account equity at the close of business on the day he enters into the new transaction. This figure normally would not include the new transaction. In particular, the initial margin deposit for the new transaction would not be included in the current equity figure unless the customer had already paid it. Similarly, depending on an LTM's procedures for calculating equity (*i.e.*, when new positions are first marked-to-market) there may have been no change in contract value for the new transaction. In this regard, the account equity shown on a first-time customer's Confirmation Statement may be zero. As a result, in order to avoid misunderstanding, the Commission is amending Rule 31.11(k)(1)(ii)(J) and the current equity entry in the sample confirmation statement to read "Current Equity in Account Excluding this Transaction." If an LTM's accounting procedures would result in the inclusion of the new transaction in the current equity figure, it may petition the Commission for an exemption.

VI. Bid and Ask Prices and Carrying Charges

No objections were raised to the Commission's proposal to require the same bid and ask prices for long and short leverage contracts, and Rule 31.25(a) is being adopted as proposed. However, with regard to the proposed requirement that carrying charge rates be the same for long and short leverage contracts, certain commenters suggested that proper disclosure by an LTM, rather than restrictions on an LTM's manner of doing business, is the appropriate way to handle this issue. One commenter argued that the Commission's proposal on carrying charges was tantamount to government "price-fixing."

The Commission rejects this view. Leverage contracts do not have all the safeguards of exchange trading. There is no clearinghouse to ensure the financial integrity of the contract and prices are not determined competitively. Instead, the LTM unilaterally determines prices and customers are solely dependent on the LTM for performance on the contract. As a result, the additional restrictions the Commission has proposed are warranted.

Also, the repurchase/resale requirement, discussed above, and the requirement that LTMs maintain one set of bid and ask prices and approximately equivalent carrying charge rates on long and short leverage contracts are meant to ensure consistency on the part of an LTM in dealing with customers who are long or short the leverage contract. In this regard, a short leverage contract can be viewed simply as the mirror image of a long leverage contract, and the restrictions on carrying charge rates and bid and ask prices are intended to ensure that the total price of a long leverage contract (ask price plus carrying charges) is consistent with the total price of a short leverage contract (the bid price plus carrying charges).

Three commenters objected to, and one commenter agreed with, the Commission's proposal to require carrying charge rates on long and short leverage contracts to be equal. Those objecting argue, in effect, that the cost of covering long leverage contracts substantially exceeds the income derived from covering short leverage contracts, necessitating different carrying charge rates. One commenter stated that the proposed requirement would force an LTM to operate at a loss on short leverage contracts, which would be tantamount to a ban on such contracts. Another commenter stated that the proposal would either compel it to discontinue the offer of short leverage

contracts altogether, or would compel it to discontinue offering new long leverage contracts when it offered new short leverage contracts in a particular commodity, thereby curtailing the two-way market. This commenter also suggested that LTMs be allowed to levy different rates on margin deposits than on contract value.

In this regard, Commission staff estimated the costs and income associated with covering long and short silver leverage contracts and the effects of a uniform interest rate for margins and contract value. These calculations indicate that the cover income from a short leverage contract is similar to the cover cost on a long leverage contract, and that both are related to the contango, or the implied carrying charge rate, in comparable futures contracts.

In particular, calculations by Commission staff indicated that the break-even carrying charge rate applied to a long leverage contract's unpaid balance and the break-even carrying charge rate applied to a short leverage contract's contract value plus margin deposit differed by less than one-fifth of one percent per year on a given day. The calculations involved a comparison in March of 1985 between the bankers' acceptance rate used in financing a portion of the 25% of a long leverage contract's value in physical cover compared with the exchange-traded futures contango rate which is the cover rate available for all of a short leverage contract's value.[9]

In this regard, Commission staff contacted a number of major banks in New York and Chicago regarding their commodity lending practices and verified that they lend against commodity collateral at rates substantially lower than those quoted by the objecting commenters. The rates quoted by the banks were generally equal to the bankers' acceptance rate, which at that time was approximately 1¼% below the prime rate. The same banks indicated that they would lend to commercials in the metals business at the prime rate plus 1% to 2% for unsecured borrowing. These unsecured borrowing rates approximate those quoted by the commenters.

Given the Commission's cover requirements for leverage contracts and the rates at which long physical cover can be financed on a collateralized basis for non-currency commodities, the costs of long cover are quite close to the income received from the futures carrying charge rate on short leverage cover. In particular, seventy-five percent of the long cover requirement can be held in futures contracts. Second, physical metal purchased for cover can be financed and stored at a cost very close to the futures contango rate of physical arbitrage. Metals dealers normally borrow to purchase metals on a collateralized basis and sell futures whenever the futures carrying charge rate starts to increase above the cost of borrowing to purchase physical metal plus storage and insurance costs. Conversely, the sale of physical metal and purchase of futures tend to occur when the futures carrying charge rate falls below the actual cost of borrowing, storage and insurance costs. Thus, the collateralized borrowing of funds to purchase physical metal is closely related to the futures contango.

Also, a leverage transaction merchant has a pool of customer margin money that can be used to purchase physical cover and margin futures cover positions. Assuming that leverage customers' initial margin deposits are 20% of a leverage contract's value on average and that FCMs require 5% of a futures contract's value to margin futures positions, 16¼% of the leverage contract's physical cover may be purchased using customer funds (after using 3¾% (75%×5%) of a leverage contract's value from customer margins to margin the futures cover) with the remaining 8¾% of the leverage contract's cover value being borrowed from banks at collateralized rates plus storage costs which approximate futures carrying costs.[10] Therefore, all of the long contract value can be covered at rates equal to or very near the futures contango; none of the long leverage contract's cover value has to be borrowed at rates similar to those quoted by the objecting commenters.

Thus, the Commission cannot accept the contention by the objecting commenters that the proposed requirement of a common carrying charge rate on long and short leverage will be equivalent to a ban on short leverage due to a disparity in the cost of long leverage cover versus the income from short leverage cover. Rather, the proposed requirement would foster a consistency in the treatment of long and short leverage customers under the Commission's leverage program.

Therefore, the Commission is adopting a final rule that requires the long and short leverage carrying charge rates, other than for leverage contracts involving a foreign currency, to be within 1% per annum of each other and that any difference greater than 1% per annum be justified in detail to the Commission by means of petition.

Commission Rule 31.4(g)(3) specifically provides for four foreign currencies under the definition of leverage commodities. Unlike the other leverage commodities, intertemporal price relationships for these commodities do not reflect United States interest rates, but interest rate differences between the United States and the country of the particular currency. In addition, foreign currency futures prices are more likely to be inverted than the prices of other leverage commodities. With respect to these leverage contracts, the one commenter who responded to this question agrees with the Commission that carrying charges on such contracts should reflect interest rate differences between the United States and the country of the particular currency. This commenter further asserted that deposits on such transactions should earn a rate equal to the United States interest rate which may be different from the interest rate charged or credited on the contract value, irrespective of which foreign currency is involved.

The Commission acknowledges these comments. Impediments to collateralized borrowing of foreign currencies and the receipt of interest on domestic deposits of foreign currencies make it impractical to require LTMs to use the same carrying charge rate for long and short leverage contracts. Under certain circumstances, such as when foreign currency futures contracts are trading in backwardation, these impediments may cause the costs of covering long leverage contracts significantly to exceed the costs of covering short leverage contracts. In addition, the greater likelihood that foreign currency prices may display backwardation also necessitates their special treatment.

Therefore, the Commission has determined not to apply its new rule on carrying charges to leverage contracts on foreign currencies.[11] Any other

[9] Staff documents further reflecting these calculations have been placed in the Commission's public comment file concerning this rulemaking.

[10] Rule 31.8(a)(2)(i) states that the 25 percent physical cover requirement may take the form of warehouse receipts provided: "That the balance of the principal and accrued interest on any loan against such warehouse receipt does not exceed 70 percent of the current market value of the commodity represented by each receipt." In this case, we are assuming only 8¾ percent of the leverage contract's cover value is financed on an encumbered basis and not the maximum allowable amount of 17.5 percent (.70×25). Thus, the LTM has a cushion of 8.75 percent (17.5–8.75) to meet other contingencies.

[11] It should be noted that the Commission is retaining the current requirement for all leverage

Continued

exception from the regulations for leverage contracts on foreign currencies must be the subject of a petition. All differences of foreign currency leverage contracts from other leverage contracts must be fully explained in the LTM's Disclosure Document.

VII. Quarterly Reporting Requirement

The Commission proposed a new Rule 31.26 which would require each LTM to file a quarterly report containing information with respect to every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or delivery, including the profit or loss to the leverage customer on any contract which was repurchased, resold or liquidated. Two commenters supported the Commission's proposal, and three commenters objected. After a careful review of those comments, the Commission has determined to adopt the substance of the quarterly reporting requirement, set forth in Rule 31.26(a), as proposed. However, the Commission has determined not to adopt the provisions of proposed Rule 31.26(b), which would have required an LTM to accompany its quarterly report with a list of all leverage customers who had a leverage contract closed out during that quarter, in numeric order by customer account identification number, including the customer's name, address, telephone number and customer account identification number. Proposed Rule 31.26(c), which stated that the quarterly report would have to be provided in both machine-readable and hard copy form, and set forth a procedure whereby each leverage firm would have to submit a proposed computer format and coding structure for Commission approval according to a specified timetable, has been redesignated as Rule 31.26(b) and has been adopted essentially in the form proposed.

Although the Commission is not requiring that a list of customer names, addresses and telephone numbers accompany the quarterly report, the Commission wishes to emphasize the need for accurate information. The Commission is adopting that provision of the quarterly reporting proposal which requires that a hard copy of such data be submitted and that the hard copy be signed by an appropriate high-level person such as the chief executive or chief financial officer. The Commission also wishes to note that its staff may undertake procedures to verify the quarterly report data under the Commission's general inspection and auditing authority, and this may include a spot check of customers.

In addition to the objections to the customer list, certain commenters also raised objections to the quarterly report itself. Commenters stated that the information called for is immaterial for disclosure purposes or for purposes of Commission determination as to whether to lift the leverage moratoria. Commenters also questioned the fairness and usefulness of requiring LTMs to submit more data than futures commission merchants are required to submit. The Commission is not persuaded by these comments. In futures trading, there is a commercial need for, and commercial participation in the development of, a new futures contract. None those elements is present in leverage trading, so it is irrelevant to compare information on leverage trading with information on trading by non-commercial futures customers. The Commission further believes that, as it stated when it proposed Rule 31.26, the data to be obtained will be useful in assessing proper disclosure and whether and if so the bases under which leverage should be expanded and, in particular, whether any further requirements are necessary. The information could also be useful in helping the Commission to prepare any studies it might wish to make, or be required to make, regarding leverage trading.

Certain commenters stated that profit or loss cannot be measured on a contract-by-contract basis, since funds added to an account are not allocated to a specific contract because it would be completely arbitrary to do so. The Commission's staff undertook to investigate the practices of the leverage firms because it was believed that the information set forth in proposed Rule 31.26 was already required by the interim final leverage rules to be compiled and furnished to customers.

After review of the Form 188s and 189s filed by two firms for February 1985, the staff asked these firms for the monthly leverage customer account statements and transaction statements for all kilo gold contracts closed out during February. The staff's review of those monthly statements indicated that the carrying charge is not reported for each leverage contract, but is only reported for the entire account. Commission staff calculated carrying charges which differed in varying amounts from those reported in the monthly statements, making it questionable whether a leverage customer can compute the carrying charges assessed by the LTM. Although the Commission now recognizes from the comments received that its rules may not have been entirely explicit with respect to the reporting to the leverage customer of carrying charges for each leverage contract, the Commission nevertheless believes that its rules can and must be interpreted as requiring such reporting. Without such reporting, a leverage customer would be deprived of material information regarding his leverage contracts which he would be unable to obtain otherwise. Disclosure of this information better informs the customer of the cost of each contract, allows him to make more informed decisions and should reduce the number of complaints received from customers who thought they were liquidating an apparently profitable position, only to learn they lost money due to carrying and termination fees. In addition, allowing an LTM discretion as to how carrying charges, margin deposits and other charges should be distributed among the various leverage positions in a customer's account would make the information required to be provided in the Disclosure Document highly misleading. The rules relating to a leverage Disclosure Document assume the direct application of margin deposits, fees and carrying charges on a contract-by-contract basis.

The carrying charge for each leverage contract is required to be reported on the monthly leverage customer account statement by Commission Rule 31.15(b)(4), which provides for:

> A *detailed accounting of all financial charges* and credits to the previous ledger balance during the monthly reporting period, including all leverage customer funds received from or disbursed to the leverage customer, *and all commissions and fees incidental to the contract which have been charged and received,* as well as all realized profits and losses. (Emphasis added).

Such a "detailed accounting" of charges should include the carrying charge per contract, not just the total carrying charge for the entire account. The recordkeeping requirements for an LTM also require the LTM to record the carrying charges for each leverage contract as part of its financial ledger, pursuant to Rule 31.14(c)(1), which requires to LTM to maintain:

> A financial ledger which will show separately for each leverage customer's

---

commodities that limits the charging of carrying charges to the unpaid balance of the long contract. In response to one commenter's inquiry, the Commission hereby explicitly reaffirms that principle. In the case of a short leverage contract, an LTM must pay or credit the carrying charge on the full contract value and interest on the customer's margin deposit at the same rate. It should also be noted that the LTM's obligation to pay interest on the margin deposit on a short leverage contract is not to be diminished by the LTM's ability to keep earnings on customer funds invested in government obligations. (*See* Rule 31.12(e)).

account *all charges against and credits to* such leverage customer's account, including but not limited to all charges and credits for purchases, repurchases, sales, resales, liquidations, rescissions and settlements by delivery of leverage contracts (including the corresponding transaction identification numbers) and all funds transferred, deposited into, or withdrawn from the leverage customer's account. (Emphasis added.)

This provision requiring the recordation of *all* charges to the customer's account must be read to include all carrying charges, *i.e.*, carrying charges for each leverage contract, not just the sum of the individual carrying charges.

In 1983, the Commission proposed Rule 31.14(d), which provided:

Each leverage transaction merchant shall prepare, as of the last business day of each calendar month, a listing of all leverage contracts carried for leverage customers during the calendar month. Such listings shall be by type of leverage commodity and contract and shall include the following details with *respect to each leverage contract:*

(1) The type of leverage commodity and contract;

(2) The date of execution and the maturity date;

(3) The transaction identification number;

(4) The value of the leverage contract when initiated;

(5) *Details of initial charges, carrying charges and termination charges which have occurred since the previous month-end date;*

(6) The date and amount of margin payments by the leverage customer to the leverage transaction merchant since the previous month-end date;

(7) The date and the amount of margin credits received by the leverage customer from the leverage transaction merchant since the previous month-end date; and

(8) The realized profit or loss on leverage contracts terminated during the month and the unrealized profit or loss on each open leverage contract marked to the market on the basis of the leverage transaction merchant's bid price since the previous month-end date. (Emphasis added.)

This proposal would have required an LTM to keep a record of the carrying charges assessed on each contract.

The recordkeeping requirement regarding carrying charges in proposed Rule 31.14(d)(5) was not adopted in the final Rule 31.14(d). In adopting the modified rule, the Commission stated that it made the changes which it "believes will simplify compliance and eliminate any unnecessary recordkeeping requirements." 49 FR 5498, at 5511 (February 13, 1984). It is important to recognize that this modification was made in the recordkeeping requirements, not the monthly leverage customer account statement section. Similarly, proposed Rule 31.14(c)(3) would have required an LTM to keep:

A daily record or journal which will show separately for each leverage customer by type of leverage commodity and contract, complete details of all leverage transactions executed on that day, including the person for whom such transaction was undertaken, the type of leverage commodity and contract, the number of leverage contracts, the transaction identification number for each leverage contract, whether the transaction was an initial purchase, offset, liquidation or delivery, the total value of the leverage contract when initiated, offset or otherwise terminated, *the total charges (initial, carrying and termination, as appropriate) for each transaction involving a leverage contract,* and the amount of leverage customer funds deposited to margin the leverage contract. (Emphasis added.)

One commenter on proposed Rule 31.14(c)(3) opposed any requirement that an LTM show the carrying charges imposed on a leverage customer's account on a daily basis. Significantly, the commenter stated that monthly reflection of such charges could be acceptable. In light of this comment, the Commission did not adopt the requirement of daily reporting of carrying charges per transaction, in the belief that "this step will alleviate any unnecessary burden on LTMs without diminishing customer protection, particularly in view of the fact that such information is required to be maintained in the LTM's financial ledger (§ 31.14(c)(1)) and transaction record (§ 31.14(c)(2)) and is reported to the customer in the break-even calculation." 49 FR 5498, at 5510. Thus, the Commission did not abandon the concept of calculating and reporting carrying charges on a contract-by-contract basis when it did not adopt the language in Rule 31.14(c)(3) highlighted above, because it felt that information would be recorded pursuant to other parts of Rule 31.14.

In conclusion, the Commission believes that the interim final regulations currently require LTMs to calculate and record carrying charges on each leverage contract. These regulatory requirements make moot the objections of certain commenters to proposed Rule 31.26 on the ground that profit and loss cannot be measured on a contract-by-contract basis. However, the Commission has determined to provide the LTMs with a period within which to come into compliance with the requirement to report the carrying charge on each contract on the monthly leverage customer account statement, if they are not already doing so. All LTMs must be in compliance by January 1, 1986 and the January monthly statements distributed in February 1986 must set forth carrying charges on a contract-by-contract basis. The Commission also believes that January 1, 1986 should be the target date by which LTMs complete their preparations for filing their first quarterly report for the last quarter of 1985, beginning October 1, 1985, with the report for the last quarter of 1985 due no later than January 23, 1986. The Commission's automated data processing staff will work with the firms to develop the appropriate format and coding structure.

The information which is required in the quarterly report is set forth in Rule 31.26(a). Every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or settlement by delivery, must be listed.[12] The data required with respect to each such contract includes identifying information such as the leverage commodity and contract involved, whether the contract was long or short, and the method of close-out. The dates the contract was entered into and closed out must be included, as well as the relevant prices at each date. The leverage customer account identification number, whether the customer had a commercial or noncommercial leverage account, and whether the customer was the owner or holder of a proprietary leverage account also must be included.

For any leverage contract which is closed out by repurchase, resale or liquidation, the LTM must report the profit or loss incurred by the leverage customer on the contract.[13] In the case of a long leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the leverage transaction merchant's bid price at the time of repurchase or liquidation, the total value of the contract based on the ask price at which the contract was entered into, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial, carrying and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage

[12] No information will be required with respect to leverage contracts closed out by rescission. An LTM's monthly report must include the number of leverage contracts rescinded during the month and the Commission requires that a leverage customer can only be assessed actual price losses from the time of entering into the contract until rescission. Rule 31.16(f) (17 CFR 31.16(f) (1985)), which has been redesignated as Rule 31.16(a)(6), and Rule 31.23 (17 CFR 31.23 (1985)).

[13] No information is required with respect to leverage contracts settled by delivery, since the ultimate profit or loss to the leverage customer in such cases depends on the amount which the leverage customer obtains upon sale of the delivered commodity, or the amount which the leverage customer paid to obtain the commodity in order to make delivery, in commercial or retail channels.

customer, in connection with the leverage contract. In the case of a short leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the bid price at which the contract was entered into, the total value of the contract based on the leverage transaction merchant's ask price at the time of resale or liquidation, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, including carrying charges, in connection with the leverage contract. A positive difference will indicate a profit and a negative difference will indicate a loss.

VIII. Order of Liquidation of Leverage Contracts

The Commission requested comment on whether it should adopt a rule specifying that leverage contract positions must be liquidated in declining order of loss, beginning with the position reflecting the greatest loss first. The regulations presently require that an LTM simply disclose the order in which leverage contracts will be liquidated pursuant to a margin call. Rule 31.11(a)(2)(vi). The Disclosure Documents initially filed with the Commission reveal that not all LTMs and applicants are liquidating leverage contracts in declining order of loss.

Two commenters addressed the proposal and both opposed it. One commenter, an applicant for registration as an LTM which currently utilizes the order of liquidation being proposed by the Commission (*i.e.*, declining order of loss, beginning with the position with the greatest loss), stated that the Commission should not adopt any requirement concerning mandatory liquidation sequence. This commenter stated that an LTM should have the right to liquidate undermargined positions in any order its sees fit, subject to disclosure of the sequence it will employ, and that the Commission lacks the statutory authority to require a liquidation sequence.

The other commenter, an LTM currently liquidating the most recently established leverage contract first because it claims the liquidation of the recently established leverage contract is least likely to have an adverse effect on its leverage customers, also opposed the adoption of the proposed rule. This commenter stated that the adoption of the rule would not be in the interest of the majority of leverage customers, because it may result in adverse federal tax consequences to the customer. This commenter further claimed that the order of liquidation is unlikely to have a significant effect on the equity of a customer's account because "[i]n almost every case where a customer's account is in a liquidation position, the leverage customer is losing on all his open positions." This commenter further calimed that it will be difficult, costly and time consuming to identify the contract in the account which has the greatest loss and should be liquidated first under the proposal. This commenter asserts that, under the proposed method of liquidation, "it is very unlikely that a leverage customer with many open positions could look at his most recent account statement and be able to determine which leverage contract would be first to be liquidated" and that the account executive, when making a margin call, "would not be able to advise the customer as to the exact consequences of failure to meet the [margin] call."

The Commission has carefully reviewed the comments but is not persuaded by them. Accordingly, the Commission has determined to adopt a rule specifying that leverage contracts must be liquidated in declining order of loss, beginning with the contracts with the greatest loss first. The Commission notes that two of the three leverage firms employ the liquidation sequence being adopted. The Commission is concerned that any liquidation sequence other than that being adopted may be disadvantageous to the customer. The Commission believes that in a liquidation situation, that position which reflects the greatest loss and thus most contributes to the customer being undermargined should be liquidated first. Accordingly, the Commission has determined to adopt new Rule 31.18(d).

The **Federal Register** notice wherein the Commission requested comments on this issue referenced Rule 31.18(b), which provides for forced liquidations without prior notice of the customer. The Commission believes that new Rule 31.18(d) should apply to all forced liquidation situations, not just those covered by Rule 31.18(b). Accordingly, the Commission in adopting this amendment is also making clear that Rule 31.18(d) applies to all parts of Rule 31.18, not just Rule 31.18(b). The Commission believes that this application is technical in nature, that the same comments made regarding the proposal would also apply to its application to all of Rule 31.18 (and the Commission is not persuaded by those comments), and that the extension is in the public interest.

IX. Related Matters

A. Regulatory Flexibility Act

Adoption of these rules and rule amendments would not appear to affect a substantial number of small firms. There are only three applicants for registration as an LTM, and until the Commission lifts its temporary moratoria on the entry of new firms into the leverage business (17 CFR 31.1 and 31.2 (1984)), it is unlikely that there will be any additional applicants. In addition, in light of the minimum financial requirements for an LTM,[14] the Commission does not believe these rules and rule amendments will have a significant economic impact on a substantial number of firms which could be considered small entities for purposes of the Regulatory Flexibility Act.

Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1168 (5 U.S.C. 605(b) (1982)), the Chairman, on behalf of the Commission, certifies that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Since any requirement imposed by the amendments to Rule 31.11 and new Rule 31.26 would affect less than ten persons (*i.e.*, only the three applicants for registration as an LTM), the Paperwork Reduction Act does not apply. 44 U.S.C. 3502(4) (1982).

List of Subjects

17 CFR Part 31

Definitions, Minimum financial requirements, Repurchase and resale of leverage contracts, Disclosure, Segregation, Bid and ask prices and carrying charges, Reporting and recordkeeping requirements.

17 CFR Part 190

Bankruptcy, Definitions.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982), and pursuant to the authority contained in the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. 101 *et seq.* (1982), the Commission hereby amends Chapter I of Title 17 of

---

[14] In this context, the Commission has defined "small entity" for purposes of the Regulatory Flexibility Act so as not to include any futures commission merchant registered with the Commission. (47 FR 18618, April 30, 1982). The minimum financial requirements for FCMs, as set forth in Commission Rule 1.17, 17 CFR 1.17 (1985), are significantly lower than those for an LTM.

the Code of Federal Regulations as follows:

PART 31—LEVERAGE TRANSACTIONS

1. The authority citation for Part 31 is revised to read as follows:

Authority: 7 U.S.C. 12a and 23.

2. Section 31.4 is amended by revising paragraph (d) and by adding paragraph (e) to read as follows:

§ 31.4 Definitions.

* * * * *

(d) "Leverage customer" means any person who, directly or indirectly, enters into, purchases, sells, or otherwise acquires for value any interest in a leverage contract with, from or to a leverage transaction merchant: *Provided, however,* That an owner or holder of a proprietary leverage account as defined in paragraph (e) of this section shall not be deemed to be a customer within the meaning of § 31.11(a)-(j) and (l), § 31.12 and § 31.26, and such an owner or holder of such a proprietary leverage account shall otherwise be deemed to be a leverage customer within the meaning of all other sections of these rules.

(e) "Proprietary leverage account" means a leverage account carried on the books and records of an individual, a partnership, corporation or other type association (1) for one of the following persons, or (2) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such individual himself, or such partnership, corporation or association itself;

(ii) In the case of a partnership, a general partner in such partnership;

(iii) In the case of a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such partnership,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such partnership, or

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) In the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such individual, partnership, corporation or association whose duties include:

* * * * *

(A) The management of the business of such individual, partnership, corporation or association or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such individual, partnership, corporation or association, or

(D) The signing or co-signing of checks or drafts on behalf of such individual, partnership, corporation or association;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that, directly or indirectly, controls such individual, partnership, corporation or association;

(viii) A business affiliate that, directly or indirectly, is controlled by or is under common control with, such individual, partnership, corporation or asociation.

* * * * *

3. Section 31.9 is amended by revising paragraphs (a), (b)(2) and (b)(9) to read as follows:

§ 31.9 Minimum financial requirements.

(a) Each leverage transaction merchant must at all times maintain adjusted net capital equal to or in excess of $2,500,000, plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the leverage transaction merchant which are uncovered, plus 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the leverage transaction merchant which are covered.

* * * * *

(b) * * *

(2)(i) The term "customer" means customer as defined in § 31.4(d);

(ii) The term "proprietary account" means a commodity futures, option or leverage account carried on the books of the applicant or registrant itself, or for general partners of the applicant or registrant; and

(iii) The term "noncustomer account" means a leverage account carried on the books of the applicant or registrant for a person which is not included in the definition of customer (as defined in paragraph (b)(2)(i) of this section) or proprietary account (as defined in paragraph (b)(2)(ii) of this section);

* * * * *

(9) The safety factors set forth in § 1.17(c)(5) (viii) and (ix) of this chapter for undermargined commodity futures and commodity option customer and noncustomer accounts shall apply in a like manner to undermargined leverage customer and noncustomer accounts, respectively, and the term "leverage transaction merchant" shall be substituted for the terms "applicable boards of trade" or "clearing organization"; and

* * * * *

4. Section 31.10 is revised to read as follows:

§ 31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.

(a) No leverage transaction merchant shall offer to sell or sell a long leverage contract involving a leverage commodity to any leverage customer at any time when such leverage transaction merchant is not offering to repurchase from any of its leverage customers any long leverage contract, and is not offering to resell to any of its leverage customers any short leverage contract, involving the same leverage commodity previously sold or purchased by the leverage transaction merchant to or from a leverage customer.

(b) No leverage transaction merchant shall offer to purchase or purchase a short leverage contract involving a leverage commodity from any leverage customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract, and is not offering to repurchase from any of its leverage customers any long leverage contract, involving the same leverage commodity previously purchased or sold by the leverage transaction merchant from or to a leverage customer.

5. Section 31.11 is amended by revising the first two paragraphs and the sixth paragraph of the bold-faced statement contained in paragraph (a)(1), paragraph (a)(3), and paragraphs (k)(1)(ii) (E) through (P), by adding paragraphs (k)(1)(ii) (Q) through (T), by revising the introductory text of paragraph (k)(2), and by adding paragraph (k)(2)(ii) to read as follows. The introductory text of paragraph (a)(1) is shown for the convenience of the user and remains unchanged.

§ 31.11 Disclosure.

(a) * * *

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS AND FOREIGN CURRENCIES, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. A FILLED IN VERSION OF THE CUSTOMER CONFIRMATION STATEMENT REFLECTING A SINGLE TRANSACTION IN A REPRESENTATIVE LEVERAGE COMMODITY FOR A LONG LEVERAGE TRANSACTION AND A SHORT LEVERAGE TRANSACTION WHICH INCLUDES A FORMULA FOR CALCULATING AN ESTIMATE OF THE LEVERAGE CONTRACT'S BREAK-EVEN VALUE IS ATTACHED TO THIS DOCUMENT. THIS IS IN THE SAME FORMAT AS THE CONFIRMATION STATEMENT YOU WILL RECEIVE TO CONFIRM YOUR ACTUAL TRANSACTION. BE CERTAIN THAT YOU UNDERSTAND THE INFORMATION PROVIDED BY THIS STATEMENT BEFORE YOU ENTER INTO A LEVERAGE TRANSACTION.

YOU SHOULD ALSO UNDERSTAND THAT THE CHARGES FOR SIMILAR LEVERAGE CONTRACTS WHICH ARE REFLECTED ON THE FILLED-IN CONFIRMATION STATEMENT AS ESTIMATED MAY VARY AMONG LEVERAGE FIRMS, AND THAT SUCH FIRMS HAVE COMPLETE DISCRETION IN SETTING THEIR CHARGES AND THE PRICE OF THE LEVERAGE CONTRACTS THEY OFFER. PRIOR TO ENTERING INTO ANY LEVERAGE CONTRACT A PROSPECTIVE LEVERAGE CUSTOMER SHOULD COMPARE THE CHARGES AND PRICES OF SUCH FIRMS WITH EACH OTHER AND WITH THE COMMISSIONS FOR AND PRICES OF FUTURES CONTRACTS TRADED ON DESIGNATED EXCHANGES.

* * * * *

THERE IS NO MARKET FOR THE LEVERAGE CONTRACT ITSELF OTHER THAN TO HAVE IT REPURCHASED BY OR RESOLD TO THE LEVERAGE TRANSACTION MERCHANT. A LEVERAGE TRANSACTION MERCHANT IS UNDER NO OBLIGATION TO OFFER TO REPURCHASE OR RESELL A LEVERAGE CONTRACT AT ALL TIMES, ALTHOUGH THE LEVERAGE TRANSACTION MERCHANT MUST OFFER TO REPURCHASE ANY LONG LEVERAGE CONTRACT PREVIOUSLY PURCHASED BY A LEVERAGE CUSTOMER AND MUST ALSO OFFER TO RESELL ANY SHORT LEVERAGE CONTRACT PREVIOUSLY SOLD BY A LEVERAGE CUSTOMER AT ANY TIME DURING WHICH THE LEVERAGE TRANSACTION MERCHANT IS OFFERING TO ENTER INTO NEW LONG OR SHORT LEVERAGE CONTRACTS WITH CUSTOMERS INVOLVING THE SAME LEVERAGE COMMODITY. AS NOTED ABOVE, HOWEVER, A LEVERAGE TRANSACTION MERCHANT HAS COMPLETE DISCRETION IN SETTING THE PRICE AND ANY CHARGES RELATED THERETO.

* * * * *

(3) A filled-in version of the customer Confirmation Statement in the format specified by the Commission for a representative single long leverage contract and a representative single short leverage contract which includes a formula which can be used to estimate the break-even price.

* * * * *

(k) * * *
(1) * * *
(ii) * * *

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transaction merchant's ask price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total unpaid balance for this transaction;

(G) The total initial charges for the transaction;

(H) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(I) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(J) The current equity in the individual customer's account as of the date of this transaction, but excluding this transaction;

(K) The total variable carrying charges to be billed each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(L) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(M) The total termination charges incurred if the contract is repurchased, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(N) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(O) Any special charges associated with liquidating the transaction, based on charges prevailing at the time the contract is entered into;

(P) The total delivery charges incurred if the customer takes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(Q) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus the bid-ask spread plus the intitial charges plus any other charges plus the termination charges plus the carrying charges for the period the contract is intended to be held open;

(R) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(T) The commercial or retail cash price series filed in accordance with § 31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis; and

(2) Within 24 hours after entry into a short leverage contract with a customer, each leverage transaction merchant shall furnish to such customer by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

* * * * *

(ii) The following additional information:

(A) The date the leverage contract was entered into;

(B) The transaction identification number;

(C) The name of the leverage commodity;

(D) The expiration date of the leverage contract;

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transactions merchant's bid price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total initial charges for the transaction;

(G) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(H) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(I) The current equity in the individual customer's account as of the date of this transaction, but excluding this transaction;

(J) The total variable carrying charges to be credited each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(K) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(L) The total termination charges incurred if the contract is resold, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(M) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(N) Any special charges associated with liquidating the transaction, based on charges prevailing at the time the contract is entered into;

(O) The total delivery (including assay) charges incurred if the customer makes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(P) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus carrying charges for the period the contract is intended to be held open, minus the bid-ask spread, minus the initial charges, minus any other charges, minus the termination charges;

(Q) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(R) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The commercial or retail cash price series filed in accordance with § 31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis; and

* * * * *

6. Section 31.12 is amended by revising paragraph (e) to read as follows:

§ 31.12 Segregation.

* * * * *

(e) The provisions of paragraphs (a) and (b) of this section shall not operate to prevent any person that uses leverage customer funds to purchase government obligations as described therein from receiving and retaining as its own any increment or interest resulting from such government obligations: *Provided, however,* That the furtures commission merchant fulfills its obligation to pay carrying charges on a short leverage contract, including any margin deposit made in connection with such a contract, in accordance with § 31.25(b).

* * * * *

7. Section 31.18 is amended by adding paragraph (d) to read as follows:

§ 31.18 Margin calls.

* * * * *

(d) Leverage contracts liquidated by a leverage transaction merchant because of a margin deficiency must be liquidated in declining order of loss, commencing with the leverage contract with the greatest loss.

8. Section 31.25 is added to read as follows:

§ 31.25 Bid and ask prices; carrying charges.

(a) A leverage transaction merchant must use the same bid price at any particular point in time to purchase a leverage contract from a leverage customer (initiation of a short transaction) and to repurchase a leverage contract from a leverage customer (close-out of a long transaction), and a leverage transaction merchant must use the same ask price at any particular point in time to sell a leverage contract to a leverage customer (initiation of a long transaction) and to resell a leverage contract to a leverage customer (close-out of a short transaction), with respect to contracts involving the same leverage commodity.

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however,* That this paragraph shall not apply to leverage contracts on those leverage commodities defined in § 31.4(g)(3).

9. Section 31.26 is added to read as follows:

§ 31.26 Quarterly reporting requirement.

(a) Each leverage transaction merchant must file, in accordance with paragraph (b) of this section, a quarterly report with the Commission's headquarters office in Washington, D.C. by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

(1) The leverage commodity and contract involved;

(2) Whether a long or short leverage contract was involved;

(3) The date the leverage contract was entered into;

(4) The maturity date of the leverage contract at initiation;

(5) The price at which the leverage contract was entered into;

(6) Whether the leverage contract was repurchased, resold, liquidated or settled by delivery;

(7) The date the leverage contract was repurchased, resold, liquidated or settled by delivery;

(8) The price at which the leverage contract was repurchased, resold or liquidated;

(9) The leverage customer account identification number;

(10) Whether the leverage customer had a commercial or noncommercial leverage account;

(11) Whether the leverage customer was the owner or holder of a proprietary

leverage account as defined in § 31.4(e); and

(12) The profit or loss incurred by the leverage customer on the contract. In the case of a long leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the leverage transaction merchant's bid price at the time of repurchase or liquidation, the total value of the contract based on the ask price at which the contract was entered into, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial, carrying and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, in connection with the leverage contract. In the case of a short leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the bid price at which the contract was entered into, the total value of the contract based on the leverage transaction merchant's ask price at the time of resale or liquidation, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, including carrying charges, in connection with the leverage contract.

(b)(1) Each leverage transaction merchant must file with the Commission or its designee, within 30 days of the date of publication of this section in the **Federal Register**, a proposed format and coding structure for the submission of the information required by paragraph (a) of this section on compatible data processing magnetic tape. Within 20 days after receipt of such proposal, the Commission or its designee shall: (i) Notify the leverage transaction merchant of the approval or disapproval of the proposed format and coding structure; or (ii) indicate to the leverage transaction merchant that additional time is required to analyze the proposal, in which case the amount of time needed will be specified. If a proposed format and coding structure is disapproved by the Commission or its designee, acceptable changes to the proposed format will be specified which must be adopted by the leverage transaction merchant, unless an alternative proposal addressing the disapproved items is filed within 10 days after notification of such disapproval.

(2) Unless otherwise approved by the Commission or its designee, the information required by paragraph (a) of this section must be submitted on compatible data processing magnetic tape, using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise required by the Commission or its designee, the information required by paragraph (a) must also be accompanied by a complete and accurate printout of information, which shall be signed by the leverage transaction merchant if a sole proprietorship, by a general partner of a leverage transaction merchant which is a partnership, by a chief executive officer or the chief financial officer of a leverage transaction merchant which is a corporation, or by a person designated by the leverage transaction merchant for such purpose provided such designee has been identified as such in writing to the Commission.

PART 190—BANKRUPTCY

10. The authority citation for Part 190 is revised to read as follows:

Authority: 7 U.S.C. 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766.

11. Section 190.01 is amended by revising paragraph (bb) to read as follows:

§ 190.01 Definitions.

* * * * *

(bb) "Non-public customer" means any person enumerated in § 1.3(y) or in § 31.4(e) of this chapter, who is defined as a customer under paragraph (k) of this section.

* * * * *

Issued in Washington, D.C. on August 29, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Note.—The following forms will not appear in the Code of Federal Regulations.

BILLING CODE 6351-01-M

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE ASK PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCISSION FROM THE ASK PRICE AT WHICH THE LEVERAGE CONTRACT WAS PURCHASED AND WHICH APPEARS ON THIS CONFIRMATION. TO RESCIND THIS CONTRACT SEND A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE.

CONFIRMATION STATEMENT FOR A CONTRACT
INITIALLY PURCHASED BY A CUSTOMER

Date: _____ Transaction I.D. Number:_____

Commodity: _____ Contract Expiration: _____

TOTAL INDEBTEDNESS

Total Value of Contracts Purchased $_____ $(Ask Price) per (Contract Unit) X (No. of Units) X (No. of Contracts)

TOTAL UNPAID BALANCE FOR THIS TRANSACTION $_____

INITIAL FEES AND MARGIN

Total Initial Charges $_____
Total Initial Margin +$_____ (___ % of Value of Contract Purchased)

Total Amount Due Now To Initiate This Transaction (Disregard If Paid) =$_____

CURRENT EQUITY IN ACCOUNT Excluding this Transaction $_____

SCHEDULE OF CHARGES 1/

Current Estimate of Variable (specify period) Carrying Charges to be Billed Starting (date) $_____ (____ % Annual Rate)

CURRENT ESTIMATED SETTLEMENT COSTS

To Have LTM Repurchase
- Total Current Bid/Ask Spread $_____
- Total Current Termination Charge +$_____
- Other Charges +$_____ = $____ Total

Special Charges if Liquidated $_____

To Take Delivery — Current Delivery Charges $_____

ESTIMATE OF CONTRACT VALUE TO BREAK-EVEN = INITIAL CONTRACT VALUE + BID-ASK SPREAD + INITIAL CHARGES + OTHER CHARGES + TERMINATION CHARGES + CARRYING CHARGES FOR THE PERIOD THE CONTRACT IS INTENDED TO BE HELD OPEN.

OTHER INFORMATION

Total Minimum Margin $_____ (____ % of Total Value of Contracts Purchased)
Total Maintenance Margin $_____ (____ % of Total Value of Contracts Purchased)

PRICE SERIES TO EVALUATE CONTRACT: _____

SOURCE OF PRICE SERIES: _____

1/ These charges and margins are subject to change. In addition, some of these charges are based on prices prevailing at the time the contract is terminated. See Disclosure Document. The customer will be notified of such changes by (specify manner of notification).

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE BID PRICE AT WHICH THE LEVERAGE CONTRACT WAS SOLD TO THE LEVERAGE TRANSACTION MERCHANT AND WHICH APPEARS ON THIS CONFIRMATION FROM THE BID PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCISSION. TO RESCIND THIS CONTRACT SEND A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN CONFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE.

CONFIRMATION STATEMENT FOR A CONTRACT
INITIALLY SOLD BY A CUSTOMER

Date: _____ Transaction I.D. Number:_____

Commodity: _____ Contract Expiration: _____

Total Value of Contracts Sold $_____ $(Bid Price) per (Contract Unit) X (No. of Units) X (No. of Contracts)

INITIAL FEES AND MARGIN

Total Initial Charges $_____
Total Initial Margin +$_____ (___ % of Value of Contract Sold)

Total Amount Due Now To Initiate This Transaction (Disregard if Paid) =$_____

CURRENT EQUITY IN ACCOUNT Excluding this Transaction $_____

SCHEDULE OF CHARGES 1/

Current Estimate of Variable (specify period) Carrying Charges to Be Credited Starting (date) $_____ (___% Annual Rate)

CURRENT ESTIMATED SETTLEMENT COSTS

To Have LTM Resell
- Total Current Bid/Ask Spread $_____
- Total Current Termination Charge +$_____
- Other Charges +$_____ = $____ Total

Special Charges if Liquidated $_____

To Make Delivery — Current Delivery Charges $_____

ESTIMATE OF CONTRACT VALUE TO BREAK-EVEN = INITIAL CONTRACT VALUE + CARRYING CHARGES FOR THE PERIOD THE CONTRACT IS INTENDED TO BE HELD OPEN - BID-ASK SPREAD - INITIAL CHARGES - OTHER CHARGES - TERMINATION CHARGES.

OTHER INFORMATION

Total Minimum Margin 1/ $_____ (___ % of Total Value of Contracts Sold)
Maintenance Margin 1/ $_____ (___ % of Total Value of Contracts Sold)

PRICE SERIES TO EVALUATE CONTRACT: _____

SOURCE OF PRICE SERIES: _____

1/ These charges and margins are subject to change. In addition, some of these charges are based on prices prevailing at the time the contract is terminated. See Disclosure Document. The customer will be notified of such changes by (specify manner of notification).

[FR Doc. 85-21032 Filed 9-5-85; 8:45 am]
BILLING CODE 6351-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Nutra-Blend Corp., providing for the manufacture of 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850, is the sponsor of a supplement to NADA 122–158 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558, is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(71) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(71) To 050568: 4 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: August 30, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–21252 Filed 9–5–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Referral of Cases

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: As part of its continuing effort to enhance equity among similarly situated offenders, as well as to assist in relieving prison overcrowding, the Parole Commission added a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence. Due to the extremely small number of cases which have been referred to the sentencing court for reduction by the Bureau of Prisons and to the amount of staff time consumed to identify, prepare and process the cases, the Director of the Bureau of Prisons has requested that the Parole Commission and the Bureau jointly discontinue the program. Pursuant to that request and after receipt of public comment, the Parole Commission is amending its rules by deleting § 2.62, Recommendation for Reduction of Minimum Sentence, from 28 CFR Part 2.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980..

SUPPLEMENTARY INFORMATION: As part of the Parole Commission's response to a request from the Bureau of Prisons and Department of Justice for assistance in addressing the problem of federal prison overcrowding and pursuant to its mandate to provide consistency in release dates for similarly situated offenders by reducing unwarranted sentence disparity, the Commission published a proposed rule in the **Federal Register** (48 FR 22949, May 23, 1983) designed to relieve prison overcrowding by referring selected cases to the Bureau of Prisons which then might petition the sentencing court for reduction of judicially imposed minimum sentences. After receiving favorable public comment, the Parole Commission published a final rule in the **Federal Register** (48 FR 44525, September 29, 1983) promulgating § 2.62 of 28 CFR Part 2, effective October 1, 1983.

The rule involved a joint effort by the Parole Commission and the Bureau of Prisons (1) to identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but who must remain in custody beyond the maximum of the applicable guideline range because of a judicially imposed minimum sentence and (2) to seek a reduction of the minimum sentence in such cases through the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g), the Director of the Bureau of Prisons may at any time petition the sentencing court to reduce a mininum term and the court can act on such application without convening a hearing. As contemplated by the rule, the Parole Commission was to review and refer to the Bureau of Prisons those cases that the Commission believed met the criteria set forth above.

Pursuant to this rule, the Parole Commission first reviewed 1,473 files of prisoners previously given presumptive parole dates at the completion of the minimum sentence for possible sentence reduction recommendations to the Bureau of Prisons. After hearing examiner and Regional Commissioner consideration and review, 401 cases, where the disparity between the minumum sentence and the maximum of the applicable guideline range appeared

unwarranted, were identified and forwarded to the Bureau. The remainder were rejected either because of insufficient time remaining on the sentence to fully process the motion or because there existed in the files aggravating factors that could have caused the Commission itself to go above the applicable guidelines. The Parole Commission next began reviewing current files for possible recommendation, identifying another 171 cases for reduction recommendation. If all of these 572 recommendations had been accepted by the Bureau and, eventually, by the sentencing judge, a savings of 9,591 prisoner incarceration months or about 800 prisoner incarceration years could have been realized.

According to data supplied by the Bureau of Prisons, since December 1983, only 74 of the 572 cases submitted by the Parole Commission made it through the Bureau's processing for consideration by its Director. He denied 68 of these, approving 6 for further review by the appropriate U.S. attorney. Three of these six were referred to the sentencing judges after U.S. attorney review, with the sentencing judge actually reducing the minimum in only two cases.

As a result, in January 1985, the Director of the Bureau of Prisons, citing the extremely small number of cases actually referred to sentencing courts and the amount of staff time involved in identifying, preparing and processing the cases, proposed that the program be discontinued. The Parole Commission sought public comment on whether to accept that recommendation, publishing a proposed rule to delete 28 CFR 2.62 in the Federal Register (50 FR 24234, June 10, 1985).

The Parole Commission received three (3) comments on the proposed rule, one from an inmate, one from a private citizen, and one submitted by the University of Southern California Post-Conviction Justice Project.

The inmate argued against deletion of the section, stating that it would be "very debilitating and a grave injustice to the many federal prisoners who are definitely rehabilitated" to deny parole solely because of the judicially imposed minimum sentence. Additional comments from the inmate related to the role of the Bureau of Prisons in this process rather than that of the Parole Commission. The private citizen, on the other hand, supported the proposal, arguing that the court was the proper body to determine sentence length rather than a "professionally untrained bureaucratic body." She noted further her view that prison overcrowding was not a sufficient justification for consideration of early release.

The attorneys who wrote on behalf of the U.S.C. Post-Conviction Justice Project argued that the elimination of the section would be "premature and thus ill-advised." After reviewing the implementation of § 4205(g) and its legislative history, the commenters concluded that there is a need to review "the manner in which the Bureau of Prisons has handled the Commission's referrals to determine whether the Bureau of Prisons has abused its discretion by deviating from its published criteria and has, therefore, failed to carry out the Congressional intent expressed in the enactment of § 4205(g)." They urged the Commission to wait until there is adequate opportunity for public comment on the Bureau's implementation of this provision.

The Parole Commission, after reviewing these comments, accepted the recommendation of the Director of the Bureau of Prisons to delete § 2.62 from its rules at this time.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.62 [Removed]

2. 28 CFR 2.62, Recommendation for Reduction of Minimum *Sentence*, is removed.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21323 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

---

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules to require all parolees (and mandatory releases) to satisfy outstanding court orders as a condition of their release, adding this condition to its Conditions of Release, 28 CFR 2.40. While mandated to add this condition as regards fines by the provisions of the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596, and as regards restitution orders by the provisions of the Victim and Witness Protection Act of 1982, Pub. L. 97-291, the Parole Commission additionally will require the satisfaction of court costs and assessments, and court ordered child support or alimony payments. Furthermore, since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), these changes will serve to clarify those existing obligations rather than resulting in totally new or additional requirements. To facilitate the payment of these obligations, the Parole Commission will require the parolee to provide relevant financial information and to cooperate, when appropriate, in the establishment of an installment payment plan. Other related amendments are being made to clarify and conform language to the terms of this new release condition. Finally, the Parole Commission is amending another condition of release, 28 CFR 2.40(a)(5), to clarify the parolee's obligations when reporting to his probation officer.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: Currently the U.S. Parole Commission imposes several conditions on every grant of parole, conditions deemed necessary to provide adequate supervision and to protect the public welfare. The Commission is amending its set of conditions at 28 CFR 2.40 by adding the condition that parolees make a diligent effort to satisfy outstanding fines and other court ordered financial obligations such as restitution orders, court costs and assessments, and child support and alimony and, to that end, that they supply financial information and develop installment payment plans. The new condition as to fines is required by the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596 and the Parole Commission is lending equal weight to the enforcement of these other court ordered financial obligations, as it did previously with restitution orders, by making their satisfaction a condition of parole.

In regard to this new condition of parole, several procedures will apply. If the parolee satisfactorily demonstrates that he cannot immediately satisfy the outstanding obligation in full, he and the U.S. Probation Officer will develop a written plan for the payment of the fine, restitution order, etc. The plan will include, among other things, a payment schedule and the amount to be paid at each installment. It will include also the following clause: "This plan, and the obligations described herein, are part of the conditions of my parole." The parolee will supply all financial information and records necessary to the development of the plan and will sign the plan, along with the U.S. Probation Officer. A copy of the signed plan will be forwarded to the Parole Commission.

As to the payment schedule and the amounts to be paid at each installment, the plan will include any relevant court ordered installment payment schedule. If no such installment payment schedule exists, one will be developed that takes into account, among other things, the amount of the fine [restitution order, etc.], any interest and penalties due as well as the parolee's employment status, earning ability, financial resources, and the economic burden that the payment of the obligation will impose on the parolee or his dependents. Where feasible, the installment payment term for fines and restitution orders should not exceed two years. When the parolee has an outstanding restitution order in addition to a fine or other financial obligation, the plan will give precedence to the satisfaction of the restitution order.

If the parolee refuses to accept the terms of the plan in general, refuses to accept the installment payment schedule, and/or refuses to sign the plan, the Parole Commission will then resolve any outstanding disputes as to terms and installment payment schedules, completing the plan as necessary and making the terms and schedules contained therein themselves a parole condition. Any changes to or modifications of the plan will be reduced to written form and signed by the parolee and the U.S. Probation Officer. A copy of the signed change or modification will be forwarded to the Parole Commission.

And, finally, if the parolee does not make diligent effort to make the payments according to the schedule in the plan, the U.S. Probation Officer will report such failure to the Parole Commission as a violation of the conditions of parole.

As a conforming amendment, the Parole Commission is deleting 28 CFR 2.7(b)(1). That subsection deals with unsatisfied orders of restitution automatically becoming a condition of release. The new condition renders this part of the subsection duplicative and thus unnecessary. The subsection also requires the inclusion of a payment plan. The Parole Commission will retain that requirement, but, for clarity, is amending the language and adding it to 28 CFR 2.33 (Release Plans) as new §2.33(d).

As a second conforming amendment, the Parole Commission is amending the language of 28 CFR 2.7(b)(3), to delete it from 28 CFR 2.7 and to add it to 28 CFR 2.52 as new §2.52(e). As presently drafted, the subsection deals with factors to be considered in determining whether to revoke parole for noncompliance with a condition of restitution. The amendment now requires that the same factors be considered in determining revocation for non-compliance with a condition of fine, court costs or assessment, and/or court ordered child support or alimony payment. The new subsection becomes part of 28 CFR 2.52 (Revocation Decisions). Finally, present 28 CFR 2.7(b)(2) is redesignated 28 CFR 2.7(b).

A proposed rule incorporating substantially all the above discussed amendments was published in the **Federal Register** (50 FR 24235, June 10, 1985). The Parole Commission received three (3) responses from the public on the proposed changes. A private citizen commended the Commission for the planned amendment citing it as "a much needed adjunct in the rehabilitation of criminals" and noting that it would "aid the parolee in developing a sense of social responsibility. And a Chief Probation Officer wrote that he was "sure the proposed rule will be a good one which will more clearly define the responsibility." He saw "no problem" with it.

The third comment was received from the University of Southern California Post-Conviction Justice Project. The attorneys representing the U.S.C. Post-Conviction Justice Project argued that the Commission should "distinguish between fines and restitution orders on the one hand, and other court ordered financial obligations" on the other. The former are related to the parolee's criminal conviction and punishment and are appropriate, they said, for Parole Commission purposes. The latter result from separate and unrelated judicial proceedings and the Commission's involvement with them will be "entirely unnecessary and superfluous" as other judicial authorities are in a better position to monitor their satisfaction. They stated also that the proposed amendment "would criminalize an entire range of civil obligations" and "will discriminate against certain civil litigants."

The commenters objected further to requiring parolees to provide information relevant to the payment of the obligations. They felt that additional safeguards were necessary here to protect against an abuse of discretion. Finally, they objected to the "deliberately evading or refusing" standard in proposed §2.52(e). They recommended that a parolee should "only face revocation for not meeting a financial obligation if he or she is found to have willfully failed to make required payments and to have had the financial ability to do so."

The Parole Commission, after considering the comments received, has determined that it is appropriate to proceed with the rule as proposed. Since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), these amendments serve to clarify those existing obligations rather than resulting in totally new or additonal requirements. Further, the Commission has determined that the "deliberately evading or refusing" standard is functionally equivalent to the "willful" standard recommended by one of the comments. For clarity, however, the Commission is substituting "court costs and assessment" for "other court ordered financial obligation of a similar nature" on the list of covered financial obligations.

The Parole Commission also is amending the release condition at 28 CFR 2.40(a)(5) in order to clarify the parolee's obligations when reporting to his probation officer. To parallel the existing requirement in subsection 2.40(a)(5) that parolees make complete and truthful written reports to probation officers, the subsection is amendment to require completeness and truthfulness at any time the parolee is reporting to his probation officer.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2.

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40, *Conditions of Release,* is amended by revising paragraph (a)(5) to read as follows:

(a) * * *

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer, at other times as the probation officer directs, providing complete and truthful information.

* * * * *

3. 28 CFR 2.40, *Conditions of Release,* is further amended by adding new paragraph (a)(13) to read as follows:

§ 2.40 Conditions of Release.

(a) * * *

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

* * * * *

§ 2.7 [Amended]

4. 28 CFR 2.7(b)(1) and 2.7(b)(3) are removed and 28 CFR 2.7(b)(2) is redesignated 28 CFR 2.7(b). Also 28 CFR 2.33, Release Plans, is amended by adding new paragraph (d) to read as follows:

§ 2.33 Release Plans.

* * *

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

5. 28 CFR 2.52, *Revocation Decisions,* is amended by adding new paragraph (e) to read as follows:

§ 2.52 Revocation Decisions.

* * *

(e) In determining whether to revoke parole for non-compliance with a condition of fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21325 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

---

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Information Considered

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules at 28 CFR 2.19 (Information Considered) to facilitate and clarify the procedure by which material concerning a prisoner is submitted for consideration by the Commission. The amendment to § 2.19 adds new subsection 2.19(b)(2) which requires that the material containing the information to be considered be forwarded sufficiently in advance so as to be received by the Commission no later than the first day of the month preceding the month of the docket. Also added is new subsection 2.19(b)(3) which states that, if a large amount of material is first submitted at the time of the hearing and the hearing panel concludes that it is not feasible to read the information submitted at that time, the person submitting the information will be permitted to briefly summarize the material. Further, the submitted material will become part of the record to be considered by the Commission upon review of the panel's recommendation. As a conforming amendment, 28 CFR 2.19(b) will become § 2.19(b)(1).

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: In making a parole or reparole determination, the Commission considers a number of reports and other documents concerning the prisoner. It will also take into consideration additional relevant information concerning the prisoner, including information submitted by the prisoner or by other interested persons. The rules governing the information so considered are at 28 CFR 2.19.

Occasionally, at the hearing, a prisoner or his representative will submit for the first time voluminous material concerning the prisoner to be considered by the panel. In such instances, it is generally impossible for the examiner to read all the material submitted without seriously disturbing the hearing schedule.

To remedy this situation and to ensure that the information contained in the submitted material receives appropriate attention and review, the Commission is amending its rule to provide that material to be considered concerning the prisoner should be forwarded to the Commission sufficiently in advance so as to be received by the Commission no later than the first day of the month preceding the month of the docket (i.e., if the hearing is scheduled for an August docket, the material should be received by the Commission by July 1). This new requirement coincides with the time schedule that the institutions must follow when forwarding information to the Commission for pre-hearing reviews. This procedure is contained in new subsection 2.19(b)(2).

Further, the new subsection contains a procedure for handling material that is first submitted at the hearing. If that material contains more than six (6), double-spaced, letter-sized pages, and the panel concludes that it is not feasible to read the material at that time, the person submitting the material will be permitted to briefly summarize the material. Also, the material submitted, in its entirety, will become part of the record to be considered by the Regional Commissioner upon review of the panel's recommendation.

As an additional conforming amendment, the present subsection 2.19(b) will be redesignated 2.19(b)(1).

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 29 CFR 2.19, *Information considered,* is amended to redesignate (b) as (b)(1) and to add two new

paragraphs, (b)(2) and (b)(3) to read as follows:

§ 2.19 Information considered.

* * * * *

(b)(1) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(2) To permit adequate review of information concerning the prisoner, materials submitted to the Commission should be received by the Commission no later than the first day of the month preceding the month of the scheduled hearing docket.

(3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing and the hearing panel concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing. The summarized material, in its entirety, will become part of the record to be considered by the Commission in its review of the panel's recommendation.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21324 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

---

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending 28 CFR by deleting several items that are obsolete or unnecessary. Two of the sections (28 CFR 2.9(b) (Study Prior to Sentencing); 28 CFR 2.16(d) (Parole of Prisoner in State, Local, or Territorial Institution)) involve the Federal Youth Corrections Act, legislation that was repealed by the Comprehensive Crime Control Act of 1984 (Pub. L. 98-473). A third item (28 CFR 2.43(a)(2) (Early Termination)) also involves the Federal Youth Corrections Act and contains an obsolete provision. The Parole Commission is amending that subsection by deleting that part that deals with youth offenders sentenced to a term of one year or less and by adding language to clarify that the retained part of the subsection deals with youth offenders sentenced to a term of more than one year. A fourth item involves 28 CFR 2.2(e) (Eligibility for Parole: Adult Sentences). The Parole Commission is amending that subsection by deleting that part that deals with sentences of six months to 1 year that were imposed prior to May 15, 1976. That part of the subsection is deemed obsolete. Should there be cases remaining in the system to which the deleted provisions are applicable, the cases will continue to be handled under the provisions existing prior to the deletion. Finally, as a conforming amendment, 28 CFR 2.9(a) is redesignated § 2.9.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: In maintaining its rules, the Parole Commission makes amendments that reflect legislative developments and changes and makes deletions of materials that has become obsolete or unnecessary. Four such amendments are being accomplished at this time.

The first two amendments involve the Federal Youth Corrections Act, legislation that was repealed as part of the Comprehensive Crime Control Act of 1984 (Pub. L. No. 98-473). Subsection (b) of 28 CFR 2.9 (Study Prior to Sentencing) is the rule governing the Commission's role in reporting to the sentencing courts on the observation and study of youths committed pursuant to 18 U.S.C. 5010(e). Subsection (d) of 28 CFR 2.18 (Parole of Prisoner in State, Local, or Territorial Institution) is the rule governing the parole of Federal Youth Corrections Act offenders committed under 18 U.S.C. § 3401 and who are given commitments of six months or less. Since YCA was repealed, these subsections became obsolete and can be deleted. Should there be cases remaining in the system to which the deleted provisions are applicable, the cases will continue to be handled under the provisions existing prior to the deletion.

The third amendment also involves the Federal Youth Corrections Act. Subsection (a)(2) of 28 CFR 2.43 (Early Termination) contains the rule governing the early termination of supervision of youth offenders. The first clause of that subsection deals with youth offenders sentenced to terms of one year or less under 18 U.S.C. 3401(g). The repeal of the Federal Youth Corrections Act has made that clause obsolete and it can be deleted. While the remainder of the subsection also involves offenders sentenced under the Federal Youth Corrections Act, the Parole Commission has a continuing responsibility for supervising those youth offenders sentenced before the repeal of the Act. The Parole Commission is amending the retained part of the subsection to clarify that that part deals with youth offenders sentenced to a term of more than one year.

Next, 28 CFR 2.2 (Eligibility for Parole: Adult Sentences) reflects the statutory provision that Federal prisoners serving a maximum of one year or less are not eligible for parole consideration by the Commission. However, the subsection states that, as an exception, Federal prisoners sentenced, prior to May 14, 1976, to a maximum of at least six months but not more than one year are eligible for parole consideration after service of one-third of such term. The Commission has determined that that exception is obsolete and may be deleted. Should there be cases remaining in the system to which this deleted provision is applicable, the cases will continue to be handled under the provision existing prior to the deletion.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.2, *Eligibility for Parole: Adult Sentences*, is amended by revising paragraph (e) to read as follows:

§ 2.2 Eligibility for Parole: Adult Sentences.

* * * * *

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission.

3. 28 CFR. 2.9, *Study Prior to Sentencing*, is revised to read as follows:

§ 2.9 Study Prior to Sentencing.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is

prepared and submitted directly by the United States Federal Prison System.

§ 2.16 [Amended]

4. 28 CFR 2.16, *Parole of Prisoner in State, Local, or Territorial Institution,* is amended by removing paragraph (d).

5. 28 CFR 2.43, *Early Termination,* is amended by revising paragraph (a)(2) to read as follows:

§ 2.43 Early Termination.

(a) * * *

(2) A committed youth offender sentenced to a term of more than one year may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 21326 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy amends its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Landing Craft Air Cushion (LCAC) class amphibious vessels are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as landing craft air cushion vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Landing Craft Air Cushion (LCAC) class amphibious vessels are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with the 72 COLREGS: Rule 21(a), pertaining to the centerline positioning of the masthead light; Rule 21(b), pertaining to the positioning of the sidelights; Rule 22(b), pertaining to the range of visibility of the sidelights; Annex I, section 2(a)(i), pertaining to the height of the masthead light above the hull; Annex I, section 2(g), pertaining to the placement of the sidelights at a height above the hull not greater than three-quarters of that of the masthead light; and Annex I, section 3(b), pertaining to the placement of the sidelights at or near the sides of the vessel, without interfering with their special functions as landing craft air cushion vessels. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on LCAC-class amphibious vessels in a manner differently from that prescribed herein will adversely affect their ability to perform their functions as landing craft air cushion vessels.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: 33 U.S.C. 1605.

§§ 706.2 and 706.3 [Amended]

2. The authority citation following §§ 706.2 and 706.3 are removed.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following class of vessels to the list:

Vessel	Number	Distance in meters of forward masthead light below minimum required height; section 2(a)(i), annex I
LCAC (class)	LCAC 1 through LCAC 100	[1] 6.51
LCAC (class)	LCAC 1 through LCAC 100	[2] 7.94

[1] The permanent masthead light is 5.26 meters athwartship to port of centerline, 5.49 meters above the main deck.
[2] The temporary masthead light is 3.98 meters athwartship to starboard of centerline, 4.06 meters above the main deck.

2. Table Two of § 706.2 is amended by adding the following class of vessels to the list.

Vessel	Number	Masthead lights, distance to starboard of keel in meters; rule 21(a)	Forward anchor light, distance below flight deck in meters; section 2(k), Annex I	Forward anchor light, number of; rule 30(a)(i)	Aft anchor light, distance below flight deck in meters; rule 21(e), rule 30(a)(ii)	Aft anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight deck in meters; section 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; section 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; section 3(b), Annex I
LCAC (class)	LCAC 1 through LCAC 100	5.26 (Perm.)[2]							[3] 1.5
LCAC (class)	LCAC 1 through LCAC 100	3.98 (Temp.)[4]							[3] 1.5

[2] The permanent masthead light is 5.26 meters athwartship to port of centerline, at frame 3, 5.49 meters above the main deck.
[3] The sidelights are on top of the port and starboard deckhouses 3.28 meters above the hull.
[4] The temporary masthead light is 3.98 meters athwartship to starboard of centerline 4.06 meters above the main deck.

3. Table Four of § 706.2 is amended by revising paragraph 14 to read as follows:

* * * * *

14. On LCAC-class amphibious vessels, full compliance with Rules 21(a), 21(b), and 22(b), and Annex I, section 2(a)(i), 72 COLREGS, cannot be obtained. Tables One and Two of section 706.2 provide the dimensions of closest possible compliance of LCAC-class amphibious vessels with the aforementioned rules. The following paragraph details the specific dimensions of closest possible compliance and the basis for certification by the Secretary of the Navy that full compliance with the aforementioned rules is not obtainable.

On LCAC-class amphibious vessels, there are permanent and temporary masts. The permanent masthead light is located 5.26 meters athwartship to port of centerline 5.49 meters above the hull. The temporary masthead light is located 3.98 meters athwartship to starboard of centerline 4.06 meters above the hull. The temporary masthead light is displayed in lieu of the permanent masthead light only when LCAC-class amphibious vessels are operating with amphibious assault vessels. When operating in this mode, the sidelights are displayed at a height greater than three-quarters of the height of the temporary masthead light. The sidelights are located on top of the port and starboard deckhouses to permit the required unobstructed arcs of visibility and are 3.28 meters above the hull, resulting in a vertical separation between those lights and the temporary masthead light of 0.78 meters. Because of the minimal vertical separation between the sidelights and the temporary masthead light and the luminous intensity of the temporary light, the sidelights on these vessels may not be distinguishable by the naked eye at the 2-mile range required by Rule 22(b).

Dated: August 22, 1985.

Approved:

James F. Goodrich,

Under Secretary of the Navy.

[FR Doc. 85-21300 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE-M

---

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has determined that USS JOHN A MOORE (FFG 19) and USS FLATLEY (FFG 21) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval frigates, and (2) has found that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are members of the FFG 7 class of ships, certain exemptions for which have been previously granted under 72 COLREGS Rule 38. The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: April 20, 1981.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332. Telephone number (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in Executive Order 11964 and 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a) regarding the arcs of visibility of their forward masthead lights; Annex I, section 2(a)(i), regarding the height above the hull of their forward masthead lights; and Annex I, Section 3(b), regarding the horizontal relationship of their sidelights to their forward masthead lights, without interfering with their special function as Navy frigates. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are members of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to these three ships. Moreover, it has been determined, in accordance with 32 CFR Parts 298 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner different from that prescribed herein will adversely affect the ships' ability to perform their military function.

List of Subjects in 32 CFR Part 706

Marine Safety Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The Authority citation for Part 706 is revised to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessels to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i) annex I
. . . . .		
USS CLIFTON SPRAGUE	FFG 16	1.6
USS JOHN A. MOORE	FFG 19	1.6
USS ANTRIM	FFG 20	1.6
USS FLATLEY	FFG 21	1.6
. . . . .		

3. Table Four of § 706.2 is amended by revising the existing paragraph 8. to read:

* * * * *

8. On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head.

USS CLIFTON SPRAGUE (FFG 16)
USS JOHN A. MOORE (FFG 19)
USS ANTRIM (FFG 20)
USS FLATLEY (FFG 21)

4. Table Four of § 706.2 is amended by revising the existing paragraph 9. to read:

9. Sidelights on the following ships do not comply with Annex 1, Section 3(b):

Vessel	Number	Distance of sidelights forward of masthead light in meters
USS CLIFTON SPRAGUE	FFG 16	2.75
USS JOHN A. MOORE	FFG 19	2.75
USS ANTRIM	FFG 20	2.75
USS FLATLEY	FFG 21	2.75

Dated: April 20, 1981.
Robert J. Murray,
Acting Secretary of the Navy.

Editor's Note: This docket was received for publication by the OFR on September 3, 1985.

[FR Doc. 85-21301 Filed 9-5-85; 8:45 am]
BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 865

Personnel Review Boards; Air Force Board for Correction of Military Records

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has issued a revision to Part 865, Subpart A of Subchapter G, Title 32 of the Code of Federal Regulations, which provides for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. D'Orazio, Secretary of the Air Force/MICB(S), Washington, D.C. 20330, telephone (202) 692-4726.

SUPPLEMENTARY INFORMATION: On 4 April 1984, the Department of the Air Force published (at 49 FR 13382) a propose regulation changing the procedures for making application, and consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records. The following summarizes the major comments received and action taken:

Three commenters objected to the proposed 25-page limit on briefs submitted for consideration by the Air Force Board for Correction of Military Records (§ 865.8). The common objection was that the limit was unnecessary and unjustified. In recognition of the fact that there are occasional cases of unusual complexity, a provision for waiver by the Board, either at the request of an applicant and on showing of good cause, or on the Board's own motion, was included, to ensure adequate briefing of issues the Board considers important. Three commenters related objections to the proposal that the Board's staff review a request for reconsideration of an appeal to determine whether new and/or relevant evidence had been submitted for review (§ 865.8(c)). The objection to the staff reaching a determination as to the relevance of evidence accompanying such a request is well taken and the rule was changed to clearly state that this determination is the prerogative of the Board. However, the determination of whether or not the evidence is "new", that is, not already of record in the proceeding, is a ministerail one which may properly be delegated to the staff.

One commenter suggested that the provision of the rule which set forth the requirements for a statement of grounds for denial of a case (§ 865.8(d)) be changed to include the requirement that the Board include all other essential facts as well as the facts of record which are used as bases for denial of an appeal. This suggestion was based on the notion that the Board may make a finding of fact which is not a fact "of record". This assertion is without merit. The Board does not make separate findings of fact; its conclusions are based on the evidence of record and the record is open to the applicant. One commenter suggested that the § 865.21 be amended to include provision to allow for a review of the Board's recommendation in the case and the opportunity to submit rebuttal comments, before the Secretary of the Air Force takes action. No such rights exist in non-adversarial proceedings and there is no legal requirement that such a review and comment be permitted.

One commenter suggested that provision be made to include, under special category cases, a rule applicable to those members who received less than fully honorable discharges for civilian misconduct while members of the Reserve component serving in an inactive status. Inasmuch as the Order by the U.S. District Court for the District of Columbia, cited by the commenter, was issued more than four years prior to the publication of the final rule, compliance to the extent required is presumably accomplished.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Note.—This rule is affected by the Privacy Act of 1974. The authorities to collect and maintain the data prescribed in this rule are Title 10, U.S.C. 1552 and E.O. 9397, 22 November 1943. The prescribed form which is used to collect personal information contains a Privacy Act Statement.

Accordingly, 32 CFR Part 865—Subpart A is revised to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.
865.0 Purpose.
865.1 Legal authority.
865.2 Board establishment and composition.
865.3 Function of the board.
865.4 Board jurisdiction.
865.5 General requirements.
865.6 Time limit for filing application.
865.7 Other proceedings not stayed.
865.8 Withdrawal of application.
865.9 Consideration of application.
865.10 Appearing before the Board.
865.11 Notice of hearing.
865.12 Definition of counsel.
865.13 Witnesses at hearing.
865.14 Access to records.
865.15 Convening the Board.
865.16 Conduct of hearing.
865.17 Continuance of hearing.
865.18 Deliberations, findings, decisions, and recommendations.
865.19 Minority report.
865.20 Record of proceedings.
865.21 Action by the Secretary of the Air Force.
865.22 Action by the Board Secretariat.
865.23 Authority to settle claims.
865.24 Application for settlement.
865.25 Settlement provisions.
865.26 Report of settlement.
865.27 Staff assistance.
865.28 Paying expenses.
865.29 Publication in the **Federal Register**.

Authority: Secs. 1552, 8012, 70A Stat. 116, 488; 10 U.S.C. 1552, 8012.

Subpart A—Air Force Board for Correction of Military Records

§ 865.0 Purpose.

This rule establishes procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records (hereinafter referred to as the Board). This rule applies to all Air Force activities.

§ 865.1 Legal authority.

Section 131 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, and as reenacted and codified in Title 10, U.S.C., section 1552, provides:

Sec. 1552. Correction of military records: claims incident thereto.

(a) The Secretary of a military department, under procedures established by him and

approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever, is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment. A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but not for longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

§ 865.2 Board establishment and composition.

Pursuant to the foregoing statutory authority, the Air Force Board for Correction of Military Records has been established in the Office of the Secretary of the Air Force. The Board consists of civilians of the executive part of the Department of the Air Force in such number, not less than three, as may be appointed by the Secretary of the Air Force. Three members present will constitute a panel and quorum of the Board.

§ 865.3. Function of the board.

The function of the Board is to consider all applications properly before it to determine the existence of an error or an injustice and, when appropriate, to make recommendations to the Secretary of the Air Force.

§ 865.4. Board jurisdiction.

The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 865.5. General requirements.

(a) *Submission.* The application for correction should be submitted on DD Form 149, Application for Correction of Military or Naval Records under the Provisions of Title 10, U.S. Code section 1552, or exact facsimile thereof, and should be addressed to:

AFMPC/MPCDOA1
Randolph AFB, TX 78150

Note.—Forms and explanatory matter may be obtained from the same activity.

(b) *Who Signs Application.* Except as provided in paragraph (c) of this section, the application will be signed by the person requesting corrective action with respect to his or her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287,1001).

(c) *When Person Is Unable to Submit Application for Self.* When the record in question is that of a person who is incapable of making application for self, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the application before the Board, the application may be made by the spouse, parent, heir, or legal representative. Proof of proper interest will be submitted as may be required by the Board.

§ 865.6. Time limit for filing application.

A claimant, heir, or legal representative, must file the application for correction of a record with the Secretary of the Air Force within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, heir, or legal representative files an application more than 3 years after he or she discovers the error or injustice, he or she must include in his or her application his or her reasons why the Board should find it is in the interest of justice to excuse his or her failure to file the application within the time prescribed above.

§ 865.7. Other proceedings not stayed.

The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

§ 865.8. Withdrawal of application.

The Board may permit an applicant to withdraw his or her application without prejudice at any time before its proceedings are sent to the Secretary of the Air Force.

§ 865.9. Consideration of application.

No application will be considered until the applicant has exhausted all effective administrative remedies afforded by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant. A brief furnished in support of an application submitted according to this part will not exceed 25 double-spaced typewritten pages. In addition, rebuttal comments submitted in response to the Air Staff advisory option will not exceed 10 double-spaced typewritten pages. In cases of unusual complexity, the Board may waive these limitations either at the request of the applicant and on showing of good cause, or on the Board's own motion. In cases where the Board approves a waiver of the standard limitation, a new, higher page limit may be imposed.

(a) *Review.* Each application and the available military or naval records pertinent to the corrective action requested will be reviewed by a panel of the Board in Executive Session to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases. If the application has not been filed within 3 years after the applicant discovered the alleged error or injustice and the applicant did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years, the application will

be returned by the Executive Secretary as incomplete.

(b) *Denial of Application.* The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him or her, that effective relief cannot be granted, or that the applicant did not file his or her application within 3 years after he or she discovered or reasonably could have discovered the alleged error or injustice and insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed 3 years. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate probable material error or injustice is without prejudice to further consideration if newly discovered relevant evidence is submitted. The applicant will be informed of his or her privilege to submit newly discovered relevant evidence for consideration.

(c) *Reconsideration.* Requests for reconsideration shall provide newly discovered relevant evidence not reasonably available to the applicant at the time of a previous application. All requests for further consideration will be initially screened by the staff of the Board to determine whether any factual allegations or any arguments, or, any documentary evidence has been submitted by the applicant that was not of record at the time of any prior Board consideration. If no such allegations, arguments or evidence have been submitted, the applicant will be informed that the request was not considered by the Board because it did not contain any newly discovered evidence or other matter that was not of record at the time of any previous Board consideration. If such factual allegations, or documentary evidence have been submitted, the request shall be forwarded to the Board for a determination in accordance with paragraph (a) of this section. The Board will determine the relevance and weight of any evidence submitted; and, whether or not the evidence was reasonably discoverable by the applicant at the time of any previous application.

(d) *Written Proceedings.* When the Board determines that the record should be corrected or that the application be denied, the determination of the Board will be made in writing. The writings (proceedings) will include, but not be limited to, all facts of record, and statement of ground(s) upon which the Board's determination is based. Where the Board concludes complete relief should not be granted, written proceedings will address applicant's claim(s) of constitutional, statutory, and/or regulatory violation rejected by the Board and/or reviewing authority. In those cases involving the characterization of an individual's discharge or dismissal from the military service, the factors required by Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal in question will be included.

§ 865.10. Appearing before the Board.

In each case in which the Board determines that a hearing is warranted the applicant will be entitled to appear before the Board either in person or by counsel of his or her own selection or in person with counsel.

§ 865.11. Notice of hearing.

(a) *To Applicant and Counsel.* In each case in which a hearing is authorized, the Executive Secretary of the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days before the date of hearing, except that an earlier date may be set where the applicant waives his or her right to such notice in writing.

(b) *To the Board.* Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days before the date for hearing as to whether the applicant will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as the applicant may intend to call in his or her behalf. Cases in which the Board is notified that the applicant does not desire to be present at the hearing will be considered according to § 865.16(b) below.

§ 865.12. Definition of counsel.

The term "counsel" will be construed to include members in good standing of the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under Title 38, United States Code, section 3402, or such other persons, who in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

§ 865.13. Witnesses at hearing.

The applicant will be permitted to present witnesses at hearings before the Board. It will be the responsibility of the applicant to notify the witnesses and to arrange for their appearance at the time and place set for hearing.

§ 865.14. Access to records.

(a) *Official Records.* The applicant will have access to all records considered by the Board with the exception of any classified and privileged matter contained therein.

(b) *Classified or Privileged Matter.* Classified or privileged matter will not be disclosed or made available. When appropriate, the applicant may be supplied only with an unclassified summary or extract of classified matter. The summary or extract will not reveal the nature of the withheld material.

(c) *Copies of Records.* This part does not authorize the Board to furnish copies of official records. Requests for copies of official records should be submitted according to regulations governing release of information (for example, AFRs 12–30 and 12–35).

§ 865.15. Convening the Board.

The Board will be convened at the call of the Panel Chairman and will recess or adjourn at his or her order.

§ 865.16. Conduct of hearing.

(a) *By Panel Chairman.* The hearings will be conducted by the Panel Chairman, and will be subject to his or her rulings that will be designed, insofar as practicable, to accord the applicant an opportunity to make a full and fair presentation of his or her case. The Board will not be limited by legal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality. Hearings are normally limited to 2 hours. However, additional time may be granted at the discretion of the Panel Chairman. AFR 11–31 is not applicable to hearings conducted by the Board.

(b) *When Applicant is not Present or Represented at Hearing.* If the applicant, after being duly notified, has decided not to appear in person or be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any

Air Staff advisories, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(c) *When Applicant Fails To Appear at Time and Place Set for Hearing.* If the applicant, after being duly notified, has indicated to the Board a desire to be present or to be represented by counsel at the hearing, and without good cause and timely notice to the Board, the applicant or a representative fails to appear at the time and place set for the hearing, the Board may consider the case as explained in paragraph (b) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(d) *Testimony.* All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

§ 865.17. Continuance of hearing.

The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to ensure a full and fair hearing.

§ 865.18. Deliberations, findings, decisions, and recommendations.

(a) *Deliberations.* Only members of the Board and its staff will be present during the deliberations of the Board.

(b) *Further Information.* During the course of review of the case when it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues. The applicant will have access to evidence developed by the Board on its own motion in accordance with § 865.14 and may submit additional comment with regard to the evidence.

(c) *Findings, Decisions, and Recommendations.* Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(d) *Separate Communication.* Where the Board considers it necessary to submit comments or recommendations to the Secretary of the Air Force as to matters arising from, but not directly related to the issues of any case, such comments and recommendations will be the subject of separate communication.

(e) Delegation of Authority To Correct Certain Military Records:

(1) The Air Force Board for Correction of Military Records is authorized to take final action on behalf of the Secretary of the Air Force in approving the correction of military records, provided such action:

(i) Has been recommended by the Air Staff;

(ii) Is unanimously agreed to by the Board; and

(iii) Falls into one of the following categories:

(A) Restoration of leave unduly charged to applicants.

(B) Promotion of applicants retroactively, who would have been promoted during regular enlisted promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(C) Promotion of applicants to grades held immediately before reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(D) Award of basic allowance for subsistence, basic allowance for quarters, family separation allowance, civilian clothing allowance, housing allowance and cost of living allowance to applicants entitled thereto.

(E) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan, the Survivor Benefit Plan and/or the Reserve Components-Survivor Benefit Plan where failure to elect to participate, decline to participate, or to make an appropriate election was through no fault of the service member.

(F) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(G) Award of Selective Reenlistment Bonuses, Proficiency Pay, Enlistment and/or Reenlistment Bonuses.

(H) Change of home of record where upon entry on duty applicants erroneously reported an address other than actual home.

(I) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(J) Award variable incentive pay (VIP).

(K) Award allowance for command sponsorship of dependents.

(L) Authorize reimbursement for shipment of excess baggage, movement of a house trailer, mobile home, and/or storage and shipment of household goods incident to permanent change of station assignment (PCS).

(M) Award of allowance for dependent(s) travel.

(N) Authorize the award of citations and/or decorations.

(O) Award of date of rank (DOR) (commissioned and enlisted).

(P) Change of Active Duty Service Commitment (ADSC).

(Q) Award of flying pay (incentive pay).

(R) Change in oversea tours (accompanied and/or all others).

(S) Authorize permissive temporary duty (TDY).

(T) Award of Air Force specialty code (AFSC).

(U) Change of effective date of retirement.

(V) Change reenlistment eligibility code (RE-Code).

(W) Reinstatement to active reserve status in the Reserve of the Air Force (AFRes and ANGUS), of applicants who were inadvertently or improperly assigned to an inactive reserve status and/or to the retired reserve.

(X) Change grade of enlistment in United States Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(Y) Set aside disciplinary punishment imposed pursuant to Aritcle 15, UCMJ.

(Z) Authorize the recharcterization of less than honorable discharges to an honorable discharge or general under honorable conditions.

(AA) Corrections, deletions, and/or additions to evaluation reports (Officer and Airman) which are excluded under the provisions of AFR 31–11.

(BB) Change date of enlistment in US Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(CC) Delete time lost and all references thereto from the record.

(DD) Award of constructive service credit.

(EE) Change date of separation (DOS).

(FF) Change entries on DD Form 214, Certificate of Release or Discharge from Active Duty.

(GG) Change reason and/or authority for discharge.

(HH) Award of operational flying duty credit.

(II) Deletion of correspondence and/or documents from the records which are derogatory and/or unfavorable to applicants.

(2) The Executive Secretary of the Board or designee, after assuring compliance with the above stated conditions, will announce the final action on applications processed under this subparagraph.

§ 865.19 Minority report.

In the case of a disagreement between members of the Board, a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor. The report will become a part of the proceedings and used in making the final decision.

§ 865.20 Record of proceedings.

When the Board has completed its deliberations, a record of proceedings will be prepared. Such record will indicate whether or not a quorum was present, and the name and vote of each member present. The record of proceedings will include the application for relief; briefs and written arguments; advisory opinions; the findings, conclusions, and recommendations of the Board; and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record will also include a transcript of testimony and any minority reports. The record so prepared will be certified as true and complete by the signature of the panel chairman or designee.

§ 865.21 Action by the Secretary of the Air Force.

All Board recommendations for correction or records, except those finalized by the Board under the authority contained in § 865.18(e) will be forwarded to the Secretary of the Air Force or his designee who will direct such action in each case as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration will be accompanied by a brief statement setting out the reasons for such action and any specific instructions. If the Secretary's decision is to deny relief, notwithstanding the Board's recommendation, such decision will be in writing and will include a brief statement of the ground(s) for denial. All Secretarial decision documents will be furnished to the applicant and counsel.

§ 865.22 Action by the Board Secretariat.

(a) *Returning Case to the Board.* On final action by the Secretary of the Air Force or his designee, the complete record in each case is returned to the Board Secretariat. The Board Secretariat will transmit the Secretary's decision to the Chief of Staff, US Air Force, for appropriate action.

(b) *Communicating Decision to Applicant and Counsel.* On receipt of proceedings after final action, the Board Secretariat will communicate the decision to the applicant or counsel, by furnishing applicant or counsel a copy of the record of proceedings.

(c) *Informing Applicant when Corrective Action has been Completed.* When all necessary corrective action has been completed by HQ, USAF, the applicant will be informed of such action by the HQ USAF office designated by the Chief of Staff, US Air Force.

(d) *Written Notice to Chairman of Board.* Written notice specifying the action taken and the date thereof will be transmitted to the chairman of the Board.

(e) *Filing Records of Decision of the Secretary of the Air Force.* The record of the decision of the Secretary of the Air Force will not be filed in the military records of the applicant where the effect of such action would be to nullify the relief granted, or in those cases in which the application is denied.

(f) *Release of Record of Proceedings to the Public.* After action on the record by the Secretary of the Air Force, his designee, by the Executive Secretary of the Board acting under the authority contained in § 865.18(e), or when the Board denies an application without a hearing, the Board Secretariat will release for public inspection and copying, at a designated reading room within the Washington, DC metropolitan area, a sanitized and indexed copy of the record of proceedings and all decisional documents. To the extent required and to prevent a clearly unwarranted invasion of personal privacy, identifying details concerning the applicant and other persons will be deleted from all documents. An index of record of proceedings, formulated so as to enable those who represent applicants to isolate from all those decisions that are indexed those cases that may be similar to an applicant's case and which indicates that grounds for which the Board and/or the Secretary granted or denied relief, will be published quarterly and will be made available for public inspection and sale at the reading room.

§ 865.23 Authority to settle claims.

(a) *Claims Authorized to be Settled and Paid.* The Department of the Air Force is authorized to pay claims according to 10 U.S.C. 1552, which is quoted in § 865.1.

(b) *Claims Not Authorized to be Paid.* The Department of the Air Force is not authorized to pay any claim heretofore compensated by the Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

§ 865.24. Application for settlement.

(a) *Filing Claims.* Settlement and payment of claims, will be made only upon a claim of the person whose record has been corrected; or his or her legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(b) *To Whom Payments will be Made if Person is Deceased.* In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due will be made to the decendent's spouse, heir, or beneficiaries, in order of precedence as prescribed in Title 10, United States Code, section 1552.

(c) *Determining Status as Proper Parties to Claim.* Upon request, the applicant or applicants will be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

§ 865.25. Settlement provisions.

(a) *Basis for Settlement.* Settlement of claims will be based on the decision of the Secretary of the Air Force. Computations of amounts due will be made by the Comptroller of the Air Force, HQ USAF, or his or her representative, according to applicable law and regulations. In no case will the amount found due exceed the amount which would otherwise have been paid or become due had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government, in compliance with the Debt Collection Act of 1982 or successor statutes.

(b) *Nature and Amount of Various Benefits.* Before or at the time of payment, the person to whom payments are to be made will be advised by the Comptroller of the Air Force, HQ USAF, or representative, as to the nature and amount of the various benefits represented by the total settlement, and will be advised further that acceptance of such settlement will constitute a complete release by the claimants involved of any claim against the United States on account of the correction of records.

§ 865.26. Report of settlement.

In every case where payment is made, the amount of such payment and the name of the payee or payees will be reported to the chairman of the Board.

§ 865.27. Staff assistance.

(a) *Assembling and Transmitting Available Military Records.* At the request of the Board, the appropriate staff office will assemble the original or copies of all available military records pertinent to the corrective action requested. Such records, together with the application and all supporting papers, will be transmitted to the Board with a certification from the staff office designated by the Chief of Staff, US Air Force, that the corrective action requested cannot be granted through adminstrative action by any staff office.

(b) *Facilities of Staff Offices.* The facilities of all staff offices will be made available as required to assist the Board in accomplishing its function. Upon request of the Board, personnel of the Department of the Air Force will be made available for presentation before the Board of matters within their functional areas and which relate to the issues under consideration. The appropriate Department of the Air Force office of primary responsibility (OPR) will also provide the Board with an official evaluation of each application, stating, among other things, its interpretation of the request, its opinion of the applicant's contention(s) and supporting evidence (if any) and a recommendation (to include appropriate rationale) as to whether or not the Board should render a favorable recommendation.

§ 865.28. Paying expenses.

No expense of any nature whatsoever voluntarily incurred by the applicant, his or her counsel, his or her witnesses, or by any other person in his or her behalf, will be paid by the government.

§ 865.29. Publication in the Federal Register.

This part and any amendments will be published in the **Federal Register**.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-21322 Filed 9-5-85; 8:45 am]

BILLING CODE 3910-01-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to the Bahamas and Greece

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to the Bahamas and Greece.

SUMMARY: Pursuant to agreements with the postal administrations of the Bahamas and Greece, the Postal Service intends to begin Express Mail International Service with those countries at postage rates indicated in the tables below. Service is scheduled to begin on October 6, 1985.

EFFECTIVE DATE: October 6, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on August 1, 1985 (50 FR 31199), the Postal Service announced that it was proposing to begin Express Mail International Service to the Bahamas and Greece. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with the Bahamas and Greece on October 6, 1985 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

BAHAMAS—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On demand service [3]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	34.80	2	26.80
3	38.60	3	30.60
4	42.40	4	34.40
5	46.20	5	38.20
6	50.00	6	42.00
7	53.80	7	45.80
8	57.60	8	49.60
9	61.40	9	53.40
10	65.20	10	57.20
11	69.00	11	61.00
12	72.80	12	64.80
13	76.60	13	68.60
14	80.40	14	72.40
15	84.20	15	76.20
16	88.00	16	80.00
17	91.80	17	83.80
18	95.60	18	87.60
19	99.40	19	91.40
20	103.20	20	95.20
21	107.00	21	99.00
22	110.80	22	102.80
23	114.60	23	106.80
24	118.40	24	110.40
25	122.20	25	114.20
26	126.00	26	118.00
27	129.80	27	121.80
28	133.60	28	125.60
29	137.40	29	129.40
30	141.20	30	133.20
31	145.00	31	137.00
32	148.80	32	140.80
33	152.60	33	144.60
34	156.40	34	148.40
35	160.20	35	152.20
36	164.00	36	156.00
37	167.80	37	159.80
38	171.60	38	163.60
39	175.40	39	167.40
40	179.20	40	171.20
41	183.00	41	175.00
42	186.80	42	178.80
43	190.60	43	182.60
44	194.40	44	186.40

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

GREECE—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On Demand service [3]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-21302 Filed 9-5-85; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704; FCC 84-487]

Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions

Correction

In FR Doc. 85-1336 beginning on page 2671 in the issue of Friday, January 18, 1985, make the following correction:

On page 2675, third column, in the first line below the "PART" heading "25.209" should read "25.509".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment of Railroad Lines and Discontinuance of Service; Offers of Financial Assistance; Technical Amendment

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment to final rules.

SUMMARY: At 48 FR 55129, December 9, 1983, the Commission modified regulations at 49 CFR 1152.27 which govern offers of financial assistance under 49 U.S.C. 10905 to reduce the amount of information required to be submitted with the offer of financial assistance. That notice contained an error in paragraph (h)(6), which this technical amendment corrects.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1152

Railroads.

Title 49 of the CFR is amended as follows:

PART 1152—[AMENDED]

1. The individual authority citations following §§ 1152.1, 1152.2, 1152.10, 1152.12, 1152.13, 1152.20, 1152.21, 1152.22, 1152.23, 1152.24, 1152.25, 1152.26, 1152.27, 1152.28, 1152.30, 1152.32, 1152.33, 1152.34, 1152.35, 1152.36, and 1152.50 and following the Appendix to Part 1152 are removed and the authority for Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

§ 1152.27 [Amended]

2. Section 1152.27 is amended by revising the words "of this section" in the second sentence of paragraph (h)(6) to read "below."

James H. Bayne,

Secretary.

[FR Doc. 85-21291 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Removal of Waterfowl Hunting Closure

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of removal of hunting closure.

SUMMARY: This notice announces that the closure on waterfowl hunting in the disputed areas of Illinois, Missouri, and Oklahoma as announced in the September 5, 1985, **Federal Register** has been removed with the exception that in Illinois the closure is only removed on their 9-day September teal season (September 7-15, 1985). This action is necessary to comply with an August 26, 1985, Federal District Court Order (later modified on August 29, 1985).

EFFECTIVE DATE: This notice takes effect on September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Matomic Building, Room 536, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Service published proposed rules in the **Federal Register** (50 FR 6017-6022) describing zones where nontoxic shot should be used during the 1985-86 waterfowl hunting season in order to offset a threat of lead poisoning to bald eagles that might otherwise ingest lead pellets lodged in or ingested by waterfowl. All or portions of 30 counties in 8 States were proposed as nontoxic shot zones.

Appropriated funds for the Department of the Interior for fiscal year 1985 were restricted in their use by the following provision contained in the Department's Appropriation Act:

No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

In response to the above law, each of the 8 States involved in the proposal of February 13, 1985, received a telegram from the Service requesting State approval to implement and enforce the proposed rule.

The States of Iowa, Kansas and South Dakota agreed to the designation of nontoxic shot zones that were published in the **Federal Register** on May 7, 1985 (50 FR 19178-19182). On the same day, the Service published a Notice of Intent (50 FR 19248-19249) not to open the waterfowl season during the 1986-87 hunting season in the proposed zones in the remaining States of California, Illinois, Missouri, Oklahoma and Oregon, unless those States agreed to such nontoxic shot zones for that season.

On June 14, 1985, the National Wildlife Federation sued the Department of the Interior to block use of lead shot for waterfowl hunting during the 1985-86 season in the 22 counties of the 5 States that had not agreed to nontoxic shot zones for this year. On August 26, 1985, the Federal District Court for the Eastern District of California ordered that lead shot may not be allowed for the hunting of migratory birds in the disputed areas of California, Illinois, Missouri, Oklahoma and Oregon, and that this hunting may not be authorized for the 1985-86 season unless and until the affected States authorize, agree to and aid the imposition of nontoxic shot requirements by the Service.

That order was modified on August 29, 1985, to clarify and limit its application only to the hunting of waterfowl as opposed to other species of game birds such as doves.

Pursuant to that order, the Service, on September 5, 1985, published final frameworks for the 1985–86 waterfowl hunting season that did not authorize migratory bird hunting in the disputed areas. In response to these closures, Illinois, Missouri and Oklahoma have now agreed to the imposition of steel shot regulations with the exception that in Illinois it is for the early hunting season only. With these States having agreed to allow the Service to implement and enforce nontoxic shot zones in the disputed areas, the Service has amended 50 CFR 20.108 in the final rules section of this issue of the Federal Register. Establishment of the disputed areas as nontoxic shot zones satisfies the modified court order of August 29, 1985, and notice therefore is hereby given that the closure on waterfowl hunting in the areas of Illinois, Missouri and Oklahoma described in the September 5, 1985, **Federal Register** has been removed with the exception that in Illinois the closure is only removed for their 9-day September teal season (September 7–15, 1985), and that waterfowl hunting with firearms is permitted only if nontoxic shot is used.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

This notice is issued under the authority of the Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703–711), as amended.

Dated: September 4, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85–21390 Filed 9–5–85; 8:45 am]

BILLING CODE 4310–55–M

---

50 CFR Part 20

Migratory Bird Hunting: Zones in Which Nontoxic Shot Will Be Required for Waterfowl Hunting in the 1985–86 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document amends and corrects the final regulations describing zones in which nontoxic shot will be required for waterfowl hunting in the 1985–86 hunting season published on May 7, 1985 (50 FR 19178). The circumstances creating the need for these corrections were: (1) South Dakota used its authority under the Department of the Interior's Appropriations Act to determine the scope and extent of a nontoxic shot program within the State and to change its previously announced nontoxic shot requirements; (2) the August 26, 1985, judgment of the United States District Court for the Eastern District of California in the suit the National Wildlife Federation brought against the Secretary of the Interior for allowing lead shot to be used by waterfowl hunters in certain areas; (3) the need to correct a numbering error in the May 7, 1985, publication. Specifically, this document will: (1) exclude the implementation and enforcement of nontoxic shot requirements in nontoxic shot zones in the State of South Dakota for persons under 16 years of age using 16 gauge, 28 gauge, or .410 gauge shotguns, and persons using muzzle-loading shotguns; (2) require the use of steel shot for migratory waterfowl hunting in 15 counties and portions of seven other counties in five States described in the body of this document that were not originally described in the May 7, 1985, document; (3) correct the numbering of a paragraph contained in the May 7, 1985, **Federal Register** publication for the State of Iowa.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th & C Streets NW., Room 2343, Washington, DC 20240 (202–343–4311).

SUPPLEMENTARY INFORMATION: Since 1976, no nontoxic shot zone could be implemented or enforced by the Fish and Wildlife Service (FWS) in a State without approval of the appropriate State authorities. This restriction on the use of funds by FWS has been contained in the Department of the Interior's Appropriations Act (most recently Pub. L. 98–473, Sec. 305) each year since 1978. South Dakota, in a letter dated August 23, 1985, formally withdrew its prior authorization for the FWS to implement and enforce the nontoxic shot requirement in South Dakota nontoxic shot zones for persons under 16 years of age using 16 gauge, 28 gauge, or .410 gauge shotguns, and persons using muzzle-loading shotguns. As the Appropriation Act's limitation is absolute in its terms and mandatory in its effect, the FWS is obligated to promptly give it effect and has no administrative discretion that might be influenced or facilitated by notice and comment procedures. Moreover, the start of the 1985–86 hunting season in South Dakota is rapidly approaching, thereby further necessitating immediate regulatory action on the part of the FWS in order to implement the August 23rd request of that State.

Regarding an additional nontoxic shot issue on February 13, 1985, the FWS published proposed rules in the **Federal Register** (50 FR 6017–6022) describing zones where nontoxic shot should be used during the 1985–86 waterfowl hunting season in order to offset a threat of lead poisoning to bald eagles that feed on waterfowl and in doing so might otherwise ingest lead pellets lodged in or ingested by waterfowl. All or portions of 30 counties in 8 States were proposed as nontoxic shot zones.

The States of Iowa, Kansas and South Dakota agreed to the designation of nontoxic shot zones that were published in the **Federal Register** on May 7, 1985 (50 FR 19178–19182). On the same day, the FWS published a Notice of Intent (50 FR 19248–19249) not to open the waterfowl season during the 1986–87 hunting season in the proposed zones in the remaining States of California, Illinois, Missouri, Oklahoma and Oregon, unless those States agreed to such nontoxic shot zones for that season.

On June 14, 1985, the National Wildlife Federation (NWF) sued the Department of the Interior to block use of lead shot for waterfowl hunting during the 1985–86 season in the 22 counties of the 5 States that had not agreed to nontoxic shot zones for this year. On August 26, 1985, the Federal District Court for the Eastern District of California ruled in favor of NWF and ordered that lead shot may not be allowed for the hunting of migratory birds in the disputed areas of California, Illinois, Missouri, Oklahoma and Oregon, and that this hunting may not be authorized for the 1985–86 season unless and until the affected States authorized, agreed to and aided in the imposition of nontoxic shot requirements by the FWS. That order was modified on August 29, 1985, to apply only to the hunting of waterfowl as opposed to other species of game birds such as doves.

Pursuant to that order, the FWS, on September 5, 1985, published, in the **Federal Register** final frameworks for the 1985–86 waterfowl hunting season that did not authorize waterfowl hunting in the disputed areas. In response to the court's order the affected States have now agreed to the imposition and enforcement of steel shot regulations in the disputed areas.

With these States having agreed to allow the FWS to implement and enforce nontoxic shot zones in the disputed areas, the FWS now formally amends 50 CFR § 20.108 to add these areas to the list of nontoxic shot zones. Therefore, the closure on waterfowl

hunting in the areas described in the September 5, 1985, **Federal Register** is now being lifted with the exception that in Illinois the closure has only been removed for their 9-day September teal season (September 7–15, 1985) since Illinois approval for nontoxic shot was limited to that season.

Given the imminence of the migratory bird hunting season and in light of the other factors outlined above, the FWS has determined that notice and comment on these regulatory changes are impracticable, unnecessary, and contrary to the public interest within the meaning of 5 U.S.C. 553(B). For the same reasons, the FWS has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) to give immediate effect to this rulemaking upon publication.

As a notice of proposed rulemaking has not been issued for these amendments, it is not a "Rule" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2). These amendments come within the exemptions of Executive Order (E.O.) 12291 for rules issued in response to emergency situations and for rules the consideration of which would conflict with deadlines imposed by statute or judicial order. South Dakota's invocation of the authority given to it by Congress in Interior's Appropriations Act has been granted immediate effect. Likewise, the ruling of the United States District Court for the Eastern District of California in favor of the plaintiff has been granted immediate effect. The ruling (Civil Action No. S–85–0837 EJG), has created an emergency situation conflicting with the normal rulemaking process.

Accordingly, the FWS, in complying with the above changes in its steel shot zone requirements, certifies that this rulemaking is a response to an emergency situation and that consideration of this rulemaking under E.O. 12291 would result in conflicts with deadlines imposed by the above-mentioned amendment and judicial order, rendering it impractical to comply with that amendment and order. This rule contains no new information-gathering requirement subject to review under the Paperwork Reduction Act, 44 U.S.C. 3501.

This rule also makes a technical correction to certain regulations for 50 CFR Part 20 which were published in the **Federal Register** on May 7, 1985, at 50 FR 19181.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112, (16 U.S.C. 712).

§ 20.108 [Amended]

2. Section 20.108 is amended by revising the following zone description for the State of South Dakota in its entirety as follows:

South Dakota

Those portions of Potter and Sully Counties lying west of U.S. 83; that portion of Hughes County lying west of U.S. 83 and that portion of Hughes County lying south of U.S. 14; that portion of Hyde County lying south of U.S. 14; and west of Hyde County F.A.S. 6547 (commonly called the Holabird Grade) and that portion of Hyde County lying south of U.S. 34 and west of S.D. 47; and that portion of Buffalo County lying west of S.D. 47. That portion of Lyman and Stanley Counties lying east and north of the Lower Brule-Antelope Creek Road from S.D. 47 to Fort Pierre. That portion of Stanley County lying north of S.D. 34 for approximately 5 miles west of Fort Pierre and east of Stanley County F.A.S. 6193 and S.D. 1806 to Minneconjou Bay. All waters, islands and bars of the Missouri River and its embayments from the north Potter County line downstream to Big Bend Dam, including the Cheyenne River embayment downstream from Minneconjou Bay. On, or within 100 yards of the Grupe Slough State Refuge in Marshall County. On Lake Andes or within 100 yards of the water's edge in Charles Mix County. On the Missouri River or within the water's edge from Fort Randall Dam to Choteau Creek, including all islands and bars.

In the above described zones, persons under 16 years of age using 16 gauge, 28 gauge or .410 gauge shotguns, and persons using muzzle-loading shotguns are exempted from the nontoxic shot requirements.

3. By adding to § 20.108, alphabetically by State under the Pacific Flyway, the following nontoxic shot zones for the State of California:

California

That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the northwest corner of Indian Tom Lake; thence south and east of the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the northwest side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding refuge lands on Sheepy Ridge) in the Tule Lake portion of the Klamath Basin.

4. Section 20.108 is further amended by adding the following zone descriptions for the State of Illinois:

Illinois

* * * * *

Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union, and Williamson Counties.

5. Section 20.108 is further amended by adding the following zone descriptions for the State of Missouri:

Missouri

* * * * *

Holt, St. Charles, Pike, and Lincoln Counties, and those portions of Chariton, Livingston, Carroll, Lafayette, Saline, and Linn Counties contained within the Swan Lake Goose Management Area.

6. Section 20.108 is further amended by adding the following zone description for the State of Oklahoma:

Oklahoma

* * * * *

Sequoyah County.

7. Section 20.108 is further amended by adding the following zone descriptions for the State of Oregon:

Oregon

* * * * *

That portion of Klamath County lying west and south of a line commencing at the Oregon-California State line and proceeding along State Highways 39 and 39–140, U.S. Highway 97, and State Highway 62 to the Klamath County-Jackson County line.

8. By correcting the entry for Iowa in FR Doc. 85–10622 appearing on page 19178 in the May 7, 1985, issue of the **Federal Register:**

On page 19182 at the top of column three, in § 20.108 under the entry for Iowa, the paragraph numbered 3 is corrected to be paragraph number 4.

Dated: September 4, 1985.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–21393 Filed 9–5–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 621

[Docket No. 31031–214]

Fishery Conservation and Management Act of 1976; Civil Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document amends § 621.2—Enforcement policy by replacing a reference in paragraph (a)(1) pertaining to the issuance of warnings, which no longer exist. NOAA and the Coast Guard established a standard policy and procedure for issuing a warning to any person who commits a technical or minor violation of one of the laws that NOAA and the Coast Guard enforce. The reference now is to the governing regulations administered by NOAA and the Coast Guard.

EFFECTIVE DATE: February 6, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haynes (Fishery Management Specialist), 202–634–7432.

List of Subjects in 50 CFR Part 621

Fisheries, Fishing, Fishing vessels, Penalties.

SUPPLEMENTARY INFORMATION:

Dated: September 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 621—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 621 is amended as follows:

1. The authority for Part 621 continues to read as follows:

Authority: 16 U.S.C. 1801–1822.

2. Section 621.2 is amended by revising paragraph (a)(1) to read as follows:

§ 621.2 Enforcement policy.

(a) * * *

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR Part 904 Subpart E);

* * * * *

[FR Doc. 85–21255 Filed 9–5–85; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 173
Friday, September 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. F&V AO-198 A-13]

Raisins Produced From Grapes Grown in California; Hearing on Proposed Amendment of the Marketing Agreement and Order, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment and text of proposal.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed emergency amendment of the marketing agreement and Order No. 989 (7 CFR Part 989) covering raisins produced from grapes grown in California. The principle issues to be considered would: (1) Require handlers to pay receiving, storing, fumigating, handling, and inspection costs, in addition to harvest costs, when redeeming diversion certificates under the raisin diversion program (RDP); and (2) add authority which would allow the Committee to offer diversion program participants, agreeing to remove raisin grape vines, tonnage in addition to that diverted. The first proposal would bring handlers' costs for acquisition of reserve tonnage raisins purchased under the RDP in line with similar costs handlers pay for reserve raisins purchased for free and export use. The proposal is necessary to maintain consistency in reserve tonnage sales under the marketing order. The second proposal would provide an incentive for more producers to use vine removal which is the most direct and most effective way of accomplishing the diversion program objectives.

DATE: The hearing is scheduled for Tuesday, September 10, 1985, 9:30 a.m.

ADDRESS: The hearing will be held in the Forum Room, Hacienda Resort, 2550 West Clinton, Fresno, California 93705.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, UDSA, Washington, D.C. 20250. Telephone: (202) 447-5053.

SUPPLEMENTARY INFORMATION: The amendment was proposed by the Raisin Administrative Committee established under the marketing agreement and order program which covers raisins produced from grapes grown in California. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this proceeding.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment of the marketing agreement and order; (2) determining whether there is a need for amendment to the marketing agreement and order; and (3) determining whether the proposed amendment or an appropriate modification of it will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Marketing Agreement and Order, Grapes, Raisins, and California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Proposed by the Raisin Administrative Committee

Proposal No. 1

Section 989.56(c) is revised to read as follows:

§ 989.56 Raisin diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, any producer may divert grapes of his/her own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last crop year eligible for such diversion, or such other weight as determined by the Committee.

Proposal No. 2

Section 989.56(d) is revised to read as follows:

* * * * *

(d) *Redemption of diversion certificates.* Handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established, plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the diversion certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled.

* * * * *

Proposed by the Department of Agriculture

Proposal No. 3

The Secretary of Agriculture shall be authorized to make such changes as may be necessary to make the entire marketing agreement and order conform with any amendment thereto that may result from this hearing.

Dated: September 4, 1985.
James C. Handley,
Administrator.
[FR Doc. 85-21412 Filed 9-5-85; 8:45 am]
BILLING CODE 3410-62-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-17; Notice No. SC-85-2-NM]

Special Conditions; Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 900 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Avions Marcel Dassault-Breguet Aviation Model 1125 Mystere-Falcon 900 series airplane. The airplane will have novel or unusual design features associated with an unusually high operating altitude (51,000 feet) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before October 21, 1985.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-17. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Transport Standards Staff, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2134.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments recieved. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-17." The postcard will be date/time stamped and returned to the commenter.

Background

On January 12, 1982, Avions Marcel Dassault-Breguet Aviation (AMD-BA), 33 rue du Professeur Victor Pauchet, 92420 Vaucresson, France, filed for an amended type certificate in the transport category for the airplane designated as the Avions Marcel Dassault-Breguet Aviation Mystere-Falcon 900. The Mystere-Falcon 900 is a derivative version of the AMD-BA Mystere-Falcon 50 for which FAA Type Certificate No. A46EU was issued. Compared to the Mystere-Falcon 50, the Mystere-Falcon 900 has an increased length and diameter, three Garret model TFE 731-5 engines, increased fuel capacity, increased weight, systems changes, and an increase in operating altitude from 45,000 to 51,000 feet.

The oxygen equipment protective capability is limited to 40,000 feet (in this case the passenger equipment). If failure occurs leading to cabin altitudes in excess of 40,000 feet, the event can be catastrophic. To reduce the probability of this event, special conditions are required in addition to the existing regulations.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system). This has been the case for the early Learjet, Lockheed Jetstar, Aero Commander, Cessna 650 (46 FR 35929; July 13, 1981); Mystere-Falcon 200 (49 FR 7219; February 28, 1984); and the Israel Aircraft Industries Model 1125 Astra (49 FR 9906; March 16, 1984). These same special conditions are proposed herein except as follows:

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitude in lieu of the ½-bay crack requirement used in previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25-54.

The cabin altitude after failure may not exceed the cabin altitude/time curve limits in Figure 3 and 4. Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet. However, for rapid decompression above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continous flow system. To prevent permanent physiological damage, the cabin altitude is not to exceed 25,000 feet for more than 2 minutes. The maximum cabin altitude has been set at 40,000 feet to agree with past FAA certification. In addition, at these altitudes the other aspect of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases). The limitation proposed herein differ from earlier special conditions and are reflected in the notes proposed on Figures 3 and 4.

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. Proposed Special Condition E.2., therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

The type certification basis for the Mystere-Falcon 900 airplane is as follows: Section 21.29 of Part 21 of the FAR; Part 25 of the FAR effective February 1, 1965, including Amendments 25–1 through 25–34, and certain portions of Amendments 25–35 through 25–56 with which AMD–BA has elected to show compliance; Part 36 of the FAR, including Amendments 36–1 through current amendment; and Special Federal Aviation Regulation 27, dated February 1, 1974, including Amendments 27–1 through 27–5. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are currently issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for the Mystere-Falcon 900 series airplane:

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended. (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449; January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29.

A. Pressure Vessel Integrity

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph D of this Special Condition (Pressurization) must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the following apply:

a. The pressure vessel structure, including doors and windows, must comply with § 25.365(d) of the FAR using a factor of 1.67 in lieu of the 1.33 factor prescribed therein.

b. In addition to the requirements of § 25.365, the fuselage pressure vessel should be capable of withstanding maximum regulated pressure combined with 1 g flight loads with a frame or stringer failed and two adjacent panels cracked, without total failure of the fuselage or floor collapse.

B. Ventilation

In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilation air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

C. Air Conditioning

In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After improbable failure, the cabin temperature-time history may not exceed the values shown in figure 2.

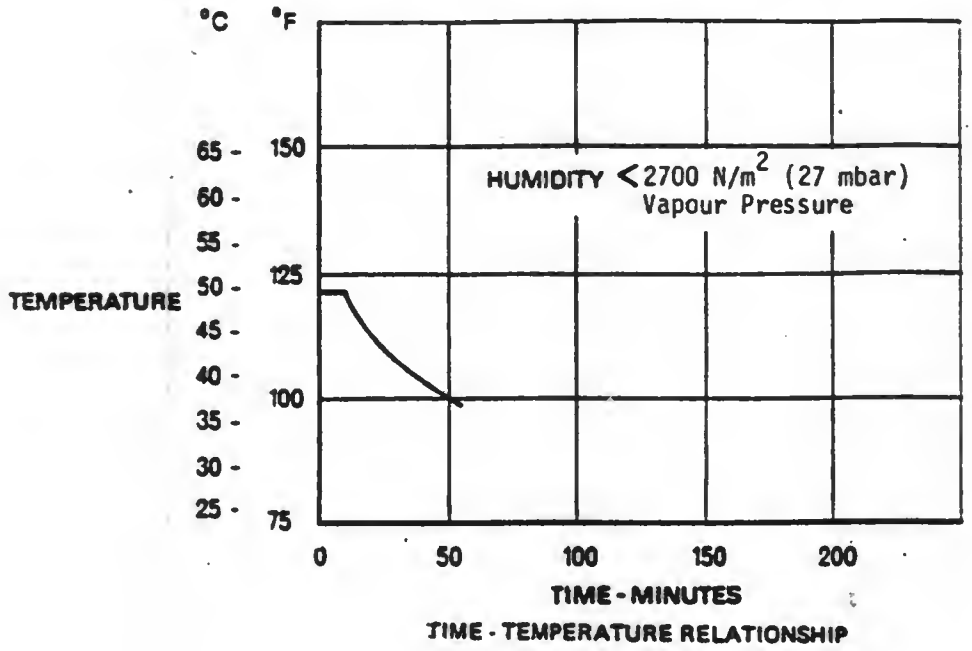
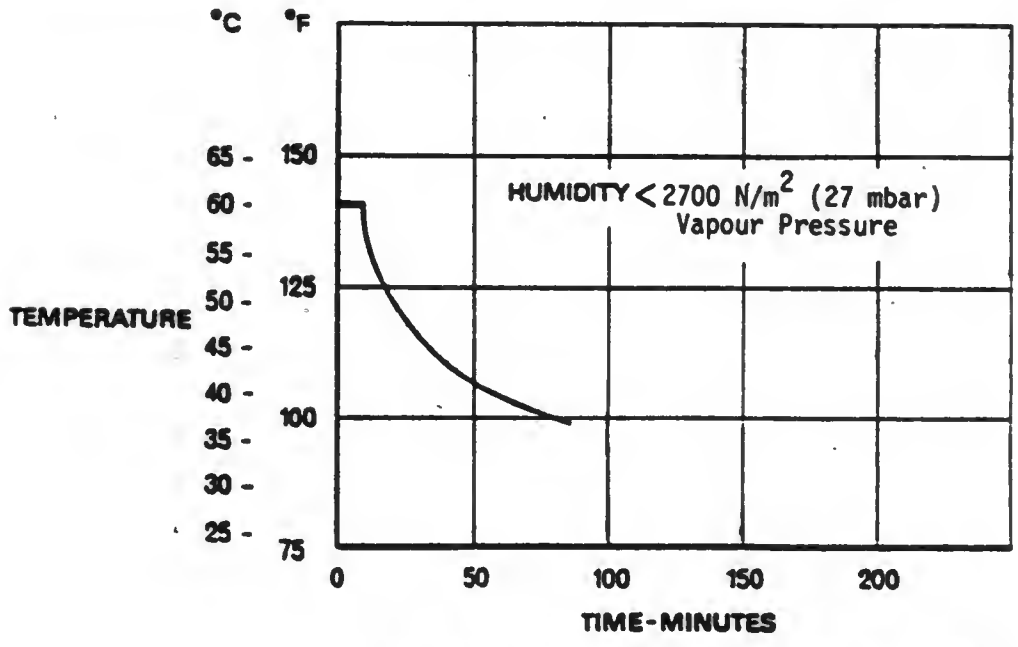


FIGURE 1



MAXIMUM TIME-TEMPERATURE RELATIONSHIP

FIGURE 2

D. Pressurization

In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable double failure in the pressurization system (§ 25.1309, Amendment 41, may be applied).

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin stringer and skin-frame combinations must be considered.

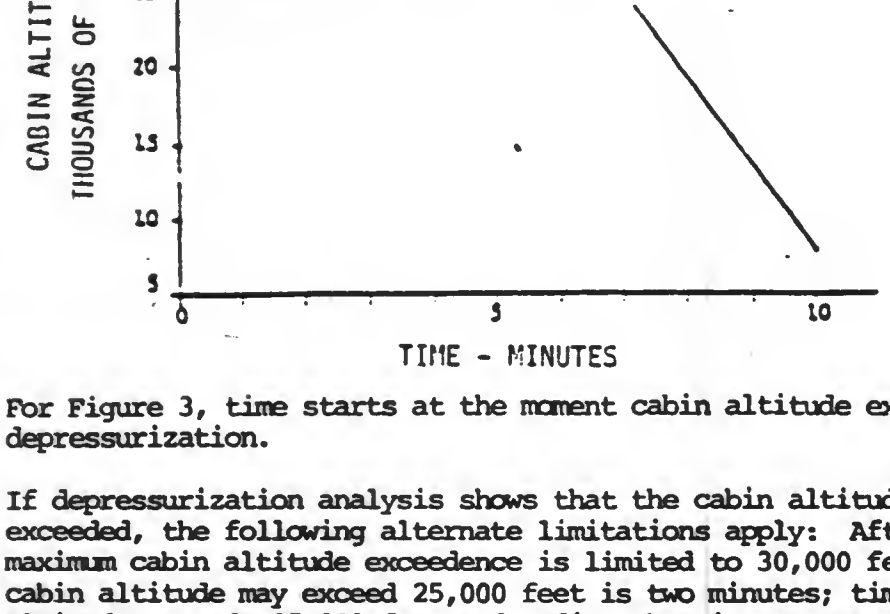
b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs D1 and D2 of this pressurization special condition, it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

BILLING CODE 4910-13-M

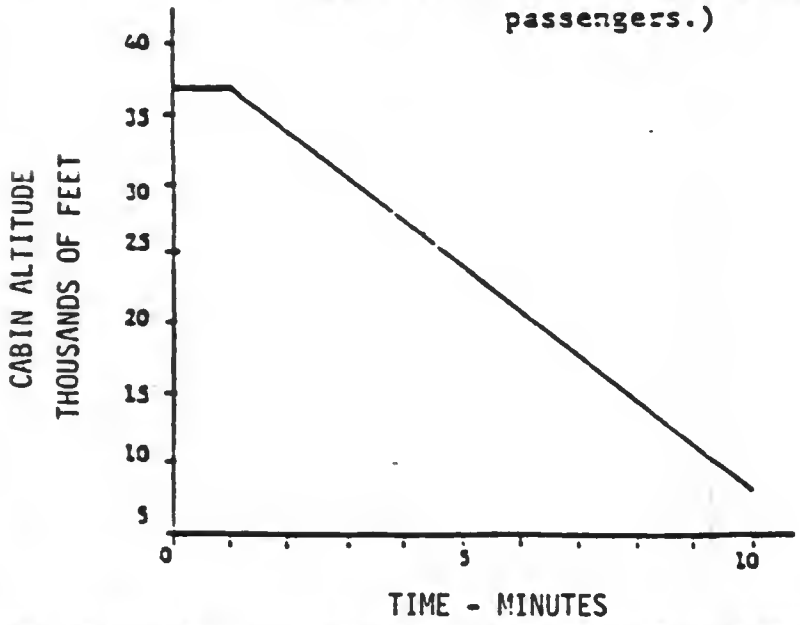
FIGURE 3
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)



For Figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

FIGURE 4
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)



For Figure 4, time starts at the moment cabin pressure exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

E. Oxygen Equipment and Supply

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for the pilots. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

Issued in Seattle, Washington, on August 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21249 Filed 9-5-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-CE-12-AD]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B and F260C (Including SF60) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws NPRM, Docket No. 85-CE-12-AD, published in the **Federal Register** on April 8, 1985 (50 FR 13815) which proposed inspelction and modification of the tip tank fuel tubes on certain models of SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes. The NPRM was prompted by a report from the manufacturer indicating movement of unwelded tip tank fuel tubes due to vibration which could result in obstruction of fuel from the tip tanks, engine fuel starvation and engine stoppage. The NPRM is being withdrawn because subsequent to its issuance the FAA has reevaluated the matter and determined that the situation described herein does not result in an unsafe condition.

ADDRESSES: SIAI-Marchetti Mandatory Service Bulletin (S/B) Number 206B39, dated June 8, 1984, which was referenced in the NPRM, may be obtained from SIAI-Marchetti S.p.A., V-12070 via Idipendenza, 2,2108 Sesto Calenda, Italy; Telephone 0331 924842/923589. A copy of this Service Bulletin is contained in the Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. J. Dow, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and modification, as necessary, of the tip tanks fuel tubes on certain SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes was published in the **Federal Register** on April 8, 1985 (50 FR 13815). Based on a request from a member of the public, an extension of the comment period to July 19, 1985, was published in the **Federal Register** on June 25, 1985 (50 FR 26218). Interested persons have been afforded an opportunity to comment on the proposal. One comment was received.

The commenter stated that the likelihood of the tip tank fuel line becoming unrestrained is remote. In the event the line does become unrestrained, the result would be a small increase in unusable fuel in that one tip tank and would result in slightly earlier fuel exhaustion in that tank. The commenter noted that the use of tip tanks was limited to level flight and use was prohibited during takeoff and landing.

In consideration of the commenter's arguments, the FAA is in agreement. Considering that the affected components are in auxiliary tanks that are depleted prior to the main tanks, are not used for takeoff and landing but are limited to use only in level flight, and that the failure mode gives the same indications expected when depleting the tip tank fuel in the normal manner, the FAA concludes that an unsafe condition is not present. Accordingly, the NPRM is being withdrawn.

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Aircraft, Safety.

Withdrawal of Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend §39.13 of the FAR as Follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub.) L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. NPRM No. 85-CE-12-AD, published in the **Federal Register** on April 8, 1985 (50 FR 13815) is withdrawn.

Issued in Kansas City, Missouri, On August 28, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-21248 Filed 9-5-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

21 CFR Part 808

[Docket No. 77P-0272]

Exemption From Preemption of State and Local Hearing Aid Requirements; West Virginia's Application for Exemption

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements. This action responds to an application from the State of West Virginia. The Federal Food, Drug, and Cosmetic Act preempts State and local medical device requirements that are different from, or in addition to, Federal requirements. The act also provides that the agency may, by regulation, exempt State and local device requirements from preemption. Elsewhere in this issue of the **Federal Register**, FDA is announcing an opportunity for interested persons to request an oral hearing on the proposed regulation.

DATES: Comments by November 5, 1985. FDA proposes that any final rule based on this proposal be effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4674.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling for hearing aid devices (21 CFR 801.420) and conditions for sale of hearing aids (21 CFR 801.421).

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rule that, after May 28, 1976, a State or political subdivision of a state may not establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act. Thus, any State or local hearing aid requirement that is different from, or in addition to, the requirements with respect to professional and patient labeling and conditions for sale of hearing aids established by FDA regulations is preempted under section 521(a) of the act.

Section 521(b) of the act provides that FDA may, upon application by a State or political subdivision, and by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local medical device requirement from preemption under such conditions as FDA may prescribe if the requirement is: (1) More stringent than an FDA requirement applicable to the device or (2) required by compelling local conditions, and compliance with it would not cause the device to be in violation of any requirement applicable under the act.

In the **Federal Register** of May 2, 1978 (43 FR 18661), FDA published final regulations establishing procedures for considering applications for exemption from preemption (21 CFR Part 808). In § 808.1(d) of the regulations, FDA provided examples of State or local requirements that are not regarded as preempted by section 521 of the act. In accordance with the regulations, the following requirements relating specifically to hearing aids are not preempted: (1) Requirements with respect to the licensing of hearing aid dispensers, audiologists, and physicians; (2) requirements that are substantially identical to FDA's requirements governing the labeling and conditions for sale of hearing aids; and (3) requirements established by Federal, State, or local agencies governing the expenditure of public funds for purchasing hearing aids and hearing health care services for the hearing impaired.

On March 19, 1985, the State of West Virginia applied for exemption from preemption for section 30–26–15, subsections (a) and (b) of article 26 of the West Virginia Code:

Article 26. Section 30–26–15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain his signature, his business address and the number of his license; the specifications as to the make and model of the hearing aid furnished; the full terms of the sale, including the date upon which the hearing aid was supplied to the person; the address of the West Virginia board of hearing-aid dealers; and the following statement: "Any person supplied with a hearing aid by a hearing-aid dealer licensed in this State has the right to return the hearing aid to the dealer within thirty days after receipt and rescind the purchase agreement except for reasonable fitting and examination charges if the hearing aid does not function properly, the hearing aid cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid." If a hearing aid which has been previously sold at retail is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe. A copy of such receipt shall be retained in the records of the licensee for a period of seven years following the issuance of such receipt.

(b) Each person supplied with a hearing aid by a hearing-aid dealer licensed pursuant to the provisions of this article shall have the right to return the hearing aid to the dealer within thirty calendar days of receipt and rescind the purchase agreement if the hearing aid does not function properly, cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid. If a hearing-aid dealer, pursuant to being notified by a person to whom he has supplied a hearing aid that the hearing aid does not function properly, does not satisfactorily correct the deficiency in the person's hearing or that the person is otherwise dissatisfied with the hearing aid, makes an adjustment to the hearing aid or advises the person to continue use of the hearing aid for the purpose of becoming more accustomed thereto or any other reason, the right of the person to whom the hearing aid was supplied shall be extended for thirty calendar days following the date upon which such adjustment was made or advisement was given.

Section 30–26–15, subsection (a) of the West Virginia Code, requires the hearing aid dispenser to deliver to each person supplied with a hearing aid a receipt which shall state, among other things, whether the hearing aid is used or reconditioned. This requirement is more stringent than the Federal requirement (see § 801.420(c)(5)). FDA believes that West Virginia's more stringent requirement will not impose a significant burden on the hearing aid dispenser. In addition, although this information is also required to be included on the container in which the hearing aid is packaged and on a tag that is physically attached to the hearing aid, FDA believes that inclusion of the information in all three places will increase the likelihood that it is brought to the attention of the consumer. Therefore, FDA is proposing to exempt this portion of subsection (a) from preemption. As a condition to exemption, the agency is requiring that West Virginia apply the FDA definition of "used hearing aid" (21 CFR 801.420(a)(6)) to ensure uniformity.

Section 30–26–15, section (b) of West Virginia's Code, gives each person supplied with a hearing aid the right to return the hearing aid to the dealer within 30 calendar days of receipt or, if applicable, within 30 days after the date the hearing aid has been adjusted. FDA has determined that the provisions of subsection (b) are not provisions that relate to the safety or effectiveness of hearing aids and, therefore, are not preempted by section 521 of the act. Consequently, a request for exemption from preemption is not applicable. FDA notes that it granted the State of New York an exemption from Federal preemption for a provision of its General Business law for a 30-day return privilege. This exemption was granted, however, only because a New York court had declared the section to be preempted by FDA regulations.

Section 808.25(c) of FDA's regulations provides that, when the agency issues in the **Federal Register** a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed regulation. Elsewhere in this issue of the **Federal Register**, FDA is issuing such a notice.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an

environmental assessment nor an environmental impact statement is required.

Executive Order 12291

FDA has carefully reviewed the proposed rule under Executive Order 12291 and concludes that it does not meet any of the criteria of a major rule. Therefore, a regulatory impact analysis is not required. The proposal merely applies Part 808 of the regulations to an application from the Government of West Virginia. The proposal does not impose any new Federal requirements on any person. Similarly, no new requirements are established at the State level because the proposal allows an existing regulation to remain in effect.

Regulatory Flexibility Act

FDA certifies that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it does not impose any new requirements on any person. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, is not required.

Interested persons may, on or before November 5, 1985, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Exemption of specific State requirements, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR 808 is revised to read as follows:

Authority: Secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371); 21 CFR 5.10.

2. In § 808.98 by revising paragraph (a), to read as follows:

§ 808.98 West Virginia

(a) The following West Virginia medical device requirements are enforceable notwithstanding section 521(a) of the act because the Food and Drug Administration has exempted them from preemption: West Virginia Code, section 30–26–14 (b) and (c) and section 30–26–15(a).

* * * * *

Dated: August 15, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affoirs.

[FR Doc. 85–21250 Filed 9–5–85; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Part 808

[Docket No. 77P–0272]

Medical Devices; Opportunity for Oral Hearing on Proposed Action on West Virginia's Application for Exemption From Preemption for Hearing Aid Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of opportunity for oral hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for interested persons to request an oral hearing on a proposed rule that would grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements. The proposed rule is published elsewhere in this issue of the **Federal Register.**

DATE: Requests for an oral hearing by October 7, 1985.

ADDRESS: Written requests to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Section 808.25 (21 CFR 808.25) of FDA's regulations provides procedures for processing applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k). Section 808.25(c) provides that, when the agency issues in the **Federal Register** a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed regulation.

Elsewhere in this issue of the **Federal Register,** FDA is issuing a proposed regulation responding to an application from the State of West Virginia for exemption from preemption for section 30–26–15, subsections (a) and (b) of article 26 of the West Virginia Code. Therefore, in accordance with § 808.25(c), FDA is announcing an opportunity for interested persons to request an oral hearing on its proposal to grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements.

FDA advises that, under § 808.25(d), any request for a hearing is required to be submitted to the Dockets Management Branch (address above) and to include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and on the proposed regulation. Further, to ensure expeditious review of requests for an oral hearing and final action on the application for exemption and on the proposed rule, FDA has limited the period for requesting an oral hearing to the first 30 days of the comment period on the proposed regulation.

Under § 808.25(e), if a timely request for a hearing is made, FDA will review the request and will determine whether a hearing should be granted. If FDA determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a future issue of the **Federal Register.** The procedures that will govern any such oral hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under Part 15 of FDA's administrative practices and procedures regulations (21 CFR Part 15).

Interested persons may, on or before October 7, 1985, submit to the Dockets Management Branch (address above) written requests for an oral hearing on this matter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Reqeusts are to be identified with the docket number found in brackets in the heading of this document. Received requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360 (k)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 15, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21251 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-01-M

PANAMA CANAL COMMISSION

35 CFR Part 133

Tolls for Vessels in Ballast

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission is proposing to revise its regulation in Title 35, Code of Federal Regulations, § 133.34 which pertains to tolls for vessels in ballast. This amendment will conform the present regulations to the rules for measurement of vessels for the Panama Canal pursuant to § 135.390 of 35 Code of Federal Regulations.

DATE: Written comments should be submitted on or before October 7, 1985.

ADDRESSES: Send comments to: Secretary, Panama Canal Commission, 2000 "L" Street, N.W., Suite 550, Washington D.C. 20036 or Panama Canal Commission, Office of General Counsel, APO Miami, FL 34011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone (202) 634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: The amendment of § 133.34 is necessary to conform to the "Rules of Measurement of Vessels" for the Panama Canal, 35 CFR Part 135, 41 FR 13583 of March 31, 1976. Prior to 1976, in order for a vessel to secure the reduced rate of toll for vessels in ballast without passengers or cargo, the amount of fuel a vessel could carry for its own consumption was 125 percent of the volume of its engine room as measured.

The 1976 amendments to Rules for Measurement of Vessels made it necessary to determine the actual volume of tanks or fixed compartments for the carriage of fuel which have been certified for the vessel's own use, as provided in § 135.390, "Spaces available for the carriage of fuel".

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of Sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 133

Tolls, Vessels.

Accordingly, it is proposed to amend 35 CFR Part 133 as follows:

PART 133—[AMENDED]

1. The authority citation for Part 133 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds either—

(a) 125 percent of the volume of its engine room as measured and as shown on its Panama Canal tonnage certificate; or

(b) the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks of fixed compartments, including settling tanks, used for the storage or lubricating oil or fuel, which spaced cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

Dated: August 8, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-21153 Filed 9-5-85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 430

[OW-FRL-2892-5]

Pulp, Paper, and Paperboard Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The EPA proposed effluent limitations guidelines on March 12, 1980, to limit the discharge of BOD5 from acetate grade dissolving sulfite pulp mills in the pulp, paper, and paperboard industry (45 FR 15952). When final, these limitations will replace those portions of the effluent limitations guidelines promulgated in January 1977 which were remanded to the Agency by court order. EPA is today requesting comments on additional data and analyses that may be used in the final regulation for acetate grade pulp production in the dissolving sulfite pulp subcategory of the pulp, paper, and paperboard industry.

DATE: Comments must be submitted on or before October 7, 1985.

ADDRESSES: Comments should be submitted in triplicate to Wendy D. Smith, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The supplementary information and analyses will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear), Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy D. Smith at 202-382-7184 for information regarding the technical data.

SUPPLEMENTARY INFORMATION:

I. Summary of Prior Rulemaking.
II. Major Issues Raised in Comments on March 12, 1980 Proposal.
III. Preliminary Data Analysis.
IV. Solicitation of Comments.

I. Summary of Prior Rulemaking

On March 12, 1980, EPA proposed regulations to control the discharge of BOD5 from acetate grade dissolving sulfite pulp mills in the pulp, paper, and paperboard industry (45 FR 15952). The comment period for the proposed regulation closed on May 12, 1980.

Comments were submitted by one company which had three facilities producing dissolving sulfite acetate grade pulp.

In assessing these comments, the Agency determined that new issues were raised that needed to be addressed. Because insufficient information was submitted with the comments to evaluate these issues, EPA requested additional information from two manufacturers of dissolving sulfite pulp on January 27, 1981. EPA received complete responses in April 1981.

The purpose of this notice is to make available for comment these additional data and the Agency's further analyses as they relate to major issues in the rulemaking. The Agency will consider comments submitted on this notice in promulgating the BOD*5* effluent limitations for acetate grade production in the dissolving sulfite pulp subcategory.

II. Major Issues Raised in Comments on March 12, 1980, Proposal

The Agency has assessed the comments received before and after the regulations were proposed on March 12, 1980 and has analyzed all additional data received. Listed below are those issues which are of greatest concern to the commenter.

A. Incorrect Data Used

The commenter stated that EPA determined the BOD*5* secondary waste load (SWL) for acetate grade pulp production in the dissolving sulfite pulp subcategory using data from a mill that does not produce acetate grade pulp. The commenter presented information supporting this claim.

B. Degree of Spent Sulfite Liquor Recovery

The commenter claimed that, in determining the proposed BOD*5* effluent limitations, EPA erroneously used BOD*5* secondary waste loads corresponding to a 95 percent spent sulfite liquor (SSL) recovery. The commenter claimed that this degree of SSL recovery is not possible and that mills producing acetate grade pulp generally achieve SSL recovery of approximately 90 percent.

C. Flow

One commenter claimed that the BPT flow basis of 66 kgal/ton is too low for acetate grade pulp production. The commenter stated that flows are greater for acetate grade pulp production than for production of other pulp grades because the ratio of the quantity of product produced compared to the amount of raw material processed (i.e., yield) is lower for acetate grade pulp production than for other grades of dissolving sulfite pulp production. The commenter stated that a more appropriate flow would be 84.5 kgal/ton. based on the flow rate of one producer of acetate grade dissolving sulfite pulp.

D. Proposed Limitations Are Too Stringent

One commenter stated that any additional cost of wastewater treatment cannot be borne by already marginal operations and proposed that effluent limitations be established at one of two levels: (1) At a long-term average level of 39.3 lb/ton based on the flow from a representative mill and a BOD*5* secondary waste load corresponding to 90 percent SSL recovery or (2) at the current long-term average discharge of 70 lb/ton from one representative mill.

III. Preliminary Data Analysis

A. Incorrect Data used

EPA has determined that the pulp produced at one mill does not meet the difinition of acetate grade pulp contained in the *Development Document for Effluent Limitations Guidelines for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink and Nanintegrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category* (U.S. EPA, December, 1976), the "Final BPT Development Document." Therefore, EPA agrees that it is not appropriate to use data from this mill in the development of BPT BOD*5* effluent limitations for acetate grade pulp production in the dissolving sulfite pulp subcategory.

B. Degree of Spent Sulfite Liquor Recovery

EPA found that, at present, 95 percent recovery of SSL has not been attained at mills where acetate grade pulps are produced. Secondary waste laod BOD*5* can be determined for three mills where acetate grades have been produced. However, it is inappropriate to base the acetate grade BOD*5* SWL on data from two of the mills. At one mill, both papergrade and dissolving grade sulfite pulps were produced simultaneously with certain process streams being common to both operations. Without extensive sampling, it would not be possible to allocate that portion of the overall BOD*5* loading that is attributable to dissolving sulfite pulp production. This mill does not currently produce acetate grade dissolving sulfite pulp; therefore, determination of its acetate grade BOD*5* RWL is impossible.

At the second mill, extensive recycling and other internal controls are employed that are more extensive than contemplated by EPA when BPT effluent limitations were first issued in 1977. EPA believes that reliance on SWL BOD*5* data from this mill is, therefore, inappropriate.

Available data indicate that the average recovery of SSL at the third mill is 92.1 percent. EPA has recalculated the effluent limitations based on the SWL BOD*5* corresponding to this third mill. EPA has also adjusted the SWL data for this mill to correspond to a SSL recovery of 95 percent. EPA has assessed the impact of basing BPT BOD*5* effluent limitations on BOD*5* secondary waste loads corresponding to two SSL recovery levels as discussed later in this notice.

C. Flow

Limited flow data for dissolving sulfite pulp production were available by grade at the time of development of BPT effluent limitations in 1976. Available data indicated that flows ranged from about 59 to 66 kgal/ton for the various grades of dissolving sulfite pulp produced. BPT effluent limitations for all grades were based on the highest average flow reported in the dissolving sulfite pulp subcategory. This flow was reported for a mill where cellophane grade pulp was produced. EPA agrees with the commenter that, in theory, unit flow (kgal/ton) at mills where acetate grade pulps are produced would increase as pulp yield decreases. The expected order from lowest to highest flow would be (1) papergrade, (2) nitration, (3) viscose, (4) cellophane, and (5) acetate.

EPA has assessed the impact of basing BPT BOD*5* effluent limitations on three unit flows: (1) the original BPT flow basis of 66 kgal/ton, (2) the original BPT flow basis adjusted upward as the ratio of acetate yield to cellophane yield, or 72.4 kgal/ton, and (3) the flow recommended by the commenter, 84.5 kgal/ton.

D. Proposed Limitations Are Too Stringent

EPA has identified three possible flow bases for BPT and three possible BOD*5* secondary waste load scenarios for the calculation of the BOD*5* limitations for acetate grade dissolving sulfite pulp production. From the matrix of nine possible options, EPA chose three options for which final effluent limitations and costs would be developed. The Agency developed long-term average BOD*5* final effluent concentrations for the three options by using the original BOD*5* reduction equation presented on page 581 of the

Final BPT Development Document. Long-term average BOD5 final effluent mass loading were calculated by multiplying the final effluent BOD5 concentrations by the flows.

The resulting BOD5 limitations for the three options are presented below:

FINAL EFFLUENT BOD5 LEVELS

BPT option	Flow (1,000 gallon per ton)	SSL recovery (percent)	Long-term average BOD5 effluent levels (pounds per ton)
1	66.0	95	33.1
2	72.4	92.1	35.6
3	84.5	92.1	38.5

Option 1 represents the methodology used in the March 12, 1980 proposal; however, data for the mill which was not producing acetate grade pulp have been excluded. Effluent limitations for Option 2 are based on BOD5 secondary waste load data corresponding the 92.1 percent SSL recovery rate from a representative mill producing acetate grade dissolving sulfite pulp. The flow for this option, 72.4 kgal/ton, is based on the 66 kgal/ton flow used in promulgating BPT for cellophane grade production but adjusted for yield differences between cellophane and acetate grade pulp production. Option 3 represents the actual flow and SSL recovery conditions at a representative mill.

EPA's preferred option is Option 2. Because this option is based on an actual SSL recovery rate for a representative mill and a flow rate adjusted for the difference in acetate and cellophane yields, the Agency believes that this option is most consistent with the BPT effluent limitations already in effect for the other segments of the dissolving sulfite pulp subcategory and for the entire industry.

After application of variability factors, the resulting maximum 30-day and maximum day effluent limitations corresponding to Option 2 are 63.4 and 121.8 lb/ton, respectively.

Upon compliance with Option 2 effluent limitations, the Agency estimates that total conventional pollutant removals will be 73.0 million kg/yr (160.8 million lbs/yr) of BOD5. These represent removals of 93 percent BOD5 from the raw waste levels of these pollutants.

EPA anticipates that the two dissolving sulfite pulp mills currently manufacturing acetate grade pulp will incure compliance costs. EPA expects that both mill would spend a total of approximately $13.5 million (capital cost) and $6.6 million (total annual cost) in upgrading their existing treatment systems to attain the option 2 BOD5 effluent levels (1978 dollars).

IV. Solicitation of Comments

The Agency is making available all information and comments received after the March 1980 proposal and has also placed in the record all analyses related to the three regulatory options now being considered as the basis for BPT effluent limitations, including model mill cost estimates corresponding to each regulatory option and mill-specific compliance cost estimates. After evaluating comments received on this notice, the Agency will finalize the economic impact analysis done previously, taking into account the revised costs and using the same methodology.

EPA invites and encourages public participation in response to this notice of availability. Of particular interest to EPA are information and data relating to the following:

1. The appropriateness of the BPT TSS effluent limitations for acetate grade production in the dissolving sulfite pulp subcategory in light of the potential revision in the flow basis of the BPT BOD5 effluent limitations.

2. The reasonableness of EPA's mill-specific compliance cost estimates. EPA is interested in receiving information on the anticipated cost of compliance with the BPT BOD5 effluent limitations taking into account current BOD5 discharge levels at the two affected mills.

Dated: August 28, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-21294 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 799

[OPTS-42070; T5H-FRL 2881-5]

Benzyl Butyl Phthalate; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to require certain environmental fate and effects tests for benzyl butyl phthalate (CAS No. 85-68-7). These are acute and chronic toxicity tests in freshwater and saltwater organisms, bioconcentration testing in the Eastern oyster, and testing for the fate of benzyl butyl phthalate in undisturbed sediments. Interested persons are invited to comment.

DATE: Comments must be submitted by November 5, 1985.

ADDRESS: Submit written comments, identified by the document control number OPTS-42070, in triplicate to: TSCA Public Information Office (TS-783), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street SW., Washington, D.C. 20460

Include the document control number (OPTS-42070) on all submissions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Interagency Testing Committee (ITC), in its Seventh Report, designated benzyl butyl phthalate (BBP) for priority consideration of environmental and health effects testing. In the **Federal Register** of October 30, 1981 (46 FR 53775), EPA published a preliminary decision not to propose a section 4(a) rule under the Toxic Substances Control Act (TSCA) to require environmental or health effects testing of BBP. This decision was based on the Agency's acceptance of a comprehensive testing proposal for phthalate esters and BBP from the Chemical Manufacturers Association (CMA) on behalf of the Phthalate Esters Program Panel (PEPP), and upon the actions of the National Toxicology Program (NTP) to perform additional studies in oncogenicity and reproductive effects of BBP. In a follow-up notice, published in the **Federal Register** of January 5, 1982 (47 FR 335), in response to public comment, EPA confirmed its decision not to propose rulemaking for BBP. In August 1984 a suit brought against EPA resulted in the ruling that negotiated testing agreements are not a legally adequate substitute for test rules in response to the designation of chemicals by the ITC (*NRDC v. EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)). Thus, EPA must now either initiate rulemaking or publish a decision not to do so. EPA is therefore issuing a proposed rule to obtain additional environmental fate and effects testing of benzyl butyl phthalate.

I. Introduction

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.* 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of test rules under section 4(a) of the Act.

The ITC designated BBP for priority testing consideration in its Seventh Report, as published in the **Federal Register** of November 25, 1980 (45 FR 78432). The Agency responded to the ITC's designation, as required by section 4(e) of TSCA, by issuing a notice announcing its decision not to require testing of BBP in the **Federal Register** of October 30, 1981 (46 FR 53775). Part of the basis for this decision was a proposal by industry for, and the Agency's acceptance of, a negotiated testing agreement sponsored by the CMA/PEPP. The commitment by NTP to pursue health effects (oncogenicity and reproductive effects) testing of BBP was also a consideration in the decision to not require testing of this substance.

In response to late public comment, the Agency reexamined the legal and scientific concerns raised by its decision and responded to these comments in a subsequent notice, published in the **Federal Register** of January 5, 1982. the Agency's response was to reaffirm its decision not to test and to continue with the negotiated testing agreement. However, subsequent legal action now requires the Agency to either initiate rulemaking or publish a decision not to do so. Therefore, the Agency is now proposing a test rule for BBP.

B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release. For the findings under sections 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300), and the section 4(a)(1)(B) findings are discussed in the **Federal Register** of June 5, 1981 (46 FR 30302).

In evaluating the testing believed by EPA to be needed for BBP, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of BBP under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning BBP; and published and unpublished data available to the Agency, including data submitted by CMA obtained as a result of the negotaiated testing agreement. Based on its evaluation, as described in this proposed rule, EPA is proposing environmental effects testing requirements for BBP under section 4(a)(1)(A).

II. Review of Available Data

A. Profile

As designated by the ITC, benzyl butyl phthalate is the *n*-butyl benzyl ester of 1,2-benzenedicarboxylic acid (CAS No. 85-68-7). It is a relataively water-insoluble liquid at room temperature.

B. Production And Use

Benzyl butyl phthalate is manufactured by Monsanto Polymer Products Co. under the trade name Santicizer 160® (Refs. 1 and 2). BBP is produced in excess of 100 million pounds per year (Ref. 1).

BBP is used as a plasticizer of synthetic resins, especially polyvinyl chloride, where its function is to make the plastic product flexible. BBP's main use is in floor coverings (Refs. 1 and 2).

C. Exposure And Release

BBP enters the environment primarily as a result of its manufacture or distribution and through processing during PVC blending operations (Ref. 1). Total losses of phthalate esters from these operations are estimated to be 2 to 4 percent; applying this factor to BBP's production leads to an estimate of 2 to 4 million pounds of BBP released per year (Ref. 3). Some leaching from finished plastic products may also occur, but at an expected low rate of release. A.D. Little (Ref. 4) estimated plastic product emissions of DEHP, another phthalate ester, to be about 1,000 to 3,000 pounds annually in the first year of product life; DEHP's production volume is about 3 times that of BBP. BBP is similar to DEHP but has a lower molecular weight, higher vapor pressure, and lower log P value which may slightly increase its rate of leachability relative to DEHP. However, PVC-plasticizer compatibility may mitigate migration of the BBP plasticizer from the plastic product, which nonetheless is still expected to be slow based on BBP's chemical/physical properties.

BBP's distribution in the environment is widespread, being found in many locations throughout the United States (Refs. 5 through 11). In areas where BBP is detected, ambient surface water concentrations reportedly average less than 1 to 10 ppb; concentrations in sediments are higher by a factor of 50-fold, and levels in biota average about 2.5 ppm (Refs. 6, 7, and 11).

D. Health Effects

The ITC recommended that BBP be tested for potential reproductive effects based on reported testicular effects of other phthalate esters. The ITC also recommended a more thorough evaluation of potential oncogenic effects based on results of a bioassay by the National Toxicology Program (NTP), which gave suggestive evidence of increased leukemia incidence among test animals (female rats). However, this study was considered inadequate by the ITC because of excessive mortality among the male rats exposed to the

compound. As noted in EPA's earlier response to this ITC recommendation, NTP has committed to performing reproductive effects tests. NTP will also be repeating the long-term cancer study for the male rats. The Agency believes that this testing will be sufficient to reasonably predict these effects and is not at this time proposing health effects testing for BBP.

E. Environmental Effects

As shown in Table 1 below, acute toxicity of BBP has been tested in three species each of freshwater and saltwater fish, in one species of saltwater and four species of freshwater invertebrates, and in five species of algae, three freshwater and two saltwater (Refs. 1, 12 through 23 and 38 through 40). Freshwater acute toxicity values ranged from 100 ppb to 13.4 ppm, with the alga *Selenastrum capricornutum* being the most sensitive species tested. The no-observed-effect concentration for *S. capricornutum* was determined to be 100 ppb by one investigator and less than 70 ppb by another (Refs. 1 and 22). In saltwater testing, acute toxcity values ranged from less than 80 ppb to 3,000 ppb. The shiner perch and the English sole were the most sensitive species tested. For these species the 96-hour LC_{50}'s were about 500 ppb, with behavioral effects observed as low as 80 ppb; a no-effect level was not determined (Refs. 18 and 19).

Chronic toxicity testing has been performed for the fathead minnow: an early-life stage test with a maximum acceptable toxicant concentration (MATC) determined to be 140 to 360 ppb (Ref. 22). Two chronic studies on *Daphnia magna* yielded an MATC of 260 to 760 ppb in one study and a geometric mean MATC of 630 ppb in the other (Refs. 1 and 23). A long-term (6-day) algal test on *Selenastrum capricornutum* gave a 6-day EC_{50} of 200 ppb (Ref. 12). No chronic studies on saltwater organisms have been performed.

A bioconcentration study for BBP in the bluegill yielded a bioconcentration factor of 663 in that fish species, with a half-life for depuration (elimination of the compound by the fish after transfer to clean water) of between 1 and 2 days (Ref. 22). Based on results on another phthalate ester, DEHP, bioconcentration factors in molluscs are expected to be much higher than those seen in fish (Ref. 24).

TABLE 1.—SUMMARY OF ENVIRONMENTAL TOXICITY DATA FOR BBP

Organism	Test	Effect level (mg/L)	No observed lethal effect level (mg/L)	Reference No.
Fathead minnow (*Pimephales promelas*)[1]	96-hr LC50	1.5	0.44	15
Fathead minnow (*Pimephales promelas*)[1]	Chronic (ELS)	0.14-0.36		22
Rainbow trout (*Salmo gairdneri*)[1]	96-hr LC50	0.82	0.28	14
Bluegill (*Lepomis macrochirus*)	96-hr LC50	1.7	0.36	1
Sheepshead minnow (*Cyprinodon variegatus*)	96-hr LC50	3.0	1.0	1
Shiner perch (*Cymatogaster aggregata*)	96-hr LC50	0.51		19
English sole (*Parophyrus vetulus*)	96-hr LC50	0.55	0.3	20
Midge (*Paratanytarsus parthenogenetica*)	48-hr LC50	13.4	3.2	39
Midge (*Paratanytarsus tentans*)	48-hr LC50	>3.6		40
Midge (*Chironomus tentans*)	48-hr LC50	3.6		40
Daphnia magna	48-hr LC50	3.7	1.0	1
Daphnia magna[1]	Chronic	0.63		23
Daphnia magna	Chronic	0.26-079		1
Mysid Shrimp (*Mysidopis bahia*)	96-hr LC50	0.9	0.4	1
Alga (*Selenastrum capricornutum*)	96-hr LC50	0.11	<0.07	22
Alga (*S. capricornutum*)	96-hr LC50	0.4	0.1	1, 38
Alga (*S. capricornutum*)[1]	6d EC50	0.2		12
Alga (*Microcystis aeruginosa*)	96-hr LC50	1000	560	1, 38
Alga (*Navicula pelliculosa*)	96-hr LC50	0.8	0.3	1, 38
Alga (*Skeletonema costatum*)	96-hr LC50	0.6	0.1	1, 38
Alga (*Dunaliella tertiolecta*)	96-hr LC50	1.0	0.3	1, 38

[1] Date developed under the CMA/PEPP-EPA negotiated testing agreement.

F. Chemical Fate

Because of its chemical/physical properties of moderately low water solubility, very low vapor pressure, and high log P, BBP is expected to partition into the aquatic environment, especially into sediments and also to accumulate in biota (Refs. 1 and 25 through 27). However, metabolism, which occurs with other phthalate esters, and biodegradation are expected to moderate the amount of BBP found in organisms and in the environment (Refs. 1 and 28 through 37). Under favorable aerobic conditions, BBP is biodegradable with a half-life of 2 to 4 days for primary degradation and 2 to 4 weeks for ultimate degradation (Refs. 1, 28 and 29). BBP is expected to degrade anaerobically in sediments; however, like the other phthalate esters, this process is expected to be fairly slow. Half-lives for anaerobic degradation of selected phthalate estrs are on the order of months and BBP is expected to be similarly persistent in sediments (Refs. 30 and 31). The specific degree of BBP's persistence in sediments is, however, unknown.

III. Findings

EPA is basing its proposed environmental effects testing of BBP on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that the manufacturing and processing of BBP may present an unreasonable risk of acute or chronic toxicity to environmental species, based on data presented in Unit II.E. above showing that BBP is highly acutely toxic (less than 1 ppm acute toxicity) to aquatic organisms and that it bioconcentrates in fish and has a high bioconcentration potential in molluscs. BBP is produced in large quantities and enters the environment and has been detected in many locations throughout the United States as discussed in Units II.B. and C. above. The concentrations of BBP detected in the environment are low (less than 1 to 10 ppb). However, in the toxicity testing which has been performed, BBP is highly acutely toxic (500 ppb in certain sensitive fish species, 900 ppb in the mysid shrimp, and 70 to 100 ppb for a freshwater alga), and BBP also has a high potential to bioconcentrate, especially in shellfish. The Agency believes that these results are serious enough to make even the reported low levels of BBP in the environment of potential concern. BBP also appears to accumulate in sediment

and may be persistent in that environmental medium. The Agency has further determined that data are inadequate to fully characterize the acute and chronic effects to freshwater and saltwater species of fish and invertebrates or to characterize the bioconcentration potential of BBP in molluscs as discussed in Unit II.E. above and that testing is necessary to develop these data. The Agency has also determined that data are inadequate to characterize the fate of BBP in sediments, as discussed in Unit II.F. above, and that testing is necessary to develop these data.

IV. Proposed Rule

Testing is needed to establish whether there exists an unreasonable risk to fresh and saltwater aquatic species due to exposure to benzyl butyl phthalate releases to the environment.

The proposed tests involve both freshwater and saltwater organisms and include acute tests, acute-chronic ratios in aquatic animals, and bioconcentration tests in aquatic animal species. The proposed tests also include a test for the fate of BBP in sediments. These test data will ensure that the Agency has sufficient data to support any necessary regulatory actions under TSCA or the Clean Water Act and will be relevant to a determination whether BBP presents an unreasonable risk of injury to the environment. These data would be sufficient to establish water quality criteria for protecting aquatic life, under section 304(a)(1) of the Clean Water Act, as described in the **Federal Register** of November 28, 1980 (45 FR 79341).

A. Proposed Testing

The minimum data set that the Agency considers necessary to evaluate the hazard posed to aquatic life by BBP and to establish Ambient Water Quality Criteria for this substance is given below.

These tests provide the minimum amount of data which will yield a statistically sound estimate of acceptable acute and chronic concentrations in the water. The values derived through use of this data set will generally protect 95 percent of a population; a lesser quantity of data would not have this level of confidence or protection. (See the Water Quality Criteria Guidelines and the Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic Organisms and their Use for Additional information.)

1. Freshwater acute tests with at least one species of freshwater animal in at least eight different families such that all of the following are included:

a. The family Salmonidae in the class Osteichthyes.

b. One other family (preferably a commercially or recreationally important warmwater species) in the class Osteichthyes, e.g., bluefill, channel catfish, etc.

c. One other family in the phylum Chordata, e.g., fish, amphibian, etc.

d. A planktonic crustacean, e.g., cladoceran, copepod, etc.

e. A benthic crustacean, e.g., ostracod, isopod, scud, grass shrimp, crayfish, etc.

f. An insect, e.g., mayfly, dragonfly, damselfly, stonefly, caddisfly, mosquito, midge, etc.

g. A family in a phylum other than Arthropoda or Chordata, e.g., Rotifera, Annelida, Mollusca, etc.

h. A family in any order of insect of any phylum not already represented.

Acute toxicity data on the rainbow trout, fathead minnow, bluegill, *Daphnia magna* and midge are currently available which satisfy requirements 1.a., b., c., d., and f. above (Refs. 12 through 15). The Agency is proposing testing on three additional species such that the requirements of 1.e., g., and h. are also satisfied. This testing would include, for 1.e., a benthic crustacean (e.g. the scud or another acceptable species); for 1.g., a nonarthropod, nonchordate (e.g., the rotifer or another acceptable species); and for 1.h an insect or other phylum member not already represented (e.g., the mayfly or another acceptable species).

2. Acute-chronic ratios with species of aquatic animals in at least three different families, provided that of the three species:

a. At least one is a fish.

b. At least one is an invertebrate.

c. At least one is an acutely sensitive freshwater species (the other two may be saltwater species).

As its name implies, this is a testing requirement to provide both acute and chronic toxicity values for a given test species. The acute-chronic ratio is calculated as the relationship between the acute and chronic toxicity values. This value may then be used to calculate a "final chronic value."

The Agency has acceptable data on *Daphnia magna* which satisfy requirement 2.b. above. EPA is proposing chronic testing on the rainbow trout based on data on DEHP which indicate the rainbow trout to be among the most sensitive freshwater fish species (Ref. 33). This testing, together with existing acute toxicity for rainbow trout, will satisfy requirements 2.a. and c. above. Furthermore, this testing, with the testing being proposed in Unit IV.A.6., will provide the overall requirement of three acceptable species tested. Data on acute toxicity testing of BBP in fish and chronic testing of DEHP in fish also indicate that length of exposure to phthalate esters is important to properly evaluate their toxic effects (Refs. 33 and 37). The Agency is proposing that the freshwater chronic testing be an early-life-stage (embryo/larvae) test on rainbow trout, extended an additional 60 days posthatch beyond the usual 60-day posthatch exposure for rainbow trout fry in this test, which is described in the OTS Environmental Effects Test Guidelines.

3. At least one acceptable test with a freshwater alga or vascular plant. If plants are among the aquatic organisms that are most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

The Agency has acceptable test results on three species of freshwater algae which satisfy this requirement. No additional testing is proposed for freshwater plants or algae.

4. At least one acceptable bioconcentration factor determined with an appropriate freshwater species, if a maximum permissible tissue concentration (from the U.S. Food and Drug Administration) is available.

The Agency is not proposing bioconcentration testing on a freshwater organism. There is a bioconcentration factor value of 663 for the bluegill in the literature (Ref. 22).

5. Saltwater acute tests with at least one species of saltwater animal in at least eight different families such that all of the following are included:

a. Two different in the phylum Chordata.

b. A family in a phylum other than Arthropoda or Chordata.

c. Either the Mysidae or Penaeidae family.

d. Three other families not in the phylum Chordata.

e. Any other family.

The Agency has data available on three species of saltwater fish and the mysid shrimp which satisfy requirements 4.a., c. and e. above (Refs. 18 through 21). EPA is proposing testing to satisfy requirements 4.b and d. above. This testing would include for 4.b. a nonarthropod, nonchordate (e.g., the Eastern oyster or another acceptable species) and for 4.d., three other nonchordates (e.g., the Pacific oyster, an amphipod, and a Penaid shrimp or any other acceptable species).

6. Acute-chronic ratios with species of aquatic animals in at least three

different families provided that of the three species:

a. At least one is a fish.

b. At least one is an invertebrate.

c. At least one is an acutely sensitive saltwater species (the other two may be freshwater species).

The Agency has no chronic data on saltwater organisms and is proposing acute-chronic testing on an acutely sensitive saltwater species. This will satisfy requirement 6.c. above. Requirement 6.a. and b. will be satisfied by the testing proposed under Unit IV.A.2. above.

7. At least one acceptable test with a saltwater alga or vascular plant. If plants are among the aquatic organisms most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

The Agency has acceptable data on two species of saltwater algae. No additional testing is being proposed for saltwater plants or algae.

8. At least on acceptable bioconcentration factor determined with an appropriate saltwater species, if a maximum permissible tissue concentration is available.

The Agency is proposing bioconcentration testing for BBP in the Eastern oyster. There is no permissible tissue concentration set by the U.S. Food and Drug Administration for BBP. Strictly speaking, this testing is therefore not required in the development of Ambient Water Quality Criteria. However, this testing is believed necessary under TSCA to define the potential of BBP to bioconcentrate in molluscs in order to be able to reasonably predict the fate and effects of BBP in the environment.

The Eastern oyster is proposed beccause it is a valuable and abundant commercial species, its biology has been well studied, there is a history of bioconcentration testing with this organism, and there are available well-defined protocols for bioconcentration testing in the oyster (see the OTS Environmental Effects Test Guidelines).

9. Chemical fate testing to examine the fate of BBP in undisturbed sediments.

The Agency is proposing that radiolabeled BBP be introduced into a simulated natural system of water and sediments and that a chemical fate analysis of parent compound and any transformation products be performed for the simulated environmental compartments. For guidance the Agency recommends OTS's Experimental Marine Microcosm Test Protocol; however, the Agency is not requiring that this test necessarily be run in saltwater.

B. Test Substance

EPA is proposing that BBP of at least 99-percent purity be used as the test substance. BBP of this purity is commercially available at nominal cost. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to BBP itself. Radiolabeled ^{14}C-BBP will be needed for the bioconcentration and the chemical fate testing.

C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) or TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that there are insufficient data and experience to reasonably determine or predict the environmental effects and fate resulting from the manufacture and processing of BBP, EPA is proposing that persons who manufacture and process BBP, or intend to manufacture or process BBP, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the envornmental effects and chemical fate testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for BBP.

D. Test Rule Development

As discussed in the Federal Register of May 17, 1985 (50 FR 20652), the Agency intends to use single-phase rulemaking for most rules promulgated under TSCA section 4(a) and to use two-phase test rule development procedures for rulemaking where no well-accepted test methodology is available for inclusion in a proposed test rule. In the case of BBP, there is no OTS test guideline or other established methodology for the type of chemical fate testing the Agency believes is needed for BBP. Therefore, test rule development for BBP will be conducted according to the two-phase process described in 40 CFR Part 790.

Under the two phase process, this Phase I test rule is being proposed for BBP specifying the test substance, the effects for which test data are to be developed, and which persons are subject to the rule. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. In Phase II, following promulgation of the final Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects specified in the Phase I rule or to obtain exemptions from the testing requirements. Within 30 days after the effective date of the final Phase I test rule, manufacturers and importers of BBP must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days after the effective date of the final Phase I test rule. After an opportunity for public comment, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the chemical specific test standards and schedules for the tests required by the Phase I rule. Testing will also be subject to EPA's generic TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792). Persons who submit study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modification to the adopted study plans can be made only with EPA aproval.

Processors of BBP, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans or to conduct testing unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the costs of testing on to processors through the pricing of BBP.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In

accordance with those regulations, any manufacturer or processor subject to the Phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under the rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

E. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA good laboratory practice (GLP) standards, which appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of the Phase I final test rule, an exporter of BBP must report to EPA the first annual export or intended export of BBP to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for BBP. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16 of TSCA. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Issues for Comment

EPA has proposed in this rule chemical fate testing (fate of BBP in undisturbed sediments) for which a specific test protocol is not available. However, the Agency believes that considering BBP's tendency to partition into sediments, this information is necessary to reasonably predict BBP's environmental fate. The Agency believes that the OTS Experimental Microcosm Test Protocol provides sufficient guidance for the development of study plans for the performance of this testing. EPA solicits comment on the adequacy of the proposed testing guidance or on other testing methods for evaluating the fate of BBP in sediments.

VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for BBP are estimated to range from $97,470 to $280,435. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $24,970 to $71,845. Based on a projected 1985 production of at least 100 million pounds, the unit test costs range

from 0.025 to 0.072 cents per pound. In relation to the current list price of 53 cents per pound for BBP, these costs are equivalent to 0.05 to 0.14 percent of price.

The Level I economic analysis (Ref. 2) indicates that the potential for adverse economic effects due to the estimated test cost is low. This conclusion is based on the following observations: (1) Demand for BBP appears relatively inelastic due to the plasticizer's favorable performance characteristics; (2) the market expectations for BBP are favorable; and (3) the estimated unit test costs are very low. A Level II analysis is not necessary.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)," can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VIII. Availability of Test Guidelines

The OTS, OECD, and FIFRA guidelines cited in this proposed test rule are available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4657). Revised OTS guidelines are identified in the Federal Register of October 11, 1984 (49 FR 39911). The OTS guidelines for environmental effects are within NTIS publications PB 82-232992 and PB 83-257709 which cost $67.00 and $7.00, respectively. The OTS guideline cited for the proposed fate in sediments testing, "Experimental Marine Microcosm Test Protocol," is NTIS publication PB 83-230854, which costs $10.00.

The FIFRA Pesticides Registration Guideline, "Proposed Data Requirements for Hazard Evaluation: Wildlife and Aquatic Toxicity," is NTIS publication PB 83-153916 and costs $11.50. The publication "OECD Test Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms," is also available from NTIS as PB 83-153908 and costs $80.00. The "Water Quality Criteria Guidelines" were published in the Federal Register on November 28, 1980 (45 FR 79341).

IX. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, D.C.: (554-1404); Outside the U.S.A. (operator 202-554-1401), by October 21, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting will be scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

X. Rulemaking Record

EPA has established a record for this rulemaking. (OPTS-42070). This record includes basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Support Documentation

Federal Register notices pertaining to this rule consisting of:

(1) Notice containing the ITC designation of BBP to the Priority List (45 FR 76432; November 25, 1980).

(2) Notice of the Agency's response to the ITC on Alkyl Phthalates and BBP (46 FR 53775; October 30, 1981).

(3) Notice of the Agency's follow-up response to the ITC on Alkyl Phthalates and BBP (47 FR 335; January 5, 1982).

(4) Notice of interim final rule on two phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(5) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

B. References

(1) Gledhill, W.E., Kaley, R.G., Adams, W.J., Hicks, O., Michael, P.R., Saeger, V.W., LeBlanc, G.A. "An environmental safety assessment of butyl benzyl phthalate." *Environ. Sci. Technol.* 14(3):301-305. 1980.

(2) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rule for Benzyl Butyl Phthalate. Washington, D.C., Office of Toxic Substances, EPA. 1985.

(3) Hirzy, J.W., Adams, W.J., Gledhill, W.E., Mieure, J.P. Phthalate esters: the environmental issues. Monsanto Chemical Co. 1978.

(4) Little, A.D. Phthalates in consumer products. Contract No. CPSC-C-80-1001. Consumer Product Safety Commission, Washington, D.C. 1982.

(5) Michael, P.R., Adams, W.J., Werner, A.F., Hicks, O. "Surveillance of phthalate esters in surface waters and sediments in the United States." *Environ. Toxicol. Chem.* 3:377-389. 1984.

(6) Staples, C.A., Werner, A.F., Hoogheem, T.J. "Assessment of priority pollutant concentrations in the United States using STORET database." *Environ. Toxicol. Chem.* 4(2):131-142. 1985.

(7) Sheldon, L.S., Hites, R.A. "Sources and movement of organic chemicals in the Delaware River." *Environ. Sci. Technol.* 13(5):574-579. 1979/

(8) Keith, L.H., Garrison, A.W., Allen, F.R., Carter, M.H., Floyd, T.L., Pope, J.D., Thruston, A.D. Jr. "Identification of organic compounds in drinking water from thirteen U.S. cities." *Chem. Cong. No. Amer. Cont.* 1:329-373. 1976.

(9) Feiler, H.D., Vernic, A.S., Storch, P.J. "Fate of priority pollutants in POTW's." *Proc. Natl. Conf. Munic. Sludge Manage.* 8:72-81. 1979.

(10) Deinzer, M., Melton, R., Mitchell, D. "Trace organic contaminants in drinking water; their concentration by reverse osmosis." *Water Res.* 9:799-805. 1975.

(11) USEPA. U.S. Environmental Protection Agency. Summary of STORET data on selected parameters by state; retrieval date 85/03/08. STORET database. 1985.

(12) Springborn Bionomics, Inc. Toxicity of fourteen phthalate esters to the freshwater green algae *Selenastrum capricornutum:* toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BP-84-14. 1984.

(13) EG&G Bionomics. Acute toxicity of thirteen phthalate esters to bluegill (*Lepomis macrochirus*): toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW-83-3-1368. 1983.

(14) EG&G Bionomics. Acute toxicity of fourteen phthalate esters to rainbow trout (*Salmo goirdneri*) under flow-through conditions: toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW-83-3-1373. 1983.

(15) EG&G Bionomics. Acute toxicity of thirteen phthalate esters to fathead minnow (*Pimepholes promelas*) under flow-through conditions; toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW–83–3–1374. 1983.

(16) EG&G Clonomics. Acute toxicity of twelve phthalate esters to*Paratanytarsus parthenogenica:* toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW–83–6–1424. 1984.

(17) Springborn Bionomics, Inc. Acute toxicity of fourteen phthalate esters to *Daphnia Magna:* toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW–84–4–1567. 1984.

(18) Randall, R.C., Ozretich, R.J., Boese, B.L. "Acute toxicity of butyl benzyl phthalate to the saltwater fish English sole, *Parophrys vetulus." Environ. Sci. Technol.* 17(11):679–672.

(19) Ozretich, R.J., Randall, R.C., Boese, B.L., Schroeder, W.P., Smith, J.R. "Acute toxicity of butylbenzyl phthalate to shiner perch (*Cymatogaster aggregata*)." *Arch. Environ. Contam. Toxicol.* 12(6):655–660. 1983.

(20) Springborn Bionomics, Inc. Acute toxicity of thirteen phthalate esters to the sheepshead minnow (*Cyprinodon variegatus*): toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BP–84–2–14. 1984.

(21) EG&G Bionomics. Acute toxicity of twelve phthalate esters to mysid shrimp (*Mysidopsis bahia*): toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BP–83–1–6. 1984.

(22) USEPA. U.S. Environmental Protection Agency. In-depth studies on health and environmental impacts of selected water pollutants. Contract No. 68–01–4646. 1978.

(23) Springborn Bionomics, Inc. Chronic toxicity of fourteen phthalate ester to *Daphnia magna;* toxicity test report submitted to Chemical Manufacturers Association, Washington, D.C. Report No. BW–84–5–1567. 1984.

(24) Brown, D., Thompson, R.S. "Phthalates and the aquatic environment: Part II, the bioconcentration and depuration of di-2-ethylhexyl phthalate (DEHP) and di-isodecyl phthalate (DIDP) in mussels (*Mytilus edulis*)," *Chemosphere* 11(4):427–435. 1982.

(25) Howard, P.H. O'Grady, D.P. Measurement of octanol/water partition coefficients of phthalate esters.

Syracuse Research Corporation. Final Report submitted to Chemical Manufacturers Association, Washington, D.C. 1984.

(26) Banerjee, S., Howard, P. Measurement of vapor pressures of phthalate esters. Syracuse Research Corporation. Final Report submitted to Chemical Manufacturers Association, Washington, D.C. 1984.

(27) Banerjee, S., Dombrowski, A.E., Howard, P.H. Measurement of the water solubilities of phthalate esters. Syracuse Research Corporation. Final report submitted to Chemical Manufacturers Association, Washington, D.C. 1983.

(28) Shelton, D.R., Boyd, S.A., Tiedje, J.M. "Anaerobic biodegradation of phthalic acid esters in sludge." *Environ. Sci. Technol.* 18(2):93–97. 1984.

(29) Sugatt, R.H., O'Grady, D.P., Banerjee, S., Howard, P.H., Gledhill, W.E. "Shake flask biodegradation of 14 commercial phthalate esters." *Appl. Environ. Microbiol.* 47(4):601–606. 1984.

(30) Johnson, B.T., Heitkamp, M.A. "Environmental and chemical factors influencing the biodegradation of phthalic acid esters in freshwater sediments." *Environ. Pollut., Ser. B, 8:101–118. 1984.*

(31) Inman, J.C., Strachan, S.D., Sommers, L.E., Nelson, D.W. "The decomposition of phthalate esters in soil." *J. Environ. Sci. Health.* B19(2):245–257. 1984.

(32) Sanborn, J.R., Metcalf, R.L., Yu, C.C., Lu, P.Y. "Plasticizers in the environment: the fate of di-*n*-octyl phthalate (DOP) in two model ecosystems and uptake and metabolism of DOP by aquatic organisms." *Arch. Environ. Contam. Toxicol.* 3(2):244–255. 1975.

(33) Mehrle, P.M., Mayer, F.L. "Di-2-ethylhexyl phthalate: residue dynamics and biological effects in rainbow trout and fathead minnows." *Trace Subst. Environ. Health.* 10:519–524. 1976.

(34) Melancon, M.J., Jr., Lech, J.R. "Distribution and biliary excretion products of di-2-ethylhexyl phthalate in rainbow trout." *Drug Metab. Dispos.* 4(2):112–118. 1976.

(35) Mayer, F.L. "Residue dynamics of di-2-ethylhexyl phthalate in fathead minnows (*Pimephales promelas*)." *J. Fish. Res. Bd. Canada* 33(11):2610–2613. 1976.

(36) Sanders, H.O., Mayer, F.L., Jr., Walsh, D.F. "Toxicity, residue dynamics, and reproductive effects of phthalate esters in aquatic invertebrates." *Environ. Res.* 6(1):84–90. 1973.

(37) Mayer, F.L., Mehrle, P.M., Schoetteger, R.A. "Collagen metabolism in fish exposed to organic chemicals." *In* Tubb, R.A., ed. Recent advances in fish toxicology: a symposium held in Corvallis, Oregon, on Jan. 13–14, 1977. pp. 31–54. 1977.

(38) EG & G Bionomics. Acute toxicity of Santicizer 160 (BN–78–1384303–1) to the freshwater algae *Microcystis aeruginosa. Selnastrum capricornutum,* and *Navicula pelliculosa,* and the marine algae *Skeletonema costatum* and *Dunaliella tertiolecta:* toxicity test report submitted to Monsanto Industrial Chemicals Company. Report No. BP–78–9–148. 1978.

(39) Analytical Bio Chemistry Laboratories. Acute toxicity of GLP–1 (9AB981018) to midge (*Paratanytarsus parthenogenetica*). Static acute bioassay report submitted to Monsanto Industrial Chemicals Company. Report No. 27145. 1981.

(40) SRI International. Acute toxicity studies on S–160 using two midge species as the test organisms: final report submitted to Monsanto Industrial Chemicals company. Report No. SR–83–X–059. 1981

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulotory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked, "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals.

Dated: August 29, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for 40 CFR Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.850 is added to read as follows:

§ 799.850 Benzyl butyl phthalate.

(a) *Identification of test substance.*

(1) Benzyl butyl phthalate (BBP; CAS No. 85–68–7) shall be tested in accordance with this section.

(2) BBP of at least 99 percent purity shall be used as the test substance in all tests.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process BBP after the effective date of this section (30 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in this section, subpart A of this Part and Part 790 of this chapter for two-phase rulemaking.

(c) *Chemical fate testing—Fate in undisturbed sediments*—(1) *Required testing.* An environmental fate test shall be conducted with BBP using natural waters and sediments representative of aquatic environments that may be exposed to BBP. Partitioning, transformation, and degradation rates of BBP are to be determined using radiolabeled test compound. The length of the test shall not be less than 30 days.

(2) *Study plans.* The Agency has not published specific guidelines for the type of environmental fate test suggested for BBP. For guidance the OTS Experimental Marine Microcosm Test Protocol and Support Document available from NTIS (PB 83–230854) should be consulted.

(d) *Environmental effects testing*—(1) *Aquatic freshwater acute toxicity*—(i) *Required testing.* Acute toxicity tests shall be conducted with BBP with freshwater animals in three different species, provided that of the four species:

(A) At least one is a benthic crustacean.

(B) At least one is from a phylum other than Arthropoda or Chordata.

(C) At least one, but not from Chordata, is from a family in any order of insect of any phylum not already represented.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems; the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908); and the Water Quality Criteria Guidelines, published in the **Federal Register** on November 28, 1980 (45 FR 79341).

(2) *Aquatic freshwater chronic toxicity*—(i) *Required testing.* Chronic toxicity testing shall be conducted with BBP on the rainbow trout. The test shall be the early-life-stage test, with the exposure of the fry to BBP extended to 120 days posthatching.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines.

(3) *Aquatic saltwater acute toxicity*—(i) *Required testing.* Acute toxicity tests shall be conducted with BBP with saltwater animals in four different species, provided that of the four species:

(A) At least one species is from a family in a phylum other than Arthropoda or Chordata.

(B) At least three other species are from three other families not in the phylum Chordata.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82–23 29 92), sould be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), and the Water Quality Criteria Guidelines.

(4) *Aquatic saltwater chronic toxicity*—(i) *Required testing.* Toxicity testing sesting shall be conducted with BBP to determine an acute-chronic ratio with at least one acutely senitive species of saltwater aquatic animal.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82–232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Water Quality Criteria Guidelines.

(5) *Saltwater Bioconcentration Testing*—(i) *Required testing.* A bioconcentration factor test shall be conducted with BBP with the Eastern oyster.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines, published by NTIS (PB 82–232992), should be consulted.

Additional guidance may be obtained may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Criteria Guidelines.

(e) *Availability of test guidelines.* The OTS Environmental Effects Test Guidelines and the OTS Experimental Marine Microcosm Test Protocol and Support Document cited in this proposed rule are available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161 (703–487–4650).

(Approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 85–21295 Filed 9–5–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization: Requirements for Provision of Services to Persons Unable to Pay

AGENCY: Public Health Service, HHS.

ACTION: Proposed rules.

SUMMARY: This notice proposes revisions to the rules currently governing how health care facilities assisted under Titles VI and XVI of the Public Health Service Act fulfill the assurance, given in their application for assistance, that they would provide a reasonable volume of services to persons unable to pay. Comment on the current rules and operational experience with them have indicated the need to revise the current requirements as they pertain to publicly owned facilities..

DATE: Written comments must be received on or before November 5, 1985.

ADDRESS: Comments must be in writing and be sent to: Mr. Richard Ashbaugh, Acting Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Rockville, Maryland 20857, Attention: Martin J. Frankel.

Comments will be available for public inspection during the hours of 8:00–5:30 at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Ashbaugh (301) 443–6560.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes below amendments to the rules governing what is popularly known as the Hill-Burton uncompensated services program. Health care facilities covered by the program received construction assistance under two titles of the Public Health Service Act—Title VI (the "Hill-Burton Act", 42 U.S.C. 291, *et seq.*) and Title XVI (42 U.S.C. 300 q, *et seq.*). As a condition of such assistance, facilities assisted under Title VI were required to give what is now known as the uncompensated services assurance. Under section 603(e) of the Act (42 U.S.C. 291c(e)), the Secretary was authorized to issue regulations requiring the following assurance.

> Such regulations may also require that before an application is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that . . . (2) there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.[1]

Regulations requiring the assurance were issued shortly after enactment of Title VI in 1946. See 12 FR 6176 (September 16, 1947). The regulatory standard for compliance with the assurance was general. Beginning in 1972, however, a series of regulatory and statutory developments occurred which culminated in the detailed requirements of the present regulations, which were issued in 1979. The objective of the amendments proposed below is to simplify and increase the flexibility of the regulations as they apply to publicly owned facilities. Because the requirements of the existing regulations are essential to an understanding of the context and significance of the proposed amendments, the pertinent sections are summarized below.

[1] The assurance required by statute of Title XVI assisted facilities, of which there are only 38, was as follows . . . reasonable assurance that at all times after such application [for Title XVI assistance] is approved . . . (ii) there will be made available in the facility or portion thereof to be constructed, modernized or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from financial viewpoint. Section 1621(b)(1)(k), 42 USC 300s–1(b)(1)(k), as redesignated by Pub. L. 96–79.

1. Summary of Existing Regulations

Following extensive public comment, in 1979 the Secretary issued the current rules, which are codified at 42 CFR Part 124, Subpart F. 44 FR 29372 (May 18, 1979).

In part, these regulations establish a fixed dollar level compliance quota, which is 3% of the facility's operating costs (less Medicare and Medicaid reimbursement) or 10% of the Federal financial assistance it received, whichever is less. A facility that does not meet its annual quota is required to make up the deficit in the amount of uncompensated services provided in later years. In addition, the facility must institute an affirmative action plan designed to prevent recurrence of the deficit. 42 CFR 124.504. A facility may also get credit for "excess"—that is, uncompensated services provided over and above its annual quota—and credit that excess against its quota in a future year. The 10% compliance level, and the deficits and excesses, are required to be adjusted by a factor that reflects inflation, the so-called "inflation factor." 42 CFR 124.503. In each case, however, the facility can only count a portion of the cost of the service provided toward the quota, the so-called "allowable credit." Facilities are required to exclude third party payments (including payments from Medicare and Medicaid) from the quota, and also may not count towards the quota the differential between the amount of third party reimbursement and allowable credit where they are required by the third party program to accept the reimbursement as payment in full for service. In addition, services disallowed as unnecessary by a Professional Standards Review Organization (PSRO) must also be excluded. 42 CFR 124.509.

The current regulations establish national eligibility criteria, based on the poverty income guidelines presently issued by the Department. 42 CFR 124.506. The criteria consider only income, not resources, and a mandatory procedure for calculating income is provided. *Id.* Facilities are given limited discretion to decide how to allocate their quota or uncompensated services among eligible persons. 42 CFR 124.507. Facilities can credit services toward their quota only if they make an eligibility determination within two working days of a request for uncompensated services. 42 CFR 124.508.

The 1979 regulations contain explicit requirements for notice, including that written notice be given to each person seeking service in the facility. 42 CFR 124.505(d). In addition, facilities are required to publish and post notices and under certain circumstances to provide notice to the local health systems agency (HSA). 42 CFR 124.505. The regulations contain a number of reporting and recordkeeping requirements.

II. Objectives and Policies of the Proposed Rules

The basic objective of the present regulations is to assure that recipients of Titles VI and XVI funds who gave the uncompensated services assurance provide those services within the context of sound planning for and management of the delivery of health care services. The proposed changes eliminate unnecessary administrative burdens imposed on publicly owned and operated facilities.

Under the current regulations, public facilities, including charity hospitals, public health centers and public health laboratories, are subject to the same procedural requirements as other facilities. Many public facilities exist principally for the purpose of providing services to the indigent and either do not charge or provide services on a subsidized basis. The Secretary believes that it is anomalous to require a facility, which is in the business of providing free or below cost care to the indigent, either to restructure its entire method of operating or face years of accumulating deficits to accommodate what may be a comparatively small Hill-Burton obligation. Thus, the Department is proposing below a compliance alternative for those public facilities which qualify to address these problems.

The criteria set out at proposed § 124.513(b) are intended to provide an objective means of identifying those public facilities which do not charge for services or whose primary purpose is to serve the indigent and which, by virtue of this purpose, in fact provide significant amounts of charity care. The criterion at § 124.513(b)(4) establishes a threshold of operational revenue these facilities receive from State or local tax appropriations, which is intended to provide an indication of significant community support for their public service or charitable purpose. The proposed threshold of 10% is based on American Hospital Association Survey Data, 1982, produced by I.C.F., Inc. Survey data on 1,744 hospitals operated by units of State or local government indicate that 90% of the facilities received less than 10% of their operating revenue from tax appropriations. Based on these data, the Department believes that 10% or more of revenue from tax

appropriations signifies a substantial proportion of support from this source. The Department solicits comments on whether there are other criteria that would most accurately identify the facilities the exception is intended to cover. Similarly, suggestions for improvement of the qualification procedure set out at proposed § 124.513(c) are solicited, including the use of audited financial statements. For example, should the Department consider other than audited financial documents, and should it require such document for the last three years rather than "the most recent three years available"?

Following initial qualification in accordance with the proposed procedure, facilities are required by proposed § 124.510(c)(1) to submit annually a certification that there has or has not been a change in the factors on which the initial qualification was based. The process envisions a one-year period of effectiveness for the initial qualification and for each subsequent certification.

However, to allow for situations in which a facility's status changes during a year, and to prevent inadvertent lapses of certifications because of processing difficulties, certifications remain in effect until they are withdrawn by the Secretary. See proposed § 124.513(d)(1).

It is possible that some public facilities have incurred deficits under the present regulations. This may occur because a facility finds it difficult to comply with some procedural requirements of existing regulations, not because the facility does not deliver large amounts of free care. The Secretary believes it would be anomalous to permit those facilities to meet their future obligation through the certification process and at the same time require them to make up thier past deficits through compliance with the current regulatory procedures. Therefore, proposed § 124.513(d)(2) provides such facilities with a choice: they may make up their deficits conventionally in accordance with the current procedural requirements; or alternatively, they may make it up by providing an additional year of uncompensated services through the certification process for each year of deficit incurred. If the latter alternative is selected, however, the facility must still provide services on an uncompensated basis to those individuals who were improperly denied uncompensated services during the deficit period. That is, the enforcement provisions of proposed § 124.511(b)(2) apply to certified public facilities at all times during their period of obligation.

A change in the reporting and recordkeeping requirements of the present regulations is also proposed to carry out the new policies set out at proposed § 124.513. The proposal's annual certification provision for public facilities represents a major reduction in the reporting and record maintenance requirements for those facilities so certified. The procedures for certification of public facilities do not require submission of detailed information nor do they necessitate the maintenance of additional records. However, as required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirements of proposed §§ 124.513(c) and 124.510(c). Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

Regulatory Flexibility Act and Executive Order 12291

The Department has determined that the impact would not approach the annual $100 million threshold for major economic consequences as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. section 605(b)), the Secretary certifies that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 124

Grant programs—Health, Health facilities, Loan programs—Health, Low income persons, Reporting and recordkeeping requirements.

Dated: August 6, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 9, 1985.

Margaret M. Heckler,

Secretary.

It is proposed to amend Subpart F of 42 CFR Part 124 as follows:

PART 124—[AMENDED]

1. The authority citation for Part 124 is revised to read:

Authority: Secs. 215, 1620(3), Public Health Service Act, as amended; 58 Stat. 690, 93 Stat. 633 (42 U.S.C. 216, 300s(3)).

2. The Table of Contents is amended by adding at the end thereof the following:

* * * * *

124.513 Public facility compliance alternative.

* * * * *

§ 124.501 [Amended]

3. Paragraph (b)(1) of § 124.501 is amended by removing the phrase, "Except where the deficit and excess compliance provisions provide for a longer or shorter period", and inserting in lieu thereof, "Except as otherwise herein provided".

§ 124.510 [Amended]

4. In § 124.510, the heading of paragraph (a) is revised to read, "*Reporting requirements for facilities not covered by § 124.513.*"; the heading of paragraph (b) is revised to read, "*Record maintenance requirements for facilities not covered by § 124.513.*"; and a new paragraph (c) is added, to read as follows:

* * * * *

(c)(1) *Reporting requirements for public facilities.* A facility under § 124.513 shall comply with paragraph (a)(4) of this section and shall submit within 90 days of the close of its fiscal year, as appropriate;

(i) A certification, signed by the responsible official of the facility, that there has been no material change in the factors upon which the certification under § 124.513 was based; or

(ii) A certification, signed by the responsible official of the facility and supported by appropriate documentation, that there has been a material change in the factors upon which the certification under § 124.513 was based.

(2) *Record maintenance requirements for public facilities.* A facility certified under § 124.513 shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the requirements of this subpart in any fiscal year, including those documents submitted to the Secretary under § 124.513(c). A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.511(a).

5. Section 124.511 is amended as follows:

a. Paragraph (a)(3) and (b)(2) are revised to read as follows:

§ 124.511 Investigation and enforcement.

(a) * * *

(3) When the Secretary investigates a facility, the facility, including a facility certified under § 124.513, shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

* * * * *

(b)(1) * * *

(2) A facility, including a facility certified under § 124.513, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance.

6. A new § 124.513 is added, to read as follows:

§ 124.513 Public facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification under this section if all of the following criteria are met:

(1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).

(2) It exists, in major part, for the purpose of providing care to the indigent on a free or below cost basis, as evidenced by provision therefor in its corporate charter or comparable organizational document.

(3) It provides health care services without charge or at a substantially reduced rate to persons who are determined by the facility, based on objective criteria, to be unable to pay therefor.

(4) It received, for the three most recent fiscal years for which audited financial statements are available, at least 10 percent of its total operating revenue from State and local governments (exclusive of any amounts received, or if not received, clamed, as reimbursement under Title XIX of the Social Security Act) or a quasi-public corporation as defined at 42 CFR 124.2(m).

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, at least 90 days prior to the beginning of the fiscal year for which certification is sought, copies of the following:

(1) The documents or laws (such as corporate charter, local ordinance, State laws) which establish its charitable purpose and operation.

(2) Audited financial statements for the most recent three years available.

(3) Billng and charging policies of the facility, including procedures for providing charity care.

(d) *Period of Effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may withdraw a certification under this subpart when he determines that there has been a material change in the factors upon which certification was based or a material failure to comply with the applicable requirements of this subpart.

(2) Except as required by § 124.511(b)(2), where a facility certified under this section has prior to that certification incurred a deficit under § 124.503, it may make up that deficit under this section on the basis of one year of certification for each year of deficit. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

[FR Doc. 85-20787 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-17-M

Notices

Federal Register
Vol. 50, No. 173
Friday, September 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985 Crop Soybean Final Loan and Purchase Rate

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1985 Crop Soybean Final Level of Price Support.

SUMMARY: The purpose of this notice is to announce that the final level of price support for the 1985 soybean crop is $5.02 per bushel. This determination is required to be made by section 201(g)(1) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4417. Since this determination is calculated in accordance with the statutory formula, the requirement of an Impact Analysis has been waived.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies to are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(g)(1) of the Agricultural Act of 1949, as amended, provides that the price of soybeans for each of the 1982 through 1985 marketing years shall be supported through loans and purchases at a level equal to 75 percent of the simple average price received by farmers for soybeans for each of the preceding five marketing years, excluding the high and low valued years, except that the support price may not be less than $5.02 per bushel. However, if the Secretary of Agriculture determines that the average price received by producers for soybeans in any marketing year is not more than 105 percent of the level of loans and purchases for such marketing year, the support level may be reduced for the next marketing year by the amount which is determined to be necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 10 percent in any year nor below $4.50 per bushel.

Section 201(g)(1) also provides that the Secretary must make a preliminary announcement of the level of price support not earlier than 30 days prior to September 1, the beginning of the marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years preceding the beginning of the marketing year for which the level of support is determined. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement applies. The final level of support cannot be less than that of the preliminary announcement.

A preliminary level of price support of $5.02 per bushel for the 1985 crop of soybeans was determined and announced on August 22, 1985 (50 FR 33987). As set forth below, it has been determined that the final level of price support for the 1985 crop of soybeans is $5.02 per bushel.

Determination

The simple average price received by farmers for soybeans for each of the preceding five years, excluding the high and low valued years, is $6.46 per bushel. This determination is based on the following data:

(1)

SIMPLE-AVERAGE SOYBEAN PRICES (DOLLARS PER BUSHEL)

1980	7.50.
1981	6.05.
1982	5.83.
1983	7.67.
1984	5.80 (projected).

(2) Average of the five years, excluding the low valued year (1984) and the high valued year (1983): ($7.50+$6.05+$5.83)/3=$6.46 per bushel.

(3) The final price support level calculation is $6.46×.75=$4.85. The calculated final price support level of $4.85 per bushel is less than the statutory minimum level of $5.02 per bushel. The projected average price of soybeans received by producers during the marketing year 1984 ($5.85) exceeded 105 percent of the 1984 price support level for soybeans ($5.02×1.05=$5.27). There is, therefore, no basis for reducing the final price support level for soybeans below the statutory minimum level of $5.02 per bushel. Accordingly, the final 1985-crop soybean price support level is $5.02 per bushel.

(Sec. 201(g)(1) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446 (g)(1)).

Signed at Washington, D.C., on August 28, 1985.

John R. Norton III,

Acting Secretary.

[FR Doc. 85–21267 Filed 9–3–85; 8:45 am]
BILLING CODE 3410–05–M

Forest Service

Challis National Forest Grazing Advisory Board; Meeting

The Challis National Forest Advisory Board will meet at 1:00 p.m., MST, on November 6, 1985 at the Lost River

Ranger District Office, Mackay, Idaho. The purpose of this meeting is to discuss, and receive advice and recommendations for, the utilization of range betterment funds, and development of allotment management plans for Fiscal Years 1986 and 1987.

The meeting will be open to the public. Persons who wish to attend should notify Ralph Jenkins at the Challis National Forest Supervisor's Office, Challis, Idaho (208/879–2285). Written statements may be filed with the committee before or after the meeting.

Dated: August 29, 1985.

Jack C. Griswold,

Forest Supervisor.

[FR Doc. 85–21331 Filed 9–5–85; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

South Mississippi Electric Power Association, Hattiesburg, MS; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Public Law 93–32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $63,400,000 to South Mississippi Electric Power Association, (SMEPA), Hattiesburg, Mississippi. This loan guarantee will provide funds needed to complete funding for SMEPA's ten percent ownership interest in the Grand Gulf Nuclear Unit No. 1 constructed by Middle South Energy.

FOR FURTHER INFORMATION CONTACT: Mr. Henry L. Thomas, General Manager, South Mississippi Electric Power Association, P.O. 1589, Hattiesburg, Mississippi 39401.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Thomas at the address given above.

In order to be considered, proposals must be submitted on or before October 7, 1985 to Mr. Thomas. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as SMEPA and REA may deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.)

Dated: August 30, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85–21282 Filed 9–5–85; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Madison-Cypress Creek Watershed, TN; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Madison-Cypress Creek Watershed, Madison County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB–USCH, 801 Broadway, Nashville, TN 37203, telephone (615) 251–5873.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of improvement include accelerated technical and financial assistance for land treatment on 4,540 acres of upland cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Billy K. Benson,

Deputy State Conservationist.

August 29, 1985.

[FR Doc. 85–21360 Filed 9–5–85; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 AM to 1:00 PM, on Wednesday, September 11, 1985, to take place in the Hubert Humphrey Building, Conference Room 723A, 200 Independence Avenue, SW., Washington, D.C.

Items on the agenda: Revisions to Authorities and Delegations; release and/or publication of the Signage Report and the Detectable Tactile Surface Treatment Report prepared by Georgia Tech; Board action on ANSI A117.1 ballot on the next edition of "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People;" report on Recreation Working Group/ Technical Paper; staff recommendations on McGraw-Hill's *Time-Saver Standards for Landscape Architecture;*

Board comments and/or recommendations concerning existing and recommended Board publications; overview presentation by the Acting Director of Research on how current and proposed research relates to sections of the MGRAD and UFAS.

DATE: Wednesday, September 11, 1985—10:00 AM-1:00 PM.

ADDRESS: Department of Health and Human Services Hubert Humphrey Building, Conference Room 723A, 200 Independence Avenue, SW., Washington, D.C.

All other committees of the ATBCB will meet on Monday and Tuesday, September 9 and 10, in the Hubert Humphrey Building, Room 723A, 200 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice of TDD).

Robert M. Johnson,

Executive Director.

[FR Doc. 85–21279 Filed 9–5–85; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-021]

Certain Carbon Steel Products From Brazil; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On June 19, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering all of the comments received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all certain carbon steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 25437) the preliminary results of its changed circumstances administrative review of the countervailing duty order on certain carbon steel products from Brazil (49 FR 25655, June 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian hot-rolled carbon steel plate in coil, hot-rolled carbon steel sheet, and cold-rolled carbon steel sheet. Such merchandise is currently classifiable under items 607.6610, 607.6710, 607.6720, 607.6730, 607.6740, 607.8320, 607.8342, 607.8350, 607.8355, and 607.8360 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received written comments from COSIPA, USIMINAS, and CSN ("the respondents"), from Hansa-World Cargo Service, Inc., an importer, and from the United States Steel Corporation, the petitioner.

Comment 1

The respondents contend that interest should be paid on the cash deposits of estimated countervailing duties refunded as a result of the revocation of the order.

Department's Position

We agree. We will instruct the Customs Service to refund with interest all cash deposits made on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Comment 2

The respondents contend that this notice should state the date by which an administrative review must be requested for entries made prior to October 1, 1984.

Department's Position

The Department published on August 13, 1985 (50 FR 32556), an interim-final/final rule itemizing when interested parties may request reviews.

Comment 3

Hansa argues that the revocation should be effective February 10, 1984, the publication date of the preliminary affirmative countervailing duty determination (49 FR 5157) and the date on which liquidation was suspended, not October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position

The Arrangement contains no provisions requiring that revocation cover all suspended entries.

Comment 4

U.S. Steel contends that the revocation of the countervailing duty order should apply only to the merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Using an earlier date for revocation would violate the intent of the Arrangement. Further, U.S. Steel argues that the Department has no statutory authority to revoke using an earlier date because no one has shown good cause to conduct a section 751(b) review of that period at this time. The sole good cause basis for any section 751(b) review now is the affirmative statements of the domestic interested parties. Finally, U.S. Steel notes that its withdrawal of the petition and request for revocation of the countervailing duty order "were conditioned upon an October 1, 1984 revocation."

Department's Position

We agree and are revoking the order for entries, or withdrawals from warehouse, for consumption on or after October 1, 1984.

Final Results of the Review and Revocation

After review of the comments received, we determine that the domestic interested parties are no longer

interested in continuation of the countervailing duty order on certain carbon steel products from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain carbon steel products from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain carbon steel products from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 29, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-21312 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Pueblo Zoological Society

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name, Pueblo Zoological Society (P369), Pueblo Zoo.

b. Address, P.O. Box 1245, Pueblo Colorado 81002.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Cuvier's beaked whale (*Ziphius cavirostris*) 3 vertebrae.

4. Type of Take: To import from Bermuda certebrae taken from a 1981 beached whale.

5. Location of Activity:_____.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: August 30, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21269 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

FY 1986 Price Change Notification

This is to advise National Technical Information Service (NTIS) customers of planned price increases for FY 1986. Effective October 1, 1985, prices for paper copy and microfiche reports, the GRA&I Annual Index, Software and Data Files as well as certain subscription/standing order products will increase. Prices for Abstract Newsletters, Tech Notes, SRIM, Published Searches, GRA&I Journal, and other subscription/standing order items will not increase until January 1, 1986.

Inquiries regarding this price notification, or prices changes for other agency subscription and standing order products should be directed to Dr. Melvin J. Josephs, Associate Director, Office of Program and Product Management, NTIS, Springfield, VA. 22161, (703) 487-4674.

The following list details the price changes and the effective dates. North American prices are for customers in the United States, Canada and Mexico. Foreign prices are for all other customers.

PRICES EFFECTIVE OCTOBER 1, 1985

Price codes	North American price	Foreign price
Standard price schedule "A"		
Microfiche:		
A01	$5.95	$11.90
Paper Copy:		
A02 and A03	9.95	19.90
A04 and A05	11.95	23.90
A06 through A09 (inclusive)	16.95	33.90
A10 through A13 (inclusive)	22.95	45.90
A14 through A17 (inclusive)	28.95	57.90
A18 through A21 (inclusive)	34.95	69.90
A22 through A25 (inclusive)	40.95	81.90
A99—Contact NTIS for price quote		
Computer Products Software and Data Files "T" Code Price Schedule		
T01	$145.00	$290.00
T02	160.00	320.00
T03	275.00	550.00
T04	370.00	740.00
T05	460.00	920.00
T06	535.00	1,070.00
T07	610.00	1,220.00
T08	685.00	1,370.00
T09	760.00	1,520.00
T10	835.00	1,670.00
T11	910.00	1,820.00
T12	985.00	1,970.00
T13	1,060.00	2,120.00
T14	1,135.00	2,270.00
T15	1,210.00	2,420.00
T16	1,285.00	2,570.00
T17	1,360.00	2,720.00
T18	1,435.00	2,870.00
T19	1,510.00	3,020.00
T99—Contact NTIS for price quote		
Documents and Microfiche "E" Code Price Schedule		
E01	$7.50	$15.00
E02	10.00	20.00
E03	11.00	22.00
E04	13.50	27.00
E05	15.50	31.00
E06	18.00	36.00
E07	20.50	41.00
E08	23.00	46.00
E09	25.50	51.00
E10	28.00	56.00
E11	30.50	61.00
E12	33.00	66.00
E13	35.50	71.00
E14	38.50	77.00
E15	42.00	84.00
E16	46.00	92.00
E17	50.00	100.00
E18	54.00	108.00
E19	60.00	120.00
E20	70.00	140.00

PRICES EFFECTIVE OCTOBER 1, 1985—Continued

Price codes	North American price	Foreign price
E99—Contact NTIS for price quote		

1984 GRA&I ANNUAL INDEX

North American price	Foreign price
$479	$645

PRICES EFFECTIVE JANUARY 1, 1986

ABSTRACT NEWSLETTERS

[Prices shown are annual]

Category	North American price	Foreign price
Administration & Management	$89	$125
Agriculture & Food	89	125
Behavior & Society	79	115
Biomedical Techn. & Human Factors Engrg	79	115
Building Industry Technology	79	115
Business and Economics	79	115
Chemistry	89	125
Civil Engineering	89	125
Communication	79	115
Computers, Control & Info. Theory	109	155
Electrotechnology	79	125
Energy	109	155
Environmental Pollution & Control	109	155
Foreign Technology	109	155
Govt. Inventions for Licensing	205	310
Health Planning & Health Serv. Rsch	89	125
Library & Information Serv	79	115
Manufacturing Technology	125	175
Materials Sciences	89	125
Medicine & Biology	89	125
NASA Earth Resources Survey Program	79	115
Natural Resources & Earth Sciences	89	125
Ocean Technology & Engineering	79	115
Physics	79	115
Problem Solving Info. for State & Local Govts	79	115
Transportation	89	125
Urban & Regional Techn. & Dev	79	115

NTIS TECH NOTES

[Prices shown are annual]

Number of categories	North American price	Foreign price
1	$68	$136
2	127	254
3	178	356
4	224	448
5	264	528
6 or more	287	574

GOVERNMENT REPORTS ANNOUNCEMENT AND INDEX—JOURNAL (GRA&I)

[Prices shown are annual]

North American price	Foreign price
$379	$530

SELECTED RESEARCH IN MICROFICHE

[SRIM]

	North American per report	Foreign per report
SRIM without Index	$1.25	$2.50
SRIM with Microfiche Index	1.35	2.70
SRIM with Paper Copy Index	1.55	3.10

North American per copy	Foreign per copy
Published Searches (Price Code NO 1)	
$45	$80
Directory of Computerized Data Files (Price Code NO 2)	
$48	$80
Directory of Computer Software (Price Code NO 2)	
$48	$80

Nancy L. Moore,
Budget Analyst, Office of Budget.

[FR Doc. 85-21369 Filed 9-4-85; 11:40 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

August 30, 1985.

On June 17, 1985 a notice was published in the **Federal Register** (50 FR 25116) announcing that, on May 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls', and infants' cotton coats in Category 335 and men's and boys' cotton shirts in Category 340, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached in consultations on a mutually satisfactory solution concerning these categories, the United States Government has decided to control imports in Categories 335 and 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986 at levels of 37,322 dozen and 134,629 dozen, respectively. Should future consultations result in agreement on different levels, further notice will be published in the **Federal Register**.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States of consumption, or withdrawal from warehouse for consumption, of cotton textile products in Categories 335 and 340 exported during the period which began on May 30, 1985 and extends through May 29, 1986, in excess of the designated restraint limits.

EFFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Fields International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377/4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreeements.
August 30, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 6, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 335 and 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986, in excess of the following levels:

Category	12 month restraint level [1]
335	37,322 dozen.
340	134,629 dozen.

[1] The levels have not been adjusted to reflect any imports exported after May 29, 1985.

Textile products in Categories 335 and 340 which have been exported to the United States prior to May 30, 1985 shall not be subject to this directive.

Textile products in Categories 335 and 340 which have been released from the custody of the U.S. Customs Service under the

provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21313 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 6, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 7, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 24018) of proposed addition to Procurement List 1985, October 19, 1984 (49 FR 41195).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985: Janitorial/Custodial, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-21311 Filed 9-5-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposal To Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Citrus Associates of the New York Cotton Exchange, Inc. for trading commodity options on frozen concentrated orange juice futures contracts.

SUMMARY: The Citrus Associates of the New York Cotton Exchange, Inc. ("CA/NYCE") has submitted an application to trade options on frozen concentrated orange juice ("FCOJ") futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 7, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CA/NYCE FCOJ option contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for option trading (46 FR 54500 (November 3, 1981)).[1] Initially, the pilot program provided that each board of trade would be approved for trading in no more that one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 33641 (August 24, 1984)). Further, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to these five permissible option designations (49 FR 2752 (January 23, 1984)). The New York Cotton Exchange has been designated as a contract market in options on cotton futures contracts.

CA/NYCE has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982) ("Act"), and Commission Regulation § 33.5, to trade options on frozen concentrated orange juice futures contracts.

A copy of the terms and conditions of the proposed CA/NYCE option on FCOJ futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CA/NYCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C.

[1] The commodities which are eligible for the initial pilot program are commodities which are not enumerated in Section 2(a)(1)(A) of the Commodity Exchange Act. The enumerated commodities are generally agricultural products which are produced in this country. Frozen concentrated orange juice is an enumerated commodity.

552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by CA/NYCE in suppport of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by October 7, 1985.

Issued in Washington, D.C., on August 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-21238 Filed 9-5-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Finding of No Significant Impact (FONSI); Ground Wave Emergency Network (GWEN)

Description of Proposed Action and Alternatives

The Ground Wave Emergency Network is an emergency communications system which will be deployed within the Continental U.S. (CONUS) to enhance the survivability and control of U.S. strategic forces. The system consists of: Relay Terminals, Receive Only Terminals, and Input/Output Terminals. The program will be acquired in three separate stages identified as: Initial Connectivity Capability (FOC).

Each site will consist of a 300-foot-high antenna with guy wires plus a buried ground plane antenna of radial wires, a fenced-in area containing an enclosure for appropriate communication equipment, and a power generator with fuel storage.

This system will be comprised of a large network of radio receive and radio transmit stations (approximately 400) that relay messages throughout CONUS. If some nodes have been destroyed, messages will be routed around the inoperative nodes and still reach the intended destination.

It is necessary that any candidate communication system for this application survive the effects of electromagnetic pulse. This requirement rules out the use of assets such as the commercial telephone systems and other communication techniques that are adversely affected by a disturbed atmosphere. Only line-of-sight systems and ground wave communication systems remain as possible alternatives. The use of microwave systems for line-of-sight relay terminals would require in excess of 10,000 installations. The large number of relay terminals rule out this alternative because of environmental impacts, costs and construction schedules. The no action alternative would deprive U.S. strategic forces of communications capability as existing systems cannot fully perform the functions required of GWEN.

Anticipated Environmental Effects

Construction noise and diesel generator noise is expected but will be moderate. Air quality during construction grading and power generator operation will be affected slightly.

Since some of the sites are unmanned and others are minimally manned, there will be insignificant impact on solid waste and water quality. The appropriate fuel storage and spill prevention measures in accordance with all applicable local, state or Federal requirements will be implemented to assure that no water contamination occurs.

The radio frequency radiation field levels outside the exclusion fence are well below hazardous levels and pose no hazard to people. In addition, radiological hazard teams will conduct measurements to verify levels of radiation and will post warning signs to restricted access areas.

No socio-economic impact is anticipated due to operation of the unmanned relay sites and a minimal impact in the form of a requirement for a few new operation, support and maintenance personnel is anticipated at some of the other sites.

Conclusion

As a result of the insignificant anticipated impacts in all environmental factors, a Finding of No Significant Impact (FONSI) is made for the GWEN system. An Environmental Assessment, dated April 1985, which analyzes the proposed project is on file at: Electronic Systems Division/DEP, Attn: Mr. Al Scansaroli, Hanscom AFB, MA 01731.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-21329 Filed 9-5-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent to Prepare a Draft Environmental Impact Statement Supplement (DEIS) for the Yakima-Union Gap Flood Damage Reduction Project, Washington

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS for the Yakima-Union Gap Flood Damage Reduction Project.

SUMMARY: 1. *Proposed Action.* The project area is comprised of portions of the cities of Yakima and Union Gap, and unincorporated sections of Yakima County in eastern Washington. A Feasibility Report and EIS were completed for this project in 1976, and the final EIS was filed with the Council on Environmental Quality on 14 May 1981. The Feasibility Report recommended that 9 miles of existing levees between the confluence of the Naches and Yakima Rivers and the Highway 24 (Moxee) Bridget be improved, and that 2.7 miles of left bank levee and 1.1 miles of right bank levee be constructed downstream of the Moxee Bridge to protect primarily farmland, residences, and the Yakima Sewage Treatment Plant. The purpose of the present investigation is to reaffirm the engineering, social, environmental, and economic viability of the plan proposed during feasibility investigations and continue engineering planning which will provide a basis for construction. This phase of Corps of Engineers study is called Continued Planning and Engineering (CP&E). In addition, the DEIS supplement will address subjects not discussed in detail in the original EIS, particularly, habitat preservation, growth impacts, and cultural resources.

2. *Alternatives.* Viable alternatives to a levee project have not been identified. However, opportunities to minimize social and environmental project impacts will be investigated. Detailed design studies will be conducted to determine if the levee alinement and design can be altered to avoid impacts to riparian vegetation, fish and wildlife habitat, and existing recreational facilities on or adjacent to the levees.

3. *Scoping Process.*

a. *Public Involvement Program.* Two scoping meetings have taken place (27 March 1985 and 29 July 1985) involving nine agencies and groups. Additional public involvement will be scheduled throughout CP&E.

b. *Significant Concerns.* Several study concerns surfaced during the feasibility study and the initial scoping, and will continue to be addressed during CP&E. Some of the most important concerns are the following:

(1) Develop a project design that will avoid or minimize impacts to riparian vegetation, and fish and wildlife habitat.

(2) Develop a landscaping plan for the levee segment that will replace the existing buffer vegetation in Sportsman Park.

(3) Examine levee designs or a cost-sharing plan that could help to retain or replace existing bike paths on the levees.

(4) Perform a cultural resources reconnaissance that will identify historic and prehistoric resources within the project area and prescribe necessary salvage or mitigation measures.

(5) Evaluate the impacts of constructing levees downstream of the Moxee Bridge on water quality and development in the area.

c. *Environmental Review and Consultation Requirements.* This project investigation is being coordinated with the U.S. Fish and Wildlife Service and will satisfy requirements of the Fish and Wildlife Coordination Act and section 7(c) of the Endangered Species Act. Section 404 of Public Law 92–500 requires an evaluation of the effects of activites on aquatic ecosystems involving the discharge of dredged or filled material in waters of the United States. A section 404(b) evalution which discusses the project impacts on the aquatic ecosystem will be developed.

4. *Availability of DEIS Supplement.* The DEIS supplement is presently scheduled to become available to the public in August 1986.

ADDRESS: Additional information about the proposed action and DEIS supplement can be obtained by contacting the enviornmental coordinator: Mr. Michael Scuderi, Environmental Resources Section, Seattle District, Corps of Engineers, Post Office Box C–3755, Seattle, Washington 98124, Telephone (206) 764–3624/(FTS 399–3624).

Dated: August 30, 1985.

Roger F. Yankoupe,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–21333 Filed 9–5–85; 8:45 am]

BILLING CODE 3710-ER-M

Intent for an EIR/EIS for a Regulatory Permit To Excavate a Connection to the Sacramento River, Adjacent to the City of Sacramento, CA

AGENCY: Sacramento District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare an EIS/EIR.

SUMMARY: The proposed inland marina will be the centerpiece for a large residential commercial waterside development along the Sacramento River. The proposed project involves developing a 300 acre site. The applicant intends to construct an inland marina by excavating about 1.2 million cubic yards of material. The excavated material will be placed in a floodway to provide fill for residential and commercial sites. The fill will also raise the sites above the flood plain elevation of 32 feet.

About 800 residential units, a 600 room hotel, a convention center, 125,000 square feet of retail commercial buildings and 450,000 square feet of office business buildings will be constructed on the upland area, including the area within the floodway of the Sacramento River.

At present, the site is undeveloped and heavily vegetated with a variety of plants. Much of the development will be done on the riverward side of the levee that protects the community of Broderick from floods from the Sacramento River. The area to be developed has been designated open space by the East Yolo County General Plan. The remainder of the site has been designated low to middle density. The project is within the boundaries of a proposed redevelopment area.

Alternatives:

The following alternatives are being considered:

1. Reduced scope of project.

2. Change in siting of redevelopment features including only construction of the marina in the flood plain; all housing moved out of the floodway.

Other alternatives identified during the scoping process will be considered. Significant issues that have been identified to date that will be discussed in the EIS/EIR:

1. Ecological resources.

2. Hydrology and water quality.

3. Change in hydraulic characteristics of the river and project effect on the floodway.

4. Social and economic impacts.

5. Impacts on wildlife habitat and endangered species.

Other issues identified during the scoping will be discussed in the EIS. A public notice describing the project will be sent to all known interested parties requesting comments on the project and on the scope of the EIS/EIR.

Scoping Process

Other environmental review and consultation requirements which will be conducted concurrently with the NEPA process includes Section 401 and 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Endangered Species Act, and Executive Order 11988 on Flood Plain Management.

We estimate the draft EIS/EIR will be available to the public on January 1986. The Environmental Impact Statement will be prepared by the EDAW, Inc. Questions concerning the proposed actions and EIS/EIR should be directed to Tom Coe, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814 (916) 551–2270, FTS 460–2270.

Wayne J. Scholl,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–21330 Filed 9–5–85; 8:45 am]

BILLING CODE 3710-ER-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee Technology Base Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Base Task Force will meet September 23–24, 1985, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: August 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–21315 Filed 9–5–85; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Prepare a Draft Joint Environmental Impact Statement for a Land Exchange and Energy Recovery Project, Naval Air Station, Miramar, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality Regulations (40 CFR Part 1506.6), the Department of the Navy and California Energy Commission (CEC) will prepare a joint environmental impact statement for a proposed land exchange with the City of San Diego and a waste-to-energy project.

Land located on the south edge of Miramar Naval Air Station, west of Highway 163 and east of Convoy Street, will be traded to the City in exchange for land now owned by the City. The land, when acquired by the City will be leased to a private company for construction and operation of a 62 megawatt, 2250 ton per day waste-to-energy facility for disposal of muncipal solid waste. Possible alternatives to the proposed actions include but are not limited to: no land exchange, sale of the land, or exchange of the land to some other party for other uses.

Affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested parties are invited to submit written comments regarding the scope and significant issues to be analyzed in the environmental impact statement; or any other matter relevant to the scoping process for the affected environment. Comments should be submitted as early as possible but no later than 15 October 1985.

Questions or comments regarding scoping or the environmental impact statement should be addressed to:

a. For the proposed land exchange: Dana Sakamoto, Western Division, Naval Facilities Engineering Command, P.O. Box 727, Code 203, San Bruno, CA 94066.
b. For the waste-to-energy project: Christopher Tooker, California Energy Commission, Siting and Environmental Division, 1516 19th Street, Sacramento, CA 95814.

Dated: August 30, 1985.

W.F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–21314 Filed 9–5–85; 8:45 am]

BILLING CODE 3810-AE-M

National Environmental Policy Act; Record of Decision To Homeport a Carrier Battle Group (CVBG) in the Puget Sound Region (Everett), WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to construct, homeport and operate a Carrier Battle Group (CVBG) in the Puget Sound region and specifically to be located at Everett, Washington.

Everett is to be the homeport for up to fifteen ships to include a nuclear powered Aircraft Carrier (CVN), three Guided Missile Crusiers (CG) (two of which are to be nuclear powered), two Destoyers (DD), two Guided Missile Destroyers (DDG), four Guided Missile Frigates (FFG) and two Mine Countermeasures ships (MCM). The homeport will involve some 8200 military personnel and about 8750 civilians including an estimated 7600 military dependents.

Four of the ships would be Naval Reserve Forces (NRF) ships and would operate independently of the main Battle Group, which would consist of the Carrier and ten combatents. One additional ship, a Destroyer Tender (AD) would spend one month per quarter at the homeport. Two Fast Combat Support Ships (AOE's) which are homeported currently at the Puget Sound Naval Shipyard (PSNS) in Bremerton would participate in some Battle Group activities but would remain homeported at PSNS. Several small service craft (10 to 15), such as tug boats, fuel boats, barges, and pusher boats, would also be included at the homeport. Location of a homeport facility at the 116 acre Norton Avenue Terminal site in Everett will require construction of a wide range of support facilities. The facilities to be constructed would include berthing for up to 15 ships plus yard craft, waterfront support facilities, administrative facilities, Bachelor Enlisted Quarters (BEQ), recreational facilities, and a Shore Intermediate Maintenance Activity (SIMA).

Construction at the homeport site would focus on demolition of virtually all existing buildings currently on-site (except the chill facility) and construction of new buildings, utilities, parking areas and recreational facilities. The large "L" shaped pier at the south end of the existing facility would be reconstructed and three smaller existing piers would be removed. Approximately 10 acres of existing fill (about 1 million cubic yards of material) at the south end of the main pier would also be removed. A new pier and 1600-foot breakwater would be constructed. Construction of the ship berthing facilities in the East Waterway would necessitate the removal of approximately 2.5 million cubic yards of bottom materials. Dredging operations would be done with both a hydraulic dredge and clamshell for clean materials and with a clamshell in the case of contaminated material.

The Navy filed a Draft Environmental Impact Statement (DEIS) for the proposed action on 16 November 1984. A public hearing was held subsequently in Everett on 14 December 1984. At the hearing concerns raised and addressed in the DEIS were the impact of the homeport siting to the surrounding ecology of the area, traffic and congestion in Everett resulting from the Navy's presence, potential toxicity and disposal of dredged materials, the fiscal impacts of the homeport versus economic benefits, air pollution, impacts on local counties, and impacts of the homeporting action on the Tulalip Tribes of Washington. The Final Environmental Impact Statement (FEIS) was filed with the public on 21 June 1985.

In selecting a site for the regional homeporting, the Navy examined both existing Navy facilities and non-Navy sites in the northwestern United States. Of these alternatives the Norton Avenue Terminal in Everett and terminal 91 in Seattle, Washington were evaluated in detail in the environmental documentation prepared along with a no-action alternative. Based on multiple impact factors which included population, housing, aquatic ecology, terrestrial ecology, land use, community facilities, transportation, available energy, air quality, asthetics, economic considerations and others, the Norton Avenue Terminal Site in Everett, Washington was selected. The no-action alternative was defined as leaving the carrier at an existing west coast port and leaving other CVBG vessels at current homeport locations, thereby depriving their use as a coordinated force.

Constructing the homeport at Everett would require the East Waterway to be dredged to depth requirements of the homeported Navy ships. About 800,000 cubic yards of contaminated sediments would need to be dredged and diposed. This was considered by most reviewers as the most significant environmental issue.

The procedures for identifying an acceptable disposal option has involved a number of field studies, evaluations of dredging and disposal technologies and strategies, and close coordination with Federal and State regulatory agencies. The Navy's proposal is to use confined aquatic disposal of the dredged material. This technique would place contaminated bottom sediments in a Deep Delta site located approximately 1½ miles southwest of the East Waterway in deep water covered by a blanket of clean capping material. This will isolate contaminants from the marine environment.

Dredging activities would also likely result in short-term impacts at the dredge site such as localized water quality degradation, temporary disruption of the benthic invertebrate community, and loss of food sources for juvenile salmon and demersal fish. Disposal of the dredged materials at an open water site would result in temporary impacts there. Disposal of dredged materials will occur at a site approved under the Corps of Engineers Section 404 Permit Process. Additional information, if required, as well as further identification of dredging technologies will be supplemented by the Corps of Engineers as a part of the Section 404 permit process.

Operation of the homeport could result in degradation of surfact water quality due to discharge of graywater, ship maintenance materials, oil spills during refueling, and surface runoff from ships and on-shore facilities. A major uncontrolled oil or fuel spill, should one inadvertently occur, would have major impacts on wetland areas and on associated aquatic, marine wildlife and waterbird species. All of these assumed impacts have corresponding mitigation measures to obviate or lessen the impacts should they occur.

Construction and operation of the proposed homeport has the potential to affect air quality levels in the immediate area. Questions were raised as to the degree of impact and the data and methodology used by the Navy. Navy will review/reevaluate its position for construction prior to completion of the Section 404 permit application process and will comply with applicable Prevention of Significant Deterioration (PSD) regulations.

Operation would result in potential habitat losses and/or disturbances of shorebirds, waterfowl, and marine mammals.

Puget Sound Indian Tribes could lose fishing time and gear in their usual and accustomed fishing areas as a result of homeport operation. There could also be a loss of fishing area due to security requirments imposed around the homeport facility. The Navy is presently negotiating with the Tulalip Indian representatives to identify specific measures to mitigate actual or perceived impacts on the fishery. A satisfactory resolution to these issues is expected prior to the homeport becoming operational.

Operation of a homeport at Everett would significantly increase the rate of population growth in Snohomish County. By 1992, the project is expected to have caused a population increase of 27,000 persons which is a six percent increase over the projected population growth. Although an estimated 4320 military personnel are expected to reside on ships or in bachelor enlisted quarters at the homeport, there would be a substantial increase in demand for housing between 1989 and 1992. Approximately 8600 new housing units would be required for military and civilian homeport-releated personnel. This could result in temporary housing shortages, increases in housing costs, and displacement of some low income families.

As a result of project-related population growth, the overall demand for local health and social services would increase. There would also be moderate impacts on public law enforcement agencies.

Certain utilities would experience significant impacts due to homeport operations. There would be a measureable impact on the Everett waste water collection system and on systems normally utilized for the collection and disposal of solid waste.

Existing traffic loads and patterns will be impacted, background noise will be increased and the visual character of the area will change. Mitigating measures noted are possible to offset some of the impacts identified.

Everett was selected as the site offering the best combination of overall operational characteristics. Berthing is satisfactorily accommodated, with immediate access to an approach channel with adequate maneuvering space. Marine services are available as well as access to other goods and supplies. Land is available for construction of most of the required shoreside facilities and personnel services can be accommodated. From a strictly environmental standpoint the homeporting action is considered to cause no more of an overall impact than the alternative considered.

The Navy believes that there are no outstanding issues to be addressed with respect to this project. Some mitigation measures require continued coordination between the Navy and cognizant State and local agencies and individual representatives to effect implementation of the homeporting action and such coordination is expected to occur.

Dated: August 27, 1985.

L. Wayne Arny, III,

Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics).

[FR Doc. 85-21316 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Evan C. Vlachos, Chairman, EAB, and Lieutenant General E.R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, September 24, 1985, to 11:00 a.m., Thursday, September 26, 1985. Place: The meeting will be held at the Marines Memorial Club, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

24 September—Tuesday—A.M. Session

8:00—Meeting convened—Opening remarks
8:25—Meeting objectives and charge to EAB—Chief of Engineers.
9:00—Introduction and comments—Director of Civil Works
9:45—Old business

P.M. Session

1:00—Shoreline protection and public access

1:30—Zoning
2:00—Development needs
2:45—Legal aspects
3:15—Panel discussion
4:45—Meeting recess

25 September—Wednesday—A.M. Session

8:00—Historical changes in Bay Habitat
8:40—Mitigation of Habitat loss
9:20—Restoration of Habitat
10:15—Management of wetlands
10:45—Panel discussion

P.M. Session

1:00—Environmental compliance monitoring
2:45—Environmental auditing
3:15—Panel discussion

26 September—Thursday—A.M. Session

8:00—EAB Report to the Chief of Engineers
10:00—Chief of Engineers response
10:30—Public comments
11:00—Meeting adjourned

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-21273 Filed 9-5-85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; Austria and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/AT(EU)-64, for the retransfer of 11 test fuel elements from the Federal Republic of Germany to Austria for use in the Astra research reactor in Seibersdorf, Austria in connection with the Reduced Enrichment Research and Test Reactor (RERTR) program. This program is intended to reduce the use of highly enriched uranium in such reactors. The fuel elements contain 21 kilograms of uranium, enriched to 19.95% in U-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21264 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Taiwan and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" as authorized by the Taiwan Relations Act of 1979 (Pub. L. 96-8), and under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned authority and agreement involves approval of the following retransfer:

RTD/EU (CI)-1, for the retransfer of uranium dioxide pellets containing 380 grams of uranium, enriched to 7.1% in U-235, from Taiwan to France, for irradiation testing in the OSIRIS reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21263 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-856, to AGIP S.P.A., Italy, 148.8 grams of normal uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21274 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-849, to the Institute Fuer Strahlenschutz, Nurenberg, the Federal Republic of Germany, one microgram of thorium-229, for use as a tracer for determination of thorium-228 in environmental samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistance Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21277 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-857, to the Central Bureau for Nuclear Measurements, Geel, Belgium, 0.009 grams of uranium, enriched to 33% in U-235, and 0.003 grams of uranium-233, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21278 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned-agreement involves approval for the loan, under Contract Number WC-SD-21, of a uranium-liquid argon calorimeter, containing approximately 12,147 kilograms of uranium metal, depleted in the isotope U-235, for use in a collaborative high-energy physics experiment. The calorimeter is to be returned to the U.S. following completion of the experiment.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21275 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-SD-125, to MB-Microtec, Inc., 1,200,000 curies of tritium gas, to be used for the manufacture of sealed tritium light sources. The U.S. Nuclear Regulatory Commission has issued license XB001234 for the export of this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21276 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. PP-83EA]

Application for Authorization to Transmit Electric Energy to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by Fairfield Energy Venture (Fairfield) and Maine Public Service Company (MPSC) for authorization to export electric energy to a foreign country.

SUMMARY: Fairfield and MPSC have filed an application with the Economic Regulatory Administration (ERA) for authority to export to Canada electric energy, which Fairfield has agreed to sell to Central Maine Power Company (CMP) for 15 years, beginning in 1987. In order to deliver the energy to CMP, it must be transmitted through the MPSC electric system to Canada and then imported into the United States from Canada for ultimate delivery to CMP.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5935

Lise Courtney M. Howe, Office of General Counsel (GC), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2900

SUPPLEMENTARY INFORMATION: On August 30, 1985, Fairfield Energy Venture and Maine Public Service Company jointly filed an application with ERA seeking authorization for Maine Public Service Company to export electric energy at a maximum rate of 30 megawatts (MW) from Maine to New Brunswick, Canada, from which point the energy will be imported into the U.S. for ultimate purchase by CMP of Maine.

Fairfield, located in Fairfield, Maine, has an agreement with CMP, located in central and southern Maine, to sell it 30 MW of electric power from Fairfield's planned wood-fired small power production facility, for 15 years beginning in 1987.

Fairfield is located in the service territory of MPSC. In order to deliver the electric power to CMP, it will be necessary to have the electricity transmitted through the utility systems of MPSC, the New Brunswick Electric Power Commission in New Brunswick, Canada, and Maine Electric Power Company in the State of Maine. Although the electricity will be transmitted through Canada, none of the energy will be sold there; instead, all of

the energy will be delivered to CMP for consumption in the U.S.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Fuels Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C., 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed within 30 days of the publication of this notice. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, D.C. from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, D.C. on August 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-21359 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-17-NG]

Vermont Gas Systems, Inc.; Application To Increase Volumes of Natural Gas Imported From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Increase the Volumes of Natural Gas Imported from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 23, 1985, of an application from Vermont Gas Systems, Inc. (Vermont Gas) to amend its existing authorization to import up to 100,000 Mcf of additional Canadian natural gas from TransCanada Pipe Lines Limited (TransCanada) on a best-efforts, interruptible basis at a price not to exceed $3.40 per MMBtu in accordance with Canada's Volume Related Incentive Pricing Program (VRIP) during each of the 1985-1986 and 1986-1987 contract years. Vermont Gas requests that the authorization be granted by October 30, 1985.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on October 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9622

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E-042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: Vermont Gas purchases its entire supply of natural gas from the general system supply of TransCanada, a Canadian corporation. Vermont Gas is totally dependent upon TransCanada for its gas supply. The delivery point is at the international boundary near Highgate Springs, Vermont. Vermont Gas sells and distributes this gas supply entirely within the state of Vermont.

Pursuant to DOE/ERA Opinion and Order No. 61 (1 ERA 70,571), Vermont Gas is currently authorized by the ERA to import up to 24,800 Mcf per day of natural gas from TransCanada on a firm basis, and an additional volume of up to 100,000 Mcf on a best-efforts, interruptible basis during the 1984-1985 contract year (from November 1, 1984, to October 31, 1985). Pursuant to DOE/ERA Opinion and Order No. 39 (1 ERA 70,544), Vermont Gas is authorized to continue importing at the 24,800 Mcf per day level during the 1985-1986 contract year (from November 1, 1985, to October 31, 1986) and to increase this to 25,600 Mcf per day during each of the next four contract years ending October 31, 1991.

With its application, Vermont Gas submitted a July 1, 1985, amendment to its February 16, 1966, gas purchase contract with TransCanada extending the sale of up to 100,000 Mcf per contract year of additional natural gas on a best-efforts, interruptible basis to the 1985-86 and 1986-87 contract years. Under its March 25, 1981, amendment to its gas purchase contract with TransCanada, Vermont Gas incurs no take-or-pay obligation until after it has taken 10 Bcf of gas in any contract year. Since the annual volume limitation imposed by the Canadian National Energy Board on TransCanada's exports to Vermont Gas in its License GL-19, as amended, is 6.5 Bcf per year on a firm basis, the take-or-pay provision will not be invoked.

The additional volumes requested will be delivered through existing facilities and Vermont Gas anticipates that purchases of interruptible gas will be made at a price not in excess of $3.40 per MMBtu, in accordance with Canada's VRIP. The VRIP, which involves a two-tier pricing system, provides for a discount of gas purchases in excess of the base volumes computed according to a formula administered by the Canadian Minister of Energy, Mines and Resources. Pursuant to an October 17, 1983, amendment to its gas purchase contract with TransCanada, Vermont Gas' purchases during the 1983-1984 winter months (November 1983 through April 1984) were allocated between base volumes and the incentive volumes. Vermont Gas and TransCanada are considering a continuation of this allocation system as well as other pricing formulae. Vermont Gas states that, in any event, the interruptible gas will only be imported when the price is competitive.

In support of its application, Vermont Gas Stated its belief that the import of additional volumes of natural gas from Canada on a best-efforts, interruptible basis conforms to the DOE's policy guidelines because the gas will be imported only when it is competitively priced. Vermont Gas stated that the continuation of interruptible volumes from Canada is not inconsistent with the public interest as it will permit Vermont Gas to meet immediate market demands of industrial customers who would othewise use oil, will not affect the total volume of gas which TransCanada is authorized to export to Vermont Gas, will reduce the need to import oil from countries less secure and reliable than Canada, and will not result in the incurrence of any take-or-pay obligations.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement in competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene

or notice of intervention, as applicable, and written comments. Any persons wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–033–B, RG–23, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., October 7, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevent to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If not party requests additional procedures, a final opinion and order may be issued on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Vermont Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D. C., On August 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–21262 Filed 9–5–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL85–46–000]

EUA Power Corp.; Notice of Petition for a Declaratory Order

Issued August 30, 1985.

The filing Company submits the following:

The notice that on August 29, 1985 EUA Power Corporation ("EUA Power") filed a petition for a declaratory order making certain determinations in ratemaking and accounting in connection with the sale of power from an 11.27% ownership interest in the Seabrook nuclear generating project that EUA proposes to acquire from Bangor Hydro Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation and Maine Public Service Company. Upon approval by the Securities and Exchange Commission, EUA Power will become a subsidiary of Eastern Utilities Associates, a registered public utility holding company headquartered in Boston, Massachusetts.

EUA Power seeks two determinations. The first is a determination that it will be allowed to sell Seabrook power to non-affiliates at market-based rates. By market-based rates is meant rates negotiated between EUA Power and the buyers as just reasonable for the services provided. This determination is sought on the basis that the market for wholesale power in New England is sufficiently competitive that market-based rates quality as just and reasonable rates within the meaning of the Federal Power Act, at least for a speculative entrant into the market having no existing customer base such as EUA Power.

The second determination consists of a series of four determinations that would apply in establishing cost-based rates for sales of power to affiliates. These determinations relate to: (1) Debt/equity ratio, (2) equity structure, (3) rates of return and (4) the effects of any subsequent findings that construction expenditures made by the Sellers prior to EUA Power's acquisition of their shares were imprudent. The second determination would also apply to sales to non-affiliates if the Commission does not allow the market-based ratemaking requested in the first determination.

EUA Power requests expedited consideration, including waiver of initial decision, to allow a final Commission order to be issued by December 31, 1985.

Any person desiring to be heard or to protest said filing or to be apprised of any changes in the proposal in the course of the proceeding should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1985. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21259 Filed 9–5–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of August 9 Through August 16, 1985

During the Week of August 9 through August 16, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 9 through Aug. 16, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 12, 1985	St. Joe Petroleum Company, St. Joseph, Missouri	HEE-0160	Exception to the reporting requirements. If granted: St. Joe Petroleum Company would not be required to file cetain EIA forms.
Aug. 15, 1985	Holy Cross Hospital, Mission Hills, California	HFL-0003	Request for temporary exception. If granted: Holy Cross Hospital would receive temporary exception relief form the regulations governing the Department of Energy's Schools and Hospitals Institutional Grants Program, 10 C.F.R. Part 455.
Aug. 16, 1985	Tampimex Oil International, Ltd., Washington, D.C.	HRD-0292	Motion for discovery. If granted: Discovery would be granted to Tampimex Oil International, Ltd. in connection with its Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0292).

REFUND APPLICATIONS RECEIVED

[Week of Aug. 9 to Aug. 16, 1985]

Date received	Names of refund proceding/ name of refund appliant	Case No.
8/5/85	Alkek/Adams/Johnson/Giant Industries.	RF6-75
8/9/85	Arkansas Louisiana/Saunders Leasing Systems, Inc..	RF154-6
8/12/85	Aminoil/County Gas Co., Inc.	RF139-66
8/12/85	Receive Orders/Consumers Power Co.	RF171-17
8/12/85	Red Trainagle/Jesse's Gulf	RF178-8
8/12/85	St. James/Glen Petroleum Corp	RF180-16
8/12/85	Champlain/Baird's Citgo	RF167-2
8/12/85	Aminoil/Behm Family Corporation.	RF139-67
8/12/85	Aminoil/Trio Gas, Inc	RF139-68
8/12/85	Aminoil/Rural Gas Company	RF139-69
8/12/85	Aminoil/Kiamichi Country LP Gas Co.	RF139-70
8/12/85	Aminoil/Linder's LP Gas Service	RF139-71
8/12/85	Armour/Kerr-McGee Corporation	RF167-4
8/12/85	Husky/Reese Tire & Center	RF161-6
8/12/85	Eugene Endicott/Ronald L. Halsey.	RF188-1
8/12/85	Enterprise/Tripe Clean Petroleum Co.	RF158-2
8/12/85	Charter Company/Florida	RQ23-225
8/12/85	Perry Gas Processors/Florida	RQ183-226
8/12/85	National Helium Corp./Florida	RQ3-227
8/13/85	Armour/Caribour Four Corners	RF167-5
8/13/85	Aminoil/Suwannee Valley Gas, Inc.	RF139-72
8/13/85	Aminoil/Lowe's Pellets&Grain, Inc.	RF139-74
8/13/85	Aminoil/Briceton Elevator, Inc	RF139-73
8/13/85	F.O. Fletcher/Bestfire Oil Co	RF172-1
8/13/85	Husky/Rebyan, Inc	RF161-7
8/14/85	Husky/W.S. Hatch Company	RF161-8
8/14/85	St. James/Quincy Adams Oil Co	RF180-17
8/14/85	Nielsen/Al's Place	RF141-14
8/14/85	Amoinoil/Martin Gas Sales	RF139-75
8/14/85	Aminoil/Georgia Pacific Corp	RF139-76
8/15/85	Aminoil/Smithfield Oil & Gas Co	RF139-77
8/15/85	St. James/Marvo Oil Company	RF180-18
8/15/85	Aminoil/Blu-Gas Co., Inc	RF139-78
8/15/85	Husky/Iowa	RF161-9
8/15/85	Husky/J&B Oil Company	RF161-10
8/15/85	Boswell/National Steel Corp	RF179-4
8/15/85	Aminoil/Carolina Energy of Shelby, Inc.	RF139-83
8/15/85	Good Hope/Kerr-McGee Corporation.	RF189-1
8/16/85	Husky/Brady Oil Company	RF161-11
8/16/85	Warren Holding/Big S Oil Co., Inc.	RF169-5
8/16/85	Inland/Len Thoele Service	RF176-3
8/16/85	Cibro/Public Fuel Service Co., Inc.	RF184-2
8/16/85	Red Triangle/Alfred G. Marmolejo.	RF178-9
8/16/85	Red Triangle/Raul G. Mrmolejo	RF178-10
8/16/85	Aminoil/C&D Gas Company	RF139-81
8/16/85	Aminoil/B&W Gas Company	RF139-80
8/16/85	Aminoil/Ohio Gas Company	RF139-79
8/16/85	Aminoil/Your Comfort Heating Co	RF139-82

[FR Doc. 85-21260 Filed 9-8-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $21,200 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Harris Enterprises, Inc. of Portland, Oregon (Case No. HEF-0087). The fund will be available to customers who purchased refined petroleum products form Harris during the consent order period.

DATE AND ADDRESS: Refund applications for a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: The Harris Enterprises, Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case No. HEF-0087.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by Harris Enterprises, Inc. of Portland, Oregon. The consent order settled possible pricing violations with respect to the firm's sales of motor gasoline, No. 2 fuel oil, and No. 1 heating oil to customers during the November 1, 1973 through August 31, 1974 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on May 23, 1985. 50 FR 24032 (June 7, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**. Applications will be accepted from customers who purchased refined petroleum products from Harris during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order.

Dated: August 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Special Refund Procedures

Name of Firm: Harris Enterprises, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0087.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such

persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982), *and Office of Enforcement*, 8 DOE ¶82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Harris Enterprises, Inc. (Harris) of Portland, Oregon.[1] Harris sells refined petroleum products in the states of Oregon and Washington to other petroleum marketers (resellers) and to end-users in bulk sales and through 16 company-operated retail stations. Harris is therefore a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31. An ERA audit of Harris' operations during the period November 1, 1973 through August 31, 1974 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Harris and the DOE regarding those alleged violations, the firm entered into a consent order with the DOE on June 11, 1979.[2] The consent order covers Harris' sales of regular and ethyl motor gasoline, No. 1 stove (heating) oil, and No. 2 fuel oil during the ten-month audit period (hereinafter the consent order period). The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Harris does not admit that it committed any such violations. In executing the consent order, Harris agreed to refund the alleged overcharges to its retail customers through price rollbacks at its stations and to issue refunds to its wholesale customers "in a manner directed by DOE." *See* Consent Order ¶¶10 and 11. An attachment to the consent order sets forth the names and addresses of the wholesale customers who were allegedly overcharged by Harris, along with the designated refund amounts.

Harris implemented a price rollback at its retail outlets and began making refunds to its wholesale customers pursuant to the consent order. However, in March 1980, Harris notified the DOE that, due to the fact that a number of its customers had changed addresses or gone out of business, it was impossible for it to complete its refund obligations to wholesale customers. Harris proposed that it satisfy the $55,741 balance of the firm's refund obligation by donating heating oil to various charities. The ERA rejected this proposal. After further negotiations, on July 17, 1981, Harris and the ERA amended the June 11, 1979 consent order and agreed that Harris' obligations under the consent order would be satisfied if the firm remitted $21,200 to the DOE for deposit in an interest-bearing escrow account for later disbursement. In modifying the original consent order, the DOE and Harris agreed that the refund to Harris' retail station customers had been completed.

On May 23, 1985, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Harris' alleged regulatory violations. *See Harris Enterprises, Inc.*, Case No. HEF-0087 (May 23, 1985) (Proposed Decision), 50 FR 24032 (June 7, 1985). In the Proposed Decision, we described a process for the distribution of funds made available pursuant to the Harris consent order. Specifically, we proposed to disburse funds on a percentage basis to wholesale claimants who were identified in the consent order as having been allegedly overcharged, but who did not receive their full designated refund. Several firms filed comments in connection with the Proposed Decision. These comments do not object to the specific procedures tentatively established in the Proposed Decision but instead question the accuracy of our information concerning the refunding which Harris made to wholesale customers.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. We have received no comments challenging our authority to fashion special refund procedures in this case. The OHA will therefore grant the ERA's petition and assume jurisdiction over the Harris consent order fund.

III. Refund Procedures

Since we did not receive any comments objecting to the procedures tentatively established in the Proposed Decision, we have concluded that the proposed procedures should be adopted. The Harris consent order fund will be distributed to wholesale claimants who satisfactorily demonstrate that they were injured by Harris' pricing practices during the ten-month consent order period (November 1, 1973 through August 31, 1974). As indicated above, an attachment to the Harris consent order identifies the wholesale customers who were allegedly overcharged by Harris. These customers are listed in Appendices A, B, and C of this Decision and Order. We have determined that these were the parties who were most likely injured by the Harris pricing practices that were alleged to be in violation of the price regulations. These firms include both resellers (wholesalers and retailers) and end-users of the products purchased from Harris.

In prior refund proceedings, we have required resellers of refined petroleum products purchased from a consent order firm to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased the product from the consent order firm market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition the reseller refund claimant is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 (1982), *Standard Oil Co. (Indiana)/Suburban Propone Gas Corp.*, 13 DOE ¶ 85,030 (1985). The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

In this case, however, as in many other refund proceedings, we will adopt

---

[1] Harris Enterprises, Inc. includes the following affiliated companies: Premium Oil Company, Harris Distributing Company, Harris Oil Company, Tiger Oil Company, and two Thrifty Rent-A-Car outlets. During the audit, the ERA did not have sufficient sales price data from Tiger and the Thrifty outlets to evaluate their compliance with the DOE regulations. Accordingly, their operations were not included in the Harris audit and are not covered by the consent order.

[2] The consent order specifically settled only overcharge claims arising from Harris' alleged (i) grouping of certain customers into improper classes of purchaser, (ii) adding excessive freight costs for deliveries to certain customers, and (iii) misapplying non-product cost rules. Consent Order ¶¶3, 4 and 5.

a presumption of injury with respect to small claims filed by resellers. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumption we will adopt in this case is used in an effort to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Harris consent order is based on a number of considerations. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased covered products from Harris and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we will adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we find that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[3] *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption we are adopting with respect to small claims, we find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement*, 10 DOE § 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. Therefore, end-users of Harris petroleum products will not be required to document the extent of injury incurred from the alleged overcharges. *See generally Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984).

IV. Distribution of Consent Order Funds

In many cases the ERA audit files may not provide conclusive evidence as to the identity of all eligible parties or the amount of money they should receive in a Subpart V proceeding. However, we have determined that it is appropriate in the present case to use the information in these files to determine eligibility for refunds. In relying on this information, we note that the ERA audit of Harris had been substantially completed, a Notice of Probable Violation (NOPV) had been issued, and the allegedly overcharged parties were well defined, as evidenced by the attachment to the Harris consent order. In addition, we have not received any comments specifically objecting to this proposal. Accordingly, we will limit eligibility for refunds in this proceeding to those firms identified in the attachment to the Harris consent order.

In the Proposed Decision, we also proposed to use the information provided in the attachment to the consent order in conjunction with the information in a report dated March 13, 1980 which lists the refunds Harris had already made to wholesale customers as of that date, to fashion a refund plan which would correspond closely to the injuries experienced. According to the information we have in the ERA audit files concerning Harris' compliance with the June 11, 1979 consent order, Harris made refunds to its wholesale customers in unequal amounts.[4] For example, the March 13, 1980 record indicates that Harris had refunded as much as 97 percent of one customer's total refund and none of another customer's designated refund. In the absence of any later documentation of additional refunds from Harris to its customers, we are presuming that the information in the ERA audit file dated March 13, 1980, is a reliable measure of the amount of refunds disbursed by Harris.

In order to allocate the consent order fund of $21,200 plus interest equitably among Harris' wholesale customers, we have allocated the principal of the escrowed consent order fund so that each wholesale applicant will be able to receive at least 90.202 percent of the amount which it was originally scheduled to receive pursuant to the consent order. We recognize that some of Harris' wholesale customers have already received from Harris more than 90.202 percent of the refund amount specified for them in the consent order. We do not believe that it is appropriate to make those firms relinquish a portion of their refunds, and we have concluded that equitable factors require that they not receive any additional refunds from the Harris consent order fund. The wholesale customers who will receive a refund under our plan along with the share of the settlement amount allotted to each to raise the refund to 90.202 percent of the original amount, are listed in Appendix A to this Decision and Order.

We received comments from two firms listed in Appendix A who state that they do not recal receiving any refund check from Harris. Since refunds were made through price reductions, the firms were apparently unaware of any

[3] All of the potential refunds calculated in accordance with the methodology set forth in Part IV of this Decision and Order fall below the $5,000 threshold amount (*see* Appendix A). Therefore, no applicant will be required to submit detailed evidence of injury in order to qualify for the refund set forth in Appendix A.

[4] In an August 15, 1985 telephone conversation with Harris we learned that Harris distributed wholesale refunds through price reductions. As a result, no check or credit memorandum was issued to customers. Nor, apparently was any separate written notification provided to inform customers of the refund. *See* Memoranda of Telephone Conversation between Richard T. Harris of Harris and Diane S. Wasch of OHA.

refund that was taking place. Thus, a firm which never received notification of a refund may still have received a refund (*see* n.4). Since the ERA was convinced at the time of the consent order's modification as to the accuracy of the information submitted by Harris concerning the amounts of the refunds effectuated by the firm through price reductions, we believe that the information in the audit files is accurate and should be relied upon to determine the remaining refunds to be made. We will, however, permit firms who did not receive price reductions in the indicated amounts from Harris to file for a larger refund than the amount set forth in Appendix A. In the event additional refunds are approved, we will recalculate the percentage distribution of the escrow account.

Those Harris customers who would be eligible to receive a refund, but who we have been unable to locate, have not been included in our allotment of refunds. These firms are listed in Appendix B.[5] Those Harris customers who received 90.202 percent or more of the original consent order amount attributable to them, and are thus considered ineligible for additional refunds based on Harris' alleged violations, are listed in Appendix C.

Finally, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.; see also* 10 CFR 205.286(b)

V. Refund Application Procedures

We have determined that the procedures described in the Proposed Decision are the most equitable and efficacious means of distributing the Harris consent order fund. Accordingly, Applications for Refunds will now be accepted from parties who purchased Harris petroleum products during the consent order period. All Applications for Refund should prominently display Case No. HEF–0087 and the applicant's name on the first page, and include the following information:

1. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

2. The manner in which the applicant used the Harris petroleum product, i.e. whether it was a reseller or end-user.

3. The volume of each Harris petroleum product the applicant purchased by month for the period of time for which it is claiming a refund. If the claimant is unable to document its volume information, it may instead submit a statement verifying that it purchased Harris petroluem products and is willing to rely on the data in the audit files.

4. A statement indicating whether the applicant was in any way affiliated with Harris. If so, it should state the nature of the affiliation.

5. Whether there has been any change in ownership of the entity that purchased Harris petroleum products since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided, along with support why the refund should be issued to the applicant.

6. A statement indicating whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

7. Each Application must also include the following statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Forrestal Building, Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant that believes its Application contains confidential information must so indicate on the first page of the Application and submit two additional copies of its Applicaton from which the confidential material has been deleted together with a statement specifying why the information is claimed to be privileged or confidential.

All Applications should be sent to: The Harris Enterprises, Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C., 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.284. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Harris Enterprises, Inc. pursuant to the consent order executed on June 11, 1979 and modified on July 17, 1981 may now be filed.

(2) All Applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register.

Dated: August 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Harris Enterprises, Inc., Customers Due Refunds

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 90.202 percent of consent order refund amount
Joe Reese, 1 N. Fremont, Portland, OR 97227	$258	$1,440
Maurice Brooks, 3331 Franklin Blvd., Eugene, OR 97403	492	672
Gov-Mart, 705 Rainier Ave. South, Renton, WA 98055	18,747	1,843
Max Klemen, 4774 Franklin Blvd., Eugene, OR 97403	219	62
Len Remington, 595 N. Pacific Highway, Woodburn, OR 97071	316	13
Ron Sigler, 18777 SE McLoughlin, Milwaukee, OR 97222	938	1,183
Bill Audrain, Central Oregon Oil, 15th & Highland, P.O. Box 188, Redmond, OR 97756	1,111	3,931
Hillcrest Oil Company, Evelyn Hopper, 3970 SW 91st Court, Portland, OR 97225	3,767	2,784
Donald Mendenhall, P.O. Box 293, Sisters, OR 97759	174	24
Gray's Crane & Rigging Int'L, P.O. Box 29161, Portland, OR 97229	209	295
Fill Up, 205 Columbia NE, Salem, OR 97303	1	94
A.L. Morris & Son, 15735 NE Fargo Court, Portland, OR 97230	4,059	3,386
Jack Maguire, 2844 Gales Way, Forest Grove, OR 97116	455	421
Priest Petroleum Products, 2406 NW Eleven Mile Avenue, Gresham, OR	2,185	1,313
F.E. Stein, 485 River Road, Gladstone, OR 97027	262	421
McCall Oil, 5136 SW Corbett, Portland, OR 97233	0	606
Grace Oil Co., 5822 SE Santiam Hwy., Albany, OR	187	134
Ralph Lockrem, 4525 SW Philomath Blvd. Corvallis, OR 97330	2,519	473
Widing Transportation, 10145 N. Portland Rd., Portland, OR 97217	661	170
Mac's Super Service, 4003 McKinley Ave., Tacoma, WA 98404	1,106	1,095
R.L. Barrett, 3317 Auburn Way North, Auburn, WA 98002	88	261

[5] In the Proposed Decision, we proposed that any firm whom we were unable to locate be removed from the list of eligible claimants and that their refund be redistributed to the remaining firms. *See* Proposed Decision at n.4. We have received no comments in opposition to this proposal. We have therefore allocated the consent order funds only among the firms for whom we have current addresses. In the event that the firms in Appendix B file successful refund applications, however, we will recalculate the percentage distribution of the escrow account.

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 90.202 percent of consent order refund amount
Thermco, Inc., P.O. Box 976, Tacoma, WA 98401	1,141	570
Total refunds due (exclusive of interest)		21,200
Reinhard Oil, 5322 Dallas Hwy., Salem, OR 97304	31	[2] 7

[1] Principal below $15 minimum, but with interest will reach $15 threshold.
[2] Reinhard Oil's potential refund falls below the $15 minimum, even with interest included. Therefore, it will not receive a refund in this proceeding.

Appendix B—Harris Enterprises, Inc., Firms We Are Unable To Locate

Applegate Dairy
Kenneth Bolton
Ed Krskine/Frank Harding & Son
Haley's Heating Oils
Bazar, Inc.
Earl Moore
Defiance Oil Company

Appendix C—Harris Enterprises, Inc., Wholesale Customers Who Received At Least 90.202 percent Of Refund Due Under Consent Order

J.R. Bales*
Mike Heidt*
John Jersey & Son*
Jack Gross*
Powell Distributing Co., P.O. Box 17194, Kenton Station, Portland, OR 97200
L&M Transportation, Box 519, Winston, OR
Fletcher Oil Company, 606 Alexander Street, Tacoma, WA 98421
Gull Oil, 3404 Fourth Avenue South, Seattle, WA 98124
Champion Petroleum, 9125 N. Burrage, Portland, OR 97217

* Firms which we were unable to locate.

[FR Doc. 85-21261 Filed 9-5-85; 8:45 am]
BILLING CODE 6450-0-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42053A TSH-FRI 2884-3]

Alkyl Epoxides; Decision Not To Test

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is terminating its rulemaking proceeding under section 4(a) of the Toxic Substances Control Act (TSCA) to require testing for certain alkyl epoxides. EPA 's analysis of data now available indicates that few people are exposed to these chemicals, exposure levels are low, and only small amnounts of these chemicals are released to the environment. Existing information on health effects does not suggest an unreasonable risk at expected exposure levels.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is not proceeding with its rulemaking under section 4(a) of TSCA to require health effects or chemical fate testing of certain alkly epoxides.

I. Background

A. ITC Recommendations and ANPR

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq;* 15 U.S.C. 2601 *et seq.*) established the Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC transmitted its First Report to the Administrator of EPA, as published in the **Federal Register** of October 12, 1977 (42 FR 55026), and designated the category "alkyl expoxides" for priority testing consideration for mutagenicity, carcinogenicity, teratogenicity, other chronic effects (with emphasis on organ effects and behavioral changes), and environmental fate. Epidemiological studies were also recommended for priority consideration for two or three of the highest exposure compounds, if suitable cohorts could be identified.

In response to the ITC, EPA published notices in the **Federal Register** of January 3, 1984 (49 FR 200) for ethylene oxide, and January 4, 1984 for propylene oxide (49 FR 430) and 1,2-butylene oxide (49 FR 503). The remaining category members were addressed in an Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of January 4, 1984 (409 FR 449). The ANPR solicited additional information on the production, use, exposure, and release of these chemicals, as well as health and environmental effects data not previously submitted to EPA. Several approaches to testing these chmicals were also raised for public comment.

In evaluating the ITC's testing recommendations for members of the alkyl epoxides category, EPA considered all relevant information including the following: information presented in the ITC's report recommending testing consideration, TSCA section 8(d) submissions, comments and information received in response to the ANPR, additional information provided by a manufacturers and processors, and published and unpublished data available to the Agency.

B. Category Members

The ITC defined the alky epoxides category as noncyclic aliphatic hydrocarbons bearing one or more epoxide functional groups.

EPA has identified from the nonconfidential (public) TSCA Chemical Substances Inventory six short-chain (up to four carbon atoms) alkyl epoxides and eight longer-chain (greater than nine carbon atoms) alkyl epoxides that fit the alkyl epoxides chemical category definition. No additional alkyl epoxides are listed in the confidential portion of the Inventory. Of the short-chain compounds, three have been addressed in separate **Federal Register** documents: ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). This notice addresses the remaining three short-chain compounds and eight long-chain substances shown in the following Table 1.

TABLE 1.—ALKYL EPOXIDES ADDRESSED IN THIS NOTICE

Chemical	CAS No.
Short-chain	
2,3-Epoxybutane	(CAS No. 3266-23-7).
Isobutylene oxide	(CAS No. 558-30-5).
1,2:3,4-Diepoxybutane	(CAS No. 1464-53-5).
Long-Chain	
1,2-Epoxydecane	(CAS No. 2404-44-6).
1,2-Epoxydodecane	(CAS No. 2855-19-8).
1,2-Epoxytetradecane	(CAS No. 3234-28-4).
1,2-Epoxypentadecane	(CAS No. 18633-25-5).
1,2-Epoxyhexadecane	(CAS No. 7320-37-8).
1,2-Epoxyheptadecane	(CAS No. 22092-38-2).
1,2-Epoxyoctadecane	(CAS No. 7390-81-0).
1,2-Epoxynonadecane	(CAS No. 67860-04-2).

Any other alkyl epoxides would be subject to premanufacture notification and EPA review under TSCA section 5 prior to their being manufactured or imported for purposes subject to TSCA jurisdiction.

C. Public Comments

Any agency received comments on the ANPR from two sources: Viking Chemical Co. and Union Carbide Corp., both manufacturers of long-chain alkyl epoxides. Viking's comments were submitted as Confidential Business Information (CBI) and contained information on production volumes, workplace and consumer exposure, and reasons why additional testing was not warranted. Union Carbide,

manufacturer of 1, 2-epoxyhexadecane, submitted recent results of Ames assays and a Sister Chromatid Exchange test, and updated production data (CBI) (Ref. 1; non-CBI version). Union Carbide stressed that the number of persons involved in the manufacture of 1,2-epoxyhexadecane is small and that the physical properties of the chemical (high boiling point of 315° C) and the personal protection employed would substantially limit exposure. It also stated that existing toxicity data and the low production volume of these chemcials did not justify additonal testing of the long-chain alkyl epoxides.

D. Regulatory Development

Under section 4(a)(1) of TSCA, EPA shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the enviroment can reasonably be determined or predicted, and

(iii) testing of such substance of mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in which both exposure and toxicity information are considered in making a section 4(a)(1)(A)(i) finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure, or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed at 45 FR 48528, and the section 4(a)(1)(B) finding is discussed at 46 FR 30300.

II. Review of Available Data

A. Human Exposure and Environmental Release

The short-chain alkyl epoxides are produced or imported in small volumes (Ref. 2). Isobutylene oxide is produced infrequently on a custom basis by Chemical Samples Co., Inc., Arco Chemical Co. and Research Organic/Inorganic Chemical Co. for use as a research reagent. 2,3-Epoxybutane is produced in volumes less than 100 lb/yr by International Flavors and Fragrances, Inc., for use as a captive intermediate for the production of flavors and fragrances. Columbia Organic Chemicals Co. imports less than 10 lb/yr. of 1,2:3,4-diepoxybutane for use as a research chemical. The production information for the three short-chain alkyl epoxides suggests very little, if any, human exposure or environmental release and does not support a finding of significant or substantial exposure to these chemicals.

All the long-chain alkyl epoxides are produced by Viking Chemical Co. In addition, Union Carbide produces 1,2-epoxyhexadecane, which is the highest volume chemical of the long-chain alkyl epoxides. Production volumes for long-chain alkyl epoxides were submitted as CBI. The Agency concludes from these submissions that the production volumes are not substantial. In general, they are specialty chemicals, several being produced on a custom basis, having limited use primarily as reactive intermediates. Non-CBI submissions obtained from processors described uses such as additives for printing inks for plastics, petroleum additives to prevent hazing in finished products, intermediates for surfactants for speciality chemical blends, and use as experimental chemicals in product development (Ref. 3). The highest amount of residual expoxide reported in a finished product was 2-percent, in a petroleum additive. However, for these additives, concentrations are further reduced by secondary processors producing final products with epoxide concentrations less than 1-percent. In addition, these products appear to be used primarily in industrial equipment such as hydraulic devices that operate as closed systems. The hydraulic fluids are recycled until they can no longer be reconditioned and are then burned as a fuel supplement (Ref. 4). No nonindustrial consumer populations were identified. In the manufacturing and processing of long-chain alkyl epoxides, potential exposure to the pure chemical occurs during loading of the reactor or mixing vessel. Voluntary use of protective clothing and equipment design minimize the potential for exposure. From information supplied to the Agency, EPA estimates that fewer than 100 persons are exposed to all the long-chain alkyl epoxides in the manufacturing and processing of these chemicals.

Information submitted as CBI by the manufacturers and some processors leads the Agency to conclude that environmental releases of long-chain alkyl epoxides are not substantial. Non-CBI submissions by processors (Ref. 3) indicate that minor discharges may occur in equipment cleanup procedures. Several processors indicate such releases to be 1 lb/yr or less. In some cases, waste includes an organic phase, which is typically burned or processed by a waste disposal contractor.

B. Health Effects

Discussions of the toxicity data for high-production short-chain alkyl epoxides appear in separate **Federal Register** notices on ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). The following health effects have been reported for one or more of these three compounds: carcinogenicity, mutagenicity, neurotoxicity, and reproductive toxicity.

EPA has conducted an evaluation of published and unpublished literature for the chemicals discussed in this notice. No toxicity data were found for 2,3-epoxybutane. Acute toxicity studies, using Department of Transportation test

protocols, determined that isobutylene oxide was caustic in an eye irritation study (rabbit), negative in a dermal irritation study (rabbit), and classified "nontoxic" (dose: 500 mg/kg) in an acute oral toxicity study (rat) (Ref. 5). Isobutylene oxide was not mutagenic in Ames strains TA98, TA100, and TA1537, with or without activation (Ref. 5), but DNA damage was observed at several dose levels in an Alkaline Elution Assay using Chinese hamster lung fibroblast (V–79) cells (Ref. 5).

Information on 1,2:3,4-diepoxybutane shows acute toxicity with an inhalation LC_{50} (rats) of 90 ppm for a 4-hour exposure, an oral LD_{50} (rats) of 78 mg/kg, and a dermal LD_{50} of 89 mg/kg (rabbits) (Ref. 6). Also, the substance elicited a carcinogenic response in a number of studies using a dermal or subcutaneous route of administration (Refs. 7, 8, 9, 10, and 11). In addition, teratogenic effects have been reported in studies using rats and chickens (Ref. 12), and a mutagenic response was reported for a number of test systems (Refs. 13, 14, 15, and 16).

Some acute toxicity data are available on the long-chain alkyl epoxides (specific gravity and animal weight not provided) (Ref. 17). For several mixed long-chain 1,2-epoxides, rat (i.p.) LD_{50} values were in the range of 4.9 to 7.5 "ml/kg," while rabbit dermal LD_{50}'s were in the range of 5.0 to 14.1 "ml/kg." For 1,2-epoxyhexadecane the corresponding values were 4.9 "ml/kg" (rat) and 10.0 "ml/kg" (rabbit). Skin irritation (rabbit) was "moderate" or "minor"; eye injury (rabbit) was graded as "none" or "trace" (Ref. 17).

Several test systems for mutagenicity have produced negative results for 1,2-epoxyhexadecane. Both Ames tests conducted by NTP (4 strains, with and without activation) (Ref. 18) and Ames tests commissioned by Union Carbide (5 strains, with and without activation) (Ref. 1) found 1,2-epoxyhexadecane to be nonmutagenic. In addition, 1,2-epoxyhexadecane was negative in a Sister Chromatid Exchange test using Chinese hamster ovary (CHO) cells without activation (Refs. 1 and 19). Other long-chain alkyl epoxides, 1,2-epoxydecane, 1,2-epoxydodecane, 1,2-epoxytetradecane, and 1,2-epoxyoctadecane are being evaluated in the Ames test by NTP (Ref. 20).

Additional information on the toxicity of long-chain alkyl epoxides is available from a subchronic study on 1,2-epoxyhexadecane applied dermally to rats and mice, completed in 1980 for the National Toxicology Program (NTP). Dosages given to both species were 62.5, 125, 250, 500, and 1,000 mg/kg. The material (1,2-epoxyhexadecane in acetone) was applied 5 times weekly to a one-inch square, shaved portion of the dorsal area for 13 weeks. Some mortality was observed in the mouse at doses of 250 mg/kg and above; none was observed in the rat. Cutaneous reactions, manifested by exfoliation of the stratum corneum, alopecia, hyperemia and/or balancing were seen at the application sites in male mice and rats receiving dose levels of 250, 500, and 1,000 mg/kg; in female mice receiving 1,000 mg/kg; and in female rates receiving 500 and 1,000 mg/kg. Reduced body weights were observed in male mice and rats dosed at 250 mg/kg and above and female rats dosed at 500 and 1,000 mg/kg. No other compound-related effects were observed on gross or histopathologic examination (Ref. 21).

Van Duuren *et al.* (Ref. 22) tested 1,2-epoxydodecane and 1,2-epoxyhexadecane separately in mouse skin painting studies to assess their oncogenic activity. No tumors were observed in a group of 30 ICR/Ha Swiss mice treated for 540 days (18 months) with approximately 100 mg of a 2-percent solution of 1,2-epoxydodecane in acetone (applied to the clipped back of each mouse three times per week from the age of 8 weeks). However, in an experimental group of 41 mice similarly treated with a 10-percent solution of 1,2-epoxyhexadecane in acetone, two mice developed papillomas and one papilloma developed into a squamous carcinoma. The test duration was 598 days, with a median survival time of 427 days. The first papilloma appeared on day 308, and the carcinoma appeared on day 372. No tumors were reported for the control group. No statistical analysis of the data was presented.

To confirm the results of Van Duuren *et al.*, and to test a representative long-chain, terminal monoepoxide, the NTF selected 1,2-epoxyhexadecane to undergo a 2-year bioassay in B6C3F1 mice and Fisher 344 rats by dermal application (Ref. 23). The exposure phase of the test was completed in June 1982. Doses of 62.5 and 125 mg/kg were applied to a 1-inch square shaved portion of the dorsal area of the mice and rats 5 times per week. The results from this study may be available by June 1986 (Refs. 23 and 24).

C. Chemical Fate

No experimental chemical fate information is available for the alkyl epoxides addressed in this notice. The short-chain alkyl epoxides are estimated to have high water solubilities (2×10^5 ppm) and to partition primarily into the water phase under equilibrium conditions ($\log K_{ow}=0.67$) (Ref. 25). The soil adsorption coefficient ($K_{oc}=4.2$) (Ref. 25) indicates that the short-chain alkyl epoxides would not adsorb strongly to organic matter and would be highly mobile in soils and sediments. On the basis of an estimated bioconcentration factor of 1.08, these chemicals are not expected to accumulate in environmental organisms (Ref. 25). The reactivity of epoxides toward water will preclude persistence of these water-soluble epoxides in the environment.

The long-chain alkyl epoxides are expected to behave very differently than the short-chain chemicals. The calculated water solubilities for the long-chain alkyl epoxides are low (6×10^{-4} ppm) (Ref. 25), and calculated logs of the octanol/water partition coefficients are on the order of 6 or 7 (Refs. 25 and 26), indicating that these chemicals will partition primarily into the soil/sediment compartment under equilibrium conditions. The calculated soil adsorption coefficient ($K_{oc}=2\times10^5$) (Ref. 25) indicates that the long-chain alkyl epoxides will adsorb strongly to organic matter in the soil and sediment and can be considered relatively immobile. An estimated bioconcentration factor of 1.7×10^5 indicates that these chemicals could bioconcentrate in the environment if significant releases occurred and the organisms were exposed before the epoxides were bound to soil and sediments. (Ref. 25). The epoxide function is likely by its nature to react with water or other nucleophiles, but these reactions may be slow because of the low water solubility.

III. Decision Not To Initiate Rulemaking

EPA has decided not to proceed with its rulemaking to require health effects or chemical fate testing for the short-chain and long-chain alkyl epoxides addressed in this notice. The ITC recommended testing for the category of all noncyclic aliphatic hydrocarbons with one or more epoxy functional groups because of the effects known to be produced by the higher production short-chain epoxides ethylene oxide, propylene oxide, and 1,2-butylene oxide and the carcinogenic effects reported for diepoxides. The high production epoxides have been addressed in other notices: ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). Of the remaining category members, the three short-chain chemicals, i.e., 2,3-epoxybutane, isobutylene oxide, and 1,2:3,4-diepoxybutane, are produced or imported in low volumes, and their use limited primarily to research. Although

there is reason to believe that these chemicals may present a hazard because of their similarity to other short-chain category members and data available for 1,2:3,4-diepoxybutane, the current production, use, exposure, and environmental release of these chemicals do not support a section 4(a)(1)(A)(i) finding of "may present an unreasonable risk" or 4(a)((1)(B)(i) finding of "substantial production" and "significant or substantial exposure" or "substantial release" for health effects or chemical fate testing.

The eight long-chain alkyl epoxides behave differently than their short-chain counterparts. There are significant differences in chemical structure and expected chemical fate behavior. Toxicity data for 1,2-epoxyhexadecane do not indicate mutagenic activity. A long-term skin painting study was negative for 1,2-epoxydodecane, and a similiar study produced one carcinoma for 1,2-epoxyhexadecane. A second skin painting study of 1,2-epoxyhexadecane has also been conducted by NTP; however, the results of this study are not available at this time. Although production for these long-chain chemicals is greater than that of the three short-chain alkyl epoxides addressed in this notice, the Agency does not consider it to be substantial. These epoxides are specialty chemicals with limited use. Little, if any, unreacted epoxide comes in contact with workers or industrial consumers. Known and potential releases to the environment are extremely small. The toxicity data available and data submitted on production volume, use, human exposure, and environmental release do not support a section 4(a)(1)(A)(i) finding of "may present an unreasonable risk" or 4(a)((1)(B) finding of "significant or substantial exposure" or "substantial release" for health effects or chemical fate testing of the long-chain alkyl epoxides.

IV. Public Record

EPA has established a public record for this decision not to test under Section 4 of TSCA (docket number OPTS-42053A). The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this decision consisting of:

(a) Notice containing the ITC Report designating the category alkyl epoxides to the Priority List (42 FR 55026; October 12, 1977).

(b) Notice of Advance Notice of Proposed Rulemaking (49 FR 449; January 4, 1984).

(c) Notice requiring submission of health and safety data under section 8(d) of TSCA (47 FR 38780; September 2, 1982).

(d) Notice for ethylene oxide (49 FR 200; January 3, 1984).

(e) Notice for propylene oxide (49 FR 430; January 4, 1984).

(f) Notice for 1,2-butylene oxide (49 FR 503; January 4, 1984).

(2) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(3) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) Union Carbide Corp., Danbury, CT. Letter containing copies of correspondence with the Agency, ANPR comments, and test data (non-CBI version) from Don Heywood to Ralph Northrop, Office of Pesticides and Toxic Substances, Environmental Protection Agency. April 23, 1984.

(2) Mathtech, Arlington, Va. Level I Economic Evaluation: Low Volume Alkyl Epoxides. April 1983.

(3) Anonymous. Non-CBI submissions from processors of long-chain alkyl epoxides. April 1985.

(4) Elco Corp., Cleveland, OH. Personal communication with Ralph Northrop, Office of Pesticide and Toxic Substances, Environmental Protection Agency. May 13, 1985.

(5) The Upjohn Co., Kalamazoo, MI. TSCA section 8(d) submission of technical reports for Isobutylene Oxide and 1,2:3,4-Diepoxybutane, 8 DHQ-0978-0144. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.

(6) Clayton G.D., Clayton, F.E., editors. Patty's Industrial Hygiene and Toxicology, p 2161. 3rd Edition; Volume 2A; John Wiley and Sons, Publisher. 1981.

(7) Kotin P., Falk H.L. "Organic Peroxides, Hydrogen Peroxide, Epoxides and Neoplasia." *Radiat. Res. Supp.* 3:193–211. 1963.

(8) Van Duuren B.L., Orris L. and Nelson N. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." II. *J. Nat. Cancer Inst.* 35:707–717. 1965.

(9) Van Duuren B.L., Langseth L., Orris L., Teebor G., Nelson N., Kuschner M. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." IV. Tumor Response in Epithelial and Connective Tissue in Mice and Rats. *J. Nat. Cancer Inst.* 37:825–838. 1966.

(10) Van Duuren B.L., Nelson N., Orris L., Palmes E.D., Schmitt F.L. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." *J. Nat. Cancer Inst.* 31:41–55. 1963.

(11) Koppers Co. The potential carcinogenic activity of butadiene dioxide, 1980. TSCA Section 8(d) Submission 8DHQ-0978-0156. Washington, D.C.; Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. 1978.

(12) Shell Oil Co. Review of the Toxicology of Epoxy Compounds. TSCA Section 8(d) submission 8DHQ-0978-0018. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.

(13) Kilbey B.J. "The Analysis of a Dose-Rate Effect Found With a Mutagenic Chemical." *Mutat. Res.* 28(4):249–256. 1974.

(14) Klimczuk J. "Spontaneous and Induced Reversions of Meth 1 Mutant of *Aspergillus nidulons*." *Genet. Pol.* 11(3–4):313–319. 1970.

(15) Polakowska R., Putrament A. "Mitochondrial Mutagenesis in *Saccharomyces cerevisioe*. II. Methyl Methanesulphonate and Diepoxybutane." *Mutat. Res.* 61:207–213. 1979.

(16) Wade M.J., Moyer J.W., Hine C.H. "Mutagenic Action of a Series of Epoxides." *Mutat. Res.* 66:367–371. 1979.

(17) Union Carbide Corp. Listing of health and safety studies. TSCA Section 8(d) submission 8DHQ-0978-123. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.

(18) National Toxicology Program. Summary of Genetic testing at EMTDP Lab. Dr. Errol Zeiger, NTP NIEHS, Research Triangle Park, NC. January 11, 1982.

(19) USEPA. Memorandum: "Evaluation of a Sister Chromatid Exchange Test for 1,2-Epoxyhexadecane." From I. Baumel. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. December 26, 1984.

(20) National Toxicology Program. Personal communication on the status of mutagenicity testing for long-chain alkyl epoxides between EMTDP Lab and Andrea Blaschka. Office of Pesticides and Toxic Substances, Environmental Protection Agency. May 23, 1985.

(21) National Toxicology Program. A subchronic test of 1,2-epoxyhexadecane (55538) in B6C3F1 mice and Fischer 344 rats by dermal application. Tracor Jitco Subcontract No. 78-61-106002; Gulf South Research Institute, Project No. 410-827, Dr. Ron Milnick, Project Officer, NTP, NIEHS, Research Triangle Park, NC. 1980.

(22) Van Duuren B.L., Langseth L., Goldschmidt B.M., Orris L. "Carcinogenicity of Epoxides, Lactones, and Peroxy Compounds. VI. Structure and Carcinogenic Activity." *J. Nat. Cancer Inst.* 39:1217–1228. 1967.

(23) National Toxicology Program. Personal communication on the status of the NTP Bioassay for 1,2-epoxyhexadecane between Ron Milnick, NTP, and Andrea Blaschka, Office of Pesticides and Toxic Substances, Environmental Protection Agency. November 21, 1983.

(24) National Toxicology Program. Personal communication on the current status of studies done by Gulf South Research Institute between James Huff, NIEHS, and Andrea Blaschka, Office of Pesticides and Toxic Substances, Environmental Protection Agency. January 30, 1985.

(25) USEPA. Memorandum: "Properties of Alkyl Epoxides". From William Wood, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C., July 8, 1982.

(26) USEPA. Memorandum: "Environmental Fate of Alkyl Epoxides". From William Wood, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C., December 4, 1984.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(15 U.S.C. 2603)

Dated: August 29, 1985.

J. A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-21304 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2892-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed August 26, 1985 Through August 30, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850369, Draft, FHW, KY, KY-44 Reconstruction, KY-55 in Taylorsville to KY-44 Relocated, Spencer County, Due: October 21, 1985, Contact: Robert Johnson (502) 227-7321.

EIS No. 850370, Draft, NASA, PRO, Galileo and Ulysses Mission Projects, Jovian System Investigation Program, Due: October 21, 1985, Contact: Harry Mannheimer (202) 453-1602.

EIS No. 850372, Final, FHW, IL, Lake Front Highway/FAP 437 Construction and Improvements, IL Tri-State Tollway/I-94 to Grand Avenue/ IL-132, Lake County, Due: October 7, 1985, Contact: Jay Miller (217) 492-4600.

EIS No. 850373, DSuppl, FHW, WA, Pasco-Kennewick Intercity Steel Truss Bridge Removal, Columbia River, between Pasco and Kennewick Cities, Benton and Franklin Cos., Due: October 25, 1985, Contact: Paul Gregson (206) 753-2120.

Amended Notices

EIS No. 820676, Draft, OSM, CO, Meeker Area Mines, Mining and Reclamation Plan, Approval, Rio Blanco Co., Published FR 10-15-82—Officially Withdrawn.

EIS No. 830628, Draft, COE, IL, Kahawainui Stream Flood Control, Laie, Island of Oahu, Published FR 12-9-83—Officially Withdrawn.

Dated: September 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-21355 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2892-9]

Environmental Impact Statements; Availability of EPA Comments

Availability of EPA comments prepared August 19, 1985 through August 23, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-L82007-00, Rating E02, Northwest Area Noxious Weed Control Program, ID, WA, MT, OR, and WY. Summary: EPA stated that picloram and glyphosate are currently not registered for range land use in the states covered by the DEIS. Therefore, registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) would be necessary to use these pesticides. Also, some evidence has recently arisen to indicate that glyphosate poses risks of oncogenic effects. This evidence is in the process of further evaluation, however, EPA does not expect any significant risks to human health to result from glyphosate's use in this program. EPA believes that BLM should consider expanding the worst case analysis to include a risk analysis of accidental spills and the risks to biota as well as human health. Additional documentation and evaluation of water quality impacts is also needed.

ERP No. D-CDB-B89016-MA, Rating LO, Tent City Development, Parcels 11A and 11B, S. End Urban Renewal, UDAG, MA. Summary: EPA believes the project, as proposed, can be developed in a manner that will not cause significant adverse impacts on the environment.

ERP No. D-COE-E30033-FL, Rating LO2, Martin County Beach Erosion Control, FL. Summary: EPA believes the environmental effects of this action are within acceptable limits and can be materially lessened through the judicious selection of borrow material.

ERP No. D-COE-E67003-FL, Rating E02, Occidental Wetland Phosphate Mining Operations Dredge and Fill Permit, Sect. 404, FL. Summary: EPA has concluded that the DEIS does not accurately assess the impacts of the proposed mining on fish and wildlife habitat and water quality of the subject headwaters and tributaries of the Suwannee River system. Further, the alternatives presented are limited in scope compared to those indicated in the Plan of Study or otherwise available. The EIS also contains fundamental factual errors regarding the value of wetlands on the project site, probability of replacing mined wetlands with higher quality habitat, and the effects of current mining practices on maintenance of water auality.

ERP No. DS-FHW-B40049-NH, Rating EC2, NH-101 Improvements, Chesham Rd. to Bonds Corner, Right-of-Way Acquisition, Construction, Modified Reconstruction Alternative, 404 Permit, NH. Summary: EPA recommended that the FEIS include for each alternative, a comprehensive impact analysis for domestic water supplies, a more detailed air quality analysis, and proposed mitigation measures that would reduce the impacts.

ERP No. D-FHW-L40146-OR, Rating EC1, Tualatin Valley Highway Widening, 21st Ave. to East Main St., Improvements and Development, OR. Summary: Although some traffic noise impacts of the project are substantial, EPA would have no objections with the project if it includes all noise mitigation.

ERP No. D-IBR-K39026-CA, Rating EC2, Freeman Diversion Improvement Project, Construction and Operation, Santa Clara R., Combat of Seawater Intrusion, CA. Summary: EPA expressed concern that the sedimentation analysis was not carried out far enough downstream of the diversion structure to adequately assess environmental impacts on the major habitats of the Lower Santa Clara River. EPA also requested a greater commitment to mitigation proposals in the FEIS.

ERP No. DS-NOA-B90001-RI, Rating LO, Rhode Island Coastal Resources Mgmt. Program, 1985 Amendment, RI. Summary: EPA believes the amendments to the Rhode Island Coastal Management Program will not cause significant adverse impacts on the environment, and will increase consistency and specificity of the regulatory policies.

Final EISs

ERP No. F-BLM-G08008-NM, El Paso 345 kV Transmission Line, Construction/Operation/Maintenance, Springerville to Deming, Right-of-Way Permit, NM. Summary: EPA has no

objection to the proposed transmission line project as described.

ERP No. FS–COE–E36148–KY, Yatesville Lake Multipurpose and Local Protection Project, Blaine Creek, KY. Summary: EPA has been obligated to use its statutory authority to control the discharge of brines and residues into surface waters of the State of Kentucky. Additional administrative actions are anticipated, and EPA's major concern with this facility, viz., the potential for long-term water quality degradation in the Blaine Creek/Sandy system, has been greatly lessened. Nonetheless, EPA continues to recommend that impoundment only begin after an evaluation of water quality of flows into the proposed lake.

ERP No. F–JUS–A82111–00, Cannabis Eradication on Federal Lands and Intermingled Forest and Rangelands in the Continental U.S. Summary: Based on EPA's review of the information and analyses contained in this programmatic FEIS, and the identification of the Operational Flexibility alternative as the preferred alternative, EPA has no objections to the proposed cannabis eradication program, provided that all appropriate mitigation measures are fully implemented and site-specific analyses are undertaken prior to initiation of individual projects.

ERP No. F–NOA–C64003–00, Shallow-Water Reeffish Fishery Mgmt. Plan, PR and VI. Summary: EPA believes that the FEIS adequately addresses the problem of overexploitation of fishery resources and is encouraged by the plan's recommendation to help replenish the fish population stocks of several species.

Regulations

ERP No. R–OSM–A01086–00, Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program, Definitions, Adverse Physical Impact Permament Program Perf. Stds., 30 CFR Parts 701, 816, and 817, (50 FR 24880). Summary: EPA agrees with the proposed regulation in its addressment of an environmentally significant aspect of coal remining. EPA commends the OSM for requiring that available spoil be used for backfilling and grading to eliminate highwalls. EPA identified the potential for increased fugitive dust emissions as a concern that could arise during backfilling.

Dated: September 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–21356 Filed 9–5–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85–266]

Hearing Designation Order

In re Applications of Big Chief Broadcasting (File No. BPCT–841120KE), South Lake Communications, Inc. (File No. BPCT–841212KH), Non-Profit Television Concepts (File No. BPCT–850214KM), Channel 68, Inc. (File No. BPCT–850214KQ), CFL, Ltd. (File No. BPCT–850215KT), Olympia Broadcasting Group, LTD. (File No. BPCT–850215KZ), C & P Partners (File No. BPCT–850215LT), Robin C. Brandt (File No. BPCT–850215LZ), For Construction Permit, Clermont, Florida.

Adopted: August 19, 1985.
Released: September 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Big Chief Broadcasting (Big Chief), South Lake Communications, Inc. (South Lake), Non-Profit Television Concepts (Non-Profit), Channel 68, Inc.,, CFL, Ltd., Olympia Broadcasting Group, Ltd. (Olympia), C & P Partners, and Robin C. Brandt, for authority to construct a new commercial television station on Channel 68, Clermont, Florida, and an informal objection filed by the Association of Maximum Service Telecasters, Inc. (AMST) against Olympia.

2. On April 17, 1985, AMST filed an informal objection to the Olympia application on the ground that Olympia's proposed site would be shortspaced to the sites proposed by the six [1] mutually exclusive applicants for channel 61 in Gainesville, Florida.[2] Olymia did not respond to the AMST objection. An applicant which fails to meet the miniumum mileage separation requirements of § 73.610 of the Commission's Rules must make the threshold showing that no fully-spaced site is available. Olympia has made no such showing. Accordingly, an issue will be specified to determine whether circumstances exist which would warrant a waiver of § 73.610 of the Rules. In assessing those circumstances, the Administrative Law Judge will consider the fact that the other applicants in this proceeding have specified fully-spaced sites.[3]

American Communication and Television, Inc. (spaced 56 out of a required 60 miles), Cozzin Communication Corporation (spaced 59 out of a required 60 miles), Gainesville Television Group, and Central Florida Broadcasting, Inc. (spaced 49 out of a required 60 miles to both).

3. Section 73.3555(b)(1) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM stations and the grant of such license will result in the Grand A contour of the proposed station encompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities" . . . will be handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest." Debra L. Anscombe is a general partner and 15% owner of CFL, Ltd. She is also the General Manager of AM Station WSIR, Winter Haven, Florida, and is a 5% limited partner of WHF Associates, Ltd., licensee of Station WSIR. Winter Haven would be within the predicted Grade A contour of the proposed television station. Since Mrs. Anscombe is intricately involved in the day-to-day operation and management of the AM station, her interest limited parnership in that station is not sufficiently insulated so that her interest is attributable. Mrs. Anscombe, however, has stated that if CFL Ltd. is the sucessful applicant in this proceeding, she will divest her interest in the licensee of the AM station and will resign her position as General Manager. Accordingly, any grant of the application of CFL, Ltd. will be subject to the condition that Mrs. Anscombe sever all interest in and connection with the licensee of Station WSIR.

4. Applicants for new broadcast stations are required to give local public notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We

[1] Olympia's site would be short-spaced to only four of the six Gainesville sites (see Footnote 2, below) because, subsequent to the filing of AMST's objection in this proceeding, two of the Gainesville applicants amended their applications to specify different sites. Olympia's site would be fully-spaced to those two sites.

[2] The four applications for Gainesville with which Olympia would be short-spaced are:

[3] The Gainesville applications were "cut-off" with respect to conflicting applications on Octobr 5, 1984. Olympia's application was filed on February 15, 1985. Olympia is, therefore, required to meet the separation requirements to all of the proposed Gainesville sites.

have no evidence, however, that Olympia has done either. If it has not already done so, Olympia will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 20 days of the release of this Order.

5. Section V–C, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Neither Big Chief nor Non-Profit has specified these figures. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Big Chief and Non-Profit will each be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

6. No determination has been made that the tower heights and locations proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposal of Olympia Broadcasting Group, Ltd. is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the Rule.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, in the event of a grant of CFL, Ltd.'s application, the construction permit shall contain the following condition:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Debra L. Anscombe has divested herself of all interest in, and connection with the licensee of Station WSIR(AM), Winter Haven, Florida.

10. It is further ordered, That Olympia Broadcasting Group, Ltd., shall file a certification with the presiding Administrative Law Judge, within 20 days after this Order is released, that it has or will comply with § 73.3580 of the Commission's Rules.

11. It is further ordered, That Big Chief Broadcasting and Non-Profit Television Concepts shall each submit an amendment stating the area and population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–21289 Filed 9–5–85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85–267]

Hearing Designation Order

In re Applications of Dorothy J. Owens, (File No. BPCT–85022KG), Harold L. Mullican (File No. BPCT–850422KJ), Lash Communications, a California Limited Partnership (File No. BPCT–850422KK), Liberty Broadcasting Corporation (File No. BPCT–850422KS), Gamez Communications, Limited Partnership (File No. BPCT–850422KT), Crown City TV, Inc. (File No. BPCT–850422LA), For Construction Permit, Bakersfield, California.

Adopted: August 19, 1985.

Released: September 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 48, Bakersfield, California; a late-filed amendment and a motion to accept the amendment filed by LASH Communications (LASH), and comments on the LASH motion filed by Liberty Broadcasting Corporation.

2. The deadline for filing amendments to the above-captioned applications was Friday, June 7, 1985 (the "B" cut-off date). On the following business day, Monday, June 10, 1985, LASH filed an amendment to its application to reflect ownership changes and, on June 13, it filed a motion to accept the late-filed amendment *nunc pro tunc*. Counsel for LASH concedes that the signed amendment was at his office in time to be filed on June 7, but that because of errors in the office, it wasn't filed until the 10th. On July 1, 1985, Liberty Broadcasting Corporation (Liberty), a competing applicant in this proceeding, filed comments arguing that the Commission should accept the amendment for Section 1.65 purposes only and to provide that LASH shall have no comparative advantage as a result of the amendment. LASH contends that it could not have filed earlier because it could not finalize an undescribed decision without one of its general partners who had left the country on May 5 and did not return until June 2.

3. Grant of LASH's motion to accept the amendment as if it were timely filed cannot be justified. The "B" cut-off list was released May 2, 1985, several days before the general partner left the country. Moreover, there is no explanation as to why one of the other general partners did not act on behalf of

the partnership or why the missing partner could not have been contacted by telephone during the one month period between release of the "B" cut-off list and the cut-off date. Finally, confusion in the office of legal counsel cannot excuse a failure to meet an established deadline. Consequently, the motion will be granted to the extent that the amendment will be accepted, but the amendment will be accepted for § 1.65 purposes only and no comparative advantage is to accrue to LASH as a result thereof.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been made that the tower height and location proposed by Harold L. Mullican, Liberty Broadcasting Corporation, Gamez Communications, and Crown City TV, Inc. each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Section 73.685(e) of the Commission's Rules states that stations operating on Channels 14–69 with transmitters delivering a peak visual power output of more than 1 kW may employ directive transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 15dB. Dorothy J. Owens proposes to employ a directional antenna with a peak power which will exceed the allowable maximum to minimum radiation. However, Ms. Owens has requested a waiver of § 73.685(e). Accordingly, an issue will be specified to determine if circumstances exist to warrant waiver of § 73.685(e).

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Dorothy J. Owens has not supplied this data. Accordingly, Ms. Owens will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

8. In Section V–C, FCC Form 301, Crown City TV, Inc. specifies its maximum visual effective radiated power as 2692 kW and its antenna height above average terrain as 3742 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Crown City TV, Inc. must submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.[1]

9. Section 73.3555(b) of the Commission's Rules states that no license for a television station shall be granted to any party if such party owns, operates or controls an AM or FM broadcast station and the grant of such license will result in the Grade A contour of the television station encompassing the entire community of the AM or FM station. Dorothy J. Owens is the Secretary-Treasurer and a director of Buck Owens Production Company, Inc., the licensee of stations KUZZ(AM) and KKXX(FM), Bakersfield, California. However, Ms. Owens has represented to the Commission that, in the event that she is the successful applicant for Channel 48, she will divest herself of all interest in and connection with the licensee of KUZZ(AM) and KKXX(FM). Accordingly, any grant of a construction permit to Ms. Owens will be conditioned upon Ms. Owens' divestiture.

10. Harold L. Mullican submitted only a partial financial certification. Accordingly, Mr. Mullican will be given 20 days from the release date of this Order to review his financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to his financial qualifications. If the applicant cannot make the required certification, he shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378 (released July 15, 1982).

11. Section 73.2080 of the Commission's Rules requires an applicant for a new television station to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. Pursuant to these requirements, an applicant who proposes to employ at least five full-time employees must establish a program, which must be submitted to the Commission, designed to assure equal employment opportunity for women and minority groups. Harold R. Mullican and Gamez Communications have each indicated that at least five full-time employees will be employed. However, neither applicant has submitted a copy of the required equal opportunity program. Accordingly, each will be required to submit an amendment which corrects this omission, to the presiding Administrative Law Judge, within 20 days after this Order is released.

12. Two of the limited partners of Gamez Communications are presently employed in positions that may be inconsistent with the Commission's cross-interest policy. Michael D. Allen is the sales manager at Station KWAC, Bakersfield, California, and Meri Catharine Hopple is a salesperson at Station KLLY(FM), Oildale, California, which is located within the applicant's proposed Grade A contour. Accordingly, an issue will be specified to determine whether Mr. Allen's employment at Station KWAC or Ms. Hopple's employment at Station KLLY(FM) would be consistent with the Commission's cross-interest policy and, if not, whether grant of the Gamez Communications application would be in the public interest.

13. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Harold L. Mullican, Liberty Broadcasting Corporation, Gamez Communications, and Crown City TV, Inc., whether there is a reasonable possibility that the tower height and location proposed by

[1] Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

each would constitute a hazard to air navigation.

2. To determine with respect to Dorothy J. Owens, whether circumstances exist to warrant a waiver of § 73.685(e) of the Commission's Rules.

3. To determine, with respect to Gamez Communications, whether the employment of Michael D. Allen at Station KWAC or the employment of Meri Catharine Hopple at Station KLLY(FM) is consistent with the Commission's cross-interest policy and, if not, whether a grant of the Gamez Communications application would be in the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

15. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, That the "motion to accept late-filed amendment" filed by LASH Communications IS GRANTED to the extent noted herein and the June 10, 1985, amendment IS ACCEPTED for § 1.65 purposes only.

17. It is further ordered, That Dorothy J. Owens shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after the release date of this Order.

18. It is further ordered, That, in the event that Dorothy J. Owens is the successful applicant, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that she has divested herself of all interest in, and connection with, the licensee of Stations KUZZ(AM) and KKXX(FM), Bakersfield, California.

19. It is further ordered, That Crown City TV, Inc. shall submit an amendment to show compliance with § 73.614 of the Commission's Rules pertaining to power and antenna height above average terrain, to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, That Harold L. Mullican shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

21. It is further ordered, That Harold L. Mullican and Gamez Communications, Limited Partnership shall each submit, as an amendment, an equal opportunity program, to the presiding Administrative Law Judge, within 20 days after this Order is released.

22. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

23. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief Video Services Division, Mass Media Bureau.

[FR Doc. 85-21292 Filed 9-5-85; 8:45 am]

BILLING CODE 6712-01

FEDERAL RESERVE SYSTEM

Colson, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Colson, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 80 percent of the voting shares of Washington Bancorporation, Washington, D.C., thereby indirectly acquiring the National Bank of Washington, Washington, D.C.

Applicant has also applied to acquire Washington Mortgage Group, Inc., Tysons Corner, Virginia, thereby engaging in making, acquiring, selling, and servicing residential mortgage loans; principally single- and multi-family mortgages.

2. *Washington National Holdings, N.V.*, Curacao, Netherlands Antiles; to become a bank holding company by acquiring 37.5 percent of the voting shares of Colson, Inc., Wilmington, Delaware, thereby indirectly acquiring The National Bank of Washington, Washington, D.C.

Applicant has also applied to acquire Washington Mortgage Group, Inc., Tysons Corner, Virginia, thereby engaging in making, acquiring, selling, and servicing residential mortgage

loans; principally single- and multi-family mortgages.

Board of Governors of the Federal Reserve System, August 30, 1985.

James McAfee,

Associate Secretary of the Board

[FR Doc. 85-21280 Filed 9-5-85; 8:45 am]

BILLING CODE 6210-01-M

New Superior Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *New Superior Financial Corporation*, Sault Ste. Marie, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Superior Financial Corporation, Sault Ste. Marie, Michigan.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Financial Corporation*, Topeka, Kansas; to acquire 100 percent of the voting shares of First State Bank and Trust Company, Topeka, Kansas.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brush Country Holding Company, Inc.*, Freer, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Freer Bancshares, Inc., Freer, Texas, thereby indirectly acquiring Brush Country Bank, Freer, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission Valley Bancorp*, Pleasanton, California; to acquire 100 percent of the voting shares of The Bank of San Ramon, N.A. (in organization), San Ramon, California.

Board of Governors of the Federal Reserve System, August 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21281 Filed 9-5-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 30, 1985.

Public Health Service

Centers for Disease Control

Subject: Dust and Endotoxin Dose Response Relationship for Cotton Dust—New.

Respondents: Individuals or households.

Subject: National Institutes for Occupational Safety and Health Information Dissemination Evaluation—New.

Respondents: Individuals or households.

Subject: National Occupational Health Survey of Mining—Extension (0920-0143).

Respondents: Business or other for-profit institutions, small businesses or organizations.

National Institutes of Health

Subject: Evaluation of the National Institutes of Health Research Career Development Award Program—New.

Respondents: Individuals or households.

Subject: Print and Broadcast Pretesting for the Office of Cancer Communications' Publications and Public Service Messages—New.

Respondents: Individuals or households.

Subject: Cancer Information Service Call Record Form—Reinstatement (0925-0208).

Respondents: Individuals or households.

Subject: Evaluation of Statewide Hypertension Programs.

Respondents: State/local governments, non-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Health Care Financing Administration

Subject: Revision to the Medicaid State Plan Preprint for Medicaid Cost Sharing Provisions-HCFA-179—Revision (0938-0193).

Respondents: State/local governments.

Subject: Evaluation of Social/Health Maintenance Organization Demonstration-HCFA-506—New.

Respondents: Individual or households.

Subject: Joint Commission on Accreditation Hospice Mail Survey Questionnaire-HCFA-505—New.

Respondents: Non-profit institutions, small businesses or organizations.

Subject: Carrier Appeal Report-HCFA-2590—Existing Collection.

Respondents: Non-profit institutions, federal agencies or employees.

Subject: Hospital and Hospital Health Care Complex Cost Report HCFA-2552-85—Revision (0938-0050).

Respondents: Businesses or other for-profit.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Health Insurance Information Request Pilot Study-SSA-5052—New.

Respondents: Individuals.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: August 30, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-21205 Filed 9-5-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 83N-0308]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant and/or Hallucinogenic Drugs; Notice of Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit written comments concerning recommendations from the World Health Organization (WHO) that the Commission on Narcotic Drugs (CND) of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, on certain stimulant and/or hallucinogenic drugs. FDA is also announcing that an informal public meeting will be held on October 10, 1985, on the WHO proposals. The comments received in response to this notice and the public meeting will be considered in preparing the United States position on these proposals for a meeting of the CND in Vienna, Austria, in February 1986. This notice requesting written comments is required by the Controlled Substances Act (CSA).

DATES: The public meeting will be held on October 10, 1985, at 8:30 a.m. Comments are due October 7, 1985.

ADDRESSES: The public meeting will be held in Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Written comments should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written notice of intent to participate should be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: By note NAL/CL.14/1983 of July 25, 1983, the Secretary-General of the United Nations requested data and information concerning 30 stimulant/hallucinogenic drug substances. In the **Federal Register** of September 13, 1983 (48 FR 41096), FDA requested interested persons to submit data and information to be considered in the preparation of a United States response to the United Nations request. The United States forwarded its response to the United Nations in March 1984. A copy of the information the United States provided is on file in the Dockets Management Branch (address above). This list of stimulant/hallucinogenic drug substances was subsequently modified and reduced to the 28 drug substances listed below:

Cathine (norpseudoephedrine)
Cathinone
Clobenzorex
Dimethoxyamphetamine
Dimethoxybromoamphetamine (DOB)
Ethylamphetamine
Fenbutrazate
Fencamfamin
Fenetylline
Fenproporex
Furfenorex
Levamfetamine
Levomethamphetamine
Mefenorex
Methoxyamphetamine (PMA)
Methylenedioxyamphetamine (MDA)
Morazone
Para-methoxyamphetamine
Pemoline
Propylhexedrine
Pyrovalerone
Trimethoxyamphetamine (TMA)
4-Bromo-2,5-dimethoxyphenethylamine
2,5-Dimethoxy-4-ethylamphetamine (DOET)
N,N-Dimethylamphetamine
N-Ethyl-3,4-methylenedioxyamphetamine (N-Ethyl-MDA)
5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)
3,4-Methylenedioxymethamphetamine (MDMA)

In March 1984, as part of an ad hoc consultative meeting, WHO conducted a review and evaluation of the data and information received from member countries concerning the list of identified stimulant/hallucinogenic drug substances. On the basis of that review, the Director-General of WHO requested assistance in obtaining additional data on 28 of the drug substances (see note NAR/CL.8/1984 issued on June 14, 1984) and recommended that the Secretary-General of the United Nations that WHO was of the opinion that 2 of the substances, 3,4-Methylenedioxyamphetamine (MDA) and 2,5 Dimethoxy-4-Bromoamphetamine (DOB), should be included in Schedule I of the Convention on Psychotropic Substances (see notes NAR/CL.6/1984 and NAR/CL.7/1984 of June 12, 1984, and June 13, 1984, respectively).

Accordingly, in the **Federal Register** of July 19, 1984 (49 FR 29273), FDA requested interested parties to submit additional data on the substances. Copies of the information received are on file in the Dockets Management Branch (address above). And, in the **Federal Register** of August 8, 1984 (49 FR 31773), FDA announced WHO's scheduling recommendation. In response to that **Federal Register** notice, no adverse comments were received and no party requested a public meeting on the recommendation.

At the meeting of the CND held on February 12, 1985, the CND decided to include both DOB and MDA in Schedule I of the 1971 Convention on Psychotropic Substances. All 40 members of the CND, including the United States, voted in favor of that action. The decision was supported by evidence of actual abuse and recognition of the fact that neither drug substance had any recognized medical use.

During April 1985, the Expert Committee on Drug Dependence met in Geneva and made recommendations concerning the international scheduling of 17 of the remaining stimulant/hallucinogenic substances then under review. As a result of the decisions made at the meeting, WHO has recommended that the CND control 17 stimulant and/or hallucinogenic drug substances under the Psychotropic Convention. Placing these drugs under international controls would require each of the member countries (including the United States) to impose similar levels of domestic control on the drug substances. This could result in the scheduling or possible rescheduling of certain drug substances domestically. It could also require additional reporting requirements by manufacturers of affected substances or the reclassification of drug substances from over-the-counter to prescription status. See section 307(e) of the CSA (21 U.S.C. 827(e)) as amended by the Psychotropic Substances Act of 1978 (Pub. L. 95-633).

The formal WHO notification, which identifies the 17 substances and explains the bases for the recommendations is reproduced below:

United Nations—Nations Unies

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honor to inform the Government that the World Health Organization, pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances, has notified the Secretary-General by notes dated 20 May 1985 that it is of the opinion that the seven substances Cathinone, Dimethoxyamphetamine (DMA), Paramethoxyamphetamine (PMA), Trimethoxyamphetamine (TMA), Dimethoxy-4-ethylamphetamine (DOET), 5-Methoxy-3,4-

methylenedioxyamphetamine (MMDA), and 3,4 Methylenedioxymathamphetamine (MDMA) should be included in Schedule I of that Convention; that the four substances Cathine, Fenetylline, Levamphetamine, and Levomethamphetamine should be included in Schedule II of that Convention: and that the six substances N-Ethylamphetamine, Fencamfamin, Fenproporex, Mefenorex, Propylhexedrine and Pyrovalerone should be included in Schedule IV of that Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the texts of those seventeen notifications as Annex I to the present note.

The Director-General of the World Health Organization, in connection with the notifications, has also submitted the report of the Twenty-second WHO Expert Committee on Drug Dependence which reviewed these substances, *inter alia*, for possible international control. Excerpts from that report, concerning the seventeen substances recommended for scheduling, are hereby transmitted as Annex II. The latter text is currently available in English only, pending receipt of the official translation from the World Health Organization.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notifications from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session. Any action or decision taken by the Commission with respect to these notifications, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

"The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible scheduling of the seventeen substances indicated in Annex I could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 25 October 1985.

18 July 1985

Annex I

Notes Dated 20 May 1985 Addressed to the Secretary-General by the Director-General of the World Health Organization

Cathine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *d-threo*-2-amino-1-hydroxy-1 phenyl-propane and referred to as cathine.

Cathine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recomments that cathine be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Cathinone

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to (-)-*alpha*-aminopropiophenone and referred to as cathinone.

Cathinone meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recomments that cathinone be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Dimethoxyamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-2,5-dimethoxy-*alpha*-methylphenylethylamine and referred to as 2,5-dimethoxyamphetamine or DMA.

DMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that DMA be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Ethylamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-N,ethyl-*alpha*-methyl-phenylethylamine and referred to as N-Ethylamphetamine.

N-Ethylamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recomments that N-Ethylamphetamine be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Fencamfamin

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-N-ethyl-3-phenylbicyclo(2,2,1)-heptan-2-amine and referred to as fencamfamin.

Fencamfamin meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recomments that fencamfamin be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Fenetylline

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3,7-dihydro-1,3-dimethyl-7-[2-[(1-methyl-2phenylethyl)amino]-ethyl]-1H-purine-2,6-dione and referred to as fenetylline.

Fenetylline meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that fenetylline be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Fenproporex

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3-/(*alpha*-methylphenethyl)amino/-propionitrile and referred to as fenproporex.

Fenproporex meet the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that fenproporex be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Levamfetamine

The Director-General of the World Health Organization presents his compliments to the

Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *l-alpha*-methylphenethylamnine and referred to as levamphetamine.

Levamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that levamphetamine be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Levomethamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *l-alpha*-dimethylphenethylamnine and referred to as levomethamphetamine.

Levomethamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that levomethamphetamine be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Mefenorex

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-N-(3-chloropropyl)-*alpha*-methylphenethylamine and referred to as mefenorex.

Mefenorex meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that mefenorex be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Para-methoxyamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to 4-methoxy-*alpha*-methylphenylethylamine and referred to as para-methoxyamphetamine (PMA).

PMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that PMA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Propylhexedrine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-1-cyclohexyl-2-methylaminoprompane and referred to as propylhexedrine.

Propylhexedrine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that propylhexedrine be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Pyrovalerone

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone and referred to as pyrovalerone.

Pyrovalerone meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that pyrovalerone be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Trimethoxyamphetamine (TMA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3,4,5-trimethoxy-*alpha*-methylphenylethylamine and referred to as 3,4,5-trimethoxyamphetamine or 3,4,5-TMA.

3,4,5-TMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that 3,4,5-TMA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

2,5-Dimethoxy-4-ethylamphetamine (DOET)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-2,5-dimethoxy-4-ethyl-*alpha*-methyl-phenylethylamine and referred to as 2,5-dimethoxy-4-ethylamphetamine or DOET.

DOET meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that DOET be added to Schedule I of the Convention on Psychotropic Substances, 1971.

5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-5-methoxy-3,4-methylenedioxy-*alpha*-methyl-phenylethylamine and referred to as 5-Methoxy-3,4-methylenedioxyamphetamine of MMDA.

MMDA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that MMDA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

3,4-Methylenedioxymethamphetamine (MDMA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3,4-methylenedixoy-N,*alpha*-dimethyl-phenylethylamine and referred to as 3,4-methylenedioxymethamphetamine or MDMA.

MDMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that MDMA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Annex II

Excerpt From the Report of the Twenty-second WHO Expert Committee on Drug Dependence

[Note by the Secretariat.—The following excerpts from the Report of the Twenty-second Expert Committee on Drug Dependence, which met at the World Health Organization in Geneva from 22–26 April 1985, concern only with 17 substances which have been recommended by WHO for scheduling. Two of the substances reviewed by the Committee, 3,4-Methylenedioxy-amphetamine (MDA) and 2.5-Dimethoxy-4-bromoamphetamine (DOB) had already been placed in Schedule I of the Convention on Psychotropic Substances by decision of the Commission on Narcotic Drugs and the Committee was of the opinion that no further action was required.]

"1. Cathine

It was noted that cathine is one of the active principals of the abused plant material Catha edulis (khat). Chemically, it is *d-threo*-2-amino-1-hydroxy-1-phenylpropane, and, it is the single optical isomer of a structure which contains two asymmetric centres. Because of this, the compound can exist as two racemates (threo and erythro) and each as two pairs of isomers + and −). The erythro racemate is commonly known as phenylpropanolamine and is widely used medically as a nasal decongestant. Phenylpropanolamine has only a low level of central stimulant activity, is not self-administered in animals and is not widely abused by man despite its widespread medical use.

Cathine has central stimulatory activity similar to amphetamine but is about 7–10 times less potent. Its toxicity in animals and man resembles amphetamine with a lesser incident of stereotypy. Animal data indicates that cathine is discriminated as being amphetamine-like.

Cathine is marketed as an anorectic in a wide variety of pharmaceutical forms and preparations and is widely distributed in the world. There are some reports of human abuse of anorectics containing cathine from a number of countries. Numerous reports of small seizures of the drug have been made.

On the basis of the data outlined above it was the consensus of the Committee that cathine met the criteria in Article 2 para 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule II.

The Committee also noted that there was little or no data available on the racemate and (−)−isomer of cathine. If these forms follow the example of amphetamine and cathinone they will have similar properties to cathine. Further study of the abuse potential of the racemate and (−)−isomer was suggested.

2. Cathinone

Cathinone is the major psychoactive component of the khat plan (Catha edulis). Chemically it is (−)−alpha-aminopropiophenone. The racemate and (+)−isomer have also been prepared and studied pharmacologically to a small extent.

Cathinone is a central nervous system stimulant which shares most of the pharmacological properties of amphetamine with about half its potency. In addition, there is cross tolerance to amphetamine as an anorexiant. The toxicology of cathinone is also similar to that of amphetamine. Cathinone is well absorbed orally and rapidly metabolized. A main excretion product is (−)nor-ephedrine.

The dependence potential of cathinone has been studied extensively in animals. The drug is discriminated as amphetamine-like and is readily self-administered by rhesus monkeys. The racemate shares these properties. Knowledge of the human pharmacology of cathinone comes only from the experience with khat, which has widely been reported to be a public health problem of great magnitude in certain areas of the world where it is available.

There is no known medical use of cathinone and there is no evidence of illicit traffic with the substance.

On the basis of the data outlined above, it was the consensus of the Committee that cathinone met the criteria for control in Article 2 para. 4 for control under the Convention on Psychotropic Substances. Since cathinone has no medical use it was recommended that it be placed in Schedule I.

3. 2,5-Dimethoxyamphetamine

This substance, commonly known as DMA, is a racemic mixture which has a pharmacological profile similar to mescaline at low doses and amphetamine at high doses. It apparently produces hallucinations in man. Drug discrimination studies indicate that it has common effects with hallucinogens. The substance has no known medical use, but is is used in the photographic industry. There are a number of reports of illicit traffic of the substance.

On the basis of the data outlined above, it was the consensus of the Committee that 2,5-dimethoxyamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no known clinical use, the Committee recommended that it be placed in Schedule I of the Convention.

4. N-Ethylamphetamine

This substance is a racemic mixture whose pharmacological profile resembles that of amphetamine. It is a central nervous system stimulant which is self-administered by the rhesus monkey. No data were available on the clinical abuse liability, the nature and magnitude of public health and social problems, or epidemiology of its use and abuse. The substance is legislatively controlled nationally by several countries and there are few reports on its therapeutic usefulness. Products contained the substance are marketed in several countries and there have been only a small number of reports of the drug appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that N-Ethylamphetamine met the criteria in Article 2, para. 4 for control under the Convention of Psychotropic Substances and should be placed in Schedule IV.

5. Fencamfamin

Chemically, fencamfamin is N-ethly-3-phenylbicyclo(2,2,1)-heptan-2-amine. Pharmacologically, fencamfamine is a central nervous system stimulant which resembles emphetamine in most aspects. The toxicology of fencamfamine also resembles an emphetamine but it does not produce aggregate toxicity. Fencamfamin is not metabolized to amphetamine and has a half-life of about 16 hours.

Fencamfamin is self-administered in both beagle dogs and monkeys and shows the typical pattern of a central stimulant reinforcer. There was no evidence of clinical abuse liability or serious public health and social problems but there is some social abuse by students in some countries.

Fencamfamin has been used clinically as an "energizing" drug since 1962 and is marketed in 32 countries and prescription controlled in many of them. There were a few examples of fencamfamin appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that fencamfamin met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances, and should be placed in Scehdule IV.

6. Fenetylline

Chemically, fenetylline is a racemic ethyltheophylline derivative of amphetamine. Pharmacologically, it partly resembles amphetamine; however, there are a number qualitative differences. The pattern of toxicity in animals is similar in amphetamine. There is a low incidence of clinical side effects. The drug is well absorbed with an elimination half-life of about 1.3 hours. It is converted to amphetamine to some extent and to a number of other metabolites which are slowly excreted.

Fenetylline is self-administered by rhesus monkeys but not to the same degree as amphetamine. In the most recent studies only two out five animals self-administered the drug at rates above saline levels. In drug discrimination studies in a number of species, fenetylline was discriminated as amphetamine in a portion of the subjects. There is limited data on clinical dependence potential but widespread and increasing abuse has been documented in the Federal Republic of Germany with additional reports from Mexico, Sweden and Middle East. Substantial illicit traffic has occurred in several countries and it is under legislative control in many countries.

The drug is used therapeutically mainly in paediatric and geriatric practice. It is marketed in a large number of countries. In recent years there has been an increasing number of reports of fenetylline entering illicit traffic. Interpol has reported seizure data from 13 countries from 1981 to 1983 totalling approximately 20 million dosage units. Particular concern has been expressed by a number of countries from the Near and Middle East.

On the basis of the data outlined above, it was the consensus of the Committee that fenetylline met the criteria of Article 2, para. 4 for control under the Convention on

Psychotropic Substances, and it should be placed in Schedule II.

7. Fenproporex

Fenproporex is the racemic N-cyanoethyl analogue of amphetamine. Pharmacologically, the compound appears to be amphetamine-like but little published data are available. No animal toxicology was available but it has been reported to alter colour vision in man at therapeutic doses. Fenproporex has been reported to be metabilized to amphetamine in man. No data was available concerning the preclinical or clinical dependence potential of the drug. There are a few reports of abuse from Chile and Mexico and the drug is under control in several countries.

Fenproporex is used therapeutically as an appetite suppressant and marketed widely. There are a number of reports of the drug appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that fenproporex met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule IV.

8. Levanphetamine

Levanphetamine is the *l*-isomer of amphetamine. Its pharmacological profile is very similar to that of *d*-amphetamine but it is a quarter to a third as potent. No toxicological of pharmacokinetic data was available.

Levamphetamine is readily self-administered by rhesus monkeys, rats and dogs and differs only from *d*-ampbetamine by being less potent. No information was available concerning clinical abuse liability, the nature of the public health and social problems, or the epidemiology of drug use and abuse. The drug is under control in a number of countries. Levamphetamine is available for medical use at least in the United Kingdom. No data was available concerning production. There have been some reports of illicit traffic with the drug.

On the basis of the data outlined above, it was the consensus of the Committee that levamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Because of its great chemical and pharmacological similarity to *d*-amphetamine the Committee recommended that it be placed in Schedule II.

9. Levomethamphetamine

Levomethamphetamine is opposite optical isomer of *d*-methamphetamine. It is a central nervous system stimulant whose pharmacological profile is very similar to the *d*-isomer but less potent. No toxicological or pharmacokinetic data was available.

Levomethamphetamine is self-administered by rats. There is no data on clinical abuse liability, the nature and magnitude of public health and social problems or the epidemiology of use and abuse. The drug is under control in several countries. It is marketed as an exempt preparation in the USA as a nasal decongestant in an inhaler. There are reports of illicit manufacture and traffic in the drug.

On the basis of the data outlined above, it was the consensus of the Committee that levomethamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. On the basis of its strong chemical and pharmacological resemblance to *d*-methamphetamine the Committee recommended that the drug be placed in Schedule II.

10. Mefenorex

Chemically, mefenorex is the racemic N-chloropropyl analogue of amphetamine. Mefenorex is an amphetamine-like stimulant with anorectic activity. It appears to have less effect on the cardiovascular system and does not produce sterotypic movements in the rat. The acute cause of death in rats is respiratory paralysis. There is no enhancement of lethality in grouped animals such as occurs with *d*-amphetamine. Typical sympathomimetic side effects are seen in man. In man the drug is excreted unchanged and as various hydroxylated metabolites.

Mefenorex is self-administered to some degree (two out of five) by the rhesus monkey and has discriminative stimulus effects in common with amphetamine in both monkeys and pigeons. The drug was less potent than amphetamine in both procedures. There is no data on clinical abuse liability, no reported public health and social problems and no information related to abuse epidemiology. The drug is under some form of control in many countries.

Mefenorex is used as an anorectic agent in the treatment of obesity and is widely sold worldwide. Some illicit traffic has been reported.

On the basis of the data outlined above, it was the consensus of the Committee that mefenorex met the criteria of Article 2, para. 4 for control of mefenorex under the Convention on Psychotropic Substances and should be placed in Schedule IV.

11. Paramethoxyamphetamine (PMA)

PMA is a racemic mixture whose pharmacological profile is predominantly amphetamine-like. It also shows some pharmacological activity resembling LSD (e.g., visual tracking in monkeys and dogs). In human subjective reports PMA was estimated as five times more potent as a psychotomimetic than mescaline.

Regarding its depedence potential, in different studies in rodents, its discriminative effect was amphetamine-like or somewhat resembling LSD. PMA was not self-administered in baboons. Data on clinical abuse liabilities from human studies relevant to the dependence potential of this substances are not available.

Serious adverse reactions and fatal toxicity appeared geographically isolated but disconcerting. Signs of intoxication include those observed with amphetamine and also with mescaline.

Data on governmental seizures indicated only isolated cases of illicit traffic in PMA.

On the basis of the data outlined above, it was the consensus of the Committee that paramethoxyamphetemine met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no therapeutic use, the Committee recommended that paramethoxyamphetamine be placed in Schedule I of the Convention.

12. Propylhexedrine

Chemically, propylhexedrine is racemic 1-cyclohexyl-2-methyl-aminopropane. Animal pharmacology studies indicate that propylhexedrine has some stimulant actions in common with amphetamine, such as increased locomotor activity and pressor effects. Regarding dependence potential, no data are available from animal studies but human investigative reports indicate that propylhexedrine is capable of imitating at least some of the subjective effects of amphetamine, such as restlessness.

Toxicological data report adverse reactions in man following both oral abuse of propylhexedrine inhalers and certain cases of intravenous abuse reported from 1974 to 1982. Published reports describe severe acute toxic effects from abuse of the substance. In addition, propylhexedrine abuse has been reported at a low frequency in epidemiological observations based upon several abuse reporting systems and these observations have been spread over a period of 30 years. It also appears important that propylhexedrine has not been accepted apparently by abusers when provided as substitute for amphetamine in inhalant form.

Propylhexedrine is a sympathomimetic agent which has been used without a prescription in an inhalant form for nasal decongestion. Its hydrochloride is available in an oral form and given daily in divided doses as an anorectic agent in the treatment of obesity.

On the basis of the data outlined above, it was the consensus of the Committee that propylhexedrine met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule IV.

13. Pyrovalerone

Chemically, pyrovalerone is 1-(4-methylpheny1)-2-(1-pyrrolidinyl)-1-pentanone Pharmacologically, it is a potent inhibitor of norepinephrine uptake. The Committee was unable to find useful data on the pharmacological profile of this substances or animal studies relevant to its dependence potential. It has been in medical use for asthma, reactive depression, and as a stimulant for the relief of drug induced lethargy. A pyrovalerone preparation was abused in France by intravenous injection and was withdrawn from the market in both France and Switzerland. Reports are available which appear to indicate that, by the intravenous route, the drug produces amphetamine-like central stimulation and psychological dependence. It remains available in Luxembourg but the manufacturer supplied no information. Thus, despite systematic effort, virtually no relevant information from the manufacturer was available to the Committee.

On the basis of the data outlined above, it was the consensus of the Committee that pyrovalerone met the criteria of Article 2, para. 4 of the Convention and should be placed in Schedule IV.

14. 3,4,5-Trimethoxyamphetamine

3,4,5-Trimethoxyamphetamine (3,4,5-TMA) is a racemate which has a pharmacological profile similar to LSD with some amphetamine-like activity in the spinal dog. It is cross tolerant with LSD. No toxicological data are available.

In rodents 3,4,5-TMA produces discriminative effects similar to DOM, another known hallucinogen of this series. No clinical abuse data are available and the nature and magnitude of public health and social problems is unknown. No information is available on the epidemiology of its use and abuse. The substance is under national control in several countries. There is no known therapeutic use and thus no licit production. Seizures of the drug and the finding of a number of clandestine laboratories indicate the substance is in illicit traffic in Canada and the United States.

On the basis of the data outlined above, it was the consensus of the Committee that 3,4,5-trimethoxyamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no known clinical use, the Committee recommended that it be placed in Schedule I.

15. 2,5-Dimethoxy-4-ethylamphetamine

This substance, commonly known as DOET, has been reported to be hallucinogenic in man. DOET was discriminated as hallucinogen-like in the rat but there is some evidence that the substance may have a different profile of pharmacological action from that of the typical hallocinogens of this series. No toxicological or pharmacokinetic data is available. DOET is not self-administered by baboons. No data are available on clinical abuse liability on the nature or magnitude of public health or social problems or on the epidemiology of its use or abuse. The drug is under national control in four countries. There is no known therapeutic use and no data on production. There is only one minor report of illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that 2,5-dimethoxy-4-ethylamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since the substance has no therapeutic use, the Committee recommends it to be placed in Schedule I.

16. 5-Methoxy-3,4-methylenedioxyamphetamine

This substance is commonly known as MMDA. In the spinal dog MMDA has a pharmacological profile which resembles both LSD and amphetamine but has other properties which are not shared by either drug. There are no data on the toxicology, pharmacokinetics, dependence potential, nature and magnitude of public health and social problems or epidemiology of its use and abuse. The substance is under national control in five countries. It has no known therapeutic use and no information is available concerning its production. Minor encounters with this compound in illicit traffic have been reported by the United States.

Request for Comments

As provided by section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)), FDA, at the direction of the Assistant Secretary for Health, invites interested persons to submit comments on the WHO recommendations. The comments received will be considered by FDA (in consultation with the National Institute on Drug Abuse) on behalf of DHHS in its evaluation of the recommendations. DHHS will then recommend to the Secretary of State the position which the United States should take when voting on the scheduling proposals at the CND meeting in February 1986.

Open Public Meeting

FDA, on behalf of DHHS, has concluded that it is in the public interest to hold an open public meeting for the purpose of allowing interested persons to present their views on the proposed CND actions discussed above (see 21 CFR 10.65). The meeting will be informal and is intended only for the presentation of views on the proposed actions. Thus, although the FDA official(s) conducting the meeting may direct questions to those presenting views for purposes of clarification, no participant may interrupt the presentation of another participant for any reason without prior approval from the presiding officer. Any interested person may attend and present his or her views provided that FDA receives written notice of intent to participate at least 3 days before the meeting. The open public meeting will be held on October 10, 1985, at 8:30 a.m., in Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Written notice of intent to participate should be sent to L David Wolfson, Rm. 11–46 (address above).

Interested persons may, on or before October 7, 1985, submit to the Dockets Management Branch (address above) written comments regarding this notice. This short comment period is necessary to assure that DHHS may make its required evaluations and recommendations. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 1985.

Robert L. Spencer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–21372 Filed 9–4–85 11:11 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Meeting

A conference on "Managing Conduct and Data Quality of Toxicology Studies" will be held November 18, 19 and 20, 1985 at the Mission Valley Conference and Expo Center, Raleigh, North Carolina.

This conference, sponsored jointly by the National Toxicology Program/ National Institute of Environmental Health Sciences and Industry (American Industrial Health Council, American Petroleum Institute, Chemical Manufacturers Association, National Agricultural Chemical Association), is intended to provide opportunities for the presentation of views and discussion of concerns related to the importance of the quaility of data generated from toxicology studies. The conference objectives are to:

—Review and exchage current concepts and strategies to improve the quality of toxicological studies.
—Present and discuss Quality Assurance (QA) programs utilized by government and industry.
—Provide a forum for the exchange of ideas between government and industry to strengthen a mutual commitment to quality.
—Publish conference proceedings.

Presentation will be made by leaders in various disciplines which contribute to the quality of toxicology studies. The interaction needed between management and scientists to maintain standards of quality in the conduct of toxicology programs will be the focus of this conference.

There will be no registration fee, but early reservations are recommended due to space limitation. Registration deadline is October 15th.

To receive information for the conference including housing, reservations, and agenda, please contact: Ms Alice S. Glover, Corporate Travel International/NC, P.O Box 30607, Raleigh, NC 27608, 1–800–672–8537 (within NC), 1–800–344–9798 (outside NC).

Dated: August 29, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85–21288 Filed 9–5–85; 8:45 am]

BILLING CODE 4160-01-M

Privacy Act of 1974; Revision of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an altered Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a major alteration to the system of records, 09–30–0022, "National Institute on Drug Abuse, Addiction Research Center, Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA," for the following reasons: (1) To computerize, (2) to expand the category of individuals, and (3) to expand the "Purpose" section to permit the Addiction Research Center to collect and maintain an automated data base for research purposes in addition to the current purpose of evaluating and monitoring subject's health during participation in a research project. We are also proposing to add a new routine use.

DATE: PHS invites interested parties to submit comments on the proposed new routine use on or before October 3, 1985. PHS has sent a Report of An Altered System to the Congress and to the Office of Management and Budget (OMB) on August 29, 1985. PHS will adopt the routine use without further notice 30 days after the date of publication, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Extramural Policy and Project Review Branch, Office of Science, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, Maryland 20857.

Comments received will be available for inspection at the same address, from 9:00 a.m. to 4:00 p.m., Monday through Thursday.

FOR FURTHER INFORMATION CONTACT: Chief, Research Support Branch, Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, Building C, 4940 Eastern Avenue, Baltimore, Maryland 21224. Telephone: (301) 955–7570. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Addiction Research Center (ARC) proposes a major alteration of the system of records, "National Institute on Drug Abuse Addiction Research Center, Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA," 09–30–0022, (1) to computerize the system, (2) to expand the category of individuals to include adolescents, (3) to expand the "Purpose" section to permit ARC to collect and maintain an automated data base for research purposes in addition to the current purpose of evaluating and monitoring subject's health during participating in a research project.

This system of records contains the administrative, medical and research records on each volunteer who has participated as a subject in any research project at ARC since its move to Baltimore, Maryland, during February 1980. Although the specific scientific methodologies vary from research project to research project, the overall goal of each project is to conduct research on the causes, diagnosis, prevention, and treatment of drug addiction and drug abuse; on the nature of the addictive process; and on the potential abuse liability of new drugs. Some projects will use statistical information from other ADAMHA programs.

The automation of the records will aid in protecting the individual as well as enhancing the gathering and analysis of the research data. Both detailed medical and research information must be maintained on each research subject as well as administrative information; and, as the number of records has increased, it has become increasingly difficult to ensure the individual's well-being using a manual system. The records on subjects who participated in research projects prior to the move will not be computerized at this time, but are being retained for research purposes. The old prisoner records have been retired to a Federal Records Center (FRC) and will not be computerized.

We are also proposing to expand the category of individuals to include adolescents (ages 13–18) who are identified by a health care provider as having potential delinquent behavior problems which could include or be associated with drug and/or drug and alcohol problems. The specific methodologies will vary with each individual project. However, any research project with adolescents, as with the other research projects, will be compatible with the goals of ARC, NIDA and this system notice. All Federal, State, and local laws and regulations applicable to research with adolescents will be strictly followed.

We are also proposing to add a contractor routine use in order to contract with an outside organization for the recruitment and screening of the individuals who volunteer as research subjects. This routine use is necessary because ARC lacks the resources and manpower to perform these procedures. Access by the contractor is limited to the screening and recruitment procedures. Records on idividuals who do not qualify for a particular project are retained for one year and then destroyed by the contractor by shredding. The contractor will be required to maintain Privacy Act safeguards with respect to all records. We are not making any changes to the litigation routine use already listed for this system.

We are revising the "Safeguards" section to include safeguards for the automated data. The records in this system will be maintained in a secure manner compatible with their content and use. The contractor will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulation. The System Manager, and/or Principal Investigator will control access to the data. The specific safeguards are explained in the accompanying system notice.

In addition, because much of the data collected is sensitive and confidential, special safeguards have been established. A certificate of confidentiality is issued under Protection of Identity—Research Subjects Regulations (42 CFR Part 2a) for each research project, as described in the system notice. Also, these records are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56a), which state:

> Where the content of patient records has been disclosed pursuant to [these regulations] for the purpose of conducting scientific research . . . information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.

The safeguards implemented have been developed in accordance with chapter 45–13, "Safeguarding Records Contained in System of Records," or the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13; and Chapter 6–05, "Risk Management, under Part 6, of the Department's ADP Systems Security Manual.

In addition to the revisions outlined above, we are also making minor editorial changes throughout the system notice.

The system notice was published most recently in the **Federal Register**, November 29, 1983 (Vol. 48 No. 230, pp. 53816–53817). We are republishing below the system notice in its entirety to incorporate the proposed changes. It is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the changes become effective.

Dated: August 30, 1995.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Notice of an Altered System of Records

09-30-0022

SYSTEM NAME:

National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NIDA Addiction Research Center, Francis Scott Key Medical Center, Building C, 4940 Eastern Avenue, Baltimore, MD 21224; Federal Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344; Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409; Bionetics, Inc., Francis Scott Key Medical Center, Building C, 4940 Eastern Avenue, Baltimore, MD 21224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers, both adult males (from 1968 to present) and adolescents (ages 13–18, beginning in 1985) involved in clinical research projects conducted at the Addiction Research Center (ARC). This system also includes records on adult Federal prisoners involved in research projects at ARC when located at Lexington, Kentucky, from 1968–1976, and some records from system 09–30–0020 to be used for statistical research only.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records involved are administrative, medical and research records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act Section 301(a) (42 U.S.C. 241(a); Sections 341(a) and 344(d) (42 U.S.C. 257(a) and 260(d); Sections 503 and 515 (42 U.S.C. 290aa–2 and 290cc). These sections authorize the conduct of research in all areas of drug abuse.

PURPOSE(S):

(1) To collect and maintain a data base for research activities at ARC, and (2) to enable Federal drug abuse researchers to evaluate and monitor the subjects' health during participation in a research project. The areas of research include, but are not limited to, biomedical, clinical, behavioral, pharmacological, psychiatric, psychosocial, epidemiological, etiological, statistical, treatment and prevention of narcotic addiction and drug abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Alcohol Drug Abuse and Mental Health Administration (ADAMHA) uses a contractor solely to recruit volunteers and to screen these individuals for their acceptability to participate in specific research projects, and limits the contractor's access to the records to these procedures. The contractor will disclose records from this system only to ADAMHA and is required to maintain Privacy Act safeguards with respect to such records.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department of any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders or on computer disks or magnetic tapes.

RETRIEVABILITY:

Administrative and medical records are indexed and retrieved by the subject's name. Research records are indexed and retrieved by the subject's name *and* an identification code.

SAFEGUARDS:

1. Authorized Users: Only authorized ARC staff (Principal Investigator and his/her research team) are allowed access to these files. The contractor staff has access to the files during the recruitment/screening process.

2. Physical Safeguards: Files and file rooms are locked after business hours. Building has controlled entry (sign in and out) at all times with a 24-hour guard/television surveillance system. The computer terminals are in a further secured area.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from unauthorized personnel. Access codes to the research records are available only to the Principal investigator and his/her research team. Access to the records is strictly limited to those staff members trained in accordance with the Privacy Act. The contractor staff members are required to secure the information in accordance with the Privacy Act. ARC Project Officer and contracting officials will monitor contractor compliance.

4. Implementation Procedures: DHHS Chapter 45–13 and supplementary Chapter PHS.hf 45–13 of the General Administration Manual; and Chapter 6–05, "Risk Management," under Part 6 in the Department's ADP System Security Manual.

In addition, because much of the data collected in these research projects are sensitive and confidential, special safeguards have been established. Certificates of confidentiality have been issued under Protection of Identity—Research Subjects Regulations (42 CFR Part 2a) to those projects initiated since February 1980. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding their names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify such individuals. In addition, these records are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: "Where the content of patient records has been disclosed pursuant to these regulations for the purpose of conducting scientific research . . . information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State."

RETENTION AND DISPOSAL:

Records will be disposed of in accordance with the ADAMHA Records Control Schedule, i.e., when the records are 10 years old or no longer required for administrative or research purposes. The records on individuals who do not qualify for a specific research project are kept for one year by the contractor who then destroys them by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Research Support Branch, NIDA Addiction Research Center, Francis Scott Key Medical Center, Building C, 4940 Eastern Avenue, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide a notarized signature as proof of identity. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identify.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The individual; observations and medical recordings (such as blood pressure, dosage of compound administered, etc.) made by the Principal Investigator and his/her research team; system of records number 09–30–0020; drug treatment programs; Bureau of Prisons; case workers; psychiatrists; research laboratories; and pharmacies and hospitals. Many of these records are confidential and privileged communication is guaranteed under Section 344(d) of the PHS Act.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–21317 Filed 9–5–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–85–1548]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing—Comparative Analysis of Utility Costs
Office: Public and Indian Housing
Form No. HUD–51994A, 51994B, 51994C, and 51994D
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 1,562
Status: Extension
Contact: Charles H. James, HUD, (202) 755–6460 Robert Fishman, OMB, (202) 395–7316.

Proposal: Report on Property/Casualty Claim Experience and Premiums Paid
Office: Public and Indian Housing
Form No. HUD–5244
Frequency of submission: Single-Time
Affected public: Non-Profit Institutions
Estimated burden hours: 1,628
Status: New
Contact: Ralph Lecky, HUD, (202) 755–8145; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Act, 44 U.S.C. 3507; Sec. 7(d) of the Deprtment of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 22, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–21258 Filed 9–5–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet Sunday, September 22, 1985. The meeting will convene from 2:00 p.m. to 5:00 p.m. in the California East Room at

the Westin St. Francis Hotel in San Francisco, California.

It will be open to the public.

The proposed agenda is:

2:00–2:30: Report by the Chairman. Completion of pending Committee business.

2:30–4:00: Reports from working groups; recommendations for consideration by the Committee; discussion of future agenda.

4:00–5:00: Public Comment: statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues.

Prospective witnesses are requested to notify the Committee contact (see below) of their intention to appear. Written statements for the record may be submitted through September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Gully Walter, Department of the Interior, Washington, D.C., Room 6650, (202) 343–2136.

Dated: September 3, 1985.

Gully Walter,

Acting Executive Director.

[FR Doc. 85–21310 Filed 9–5–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

August 23, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Northern Cherokee Tribe of Indians, c/o Mrs. Beverly A. Baker, P.O. Box 1221, Columbia, Missouri 65205, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 26, 1985. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Branch of Acknowledgment and Research, Code 440B, Bureau of Indian Affairs, Interior South Building, Room 32, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–21332 Filed 9–5–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[N–37930]

Nevada; Termination of Airport Lease Application Involving Lands in Nye County

August 23, 1985.

Notice is hereby given that airport lease application N–37930, involving the following described lands, has been withdrawn:

Mount Diablo Meridian, Nevada

T. 12 N., R. 46 E.,
Secs. 11, 14, 15 and 22 (within).

The segregative effect of the airport lease application is hereby removed upon publication of this notice in the Federal Register.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85–21347, Filed 9–5–85; 8:45 am]

BILLING CODE 4310–HC–M

[CA 10388–A]

Exchange of Public and Private Lands in San Diego and Tehama Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document, and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire the non-Federal land for use in implementing the Sacramento River/Payne Creek/Table Mountain composite. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with officials from Tehama and San Diego counties including a composite review by the State of California Resources Agency. The public interest was well served by making the exchange. The land acquired in this exchange will be opened to the operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

EFFECTIVE DATE: June 26, 1985.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4815.

The United States issued an exchange conveyance document to The Trust for Public Land on June 26, 1985, for the following described lands under the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Mount Diablo Meridian, California

T. 26 N., R. 1 W.,
Sec. 26, SE¼NE¼, SW¼SW¼, and N½SE¼.

San Bernardino Meridian, California

T. 13 S., R. 1 E.,
Sec. 6, N½SE¼.

Comprising 240.00 acres of public land.

In exchange for these lands, the United States acquired the following described land from The Trust for Public Land:

Mount Diablo Meridian, California

T. 28 N., R. 3 W.,
Sec. 22, NE¼SW¼, S½SE¼NW¼, SW¼SW¼NE¼, and W½NW¼SE¼.

Comprising 90.00 acres of non-Federal land.

The values of the public land and non-Federal land were equalized by a cash payment to the United States in the amount of $18,719.70.

At 10:00 a.m. on October 8, 1985, the non-Federal land described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 8, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10:00 a.m. on October 8, 1985, the non-Federal land described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: August 29, 1985.

Sharon N. Janis,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 85–21346 Filed 9–5–85; 8:45 am]

BILLING CODE 4310–40–M

[CA 9612]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

A petition for reinstatement of oil and gas lease CA 9612, embracing lands in the State of California, County of Kern, was timely filed and accompanied by all the required rentals and royalties accruing from February 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at the rate of $5.00 per acre or fraction thereof and 16⅔ percent respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

The lessee having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Minerals Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: August 28, 1985.

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-21351 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-40-M

[C-40262]

Realty Action; Colorado; Exchange of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial No. C-40262, Determination of land suitable for exchange under the authority of sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Approximately 120 acres of public land under the jurisdiction of the Bureau of Land Management have been determined suitable for exchange. The determination of suitability has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Mr. Mark Lee. In the proposal, Mr. Lee has offered to exchange approximately 40 acres of private land. The exchange proposal has been made to facilitate the consolidation of land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public land being managed by the Bureau.

The values of the land to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values. Any expected changes in selected public land acreage would occur in selected public land located in section 33.

Description of Land To Be Considered for Exchange in Garfield County, Colorado

Offered Private Land

6th Principal Meridian, Colorado

T. 5 S., R. 89 W.,
Sec. 21: NW¼SW¼.
Containing 40 acres

Selected Public Land

6th Principal Meridian, Colorado

T. 5 S., R. 89 W.,
Sec. 27: NW¼SW¼.
Sec. 28: Lot 3;
Sec. 33: NE¼NE¼.
Containing 119.17 acres.

Terms and Conditions: The following reservations for existing uses and users would be made in a patent issued for public land.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of all mineral deposits in the land.

3. The Reservation of Oil and Gas lease, C-31701.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Objections will be reviewed by the State director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

Dated: August 27, 1985.

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 85-21345 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-JB-M

Colorado; Grand Junction District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grand Junction District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Grand Junction District Advisory Council will be held on Wednesday, October 9, 1985, and Thursday, October 10, 1985.

SUPPLEMENTARY INFORMATION: The meeting on Wednesday, October 9 will be held at the Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, CO 81601; from 2-5 p.m. A public comment period is scheduled for 4 p.m.

On Thursday, October 10, beginning at 8 a.m., the Council will tour land exchange parcels, recreation sites along the upper Colorado River, and a prescribed burn area and wildlife brush-beating project north of Dotsero. These sites were addressed in the Glenwood Springs Resource Management Plan and are now involved in implementation.

The full-day field trip is open to the public; however, transportation and food will only be provided for Council members.

Dated: August 30, 1985.

Wright Sheldon,

District Manager, Grand Junction District.

[FR Doc. 85-21348 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-JB-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

August 23, 1985.

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 16, 1985.

Mount Diablo Meridian, Nevada
T. 35 N., R. 69 E.

2. The land within the above township is about 4,400 to 5,200 ft. above sea level and is level to rolling. The soil is sandy clay loam at the lower elevations and rocky in the higher elevations. Vegetation consists of scattered sagebrush, native grass and greasewood.

A gravel road crosses from SSW. to NNE., entering in section 31 and leaving in section 5.

Pilot Creek enters the township in section 5 and leaves in section 36 and drains S. to SE.

Numerous trail roads are located within the township.

The remains of the old Cummings ranch are located in the NW. cor. of sec. 10.

Principal users of the area are ranchers.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 am., on September 16, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

4. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 22 N., R. 18 E....	May. 7, 1985..	Dependent Resurvey
T. 23 S., R. 63 E....	May 7, 1985...	Supplemental Plat.
T. 33 N., R. 70 E....	May 7, 1985...	Supplemental Plat.
T. 36 N., R. 69 E....	July 7, 1985...	Dependent Resurvey.
T. 37 N., R. 69 E....	July 15, 1985.	Dependent Resurvey
T. 28 N., R. 39 E....	July 15, 1985.	Supplemental Plat.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 85-21354 Filed 9-5-85; 8:45 am]
BILLING CODE 4310-HC-M

[W-86236, W-86239]

Wyoming; Realty Action; Direct Sale of Public Lands in Sheridan County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of land parcels in Sheridan County, Nebraska.

SUMMARY: The Bureau of Land Management has determined that the following described lands are suitable for public sale and will accept bids on these lands. BLM is required to received fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Detailed bidding instructions and other sale details are available on request at BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, phone (307) 746-4453. Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Parcel No.	Acreage	Appraised value
W-86236	T. 28 N., R. 44 W., 6th P.M. Section 11, NE¼SW¼.	1	40.00	$3,000
W-86239	T. 35 N., R. 45 W. 6th P.M. Section 32, lot 1...	4	27.75	$1,100

The lands described are hereby segregated for appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on October 23, 1985 will be conducted by direct sale procedures, and each parcel will be offered by a sealed bid process to the adjoining landowners. The bidder will be required to submit evidence of adjoining landownership before the bid can be accepted. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding according to this Notice. The patent for all parcels will include a reservation for ditches and canals. All minerals will be reserved to the United States and Parcel 4 will be subject to an oil and gas lease. A detailed description of these reservations is available from the above address.

For a period of 45 days from the date of publication of this notice interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 28, 1985.

James W. Monroe,
Casper District Manager.

[FR Doc. 85-21352 Filed 9-5-85; 8:45 am]
BILLING CODE 4310-84-M

[W-86237, W-86238, W-86240]

Wyoming; Realty Action; Modified Competitive Sale of Public Lands in Sheridan County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Land Parcels in Sheridan County, Nebraska.

SUMMARY: The Bureau of Land Management has determined that the following described lands are suitable for public sale and will accept bids on these lands. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Detailed bidding instructions and other sale details are available on request at BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, phone (307) 746-4453. Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Parcel No.	Acreage	Appraised value
W-86237	T. 35 N., R. 44 W. 6th P.M. Section 24, SW¼SE¼.	2	40.00	$3,400
W-86238	T. 33 N., R. 45 W. 6th P.M. Section 20, SE¼SW¼.	3	40.00	7,000

Serial No.	Legal description	Parcel No	Acreage	Appraised value
W-86240	T. 34 N., R. 46 W. 6th P.M. Section 7, SE¼NW¼, E½SW¼.	5	120.00	4,800

The lands described are hereby segregated for appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on October 23, 1985 will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to the adjoining landowners. The bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding according to this Notice. The patent for all parcels will include a reservation for ditches and canals. All minerals will be reserved to the United States, and all three parcels will be subject to oil and gas leases. A detailed description of these reservations is available from the above address.

For a period of 45 days from the date of publication of this notice interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 28, 1985.

James W. Monroe,

Casper District Manager.

[FR Doc. 85-21353 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-84-M

Sale of Public Lands; San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Land: San Diego County, CA.

SUMMARY: The following described public land has been examined and found suitable for disposal by direct sale at not less than the appraised fair market value pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713. The lands will not be offered for sale until 60 days after the date of this notice.

Parcel No.	Serial No.	Legal description	Acres	Appraised value
SD-1	CA17646	T.17S.,R.6E.,SBM; Sec. 36: Lots 1, 7, 8 and 10	120.56±	$100,000

Purpose: The purpose of this direct sale is to dispose of public lands which because of location and existing private landownership patterns in the area make them difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency or department. The public interest will be well served by offering the subject land for sale. Because of the need to recognize historic use of the land described above, it shall be sold by direct sale to the existing grazing lessee and adjoining property owner, Mr. Alexander Haagen III, 3500 Sepulveda Blvd., Manhattan Beach, California 90266.

Publication of this notice in the **Federal Register**, segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect shall terminate upon issuance of the patent or 270 days from the date of publication, whichever occurs first.

The lands described above have no known mineral values. Conveyance of the available mineral interests will occur simultaneously with the sale of the surface estate. Acceptance of the direct sale offer by Mr. Haagen will also constitute an application for conveyance of the mineral estate requiring the submission of a $50 nonrefundable filing fee on the day of sale.

In addition to the aforementioned application fee, Mr. Haagen shall submit a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM, for not less than 10% of the appraised value to the California Desert District, 1695 Spruce Street, Riverside, California 92507, by 10:00 a.m. on November 8, 1985. The remainder of the full purchase price shall be submitted within 60 days from the sale date.

Failure to accept an offer to purchase the offered land within the above specified time shall constitute a waiver of this preference consideration. The land will then be offered competitively.

The terms and conditions applicable to the sale area: The patent will reserve to the United States a right-of-way for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

Detailed information concerning this sale, including the environmental analysis and land report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 9, 1985.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 85-21239 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Use of Lampricides in a Temporary Program of Sea Lamprey Control in Lake Champlain With an Assessment of Effects on Certain Fish and Sport Fisheries and Notice of Public Scoping Meetings

AGENCY: Fish and Wildlife Service, Interior; New York Department of Environmental Conservation; Vermont Fish and Wildlife Department.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service (and Vermont Fish and Wildlife) intends to act as a co-lead agency with the New York Department of Environment Conservation in

gathering information necessary for the preparation of an EIS describing the use of lamppricides in a temporary program of sea lamprey control in Lake Champlain. Assessments of effects on certain fish populations and sport fisheries will be included in the document. Potential affected areas include 86.1 miles of 18 tributaries and 850 acres of 5 delta areas. Nine tributaries (48.4 mi.) and all delta areas are in New York. Eight tributaries (32.9 mi.) are in Vermont and one (4.8 mi.) is in the Province of Quebec, Canada.

Public meetings regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) (and in concert with the New York State Environmental Quality Review Act (SEQR) and implementing regulations—6NYCRE Part 617) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process is solicited.

DATES AND LOCATIONS OF PUBLIC SCOPING MEETINGS:

New York Side of Lake Champlain

Date: October 17, 1985

Time: 1:00 PM
Location: Willsboro Town Hall, Basement Meeting Room, Juncture of Rt. 22 and Willsboro Point Road, Willsboro, NY 12996
Time: 7:00 PM
Location: Clinton County Government Center, Community Meeting Room, 137 Margaret Street, Plattsburg, NY 12901

Contact person for New York meetings and for information packets: Mr. Daniel S. Plosila, Supervising Aquatic Biologist, New York State Department of Environmental Conservation, Route 86, Ray Brook, New York 12977, Telephone: (518) 891–1370.

Vermont Side of Lake Champlain

Date: October 10, 1985
Time: 1:00 PM
Location: Vergennes High School, Auditorium Monkton Road, Vergennes, VT 05491
Time: 7:00 PM
Location: University of Vermont, Rowell Building, Room 103, Burlington, VT 05401

Contact person for Vermont meetings and for information packets: Mr. Angelo Incerpi, Director of Fisheries, Vermont Department of Fish and Wildlife, State Office Building, Montpelier, VT 05602, Telephone: (802) 828–3371.

Written comments should be addressed to and received by November 20 1985: Mr. Paul Neth, Supervisor, Inland Fisheries Section, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

SUPPLEMENTAL INFORMATION: Notice is also given that public scoping meetings are designed to (1) provide a brief description of the proposed project for informational purposes, (2) to identify impacts, alternatives and issues that should be addressed in the draft EIS (DEIS), (3) to identify other environmental review consultation, coordination, clearance, or permit requirements associated with the project, (4) to describe the role of the EIS in the planning and decision making process, and (5) to discuss the projected time frame of the draft and final EIS.

Areas potential affected by this action include the following:

TRIBUTARIES

State or Province and stream	Miles to be treated	Location	
		Counties	Townships
New York			
Great Chazy River	20.6	Clinton	Mooers, Champlain.
Saranac River	3.3	Clinton	Plattsburgh.
Salmon River	4.0	Clinton	Plattsburgh.
Little Ausable River	5.2	Clinton	Peru.
Ausable River	5.3	Clinton, Essex	Peru, Ausable, Chesterfield.
Bouquet River	2.6	Essex	Willsboro.
Beaver Creek	1.8	Essex	Westport.
Putnam Creek	4.4	Essex	Crown Point.
Mt. Hope Brook	1.2	Washington	Fort Ann, Dresden.
Vermont			
Lewis Creek	9.5	Addison	Ferrisburg, Charlotte, Winooski City.
Winooski River	7.5	Chittenden	Colchester, Burlington City.
Indian Brook	2.7	Chittenden	Colchester.
Malletts Creek	1.7	Chittenden	Colchester.
Trout Brook	1.3	Chittenden	Milton.
Stone Bridge Brook	2.7	Chittenden	Milton.
Missisquoi River	6.5	Franklin	Highgate, Swanton.
Youngman Brook	1.0	Franklin	Highgate.
Quebec			
Pike River	4.8	Missisquoi	Stanbridge.
Total: 18 streams.	86.1		

DELTAS

State and delta	Acres involved	Counties	Townships
New York			
Saranac River	175	Clinton	Plattsburgh.
Salmon River	100	Clinton	Plattsburgh.
Little Ausable River	75	Clinton	Peru.
Ausable River	250	Clinton	Peru, Ausable.
Bouquet River	250	Essex	Willsboro.
Total	850		

FWS contact on this project is David B. Goldthwaite, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965–5100 X208.

Dated: August 30, 1985.

Howard N. Larsen,

Regional Director.

[FR Doc. 85–21240 Filed 9–5–85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2111, 2116, 2608, and 2613, Blocks 314, 331, 313, and 332, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21334 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-10963]

Armstrong World Industries, Inc.; Transportation Within Texas; Petition for Declaratory Order

August 30, 1985.

Notice To The Parties: Pursuant to a request, the date for filing comments is further extended to October 7, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21305 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30693]

Grand Trunk Western Railroad Co.; Trackage Rights Exemption; Consolidated Rail Corp.

The Grand Trunk Western Railroad Company (GTW), has entered into an agreement for overhead trackage rights over Consolidated Rail Corporation (CR) track beginning on the Toledo Branch at Valuation Station 1785+65, near CP Dunbar, Monroe, MI to Valuation Station 433+14 on the Eastern Branch, including the designated interchange tracks at Stanley Yard, Toledo, OH. This trackage rights agreement became effective September 27, 1984.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21306 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

J.P. Stevens & Co.; Proposed Termination of Final Judgment

Notice is hereby given that J. P. Stevens & Co., Inc. (Stevens) has filed with the United States District Court for the Southern District of New York a motion to terminate the final judgment in *United States* v. *J. P. Stevens & Co., Inc.*, Civil No. 70-2829, and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment but has reserved the right to withdraw its consent for at least seventy (70) days after publication of this notice. The complaint in this case (filed on June 30, 1970) alleged that Stevens had conspired with wholesalers and retailers to stabilize the retail prices of Stevens prime line sheets and pillowcases and to eliminate, curtail and restrict the sale of such sheets and pillowcases by cut-price retailers. The judgment (entered on July 31, 1970), among other things, enjoins Stevens from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any wholesaler or retailer in the United States to: (A) Fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of its sheets to any third person; (B) hinder, restrict, limit or prevent the sale of its sheets by any person or class of persons; and (C) restrict, limit or preclude Stevens from selling its sheets, other than sheets identified only by a trademark or trade name of a person other than Stevens, to a specified person or a specific class of persons.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Cannon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by Department of Justice regulations.

Interested persons may submit comments concerning this matter by sending them to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone: 212-264-0390). Such comments must be received by the Division within sixty (60) days.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-21283 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree; United States v. Rocky Mountain Motor Tariff Bureau, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received from The Pillsbury Company, Minneapolis, Minnesota on a proposed consent decree judgment in *United States* v. *Rocky Mountain Motor Tariff Bureau, Inc.*, Civil Action No. 84-F-1737, United States District Court for the District of Colorado, together with the response of the United States to that comment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

August 20, 1985

Re: United States v. Rocky Mountain Motor Tariff Bureau, Inc. Civil Action No. 84-F-1737 (D. Colo.).

Richard J. Wegener, Esq.,
The Pillsbury Company, Pillsbury Center, MS 3726, Minneapolis, Minnesota

Dear Mr. Wegener: We have received and carefully considered your letter dated June 3, 1985 regarding the proposed Final Judgment in the above case. You urge that the Final Judgment should specifically state how the defendant, Rocky Mountain Motor Tariff Bureau, Inc. (hereafter, "RMMTB"), will purge rates on exempt commodities in conformity with paragraph V(A) and that the Judgment identify clearly those exempt commodities that will be purged. You presume that, unless it is subject to the requirements you propose, the defendant would purge its tariffs through supplements deleting specific presently-effective tariff items without identifying the exempt commodities contained therein.

We believe that the proposed Final Judgment is sufficient as now written. Paragraph V(A) requires that RMMTB purge

from each of its tariffs all rates for the transportation of exempt commodities. Attached to and incorporated in the proposed Final Judgment is Appendix A, a listing of exempt commodities, as specified in 49 U.S.C. 10526, as amended. In the recent past, RMMTB has published docket bulletins proposing deletion of a number of tariff items, indicating that the items may contain exempt commodities. Through a comparison of those tariff items and any later deletions of tariff items with the list contained in Appendix A to the proposed Final Judgment, any shipper can readily determine whether any of the products it ships are exempt and, if so, whether its goods are listed in the RMMTB tariffs.

Thus, the United States believes that the proposed Final Judgment is properly structured. It requires the purging of rates for exempt commodities, which are identified in an appended list, from RMMTB's tariffs; it also prohibits RMMTB from taking joint action on such rates in the future. The proposed Final Judgment provides the Government with all of the relief it sought in its Complaint and avoids the burden of any further litigation.

I note that, for your information, during the pre-Complaint investigation of this matter by the Antitrust Division, we prepared a list of joint actions taken on exempt commodities by one of RMMTB's major rate committees which has authority over Tariffs 328 and 329. A summary of our findings were filed as Appendix A to our Response to Defendant's Motion to Dismiss on March 7, 1985.

Pursuant to the provisions of 15 U.S.C. 16(d), a copy of your comments and of this letter will be printed in the Federal Register and filed with the court.

Sincerely,

Gary R. Spratling,

Chief, San Francisco Office, Antitrust Division.

The Pillsbury Company
Minneapolis, MN, June 3, 1983

Re: United States v. Rocky Mountain Motor Tariff Bureau, Inc., *Civil Action No. 84–F–1737 (D Co., Filed Aug. 28, 1984).*
Gary R. Spratling, Chief, San Francisco Field Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94103.

Dear Mr. Spratling: This letter is written pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 *et seq.* and pertains to the Final Judgment proposed for the above-captioned proceeding.

We note that paragraph V(A) of the proposed judgment requires the RMMTB purge rates on exempt agricultural commodities from its tariffs within ninety days of entry of the Final Judgment.

We presume that unless otherwise required the RMMTB will do so through supplements deleting specific presently effective tariff items.

Our concern is two-fold. First, that the proposed judgment specifically state how such purging shall take place, and second, that such procedure shall result in a clear and understandable identification of the exempt commodities now contained in RMMTB tariffs.

The practical availability of an individual private action is dependent upon the business public being able to quickly and easily understand the identity of the tariffs affected. This cannot be achieved, for example, if the Bureau is allowed to simply eliminate its offensive tariffs by republishing an amended tariff schedule which excludes the subject provisions.

If the Department accepts anything less than a detailed public listing of the offensive provisions which are to be canceled, it would deny the business public its role as an ally of the Government in enforcing the antitrust laws.

Sincerely,

Richard J. Wegener.

[FR Doc. 85–21287 Filed 9–5–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Hoffmann La Roche Inc.; Registration

By Notice dated December 12, 1984, and published in the Federal Register on January 8, 1985; (50 FR 1003), Hoffmann La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) (for manufacturing diagnostic products for non-human consumption to detect THC in urine.	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 22, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–21309 Filed 9–5–85; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before November 5, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Administrative Office of the United States Courts, Magistrates Division (NC1–116–85–5). Records relating to the management of United States Magistrates' office in the Federal court system.

2. United States Forest Service (NC1–95–84–4). Routine correspondence relating to land classification, boundary modifications, and land transfer analyses, as well as duplicate and microfiche copies of land transfer and boundary modification case files designated for archival retention.

3. U.S. Department of Agriculture, Animal and Plant Health Inspection Service (NC1–463–85–2). Records relating to veterinary biologicals production, marketing, and transportation, including licenses, labels, inspection reports, transportation requests and authorizations, and import/export certificates.

4. Department of the Army, Office of the Adjutant General (NC1–AU–84–36). Records relating to the proposal, coordinating action, and approval of popular names for major items of development equipment. Records with reference and research value will be accessioned by the National Archives.

5. Department of the Army, Office of the Adjutant General (NC1–AU–85–67). Communicable disease reporting files, including notifications of cases of animal communicable diseases.

6. Department of Health and Human Services, Office of Child Support Enforcement (NC1–292–84–3). Records of the Program Operations Division including plans, issuances, reports, and subject and administrative files.

7. Department of Health and Human Services, Office of Child Support Enforcement (NC1–292–84–4). Records of the Audit Division including reports, working drafts and documents, and administrative files.

8. Department of Health and Human Services, Office of Child Support Enforcement (NC1–292–84–5). Records of the Policy and Planning Division including subject, plans, reports, project, and administrative files.

9. Federal Communications Commission, Mass Media Bureau (NC1–173–85–5). Affiliation contracts and related correspondence for commercial broadcast stations.

10. Department of Justice, Federal Bureau of Investigation, Records Management Division (NC1–65–85–12), (NC1–65–85–13), and (NC1–65–85–14). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

11. Department of the Navy, U.S. Marine Corps, (NC1–127–85–1). Routine administrative correspondence files of Marine Corps Battalion level and Marine Barracks commands.

12. Tennessee Valley Authority, Office of Natural Resources and Economic Development (NC1–142–85–5). Comprehensive records schedule covering paper and audiovisual records dealing with community development.

13. Tennessee Valley Authority, Office of Power Operations (NC1–142–85–11). Document control and item identification code logs used to track and control TVA commodities.

14. Agency for International Development, Predecessor Agencies (NC1–286–85–8). Routine administrative records from the overseas missions and the Washington office; overseas mission records of activities adequately documented in the Washington office.

15. Commodity Futures Trading Commission (NC1–180–85–1). Revises schedule for the destruction of registrant applications to include records transferred to the National Futures Associations.

16. Department of Health and Human Services, Office of Child Support Enforcement (NC1–292–84–6). Records of the Office of the Director including the Deputy Director's administrative files, public inquiry and information files, special collections unit files, and general program administrative files.

17. Department of Navy, Naval Intelligence Support Center (NC1–289–85–1). Magnetic tapes containing raw data in analog form derived from remote sensing devices.

18. Department of State, (NC1–59–84–5). Administrative and financial records of the Sinai Support Mission, excluding those with research and reference value that will be accessioned by the National Archives.

19. Department of the Treasury, Fiscal Assistant Secretary (NC1–56–85–2). Miscellaneous subject files, approximately 1930–1984, collected for reference purposes, and largely duplicated elsewhere.

20. Veterans Administration (NC1–15–85–4). Copies of closed vocational rehabilitation contract files pertaining to education and training of veterans.

21. Veterans Administration (NC1–15–85–5). Records relating to loan management and allied security instrument transactions on settled portfolio loan accounts.

22. Environmental Protection Agency, Office of the Administrator and the Deputy Administrator (NC1–412–85–11). Information copies of speeches given by the Administrator and the Deputy Administrator.

23. Veterans Administration (NC1–15–85–7). Centralized Accounts Receivable Microform Records.

24. Department of the Army, Office of the Adjutant General (NC1–AU–85–72). Records of various Army laboratories, ca. 1920–1967, including correspondence, reports, manuals, bulletins, case files, and specifications and drawings files. Records with reference and research value will be accessioned by the National Archives.

Dated: August 29, 1985.

James E. O'Neill,

Acting Archivist of the United States.

[FR Doc. 85–21307 Filed 9–5–85; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423A]

Northeast Nuclear Energy Co. et al.; Finding of No Significant Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 3 of the Millstone Nuclear Power Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the

events since issuance of the Millstone 3 construction permit to Northeast Nuclear Energy Company, et al., the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New England, the events relevant to the Millstone 3 construction permit review and the events that have occurred subsequent to the construction permit review.

The conclusion of the staff's analysis is as follows:

The Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) is jointly owned by 15 electric utilities in Connecticut, Massachusetts, Maine and Vermont. The Northeast Nuclear Energy Company, a subsidiary of the Northeast Utilities holding company, has no ownership in Millstone 3, but acts as agent and representative of the owners in design, construction and operation of the nuclear unit. Northeast Utilities has the largest ownership share in Millstone 3, approximately 35%, shared by two of its operating subsidiaries, Connecticut Light and Power Company with approximately 53% and Western Massachusetts Electric Company with slightly over 12%. The remainder of the unit is shared by other investor owned utilities (over 25%), municipal utilities (approximately 9%) and electric cooperatives (over 1%). The Department of Justice (Department), in connection with the construction permit antitrust review of Millstone 3, rendered antitrust advice to the Commission by letter dated August 10, 1973 Federal Register, Vol. 38, No. 159, p. 22249, August 17, 1973). The Department's advice letter noted that while there has been allegations that the large electric utility systems had in various ways precluded the small systems in the area from gaining access to low cost bulk power supply on the same basis as the large systems, the situation had markedly improved with the formation of the New England Power Pool (NEPOOL). Although, several municipal systems had contested certain provisions of the power pool agreement, a settlement agreement had been reached representing a compromise among most of the parties concerning the disputed portions of NEPOOL as filed with the Federal Power Commission. (FPC).

In the Millstone 3 advice letter, the Department also noted that there had been complaints by several municipal systems that the transmission rates of Northeast Utilities (NU) were too high. The Department considered these complaints as a rate matter, more appropriately under the jurisdiction of the FPC. The Department also advised that a group of 6 municipal systems in Connecticut had filed an antitrust suit against NU and its Connecticut operating subsidiaries. The Department chose not to pass judgment upon the allegations in the antitrust suit, but noted that most of the allegations focused upon the rates, and terms and conditions of wholesale service to the municipal systems, matters which the Department presumably considered to fall primarily under the jurisdiction of the FPC.

Following the Millstone 3 construction permit antitrust advice letter, the Department furnished antitrust advice in June 1974, January 1975, November 1975, December 1978, and March 1980 related to the Pilgrim 2 and 3, Montague, New England 1 and 2, Seabrook 1 and 2, and Pilgrim 1 applications, respectively. These applications involved many of the same applicants in Millstone 3. In addition, the Department conducted numerous antitrust reviews at various times for changes in ownership in Millstone 3 and in the other nuclear plant applications. In each instance, the Department recommended that no antitrust hearing was required, often pointing to the dramatic improvement in the relations among the various segments of the electric power industry in New England following the formation of NEPOOL and the associated settlement agreement.

Similarly, the suit filed by the 6 Connecticut municipal electric utilities, which the Department referred to in its Millstone 3 antitrust advice letter, has been resolved. The District Court dismissed all allegations in its decision of August 1980.

Thereafter, three of the cities reached a settlement with Connecticut Light and Power Company. The other three cities carried the case to the Appeals Court, which issued a decision in October 1981. The NRC staff finds the settlement agreement and the court rulings to be dispositive of the issues raised. Likewise, a settlement agreement in 1983 among the Town of Norwood, Massachusetts, the Boston Edison Company and the New England Power Company has disposed of issues raised by the Town of Norwood before the U.S. District Court of Massachusetts.

In addition to the issues raised in the various court proceedings, the Department of Justice antitrust review of Millstone 3 and its subsequent antitrust reviews of other nuclear power plant applications, the NRC staff has reviewed the data provided by applicants and attendant information associated with and accompanying the Millstone 3 construction permit and operating license applications. In the process of this review, staff identified three groups of changes that could have had possible competitive implications on bulk power supply in the New England region. These changes involved certain mergers and transfers of facilities among electric utilities in the area, transfers of ownership rights in Millstone 3 and the formation of joint action agencies in the region. After analyzing these changes, in conjunction with developments that were initiated prior to and during the construction permit (CP) antitrust review (i.e., the development of NEPOOL and the associated settlement agreement), staff found no significant anticompetitive effects resulting from these changes.

On the contrary, staff has found that the period during and following the CP review for Millstone 3 has been characterized by significant competitive improvements in the way bulk power is allocated in New England. The development of the New England Power Pool and its open pooling concept established the region as a model of how cooperation among all bulk power suppliers in the region has promoted competition among large systems and small systems alike. The fruits of negotiations and compromise that characterized the period during and after the CP review are now being realized by all systems—particularly the smaller systems—throughout New England. Consequently, staff does not recommend that the Director of Nuclear Reactor Regulation issue a significant change finding pursuant to the operating license for Unit 3 of the Millstone Nuclear Power Station.

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Millstone Nuclear Power Station, Unit 3 is not required.

Signed on August 30, 1985 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antiturst significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21337 Filed 9-5-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee for Review of Enforcement Policy; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Committee on the Enforcement Policy will meet on September 23 and 24, 1985 to continue drafting its final report to the Commission. The meeting will be open to the public. The meeting will be held in Room 118 of the Phillips Building, 7920

Norfolk Avenue, Bethesda, Maryland from 8:45 a.m. until 5:00 p.m. each day.

Further information on the meeting may be obtained from Karen Cyr, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301–492–7269.

Dated at Washington, D.C., this 3rd day of September, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–21338 Filed 9–5–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standard Amendments; Additional Hearing

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of additional public hearing.

SUMMARY: In July, the Northwest Power Planning Council (Council) released for public comment proposed amendments to portions of its Northwest Conservation and Electric Power Plan (Plan) concerning model conservation standards (MCS), set a deadline for receipt of public comments regarding the amendments, and scheduled public hearings (50 FR 30654–61, July 26, 1985). Subsequently, the Council extended the deadline for receipt of public comments and rescheduled two of the previously-announced public hearings (50 FR 33435, August 19, 1985). To provide ample opportunity for interested parties to submit public comments, the Council has now scheduled an additional hearing in Portland, Oregon.

DATE AND ADDRESS: The following hearing has been added to the Council's previously-announced schedule:

- Portland, Oregon, Wednesday, September 11, 1985, beginning at 10 a.m. in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ruth Curtis, Information Coordinator, at the Council's central office (850 SW. Broadway, Suite 1100, Portland, Oregon 97205 or 503–222–5161, toll free 1–800–222–3355 in Idaho, Montana and Washington or 1–800–452–2324 in Oregon).

SUPPLEMENTARY INFORMATION: The Council held a public hearing on its proposed MCS amendments in Portland, Oregon on August 6, 1985. In response to requests made by commenters at the August 6, hearing, the Council has now scheduled an additional hearing in Portland.

Rick Applegate,

Executive Assistant.

[FR Doc. 85–21271 Filed 9–5–85; 8:45 am]

BILLING CODE 0000-00-M

PENSION BENEFIT GUARANTY CORPORATION

Multiemployer Pension Plans; Withdrawal Liability in Fully Funded Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of consideration.

SUMMARY: This notice advises employers, multiemployer plan sponsors and other interested persons that the Pension Benefit Guaranty Corporation (PBGC) is reconsidering a multiemployer plan's right to assess withdrawal liability under section 4201 of ERISA in a year following a year in which the plan has no unfunded vested benefits. The PBGC expects to issue its interpretation in the form of an opinion letter. This notice is to solicit public comment concerning the interpretation of the indicated statutory provisions.

DATE: Comments must be received on or before November 5, 1985.

ADDRESSES: Comments should be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Louise E. Cayne, Attorney, Legal Department, Code 250, 2020 K Street NW., Washington, D.C. 20006, 202–254–4895 (202–254–8010 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

The Statute

Under the Employee Retirement Income Security Act of 1974 as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), an employer that withdraws from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. Section 4211 of ERISA establishes four different methods of computing withdrawal liability. These methods are: The presumptive method, described in section 4211(b); the modified presumptive method, described in section 4211(c)(2); the rolling-5, method described in section 4211(c)(3); and the direct attribution method, described in 4211(c)(4). Application of these sections, other than section 4211(c)(3), may result in a multiemployer plan's assessing withdrawal liability on a withdrawing employer in cases where the plan's assets equal or exceed its vested liabilities *i.e.*, the unfunded vested benefits are zero.

The Interpretation

In Opinion Letter 83–19 (August 11, 1983), the PBGC took the position that a withdrawing employer may incur withdrawal liability under the presumptive method even though the plan has no unfunded vested benefits. The PBGC has received several requests for reconsideration of Opinion Letter 83–19. The requests suggest that because the purpose of the allocation methods in Section 4211 is to allocate a plan's unfunded vested benefits among employers, the credits and charges for a particular employer are irrelevant when the plan has no unfunded vested benefits to allocate. One request asserts that imposition of liability by a plan with no unfunded vested benefits is inconsistent with purposes of the withdrawal liability provisions; is inequitable to employers, particularly because the *de minimis* provisions afford no relief when a plan's unfunded vested benefits are zero; and is often burdensome to plans, particularly construction industry plans, which are required to use the presumptive method. Several requests suggest that no withdrawal liability should be assessed when a plan has no unfunded vested benefits. If a plan using the presumptive method subsequently develops unfunded vested benefits, it is further suggested that the withdrawal liability calculations should be based on the employer's share of unamortized changes in unfunded vested benefits and reallocated unfunded vested benefits only for years following the last year in which that plan had no unfunded vested benefits. One writer has suggested that even though withdrawal liability for a plan with zero unfunded vested benefits may be appropriate under certain allocation methods, it would not be

appropriate under the direct attribution method.

The PBGC is reconsidering the statutory interpretation expressed in Opinion Letter 83–19 in response to these requests. The PBGC requests public comments on the proper application of each of the statutory allocation methods, and particularly the presumptive method, in plan years when a plan has no unfunded vested benefits and in subsequent plan years.

Specifically, the PBGC requests responses to the following questions:

1. Does section 4211 mandate or prohibit assessment of withdrawal liability against an employer that withdraws from a multiemployer plan with no unfunded vested benefits.

2. Does the answer to question 1 depend on the allocation method used?

3. If in a subsequent year a plan's unfunded vested benefits exceed zero, how should withdrawal liability for later withdrawals be calculated? For example, should an employer's liability under the presumptive method be based only on the employer's share of unamortized changes in unfunded vested benefits and reallocated unfunded vested benefits only for years following the last year in which the plan has no unfunded vested benefits?

Public Comments

The PBGC hereby solicits public comment concerning these questions including any comments on related issues and the implications and practical effect that particular interpretations may have on employers, multiemployer pension plans and the pension insurance system. Comments should specify the statutory basis for the interpretations presented. Comments should be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC. 20006.

Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name, address, identify this notice, and give reasons for any recommendation.

Issued in Washington, D.C., 3rd day of September 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–21350 Filed 9–5–85; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22374; SR–MSRB–85–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

Introduction

The Municipal Securities Rulemaking Board ("MSRB") on March 11, 1985 submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G–32 on disclosures in connection with new issues, and rules G–8 and G–9 on recordkeeping. Rule G–32 currently prohibits a municipal securities broker or dealer from selling during the underwriting period new issue municipal securities to a customer unless, at or prior to sending the final confirmation of the transaction, a copy of the final official statement, if available is sent to the customer. Rule G–32 also requires dealers to furnish copies of official statements and other disclosures upon request to any broker, dealer, or municipal securities dealer to which it sells new issue municipal securities. The rule is designated to ensure that a purchaser of new issue securities is provided with all available information relevant to his investment decision.

The proposed rule change is designed to delineate more clearly the responsibilities of dealers that sell new issue municipal securities as well as to strengthen and facilitate enforcement of rule G–32. Specifically, the amendments to rule G–32 would require first, that rule G–32 disclosures in final form, which include a final official statement if prepared by or on behalf of the issuer, be delivered to a customer by settlement of the transaction. Second, a preliminary official statement need be delivered only when no official statement has been prepared, along with a written notice that a final official statement has not been prepared. Third, if a final official statement is being prepared, the financial advisor or the managing underwriter must make the final official statement available no later than two business days before the date the manager delivers the securities to the syndicate members. Fourth, the managing underwriter must be prepared to provide to a broker, dealer or municipal securities dealer that has purchased the new issue and has requested an official statement, one copy of the final offical statement and other rule G–32 disclosures and one additional official statement per $100,000 par value of the new issue purchased.

Rules G–8 and G–9 set forth the recordkeeping and record retention requirements, respectively, for brokers, dealers, and municipal securities dealers. The proposed rule change would add a new section to rule G–8 requiring a dealer to maintain a record of deliveries of rule G–32 disclosures and would amend rule G–9 to require that these records be retained for a period of not less than three years.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21968, published in the **Federal Register** (50 FR 18336; April 30, 1985) ("April 30 release"). A complete description of the amendments is contained in that release.[1]

Comments

In response to the April 30 release, the Commission received seven comment letters.[2] While the commentators generally supported the rule change's goal of strengthening the requirements of rule G–32, several specific comments were critical of the proposed rule change. First, most of the commentators addressed the proposed requirement that final official statements be delivered by settlement of the transaction. One commentator noted that requiring official statements to be delivered by settlement rather than sent with the final confirmation as currently required, still would not allow sufficient time to permit compliance with the rule. In this regard, the MSRB has indicated that this requirement is designed to address the complete failure of a dealer to provide customers with official statements and not the situation in which delivery of an official statement

[1] On August 5, 1985, the MSRB filed with the Commission an amendment ("Amendment No. 1") to the proposed rule change (File No. SR–MSRB–85–11) containing the text of the amended definition of "new issue municipal securities" excluding short term tax exempt commercial paper, and an interpretation that presumes that disclosures mailed to a customer at least three business days prior to settlement of the transaction have been received by the customer by settlement of that transaction.

[2] Letters from Charles S. Garland, Jr., Managing Director, Alex. Brown & Sons, Inc. (June 10, 1985); James J. Stahlnecker, Chairman, Municipal Bond Committee, The Cashiers' Association of Wall Street (May 23, 1985); Kathleen A. Graffam, Operations Officer, Bond Operations, Continental Bank (April 16, 1985); Jean J. Rousseau, Division Director, Municipal Securities Division, Merrill Lynch Capital Markets (June 12, 1985); Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, Inc. ("NASD") (June 6, 1985); Jan L. Meyer, Vice President, Newhard & Cook & Co. (June 6, 1985); Jeffrey H. Smith, Chairman, Municipal Securities Division Operations & Compliance Committee (June 3, 1985) to John Wheeler, Secretary, SEC.

is delayed a day or so because of the mail system. Further, the MSRB has provided an interpretation of the proposed official statement delivery requirement to the effect that an official statement mailed three days before settlement date is presumed to have been delivered to the customer by settlement of the transaction.[3]

Second, a number of commentators addressed the propsed requirement that managers or financial advisors make the final official statement available at least two business days prior to the date the manager delivers the securities to the syndicate. These comments indicated that the two business day requirement is not sufficient to ensure that an official statement will be distributed to customers as required by the rule, particularly when a customer or its dealer are located outside New York. Some commentators suggested that a four or five business day requirement should be used. In this connection, the MSRB has retained the two-day requirement, emphasizing that this is a minimum requirement and that managers and financial advisors are strongly urged to make final official statements available as soon after the date of sale as possible.

Third, some commentators argued that dealers selling new issues of commercial paper and variable rate demand instruments which commonly are traded on a cash (same day settlement) basis, would be unable to comply with rule G–32. In this regard, the MSRB has determined to exclude short term tax exempt commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents, although an official statement may not be prepared to accompany any specific issue of these securities.[4] The MSRB has concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities, and given the differences between the disclosure practices for these issues and other types of municipal securities, it would not be appropriate to include these issues in the rule G–32 definition of new issue municipal securities. The MSRB did not reach the same conclusion regarding variable rate demand instruments, believing that there still appeared to be a need for disclosure documents for these securities and thus did not provide an exemption for these securities.

[3] *See supra* note 1.

[4] See supra note 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder. The Commission supports the proposed rule change and its goal of ensuring that customers receive information necessary to make informed decisions regarding the purchase of new issue municipal securities. Furthermore, the Commission believes that experience gained with the amendments will indicate whether the objectives of the proposal are being satisfied; the Commission anticipates that the MSRB will further refine its rules if aspects of the amendments prove unsatisfactory or unworkable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Dated: August 30, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21343 Filed 9–5–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23815; 70–7138]

American Electric Power Company, Inc., et al.; Proposed Amendment of Term Loan Agreements

August 30, 1985.

AEP Generating Company ("AEGCo") and American Electric Power Service Corporation ("AEPSC"), 1 Riverside Plaze, Columbus, Ohio 43215, Kingsport Power Company ("Kingsport"), 40 Franklin Road, SW., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, (collectively "Declarants") and their parent company, American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By orders dated September 13, 1982, October 8, 1982, December 21, 1982, December 22, 1982, December 29, 1982, May 3, 1983, June 13, 1983, December 30, 1983, April 10, 1984, and August 17, 1984 (HCAR Nos. 22633, 22663, 22791, 22797, 22805, 22926, 22973, 23192, 23279, and 23399, respectively), the Commission authorized AEGCo, AEPSC, Kingsport, Michigan, and Wheeling to enter into fixed-rate, term-loan agreements and Declarants subsequently entered into such agreements with The Chase Manhattan Bank, N.A. ("Chase") as follows:

Company	Amount	Interest rate (percent)	Term of agreement
AEGCo	$25,000,000	13.85	Aug. 30, 1984, to Aug. 30, 1989.
AEPSC [1]	5,000,000	12.00	June 13, 1983, to June 13, 1988.
AEPSC [1]	10,000,000	11.71	Oct. 13, 1983, to Oct. 14, 1986.
Kingsport	5,000,000	12.10	June 16, 1983, to June 16, 1988.
Michigan	5,000,000	12.10	Do.
Wheeling	5,000,000	12.10	Do.

[1] American unconditionally guaranteed the principal and interest of the notes under these agreements.

Declarants now request authorization to refinance the above fixed-rate, term-loan agreements with Chase ("Agreements") and the unsecured promissory notes thereunder at any time until March 31, 1986, at a fixed interest rate equal to or lower than the interest rate presently in effect for each Agreement. Alternatively, if credit market conditions appear attractive, Declarants propose to extend the maturity date of any of the Agreements to a date on or before December 31, 1995, at a fixed interest rate of 1% or less above the present interest rate in such Agreement whose maturity is extended. If the maturity date of an Agreement is extended, the interest rate for such Agreement will recover costs of prepayment of the note, and no separate prepayment fee will be made. The notes under any refinanced Agreements will mature on a date not more than ten years from the effective date of the amendment of any Agreement and no later than December 31, 1995.

Each refinanced Agreement will be amended to provide that a Declarant pay to Chase the principal amount of the note thereunder and accrued interest thereon, on a quarterly basis and reborrow the principal amount of each note on each repayment date. Each refinanced Agreement will provide that in the event a note is paid prior to maturity, a Declarant will be required to pay a fee to Chase calculated to reimburse Chase for interest lost, if any, as a result of the prepayment. No compensating balances or commitment fees will be required. All other terms and conditions of the Agreements, to the extent not modified by the Amendment described herein, will remain

unchanged. Chase intends to sell participations in all or any part of the refinanced Agreements and the notes thereunder to other banks or entities.

Declarants state that prevailing interest rates are attractive to warrant the proposed refinancing. Declarants also believe it would be of long-term benefit to each Declarant and its customers to refinance the Agreement in whole or in part for a long maturity if interest rates are attractive, even though such long-term notes may have a fixed rate of interest higher than the interest rate under the Agreements.

In order to induce Chase to enter into the refinancing of the Agreements between AEPSC and Chase, American proposes to unconditionally guarantee the principal and interest of the notes under such amended Agreements.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the Declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21340 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23810; 70-7154]

Blackstone Valley Electric Co.; Proposal To Increase Unsecured Indebtedness Limitation of Preferred Stocks; Order Authorizing Solicitation of Proxies

August 30, 1985.

Blackstone Valley Electric Company ("BVEC"), Washington Highway, P.O. Box 11, Lincoln, Rhode Island 02865, a wholly owned subsidiary of Eastern Utilities Associates, a registered holding company, has filed a declaration with the Commission subject to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

The terms of the preferred stock of BVEC provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of the company having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital and surplus of the company. The amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

At a special meeting of the holders of BVEC preferred stock held on November 24, 1980, BVEC was authorized, for a five year period ending November 21, 1985, to issue or assume unsecured indebtedness, having maturities of less than ten years, in excess of the 10% limitation.

BVEC proposes to extend, for an additional five year period, the authorization adopted on November 24, 1980 by the preferred stockholders. In connection therewith, BVEC proposes to solicit proxies from its preferred stockholders.

Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series, namely, its 4.25% Series and its 5.60% Series, both having a par value of $100 per share) voting as a single class.

The declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice on order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing that the declaration, as amended, regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, pursuant to Rule 62, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21341 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23814; 70-7153]

Middle South Utilities, Inc. and Louisiana Power & Light Co.; Proposal To Issue and Sale Subsidiary Common Stock to Parent and To Amend Charter

August 30, 1985.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned subsidiary, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed and application-declaration with the Commission subject to sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 50(a)(3) thereunder.

LP&L proposes to issue and sell to MSU, and MSU proposes to purchase, through December 31, 1986, and aggregate of not in excees of 15,152,000 additional shares of its authorized but unissued common stock, without nominal or par value ("Additional Shares"), for an aggregate cash purchase price not to exceed $100 million. LP&L will use the proceeds of such sales to finance, in part, (including the retirement of short-term indebtedness incurred in financing) its construction program, to meet its obligations to pay for capacity and energy from Unit No. 1 of the Grand Gulf Station and for other corporate purposes.

Upon each issuance and sale of Additional Shares, LP&L proposes to credit its Common Stock Capital Account with the amount (in the aggregates not more than $100 million) received by it for such stock, and MSU proposes to debit its investment Account with the amount (in the aggregate not more than $100 million) of its cash investment in such stock.

On August 26, 1985 the Board of Directors of LP&L announced that it had not declared a dividend to MSU for its third quarter common stock. The News Release announcing the decision states that: "This action was taken after consideration of the financial obligations of the company, its needs to conserve available cash resources in the absence of urgently needed rate relief, the long-term interests of its equity security holders and restrictions in the Company's corporate decuments on the declaration of common stock dividends."

To make the findings under section 7(d) of the Act necessary to permit the application-declaration to become effective, the Commission must find, among other things, that the security is reasonably adapted to the earning power of LP&L. The Commission also must find that the securities to be issued are reasonably adapted to the financial structure of LP&L and the other companies in the Middle South system as well. The Commission further must find that the terms and conditions of such securities are not detrimental to the public interest or the interest of investors or consumers. Based on the record presently before it, the Commission has serious reservations about its ability to make such findings. The Commission has serious reservations about its ability to make such findings. The Commission therefore requests all interested persons, including state regulatory authorities with jurisdiction over the rates charged by operating companies in the Middle South system, to address these issues in comments submitted on the instant application-declaration.

The application-declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985 to the Secretary. Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addressess specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of factor or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21342 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23816; 70-7142]

Northeast Nuclear Energy Co. et al; Proposal To Amend and Restate Plant Agreement and Owners Lease, Sale and Leaseback of Utility Assets

August 30, 1985.

Northeast Nuclear Energy Company ("NNECO"), The Connectcut Light and Power Company ("CL&P"), Connecticut Yankee Atomic Power Company ("CYAPC"), P.O. Box 270, Hartford, Connecticut 06141, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, all electric utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, have filed an application-declaration with this Commission subject to sections 9(a), 10, and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 90 and 91 thereunder.

CL&P and WMECO (collectively, "the Owners") have direct or indirect ownership interests in four nuclear generating units: Millstone 1, Millstone 2, and Millstone 3 (the "Millstone Units") located Millstone Point in Waterford, Ct., and the Haddam Neck Unit located in Haddam Neck, Ct. The Owners provide managerial and administrative services to CYAPC through their affiliate, Northeast Utilities Service Company ("NUSCO"), another subsidiary of Northeast.

The Owners have arranged, through NUSCO, to purchase a nuclear power plant control room simulator system ("Simulator") for each of the Units ("Simulator 1", "Simulator 2", "Simulator 3", sometimes referred to as the "Millstone Simulators", and the "CY Simulator") from the Link Simulation Systems Division of the Singer Company ("Singer/Link") pursuant to a contract (the "Singer/Link Contract") between NUSCO and Singer/Link. In the Singer/Link Contract, Singer/Link agreed to design, construct and install the Simulators in a building (the "Building") to be constructed on land (the "Building Site") owned by the Owners near the Millstone site. NNECO leased the Building Site from the Owners pursuant to a ground lease dated August 26, 1983 (the "Owners Lease"), and has served as agent of the Owners with respect to the construction of the Building and the aquisition of Simulators 1 and 2 and related financing (HCAR No. 23038, August 22, 1983). Applicants-declarants propose to extend the ending date of the Owners Lease from the present expiration date to December 31, 2025 pursuant to an Amended and Restated Ground Lease which would replace the Owners Lease.

Simulators 3 was delivered by Singer/Link in December 1984 and first placed in service in February 1985, Simulators 2 was delivered by Singer/Link in April 1985 and placed in service in May 1985, the CY Simulators is expected to be delivered by Singer/Link in October 1985 and placed in service in December 1985, and Simulator 1 is expected to be delivered by Singer/Link in November 1985 and placed in service December 1985. When Simulators 1, 2, 3, and the CY Simulator have been fully tested and accepted, and the final payment made to the vendor, it is estimated that they will have cost $10,475,000, $11,700,000, $12,625,000, and $9,700,000, respectively.

CLAP, WMECO and NNECO, parties to an Amended and Restated Millstone Plant Agreement ("Millstone Plant Agreement"), propose a further amendment and restatement of the Millstone Plant Agreement ("New Millstone Plant Agreement") to allow NNECO to render services with respect to the Millstone Units and the nuclear fuel for the units. In return for NNECO's services, CL&P and WMECO would each pay NNECO its respective share of all the NNECO's expenses incurred with respect thereto.

NNECO and CYAPC propose to enter into an agreement (the "CYAPC Agreement") wherein NNECO would grant CYAPC the right to operate the CY Simulator in the Building and would provide services related thereto. CYAPC would reimburse NNECO for all expenses incurred by NNECO with respect to the CY Simulator and CYAPC's portion of the Building. The Owners would each pay NNECO its allocable share of NNECO's expenses related to the ownership, operation, and maintenance of the Building and its allocable share of NNECO's return on equity. Under the New Millstone Plant Agreement and the CYAPC Agreement, NNECO would have sole authority to determine when and how the Millstone Plant and the Building will be operated.

NNECO also proposes to sell all of its right, title and interest in Simulators 1 and 2 to the Prudential Insurance Company of America ("Prudential"), for the full capitalized cost thereof, and

then to lease Simulators 1 and 2 back from Prudential pursuant to a Simulator Financing Lease Agreement. The Simulator Financing Lease Agreement will be a "net" lease: NNECO will bear all expenses related directly or indirectly to the transaction including but not limited to maintenance, insurance, and taxes other than taxes on the net income of Prudential. NNECO will use the proceeds of the sale to Prudential to prepay NUSIMCO Inc. (a corporation formed specially for the construction financing for the Building and Simulators 1 and 2), the installment purchase price of Simulators 1 and 2, pursuant to the Construction Agreement. NNECO will also use the proceeds from the financing to pay the balance of the payments due Singer/Link with respect to Simulators 1 and 2. Prudential will pay an aggregate total acquisition cost of up to $23 million for Simulators 1 and 2. The basic lease term of each of Simulators 1 and 2 shall be for a period of five years, after which time the lease of each Simulator shall be extended from month to month for an additional period of ten years unless terminated sooner. Prior to the commencement of the Basic Lease Term with respect to each of Simulators 1 and 2, and no later than June 26, 1986, NNECO shall request Prudential to specify a fixed rate for each portion of such Simulator, such rate to be equal to the yield on 10 year Treasury Notes at that time.

The Owners, acting through NUSCO as their agent, propose to sell their aggregate 64.85% undivided interest in Simulator 3 to ComPlan, Inc., a leasing company which is a wholly owned subsidiary of Bankers Leasing Corporation, and NNECO proposes to lease the interest from ComPlan pursuant to an Amended and Restated Master Leasing Agreement. Subject to all of the terms and conditions of the Amended and Restated Master Leasing Agreement, ComPlan has agreed to pay an aggregate total acquistion cost of up to $8.2 million for the Owners 64.85% undivided interest in Simulator 3. The proceeds of the proposed sale will be used by the Owners to reduce outstanding indebtedness. The lease term of Simulator 3 shall be for a period of one year, after which the lease shall be extended from month to month for an additional period of fourteen years, unless terminated sooner. Following the lease of Simulator 3 for fifteen years, NNECO may purchase Simulator 3 from ComPlan for one dollar.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21344 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Availability of Appendices to Comprehensive Strategy Report

AGENCY: Synthetic Fuels Corporation.

ACTION: Notice of availability of Appendices to Comprehensive Strategy Report.

SUMMARY: Notice is hereby given that at a meeting of the Board of Directors on August 21, 1985, the United States Synthetic Fuels Corporation approved the Appendices to the Comprehensive Strategy Report, and directed that the Chairman make copies of the Appendices available for public review in the public reading room of the Corporation. Copies of the Appendices are now available in the Office of Public Disclosure.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

August 30, 1985.

[FR Doc. 85-21237 Filed 9-5-85; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 28-85]

Treasury Notes, Series M-1990

Washington, August 29, 1985.

The Secretary announced on August 28, 1985, that the interest rate on the notes designated Series M-1990, described in Department Circular—Public Debt Series—No. 28-85 dated August 21, 1985, will be 9⅝ percent. Interest on the notes will be payable at the rate of 9⅝ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-21270 Filed 9-5-85; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 209 (Rev. 1)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The delegation order authorizes the appropriate officials to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level, to sign the notice of final partnership or S corporation administrative adjustment and enter into and approve written agreements with partners or shareholders with respect to the determination of partnership or S corporation items. The text of the order appears below and extends the authority to Windfall Profit Tax Matters as provided for in IRC Section 6232.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Robert H. Gill, OP:EX, 1111 Constitution Avenue, NW., Room 2509, Washington, DC 20224, 202-566-4269 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Percy Woodard, Jr.,

Assistant Commissioner (Examination).

Order No. 209 (Rev. 1)

Effective date: 8-27-85

Delegation of Authority in Partnership and S Corporation Matters

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6232, 6243, and 6244, and Treasury Department Order 150–37:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to:

a. Revenue Agents (grade GS–11 and higher), in district offices; and

b. Chief, Examination Branch (GM 512–14), in service centers.

c. Chief, Classification Section (GM 512–13), in service centers.

d. Chief, Examination Support Unit, (GM 512–13), in service centers.

e. Chief, Windfall Profit Tax Staff (GM 512–13), in the Austin Service Center.

2. Authority to sign the notice of final partnership or S corporation administration adjustment is delegated to:

a. Chief Counsel;

b. Regional Counsel;

c. Regional Directors of Appeals;

d. Chiefs and Associate Chiefs of Appeals Offices;

e. Appeals Team Chiefs as to their respective cases;

f. Revenue Agents (Reviewers), (grade GS–11 and higher), in Examination Division;

g. Chief, Examination Branch, in service centers;

h. Chief, Classification Section (GM 512–13) in service centers; and

i. Chief, Examination Support Unit (GM 512–13), in service centers.

j. Chief, Windfall Profit Tax Staff (GM 512–13), in the Austin Service Center.

3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or S corporation items for such partnership or S corporation taxable year is delegated to:

a. Chief, Counsel;

b. Regional Counsel;

c. Regional Directors of Appeals;

d. Chiefs and Associate Chiefs of Appeals Offices;

e. Appeals Team Chiefs as to their respective cases;

f. Revenue Agents (Reviewers), (grade GS–11 and higher), in Examination Division;

g. Chief, Examination Branch, (GM 512–14) in service centers;

h. Chief, Classification Section (GM 512–13), in service centers, and

i. Chief, Examination Support Unit, (GM 512–13), in service centers.

j. Chief, Windfall Profit Tax Staff (GM 512–13), in the Austin Service Center.

The authority delegated herein may not be redelegated.

Delegation Order No. 209, effective January 9, 1985, is hereby superseded.

Dated: August 9, 1985.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85–21336 Filed 9–5–85; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 173
Friday, September 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Board of Governors of the Federal Reserve System	1
Consumer Product Safety Commission	2, 3
Equal Employment Opportunity Commission	4, 5
Federal Energy Regulatory Commission	6
Federal Maritime Commission	7
Occupational Safety and Health Review Commission	8

1

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10:00 a.m., Wednesday, September 11, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21366 Filed 9-4-85; 9:04 am]

BILLING CODE 6210-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, September 11, 1985.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Petroleum Distillates Labeling: Proposed Amendment

The staff will brief the Commission on a draft proposal to revoke the special labeling requirements for products containing petroleum distillates.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Dated: September 3, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-21421 Filed 9-4-85; 1:17 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 12, 1985.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Methylene Chloride; Meeting With Industry

The Commission will meet with representatives of the chemical industry to discuss the extent of use of methylene chloride in consumer products.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Dated: September 3, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-21422 Filed 9-4-85; 1:17 pm]

BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, September 16, 1985, 2:00 p.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat (202) 634-6748.

Dated: September 4, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 4, 1985.

[FR Doc. 85-21461 Filed 9-4-85; 3:33 pm]

BILLING CODE 6750-06-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, September 17, 1985, 9:30 a.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTER TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Semi-annual Regulatory Agenda
4. Recommended FY 1986 State and Local Expenditures

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: September 4, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 4, 1985.

[FR Doc. 85–21462 Filed 9–4–85; 3:33 pm]

BILLING CODE 6750–06–M

6

FEDERAL ENERGY REGULATORY COMMISSION

September 4, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., September 11, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 819th Meeting—September 11, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 8399–002, city of Ellensburg, Washington
CAP–2.
Project No. 7678–002 Michiana Hydro-Electric Power Corporation
CAP–3.
Project No. 6967–002, California Hydroelectric
CAP–4.
Project No. 5989–002, the city of Jersey City, New Jersey
CAP–5.
Project No. 4919–004, city of Gillette, Wyoming
Project No. 3749–003, Mitchell Energy Company
Project No. 4210–003, Sts Energenic, Ltd.
Project No. 5006–003, Central Montana Electric Generation and Transmission Cooperative, Inc.
CAP–6.
Project No. 2548–006, Georgia-Pacific Corporation
CAP–7.
Project No. 2969–002, Borough of Weatherly
CAP–8.
Project No. 8083–001, Briggs Hydroelectric
CAP–9.
Project No. 7885–005, Fisheries Development Company
CAP–10.
Project No. 9137–001, North American Hydro, Inc.
CAP–11.
Omitted
CAP–12.
Project No. 8438–001, Schaffner Power Company
CAP–13.
Project No. 2874–005, Electric Plant Board of the city of Glasgow, Kentucky
CAP–14.
Project No. 2738–010, New York State Electric & Gas Corporation
CAP–15.
Project No. 2866–004, the Metropolitan Sanitary District of Greater Chicago
CAP–16.
Project No. 4114–001, Long Lake Energy Corporation
Project No. 5614–000 New York State Electric and Gas Corporation and Georgia-Pacific Corporation
CAP–17.
Project No. 2909–001, town of Vidalia, Louisiana
CAP–18.
Project No. 516–021, South Carolina Electric & Gas Company
CAP–19.
Docket No. EL85–36–000, Rhyne Mills, Inc.
CAP–20.
Docket No. ER85–596–000, New England Power Company
CAP–21.
Docket No. ER85–515–003, Florida Power & Light Company
CAP–22.
Docket No. ER85–404–005, Commonwealth Edison Company
CAP–23.
Docket No. ER85–534–003, Southwestern Electric Power Company
CAP–24.
Docket No. QF85–541–000, the city of New Martinsville, West Virginia
CAP–25.
Docket No. QF85–172–001, Power Developers, Inc.
CAP–26.
Docket Nos. RE81–56–001 and 002, Oglethorpe Power Corporation, et al.
CAP–27.
Docket Nos. EL85–11–001, 002 and 003, city of Vernon and the cities of Anaheim, Riverside, Banning, Colton, and Azusa, California v. Southern California Edison Company
CAP–28.
Docket Nos. ER79–182–010, ER80–106–007, ER82–146–011, EL82–16–003 and EL82–27–003, Commonwealth Edison Company
CAP–29.
Docket No. ER84–568–006, Gulf States Utilities Company
CAP–30.
Docket No. ER84–592–000, Indiana & Michigan Electric Company
CAP–31.
Docket No. ER85–184–000, Carolina Power & Light Company
CAP–32.
Docket Nos. ER85–194–000 and 001, Southwestern Electric Power Company
CAP–33.
Docket No. ER85–300–000, Vermont Yankee Nuclear Power Corporation
CAP–34.
Docket No. ER85–401–000, Jersey Central Power and Light Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA84–15–000, Minnesota Power & Light Company
CAM–2.
Docket Nos. RM79–76–136 (Utah–5) and RM79–76–137 (Utah–6), High-cost gas produced from tight formations
CAM–3.
Docket Nos. RM79–76–240 (Colorado–40) and RM79–76–245 (Colorado–40 addition), high-cost gas produced from tight formations
CAM–4.
Docket No. Rm79–76–237 (Texas–40 addition), high-cost gas produced from tight formations
CAM–5.
Docket No. GP85–9–001, Texas Gas Transmission Corporation
CAM–6.
Docket No. GP84–40–001, Mineral Resources Incorporated and Natural Gas Pipeline Company of America
CAM–7.
Docket No. GP84–54–001, Hawthorne Oil & Gas Corporation, Arcade Enterprises, Inc., William B. Burkenhead, Jr. and Republic Production Company of Texas
CAM–8.
Docket No. GP85–41–000, J.R. Simplot Company and Sacramento Bank for Cooperatives
CAM–9.
Docket No. GP84–25–000, JM Resources
CAM–10.
Docket No. GP80–29–004, Gulf Oil Corporation (Florida Gas Transmission Company)
CAM–11.
Docket No. GP85–35–000, United Gas Pipe Line Company
CAM–12.
Docket No. GP85–25–000, Mississippi Fuel Company
CAM–13.
Docket Nos. SA84–8–002, SA84–9–002 and SA84–10–002, Phillips Petroleum Company
Docket Nos. SA84–11–002 and SA84–12–002, Phillips Oil Company
CAM–14.
Docket No. SA82–30–001, Omega Minerals, Inc.
CAM–15.
Docket No. RO84–9–001, Walter J. Scott and Benjamin J. Agajanian, William J. Scott and Walter J. Scott d/b/a Scott Oil Company
CAM–16.
Docket No. RA82–4–000, Placid Oil Refining Company
CAM–17.
Docket No. RA82–25–000, Landsea Oil Company

CAM–18.
Docket No. RA85–1–000, Laketon Asphalt Refining, Inc.

Consent Gas Agenda

CAG–1.
Docket No. ST85–97–001, Phoenix Transmission Company
CAG–2.
Docket Nos. ST85–710–001, ST85–972–001 and ST85–1159–001, Mountain Fuel Resources, Inc.
CAG–3.
Docket No. ST84–725–001, Mississippi River Transmission Corporation
CAG–4.
Docket No. ST84–1014–001, Mississippi River Transmission Corporation
CAG–5.
Docket No. RP84–15–006, MIGC, Inc.
CAG–6.
Docket No. RP85–167–001, Sea Robin Pipeline Company
CAG–7.
Docket No. RP85–37–002, High Island Offshore System
CAG–8.
Docket Nos. RP83–70–001 and RP85–38–001, U–T Offshore System
CAG–9.
Docket Nos. RP85–165–002, 003 and 004, Distrigas of Massachusetts Corporation
CAG–10.
Docket Nos. RP80–97–042 through 048, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG–11.
Docket Nos. TA82–1–52–003, TA82–2–52–004, TA83–1–52–002, TA83–2–52–001, TA84–1–52–002 and TA84–2–52–001, Western Gas Interstate Company
CAG–12.
Docket No. TA85–2–61–002, Bayou Interstate Pipeline System
CAG–13.
Docket Nos. TA85–4–17–005 and 006, Texas Eastern Transmission Corporation
CAG–14.
Omitted
CAG–15.
Docket No. TA83–2–47–004, MIGC, Inc.
CAG–16.
Docket No. TA85–1–16–005, National Fuel Gas Supply Corporation
CAG–17.
Omitted
CAG–18.
Omitted
CAG–19.
Omitted
CAG–20.
Docket No. TA85–2–42–003, Transwestern Pipeline Company
CAG–21.
Docket No. TA–83–1–34–000, Florida Gas Transmission Company
CAG–22.
Docket No. TA84–2–21–000, Columbia Gas Transmission Corporation
CAG–23.
Docket No. RP85–187–000, Northwest Pipeline Corporation
CAG–24.
Docket No. RP85–141–002, Texas Gas Transmission Corporation
CAG–25.
Docket No. RP85–18–002, Natural Gas Pipeline Company of America
CAG–26.
Docket No. RP72–132–001, Natural Gas Pipeline Company of America
CAG–27.
(A) Docket No. RP80–136–006, et al., Southern Natural Gas Company
(B) Docket No. RP80–136–007, et al., Southern Energy Company
CAG–28.
Docket No. TA85–2–55–002, Mountain Fuel Resources, Inc.
CAG–29.
Docket No. RP85–8–000, Canyon Creek Compression Company
CAG–30.
Docket No. RP81–52–000, Northern Natural Gas Company, division of Internorth, Inc.
CAG–31.
Docket Nos. ST83–442–001, ST80–299–002, ST83–260–001, ST83–660–000, ST84–29–000, ST84–650–000, ST84–896–000, ST85–126–000, ST82–249–001, ST83–317–001, ST83–678–000, ST84–632–000, ST84–804–000 and ST84–1013–000, Acadian Gas Pipeline System
CAG–32.
Docket No. RI81–4–000, Michigan Wisconsin Pipe Line Company
CAG–33.
Docket Nos. RI74–188–061, RI75–21–056, RI74–188–062 and RI75–21–057, Independent Oil & Gas Association of West Virginia
CAG–34.
Docket No. CI78–704–003, Mitchell Energy Corporation
CAG–35.
Docket No. CI80–151–001, Mitchell Energy Corporation
CAG–36.
Docket No. CI85–288–000, Quinoco Oil & Gas, Inc.
CAG–37.
Docket No. CI78–1179–000, Dorchester Gas Producing Company
CAG–38.
Docket No. CI84–355–000, Exchange Oil & Gas Corporation
CAG–39.
Docket Nos. CP74–314–016, CI83–356–005 and CI84–141–003, El Paso Natural Gas Company and Union Oil Company of California
CAG–40.
Docket No. CI85–476–000, Energy Marketing Exchange, Inc.
CAG–41.
Docket Nos. RP74–50–010, 011, 012, 013 and 014, Florida Gas Transmission Company (Basic Magnesia, Inc.), Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.), Florida Gas Transmission Company (Borden, Inc.) and Florida Gas Transmission Company (Gardinier, Inc.)
CAG–42.
Docket No. CP85–296–001, Florida Cities v. Florida Gas Transmission Company and Houston Natural Gas Corporation
CAG–43.
Docket No. CP85–162–001, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG–44.
Docket Nos. CP84–293–000 through 004 and CP84–425–000 through 004, Michigan Consolidated Gas Company, Interstate Storage Division
Docket Nos. CP77–253–016, 018, 020, 021 and 022, Panhandle Eastern Pipe Line Company
CAG–45.
Docket Nos. CP84–543–001, CP85–150–001 and CP85–151–001, Equitable Gas Company, a division of Equitable Resources, Inc.
CAG–46.
Docket Nos. CP84–132–001 and CP84–196–001, Columbia Gulf Transmission Company
Docket Nos. CP84–132–002, CP84–133–001, CP84–134–001 and CP84–196–002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP84–622–001, Transcontinental Gas Pipe Line Corporation
CAG–47.
Docket No. CP85–354–000, Consolidated Gas Transmission Corporation
CAG–48.
Docket No. CP85–295–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG–49.
Docket No. CP85–243–000, United Gas Pipe Line Company
CAG–50.
Docket No. CP79–477–002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

I. Licensed Project Matters

P–1.
Project No. 2574–000, Milstar Manufacturing Corporation
P–2.
Project Nos. 3024–004, 005, 006, 007, 3029–004, 005, 006 and 007, the city of Richmond, Virginia
P–3.
Project Nos. 77–007 and 008, Pacific Gas and Electric Company
P–4.
Docket No. EL85–41–000, proposed procedure for implementing a review of power project land withdrawals and vacating non-essential withdrawals

II. Electric Rate Matters

ER–1.
Docket No. ER83–138–000 (Phase II), the Cleveland Electric Illuminating Company
ER–2.
(A) Docket No. ER84–579–002, AEP Generating Company
(B) Docket Nos. ER84–348–002, 003, 004 and 005, American Electric Power Service Corporation
ER–3.
Docket No. EL82–3–003 (Remand), city of Oakland, California v. Pacific Gas & Electric Company
ER–4.
Docket No. EL83–19–001, Cliffs Electric Service Company and Upper Penisula Generating Company
Docket No. EL83–28–000, Colockum Transmission Company, Inc.
Docket No. EL83–30–000, Elkem Metals Company
Docket No. EL83–18–000, Stonington and Deer Isle Power Company

ER–5.
Docket No. ID–2084–000. Donald B. Riefler

Miscellaneous Agenda

M–1.
Docket No. RM82–38–000. fees applicable to electric utilities, cogenerators, and small power producers

M–2.
Docket No. RM83–39–000. list of units of property for use in accounting for additions and retirements of reactor plant equipment

I. Pipeline Rate Matters

RP–1.
Docket Nos. RP85–13–004, 005, 006, RP85–65–001, 002, 003, TA85–2–37–011, 012 and 013 (not consolidated), Northwest Pipeline Corporation

RP–2.
Docket Nos. TA85–1–33–004, TA84–2–33–009 and TA84–1–33–007, El Paso Natural Gas Company

RP–3.
Docket Nos. RP82–71–016, RP82–71–000, TA83–1–59–000, TA84–1–59–000 and TA85–1–59–000, Northern Natural Gas Company, division of Internorth, Inc.

RP–4.
Docket No. TA85–1–53–005, KN Energy, Inc.

RP–5.
Docket No. TA85–2–42–002, Transwestern Pipeline Company

RP–6.
Docket Nos. TA82–1–33–003, TA82–2–33–018, TA83–1–33–010, TA83–2–33–002 and TA84–1–33–001 (unpaid accruals), El Paso Natural Gas Company

II. Producer Matters

CI–1
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Kenneth F. Plumb,
Secretary.
[FR Doc. 85–21457 Filed 9–4–85; 3:25 pm]
BILLING CODE 6717–01–M

7

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 11, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Consideration of proposed circular letter which covers the subject of specific tariff rates which exclude certain classes of shippers.

Portions Closed to the Public

1. Agreement No. 202–010795: West Coast/Western Australia Discussion and Cooperative Working Agreement.
2. Docket No. 85–5—Failure of Non-Vessel Operating Common Carriers in the Foreign Commerce of the United States to Comply with the Anti-Rebate Certification Filing Requirements of Section 15(b) of the Shipping Act of 1984—Consideration of the Record.

CONTRACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523–5725.

Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85–21481 Filed 9–4–85; 4:01 pm]
BILLING CODE 6730–01–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 26, 1985.

PLACE: Suite 410, 1825 K Street, NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: September 3, 1985.

Arthur G. Sapper,
Deputy General Counsel.
[FR Doc. 85–21420 Filed 9–4–85; 1:16 pm]
BILLING CODE 7640–01–M

Friday
September 6, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut:	CT85–3023	June 7, 1985.
District of Columbia:	DC84–3009	Apr. 6, 1984.
Maryland:		
	MD84–3039	Nov. 9, 1095.
	MD85–3041	July 25, 1985.
Massachusetts:		
	MA85–3014	Mar. 1S, 1985
	MA85–3015	Do.
New Jersey:	NJ85–3031	Aug. 2, 1985.
Texas:		
	TX84–4047	Aug. 10, 1984.
	TX84–4045	Do.
	TX85–4013	May 10, 1985.
	TX85–4018	June 14, 1985.
	TX85–4019	Do.
Virginia:		
	VA84–3006	Mar. 2, 1984.
	VA84–3006	July 6, 1984.
	VA84–3025	Do.
	VA85–3025	May 3, 1985.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California	CA84–5007 (CA85–5035)	May 18, 1984.
Maryland	MD80–3047 (MD85–3045)	Aug. 29, 1980.
Missouri	MO84–4106 (MO85–4038)	Nov. 30, 1984.
	MO84–4102 (MO85–4037)	Oct. 26, 1984.
	MO84–4108 (MO85–4032)	Dec. 21, 1984.
North Carolina	NC82–1027 (NC85–3047)	Apr. 30, 1982.
	NC82–1027 (NC85–3046)	Apr. 30, 1982.
South Carolina	SC82–1050 (SC85–3049)	Sept. 24, 1982.
	SC82–1050 (SC85–3048)	Do.
	SC79–1018 (SC85–3050)	Feb. 2, 1979.

Signed at Washington, D.C., this 30th day of August 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION NO. CT85-3023 - MOD. #3
(50 FR 24109 - June 7, 1985)
STATEWIDE, CONNECTICUT

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; LATHERS; RESILIENT FLOOR LAYERS:		
BUILDING CONSTRUCTION:		
Area 6:		
Carpenters, piledrivermen, lathers, Resilient floor layers	16.35	2.43
Millwrights	16.85	2.43

DECISION NO. MD84-3039
MOD. #1
(49 FR 44854- November 9, 1984)
Baltimore City, Maryland

DELETE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Mason Tenders & Mortar Mixers (brick & stone work only)	10.45	1.225
ADD:		
MASONARY LABORERS:		
Laborers	7.75	1.225
Mason Tenders	8.49	1.225
Scaffold Builders	8.74	1.225
Forklift Laborers	10.00	1.225

DECISION NO. VA85-3025
MOD. #1
(59 FR 18966-May 3, 1985)
RADFORD ARMY AMMUNITION PLANT, VIRGINIA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS	13.65	3.37
SHEET METAL WORKERS	13.50	2.09

DECISION NO. DC84-3009
MOD. #21
(49 FR 13800-April 6, 1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Structural, Ornamental, & Chain link fence	15.14	3.525
PLUMBERS:		
WASHINGTON, D.C.:		
Apartment buildings over 4 stories:		
Journeyman	11.25	1.62
All Other Work	16.63	3.14
REMAINING AREAS:		
Apartment buildings over 4 stories, schools, colleges speculative office buildings, strip shopping centers, churches, water coolers, room air conditioning units, appliances, packaged ice machines, and light commercial and/or air conditioning systems serving a single business in a single story building and not to exceed 5 h.p. or tons (self-contained package unit up to and including 5 h.p. or tons)		
Journeymen	11.25	1.62
All Other Work	16.63	3.14
SPRINKLER FITTERS:		
Montgomery and Prince Georges Counties, MD.	16.90	2.40
Remaining Areas	17.35	2.40

DECISION NO. MA85-3014
MOD. NO. 3
(50 FR 10594 - March 15, 1985)
Worcester County, Massachusetts

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Bricklayers, Cement Masons, Plasterers; and Stonemasons:		
Area 4	$18.15	3.90
Painters:		
Area 1		
Brush and Tapers	14.66	3.29
Spray and Sandblasting	17.93	3.29
Swing and Chair Work and steel riding under 40 feet	14.85	3.29
Swing and chair work and steel riding 40 feet and over	15.16	3.29
Plumbers & Pipefitters:		
Area 3		
Plumbers	17.74	3.55
Roofers	17.91	4.92

DECISION NO. MA85-3015
MOD. NO. 3
(50 FR 10600 - March 15, 1985)
Berkshire, Franklin, Hampden and Hampshire Counties, Massachusetts

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Bricklayers; Cement masons; plasterers; stonemasons; marble; tile; terrazzo workers; pointers; cleaners & caulkers	15.10	4.54
Painters:		
Brush & Tapers	14.66	3.29
Spray & Sandblasting	17.93	3.29
Swing stage and steel riding under 40'	14.85	3.29
Swing stage and steel riding over 40'	15.16	3.29
Plumbers & Steamfitters:		
Area 2	18.30	3.76
Area 3	16.82	4.59

DECISION NO. MD85-3041
MOD. #3
(50 FR 30587-July 25, 1985)
ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND
(Building and Heavy Construction)
HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construction Only)

CHANGE:
BUILDING POWER EQUIPMENT OPERATOR CLASSIFICATIONS to read BUILDING AND HEAVY POWER EQUIPMENT OPERATOR CLASSIFICATIONS

DELETE:

	Basic Hourly Rates	Fringe Benefits
MASON TENDERS:		
Mason tenders	10.65	1.225
Scaffold builders	10.90	1.225
ADD:		
MASONARY LABORERS:		
Laborers	7.75	1.225
Mason tenders	8.49	1.225
Scaffold builders	8.74	1.225
Forklift laborer	10.00	1.225

DECISION NO. NJ85-3031 - MOD. #4 (50 FR 31459 - August 2, 1985)	Basic Hourly Rates	Fringe Benefits
Bergen, Essex, Hudson (excludes Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey		
ADD:		
ELECTRICIANS:		
Telephone Interconnect:		
Picatinny Arsenal in Morris County	15.31	3%+1

Footnotes:
1. Vacation pay: Employees with over 6 months total servics with the employer receive 1 week; over 2 years - 2 weeks; over 5 years - 3 weeks; over 10 years - 4 weeks; over 15 years - 5 weeks.

CHANGE:

Footnotes:
h. Paid Holidays: A through F, plus Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, General Election Day, Columbus Day and Veterans Day, provided the employee has been assigned to work or "shapes" one day of the calendar week in shich the holiday falls.

DECISION NO. VA84-3006 MOD. #3 (49 FR 7918-March 2, 1984)	Basic Hourly Rates	Fringe Benefits
AMELIA, BRUNSWICK, CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER HENRICO, LUNENBURG, MECHKLENBURG, NEW KENT NOTTOWAY, POWHATAN, PRINCE GEORGE, and the Independent Cities of RICHMOND, PETERSBURG, CHESTERFIELD, COLONIAL HEIGHTS, & HOPEWELL		
DELETE:		
DECISION NO. VA84-3006 Mod. #2 (49 FR 27878-July 6, 1984) City of Newport News & (FORT EUSTIS)		
Change:		
ELECTRICIANS	13.83	1.15+9

DECISION NO.. VA84-3025 MOD. #2 (49 FR 27878-July 6, 1984) City of NEWPORT NEWS & (FORT EUSTIS)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS	13.83	1.15+9
ELEVATOR MECHANICS	11.845	3.29+ a&b
ELEVATOR MECHANICS HELPERS	8.29	3.29+ a&b

DECISION #TX84-4047-MOD.#3 (49 FR 32167-Aug. 10, 1984)	Basic Hourly Rates	Fringe Benefits
LUBBOCK COUNTY, TEXAS		
CHANGE:		
Electricians:		
Electricians	$14.85	$1.60+ 3.10%
Cable Splicers	15.10	1.60+ 3.10%
Plumbers and Steamfitters	15.00	1.59

DECISION #TX84-4045-MOD.#5 (49 FR 32168-Aug. 10, 1984)	Basic Hourly Rates	Fringe Benefits
TRAVIS COUNTY, TEXAS		
CHANGE:		
Bricklayers	$14.74	$2.55
Glaziers	13.935	2.735
Elevator Constructors:		
Mechanics	14.745	3.58+a
Helpers	70%JR	3.58+a
Helpers (Prob.)	50%JR	
Marble, Tile & Terrazzo Workers	14.00	1.60
Roofers:		
Roofers, Deckman	8.81	.92
Waterproofers	8.27	.92
Kettlemen	8.33	.92
Helpers	4.16	.92
Plumbers & Pipefitters	18.00	1.32
Sprinkler Fitters	16.66	3.40

DECISION #TX85-4013-MOD.#1 (50 FR 19868-May 10, 1985)	Basic Hourly Rates	Fringe Benefits
BEXAR COUNTY, TEXAS		
CHANGE:		
Elevator Constructors:		
Mechanics	$14.695	3.58+a
Helpers	70%JR	3.58+a
Helpers (Prob.)	50%JR	
Pipefitters	18.90	2.03
Tile Setters	13.52	2.27
Sprinkler Fitters	16.66	3.40

DECISION #TX85-4018-MOD.# 1 (50 FR 25004-June 14, 1985)	Basic Hourly Rates	Fringe Benefits
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant, & Wise Cos., Texas		
CHANGE:		
Elevator Constructors:		
Mechanics	$ 14.71	$3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	
Sprinkler Fitters	16.66	3.40

DECISION #TX85-4019-MOD.# 2 (50 FR 25006-June 14, 1985)	Basic Hourly Rates	Fringe Benefits
Jefferson & Orange Cos., Texas		
CHANGE:		
Electricians	$16.90	$1.59+ 3%
Carpenters-Commercial	12.10	3.065
Millwrights	14.495	2.95
Piledrivermen	14.40	2.90
Painters:		
Northern 1/2 of Jefferson County:		
Brush, Hand Cleaning Operations	$14.50	$1.79
Roller, Spray, Sign Painters, Tape, Float, Texture, Paper, Vinyl & Power tool opers.	15.10	1.79
Tile Setters	17.87	2.20
Sprinkler Fitters	16.66	3.40

STATE: CALIFORNIA

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura

DECISION NUMBER: CA85-5035

DATE: Date of Publication

Supersedes Decision No. CA84-5007 dated May 18, 1984, in 49 FR 21245.

DESCRIPTION OF WORK: Building; Heavy (excluding Water Well Drilling and, in Kern County, excluding Oil Well Drilling); Highway; Residential (excluding Inyo and Mono Counties); Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$22.06	$5.45
BOILERMAKERS:		
Boilermakers	21.60	4.25
Boilermaker - Blacksmith (storage tank erection)	17.25	4.00
Boilermaker - Blacksmith (storage tank repair)	16.05	4.00
BRICKLAYERS; STONEMASONS:		
Area 1	19.09	3.59
Area 2	17.99	4.31
Area 3	20.75	3.52
Area 4	19.75	3.95
Area 5	17.40	4.56
Area 6	19.42	4.86
Area 7	20.50	3.22
Area 8	21.74	4.31
BRICK TENDERS	14.07	8.18
CARPENTERS:		
Area 1:		
Bridge or Dock Carpenter; Derrick Barge and Rock Slinger	19.275	7.275
Carpenters; Cabinet Installers; Insulation Installers	19.145	7.275
Hardwood Floor Layer and Acoustical Installer	19.345	7.275
Millwrights	18.075	6.745
Piledrivers	19.275	7.275
Pneumatic Nailer or Power Stapler	19.395	7.275
Saw Filers	19.225	7.275
Table Power Saw Operator	19.245	7.275
CARPENTERS (Cont'd):		
Area 1 (Cont'd):		
Work on single family homes and apartments up to and including 3 stories:		
Framer and Finish Carpenter	$18.29	$3.395
Insulator Installer	19.145	3.395
Slab on grade (residential concrete construction excluding subterranean garages)	18.575	5.775
Area 2:		
Bridge or Dock Carpenter; Derrick Barge and Rock Slinger	17.275	7.275
Carpenter; Cabinet Installer; Insulation Installer	17.145	7.275
Hardwood Floor Layer and Acoustical Installer	17.345	7.275
Millwrights	17.075	6.745
Piledrivers	17.275	7.275
Pneumatic Nailer or Power Stapler	17.395	7.275
Saw Filers	17.225	7.275
Table Power Saw Operator	17.245	7.275

(7)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (Cont'd):		
Area 2 (Cont'd):		
Work on single family homes and apartments up to and including 3 stories:		
Framer and Finish Carpenter	$16.29	$3.395
Insulator Installer	17.145	3.395
Slab on grade (residential concrete construction excluding subterranean garages)	16.575	5.775
CEMENT MASONS:		
Area 1:		
Cement Masons	19.31	6.85
Cement Floating and Troweling Machine	19.56	6.85
Area 2:		
Cement Masons	17.31	6.85
Cement Floating and Troweling Machine	17.56	6.85
DIVERS*:		
Diver, Wet	39.55	7.275
Diver, Stand-by	19.775	7.275
Diver, Tender	18.775	7.275
DRYWALL INSTALLERS/LATHER:		
Inyo, Kern and Mono Counties	16.66	5.05
Remainder of Counties:		
Drywall Installer/Lather	18.53	7.06
Drywall Stocker, Scrapper and Cleanup	9.31	2.25
Residential Drywall/Lather	18.53	5.06
ELECTRICIANS:		
Area 1:		
Electricians	18.00	3.90+ 3%
Cable Splicers	18.45	3.90+ 3%
Sound Installers	16.47	1.46+ 3%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (Cont'd):		
Area 1 (Cont'd):		
Utility Technicians (covers street lights, traffic signals, and underground systems in streets and/or established easements)	$16.50	$0.47+ 3%
Area 2:		
Electricians	17.15	4.55+ 3%
Cable Splicers	18.87	4.55+ 3%
Residential Electrician	12.00	2.00+ 3%
Area 3:		
Electricians	23.00	4.79+ 3%
Cable Splicers	23.60	4.79+ 3%
Sound Technician	16.95	2.25+ 3%
Alarm Technician	11.90	.10
Area 4:		
Electrician	22.63	3.55+ 3%
Cable Splicer	23.67	3.55+ 3%
Alarm Technician	11.75	.10
Area 5:		
Electrician	17.79	4.81+ 3%
Cable Splicers	18.29	4.81+ 3%
Area 6:		
Contracts over $2 million:		
Electricians	20.80	5.40+ 3%
Cable Splicer	21.30	5.40+ 3%
Contracts $2 million and under:		
Electricians	17.80	5.40+ 3%

(8)

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (Cont'd):		
Area 6 (Cont'd):		
Contracts $2 million and under (Cont'd):		
Cable Splicers	$18.30	$5.40+ 3%
Area 7:		
Contracts over $100,000:		
Electrician	22.23	3.63+ 3%
Cable Splicer	24.45	3.63+ 3%
Contracts $100,000 or less:		
Electrician	17.00	3.63+ 3%
Cable Splicer	18.70	3.63+ 3%
Residential Electrician	11.40	3.63+ 3%
Area 8:		
Contracts over $250,000, with a main electrical service over 1200 amps:		
Electricians	22.67	4.35+ 3%
Cable Splicers	24.17	4.35+ 3%
Contracts of $250,000 or less with a main electrical service of 1200 amps or less:		
Electricians	18.00	4.35+ 3%
Cable Splicers	19.80	4.35+ 3%
Work on single family homes and apartments 3 stories or less	11.40	4.35+ 3%
Area 9:.		
Electrician	21.00	5.27+ 3%
Cable Splicers	23.10	5.27+ 3%
ELECTRICIANS (Cont'd):		
Area 10:		
Contracts over $250,000 with a main electrical service over 1200 amps:		
Electricians	$26.42	$4.35+ 3%
Cable Splicers	27.92	4.35+ 3%
Contracts of $250,000 or less with a main electrical service of 1200 amps or less:		
Electricians	21.75	4.35+ 3%
Cable Splicers	23.55	4.35+ 3%
Work on single family homes and apartments 3 stories or less	11.40	4.35+ 3%
Area 11:		
Electricians	20.90	4.55+ 3%
Cable Splicers	22.62	4.55+ 3%
Residential Electrician	13.00	2.00+ 3%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	23.14	3.29+a
Helpers	16.20	3.29+a
Probationary Helpers	11.57	
Area 2:		
Mechanics	29.39	3.29+a
Helpers	20.57	3.29+a
Probationary Helpers	14.695	
GLAZIERS:		
Area 1	18.59	6.21
Area 2	17.87	3.15
Area 3	16.90	5.82
IRONWORKERS*:		
Fence Erectors	18.01	8.93
Ornamental, Reinforcing, Structural	18.90	8.93
IRRIGATION AND LAWN SPRINKLERS	15.00	39%
LINE CONSTRUCTION:		
Area 1:		
Ground	17.41	3.65 +4%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd)		
Area 1 (Cont'd):		
Line worker	$22.61	$3.65+ 4%
Cable Splicers	22.91	3.65+ 4%
Area 2:		
Ground	12.86	4.40+ 4%
Line worker; Heavy Equipment Operator	17.15	4.40+ 4%
Cable Splicers	18.87	4.40+ 4%
Area 3:		
Line worker	23.00	5.05+ 3%
Cable Splicers	23.60	5.05+ 3%
Ground	17.25	5.05+ 3%
Area 4:		
Line worker	18.22	4.70+ 3%
Area 5:		
Cable Splicer	18.17	4.75+ 3%
Equipment Operator	17.67	4.75+ 3%
Ground	13.25	4.75+ 3%
Line worker	17.67	4.75+ 3%
Area 6:		
Ground	16.67	3.58+ 4%
Line worker; Line truck and equipment operators	22.23	3.58+ 4%
Cable Splicers	24.45	3.58+ 4%
Area 7:		
Ground	15.75	5.27+ 3%
Line worker	21.00	5.27+ 3%
Cable Splicers	23.10	5.27+ 3%
Area 8:		
Ground	21.53	3.15+ 4%
Line worker; Equipment operator	27.45	3.15+ 4%
LINE CONSTRUCTION (Cont):		
Area 8 (Cont'd):		
Cable Splicers	$28.95	$3.15+ 4%
Area 9:		
Ground	16.61	4.40+ 4%
Line worker; Heavy equipment operator	20.90	4.40+ 4%
Cable Splicers	22.62	4.40+ 4%
Area 10:		
Ground	17.78	3.15+ 4%
Line worker; Equipment operators	23.70	3.15+ 4%
Cable Splicers	25.20	3.15+ 4%
MARBLE SETTERS:		
Area 1	18.50	2.95
Area 2	20.75	3.52
Area 3	19.75	3.95
Area 4	20.50	3.22
MARBLE SETTERS & TILE LAYERS:		
Area 1	17.69	4.66
MARBLE FINISHERS:		
Area 1	14.14	3.80
MARBLE & TILE FINISHERS:		
Area 1	15.91	5.68
PAINTERS:		
Area 1:		
Brush; Painter Burner	18.37	4.67
Paperhangers	18.87	4.67
Sandblaster; Iron, Steel and Bridge (swing stage)	19.37	4.67
Sheet Rock Tapers	19.37	4.67
Brush (swing stage); Spray	18.62	4.67
Steeplejack	20.02	4.67
Area 2:		
Brush	18.67	4.68
Brush Painter, Structural Steel; Paint Burner	18.79	4.68
Swing Stage, under 13 stories; Sandblaster; Pressure Roller Operator; Paperhanger	18.92	4.68
Swing stage, over 13 stories	19.04	4.68

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 2: (Cont'd):		
Paste Machine Operator	19.17	4.68
Spray Painter; Steeplejack	19.92	4.68
Taper	19.94	4.68
Area 3:		
Brush	15.00	4.12
Brush or roller (swing (stage):Paperhanger Taper (sheet rock)	15.50	4.12
Spray; Sandblaster	16.00	4.12
Spray and Sandblast (swing stage)	16.50	4.12
Steeplejack	17.00	4.12
Area 4:		
Brush; Pot Tender	18.57	4.14
Paperhangers; Paste Machine Operator; Iron and steel	18.82	4.14
Spray; Taper; Sandblaster	19.07	4.14
Sign Painter	19.22	4.14
Iron and Steel Spray Painter	19.57	4.14
Steeplejack	19.32	4.14
High Iron and Steel Construction, Bridges over 30 ft: Brush; Steeplejack (brush)	20.32	4.14
Steel, Sandblaster, Waterblaster, Power Cleaning, Steam Cleaning	20.82	4.14
Steeplejack (Spray)	21.82	4.14
Parking Lot Striping Work and/or Highway Markers:		
Traffic Delineating Device Applicator	14.83	2.00+b
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	14.30	2.00+b

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 4 (Cont'd):		
Parking Lot Striping Work and/or Highway Markers (Cont'd):		
Slurry Seal Operation:		
Mixer Operator	$13.95	$2.00+b
Squeegee; Applicator Operator and Shuttle	12.37	2.00+b
Top	10.39	2.00+b
PLASTERERS:		
Area 1:		
Plasterers	21.03	4.16
Plasterers/Lathers working on single family homes and apartments up to and including 3 stories	18.03	4.16
Area 2:		
Plasterers	25.40	
Plasterers/Lathers working on single family homes and apartments up to and including 3 stories	22.40	
Area 3	21.77	
Area 4	18.07	3.35
Area 5	19.62	5.17
Area 6:		
Plasterers	15.57	4.41
Nozzle operator	15.69$	4.41
PLASTERERS' TENDERS:		
Area 1	16.76	8.26
Area 2	12.75	6.10
Area 3:		
Plasterers Tenders	16.71$	8.11
Plasterers Tenders working on single family homes and apartments up to and including 3 stories	13.71$	8.11
Area 4:		
All work except Residential work	14.34	7.96

(11)

	Basic Hourly Rates	Fringe Benefits
PLASTERERS' TENDERS (Cont'd):		
Area 4 (Cont'd):		
Residential work (does not apply to Vandenberg Air Force Base, Point Arguello, or Camp Roberts)	$12.34	$7.96
Area 5:		
Plasterers Tenders	17.07	7.42
Plasterers Tenders working on single family homes and apartments up to and including 3 stories	15.07	7.42
Area 6	16.25	6.10
PLUMBERS; STEAMFITTERS:		
Area 1		
Zone 1	21.48	8.42
Zone 2	23.73	8.42
Zone 3	24.98	8.42
Area 2	18.14	5.53
Area 3	23.14	5.53
REFRIGERATION AND AIR CONDITIONING:		
Area 1	20.19	8.40
ROOFERS:		
Area 1	14.54	5.16
Area 2	15.80	3.85
Area 3	17.65	5.50
Area 4	18.97	5.685
Area 5	17.055	2.435
SHEET METAL WORKERS:		
Area 1	20.38	6.04
Area 2	19.30	3.72
Area 3	21.09	4.77
Area 4	19.93	4.62
Area 5	20.08	4.28
Area 6	19.92	4.96
Area 7	23.80	3.33
SOFT FLOOR LAYERS:		
Area 1	18.45	3.94
Area 2	19.07	4.75
SPRINKLER FITTERS:		
Area 1	21.87	3.23
Area 2	24.07	7.54

	Basic Hourly Rates	Fringe Benefits
TERRAZZO WORKERS:		
Area 1	$19.76	$5.15
Area 2	20.42	3.80
TILE SETTERS:		
Area 1	19.76	5.15
Area 2	20.65	4.00
Area 3-A	19.50	4.10
Area 3-B	24.50	4.10
Area 4-A	17.00	2.30
Area 4-B	20.00	2.30
Area 5	16.45	4.55
LABORERS:		
Area 1:		
Group 1	16.42	8.18
Group 2	16.57	8.18
Group 3	16.77	8.18
Group 4	17.07	8.18
Group 5	17.27	8.18
Tunnel Laborers:		
Group 1	17.33	8.18
Group 2	17.45	8.18
Group 3	17.61	8.18
Group 4	17.89	8.18
Residential work:		
Clean-up; Landscaping; Fencing (Chain link and wood)	12.60	8.18
All other work	13.60	8.18
Area 2:		
Group 1	14.42	8.18
Group 2	14.57	8.18
Group 3	14.77	8.18
Group 4	15.07	8.18
Group 5	15.27	8.18
Tunnel Laborers:		
Group 1	15.33	8.18
Group 2	15.45	8.18
Group 3	15.61	8.18
Group 4	15.89	8.18
Residential work:		
Clean-up; Landscaping; Fencing (Chain link and wood)	10.60	8.18
All other work	11.60	8.18
GUNNITE LABORERS:		
Areas 1 & 2:		
Group 1	15.91	8.06
Group 2	14.96	8.06
Group 3	13.70	8.06

(12)

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS*:		
DREDGING:		
Hydraulic Suction Dredges:		
Lever operator	$19.10	$7.35
Deckmate; Watch Engineer; Welder	18.77	7.35
Winch (Stern winch on dredge)	18.22	7.35
Bargehand; Deckhand; Firefighter; Oiler; Leveehand	17.68	7.35
Dozer	18.88	7.35
Clamshell Dredges:		
Lever operator	19.35	7.35
Deckmate; Watch Engineer	18.77	7.35
Barge Mate	18.29	7.35
Bargehand; Deckhand; Firefighter; Oiler	17.68	7.35
POWER EQUIPMENT OPERATORS:		
Group 1	17.50	7.35
Group 2	17.78	7.35
Group 3	18.07	7.35
Group 4	18.21	7.35
Group 5	18.83	7.35
Group 6	18.54	7.35
Group 7	18.66	7.35
Group 8	18.83	7.35
Group 9	18.96	7.35

Ironworkers (Cont.from the right side of the page):
City Halls: City Hall of Bakersfield, El Centro, Eureka, Fresno, Los Angeles, Napa, Oakland, Redding, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Stockton and Ventura.

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS*:		
Group 1	$15.97	$7.26
Group 2	16.05	7.26
Group 3	16.11	7.26
Group 4	16.20	7.26
Group 5	16.23	7.26
Group 6	16.25	7.26
Group 7	16.29	7.26
Group 8	16.30	7.26
Group 9	16.35	7.26
Group 10	16.38	7.26
Group 11	16.43	7.26
Group 12A	16.45	7.26
Group 12B	16.48	7.26
Group 13	16.50	7.26
Group 14	16.75	7.26
Group 15	17.00	7.26
Group 16	17.10	7.26
Group 17	17.20	7.26
Group 18	17.50	7.26
Group 19	18.00	7.26

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

*Divers: Shall receive a minimum of 8 hrs. pay for any day or part thereof.

*Ironworkers: Where the project is located 60 mi. or more from the City Halls indicated below, the following amount shall be added to the Base Pay:
60-100 mi.:$18.00/day
Over 100 mi.: $24.00 per day
For list of City Halls, see left side of pg.

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day
b. Employer contributes $.80 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years$1.13 per hour to Vacation Fund, 5 years but less than 10 years$1.48 per hour to Vacation Fund, over 10 years$1.83 per hour to Vacation Fund.

*DIVERS AND *IRONWORKERS, SEE PAGE 5.

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties (excluding Edwards AFB and China Lake Naval Weapons Center)
Area 3: Los Angeles County
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County
Area 7: Orange County
Area 8: Edwards Air Force Base and China Lake Naval Weapons Center

CARPENTERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

CEMENT MASONS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining counties

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono, and San Bernardino Counties
Area 7: San Luis Obispo County
Area 8: Santa Barbara (Remainder of County)
Area 9: Ventura County
Area 10: Point Arguello and Vendenberg Air Force Base
Area 11: China Lake Naval Ordnance Test Station and Edwards Air Force Base

ELEVATOR CONSTRUCTORS:
Area 1: Imperial and Inyo Counties; Kern County (south of Tehachapi Range); Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

AREA DESCRIPTIONS (Cont'd)

GLAZIERS:
Area 1: Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties
Area 2: Imperial County
Area 3: Inyo, Kern, Mono and San Luis Obispo Counties

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County of County)
Area 3: Los Angeles County
Area 4: Inyo, Mono, and San Bernardino Counties
Area 5: Riverside County
Area 6: San Luis Obispo County
Area 7: Ventura County
Area 8: Point Arguello and Vandenberg Air Force Base
Area 9: China Lake Naval Ordnance Test Station and Edwards Air Force Base
Area 10: Santa Barbara (Remainder of County)

MARBLE SETTERS: (4 areas)
Area 1: Imperial County;Area 2: Los Angeles County;Area 3: Riverside and San Bernardino County; Area 4: Orange County

MARBLE AND TILE SETTERS:
Area 1: San Luis Obispo and Santa Barbara Counties, including the Channel Islands of Santa Barbara County

MARBLE FINISHERS:
Area 1: Imperial County

MARBLE AND TILE FINISHERS:
Area 1: Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties

PAINTERS:
Area 1: Imperial, Orange, and Riverside Counties; Los Angeles County (Pomona Area); San Bernardino County (excluding western portion)
Area 2: Inyo County; Los Angeles County (except Pomona Area); Mono County; San Bernardino County (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area); Kern County (east of the Los Angeles Aqueduct)
Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)
Area 4: San Luis Obispo, Santa Barbara, and Ventura Counties

AREA DESCRIPTIONS (Cont'd)

PLASTERERS:
Area 1: Los Angeles and Orange Counties
Area 2: Imperial, Riverside, and San Bernardino Counties
Area 3: San Luis Obispo County
Area 4: Santa Barbara County
Area 5: Ventura County
Area 6: Kern, Inyo, and Mono Counties

PLASTERERS' TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside, and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo and Santa Barbara Counties
Area 5: Ventura County
Area 6: China Lake Naval Ordnance Test Station and Edwards Air Force Base

PLUMBERS; STEAMFITTERS:
Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties
Area 3: Edwards Air Force Base, Naval Weapons Center and China Lake Naval Ordnance Test Center

REFRIGERATION and AIR CONDITIONING:
Area 1: Los Angeles and Orange Counties
Area 2: Riverside and San Bernardino Counties

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange, and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties; Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (Remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara, and Ventura Counties
Area 7: Edwards Air Force Base and China Lake Naval Weapons Base

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino, and Ventura Counties

*SEE ZONE DEFINITIONS ON PAGE 9 AT THE BOTTOM.

AREA DESCRIPTIONS (Cont'd)

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, and Mono Counties, Orange County (except Santa Ana), Riverside County, San Bernardino County (except Ontario); San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Los Angeles City and area within 25 miles and Pomona Area; Orange County (Santa Ana); San Bernardino County (Ontario); and Ventura County (Santa Paula, Point Mugu and Port Hueneme)

TERRAZZO WORKERS:
Area 1: Imperial County
Area 2: Remaining Counties

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, and Ventura Counties
Area 3-A: Riverside and San Bernardino Counties (excluding Fort Irwin Training Center, 29 Palms Marine Base, and China Lake Naval Base)
Area 3-B: Fort Irwin, 29 Palms Marine Base, and China Lake Naval Base
Area 4-A: Inyo, Kern and Mono Counties (excluding China Lake Naval Weapons Center and Edwards Air Force Base)
Area 4-B: China Lake Naval Weapons Center and Edwards Air Force Base
Area 5: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties

LABORERS:
Area 1: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordance Test Center, Vandenberg Air Force Base
Area 2: Remainder of Counties

LABORERS
AREAS 1 and 2

Group 1: Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry packing of concrete, plugging, filling of Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Gas, oil and/or water pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Material Hose operator (walls, slabs, floors, and decks); Rigging and Signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee operator, Shuttle, Top); Striper, Concrete or other paved surfaces; Tar and Mortar, Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

PLUMBERS; STEAMFITTERS (FROM PAGE 8):
Area 1:
Zone Definitions:
Zone 1: Remainder of area
Zone 2: Camp Pendleton, Camp Roberts, Edwards Air Force Base, George Air Force Base, Vandenberg Air Force Base
Zone 3: Fort Irwin Army Base, Marine Corps Logistic Base at Nebo, Marine Corps Logistic Base at Yermo, Nicolaus Island Naval Base, 29 Palms Marine Base

LABORERS (Cont'd)
AREAS 1 and 2 (Cont'd)

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer. Chucktender; Chute handler, pouring concrete, the handling of the Chute from Ready Mic Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters, and sidewalks; Concrete Curer, Impervious Membrane and Form Oiler; Cutting Torch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, oil and/or water Pipeline Wrapper; Pot Tender and Form, Guinea Chaser; Headerboard, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (Lead); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luta, Ironer and Asphalt Spreader Boxes (all types); Buggymobile, Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, oil and/or water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench Multi-plate; Kettle, Pot and asphalt appliers, Lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools; Vibrating Machines, Pavement Breakers, Air Blasting, Come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's Backup, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rock Slinger; Rotary Scarifier or Multiple Head Concrete Chipping Scarifier; Steel Headerboard and Guideline Setter; Tampers, Barko, Wacker, and similar type; Trenching Machine, hand propelled

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Over-size Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzle, water blasting; Welding in connection with Laborers' work

Group 5: Blaster Powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller; All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

GUNNITE

Group 1: Nozzle and Rod

Group 2: Gun

Group 3: Rebound

LABORERS (Cont'd)
TUNNEL

Group 1: Batch Plant Laborers; Bull Gang Mucker, Track; Concrete Crew, including Rodders and Spreaders; Changehouse; Dump; Dump-(outside); Swamper (Brake and Switch on tunnel work); Tunnel materials handling; Tool

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Tender; Vibrator operator, Jackhammer, pneumatic tools (except Driller; Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Blaster, Driller, Powder; Chemical Grout Jet; Cherry Picker; Grout Gun; Grout Mixer; Grout Pump; Jackleg Miner; Jumbo; Kemper and other pneumatic concrete Placer Operator; Miner, tunnel (hand or machine); Powder (Primer House); Primer; Shotcrete; Steel Form Raiser and Setter; Timber; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzle; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

POWER EQUIPMENT OPERATORS

Group 1: Brake; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty Repair; Tender; Pump; Signal; Switch

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer. Skip type, Conveyor; Firefighter; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or compressor; Rotary Drill Helper (Oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Firefighter; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Radio (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Rosa Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireigheer; Boring Machine; Box or Mixer (asphalt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motor (up to and including 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Signal; Hydra-Hammer-Areo Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 feet)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engineer; Derrick (Oilfield type); Drilling Machine Operator; Derrick (canal lift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (asphalt or concrete); Mechanical Finisher (Concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skip-loader (Crawler and wheel type, over 3/4 yard and up to and including 1½ yd.s); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 HP, flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tons up to and including 30 tons); Welder-general

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator (up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repair; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey, Euclid, Sierra and similar type); Material Hoist; Mucking Machine (1/4 yard rubber tired, rail or track or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skip-loader (Crawler and wheel type, over 1½ yds., up to and including 6½ yds.); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel HP and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor (single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yds. M.R.C.) (Long-boom pay applicable); Self-propelled Curb and Gutter Machine

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Crane, over 25 ton up to and including 100 tons M.R.C. (Long boom pay applicable); Derrick Barge (Long-boom pay applicable); Dual Drum Mixer; Heavy Duty Repair Welder combination; Hoist, Stiff-legs, Guy Derrick or similar type, up to and including 100 tons (Long-boom pay applicable); Monorail Locomotive (diesel, gas or electric); Motor Patrol-blade Operator (single engine); Multiple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar) (over 25 yards and up to 50 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. M.R.C) (Long-boom pay applicable); Tower Crane Repair; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long-boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more) (Long boom pay applicable); Mass Excavator, less than 750 cu. yds.; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine; Pipe Mobile Machine; Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired Self-loading Scraper (paddle wheel, euger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat; Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; Highline Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yds.)

TRUCK DRIVERS

Group 1: Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than 6 tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Boot, Cement Distributor; Fuel Truck; Water Truck, 2 axle

TRUCK DRIVERS (Cont'd)

Group 6: Dump, less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 6½ yards

Group 8: Truck Repair Helper

Group 9: Water Truck, 3 or more axles

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working Truck including Winch, but limited to truck applicable to Pipeline and Utility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tire (50¢ per hour additional for tire)

Group 11: Transit-Mix, 3 yards or more; Dumpcrete, 6½ yards and over

Group 12A: Driver of vehicle or combination of vehicles of 4 or more axles

Group 12B: Driver of oil spreader truck

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame or Swedish Crane, or similar type of equipment Driver; Fork Lift Driver; Roas Carrier, highway

Group 15: All off-highway equipment within Teamsters' jurisdiction (off highway combination of vehicles or equipment with multiple power sources, $1.00 per hour additional); Dump, 25 yds. or more; Truck Repair

Group 16: Truck Repair Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MARYLAND
DECISION NO.: MD 85-3045
SUPERSEDEAS DECISION NO.:
MD 80-3047, dated August 29, 1980, in 45 FR 57922
DESCRIPTION OF WORK: Heavy and Highway Construction

COUNTIES: Allegany and Garratt
DATE: Date of Publication

HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	15.34	1.55
CARPENTERS	14.26	3.74
CEMENT MASONS	16.10	1.50
ELECTRICIANS		
Allegany County	15.00	3.50+ 3.75%
Garrett County	15.40	3.50+ 3.75%
IRONWORKERS: Structural and Reinforcing	15.60	3.55
LABORERS:		
Water Boy	10.20	3.70
Laborer, handy man, tool checker, dumpman, spotter, landscape wkr.	10.45	3.70
Power tool operator, mason & plaster tender, mortar mixer by hand, machine, scaffold builder, hod carrier, concrete puddler, pipelayer rammer, grade checker, tamper, asbestos worker burner, barco tamper	10.61	3.70
Blaster/dynamite, diamond bit driller, air track driller	10.83	3.70
Tunnel workers, caisson, driller, mucker	11.47	3.70
Gunnite work: Nozzleman, gun operator, ground lab.	10.61	3.70
LINEMEN-Allegany and Garrett (East of the 219 at the Lake)		
Lineman	15.00	3.50+ 3.75%
Equipment Operator	14.25	3.50+ 3.75%
Truck Driver, Groundmen	9.75	3.50+ 3.75%
LINEMEN-Garrett (West of Rte. 219 at the Lake)		
Lineman	15.40	3.50+ 3.75%
Equipment Operator	14.65	3.50+ 3.75%
Truck Driver, Groundmen	10.15	3.50+ 3.75%
PILEDRIVERMEN	14.66	3.74
HEAVY CONSTRUCTION		
POWER EQUIPMENT OPERATORS:		
Group 1	15.70+a	3.30+b
Group 2	15.15	3.30+b
Group 3	14.56	3.30+b
Group 4	14.08	3.30+b
Group 5	13.64	3.30+b
Group 6	13.09	3.30+b
HIGHWAY CONSTRUCTION		
POWER EQUIPMENT OPERATORS:		
Group 1	15.49+a	3.30
Group 2	14.89	3.30
Group 3	14.25	3.30
Group 4	13.83	3.30
Group 5	13.34	3.30
Group 6	12.85	3.30
TRUCK DRIVERS:		
Group 1	11.78	3.45
Group 2	12.00	3.45
Group 3	12.28	3.45
Group 4	12.55	3.45
Group 5	12.87	3.45
Group 6	13.23	3.45
Group 7	13.57	3.45

Footnotes:

a-Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:
130' to 169' plus $ .40
170' to 209' plus .60
210' to 249' plus .80
250' to 299' plus 1.00
300' & over plus 1.25

b-Paid holidays include New Year's Day, July 4, Memorial Day, Veteran's Day, Christmas Day, & Thanksgiving Day.

Welder - receives rate prescribed for craft performing operation to which welding is incidental.

DECISION NO.: MD 85-3045

HEAVY AND HIGHWAY CONSTRUCTION CLASSIFICATIONS

Group 1 - Operators handling or setting steel stone, pre-stressed concrete or machinery tower cranes.

Group 2 - Backfiller, backhoe, concrete mixing plant, batching plants, cable way, derrick boat dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard guage locomotive trenching machine, tunnel mucking machine, whirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over 4 welders top scale (more than 6, another man), Eimco type overhead loader, wellpoint system, mighty midget with compressor, equipment foreman, twin engine scraper (25 yds, & over), mechanic, mechanic's welder, grader, all bulldozers, tire maintenance truck.

Group 3 - Tractor with attachments (2 or more), front end loader (up to and including 2 yds.)

Group 4 - Concrete mixer, concrete pump, one drum hoist, narrow, gauge locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 C.F.M.), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, excavating scoop, finsihing machine full float, longitudinal float, screeding machine, concrete spreader, sub grader.

Group 5 - Fireman, truck crane oiler, wheel tractor, grease truck operator.

Group 6 - Oiler, greaser, mechanic's helper, single compressor, over 180 C.F. and up to 210 C.F.M.

TRUCK DRIVER CLASSIFICATIONS

Group 1 - Dumpmen

Group 2 - Pick-ups, dump trucks (under 5 yds., capacity), straight trucks.

Group 3 - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds. capacity), Transit mix, dumps (5 to 9 yds, capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks, dispatcher, yardmen.

Group 4 - Dump trucks (10 to 15 yd. capacity)

Group 5 - Dump trucks (over 15 yd. capacity), buttom and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumpcretes or batch trucks, specialized earth moving equipment, Off-highway tandem back-dump, twin engine equipment & double hitched equipment (where not self-loaded).

Group 6 - All equipment listed in Group 5 over 49 tons to 59 tons.
Group 7 - All equipment listed in Group 5 over 59 tons.

STATE: Missouri & Kansas

COUNTIES: Cass,Clay,Jasckson,Platte, Ray,Henry,Johnson, & Lafayette Cos., Missouri; Johnson & Wyandotte Cos., Kansas

DECISION NO: MO85-4038

DATE: Date of Publication

Supersedes Decision No. MO84-4106 dated November 30, 1984 in 49 FR 47157.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories) and heavy and highway construction in Johnson & Wyandotte Cos., Kansas only.

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$17.29	4.85
Boilermakers	17.345	3.25
Bricklayers & Stonemason	16.54	3.00
Carpenters:		
Zone 1-Cass,Clay,Jackson,Platte & Ray Cos., Mo.; Johnson & Wyandotte Cos.,Kansas: Carpenters, Lathers, Millwrights & Pile-drivermen	16.05	2.67
Zone2-Henry County, Mo.:		
Carpenters & Lathers	13.70	2.67
Millwrights & Pile-drivermen	16.05	2.67
Zone 3-Johnson & Lafayette Cos., Mo.:		
Carpenters & Lathers	14.775	2.67
Millwrights & Pile-drivermen	16.05	2.67
Cement Masons (Building Construction):		
Zone 1-Casa,Clay,Jackson,Lafayette,Platte, & Ray Cos., Mo.; Johnson & Wyandotte Cos., Kansas:		
Cement Masons	15.895	2.38
Zone 2-Henry & Johnson Cos., Mo.	13.98	
Cement Masons (Heavy & Highway Construction): Johnson & Wyandotte Cos., Kansas	15.87	2.38
Electricians:		
Zone 1-Western half of Clay & Jackson Cos., Mo. not including Blue Springs; Northern half of Platte Cos., Mo.; Northwestern portion of Cass Cos., Mo. not including Pleasant Hill:		
Electricians	16.18	10%+ 3.01
Electricians(cont'd):		
Zone 2-Henry,Johnson & Lafayette Cos., Mo. & remainder of Clay,Jackson,Platte&Cass Cos.,Mo.:		
Electricians (contracts exceeding 2,000 man hrs.	16.18	10%+ 3.01
Electricians(contracts not exceeding 2,000 man hrs.	15.18	10%+ 3.01
Zone 3-Ray Cos., Mo.:		
Electricians (contracts exceeding 2,000 man hrs.	16.18	10%+ 3.01
Electricians (contracts not exceeding 2,000 man hrs.	14.58	10%+ 3.01
Zone 4-Wyandotte County, Kansas	16.18	10%+ 3.01
Zone 5-Johnson County (that portion east of Monticello, Olathe, & Spring Hill Townships), Kansas	16.18	10%+ 3.01
Johnson County (that portion west of Aubry, Oxford & Shawnee Townships), Kansas	15.55	3%+ 2.13
Elevator Constructors	17.445	3.29 + a
Elevator Constructors' Helpers	70%JR	3.29 + a
Elevator Constructors' Helpers (Prob.)	50%JR	
Glaziers	14.665	3.56+ 17.14%
Ironworkers:		
Zone 1-Cass,Clay,Jackson,Platte,Ray,Henry, Johnson & Lafayette Cos., Mo.: Johnson & Wyandotte Cos.,Kansas	17.51	3.37

(25)

DECISION NO. MO85-4038

PAGE 2

	Basic Hourly Rates	Fringe Benefits
Laborers:		
Building Construction:		
Zone 1-Casa,Clay,Jackson,& Platte Cos., Mo.; Johnson & Wyandotte Cos., Kansas:		
Group 1	12.55	2.50
Group 2	12.70	2.50
Group 3	12.85	2.50
Zone 2-Lafayette & Ray Cos., Mo.:		
Group 1	11.55	2.50
Group 2	11.70	2.50
Group 3	11.85	2.50
Zone 3-Henry & Johnson Cos., Mo.:		
Group 1	10.075	3.10
Group 2	10.175	3.10
Group 3	10.40	3.10
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 4-Johnson & Wyandotte Cos., Kansas:		
Group 1	13.02	3.60
Group 2	13.82	3.60
Line Construction:		
Zone 1-Cass,Clay,Jackson,Platte & Ray Cos., Mo.;Wyandotte & Johnson Cos., Kansas:		
Linemen	18.33	8⅛%+ 1.25
Linemen operator	17.10	8⅛%+ 1.25
Groundman powderman	12.84	8⅛%+ 1.25
Groundman	12.23	8⅛%+ 1.25
Zone 2-Cass,Clay,Jackson,Platte,Ray,Henry, Johnson & Lafayette Cos., Mo.; Wyandotte Co. & Johnson Co.-that portion east of Monticello,Olathe & Spring Hill Townships,Kansas: Line Construction(Telephone & telegraph Work including C.A.T.V. work): Cable Splicers;air pressure technicians; central office equipment man	10.96	3%+.45
Telephone lineman & installer repairman; C.A.T.V. terminator;		
Line Construction (cont'd):		
Zone 2-equipment operator (¾ yd. backhoe & larger & D-4 crawlers & larger	$10.39	3%+.45
Equipment operator (trenchers & all other equipment)	9.11	3%+.45
Groundman-winch driver	7.87	3%+.45
Groundman	6.36	3%+.45
Line Construction (Railroad & Cross Country Transmission Lines):		
Zone 3-Wyandotte Co. & Johnson Co.-that portion east of Monticello, Olathe & Spring Hill Townships:		
Lineman	15.50	3⅛%+ 1.06
Lineman operator	14.36	3⅛%+ 1.06
Groundman, powderman	10.79	3⅛%+ 1.06
Groundman	10.09	3⅛%+ 1.06
Pole Treating:		
Pole treating specialist	16.24	3⅛%+ 1.06
Pole treating inspector	15.50	3⅛%+ 1.06
Pole treating truck driver	10.79	3⅛%+ 1.06
Pole treating groundman	10.09	3⅛%+ 1.06
Marble & tile setters	17.52	7%+1.2
Marble & tile setters finishers	14.40	
Painters:		
Zone 1-Cass,Clay,Henry, Jackson,Johnson(excluding Whiteman AFB), Lafayette,Platte & Ray Cos., Mo.;Johnson & Wyandotte Cos.,Kansas:		
Brush & tapers	16.04	2.00
Spray	17.04	2.00
Zone 2-Johnson Co., Mo. Whiteman AFB Only):		
Brush	14.50	
Spray	15.50	
Plasterers:		
Zone 1-Cass,Clay,Jackson,Lafayette,Platte & Ray Cos., Mo.; Johnson		

(26)

	Basic Hourly Rates	Fringe Benefits
Plasterers(cont'd):		
Zone 1-& Wyandotte Cos., Kansas	18.05	
Zone 2-Henry & Johnson Cos., Missouri	13.66	
Pipefitters	17.56	3.32
Plumbers:		
Zone 1-Platte,Clay,Jackson,&Cass Cos., Mo.; Johnson & Wyandotte Cos. Kansas	18.46	2.70
Zone 2-Johnson,Henry,Ray & Lafayette Cos.,Mo.	16.02	2.70
Power Equipment Operators:		
Building Construction:		
Group I	15.86	4.05
Group II	15.51	4.05
Group III:		
(a)	10.45	4.05
(b)	13.61	4.05
(c)	11.25	4.05
(d)	13.86	4.05
Group IV	16.11	4.05
Group V	15.76	4.05
Group VI	16.36	4.05
Group VII:		
(a)	15.71	4.05
(b)	15.46	4.05
(c)	13.46	4.05
Group VIII	16.86	4.05
Group IX	16.36	4.05
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 1-Johnson & Wyandotte Cos., Kansas:		
Group I	14.60	4.07
Group II	14.35	4.07
Group III	13.65	4.07
Group IV:		
Oilers	9.63	4.07
Diler drivers (all types)	12.65	4.07
Roofers	16.48	2.91
Sheet metal workers	16.75	2.78
Soft floor layers	12.89	3.67
Sprinkler fitters	19.28	3.21
Terrazzo Workers:		
Terrazzo workers	17.56	12%
Terrazzo workers finishers	13.58	
Terrazzo base machine	13.93	

	Basic Hourly Rates	Fringe Benefits
Truck Drivers:		
Building Construction:		
Group I	$14.335	2.75
Group II	14.385	2.75
Group III	14.46	2.75
Group IV	14.585	2.75
Group V	14.485	2.75
Group VI	14.685	2.75
Group VII	14.535	2.75
Group VIII	14.435	2.75
Truck Drivers:		
Site Preparation & Grading,Heavy & Highway Construction:		
Zone 1-Johnson & Wyandotte Cos.,Kansas:		
Group I	14.17	4.25
Group II	14.02	4.25
Group III	13.71	4.25
Group IV	13.51	4.25
Group V	13.29	4.25

FOOTNOTE: a-Employer contributes 8% of basic hourly rate for over 5 yrs. of service & 6% of basic hourly rate for 6 mos. to 5 yrs. service as Vacation Pay Credit. Also 7 paid Holidays, A thru G.

WELDERS - Receive rates prescribed for craft performing operation to which welding is incidential.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

PAID HOLIDAYS:
A-Christmas Day, B-New Year's Day, C-Labor Day, D-Memorial Day, E-Independence Day, F-Thanksgiving Day, G-Friday after Thanksgiving Day.

CLASSIFICATION DEFINITIONS

LABORERS:(BUILDING CONSTRUCTION - ZONES 1 and 2)
GROUP I
General labor; wiremesh handlers or setters; carpenter tender; track men; salamander tenders; landscape man; sod layers; wrecker (for alterations or entire projects); Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds; georgie buggies (self-propelled); fork lift; hosemen; insulation man.
GROUP II
Vibrator operator; fork lift (masonry, brick tender, plaster tender, stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding).
GROUP III
Barco, Jackson or similar tam operators; asphalt rakers; power men; mastic hot kettle man; sandblasting and gunnite nozzleman; wagon and churn drill operators; cutting torch or burner men.

LABORERS: (BUILDING CONSTAUCTION - ZONE 3)
GROUP I
General laborers - carpenter tenders, track men, wreckers, reinforcing rod carriers, and all other General laborers, plumbers labozers sewer work, water lines, conduit pipe, drain tile and duck lines, batter board man on pipe and ditch work
GROUP II
First Semi-Skill - Stone mason tenders, air tool operators, pier hole men working below ground, vibrator man, jack hammer, chipping hammer operators, material batch hopper man, scale man, spreader or screed man on asphalt machine, chain or concrete saw, brush feeders on pulverizers, swinging scaffold, cement handlers (bulk or sack), laser beam man
GROUP III
Second Semi-Skill - Plaster tenders, hod carrers, brick tenders, cutting torch and burner men, asphalt rakers, barco tamper, jackson or any similar tamps, power buggy operator, powderman, mastic kettlemen, sandblasting and gunnite nozzlemen, head pipe layer on sewer work, men working tunnels, head forms and stringline men, hot tar applicator.

LABORERS: Site Preparation (ZONE 4)
GROUP I
Carpenter tenders; salamander tenders; (dump man and ticket takers on stock piles;) loading trucks under bins, hoppers and conveyors, track men and all other general laborers; air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams, abutmentments and pier hole men working below ground); riprap pavers rock, block or brick; scaffolds over 10 feet not self supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only), crusher feeder; men handling creosote ties on creosote materials; man working with and handling epoxy material or materials (where special protection is required); topper or standing trees;

CLASSIFICATION DEFINITIONS (cont'd)

LABORERS: Site Preparation (ZONE 4)
GROUP I (cont'd)
batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used.
GROUP II
Spreader or screed man on asphatl machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline men on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar application; hand blade operators; manhole builders tenders and mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; manhole builder (brick or block); dynamite and powderman; welder; head pipe layer on sewer work.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)
Group I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barbergreene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mix plant, portable (job site); concrete mixer paver; crane-overhead; cureher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man; locomotives
GROUP II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws; self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and tenn/ sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine
GROUP III
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling materia less than 50 h.p.
GROUP IV
Clamshells, 100 ft. of boom or over (excluding jib); crane or rig 100 ft. of boom or over (excluding jib); draglines, 100 ft. of bo over (excluding jib); pile drivers, 100 ft. of boom or over

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION
Group V
Hoists - each additional drum over 1 drum
Group VI
Crane or rigs, over 200 ft. of boom
Group VII
Ready Mixed Concrete Plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator
Group VIII
Master Mechanic
Group IX
Crane - tower or climbing

POWER EQUIPMENT OPERATORS: (Site Preparation)
Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard guage; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; scoop operator - all types; scoops in tandem; self-propelled rotary drill (leroy or equal not air trec); shoval operator; side discharge spreader; sideboom cats; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2
Group II - A-frame truck, asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter;multiple compactor; pavement breaker, self-propelled, of the hydrahammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.
Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand;welding machine maintenance operator - 1.

CLASSIFICATIONS DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: (Site Preparation - Cont'd):
Group IV:
Oilers
Oiler driver (all types)

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over.

TRUCK DRIVERS (Building Construction):
Group I - Warehousemen and stock man
Group II - Flat beds; pick-ups; drum trucks, under 10 yds.
Group III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers
Group IV - Straddle trucks, wheel tractors (when used for towing); hydro lift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)
Group V - Distributor truck drivers and operators; oilers, greasers
Group VI - Mechanics; transit mix tractor trailer
Group VII - Transit mix, 5 yds. and over
Group VIII - Transit mix, under 5 yds.

TRUCK DRIVERS: (Site Preparation)
GROUP I
Mechanics & welders-field
GROUP II
A-frame low boy - boom truck driver
GROUP III
Insley wagons; dump trucks, excavating, 5 cu. yds and over; dumpsters; half-tracks; speedace; euclids and similar excavating equipment Material trucks, tandem two teams, semi-trailers, winch trucks; fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi
Group IV
One team; station wagons; pickup truck; material trucks, single axle tank wagon drivers, single axle
Group V
Oilers; greasers-field

SUPERSEDEAS DECISION

STATE: Missouri & Kansas COUNTIES: Cass,Clay,Jackson, Platte & Ray Missouri;Johnson & Wyandotte, Kansas

DECISION NO.: MO85-4037 DATE: Date of Publication

Supersedes Decision No. MO84-4102 dated October 26, 1984 in 49 FR 43176.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.29	4.85
BOILERMAKERS	17.345	3.25
BRICKLAYERS & STONE-MASONS	16.54	3.00
CARPENTERS	14.55	2.07
CEMENT MASONS	15.895	2.38
ELECTRICIANS:		
Buildings of (3) stories or less:		
ZONE 1 - Johnson County, Kansas (that portion of Johnson County west of Aubry,Oxford & Shawnee Twps.) Cass,Clay,Jackson,Platte & Ray Counties, Missouri; & Wyandotte County,Kansas & remainder of Johnson County, Kansas	8.50	10%+ 2.26
Buildings of over (3) stories:		
ZONE 1 - Western half of Clay & Jackson Cos., Missouri not including Blue Springs;Northern half of Platte County; Northwestern portion of Cass County,Missouri; not including Pleasant Hill	16.18	10%+ 3.01
ZONE 2 - Remainder of Cass,Clay,Jackson & Platte Counties, Missouri:		
Electricians (Contracts exceeding 2000 man hours)	16.18	10%+ 3.01
Buildings of over (3) stories:		
ZONE 3 - Electricians (contracts not exceeding 2000 man hours)	15.18	10%+ 3.01

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
ZONE 4 - Ray County, Missouri		
Electricians (contracts exceeding 2000 man hours	16.18	10%+ 3.01
Electricians (contracts not exceeding 2000 man hours	14.58	10%+ 3.01
ELEVATOR CONSTRUCTORS'	17.445	3.29+a
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	3.29+a
ELEVATOR CONSTRUCTORS' HELPER (PROB.)	50%JR	
GLAZIERS	14.665	3.56+ 17.14%
IRONWORKERS	17.51	3.37
LABORERS:		
Building Construction:		
ZONE I Cass,Clay, Jackson & Platte Cos. Missouri;Johnson & Wyandotte Cos., Kansas		
GROUP I	12.55	2.50
GROUP II	12.70	2.50
GROUP III	12.85	2.50
ZONE II (Ray Co. Missouri)		
GROUP I	11.55	2.50
GROUP II	11.70	2.50
GROUP III	11.85	2.50
LABORERS:		
Site Preparation & Grading		
ZONE 3 - Johnson & Wyandotte Counties, Kansas;Site Preparation, incidental paving & utilities Clay,Jackson,Platte & Ray Counties, Missouri		
GROUP I	13.02	3.60
GROUP II	13.82	3.60

	Basic Hourly Rates	Fringe Benefits
TILE & MARBLE SETTERS	16.55	10%
TILE SETTERS & MARBLE FINISHERS	14.40	
PAINTERS:		
Brush,roller & tapers	15.54	1.00
Spray	16.54	1.00
PLASTERERS	18.05	
PIPEFITTERS	17.56	3.32
PLUMBERS	15.02	2.70
POWER EQUIPMENT OPERATORS:		
Building Construction		
(ZONE 1)		
GROUP I	15.86	2.85
GROUP II	15.51	2.85
GROUP III:		
(a)	10.45	2.85
(b)	13.61	2.85
(c)	11.25	2.85
(d)	13.86	2.85
GROUP IV	16.11	2.85
GROUP V	15.76	2.85
GROUP VI	16.36	2.85
GROUP VII:		
(a)	15.71	2.85
(b)	15.46	2.85
(c)	13.46	2.85
GROUP VIII	16.86	2.85
GROUP IX	16.36	2.85
POWER EQUIPMENT OPERATORS:		
Site preparation & grading, Johnson & Wyandotte Counties, Kansas;Site Preparation, incidental paving & utilities Clay, Jackson, Platte & Ray Cos., Missouri		
(ZONE 2)		
GROUP I	14.60	4.07
GROUP II	14.35	4.07
GROUP III	13.65	4.07
GROUP IV		
(a)	9.63	4.07
(b)	12.65	4.07
GROUP V	14.85	4.07
ROOFERS:		
Roofers	16.48	2.91
SHEET METAL WORKERS	16.75	2.78
SOFT FLOOR LAYERS	12.89	3.67
SPRINKLER FITTERS	19.28	3.21

	Basic Hourly Rates	Fringe Benefits
TERRAZZO WORKERS:		
Terrazzo Workers	17.56	12%
Terrazzo Finishers	13.56	
Terrazzo Base Machine Operator	13.93	
TRUCK DRIVERS:		
Building Construction:		
(ZONE 1)		
GROUP I	14.335	2.75
GROUP II	14.385	2.75
GROUP III	14.585	2.75
GROUP IV	14.46	2.75
GROUP V	14.485	2.75
GROUP VI	14.685	2.75
GROUP VII	14.535	2.75
GROUP VIII	14.435	2.75
TRUCK DRIVERS:		
Site preparation & grading, Johnson & Wyandotte Counties, Kansas; Site preparation, Incidental paving & utilities Clay,Jackson,Platte & Ray Cos., Missouri		
(ZONE 2)		
GROUP I	14.17	4.25
GROUP II	14.02	4.25
GROUP III	13.71	4.25
GROUP IV	13.51	4.25
GROUP V	13.29	4.25

FOOTNOTES:
a - Employer contributes 8% of basic hourly rate for over 5 years of service & 6% of basic hourly rate for 6 mos. to 5 years service as Vacation Pay Credit.
Also 7 paid holidays A thru G.

PAID HOLIDAYS:
A-Christmas Day, B-New Year's Day, C-Labor Day, D-Memorial Day, E-Independence Day, F-Thanksgiving Day,G- Day after Thanksgiving Day

CLASSIFICATION DEFINITIONS

LABORERS: Building Construction (Zones 1 and 2)
GROUP I - General laborer;wiremesh handlers or setters; carpenter tender; track men; salamander tenders; landscape man; sod layers; wrecker (for alterations or entire projects); plumber labors (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds; georgie buggies (self-propelled); fork lift; hosemen; insulation man
GROUP II - Vibrator operator; fork lift (masonry), brick tender, plaster tender, stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding)
GROUP III - Barco, Jackson or similar tamp operators; asphalt rakers; power men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators; cutting torch or burner men

LABORERS: Site Preparation (Zone 3)
GROUP I - Carpenter tenders; salamander tenders; loading trucks under bins, hoppers and conveyors, track men and all other general laborers; air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams, abutments and pier hole men working below ground; riprap pavers rock, block or brick; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only), crusher feeder; man handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used.
GROUP II - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline men on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar application; hand blade operators; manhole builders tenders and mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; manhole builder (brick or block); dynamite and powderman; welder; head pipe layer or sewer work

CLASSIFICATION DEFINITIONS - (Cont'd)

POWER EQUIPMENT OPERATORS - Building Construction (Zone 1)
Group I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operator with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man; locomotives
GROUP II Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies; sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine
Group III -
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.
Group IV -
Clamshells, 100 ft. of boom or over (excl. jib); crane or rigs, 100 ft. of boom or over (excl. jib); draglines, 100 ft. of boom or over (excl. jib); pile drivers, 100 ft. of boom or over (excl. jib)
Group V
Hoists-each additional drum over 1 drum
Group VI
Crane or rigs, over 200 ft. of boom
Group VII
Ready Mixed Concrete Plants:
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator
Group VIII
Master Mechanic
Group IX
Crane-tower or climbing

CLASSIFICATION DEFINITIONS - (Cont'd)

POWER EQUIPMENT OPERATORS: Site Preparation (Zone 2)
GROUP I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers-2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drill-cat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader-fork lift; hoistline engine-2 active drums; locomotive operator, standard gauge; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump-2; push cat operator; quad-track; scoop operator-all types; scoops in tandem; self-propelled rotary drill (leroy or equal-not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operater; slip-form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator-2.
GROUP II - A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator elevating grader; greaser; hoisting engine-1 drum; letourneau rooter; multiple compactor; pavement breaker, self propelled, of the hydra-hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator, tractor operator over 50 h.p..
GROUP III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other then high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator-combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1.
GROUP IV
(a) Oiler
(b) Oiler drivers, all types
GROUP V - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over

CLASSIFICATION DEFINITIONS (Cont'd)

TRUCK DRIVERS - Building Construction (Zone 1)
GROUP I - Warehousemen and stock man.
GROUP II - Flat beds; pick-ups; dump trucks, under 10 yds.
GROUP III - Straddle trucks, wheel tractors (when used for towing); hydro lift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)
GROUP IV - Dump trucks, 10 yds. and over; steel drivers; semi truck drivers
GROUP V - Distributor truck drivers and operators; oilers, greasers and mechanics' tenders
GROUP VI - Machenics; transitmix;tractor trailer
GROUP VII - Transit mix, 5 yds. and over
GROUP VIII - Transit mix, under 5 yds.

TRUCK DRIVERS - Site Preparation (Zone 2)
GROUP I - Mechanics and welders
GROUP II - A-frame, lowboy and boom truck driver
GROUP III - Material trucks, tandem; two teams; semi-trailers; winch trucks-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment.
GROUP IV - One team; station wagons; pickpu trucks; material trucks, single axle; tank wagon drivers, single axle
GROUP V - Mechanics tender, oilers and greasers, field

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

STATE: Missouri COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren & City & County of St. Louis

DECISION NO.: MO85-4032 DATE: Date of Publication

Supersedes Decision No. MO84-4108 dated December 21, 1984 in 49 FR 49820.

DESCRIPTION OF WORK: Residential Projects, consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$20.57	$3.48
BRICKLAYERS; STONEMASONS	16.45	3.77
BOILERMAKERS	17.495	3.25
CARPENTERS:		
ZONE 1 - St. Louis City & County:		
Carpenters (including insulation)	16.61	3.00
Carpenters-reinsulator (not including pipe & duct insulation)	10.95	2.12
ZONE 2 - Remainder of Counties:		
Carpenters	16.61	3.00
ELECTRICIANS:		
ZONE I - City & County of St. Louis & St. Charles County	17.30	2.20+ 28½%
ZONE II - Franklin, Jefferson, Lincoln & Warren Cos. where the electrical contracts exceeds $15,000	17.30	2.20+ 28½%
ZONE III - Franklin, Jefferson, Lincoln, & Warren Cos. where electrical contracts does not exceed $15,000	14.78	2.20+ 28½%
ELEVATOR CONSTRUCTORS	18.47	3.29+a
ELEVATOR CONSTRUCTORS HELPERS	70%JR	3.29+a
ELEVATOR CONSTRUCTORS HELPERS (PROBATIONARY)	50%JR	
a-Employer contributes 8% of basic hourly rate for over 5 years' service & 6% of basic hourly rate for 6 mos. to 5 years as Vacation Pay Credit, also 7 paid holidays. A thru G.		
GLAZIERS	17.20	7.15+ 13.2%
IRONWORKERS	17.225	2.99
LABORERS:		
Zone I - St. Louis City & County:		
Laborers General	12.675	1.70
Laborers, site improvement	10.175	2.50
Plumber, laborer	15.65	2.50
Zone II - Lincoln & Warren Counties	13.77	2.80
Zone III - Jefferson Co.:		
Contracts less than $500,000.00:		
General laborer	13.60	2.30
Powderman	14.35	2.30
Mason tenders; plaster tender; grade checker; pipelayer	14.10	2.30
Contracts $500,000.00 or over:		
General laborer	14.95	2.50
Powderman	15.70	2.50
Mason tenders; plaster tender; grade checker; pipelayer	15.45	2.50
Zone IV - Franklin Co.:		
Contracts less than $500,000:		
General Laborers	13.00	1.95
Mason Tenders, Plumber Laborer, Plaster Tender	13.20	1.95
Contracts $500,000 or over:		
General Laborer	14.50	1.95
Mason tenders, Plumber laborer, plaster tender	14.70	1.95
Zone V - St. Charles Co.:		
Laborers, general	14.27	2.80
MARBLE SETTERS	15.96	3.145
MARBLE FINISHERS	17.50	
PAINTERS:		
Brush	16.00	2.53
Spray	18.00	2.53

	Basic Hourly Rates	Fringe Benefits
PIPEFITTERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Cos.)	19.85	6.08
PIPEFITTERS & PLUMBERS (Lincoln County)	19.85	6.08
PLUMBERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Counties	17.105	4.55
PLASTERERS	17.195	3.03
POWER EQUIPMENT OPERATORS:		
GROUP I	14.32	2.95
GROUP II	14.32	2.95
GROUP III	13.77	2.95
GROUP IV	13.32	2.95
ROOFERS:		
Composition; Slate & Tile	16.75	2.35
SHEET METAL WORKERS	18.44	3.10+ 3%
SPRINKLER FITTERS	21.11	3.42
TERRAZZO WORKERS	20.55	
TILE SETTERS	15.93	3.145
TILE WORKER FINISHER	14.12	2.605
TRUCK DRIVERS:		
GROUP 1	15.17	80¢p/h+ 55.00 per wk. +b
GROUP 2	14.00	"
GROUP 3	15.37	"
GROUP 4	15.47	"
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

b - Paid vacation of 3 days for 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any one contract year; 5 days paid vacation for 1,000 hours of service in any one contract year. Also 7 paid holidays A thru G.

FOOTNOTE:
A-Christmas Day, B-New Year's Day, C-Independence Day, D-Memorial Day, E-Labor Day, F-Thanksgiving Day, G-Friday after Thanksgiving Day

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1 : Trucks or trailers of a water level capacity of 11.99 cu. yds. or less
Group 2 : Fork lift trucks single axle, job site ambulances & pick-up trucks and flat bed trucks
Group 3 : Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including euclids, speedace and similar equipment of same capacity and compressors.
Group 4 : Trucks or trailers of a water level capacity of 22.0 cu. yds. and over including euclids, speedace and all floats, flat bed trailers, boom trucks, winch trucks, including small trailers, farm wagons, tilt top trailers, tool trailers, concrete pumps, concrete conveyors and gasoline tank trailers.

POWER EQUIPMENT OPERATORS

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car or derrick boat; dragline; dredge; gradeall, crawler or tire mounted; locomotive gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas electric or other powers); switch boat; & whirley.
GROUP II - Air tugger w/air compressor; anchor placing barge; asphalt spreader; athey force feeder loader (self-propelled); back-filling machine; boat operator-push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixer-mobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumpcrete machine; concrete spreader; conveyor, large (not-self-propelled) hoisting or moving brick and concrete into, or into and on floor level,one or both; crane, hydraulic rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons;drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jack-hammers and barco equipment); elevating grader; engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift;grader, road with power blade; highlift; hoist, concrete and brick (brick cages on concrete skips operating in or on tower, tower-mobile, or similar equipment); hoist, stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mixer-mobile, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix-job site; plant, heating-job-site; plant mixing job site; plant, power generating-job site;

POWER EQUIPMENT OPERATORS (Cont'd):

GROUP II (Cont'd)
pumps, two self-power, over 2" through 6" pumps, electric submersible, one through three, over 4" quad-track; roller, asphalt, top or subgrade; scoop tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine, tunnel boring machine; vibrating machine, automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine; mechanic on job site; mixer, paving; compressor (when operator run throttle); compressor-generator combination; compressor-pump combination;generator two 30 KW or over, or any number developing over 30 KW; generator pump combination; pumps, electric submersible, one through three, over 4".

GROUP III - Air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one;compressor, air (mounted on truck); concrete saw, self-propelled; conveyor, large (not self-propelled); conveyor, large (not-self-propelled) moving brick and concrete (distributing) on floor level; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; fireman;-form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over-8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixer with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane, pug mill operator; pump, sump-self-powered, automatic controller over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; sciasor lift (used for hoisting); curb finishing machine, tractor, small wheel type 50 h.p. & under with grader, blade and similar equipment.

GROUP IV - Boat-operated-outboard motor (job-site); conveyor (such as con-vay-it), regardless of how used; oiler; sweeper, floor.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

STATE: NORTH CAROLINA
COUNTIES: ALLEGHANY, ANSON, ASHE, AVERY, BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CALDWELL, CAMDEN, CARTERET, CASWELL, CHATHAM, CHEROKEE, CHOWAN, CLAY, CLEVELAND, COLUMBUS, CRAVEN, CURRITUCK, DARE,DUPLIN, EDGECOMBE, GATES, GRAHAM, GRANVILLE, GREENE, HALIFAX, HARNETT, HAYWOOD, HENDERSON, HERTFORD, HOKE, HYDE, IREDELL, JACKSON, JOHNSTON, JONES, LEE, LENOIR, McDOWELL, MACON, MADISON, MARTIN, MITCHELL MONTGOMERY, MOORE, NASH, NORTHAMPTON, PAMLICO, PASQUOTANK, PENDER, PERQUIMANS, PERSON, PITT, POLK, RICHMOND, ROBESON, ROCKINGHAM, RUTHERFORD, SAMPSON, SCOTLAND, STANLY, SURRY, SWAIN, TRANSYLVANIA, TYRRELL, VANCE, WARREN, WASHINGTON, WATAUGA, WAYNE, WILKES, WILSON, YANCEY.
DECISION NUMBER: NC85-3047 DATE: DATE OF PUBLICATION
Supersedes Decision Number NC82-1027, dated April 30, 1982, in 47 FR 18752.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (Does not include tunnels, building structures in rest area projects, railroad construction, and bascule/suspension/spandrell arch bridges, and bridges designed for commercial navigation and bridges involving marine construction, and other major bridges).

	Basic Hourly Rates	Fringe Benefits
ASPHALT LAY DOWN MAN	$ 5.54	
ASPHALT RAKER	5.69	
CARPENTER	6.76	
CARPENTER HELPER	5.39	
CONCRETE FINISHER	6.55	
ELECTRICIAN	8.07	
FORM SETTER (ROAD)	6.82	
IRONWORKER	9.08	
LABORER	4.84	
MASON (BRICK, BLOCK, STONE)	7.00	
MECHANIC	7.29	
MECHANIC HELPER	5.48	
OILER	5.75	
PAINTER (BRIDGE)	6.00	
PIPE LAYER	5.52	
POWER TOOL OPERATOR	6.53	
SIGN ERECTOR	5.29	
WEIGHMAN	4.84	
WELDER	8.14	
POWER EQUIPMENT OPERATORS:		
ASPHALT DISTRIBUTOR	6.04	
ASPHALT PAVER	6.25	
BULLDOZER	6.51	
BULLDOZER (UTILITY)	6.00	
CONCRETE CURB MACHINE	6.00	
CONCRETE FINISHING MACHINE	8.42	
CONCRETE PAVER	8.47	
CONCRETE SAW	7.96	
CRANE, BACKHOE, SHOVEL, & DRAGLINE (OVER 1 yd.)	7.18	
CRANE, BACKHOE, SHOVEL, & DRAGLINE (UNDER 1 yd.)	5.77	
DRILL OPERATOR	7.65	
GRADEALL	7.55	
GREASEMAN	5.39	
HYDROSEEDER	7.00	
LOADER	6.11	
MILLING MACHINE	6.61	
MOTOR GRADER (FINE GRADE)	7.31	
MOTOR GRADER (ROUGH GRADE)	6.54	
ROLLER (FINISH)	5.88	
ROLLER (ROUGH)	4.84	
SCRAPER	5.99	
SCREED ASPHALT	5.85	
STONE SPREADER	5.35	
STRIPING MACHINE OPERATOR	6.00	
SUBGRADE MACHINE	7.08	
SWEEPER	5.11	
TRACTOR (UTILITY)	5.09	
TRUCK DRIVERS:		
SINGLE REAR AXLE TRUCKS	4.84	
MULTI REAR AXLE TRUCKS	5.02	
HEAVY DUTY TRUCKS	5.48	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA
COUNTIES: ALAMANCE, ALEXANDER, BUNCOMBE, BURKE, CABARRUS, CATAWBA, CUMBERLAND, DAVIDSON, DAVIE, DURHAM, FORSYTH, FRANKLIN, GASTON, GUILFORD, LINCOLN, MECKLENBURG, NEW HANOVER, ONSLOW, ORANGE, RANDOLPH, ROWAN, STOKES, UNION, WAKE, YADKIN.
DECISION NUMBER: NC85-3046 DATE: DATE OF PUBLICATION
Supersedes Decision Number NC82-1027, dated April 30, 1982, in 47 FR 18752.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (Does not include tunnels, building structures in rest area projects, railroad construction, and bascule, suspension and spandrel arch bridges, bridges designed for commercial navigation, and bridges involving marine construction, and other major bridges).

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION:		
ASPHALT LAY DOWN MAN	$ 5.54	
ASPHALT RAKER	5.69	
CARPENTER	6.76	
CARPENTER HELPER	5.39	
CONCRETE FINISHER	6.55	
ELECTRICIAN	8.07	
FORM SETTER (ROAD)	6.82	
IRONWORKER	9.08	
LABORER	4.84	
MASON (BRICK, BLOCK, STONE)	7.00	
MECHANIC	7.29	
MECHANIC HELPER	5.48	
OILER	5.75	
PAINTER (BRIDGE)	6.00	
PIPE LAYER	5.52	
POWER TOOL OPERATOR	6.53	
SIGN ERECTOR	5.29	
POWER EQUIPMENT OPERATORS:		
ASPHALT DISTRIBUTOR	6.04	
ASPHALT PAVER	6.25	
BULLDOZER	6.51	
BULLDOZER (UTILITY)	6.00	
CONCRETE CURB MACHINE	6.00	
CONCRETE FINISHING MACHINE	8.42	
CONCRETE PAVER	8.47	
CONCRETE SAW	7.96	
CRANE, BACKHOE, SHOVEL, & DRAGLINE (OVER 1 yd.)	7.18	
CRANE, BACKHOE, SHOVEL, & DRAGLINE (UNDER 1 yd.)	5.77	
DRILL OPERATOR	7.65	
GRADEALL	7.55	
GREASEMAN	5.39	
HYDROSEEDER	7.00	
LOADER	6.11	
MILLING MACHINE	6.61	
MOTOR GRADER (FINE GRADE)	7.31	
MOTOR GRADER (ROUGH GRADE)	6.54	
ROLLER (FINISH)	5.88	
ROLLER (ROUGH)	4.84	
SCRAPER	5.99	
SCREED ASPHALT	5.85	
STONE SPREADER	5.35	
STRIPING MACHINE OPERATOR	6.00	
SUBGRADE MACHINE	7.08	
SWEEPER	5.11	
TRACTOR (UTILITY)	5.09	
TRUCK DRIVERS:		
TRUCKS - SINGLE REAR AXLE	4.84	
TRUCKS - MULTI REAR AXLE	5.02	
TRUCKS - HEAVY DUTY	5.48	
WEIGHMAN	4.84	
WELDER	8.14	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).

(43)

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA
COUNTIES: ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN, CHEROKEE, CHESTER, CHESTERFIELD, CLARENDON, COLLETON, DARLINGTON, DILLON, EDGEFIELD, FAIRFIELD, GEORGETOWN, GREENWOOD, HAMPTON, HORRY, JASPER, KERSHAW, LANCASTER, LAURENS, LEE, MARION, MARLBORO, McCORMICK, NEWBERRY, OCONEE, ORANGEBURG, SALUDA, SUMTER, UNION, WILLIAMSBURG.
DECISION NUMBER: SC85-3049 DATE: DATE OF PUBLICATION
Supersedes Decision Number SC82-1050, dated September 24, 1982, in 47 FR 42256.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (Does not include tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
ASPHALT LAY DOWN MAN	$ 4.43	
ASPHALT RAKER	4.84	
CARPENTER	6.56	
CARPENTER HELPER	5.30	
CONCRETE FINISHER	6.45	
CONCRETE FINISHER HELPER	4.98	
FLAGGER	4.43	
FORM SETTER (ROAD)	5.97	
GRADE CHECKER	4.86	
IRONWORKER - REINFORCING	7.96	
IRONWORKER - STRUCTURAL	9.40	
LABORER	4.43	
LUTEMAN	4.87	
MASON	7.27	
MECHANIC	6.52	
MECHANIC HELPER	4.61	
OILER	4.85	
PAINTER - BRIDGE	8.47	
PIPE LAYER	5.01	
POST DRIVER	6.83	
POWER TOOL OPERATOR	5.44	
WELDER	6.24	
POWER EQUIPMENT OPERATORS:		
ASPHALT DISTRIBUTOR	4.50	
ASPHALT PAVER	5.38	
ASPHALT PLANT	5.29	
BULLDOZER	5.91	
BULLDOZER (UTILITY)	5.01	
CONCRETE SAW	4.95	
CRANE, BACKHOE, DRAGLINE, SHOVEL (ONE YARD AND UNDER)	6.05	
CRANE, BACKHOE, DRAGLINE, SHOVEL (OVER ONE YARD)	7.69	
GREASEMAN	4.82	
HYDROSEEDER	5.00	
LOADER	5.50	
MOTOR GRADER (FINE GRADE)	7.40	
MOTOR GRADER (ROUGH GRADE)	5.85	
PAVEMENT MILLING MACHINE	8.04	
ROLLER	4.62	
ROLLER (FINISH)	5.40	
SCRAPER	5.61	
SCREED ASPHALT	5.33	
SWEEPER	4.67	
STRIPING MACHINE	5.93	
TRACTOR (UTILITY)	5.27	
TRUCK DRIVERS:		
TRUCKS - SINGLE-REAR AXLE	4.51	
TRUCKS - MULTI-REAR AXLE	4.63	
TRUCKS - REAVY DUTY	6.17	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).

(44)

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA
COUNTIES: AIKEN, ANDERSON, BERKELEY, CHARLESTON, DORCHESTER, FLORENCE, GREENVILLE, LEXINGTON, PICKENS, RICHLAND, SPARTANSBURG, YORK.
DECISION NUMBER: SC85-3048 DATE: DATE OF PUBLICATION
Supersedes Decision Number SC82-1050, dated September 24, 1982, in 47 FR 42256.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (Does not include tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION:		
ASPHALT LAY DOWN MAN	$ 4.43	
ASPHALT RAKER	4.84	
CARPENTER	6.56	
CARPENTER HELPER	5.30	
CONCRETE FINISHER	6.45	
CONCRETE FINISHER HELPER	4.98	
FLAGGER	4.43	
FORM SETTER (ROAD)	5.97	
GRADE CHECKER	4.86	
IRONWORKER - REINFORCING	7.96	
IRONWORKER - STRUCTURAL	9.40	
LABORER	4.43	
LUTEMAN	4.87	
MASON	7.27	
MECHANIC	6.52	
MECHANIC HELPER	4.61	
OILER	4.85	
PAINTER - BRIDGE	8.47	
PIPE LAYER	5.01	
POST DRIVER	6.83	
POWER TOOL OPERATOR	5.44	
WELDER	6.24	
POWER EQUIPMENT OPERATORS:		
ASPHALT DISTRIBUTOR	4.50	
ASPHALT PAVER	5.38	
ASPHALT PLANT	5.29	
BULLDOZER	5.91	
BULLDOZER (UTILITY	5.01	
CONCRETE SAW	4.95	
CRANE, BACKHOE, DRAGLINE, SHOVEL (ONE YARD AND UNDER)	6.05	
CRANE, BACKHOE, DRAGLINE, SHOVEL (OVER ONE YARD)	7.69	
POWER EQUIPMENT OPERATORS (CONT'D.):		
GREASEMAN	4.82	
HYDROSEEDER	5.00	
LOADER	5.50	
MOTOR GRADER (FINE GRADE)	7.40	
MOTOR GRADER (ROUGH GRADE)	5.85	
PAVEMENT MILLING MACHINE	8.04	
ROLLER	4.62	
ROLLER (FINISH)	5.40	
SCRAPER	5.61	
SCREED ASPHALT	5.33	
SWEEPER	4.67	
STRIPING MACHINE	5.93	
TRACTOR (UTILITY)	5.27	
TRUCK DRIVERS:		
TRUCKS - SINGLE-REAR AXLE	4.51	
TRUCKS - MULTI-REAR AXLE	4.63	
TRUCKS - HEAVY DUTY	6.17	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii))		

(45)

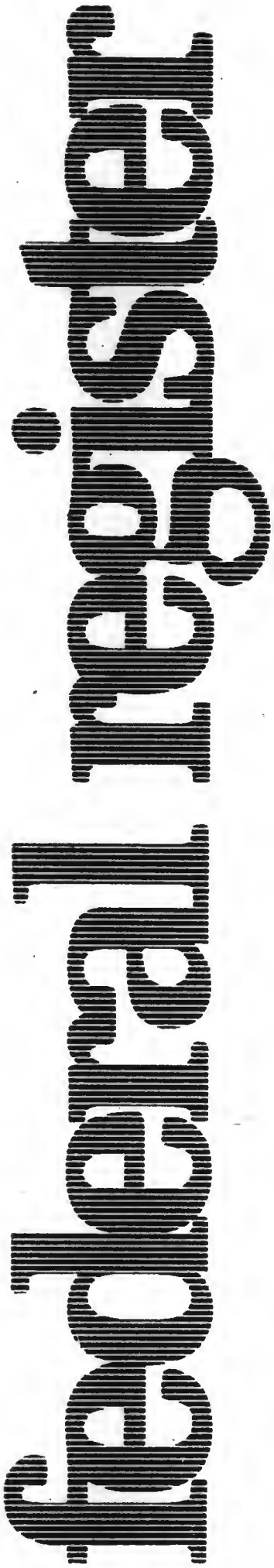
SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA COUNTY: BEAUFORT
DECISION NUMBER: SC85-3050 DATE: DATE OF PUBLICATION
Supersedes Decision Number SC79-1016, dated February 2, 1979, in 44 FR 6888.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (Does not include single family homes and apartments up to and including four (4) stories.)

	Basic Hourly Rates	Fringe Benefits
BRICK & BLOCK MASONS	$ 9.82	
CARPENTERS	8.83	
CEMENT MASONS/FINISHERS	9.26	
ELECTRICIANS	8.63	
ELEVATOR CONSTRUCTORS:		
MECHANICS	12.95	3.29 + a
HELPERS	9.06	3.29 + a
PROBATIONARY HELPERS	6.47	
IRONWORKERS	11.75	
LABORERS - UNSKILLED	4.94	
MASON TENDERS	5.46	
PAINTERS - BRUSH & ROLLER	7.50	
PIPEFITTERS	9.40	
PLUMBERS	9.93	
POWER EQUIPMENT OPERATORS:		
BACKHOE	7.00	
CRANE	9.32	
ROOFERS	6.16	
SHEET METAL WORKERS	8.96	
TILE SETTERS	9.00	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).		
FOOTNOTE 'a': Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day; Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more service, and 6% for those employees with 6 months to 5 years of service.		

(46)

[FR Doc. 85-21178 Filed 9-5-85; 8:45 am]
BILLING CODE 4510-27-C



Friday
September 6, 1985

Part III

Environmental Protection Agency

40 CFR Part 466

Porcelain Enameling Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 466

[FRL 2853-3]

Porcelain Enameling Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct porcelain enameling operations. EPA agreed to propose and take final action on these amendments in a settlement agreement which resolved the various lawsuits challenging the final porcelain enameling regulation promulgated by EPA on November 24, 1982, 47 FR 53172.

The amendments include: (1) Certain modifications of the effluent limitations for "best practicable control technology currently available" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct discharges; and (2) certain modifications to the pretreatment standards for new and existing indirect discharges (PSNS and PSES).

EPA is also amending two tables which were incorrectly printed in the final regulation that was published November 24, 1982.

DATES: This regulation shall become effective on October 21, 1985. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is November 25, 1985.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. In accordance with 40 CFR Part 23 (50 FR 7268), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. eastern time on September 20, 1985.

ADDRESS: Mr. Ernst P. Hall, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: Organization of this notice:

I. Legal Authority
II. Background
  A. Prior Regulation
  B. Challenges to Prior Regulation
  C. Settlement Agreement
III. Response to Public Comments
IV. Amendments to the Regulation
V. Corrections to the Regulation
VI. Environmental Impact of the Modification to the Regulation
VII. Economic Impact of the Regulation
VIII. Executive Order 12291
IX. Regulatory Flexibility Analysis
X. OMB Review
XI. List of Subjects in 40 CFR Part 466

I. Legal Authority

The regulation described in this notice is promulgated under the authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-217).

II. Background

A. Prior Regulation

On January 27, 1981, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Source (PSES), and Pretreatment Standards for New Sources (PSNS) for the porcelain enameling point source category (46 FR 8860). EPA published the final porcelain enameling regulation in November 24, 1982, (47 FR 53172).

B. Challenges to the Prior Regulation

After publication of the porcelain enameling regulation, certain members of the porcelain enamel industry and the Porcelain Enamel Institute, the Gas Appliance Manufacturers Association, and the Association of Home Appliance Manufacturers filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit. (*Porcelain Enamel Institute* v. *EPA*, 4th Cir. No. 82-2124 and Consolidated Cases.)

C. Settlement Agreement

On August 19, 1983, the parties in the consolidated lawsuits entered into a settlement agreement which resolved all issues related to the porcelain enameling regulation raised by the petitioners. On September 28, the United States Court of Appeals for the Fourth Circuit entered an order staying briefing in the lawsuits. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain amendments to the final porcelain enameling regulation. If, after EPA has taken final action under the Settlement Agreement, each individual provision of the final porcelain enameling regulation is consistent with the Settlement Agreement, the petitioners agreed to dismiss their various lawsuits challenging the final porcelain enameling regulation and not to challenge the new amendments. A copy of the Settlement Agreement was sent to EPA Regional Offices and State NPDES permit-issuing authorities and was included in the record of this rulemaking.

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of certain sections of 40 CFR Part 466 pending final action by EPA on each respective modification. On December 23, 1983, the Court entered an order staying those sections of the regulation promulgated on November 24, 1982 which EPA is amending in the regulation appended to this notice. All limitations and standards contained in the final porcelain enameling regulation published on November 24, 1982 which are not specifically listed in this amendment were not stayed by the order entered by the court, and EPA is not deleting or amending any of the limitations and standards that were not addressed in this amendment.

III. Response to Public Comments

The Agency received 15 letters containing comments on the proposed regulation published April 27, 1984. All of the comments were supportive of the proposed amendments to the procelain enameling regulation originally published on November 24, 1982. All of the commenters stated that the proposed amendment to the porcelain regulation were consistent with the Settlement Agreement with the exception of the values for nickel for the steel subcategory under § 466.13 (New Source Performance Standards) and § 466.15 (Pretreatment Standards for New Sources). The Agency intended to calculate these nickel values based on a daily maximum concentration of 1.2 mg/l. The wrong concentration was used inadvertently in the proposed amendment. These values for nickel are corrected in the final regulation. Except for the nickel value discussed above, none of the commenters made any adverse comment on any part of this amendment. Commenters agreed the regulation is technologically and economically feasible if the amendments are made and nickel values are corrected.

IV. Amendments to the Regulation

Below are descriptions of the amendments to the porcelain enameling regulation EPA is promulgating. The amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on November 24, 1982. See the preamble to the regulation, at 47 FR 53172, for the Agency's findings with respect to these technologies.

A. Section 466.01 Applicability

The promulgated rule contains BPT limitations for the coating operations for the Cast Iron Subcategory which apply to all cast iron wet process coating operations. Hence, under the final regulation wastewaters from coating cast iron, which are co-treated with wastewater from coating steel, are subject to the limitations for cast iron coating operations. These limitations are lower than the limitations for coating steel due to the lower average production-related water flow for the Cast Iron Subcategory. EPA is amending the applicability section of the regulation for the porcelain enameling point source category, § 466.01, to allow plants applying wet process coating to cast iron in conjunction with, and as a secondary function to, applying coatings to steel to adhere to coating limitations equivalent to those set forth in § 466.11 of the regulation.

B. Subpart A—Steel Basis Material Subcategory—Iron Limitations and Standards

EPA is promulgating amendments to the BPT and BAT limitations and NSPS standards for iron in §§ 466.11, 466.12 and 466.13 of the porcelain enameling regulation. The limitations in the November 24, 1982 final regulation are based upon concentrations of 1.23 mg/l (one day maximum) and 0.63 mg/l (monthly average). The iron limitations promulgated today are based upon data obtained from two porcelain enameling plants in the steel basis subcategory (ID 33097 and ID 40063) which use the recommended technology (hydroxide precipitation and sedimentation, or "lime and settle"). These data were judged to be more typical of the steel subcategory than the data used as the basis for the November 24, 1982 regulation (long-term mean is 1.34 mg/l and 0.67 mg/l for the new data from the two plants and 0.41 mg/l for the data used as the basis for the November 24, 1982 regulation). The iron limitations and standards are based upon concentrations of 2.8 mg/l (daily maximum) and 1.4 mg/l (monthly average).

C. Limitations and Standards for Coating Operations in all Subcategories

EPA is promulgating amendments to all the limitations and standards for BAT, NSPS, and PSNS for coating operations in all subcategories. The limitations and standards, which were promulgated November 24, 1982, were based upon an allowable flow of 0.636 l/m². This flow was the average of two values (0.0107 l/m² and 1.2603 l/m²) which were the measured flows for ball mill washout at two plants. The amended limitations and standards are based upon an allowable flow of 1.2603 l/m², the higher of the two values discussed above.

D. Subpart A—Nickel Standards for NSPS and PSNS for the Steel Subcategory

EPA is promulgating amendments to the NSPS and PSNS standards for nickel in the steel subcategory. The standards in the November 24, 1982 final regulation were based on concentrations of 0.55 mg/l (one day maximum) and 0.37 mg/l (monthly average). Owing to the substantial effect of flow reduction, the Agency has decided to use a different data base for calculating nickel standards for NSPS and PSNS in the steel subcategory. The amended standards for new sources in the steel subcategory are based on concentrations of 1.2 mg/l (daily maximum) and 0.63 mg/l (monthly average).

E. New Source Performance Standards; Pretreatment Standards for New Sources; Metal Preparation Operation

EPA is promulgating amendments to §§466.13, 466.33 and 466.43 of the Porcelain Enameling Regulation which contain new source performance standards applicable to new direct dischargers and to §§ 466.15, 466.35 and 466.45 which contain pretreatment standards applicable to new indirect dischargers. Each of the mass-based standards for the metal preparation operation in each of these sections was based upon flow reduction of approximately 91 percent from production—normalized flow used to calculate best practicable technology limitations. The amended standards for the metal preparation operation for new sources are based upon reduction of allowable flow by 75 percent from the flow used to calculate best practicable technology limitations.

V. Corrections to the Regulation

EPA is amending § 466.11 and § 466.14 to correct the tables which were inadvertently misprinted in the original regulation published on November 24, 1982. The table in § 466.11 of the November 24, 1982 regulation is incorrect where metric units are printed in the English units table. This amendment corrects the table by deleting "metric units—mg/m² of area processed or coated". The misprinted table in § 466.14[a] of the November 24, 1982 regulation is incorrect where two columns, entitled Metal preparation and Coating operation, are printed to show the concentration based pretreatment standards for existing sources. This amendment corrects the table by deleting these two columns and showing only one column entitled Maximum for any 1 day and one column entitled Maximum for monthly average. The corrected tables in the amended regulation revise the format for the tables but do not in any way alter the requirements of the regulation.

VI. Environmental Impact of the Amendments to the Porcelain Enameling Regulation

The amendments promulgated today will allow 28 existing direct dischargers and new direct and indirect dischargers to discharge a greater amount of pollutants than was allowed by the November 24, 1982 regulation. The increase in the mass of pollutants

allowed to be discharged is not expected to be substantial, however.

The increased quantity of iron that will be discharged at BPT due to the higher iron concentration under the amended regulation averages only 0.4 pound per plant per day.

The doubling of flow for coating operations at BAT will not have a substantial impact because coating flow represents a small portion of the total wastewater flow from all direct dischargers. There will be an increase of less than 1.5 percent in the quantity of toxic pollutants discharged at BAT due to the increase in wastewater flow for the coating operations in the proposed amended regulation.

The increase in the quantity of toxic pollutants that may be discharged by new sources under the amended regulation is nationally insignificant. Under the regulation that was promulgated November 24, 1982, it is estimated that model new sources would remove 98.4 percent of the toxic pollutants present in the raw wastewater. It is estimated that 97.9 percent of the toxic pollutant in raw wastewater will be removed by model new sources under the amended regulation. The Agency expects the number of porcelain enameling plants to remain stable through 1987 and therefore few new sources are expected to be built.

VII. Economic Impact of the Regulation

The model technologies for the amended regulation for the porcelain enameling category are the same as those upon which the original regulation was based. Accordingly, that portion of the compliance costs associated with the amended regulation are identical to those of the original regulation. The preamble to the original regulation and the supporting Economic Impact Analysis explain the data, methodology, and conclusions with respect to costs and economic impacts. For the most part, those data and conclusions also support this amendment.

Subsequent to the promulgation of the original porcelain enameling regulation and to the proposal of these amendments, the Agency became aware that its estimates of the cost of compliance with this regulation may have understated the cost of disposal of solid waste. In particular, the Agency's original estimates of solid waste disposal costs were based upon the premise that the waste would not be considered hazardous under the Resource Conservation and Recovery Act of 1980 (RCRA). However, sludge generated in the steel subcategory from the treatment of spent pickle liquor is currently included under Hazardous Waste No. K062 (40 CFR 261.32). A petition for rulemaking has been filed with the Agency questioning the Agency's interpretation, and EPA is planning to initiate rulemaking proceedings in response to the petition. Nonetheless, the Agency has revised its estimates of the costs for disposal of these wastes and has reviewed the economic achievability of the regulation in light of these revised estimates.

The cost estimates are for on-site separate lime and settle treatment of the pickle liquor with sludge disposal off-site as a hazardous waste. This requires minimal investment and annual costs. For a normal plant the added investment cost would be $3,000 and the total annual cost would be $1,600.

In making the revised estimates, the Agency has omitted costs for several porcelain enameling facilities in the steel subcategory that have petitioned the Agency for—and received—delisting of their particular wastes. Other plants also may be able to obtain site-specific de-listings and therefore avoid the additional hazardous waste disposal costs. In addition, the industry may be able to submit data that might justify industry-wide de-listing.

In order to determine if the additional hazardous waste disposal costs would affect the economic achievability of the porcelain enameling regulation, the Agency performed a cost sensitivity anaylsis, where the revised compliance costs are increased on a percentage basis and the resulting changes to the economic impacts are projected. This analysis is included in the record.

For almost all of the plants analyzed, the additional cost is less than 5 percent of the original compliance cost. For many of the plants (53 percent), the additional cost is only a 1 percent increase in compliance costs. For existing sources, therefore, the additional costs do not alter the Agency's determination of economic achievability. For new sources, this magnitude of increased compliance cost does not alter the Agency's opinion that NSPS and PSNA will not represent a barrier to entry.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. Today's regulations, like the regulation promulgated on November 24, 1982, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

IX. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the November 24, 1982 final porcelain enameling regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (47 FR 53179). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to this regulation, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

X. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. OMB made no comments.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2040–0033.

XI. List of Subjects in 40 CFR Part 466

Porcelain enameling industry, Waste treatment and disposal, Water pollution control.

Dated: August 27, 1985.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA is amending 40 CFR Part 466 as follows:

PART 466—PORCELAIN ENAMELING POINT SOURCE CATEGORY

1. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e) and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. 40 CFR § 466.01 is amended by adding a new paragraph (d) to read as follows:

§ 466.01 Applicability.

* * * * * * *

(d) When wastewaters from coating cast iron are cotreated with wastewaters from coating steel, the limitations for coating steel contained in § 466.11 may be applied to the entire wastestream.

3. 40 CFR Part § 466.11 is amended by revising both entries for the pollutant iron in all 4 columns of the table to read as follows:

§ 466.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

SUBPART A.—BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
• • •	•	•	•	•
Iron	112.12	22.69	56.06	11.34
• • •	•	•	•	•
	English units—lbs/1 million ft² of area processed or coated			
• • •	•	•	•	•
Iron	22.96	4.65	11.48	2.32
• • •	•	•	•	•

4. 40 CFR Part 466.12 is amended by revising both entries for the pollutant iron in all four columns and both coating operation columns for the pollutants chromium, lead, nickel, zinc and aluminum to read as follows:

§ 466.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically.

* * * * *

SUBPART A.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	• • •	0.53	• • •	0.22
Lead	• • •	0.19	• • •	0.16
Nickel	• • •	1.78	• • •	1.26
Zinc	• • •	1.68	• • •	0.71
Aluminum	• • •	5.74	• • •	2.35
Iron	112.12	3.53	56.06	1.77
	English units—lbs/1 million ft² of area processed or coated			
Chromium	• • •	0.11	• • •	0.05
Lead	• • •	0.04	• • •	0.03
Nickel	• • •	0.37	• • •	0.26
Zinc	• • •	0.35	• • •	0.15
Aluminum	• • •	1.18	• • •	0.48

SUBPART A.—BAT EFFLUENT LIMITATIONS—Continued

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Iron	22.96	0.72	11.48	0.36

5. 40 CFR 466.13 is amended by revising the table to read as follows:

§ 466.13 New source performance standards.

* * * * *

SUBPART A.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	3.7	0.47	1.5	0.19
Lead	1.0	0.13	0.9	0.11
Nickel	12.0	1.51	6.3	0.79
Zinc	10.2	1.29	4.2	0.53
Aluminum	30.3	3.82	12.4	1.56
Iron	28.0	3.53	14.0	1.77
Oil and grease	100.0	12.60	100.0	12.60
TSS	150.0	18.91	120.0	15.12
pH	(1)	(1)	(1)	(1)
	English units—lbs/1 million ft² of area processed or coated			
Chromium	0.76	0.10	0.31	0.04
Lead	0.21	0.03	0.19	0.03
Nickel	2.46	0.31	1.29	0.16
Zinc	2.09	0.27	0.86	0.11
Aluminum	6.21	0.78	2.54	0.32
Iron	5.74	0.72	2.87	0.36
Oil and grease	20.48	2.58	20.48	2.58
TSS	30.72	3.87	24.56	3.10
pH	(1)	(1)	(1)	(1)

[1] Within the range 7.5 to 10.0 at all times.

6. Section 466.14, is amended by revising paragraphs (a) and (b) to read as follows:

§ 466.14 Pretreatment standards for existing sources.

(a) Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	• • •	• • •
	Milligrams per liter (mg/l)	
Chromium	0.42	0.17
Lead	0.15	0.13
Nickel	1.41	1.00

SUBPART A.—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	• • •	• • •
Zinc	1.33	0.56

(b) In cases where POTW find it necessary to impose mass effluent pretreatment standards the following equivalent mass standards are provided:

SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	• • •	0.53	• • •	0.22
Lead	• • •	0.19	• • •	0.16
Nickel	• • •	1.78	• • •	1.26
Zinc	• • •	1.68	• • •	0.71
	English units—lbs/1 million ft² of area processed or coated			
Chromium	• • •	0.11	• • •	0.05
Lead	• • •	0.04	• • •	0.03
Nickel	• • •	0.37	• • •	0.26
Zinc	• • •	0.35	• • •	0.15

7. 40 CFR 466.15 is amended by revising the table to read as follows:

§ 466.15 Pretreatment standards for new sources.

* * * * *

SUBPART A.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	3.7	0.47	1.5	0.19
Lead	1.0	0.13	0.9	0.11
Nickel	12.0	1.51	6.3	0.79
Zinc	10.2	1.29	4.2	0.53
	English units—lbs/1 million ft² of area processed or coated			
Chromium	0.78	0.10	0.31	0.04
Lead	0.2	0.03	0.19	0.02
Nickel	2.46	0.31	1.29	0.16
Zinc	2.09	0.27	0.86	0.11

8. 40 CFR 466.22 is amended by revising paragraph (b) to read as follows:

§466.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(b) The discharge of process wastewater pollutants from all porcelain

enameling coating operations shall not exceed the values set forth below:

SUBPART B.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	• • •	• • •	• • •	• • •
	mg/m² (lbs/1 million ft²) of area coated			
Chromium	0.53	(0.11)	0.22	(0.05)
Lead	0.19	(0.04)	0.16	(0.03)
Nickel	1.78	(0.37)	1.26	(0.26)
Zinc	1.68	(0.35)	0.71	(0.15)
Aluminum	5.74	(1.18)	2.35	(0.48)
Iron	1.55	(0.32)	0.79	(0.16)

9. Section 466.23 is amended by revising paragraph (b) to read as follows:

§ 466.23 New source performance standards.

* * * * *

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	• • •	• • •	• • •	• • •
	mg/m² (lb/1 million ft²) of area coated			
Chromium	0.47	(0.10)	0.19	(0.04)
Lead	0.13	(0.03)	0.11	(0.02)
Nickel	0.69	(0.14)	0.47	(0.10)
Zinc	1.29	(0.27)	0.53	(0.11)
Aluminum	3.82	(0.78)	1.56	(0.32)
Iron	1.55	(0.32)	0.79	(0.16)
Oil and grease	12.60	(2.58)	12.60	(2.58)
TSS	18.91	(3.87)	15.12	(3.10)
pH	(1)	(1)	(1)	(1)

[1] Within the range 7.5 to 10.0 at all times.

10. Section 466.24 is amended by revising paragraph (b)(2) to read as follows:

§ 466.24 Pretreatment standards for existing sources.

* * * * *

(b) • • •

(2) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	• • •	• • •	• • •	• • •
	mg/m² (lb/1 million ft²) of area coated			
Chromium	0.53	(0.11)	0.22	(0.05)
Lead	0.19	(0.04)	0.16	(0.03)
Nickel	1.78	(0.37)	1.26	(0.26)
Zinc	1.68	(0.35)	0.71	(0.15)

11. Section 466.25, is amended by revising paragraph (6) to read as follows:

§ 466.25 Pretreatment standards for new sources.

* * * * *

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	• • •	• • •	• • •	• • •
	mg/m² (lb/1 million ft²) of area coated			
Chromium	0.47	(0.10)	0.19	(0.04)
Lead	0.13	(0.03)	0.11	(0.02)
Nickel	0.69	(0.14)	0.47	(0.10)
Zinc	1.29	(0.27)	0.53	(0.11)

12. Section 466.32 is amended by revising both entries for all pollutants in the columns of the table entitled coating operation to read as follows:

§ 466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

SUBPART C.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² or area processed or coated			
Chromium	• • •	0.53	• • •	0.22
Lead	• • •	0.19	• • •	0.16
Nickel	• • •	1.78	• • •	1.26
Zinc	• • •	1.68	• • •	1.71
Aluminum	• • •	5.74	• • •	2.35
Iron	• • •	1.55	• • •	0.80
	English units—lbs/1 million ft² of area processed or coated			
Chromium	• • •	0.11	• • •	0.05
Lead	• • •	0.04	• • •	0.03
Nickel	• • •	0.37	• • •	0.26
Zinc	• • •	0.35	• • •	0.35
Alumiun	• • •	1.18	• • •	0.48
Iron	• • •	0.32	• • •	0.18

13. 40 CFR 466.33 is amended by revising the table to read as follows:

§ 466.33 New source performnce standards.

* * * * *

SUBPART C.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	3.60	0.47	1.46	0.19
Lead	0.97	0.13	0.88	0.11
Nickel	5.35	0.69	3.60	0.47
Zinc	9.92	1.29	4.09	0.53
Aluminum	29.46	3.82	12.06	1.56
Iron	11.96	1.55	6.13	0.79
Oil and grease	97.24	12.60	97.24	12.60
TSS	145.86	18.91	116.69	15.12
pH	(1)	(1)	(1)	(1)
	English units—lbs/1 million ft² of area processed or coated			
Chromium	0.74	0.10	0.30	0.04
Lead	0.20	0.03	0.18	0.20
Nickel	1.10	0.14	0.74	0.10
Zinc	2.03	0.27	0.84	0.11
Aluminum	6.03	0.78	2.47	0.32
Iron	2.45	0.32	1.26	0.18
Oil and grease	19.92	2.58	19.92	2.58
TSS	29.88	3.87	23.90	3.10
PH	(1)	(1)	(1)	(1)

[1] Within the range 7.5 to 10.0 at all times.

14. Section 466.34, is amended by revising paragraph (b) to read as follows:

§ 466.34 Pretreatment standards for existing sources.

* * * * *

(b) In cases where POTW find it necessary to impose mass pretreatment standards the following equivalent mass standards are provided:

SUBPART C.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
	Metric units—mg/m² of area processed or coated			
Chromium	• • •	0.53	• • •	0.22
Lead	• • •	0.19	• • •	0.16
Nickel	• • •	1.78	• • •	1.26
Zinc	• • •	1.68	• • •	1.71
	English units—lbs/1 million ft² of area processed or coated			
Chromium	• • •	0.11	• • •	0.05
Lead	• • •	0.04	• • •	0.03
Nickel	• • •	0.37	• • •	0.25
Zinc	• • •	0.35	• • •	0.35

15. 40 CFR 466.35 is amended by revising the table to read as follows:

§ 466.35 Pretreatment standards for new sources.

* * * * *

SUBPART C.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m² of area processed or coated				
Chromium	3.60	0.47	1.46	0.19
Lead	0.97	0.13	0.88	0.11
Nickel	5.35	0.69	3.60	0.47
Zinc	8.92	1.29	4.09	0.53
English units—lbs/1 million ft² of area processed or coated				
Chromium	0.74	0.10	0.30	0.04
Lead	0.20	0.03	0.18	0.02
Nickel	1.10	0.14	0.74	0.10
Zinc	2.03	0.27	0.84	0.11

16. 40 466.43 is amended by revising the table to read as follows:

§ 466.43 New source performance standards.

* * * * *

SUBPART D.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m² of area processed or coated				
Chromium	6.23	0.46	2.52	0.19
Lead	1.69	0.13	1.52	0.11
Nickel	9.25	0.69	6.23	0.47
Zinc	17.16	1.29	7.07	0.53
Aluminum	50.97	3.82	20.86	1.56
Iron	20.69	1.55	10.60	0.79
Oil and grease	168.23	12.60	168.23	12.60
TSS	252.35	18.91	201.66	15.12
pH	(1)	(1)	(1)	(1)
English units—lbs/1 million ft² of area processed or coated				
Chromium	1.28	0.10	0.52	0.04
Lead	0.35	0.03	0.31	0.03
Nickel	1.90	0.14	1.28	0.10
Zinc	3.52	0.27	1.45	0.11
Aluminum	10.44	0.78	4.27	0.32
Iron	4.24	0.32	2.17	0.16
Oil and grease	34.46	2.58	34.46	2.58
TSS	51.69	3.87	41.35	3.10
pH	(1)	(1)	(1)	(1)

[1] Within the range 7.5 to 10.0 at all times.

17. 40 CFR 466.45 is amended by revising the table to read as follows:

§ 466.45 Pretreatment standards for new sources.

* * * * *

SUBPART D.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m² of area processed or coated				
Chromium	6.23	0.46	2.52	0.19
Lead	1.69	0.13	1.52	0.11
Nickel	9.25	0.69	6.23	0.47
Zinc	17.16	1.29	7.07	0.53
English units—lbs/1 million ft² of area processed or coated				
Chromium	1.28	0.10	0.52	0.04
Lead	0.35	0.03	0.31	0.02
Nickel	1.90	0.14	1.28	0.10
Zinc	3.52	0.27	1.45	0.11

[FR Doc. 85–21175 Filed 9–5–85; 8:45 am]
BILLING CODE 6560–50–M

VOL
50

ISS
73

SE
6

985

UMI

federal register

Friday
September 6, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1040

Sunlamp Products; Performance Standard; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1040

[Docket No. 82N-0188]

Sunlamp Products; Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the performance standard for sunlamp products and ultraviolet (UV) lamps intended for use in these products to accommodate new products employing design concepts significantly different from those for which the current standard was developed. Also, FDA's experience in applying the current standard, which went into effect on May 7, 1980, indicates that some requirements are either inappropriate for or inapplicable to some products. The amendments are intended to establish a standard that is appropriate for the present technology of suntanning and new sunlamp product designs.

DATES: Effective September 8, 1986, for sunlamp products and ultraviolet lamps that are manufactured on or after this date. For additional information concerning the applicability of this amended performance standard, see the **"EFFECTIVE DATE"** paragraph in the preamble of this document. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 1040.20 effective September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1983 (48 FR 22886) (corrected October 21, 1983; 48 FR 48837), FDA issued a proposed rule to amend the performance standard for sunlamp products and ultraviolet lamps intended for use in sunlamp products (21 CFR 1040.20). In the preamble to the May 20, 1983 proposal, FDA discussed the history of § 1040.20 and the issues that led to the agency's decision to propose to revise the standard. The preamble also described the changes in the standard that FDA proposed to make based on the agency's experience in administering the standard. Interested persons were given until July 19, 1983, to provide written data, views, or comments concerning the amendments and any associated information on their potential environmental or economic impact.

Comments

Comments were received from an interested member of the public, a medical academy, two manufacturers, an individual who described himself as an association representing suntanning professionals, and a Canadian government agency. A summary of the comments and FDA's responses to them follows:

1. One comment agreed with the proposed amendments as they would apply to the use of sunlamp products for skin-tanning purposes but questioned whether the regulations also were intended to apply to sunlamp products used for medical purposes. The comment stated that most of the safety provisions of the proposed rule should be adhered to regardless of the purpose of the sunlamp use. The comment suggested, however, that the warning statement in § 1040.20(d)(1)(i) not be required to be included on medical therapy units because the statement would establish a negative environment for the treatment regimen and would be counterproductive. In addition, the warning statement could cause patients to resist the use of an effective form of therapy for diseases such as psoriasis.

Section 1040.20 applies only to sunlamp products as defined in § 1040.20(b)(9): "'Sunlamp product' means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation with wavelengths between 200 and 400 nanometers, *to induce skin tanning*" (emphasis added). Accordingly, the warning statement of § 1040.20(d)(1)(i) applies only to sunlamp products intended for skin tanning.

2. One comment suggested that the proposed amendments should be modeled after the draft German Industrial Standard DIN 50–50, "Non-Therapeutical UV Irradiation Apparatus for the Human Body." In this standard, a sunburn effect is defined by the erythema-threshold time and by the tanning effect (pigmentation-threshold time). Each manufacturer is required to declare on its sunlamp product label the erythema and pigmentation threshold times for the product. In addition, the product is required to be classified and labeled according to the magnitude of the erythema-threshold time.

FDA believes that the current standard, which requires manufacturers to provide adequate directions for use, including recommended exposure schedules and exposure positions, achieves the same goals that the German standard achieves. FDA's evaluation indicates that little safety advantage is to be gained by rating sunlamp products according to an estimated erythema potential. To establish a system of erythema potential ratings that would be appropriate under all use conditions and for all product designs or configurations would be burdensome and excessively complicated. A sunlamp product may have almost any spectral distribution and irradiance depending upon varying factors; for example, product design, lamp design, and lamp age. Also, human skin varies greatly from individual to individual in sensitivity to burning induced by sunlamp products. For all these reasons, FDA declines to adopt the suggestion.

3. One comment on § 1040.20(c)(2)(ii) objected to FDA's proposal to remove the current 10-minute limit on a sunlamp product timer. The comment also objected to the proposal to revise § 1040.20(c)(4) to proscribe only automatic resumption of emission from a product. The comment argued that such changes inappropriately allow the manufacturer, seller, or user of the product to decide what conditions of sunlamp use are safe.

FDA believes that irradiation of the skin with ultraviolet radiation to induce skin tanning is hazardous. The performance standard for sunlamp products was established to protect the consumer from acute burns (as evidenced by erythema) and from exposure to hazardous radiation that is unnecessary for skin tanning (in this case, UV radiation of wavelengths in air of less than 260 nanometers (nm)) and to warn the consumer of the known adverse effects to the body after exposure to ultraviolet radiation. FDA believes that the user of a sunlamp product can take appropriate action when informed of the possible adverse effects to the body from exposure to ultraviolet radiation, if the product is equipped with necessary safety performance features.

The current 10-minute maximum timer interval and the requirement concerning resumption of radiation emission, however, are inappropriate for newer sunlamp products now on the market. The agency's position on these two requirements remains as expressed in the discussion in the preamble to the proposed rule (48 FR 22888).

FDA notes that the timer is defined in § 1040.20(b)(10) as any device incorporated into a sunlamp product

that terminates radiation emission after a preset time interval. A sunlamp product may, however, be designed to use more than one source of ultraviolet radiation with differing spectral distributions. Such a product may need to incorporate more than one timer and more than one maximum exposure time to minimize potential injury to the user. The manufacturer is required to provide a recommended exposure schedule that would not result in acute injuries when followed and to provide the means to enable the user to follow these instructions regardless of the complexity of the spectral distribution of the radiation. The standard is modified in the final rule to make this requirement clear.

4. A comment stated that the language of § 1040.20(c)(2)(iv) of the proposed amendments may be misleading because the proposed language may be interpreted to exclude timers that will automatically resume radiation at the point when power is interrupted. Because the intent of the amendment has been perceived to allow this usage, the comment suggested that this requirement be revised to state, "The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the sunlamp product has been terminated."

The agency accepts the suggested change.

5. A comment suggested that the warning statement required by § 1040.20(d)(1)(i) should utilize the signal word "CAUTION" rather than "DANGER." The comment contended that the word "DANGER" implies an immediate and serious threat to life, a hazard not associated with UVA sunlamp products, i.e., sunlamp products that operate in the wavelength region of 320 to 400 nm. The comment stated that there is a need for an appropriate warning label cautioning the user that certain safeguards need to be observed to avoid injury and that prolonged use has long-term risk.

The agency believes that the word "DANGER" as used on the warning statement is appropriate. Exposure to ultraviolet radiation can be an immediate threat to life for people using photosensitizing medications or cosmetics and for people with a medical condition that causes them to be sensitive to ultraviolet radiation, for example, photoallergies.

6. One comment urged that UVA lamps should be exempt from the provisions of § 1040.20(d) that require the warning: "As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer." The comment argued that radiation at wavelengths in air longer than 320 nm cannot induce skin cancer and that only radiation at wavelengths in air shorter than 320 nm is responsible for premature skin aging. The comment argued further that UVA radiation that does not contain measurable UVB radiation (280 to 320 nm) has positive effects, for example, a UVA tan can protect a person against the harmful UVB radiation of the sun (photoprotection), and UVA radiation that does not contain UVB radiation can monomerize pyrimidine dimers in the deoxyribonucleic acid (DNA).

FDA disagrees that it has been proven that UVA does not cause skin cancer or premature skin aging, or that UVA radiation can protect humans against UVB radiation. Relatively few studies have been carried out on the long-term biological effects of UVA radiation in humans or in animals. Further studies are needed to establish clearly the long-term biological effects of UVA radiation. There are, however, reports that, under long-term continuous exposure, UVA radiation can induce skin cancer in test animals (Refs. 1 and 2). Also, there is evidence that the incidence of skin tumors induced in animals by irradiation with a combination of UVB and UVA radiation can be increased by subsequent irradiation with UVA alone (Ref. 3).

There is evidence (Ref. 4) that UVA radiation can enhance the photoreactivation of pyrimidine dimers in the DNA of human leukocytes. However, this effect has not been shown to provide humans protection against UVB radiation (Ref. 5). The Task Force on Photobiology of the American Academy of Dermatology has expressed concerns about potential risks of tanning with UVA radiation (Ref. 6).

Based on available evidence, FDA concludes that to exempt UVA lamps from the warning statement required by the standard would not promote the public health and safety.

7. One comment disagreed with the language of the warning statement set forth in § 1040.20(d)(1) of the proposed amendments and argued that the statement, "If you do not tan in the sun, you are unlikely to tan from the use of this product," would be inappropriate because it may confuse the sunlamp user. The comment argued that the action of direct exposure to the sun cannot be compared to that of exposure to either UVA or UVB suntanning equipment; that the current warnings already clearly and accurately provide the same information in more detail; and that the quoted statement would be redundant to the statement "Consult a physician before using lamp if taking any medication or if you believe yourself sensitive to sunlight."

The agency disagrees with the comment. The scientific literature clearly demonstrates that some people do not tan or that they tan only with great difficulty using either the sun or sunlamps (Ref. 7). People who, when exposed to the sun, do not tan or tan only with great difficulty should be informed about the futility of exposures to potentially hazardous ultraviolet radiation.

8. A comment disagreed with the requirements of § 1040.20(d)(1)(vi) and (2) of the proposed amendments, arguing that there are not any lamps that are "uniquely designed" for a particular sunlamp product. According to the comment, only a few manufacturers of lamps manufacture replacement lamps for other manufacturers' sunlamp products. The comment stated that FDA is providing an unfair competitive advantage to certain manufacturers and a great disadvantage to others because the additional labeling would be extremely expensive, in monetary as well as person-hour terms. The comment said that the requirement would have a significant impact on a substantial number of small entities, as this term is used in the Regulatory Flexibility Act. The comment stated further that it would be impossible for some manufacturers to maintain and service their own products because their products are distributed throughout the country and urged the agency not to exempt any sunlamp products or ultraviolet lamps from the proposed labeling requirements. According to the comment, there would be no way for FDA to monitor whether a particular unit was being maintained and serviced by the manufacturer or its agent.

After having reviewed reports submitted to the agency under Part 1002 (21 CFR Part 1002), FDA agrees that there are few ultraviolet lamps that are unique to a sunlamp product. The agency concludes that a substitute lamp could be made by other manufacturers. Also, FDA agrees that monitoring the maintenance and servicing of sunlamp products would be difficult and would not be warranted. For these reasons, FDA has concluded not to exempt any sunlamp products or ultraviolet lamps from the labeling requirements and has revised final § 1040.20(d) (1)(vi) and (2) accordingly.

The comment does, however, illustrate that manufacturers use lamps produced by other firms. It is also

apparent that many of these lamps are equivalent and can be used safely in a number of different models of sunlamp products. The current standard is not clear on how a person or manufacturer would be able to determine that a replacement lamp is equivalent to that designated on the sunlamp product to be used in the product. FDA advises that replacement lamps must comply with each applicable requirement of the performance standard and be certified under § 1010.2 of the regulations (21 CFR 1010.2). Section 1040.20(e) requires that any ultraviolet lamp not accompanying a sunlamp product contain instructions for its safe use. Thus, the manufacturer of a replacement ultraviolet lamp is required to state in the user instructions any specific model of ultraviolet lamps for which the manufacturer is promoting its lamp as a replacement. FDA has revised § 1040.20(e)(2) in the final rule to make this concept clear. FDA advises that the promotion of incompatible lamps will be considered as marketing a falsely certified product.

Effective Date

The final rule will become effective September 8, 1986, for sunlamp products and ultraviolet lamps that are manufactured on or after this date. Sunlamp products and ultraviolet lamps manufactured on or after May 7, 1980, but before September 8, 1986, are subject to the provisions of 21 CFR 1040.20 as published in the **Federal Register** of November 9, 1979 (44 FR 65357). The agency, however, does not object to any manufacturer of a sunlamp product or ultraviolet lamp complying with the final rule after it is published and prior to its effective date, provided the manufacturer specifies on the certification label for the product that it complies with the amended standard and provided the manufacturer complies with the recordkeeping and reporting requirements of Part 1002.

References

The following references are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Forbes, P.D., R.E. Davies, and C.A. Cole, "Photocarcinogenesis by UVA Alone," Abstract MAM-D6, Tenth Annual Meeting, American Society for Photobiology, Vancouver, BC, Canada, June 27-July 1, 1982.

2. Van Weelden, H., F.R. de Gruijl, and J.C. van der Leun, "Tumors Induced by UVA in Mice," Abstract WAM-F4, *Photochemistry and Photobiology*, 7S:79, 1983.

3. Staberg, B., et al., "The Carcinogenic Effect of UVA Irradiation," *Journal of Investigative Dermatology*, 81:6:517-519, 1983.

4. Sutherland, B.M., P. Runge, and J.C. Sutherland, "DNA Photoreactivating Enzyme from Placental Mammals. Origin and Characteristics," *Biochemistry*, 23:4710-4715, 1974.

5. Mutzhas, M.F., et al., "A New Apparatus with High Radiation Between 320-460 nm: Physical Description and Dermatological Applications," *Journal of Investigative Dermatology*, 76:42-47, 1981.

6. Jeffry, Jr., T.E., "Danger of Tanning Booths Bared. New Release," American Academy of Dermatology, Evanston, IL, May 1, 1983.

7. Pathak, M.A., "Sunscreens: Topical and Systemic Approaches for Protection of Human Skin Against Harmful Effects of Solar Radiation," *Journal of the American Academy of Dermatology*, 7:285-311, 1982.

Economic Impact

FDA has evaluated the economic consequences of this action in accordance with Exectutive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). This action has been determined not to be a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A threshold assessment supporting this conclusion is on file with the Dockets Management Branch (address above).

Paperwork Reduction Act of 1980

Section 1040.20 (d) and (e) of this final rule contains informatin collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0195.

List of Subjects in 21 CFR Part 1040

Electronic products, HID lamps, Incorporation by reference, Lasers, Medical devices, Radiation protection, Standards, Sunlamps.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, Part 1040 is amended to read as follows:

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

1. The authority citation for Part 1040 continues to read as follows:

Authority: Secs. 358, 360A, 82 Stat. 1177-1179, 1182 (42 U.S.C. 263f, 263i); 21 CFR 5.10.

2. By revising § 1040.20, to read as follows:

§ 1040.20 Sunlamp products and ultraviolet lamps intended for use in sunlamp products.

(a) *Applicability.* (1) The provisions of this section, as amended, are applicable as specified herein to the following products manufactured on or after September 8, 1986.

(i) Any sunlamp product.

(ii) Any ultraviolet lamp intended for use in any sunlamp product.

(2) Sunlamp products and ultraviolet lamps manufactured on or after May 7, 1980, but before September 8, 1986, are subject to the provisions of this section as published in the **Federal Register** of November 9, 1979 (44 FR 65357).

(b) *Definitions.* As used in this section the following definitions apply:

(1) "Exposure position" means any position, distance, orientation, or location relative to the radiating surfaces of the sunlamp product at which the user is intended to be exposed to ultraviolet radiation from the product, as recommended by the manufacturer.

(2) "Intended" means the same as "intended uses" in § 801.4.

(3) "Irradiance" means the radiant power incident on a surface at a specified location and orientation relative to the radiating surface divided by the area of the surface, as the area becomes vanishingly small, expressed in units of watts per square centimeter (W/cm^2).

(4) "Maximum exposure time" means the greatest continuous exposure time interval recommended by the manufacturer of the product.

(5) "Maximum timer interval" means the greatest time interval setting on the timer of a product.

(6) "Protective eyewear" means any device designed to be worn by users of a product to reduce exposure of the eyes to radiation emitted by the product.

(7) "Spectral irradiance" means the irradiance resulting from radiation within a wavelength range divided by the wavelength range as the range becomes vanishingly small, expressed in units of watts per square centimeter per nanometer ($W/(cm^2/nm)$).

(8) "Spectral transmittance" means the spectral irradiance transmitted through protective eyewear divided by the spectral irradiance incident on the protective eyewear.

(9) "Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by

ultraviolet radiation with wavelengths in air between 200 and 400 nanometers. to induce skin tanning.

(10) "Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

(11) "Ultraviolet lamp" means any lamp that produces ultraviolet radiation in the wavelength interval of 200 to 400 nanometers in air and that is intended for use in any sunlamp product.

(c) *Performance requirements* (1) *Irradiance ratio limits.* For each sunlamp product and ultraviolet lamp, the ratio of the irradiance within the wavelength range of greater than 200 nanometers through 260 nanometers to the irradiance within the wavelength range of greater than 260 nanometers through 320 nanometers may not exceed 0.003 at any distance and direction from the product or lamp.

(2) *Timer system.* (i) Each sunlamp product shall incorporate a timer system with multiple timer settings adequate for the recommended exposure time intervals for different exposure positions and expected results of the products as specified in the label required by paragraph (d) of this section.

(ii) The maximum timer interval(s) may not exceed the manufacturer's recommended maximum exposure time(s) that is indicated on the label required by paragraph (d)(1)(iv) of this section.

(iii) No timer interval may have an error greater than 10 percent of the maximum timer interval of the product.

(iv) The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the sunlamp product has been terminated.

(v) The timer requirements do not preclude a product from allowing a user to reset the timer before the end of the preset time interval.

(3) *Control for termination of radiation emission.* Each sunlamp product shall incorporate a control on the product to enable the person being exposed to terminate manually radiation emission from the product at any time without disconnecting the electrical plug or removing the ultraviolet lamp.

(4) *Protective eyewear.* (i) Each sunlamp product shall be accompanied by the number of sets of protective eyewear that is equal to the maximum number of persons that the instructions provided under paragraph (e)(1)(ii) of this section recommend to be exposed simultaneously to radiation from such product.

(ii) The spectral transmittance to the eye of the protective eyewear required by paragraph (c)(4)(i) of this section shall not exceed a value of 0.001 over the wavelength range of greater than 200 nanometers 320 nanometers and an value of 0.01 over the wavelength range of greater than 320 nanometers through 400 nanometers, and shall be sufficient over the wavelength greater than 400 nanometers to enable the user to see clearly enough to reset the timer.

(5) *Compatibility of lamps.* An ultraviolet lamp may not be capable of insertion and operation in either the "single-contact medium screw" or the "double-contact medium screw" lampholders described in American National Standard C81.10–1976, Specifications for Electric Lamp Bases and Holders—Screw-Shell Types, which is incorporated by reference. Copies are available from the American National Standards Institute, 1430 Broadway, New York, NY 10016, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Label requirements.* In addition to the labeling requirements in Part 801 and the certification and identification requirements of §§ 1010.2 and 1010.3, each sunlamp product and ultraviolet lamp shall be subject to the labeling requirements prescribed in this paragraph and paragraph (e) of this section.

(1) *Labels for sunlamp products.* Each sunlamp product shall have a label(s) which contains:

(i) A warning statement with the words "DANGER—Ultraviolet radiation. Follow instructions. Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer. WEAR PROTECTIVE EYEWEAR; FAILURE TO MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult physician before using sunlamp if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of this product."

(ii) Recommended exposure position(s). Any exposure position may be expressed either in terms of a distance specified both in meters and in feet (or in inches) or through the use of markings or other means to indicate clearly the recommended exposure position.

(iii) Directions for achieving the recommended exposure position(s) and a warning that the use of other positions may result in overexposure.

(iv) A recommended exposure schedule including duration and spacing of sequential exposures and maximum exposure time(s) in minutes.

(v) A statement of the time it may take before the expected results appear.

(vi) Designation of the ultraviolet lamp type to be used in the product.

(2) *Labels for ultraviolet lamps.* Each ultraviolet lamp shall have a label which contains:

(i) The words "Sunlamp—DANGER—Ultraviolet radiation. Follow instructions."

(ii) The model identification.

(iii) The words "Use ONLY in fixture equipped with a timer."

(3) *Label specifications.* (i) Any label prescribed in this paragraph for sunlamp products shall be permanently affixed or inscribed on an exterior surface of the product when fully assembled for use so as to be legible and readily accessible to view by the person being exposed immediately before the use of the product.

(ii) Any label prescribed in this paragraph for ultraviolet lamps shall be permanently affixed or inscribed on the product so as to be legible and readily accessible to view.

(iii) If the size, configuration, design, or function of the sunlamp product or ultraviolet lamp would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, or would render the required label unnecessary, the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, on the Center's own initiative or upon written application by the manufacturer, may approve alternate means of providing such label(s), alernate wording for such label(s), or deletion, as applicable.

(iv) In lieu of permanently affixing or inscribing tags or labels on the ultraviolet lamp as required by §§ 1010.2(b) and 1010.3(a), the manfacturer of the ultraviolet lamp may permanently affix or inscribe such required tags or labels on the lamp packaging uniquely associated with the lamp, if the name of the manufacturer and month and year of manufacture are permanently affixed or inscribed on the exterior surface of the ultraviolet lamp so as to be legible and readily accessible to view. The name of the manufacturer and month and year of manufacture affixed or inscribed on the exterior surface of the lamp may be expressed in code or symbols, if the manufacturer has previously supplied

the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, with the key to such code or symbols and the location of the coded information or symbols on the ultraviolet lamp. The label or tag affixed or inscribed on the lamp packaging may provide either the month and year of manufacture without abbreviation, or information to allow the date to be readily decoded.

(v) A label may contain statements or illustrations in addition to those required by this paragraph if the additional statements are not false or misleading in any particular; e.g., if they do not diminish the impact of the required statements; and are not prohibited by this chapter.

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0195.)

(e) *Instructions to be provided to users.* Each manufacturer of a sunlamp product and ultraviolet lamp shall provide or cause to be provided to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, adequate instructions for use to avoid or to minimize potential injury to the user, including the following technical and safety information as applicable:

(1) *Sunlamp products.* The users' instructions for a sunlamp product shall contain:

(i) A reproduction of the label(s) required in paragraph (d)(1) of this section prominently displayed at the beginning of the instructions.

(ii) A statement of the maximum number of people who may be exposed to the product at the same time and a warning that only that number of protective eyewear has been provided.

(iii) Instructions for the proper operation of the product including the function, use, and setting of the timer and other controls, and the use of protective eyewear.

(iv) Instructions for determining the correct exposure time and schedule for persons according to skin type.

(v) Instructions for obtaining repairs and recommended replacement components and accessories which are compatible with the product, including compatible protective eyewear, ultraviolet lamps, timers, reflectors, and filters, and which will, if installed or used as instructed, result in continued compliance with the standard.

(2) *Ultraviolet lamps.* The users' instructions for an ultraviolet lamp not accompanying a sunlamp product shall contain:

(i) A reproduction of the label(s) required in paragraph (d) (1) (i) and (2) of this section, prominently displayed at the beginning of the instructions.

(ii) A warning that the instructions accompanying the sunlamp product should always be followed to avoid or to minimize potential injury.

(iii) A clear identification by brand and model designation of all lamp models for which replacement lamps are promoted, if applicable..

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0195.)

(f) *Test for determination of compliance.* Tests on which certification pursuant to § 1010.2 is based shall account for all errors and statistical uncertainties in the process and, wherever applicable, for changes in radiation emission or degradation in radiation safety with age of the product. Measurements for certification purposes shall be made under those operational conditions, lamp voltage, current, and position as recommended by the manufacturer. For these measurements, the measuring instrument shall be positioned at the recommended exposure position and so oriented as to result in the maximum detection of the radiation by the instrument.

Dated: August 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–21253 Filed 9–5–85; 8:45 am]

BILLING CODE 4160–01–M

Friday
September 6, 1985

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Permanent State Regulatory Program of Utah; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Permanent State Regulatory Program of Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its approval of an extension of the deadline for Utah to resubmit rules (1) governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850, and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 20, 1984, Utah requested an extension to develop a blaster certification program. On June 8, 1984, OSM announced its decision to extend Utah's deadline to June 10, 1985 (49 FR 23836). On June 6, 1985, Utah indicated that an additional six-month extension was necessary.

On July 10, 1985, OSM invited public comment on the proposal to extend the deadline for an additional six months (50 FR 28107).

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. OSM is announcing its approval to modify the deadline for Utah to develop and adopt its blaster program.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Utah's program, the applicable date is 12 months after publication date of OSM's rule or March 4, 1984.

On March 20, 1984, the State of Utah submitted to OSM a request for an extension until April 4, 1985, to submit final rules addressing the blaster certification program. In the April 23, 1984 **Federal Register** (49 FR 17040), OSM proposed a thirteen-month extension for Utah to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending May 23, 1984. On June 8, 1984 (49 FR 23836), OSM announced its decision to extend the deadline for Utah to develop a program; giving Utah 12 months additional time to study the rule and statutory changes needed to bring Utah's rules into compliance with the revised Federal rules, and extending the deadline period to June 10, 1985.

The Utah Rules Revision Committee planned to formulate a blaster certification program together with other revisions to the Federal rules. The State indicated that its certification program, which is administered through the Utah Industrial Commission, would provide the necessary protection until the State developed a program under its approved surface mining regulatory program.

In a June 6, 1985 letter to OSM, the State of Utah indicated that an additional six-month extension was necessary to review any of OSM's concerns and changes to its proposed program. The State noted that in considering the impact of a six-month extension, OSM should recognize that Utah is predominately an underground coal mining State, and that coal mining currently underway in the State is underground mining. Blasting associated with those operations is under the direction of the Utah Industrial Commission, in coordination with the Mine Safety and Health Administration.

On July 10, 1985, OSM announced procedures for the public comment period on the State's request to further extend the deadline to submit a blaster certification program (50 FR 28107). The public comment period ended August 9, 1985. No comments were received by OSM in response to the request for comments.

Director's Decision

In accordance with the State's request, the Director has decided to extend the deadline for Utah to submit a proposed blaster training program. The Director is granting the State an extension of six months. This extension will allow the Utah Division of Oil, Gas and Mining an opportunity to coordinate the development of the program with the Utah Industrial Commission.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it willl ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Undergreund mining.

Dated: August 25, 1985.

Jed O. Christensen,

Acting Director, Office of Surface Mining.

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 944 is amended by revising § 944.16 to read as follows:

§ 944.16 Required program amendments.

Pursuant to 30 CFR 732.17 Utah is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 6, 1986, Utah shall submit for OSM's approval:

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) [Reserved].

[FR Doc. 85-21303 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-05-M

VOL
50

ISS
73

SE
6

985

UMI

Federal Register

Friday
September 6, 1985

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Notice of Issuance of Program Announcement, "Nonparticipating State Initiative"

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Notice of Issuance of Program Announcement, "Nonparticipating State Initiative"

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Issuance of Program Announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5633, *et. seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473) (hereinafter "Act") is issuing a program announcement and a solicitation for applications from States not participating in the formula grant program as authorized by Part B, Subpart I of the Act. Eligible applicants are limited to local public and private nonprofit agencies in those States not participating in the Act. Those States are North Dakota, South Dakota, Nevada, Wyoming and Hawaii.

I. Introduction and Background

Pursuant to section 223(d) of the Act, the OJJDP Administrator must endeavor to make the formula grant fund allotment under section 222(a) of the Act, of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving:

A. Section 223(a)(12)(A), which provides that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities. This does *not* mean that such juveniles may not come under the jurisdiction of the juvenile justice system, nor does it mean that such juveniles may not be placed under supervised custody by the juvenile court in circumstances which conform to section 223(a)(12)(A) limitations on placement in secure facilities:

B. Section 223(a)(13), which provides that juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders shall not be detained or confined in any institution in which they have regular contact with incarcerated adults convicted of crimes or awaiting trial on criminal charges;

C. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

—Are outside a Metropolitan Statistical Area,
—have no existing acceptable alternative placements available, and
—provide for the sight and sound separation of juveniles and incarcerated adults.

II. Definition of Terms

A. *Adult jail.* A locked facility, administerd by State, county, or local law enforcement and public or private correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders usually sentenced for less than one year.

B. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

C. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

D. *Accused juvenile.* A juvenile on whom a petition has been filed in the juvenile court or other action has occured alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

E. *Adjudicated juvenile.* The juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

F. *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

G. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

H. *Local private nonprofit agency.* A private nonprofit agency or organization that provides services within an identifiable unit or a combination of units of general local government, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS be tax-exempt under the provisions of section 510(c)(3) of the 1954 Internal Revenue Code.

I. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

J. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

K. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the Act and thus is not participating in the formula grant program authorized by Part B of the Act; or a State found ineligible to receive funds because of failure to achieve or maintain compliance with a statutory mandate.

L. *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

M. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

N. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

O. *State Program Coordinator.* The agency/organization selected by OJJDP to implement Phase I and II of this Initiative.

III. Program Objectives

Pursuant to section 223(d) of the Act and coupled with sections 223(a) (12), (13) and (14), the OJJDP is sponsoring a program to support the development and implementation of projects to improve the detention and incarceration practices, policies, programs, and alternative services within nonparticipating States which address the problems associated with placing status offenders in secure facilities and any juveniles in adult jails and lockups. This program is intended to provide resources, both financial and technical, to jurisdictions in nonparticipating States to assist them in planning and implementing a viable strategy for providing court ordered supervision and protection programs for status offenders and nonoffenders as an alternative to the use of secure facilities, thereby moving the State toward compliance with section 223(a)(12)(A), and achieving both separation of juveniles and incarcerated adults and removal of juveniles from adult jails and lockups. This solicitation is an attempt to make it possible for non-participating States to move toward compliance with Act mandates while still providing appropriate supervision for children in need of supervision. It is hoped that alternatives to secure detention can be found that provide adequate supervision and protection for status offenders without requiring authorities to charge the offender with a criminal offense.

IV. Program Description

A. Problem Addressed

Many communities have not been able to implement the mandates of the Act because the State elected not to participate in the formula grant program or became ineligible to continue participating in the program. The limited number of alternative resources available to them has often resulted in an over reliance on the use of jails, lock-ups and other secure facilities for criminal-type, status and non-offenders.

This program is aimed at providing resources to establish alternative programs and services to eliminate the use of secure facilities for the placement of status offenders and non-offenders and the use of adult jails and lockups for the detention of juveniles. It is also intended to focus on the policies and practices which result in the inappropriate placement of youth. The major areas of concern include, but are not limited to:

—A general lack of alternative residential and non-residential programs for youth awaiting court appearance.

—Lack of community resources to effectively provide supervisory control and protection of status offenders and non-offenders in the community, in the schools and within the family structure, particularly drug and alcohol dependent youth, runaways and truants, resulting in subsequent uncontrollable behavior and victimization.

—A lack of 24-hour intake screening and a lack of objective intake criteria.

B. Target Population

The population expected to benefit from this initiative is juveniles who are currently held in adult jails and lockups and status offenders and non-offenders who are either being placed in secure facilities, or who, because they are being ignored by the juvenile justice system, are at risk of future placement in such facilities.

C. Results Sought

1. The removal of juveniles from adult jails and lockups through identification, development and utilization of viable alternatives to the use of adult jails and lockups.

2. The development of a flexible network of service and placement options for juvenile offenders and non-offenders which will provide supervision and control to such juveniles, protect them from victimization and exploitation, and hold them accountable for their offenses.

3. The development and adoption of intake criteria, consistent with nationally recommended standards, for alleged juvenile offenders and non-offenders who are awaiting court appearance.

4. An enhanced capacity for parents, schools, and police to resolve problems of youth without the use of jails and lockups. This includes, where appropriate, the coordination and integration of public and private juvenile services.

V. Program Strategy

This program employs a two-phased approach. Phase I is a planning and analysis period with Phase II being the implementation of the plan developed within the nonparticipating State. A State Program Coordinator (SPC) will be selected by OJJDP through this competitive announcement and, through a 24-month cooperative agreement with OJJDP, will receive an award of funds to implement both Phase I and Phase II of this program. During Phase I, the State Program Coordinator will develop, in conjunction with local jurisdictions across the State, a systematic Statewide plan for: (1) Removing juveniles from adult jails and lockups; and (2) removing status offenders and non-offenders from secure facilities by providing court ordered supervision and protection programs for such status offenders and non-offenders. During Phase II the SPC will act as the conduit for funds to local jurisdictions and provide the necessary coordination and oversite of the plan implementation.

A. Phase I: Planning and Analysis

Phase I is directed toward planning and analysis which will result in an action plan for removing juveniles from adult jails and lockups and the supervision and protection of status offenders and non-offenders which will be available upon removal from secure facilities. The State Program Coordinator, with technical assistance from OJJDP as necessary, will undertake a planning process consisting of a definition and assessment of the problems, needs assessment, policy and plan development, program development, and program monitoring.

During Phase 1, which will be completed during a six month period, the following problems should be addressed with appropriate strategies developed and incorporated into an action plan:

1. Lack of coordination and cooperation between enforcement officials, the judiciary, public and private service providers, and local public interest groups, which contribute to the inappropriate placement of juveniles in jails and lockups.

2. Need to develop a flexible network of services and programs, amenable to the local jurisdiction's needs and capabilities.

3. Need to develop alternative services which can be sustained over time with local resources, inclusive of but not limited to:

a. Supervision of juveniles in facilities which conform to the Act definition of "secure," but which control the self-destructive behavior of juveniles.

b. Intensive supervision in a child's home as a placement alternative.

c. Emergency foster care, shelter care and independent living arrangements.

d. Crisis intervention services and short-term residential crisis intervention programs which can be used for conflict mediation, emergency holding and provision of emergency attention for

youth with physical or emotional problems.

e. Development of objective intake criteria which are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

B. Phase II: Plan Implementation

Phase II will implement the comprehensive strategy to supervise and protect status offenders and non-offenders and remove juveniles from adult jails, developed in Phase I. This will be accomplished by the State Program Coordinator contracting the program dollars to local jurisdictions to implement specific programs and projects during the 18 months remaining in the initial budget period upon completion of Phase I. The SPC, with the assistance of OJJDP, will provide financial and program assistance to support plan implementation.

The responsibilities of the SPC will include, but will not be limited to, working with key local officials in development of the program implementation strategy developing selection criteria for determining which projects will receive funds, screening applicants, and following final review and approval by OJJDP, award contracts for project implementation. The SPC also will provide assistance to project implementors in maintaining financial accountability, and coordinate activities within the State to ensure that funded projects are consistent with the plan developed and are meeting defined objectives consistent with this program announcement.

VI. Dollar Range and Number of Awards

A. The project period for this program is three years from date of award, with a total funding commitment of up to $450,000 for the initial two year budget period for each of the applicants selected in the five nonparticipating States. A final 12 month budget period award will be based upon satisfactory completion of identified objectives and is subject to availability of Fiscal Year 1986 funds to carry out the purposes of section 223(d) of the Act. Funds will be made available through a cooperative agreement. Financial support for the SPC (planning and administration costs) may not exceed $90,000 for the initial budget period (i.e., 20% of the total $450,000 award). The remainder of the initial budget period award will be contracted by the SPC to local public and private nonprofit agencies for implementation of Phase II of the Initiative. SPC financial support for the second budget period will be negotiated on a case by case basis, not to exceed 20% of the award. Financial assistance provided under this program requires no matching contribution except as provided in section VI–C of this announcement regarding construction funds.

B. One application per State will be selected for each of the five nonparticipating States pursuant to the selection criteria established in this announcement, and consistent with the OJJDP Competition and Peer Review Policy as issued in the **Federal Register** on August 2, 1985 (50 FR 31361). The agency organization selected as the SPC will not be eligible to receive funds for purposes related to section 223(d) beyond the three year project period.

C. Up to one-fourth of the funds received by a subrecipient local jurisdiction for Phase II may be used for construction or renovation purposes. All construction funds must be used for innovative community-based facilities for less than 20 persons which meet the secure requirements of the Act and must be approved in advance by OJJDP. All construction funds must be matched dollar for dollar (in cash) by the local jurisdiction. The SPC and the local jurisdiction will be held accountable for adherence to section 227 of the Act and the requirements for construction programs as contained in the effective edition of the Financial and Administrative Guide for Grants, M7100.1. In addition, the erection of new buildings or the renovation of jails or lockups will not be permitted with funds acquired through this progam.

VII. Program Eligibility/Applicant Capability

Applications to serve as the State Program Coordinator are invited from local public and local private nonprofit agencies within the five nonparticipating States (Hawaii, Nevada, North Dakota, South Dakota, and Wyoming), which have knowledge and experience in developing and/or implementing programs and projects on a Statewide basis at the local level.

The applicant must:

A. Demonstrate knowledge of and experience with juvenile justice systems; local jails, lockups, and secure detention facilities; the problems, strategies and program alternatives necessary to achieve the objectives of this program; and, plan development and implementation.

B. Have the demonstrated capability or experience to develop management and fiscal systems necessary for the proper administration of Federal funds.

C. Demonstrate its ability to fulfill the activities and responsibilities identified in Section V of this announcement.

D. Demonstrate the ability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the Boards of public and private youth service providers which exist within the State.

E. Provide a detailed task specific description of activities which include a proposed level of OJJDP involvement in each task.

VIII. Application Submission Procedures and Deadlines

Prospective applicants for the State Program Coordinator must mail or hand deliver one (1) original and two (2) copies of the application, using Standard Form 424 to Mrs. Emily C. Martin, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, by October 4, 1985. Applications sent by mail will be considered to be received on time if sent by registered mail or certified mail no later than October 4, 1985, as evidence by the U.S. Postal Service postmark or the receipt from the U.S. Postal Services. Section IX of this program announcement identifies what must be contained in the application for the State Program Coordinator.

IX. Contents and Selection Criteria for the State Program Coordinator Applications

A. Contents of Applicotion

These requirements are to be used in lieu of the Part D-Program Narrative instructions in the Standard Federal Assistance Form 424. In order to be considered for funding, applications for the State Program Coordinator must include the following:

1. *Project Goals and Objectives.* Identify the specific objectives and describe the program strategy to be pursued in accomplishing the results sought by this solicitation. Discuss in detail the tasks and activities necessary to accomplish stated objectives. Provide a 24 month workplan, broken down into six month segments, which identifies objectives in relation to tasks, specific milestones and timeframes. Each task should include a proposed level of OJJDP involvement.

2. *Problem Definition.* a. Discuss for your State your understanding of: (1) The placement of juveniles in adult jails and lockups and status offenders and

non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (2) State legislative activities related to supervision and protection of status offenders and non-offenders and jail removal, and (3) program, services and various approaches which can be explored in an effort to achieve the Act's mandates.

b. Discuss the anticipated major difficulties and problem areas in the management and implementation of Phase I activities, selection of jurisdictions for implementing Phase II, management of Phase II activities, and coordination with OJJDP. This discussion of anticipated problems should also address potential or recommended approaches for their solution.

c. Proposals must address the following points regarding qualification and experience of the applicant.

(1) Provide adequate documentation that the applicant is a local public or local private nonprofit agency.

(2) Describe experience with similar or related projects completed or now underway.

(3) Identify the local/State mechanisms established, or to be established, to effect Statewide coordination, and provide documentation that the applicant has the clear support of State and local officials in planning and implementing a Statewide program.

(4) Identify key personnel, along with their responsibilities and the approximate percentage of time and duration each will be available for this program. Resumes which indicate relevant education and experience are required.

d. The applicant must also provide the information requested below with the information numbered and labeled according to the following:

Note.—Items asterisked should not be submitted with the application. They will be required at the end of Phase I, for those applicants selected.

(1) Description of State demographics including number of counties and cities, juvenile population and size of area(s).

(2) Description of the current system, size, and workload.

*(3) Description of the current juvenile intake and detention processes, intake criteria, resources, constraints, legal framework (including a summary of all relevant laws and formal administrative policies and procedures bearing on the issue of detaining youth), and other financial or funding sources.

*(4) Statements to the number of adult jails and lockups in the State and the number of secure (juvenile only) detention and correctional facilities. Include the holding capacity for both juveniles and adults in each.

(5) Statement of need including a brief description as to the reasons why juveniles are held in local jails or lockups and why status offenders and non-offenders are held in secure facilities.

*(6) Total number of juveniles detained in adult jails and lockups for the latest (2-month period); total number of status offenders held in secure facilities; and the total number of these detained or incarcerated in sight and sound contact with adult offenders.

*(7) A brief description of the existing jail alternatives, including both secure and non-secure alternatives.

(8) Assurance that the courts of juvenile jurisdiction are willing to reexamine intake criteria and experiment with alternative criteria.

(9) A documented statement of willingness of key juvenile justice agencies and local officials to develop community-based or other release options, to apply local financial resources to the effort, to continue the effort once Federal financial support ceases, and to consider nationally recognized standards, regulations and guidelines pertaining to juveniles awaiting court appearance.

(10) Letters of support from local juvenile court officials, law enforcement officials, and local child service providers which demonstrate a commitment to meeting the objectives of this program.

(11) A brief explanation of problems and/or reasons for the State's nonparticipation in the Act.

3. *Program Methodology.* Provide a plan and program design to accomplish the following administrative and developmental tasks:

a. Project Administration.

(1) Propose an administrative, management and fiscal structure. This structure must reflect the relationship between jurisdictions who will implement Phase II of this initiative and the applicant SPC organization.

(2) Provide an implementation plan which includes a schedule, management policies and organizational chart to show provisions for quality control and compliance with Federal requirements.

b. Plan development for implementing Phase I and Phase II of the Nonparticipating State Initiative.

(1) Outline a plan for implementing Phase I and involving local jurisdictions in the entire Phase I effort. Include a timeframe, task identification and the product of each stage in implementing Phase I.

(2) Outline a plan for developing selection criteria and screening of potential local jurisdictional sites for Phase II participation and describe a cooperative process with OJJDP for identifying those projects which will be recommended by the SPC or OJJDP approval.

(3) Outline a plan for soliciting, receiving, assessing and processing applicants from local jurisdictions for Phase II.

(4) Outline a plan for the management of all Phase II contracts/subgrants. This plan should include:

a. procedures for assuring the local jurisdictional compliance with OJJDP program and fiscal requirements.

b. procedures for on-site monitoring of all Phase II activities.

c. procedures for assuring that all Phase II local jurisdictions meet quarterly program and fiscal reporting requirements.

d. procedures for monitoring the impact of Phase II as it relates to achieving the objectives of this program announcement.

B. Selection Criteria

Applicants for the State Program Coordinator will be evaluated on methodology, management, and capability and their responsiveness to the specifications in the program announcement as evidenced by their application submission.

1. *Applicant Capability*—Applicants must evidence the following qualifications and experience: (35 points)

a. A local public or local private nonprofit agency with diversified experiences in working with local jurisdictions to effectuate plans and programs for youth and in establishing services and policy changes at the local, regional and Statewide level. (15 points)

b. Ability to establish effective relationships with the juvenile justice system and alternative service providers. (5 points)

c. Availability of key staff experienced in providing diverse populations with technical expertise in substantive topics related to the development and implementation of plans. (5 points)

d. Capability and expertise in maintaining and managing contracts/subgrants where local jurisdictions will be implementing various projects, new policies, and different techniques. (10 points)

2. *Understanding of Proposed Methodology*—Applicants must

evidence an understanding of the following: (20 points)

a. The required steps in the development and implementation of the planning and analysis phase (Phase I). (10 points)

b. The required steps in the implementation phase (Phase II) including the necessary OJJDP approval at each decision point. (10 points)

3. *Management Capability*—Applicants must evidence management capability as follows: (45 points)

a. The completeness of the application with respect to organization management of Phase I, project selection process, and management of the subcontracts/subgrantee activities, and management of Phase II. (20 points)

b. The feasibility of the workplan with respect to milestones, timeframes, workload, and cost. (15 points)

c. The completeness of the plan for assuring compliance with OJJDP administrative, statutory and fiscal requirements. (10 points)

Applications will be evaluated by a peer review panel. The application from each of the five (5) eligible States which receives the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

XI. Contact

For further information contact: Mr. Doyle A. Wood, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–5921.

Alfred S. Regnery,

Administrator, OJJDP.

[FR Doc. 85–21308 Filed 9–5–85; 8:45 am]

BILLING CODE 4410–18–M

Reader Aids

Federal Register

Vol 50, No. 173

Friday, September 6, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033

Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041
319.....35533
736.....35535
908.....35767
981.....35767
989.....35769
1135.....36043
1472.....35772

Proposed Rules:
52.....36094
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829

9 CFR

Proposed Rules:
77.....35564
309.....36094

14 CFR

39.....35772, 36044-36046
71.....36047
108.....35535

Proposed Rules:
21.....36437
39.....35830-35839, 36095-36102, 36441
71.....35840

16 CFR

4.....36048

Proposed Rules:
13.....35565

17 CFR

1.....36049
31.....36405
190.....36405

Proposed Rules:
1.....36104
3.....36104

18 CFR

385.....36051

20 CFR

Proposed Rules:
295.....35568
416.....36108

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
510.....35535
558.....35535, 35536, 36419
1040.....36548

Proposed Rules:
74.....35841
82.....35841
170.....35571
808.....36441-36443

26 CFR

1.....35536, 35540
6a.....35540
602.....35536, 35540

Proposed Rules:
1.....35572
602.....35572

28 CFR

0.....36054
2.....36419-36423

30 CFR

Proposed Rules:
817.....35573
944.....36554

31 CFR

51.....36055
206.....35547

Proposed Rules:
223.....36115

32 CFR

155.....35790
706.....36424-36425
865.....36426

33 CFR

100 35552-35554
165 35555
Proposed Rules:
207 35573

34 CFR

Proposed Rules:
682 35964
683 35964

35 CFR

Proposed Rules:
133 36444

36 CFR

327 35555

39 CFR

10 36431
Proposed Rules:
111 35843

40 CFR

15 36188
52 35796
81 35561
271 35798
466 36540
Proposed Rules:
147 35574
180 35844
430 36444
799 36446

42 CFR

505 35646
512 35646
Proposed Rules:
124 36454

43 CFR

1820 36055

44 CFR

59 36016
60 36016
61 36016
64 36016
66 36016
70 36016
72 36016
75 36016

47 CFR

Ch. I 36056
0 36061
2 36061
18 36061
25 ..... 36071, 36432
73 ..... 35562, 35799-35800
97 36080
Proposed Rules:
73 ..... 35574-35581, 35845

48 CFR

15 35815
52 35815
501 36080
502 36080
504 36080
505 36080
506 36080
507 36080
509 36080
510 36080
514 36080
515 36080
525 36080
536 36080
549 36080
914 35956
915 35956
952 35956
Proposed Rules:
549 35582
552 35582

49 CFR

Ch. X 35562
571 36084
1033 36085
1085 35563
1152 36432
Proposed Rules:
192 36116
218 35636
221 35636
232 ..... 35640, 35643
571 35583

50 CFR

17 ..... 36085, 36089
20 ..... 35762, 36198, 36432-36433
32 ..... 35563, 35815
33 35563
611 35825
621 36434
630 35563
661 ..... 35827, 36092
672 35825
675 35825
Proposed Rules:
17 ..... 35584, 36118

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1985

VOL
50

ISS
73

SE
6

985

UMI

VOL
50

ISS
74

SE
9

985

UMI

9-9-85
Vol. 50 No. 174

federal register

Monday
September 9, 1985

**********5-DIGIT 48106

A FR SERIALS300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
174

SE
9

985

UMI

9-9-85
Vol. 50 No. 174
Pages 36563-36860

Federal Register

Monday
September 9, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency
Aviation Safety
Federal Aviation Administration
Banks
Defense Department
Bridges
Coast Guard
Credit Unions
Defense Department
Crop Insurance
Federal Crop Insurance Corporation
Education
Veterans Administration
Employee Benefit Plans
Pension Benefit Guaranty Corporation
Hazardous Waste
Coast Guard
Income Taxes
Internal Revenue Service
Indians—Education
Indian Affairs Bureau
Loan Programs—Agriculture
Commodity Credit Corporation

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Marketing Agreements
Agricultural Marketing Service

Marine Safety
Coast Guard

Motor Vehicle Pollution
Environmental Protection Agency

Old-age, Survivors and Disability Insurance
Social Security Administration

Pesticides and Pests
Environmental Protection Agency

Reporting and Recordkeeping Requirements
Federal Energy Regulatory Commission

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

The President
ADMINISTRATIVE ORDERS
36563 Trading With the Enemy Act, extension of authorities (Memorandum of September 5, 1985)
36565 Cargo Preference Act, delegation of authority under the (Memorandum of August 7, 1985)

Executive Agencies

Agricultural Marketing Service
RULES
36567 Kiwifruit grown in California

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Food and Nutrition Service.

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
36677 September; correction

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
36642 Arkansas
36643 Ohio
36643 Washington

Coast Guard
RULES
Pollution:
36768 Waste reception facilities requirements; interim
Regattas and marine parades:
36576 Bluewater Race of Champions
PROPOSED RULES
Drawbridge operations:
36630 Florida
Equipment, construction, and materials; specifications and approval:
36639 Lifesaving equipment; inflatable liferafts, stability; extension of time
Regattas and marine parades:
36629 Annual Parker Thanksgiving Regatta
36628 Lake Havasu Classic

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Loan and purchase programs:
36568 Cotton; warehouse approval standards

Copyright Office, Library of Congress
NOTICES
Meetings:
36682 American Folklife Center Board of Trustees

Customs Service
PROPOSED RULES
Recordkeeping, inspection, search, and seizure:
36603 Violations of 19 U.S.C. 1592, prior disclosures; extension of time

Defense Department
See also Defense Logistics Agency; Defense Mapping Agency; Engineers Corps.
PROPOSED RULES
36619 Banking institutions on DOD installations; operating procedures
36610 Banking offices on DOD installations; operating procedures
36622 Credit unions on DOD installations; operating procedures
NOTICES
36646, 36648 Agency information collection activities under OMB review (2 documents)
Meetings:
36648 President's Blue Ribbon Commission on Defense Management
36648 Science Board Task Forces
36647 Travel per diem rates, civilian personnel; changes

Defense Logistics Agency
NOTICES
36649 Agency information collection activities under OMB review (2 documents)

Defense Mapping Agency
NOTICES
Meetings:
36649 Mapping, Charting and Geodesy Advisory Committee

Education Department
NOTICES
36650 Agency information collection activities under OMB review
Grants; availability, etc.:
36651 National direct student loan, college work study, and supplemental educational opportunity grant programs; sample cases and expected parental contributions; correction and extension of time
Meetings:
36651 Indian Education National Advisory Council
36650 National Council on Educational Research

Energy Department
See Energy Information Administration; Federal Energy Regulatory Commission.

Energy Information Administration
NOTICES
Forms; availability, etc.:
36651 Nuclear fuel data (RW–859)

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
36648 Kansas River, KS

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
36830 Automobile and light-duty truck surface coating operations; innovative technology waivers
Air programs:
36732, 36734 Noncompliance penalties; assessment and collection (2 documents)
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
36579 Carbofuran
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
36838 Importation of nonconforming motor vehicles and engines
Air quality implementation plans; approval and promulgation; various States:
36635 Nevada
36633 Ohio
Air quality implementation plans; delayed compliance orders:
36637 Pennsylvania
Water pollution; effluent guidelines for point source categories:
36638 Pharmaceutical manufacturing
NOTICES
36665 Agency information collection activities under OMB review
Air quality; prevention of significant deterioration (PSD):
36666 Permit determinations, etc.; Region VI
Meetings:
36668 FIFRA Scientific Advisory Panel
Toxic and hazardous substances control:
36666 Confidential information and data transfer to contractors
36665 Premanufacture exemption applications
36669, 36671 Premanufacture notices receipts (2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
36570 McDonnell Douglas
PROPOSED RULES
Airworthiness directives:
36600 DeHavilland

Federal Communications Commission
NOTICES
36672 Agency information collection activities under OMB review
Hearings, etc.:
36672 Broadcast Data Corp. et al. (2 documents)
36673 Digital Paging Systems, Inc., et al.
Meetings:
36672 Radio Advisory Committee

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
36589 Corn
36593 Dry bean
36584 Flax
36580 Grain sorghum
36597 Prevented planting crop insurance policy

Federal Deposit Insurance Corporation
NOTICES
36705 Meeting; Sunshine Act (2 documents)

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
36571 Btu measurement adjustments; refund procedures; stay and rehearing denied
36571 Pipelines; interstate distributors; blanket certificates for sales and transportation, etc.; rehearing petition denied
PROPOSED RULES
36601 Oil pipelines; data for depreciation analysis; reporting and recordkeeping requirements
NOTICES
Hearings, etc.:
36652 Algonquin Gas Transmission Co.
36664 Consolidated Gas Transmission Corp.
36664 Panhandle Eastern Pipe Line Co.
36652 Raton Natural Gas Co.
36653 Sea Robin Pipeline Co.
36653 Southeastern Gas Co.
36653 Southern Natural Gas Co.
36654 Tennessee Gas Pipeline Co.
36654 Transcontinental Gas Pipe Line Corp.
36654 Transwestern Pipeline Co.
36655 Hydroelectric applications
Natural gas certificate filings:
36660 Florida Gas Transmission Co. et al.
Small power production and congeneration facilities; qualifying status; certification applications, etc.:
36663 White, William T. III et al.

Federal Home Loan Bank Board
NOTICES
36705 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
36674 Agreements filed, etc.

Federal Mine Safety and Health Review Commission
NOTICES
36705 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
36674 Amoskeag Bank Shares, Inc., et al.
36675 National security information program; implementation

Food and Drug Administration
NOTICES
Human drugs:
36677 Prescription drugs, direct-to-consumer advertising; moratorium withdrawn

Food and Nutrition Service
NOTICES
Food stamp program:
36641 Thrifty food plan and deductions

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Public Health Service; Social Security Administration.
NOTICES
Meetings:
36676 Interagency Committee on Smoking and Health

Indian Affairs Bureau
RULES
Education:
36798 Minimum academic standards for basic education of Indian children and national criteria for dormitory situations

Interior Department
See Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Income taxes:
36575 Expenditures for facilities used for entertainment; disallowance of deductions

International Development Cooperation Agency
See Overseas Private Investment Corporation.

International Trade Administration
NOTICES
Meetings:
36643 Management-Labor Textile Advisory Committee
Scientific articles, duty-free entry:
36643 University of Arizona
36643 University of Colorado
Short supply determinations; inquiry:
36644 Carbon band saw steel

Interstate Commerce Commission
NOTICES
Motor carriers:
36680 Lease of equipment and drivers to private carriers; policy statement; petition; extension
Railroad services abandonment:
36681 Atchison, Topeka and Santa Fe Railway Co.
36680 Seaboard System Railroad, Inc.
Railroad services abandonment, and railroad operations, etc.:
36681 Southern Pacific Transportation Co.

Justice Department
NOTICES
36681 Agency information collection activities under OMB review

Land Management Bureau
NOTICES
Exchange of lands:
36678 Idaho; correction
Oil and gas leases:
36678 Alaska

Library of Congress
See Copyright Office, Library of Congress.

Merit Systems Protection Board
NOTICES
36682 Privacy Act; systems of records

National Bureau of Standards
NOTICES
Meetings:
36644 OSI Implementors workshop

National Credit Union Administration
NOTICES
Senior Executive Service:
36683 Performance Review Board; membership

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
36703 Union City Body Co., Inc.

National Oceanic and Atmospheric Administration
NOTICES
Marine mammals:
36644 Incidental taking; authorization letters, etc.; National Fish Meal & Oil Association et al.

National Park Service
NOTICES
Concession contract negotiations:
36679 Vern-Del Enterprises, Inc.
Meetings:
36679 Golden Gate National Recreation Area Advisory Commission
36679 Santa Monica Mountains National Recreation Area Advisory Commission
36680 Upper Delaware Citizens Advisory Council

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
36683 Long Island Lighting Co.
36683 Nebraska Public Power District
36685 Vermont Yankee Nuclear Power Corp.

Overseas Private Investment Corporation
NOTICES
36706 Meetings; Sunshine Act

Pension Benefit Guaranty Corporation
PROPOSED RULES
Multiemployer plans:
36603 Vested benefits, unfunded; allocation

Public Health Service
NOTICES
Organization, functions, and authority delegations:
36678 Food and Drug Administration
Patent licenses, exclusive:
36676 Research Corp.
36676 Thermedics Inc.

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
36679 Fallon Indian Reservation Irrigation and Drainage System, Newlands Project, NV; cancellation

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes;
36689 Municipal Securities Rulemaking Board
36692 National Association of Securities Dealers
36686 Philadelphia Stock Exchange, Inc.

Social Security Administration
RULES
Social security benefits:
36571 Coverage of employees of private nonprofit organizations, work outside U.S., etc.

State Department
NOTICES
Grants; availability, etc.:
36698 Discretionary grant programs; Soviet and Eastern European research and training
Meetings:
36700 International Telegraph and Telephone Consultative Committee
36700 Shipping Coordinating Committee (2 documents)

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Abandoned mine land reclamation fund:
36858 Fee collection and coal production reporting; reclaimed coal

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
36645 Northern Mariana Islands
36645 Yugoslavia
Textile consultation; review of trade:
36645 Taiwan

Trade Representative, Office of United States
NOTICES
36686 Wine trading countries, designations

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.
NOTICES
36701 Agency information collection activities under OMB reviews
Aviation proceedings; hearings, etc.:
36703 Big Island Air
36701 Las Vegas Airlines, Inc.
36701 Las Vegas Express, Inc.

Treasury Department
See Customs Service; Internal Revenue Service.

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
36577 Headstone or marker allowance
Vocational rehabilitation and education:
36578 Advance payment regulations, etc.; editorial amendments
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
36631 Vocational training; temporary programs

Separate Parts in This Issue

Part II
36732 Environmental Protection Agency

Part III
36768 Department of Transportation, Coast Guard

Part IV
36798 Department of the Interior, Bureau of Indian Affairs

Part V
36830 Environmental Protection Agency

Part VI
36838 Environmental Protection Agency

Part VII
36858 Department of the Interior, Office of Suface Mining Reclamation and Enforcement

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Memorandums:
- September 5, 1985.....36563
- August 7, 1985.....36565

7 CFR

920.....36567
1427.....36568

Proposed Rules:

420.....36580
423.....36584
432.....36589
433.....36593
442.....36597

14 CFR

39.....36570

Proposed Rules:

39.....36600

18 CFR

154.....36571
157.....36571

Proposed Rules:

357.....36601

19 CFR

Proposed Rules:

162.....36603

20 CFR

404.....36571

25 CFR

36.....36798

26 CFR

1.....36575

29 CFR

Proposed Rules:

2642.....36603

30 CFR

Proposed Rules:

870.....36858

32 CFR

Proposed Rules:

230.....36610
231.....36619
231a.....36622

33 CFR

100.....36576
151.....36768
158.....36768

Proposed Rules:

100 (2 documents).....36628–36629
117.....36630

38 CFR

3.....36577
21.....36578

Proposed Rules:

3.....36631

40 CFR

60.....36830
66 (2 documents).....36732, 36734
67.....36732
180.....36579

Proposed Rules:

52 (2 documents).....36633–36635
65.....36637
85.....36838
439.....36638
600.....36838

46 CFR

Proposed Rules:

160.....36639

VOL
50

ISS
174

SE
9

985

UMI

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

Presidential Documents

Title 3—

The President

Memorandum of September 5, 1985

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625, 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 11, 1984 (49 FR 35927), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1985.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1986, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

This memorandum shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 5, 1985.

[FR Doc. 85–21640
Filed 9–6–85; 10:46 am]
Billing code 3195–01–M

VOL
50

ISS
174

SE
9

985

UMI

Presidential Documents

Memorandum of August 7, 1985

Delegation of Authority Under the Cargo Preference Act

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo Preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, August 7, 1985.

cc: The Secretary of State

[FR Doc. 85-21675
Filed 9-6-85; 12:45 pm]
Billing code 3195-01-M

VOL
50

ISS
174

SE
9

985

UMI

Rules and Regulations

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

Kiwifruit Grown in California; Grade, Size, Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes minimum grade, size, pack, and container requirements pursuant to the marketing order for kiwifruit grown in California. The regulation is designed to provide for orderly marketing of kiwifruit for the benefit of producers and consumers.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated as a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this section will not have a significant economic impact on a substantial number of small entities.

A notice was published in the **Federal Register** on July 2, 1985, (50 FR 27288), containing proposed grade, size, pack and container requirements for fresh shipments of California kiwifruit. That proposed rule provided interested persons an opportunity to file comments through August 1, 1985. A notice of an extension of the period for filing comments to August 7, 1985, was published in the **Federal Register** on August 5, 1985 (50 FR 31635). A total of 110 comments were filed.

Persons filing comments opposed to the proposed grade and size requirements indicated that such requirements are not needed and are not adequately justified, would restrict shipment of lower quality kiwifruit and misshapen fruit, i.e. "wides" and "fans" and smaller sizes of kiwifruit. Several comments indicated that the proposed requirements could eliminate 3 to 30 percent of the kiwifruit crop from being shipped in fresh market channels. Other comments suggested that the proposals would restrict market expansion, adversely affect small growers, and result in the destruction of edible fruit.

Information indicates that about 8 percent of the 1985–86 California kiwifruit crop may not meet specified minimum quality requirements. Individual growers may have differing amounts of their kiwifruit crop which would not meet specified quality requirements depending on cultural practices employed and other factors. However, kiwifruit which does not meet these requirements may be handled exempt from regulations if it is designated for use by charitable institutions, distributed by relief agencies, commercially processed into products, or handled to outlets specified under § 920.110. Thus, the regulation should not result in the elimination of marketable kiwifruit.

The majority of those persons regulated under the order are considered to be small entities and regulations issued under the order are uniformly applied to all such entities. These regulations may be modified upon recommendation of the committee and approval of the Department to recognize changed crop or market conditions for kiwifruit.

Comments filed in favor of the proposed requirements indicated that minimum quality requirements are needed to expand the market for California kiwifruit. Shipment of lower quality and smaller sizes of kiwifruit adversely affects prices for better quality and preferred sizes of kiwifruit and may result in consumer dissatisfaction and reduced purchases of kiwifruit. Other comments indicated that the proposed requirements would not substantially reduce the volume of the crop for market.

The KAC filed a comment indicating that while the proposed minimum size 49 should be defined in the rule in terms of the number of kiwifruit in an 8-pound sample, the regulation should not define sizes 30, 33, 36, and 39 in such terms because of uncertainty as to the acceptable number of kiwifruit in an 8-pound sample and variations in the weight of kiwifruit which may occur during the season. As an alternative, KAC suggested that these size designations be determined by the Federal or Federal-State Inspection Service. The comment also suggested that the regulation should reference § 51.2338 of the U.S. Standards for Grades of Kiwifruit which specifies standard pack requirements rather than citing the provisions in that section.

The size designations 30, 33, 36, and 39 are defined to clearly indicate the basis for ascertaining that these sizes meet the "fairly uniform in size" requirements in § 920.302(a)(3). The committee may recommend and the Secretary may approve changes to these sizes if substantial evidence is shown that there is a need for such a change. In order to assure clarity, the rule retains the detail as to applicable standard pack requirements in lieu of a reference to the section of the U.S. Standards for Grades of Kiwifruit containing standard pack requirements, as suggested by the committee. Thus, the changes submitted by KAC with respect to this issue are not adopted.

Based on comments received, the recommendations and information submitted by the committee and other available information, it is determined that minimum grade, size, pack, and container requirements should be made applicable to fresh shipments of California kiwifruit to promote orderly marketing of the 1985–86 crop.

The final rule is issued under the marketing agreement and Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the act.

The 1985–86 California Kiwifruit crop is estimated by the committee at 5.2 million trays or tray equivalents (approximately 39 million pounds) compared to last year's crop of 4.265

millions trays or tray equivalents (approximately 31.99 million pounds).

The marketing order for California kiwifruit became effective on October 12, 1984, and was based on evidence that establishment of minimum quality and other regulations would promote orderly marketing of California kiwifruit. The minimum grade, size, pack and container requirements specified in this rule implement authorization for regulation of shipments of kiwifruit contained in the marketing order.

The KAC reported that the lack of grade and size regulations last year resulted in numerous complaints from consumers and wholesale buyers that the quality of the California kiwifruit crop was poor. The committee concluded that this situation reduced buyer confidence in California kiwi-fruit and may have contributed to lower f.o.b. prices. The specification of minimum grade and size requirements should provide for a consistent supply of good quality kiwifruit and are necessary to improve wholesale buyer and consumer confidence during the 1985–86 season.

Pursuant to § 920.52, § 920.302 would specify that kiwifruit must grade at least 85 percent U.S. No. 2, and be at least size 49 (size 49 means that an eight pound sample, representative of this size in the package or container, does not contain more than 64 pieces of fruit). The pack requirements would require that size 30 or larger cannot vary more than ½ inch in diameter, sizes 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter. Lot stamping of containers would be required for all shipments, except those being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

Section 920.110 of the regulations under the order exempts the handling of kiwifruit under certain conditions from specified provisions of the order and the regulations. This exemption would apply to the requirements established herein privided that: (1) The net weight of such kiwifruit sold to any one person during any one day does not exceed 200 pounds; (2) the kiwifruit are for home use and not for resale; and (3) the kiwifruit are handled by the person who produced them and, the handling takes place on the premises where grown, at a packinghouse, retail stand, or any other outlet approved by the committee which is operated by said handler, or at a Certified Farmers Market.

It is found that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because interested persons were given an opportunity to submit information and views on the requirements specified in this rule and no useful purpose would be served by delaying the effective date of this rule. Prompt implementation of this rule is necessary to effectuate the purpose of the act. California kiwifruit growers have been apprised of the provisions of this rule. This final rule is the same as the proposed rule except for the later effective date and minor, editorial changes for clarity.

List of Subjects in 7 CFR Part 920

Marketing agreements and Orders, Kiwifruit, California.

PART 920—[AMENDED]

1. The Authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. New § 920.302 is added to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) On and after September 9, 1985, no handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(1) *Grade Requirements.* Fresh shipments of kiwifruit shall grade a least 85 percent U.S. No. 2: *Provided,* That no more than 8 percent be allowed for defects other than badly misshapen fruit.

(2) *Size Requirements.* Such kiwifruit are a minimum size 49 (size 49 means that an eight-pound sample representative of this size in the package or container, contains not more than 64 pieces of fruit: *Provided,* That size 30, 33, 36, and 39 mean that an eight-pound sampler representative of these sizes in a package or container, contains not more than 34, 37, 41, and 46 pieces of fruit, respectively.

(3) *Pack Requirements.* Such kiwifruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, cartons or any other containers and arranged according to approved and recognized methods. Containers shall be well filled; contents tightly packed but not be excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents. When packed in closed containers the size shall be indicated by marking the container with the numerical count. Fruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count. For the purposes of this section, "fairly uniform in size" means that size 30 or larger cannot vary more than ½ inch in diameter, sizes 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter: *Provided,* That volume fill containers are exempt from numerical count markings on containers: *Provided further,* That "diameter" means the greatest dimension measured at right angles to a line from stem to blossom end: and *Provided further,* That not more than 10 percent, by count, of containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet these requirements.

(4) *Container Requirements.* Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(b) The term "U.S. No. 2" means the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

Dated: September 4, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–21395 Filed 9–6–85; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 4.]

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR 1427.1061 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The final rule will: (1) require non-federally licensed warehousemen requesting renewal of an existing Cotton Storage Agreement (CSA) to pay fees to CCC to partially defray warehouse examination costs incurred by CCC in determining

whether to renew the CSA; and (2) require non-federally licensed warehousemen requesting approval of a new CSA to pay fees to partially defray warehouse examination costs incurred by CCC in determining whether to approve such new CSA.

EFFECTIVE DATE: September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5962-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 382–8053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since it does not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The information collection requirements contained in this regulation (7 CFR Part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0040, 0560–0074, 0560–0027, and 0560–0059.

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714 et seq.) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the CCC's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce. Pursuant to these provisions, CCC enters into Cotton Storage Agreements (CSA) with private warehousemen which provide for the storage of commodities owned by CCC or pledged as security to CCC for a price support loan.

CCC examines all warehouses which are subject to a CSA, or for which a warehouseman has requested approval of a new CSA, to determine whether quantities of CCC-owned cotton, CCC loan cotton, and other depositors' cotton are totally accounted for and whether the warehouse will provide adequate protection for all cotton in storage and all cotton to be placed in storage. CCC now pays all examination costs with respect to those warehouses which are not licensed under the U.S. Warehouse Act but for which there is a request by the warehouseman for renewal of an existing CSA or for approval of a new CSA. If the warehouse examination discloses that (1) all cotton is accounted for, (2) the facility provides or will provide adequate protection for all cotton and (3) the warehousemen and warehouse meet the financial and other requirements of the Standards for Approval, an existing CSA may be renewed or a new CSA may be approved for the warehouse. Since the warehouseman also derives a direct benefit from warehouse examination, it has been determined that the warehouseman should pay a portion of the examination costs.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on July 22, 1985, 50 FR 29693, requesting comments with respect to an amendment of the Standards for Approval of Warehouses for Cotton and Cotton Linters. The comment period was for thirty days and ended on August 21, 1985.

Amendments to the regulations were proposed which would require each warehouseman who has a non-federally licensed cotton warehouse and who is requesting renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement to pay an annual contract fee for each such warehouse in order to partially defray the cost of the warehouse examination.

No comment were received concerning the proposed rule. Accordingly, it has been determined that the provisions of the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—Cotton Price Support Programs, Cotton storage.

Final Rule

Accordingly, the regulations at 7 CFR Part 1427, Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters, are amended as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR Part 1427, Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters, reads as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

§ 1427.1088 [Redesignated as § 1427.1089]

2. Section 1427.1088 is redesignated as § 1427.1089.

3. A new § 1427.1088 is added immediately following § 1427.1087 to read as follows:

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior

to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the **Federal Register.**

Signed at Washington, D.C. on September 4, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-21394 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-44-AD; Amdt. 39-5137]

Airworthiness Directives; McDonnell Douglas Model DC-9, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1248

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, and repair, if necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC-9 series airplanes. This action is prompted by reports of cracks in the upper anticollision light doubler, the failure of which could result in significant damage to the adjacent structure and cause the subsequent loss of cabin structural integrity.

DATES: Effective October 14, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection and repair, as necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on May 15, 1985 (50 FR 20225). The comment period for the proposal closed July 8, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

The first commenter suggested that the FAA consider Condition III of McDonnell Douglas DC-9 Service Bulletin 53-186 as an alternative repair method for cracks found less than one inch long (Condition II). The FAA concurs that Condition III will provide the necessary equivalent level of safety, for Condition II repairs (i.e. cracks less than 1 inch). This option, therefore, has been incorporated into the final rule.

The second and third commenters recommended that paragraph B. of the NPRM be revised to include the installation of an external doubler as an alternate method of complying with Condition I, Phase II. After reviewing additional data received from McDonnell Douglas Corporation, the FAA has determined that this is a viable alternative method for complying with Condition I, Phase II. This alternative method has also been incorporated into the final rule.

The fourth commenter suggested that the one year repetitive inspection interval of paragraph B. of the NPRM be expressed in landings (cycles). The FAA concurs after reviewing additional data received from McDonnell Douglas Corporation, and the amendment, as adopted, incorporates this change.

It is estimated that 548 airplanes of U.S. registry will be affected by this AD. It will take approximately four man-hours per airplane to accomplish the required inspections, and ten man-hours per airplane to accomplish the required repairs. The average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $306,880.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1248, certificated in any category, with more than 30,000 landings. Compliance required as indicated, unless previously accomplished.

A. Within the next 1,600 landings after the effective date of this AD, inspect the skin and doublers around the upper anticollision light cutout for cracks in accordance with McDonnell Douglas Service Bulletin 53-186, dated April 17, 1985 (hereinafter referred to as SB 53-186), Figure 2, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found under Condition I, Phase I, as referenced is SB 53-186, perform repetitive eddy current inspections at intervals not to exceed 3,500 landings in accordance with Figure 2, of SB 53-186, until such time as stress coining of plate nut clearance holes, as outlined under Condition I, Phase II,* is accomplished.

C. If cracks are found, before further flight:

1. For cracks less than 1.00 inch long, repair cracked area in accordance with Condition II or III of the Accomplishment Instructions in SB 53-186, or SB 09531086 (originally identified as McDonnell Douglas DC-9 Service Sketch 3626C).

2. For cracks 1.00 to 1.25 inches long, repair cracked area in accordance with Condition III of the Accomplishment Instructions in SB 53-186, or SB 09531086.

3. For cracks greater than 1.25 inches, repair in accordance with data approved by the Manager, Los Angeles Aircraft

* NOTE: Accomplishment of Phase II, eliminates the requirements for Phase I repetitive inspections.

Certification Office, FAA, Northwest Mountain Region.

D. Terminating Action. Completion of the Accomplishment Instructions of SB 53-186, or SB 09531066, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for this AD.

E. Alternative inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 14, 1985.

Issued in Seattle, Washington, on August 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21368 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM84-6-015 through 032]

Refunds Resulting From Btu Measurement Adjustments

August 26, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Denial of requests for stay.

SUMMARY: The Federal Energy Regulatory Commission is giving notice that it is denying requests for stay and not acting on requests for rehearing of Order No. 399-B, relating to refunds resulting from Btu measurement adjustments, issued July 18, 1985, 50 FR 30141 (July 24, 1985).

EFFECTIVE DATE: August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9115.

SUPPLEMENTARY INFORMATION: On July 26, 1985, Mesa Petroleum Company, on August 9, 1985, Phillips Petroleum Company, and on August 19, 1985, Pitts Oil Company, *et al.*, and Mobil Oil Corporation, *et al.*, requested rehearing and petitioned for a stay of Commission Order No. 399-B, issued July 18, 1985, in the above-entitled proceeding, 50 FR 30141 (July 24, 1985). The Commission denies the requests for a stay because it does not believe justice requires that Order No. 399-B be stayed. 5 U.S.C. 705 (1982). In addition, the Commission will not act further upon these requests for rehearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21398 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 157

[Docket Nos. RM81-19-024 and RM81-29-019]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

August 16, 1985.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice of Denial of Petition for Rehearing.

SUMMARY: On July 18, 1985, a petition for rehearing was filed by the Interstate Natural Gas Association of America on the final rule in this proceeding relating to interstate pipeline blanket certificates for routine transactions and sales and transportation by interstate pipelines and distributors. The Commission has decided to deny the petition by not acting on it.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTAL INFORMATION: On July 17, 1985, the Interstate Natural Gas Association of America requested rehearing of the Commission's final rule issued June 17, 1985, 50 FR 25701 (June 21, 1985). The Commission has decided to deny this request pursuant to section 19(a) of the Natural Gas Act by not acting upon it.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21400 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Coverage of Employees of Private Nonprofit Organizations, Work Outside United States, Etc.

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These rules implement sections 102, 321, 322, and 323 of Pub. L. 98-21 (the Social Security Amendments of 1983). Generally, these provisions: (1) Mandatorily cover for Social Security purposes employees of private nonprofit organizations; (2) Provide additional Social Security coverage for certain work performed outside the United States (U.S.); (3) Provide coverage under the Social Security program for certain foreign earned income; (4) Provide special Social Security insured status requirements for certain nonprofit organization employees covered as a result of these amendments; and (5) Provide Social Security coverage for employment and self-employment that is identified as "covered" for purposes of title II of the Social Security Act (the Act) by the provisions of a totalization agreement between the U.S. and another country. We published a Notice of Proposed Rulemaking on April 6, 1984 (49 FR 13710). No comments were received.

These regulations also implement section 2603 of Pub. L. 98-369 (the Deficit Reduction Act of 1984) which was enacted subsequent to publication of the Notice of Proposed Rulemaking. Section 2603 permits certain churches and church-controlled organizations, opposed to the payment of Social Security employment tax for religious reasons, to elect to exclude from Social Security coverage as employment, services of their employees performed after 1983. The excluded services are considered to be self-employment for Social Security purposes. Since this provision modifies section 102 of Pub. L. 98-21 we are including regulations reflecting this provision as final rules without a prior Notice of Proposed

Rulemaking but with an opportunity for public comment.

DATES: These rules are effective (insert date of publication), but the statutory changes which the regulations reflect were effective on earlier dates. Because the rules implementing section 2603 of Pub. L. 98–369 were not included in the Notice of Proposed Rulemaking we will consider any comments concerning that provision (§§404.1025(a), 404.1026, 404.1068 (a) and (f), 404.1080(a), and 404.1096(c)(1)) that we received by November 8, 1985 and will revise such rules later if public comment warrants.

ADDRESS: Send comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland, 21203; or deliver to the Office of Regulations, Social Security Administration, 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland, 21235.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7460.

SUPPLEMENTARY INFORMATION:

Coverage of Employees of Private Nonprofit Organizations

Beginning January 1, 1984, employees of private nonprofit organizations are mandatorily covered by Social Security. Any remuneration paid to such employees on or after that date may be subject to the Social Security tax. Under prior law employees of such organizations were exempt from Social Security coverage (and taxes) but an organization could voluntarily waive the exemption to provide coverage for its employees. Termination of a waiver was possible under prior law but on or after March 31, 1983, termination is prohibited. Special requirements for fully insured status are provided for certain employees covered solely as a result of this provision.

These regulations differ from those set forth in the Notice of Proposed Rulemaking to the extent that they reflect the clear provisions of section 2603 of Pub. L. 98–369, which affected section 102 of Pub. L. 98–21. Section 2603 provides that certain church and church-controlled organizations may elect to have the services of their employees excluded from Social Security coverage as employment beginning January 1, 1984. Services of employees so excluded are considered to be self-employment for Social Security purposes. These regulations do not reflect any exercise of discretion or administrative policy choices. They simply reflect the clear provisions of section 2603 of Pub. L. 98–369 which affect section 102 of Pub. L. 98–21. They do not grant or deny rights which do not exist under the statute. Therefore, there is good cause for finding that prior notice and opportunity for comment under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) is unnecessary. In addition, prior notice and comment would be impracticable and contrary to the public interest. It would be impracticable for us to publish a final regulation providing mandatory Social Security coverage of employees of private nonprofit organizations without publishing at the same time the provision permitting an exclusion from such coverage. Prior notice and comment would be contrary to the public interest in that delaying the regulations implementing section 2603 would delay final publication of the regulations in the April 6 Notice of Proposed Rulemaking and existing regulations would be out of date for an unreasonable period of time.

Coverage of Employees of Foreign Affiliates of American Employers

These regulations implement section 321 of Pub. L. 98–21. Under this provision any American employer (corporation, sole proprietorship or partnership) may provide Social Security coverage for U.S. citizens and U.S. residents working outside the U.S. for a foreign affiliate when the American employer has not less than 10 percent direct or indirect interest in the affiliate. In order to provide Social Security coverage, the American employer must enter into an agreement with the Secretary of the Treasury. Prior law required that for Social Security coverage purposes both the American employer and its affiliate be corporations.

Coverage Under Totalization Agreements

These regulations implement section 322 of Pub. L. 98–21 which provides Social Security coverage under sections 210 and 211 of the Act for services identified as covered employment or self-employment under title II of the Act by an agreement between the U.S. and another country pursuant to section 233 of the Act. The Internal Revenue Code of 1954 (the Code) was also amended to provide for Social Security taxes on wages and self-employment income derived from such services. These provisions were inadvertently omitted in Pub. L. 95–216 which added section 233 to the Act.

Treatment of Certain Services Performed Outside the U.S.

These regulations implement section 323 of Pub. L. 98–21 by eliminating the foreign earned income exclusion with regard to net earnings from self-employment, derived by U.S. citizens and residents who reside in foreign countries, for taxable years beginning after December 31, 1983. For Social Security purposes, provision is made for crediting earned income as net earnings from self-employment for taxable years beginning after December 31, 1981 and before January 1, 1984. Prior law provided that earned income derived by U.S. citizens and residents who are "present in a foreign country" was subject to Social Security tax but there was no provision for crediting it for other Social Security purposes. Section 323 also provides Social Security coverage for U.S. residents who work outside the U.S. for American employers.

We made a minor change in § 404.1091 by changing the description of section 911 of the Code because of recent amendments to section 911.

Regulatory Procedures

Executive Order 12291

These rules merely conform the existing rules to the changes legislated by Pub. L. 98–21 and Pub. L. 98–369. The resulting cost impact is due to the legislation, and since the Secretary has no discretion in implementing the statutory requirements, the Office of Management and Budget has granted a waiver from the requirement to conduct a regulatory impact analysis.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect the Social Security coverage of individuals. Any impact on small entities would result from the statutory provisions. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors, and Disability insurance.

Dated: May 8, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

For the reasons set out in the preamble, Part 404 of Chapter III of Title 20, Code of Federal Regulations, is amended as follows:

Subpart B—Insured Status and Quarters of Coverage

1. The authority citation for Subpart B continues to read as follows:

Authority: Secs. 205, 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 53 Stat. 1368, 64 Stat. 504 and 505, 68 Stat. 1080, 64 Stat. 512, 70 Stat. 815, and 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953; 67 Stat. 631; 42 U.S.C. 405, 412, 413, 414, 416, 417, 423, and 1302; 5 U.S.C. Appendix.

2. In § 404.110, paragraph (a) is revised to read as follows:

§ 404.110 How we determine fully insured status.

(a) *General.* We describe how we determine the number of quarters of coverage (QCs) you need to be fully insured in paragraphs (b), (c), and (d) of this section. The table in § 404.115 may be used to determine the number of QCs you need to be fully insured under paragraph (b) of this section. We consider certain World War II veterans to have died fully insured (see § 404.111). We also consider certain employees of private nonprofit organizations to be fully insured if they meet special requirements (see § 404.112).

* * * * *

3. A new § 404.112 is added to read as follows:

§ 404.112 When we consider certain employees of private nonprofit organiations to be fully insured.

If you are age 55 or over on January 1, 1984, and are on that date an employee of an organization described in § 404.1025(a) which does not have in effect a waiver certificate under section 3121(k) of the Code on that date and whose employees are mandatorily covered as a result of section 102 of Pub. L. 98–21, we consider you to be fully insured if you meet the following requirements:

Your age on January 1, 1984 is—	QC's acquired after Dec. 31, 1983
60 or over	6
59 or over but less than age 60	8
58 or over but less than age 59	12
57 or over but less than age 58	16
55 or over but less than age 57	20

Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income

4. The authority citation for Subpart K continues to read as follows:

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act; 53 Stat. 1368, 49 Stat. 625, 64 Stat. 492, 81 Stat. 833, 86 Stat. 416, 86 Stat. 1367, 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 409, 410, 411, 429, 430, 431, and 1302; 5 U.S.C. appendix.

5. Section 404.1004 is amended by revising paragraphs (a)(2), adding paragraph (a)(4), revising paragraph (b)(5), removing the present text of paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), (b)(9) and (b)(10) as (b)(6), (b)(7), (b)(8) and (b)(9), respectively, to read as follows. The text of newly designated paragraphs (b)(6)–(b)(9) is not changed as is shown for reader convenience only.

§ 404.1004 What work is covered as employment.

(a) * * *

(2) You perform the work outside the United States and you are a citizen or resident of the United States working for—

(i) An American employer; or

(ii) A foreign affiliate of an American employer than has in effect an agreement covering your work under section 3121(l) of the Code.

* * * * *

(4) Your work is designated as employment or recognized as equivalent to employment under a totalization agreement. (See § 404.1913. An agreement may exempt work from coverage as well as extend coverage to work.)

(b) * * *

(5) "Foreign affiliate" refers to a foreign affiliate as defined in section 3121(l)(8) of the Code.

(6) "On and in connection with" refers to the performance of work on a vessel or aircraft which concerns the vessel or aircraft. Examples of this kind of work are the services performed on a vessel by employees as officers or crew members, or as employees of concessionaires, of the vessel.

(7) "On or in connection with" refers to work performed on the vessel or aircraft and to work which concerns the vessel or aircraft but not actually performed on it. For example, shore services in connection with repairing, loading, unloading, or provisioning a vessel performed by employees as offices or crew members, or as employees of concessionaires, of the vessel are included, since this work concerns the vessel though not performed on it.

(8) "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(9) "United States" when used in a geographical sense means the 50 States, the District of Columbia the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 404.1026 [Redesignated as § 404.1025]

6. Section 404.1026 is redesignated as § 404.1025 and revised to read as follows:

§ 404.1025 Work for religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *After 1983.* Work done after 1983 by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code is covered as employment unless the work is for a church or church-controlled organization that has elected to have services performed by its employees excluded (see § 404.1026). (See § 404.1059(b) for special wage rule.)

(b) *Before 1984.* Work described in paragraph (a) of this section which was done before 1984 is excluded from employment. However, the exclusion does not apply to work done during the period for which a form SS–15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, was filed (or was deemed to have been filed) with the Internal Revenue Service.

7. A new § 404.1026 is added to read as follows:

§ 404.1026 Work for a church or qualified church-controlled organization.

(a) *General.* If you work for a church or qualified church-controlled organization, as described in this section, your employer may elect to have your services excluded from employment. You would then be considered to be self-employed (see § 404.1068(f)). The employer's election of the exclusion must be made with the

Internal Revenue Service in accordance with Internal Revenue Service procedures and must state that the church or church-controlled organization is opposed for religious reasons to the payment of Social Security employment taxes. The exclusion applies to current and future employees. If you work in an unrelated trade or business (within the meaning of section 513(a) of the Code) of the church or church-controlled organization the exclusion does not apply to your services.

(b) *What is a church.* For purposes of this section the term "church" means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(c) *What is a qualified church-controlled organization.* For purposes of this section the term "qualified church-controlled organization" means any church-controlled organization exempt from income tax under section 501(c)(3) of the Code but does *not* include an organization which:

(1) Offers goods, services, or facilities for sale to the general public, other than on an incidental basis, or for other than a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(2) Normally receives more than 25 percent of its support from either governmental sources or receipts from admissions, sales of merchandise, performance of services or furnishing of facilities other than in an unrelated trade or business, or both.

8. Section 404.1065 is revised to read as follows:

§ 404.1065 Self-employment coverage.

For an individual to have a self-employment coverage under Social Security, the individual must be engaged in a trade or business and have net earnings from self-employment that can be counted as self-employment income for Social Security purposes. The rules explaining whether you are engaged in a trade or business are in §§ 404.1066–404.1077. What are net earnings from self-employment is discussed in §§ 404.1080–1095. Section 404.1096 describes the net earnings from self-employment that are counted as self-employment income for Social Security purposes. See § 404.1913 for the effect of a totalization agreement on self-employment coverage. An agreement may exempt an activity from coverage as well as extend coverage to an activity.

9. In § 404.1068, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 404.1068 Employees who are considered self-employed.

(a) *General.* Although we generally exclude services performed by employees from the definition of trade or business, certain types of services are considered a trade or business even though performed by employees. If you perform any of the services described in paragraphs (b) through (f) of this section, you are self-employed for Social Security purposes. Certain other services described in § 404.1071 (relating to ministers and members of religious orders) and § 404.1073 (relating to certain public officers) may be considered a trade or business even though performed by employees.

* * * * *

(f) *Employees of church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your net earnings from self-employment (§ 404.1080) you may not deduct any expenses attributable to your work.

10. In § 404.1080, paragraph (a) introductory text is revised to read as follows:

§ 404.1080 Net earnings from self-employment.

(a) *Definition of net earnings from self-employment.* If you are self-employed, you must first determine the amount of your net earnings from self-employment before figuring the amount of your earnings that count for social security purposes. Some of your earnings may not be included as net earnings from self-employment even though they are taxable for income tax purposes. If you are an employee but we consider you to be self-employed for Social Security purposes, you must figure your earnings as though you were actually self-employed unless you work for a church or church-controlled organization that has exempted its employees (see § 404.1068(f)). Subject to the special rules in §§ 404.1081 through 404.1095, the term "net earnings from self-employment" means—

* * * * *

11. In § 404.1081, paragraph (a)(4)(iii) is revised to read as follows:

§ 404.1081 General rules for figuring net earnings from self-employment.

(a) * * *

(4) * * *

(iii) You are a United States citizen or resident engaged in a trade or business outside the United States (see § 404.1092); or

* * * * *

12. In § 404.1091, paragraph (c) is revised to read as follows:

§ 404.1091 Figuring net earnings for ministers and members of religious orders.

* * * * *

(c) *Services outside the United States.* If you one are a citizen or resident of the United States performing services outside the United States which are in the exercise of your ministry or in the exercise of duties required by your order, your net earnings from self-employment from the performance of these services are figured as described in paragraph (b) of this section. However, they are figured without regard to the exclusions from gross income provided in sections 911 and 931 of the Code relating to earned income from services performed outside the United States and from sources within possessions of the United States.

13. Section 404.1092 is revised to read as follows:

§ 404.1092 Figuring net earnings for U.S. citizens or residents living outside the United States.

(a) *Taxable years beginning after December 31, 1983.* If you a citizen or resident of the United States and are engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911 (a)(1) of the Code.

(b) *Taxable years beginning after December 31, 1981, and before January 1, 1984.* If you are a citizen of the United States and were engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911(a)(1) of the Code unless you are a resident of a foreign country or countries

for an uninterrupted period which includes an entire taxable year.

14. In § 404.1096, paragraphs (c)(1) and (d) are revised to read as follows:

§ 404.1096 Self-employment income.

* * * * *

(c) *Minimum net earnings from self employment.* (1) Self-employment income does not include your net earnings from self-employment when the amount of those earnings for the taxable year is less than $400. If you have only $300 of net earnings from self-employment for the taxable year you would not have any self-employment income. (Special rules apply if you are paid $100 or more and work for a church or church-controlled organization that has exempted its employees (see § 404.1068(f)).)

* * * * *

(d) *Nonresident aliens.* A nonresident alien has self-employment income only if coverage is provided under a totalization agreement [see § 404.1913]. We do not consider an individual who is a resident of the Commonwealth of Puerto Rico, The Virgin Islands, Guam or American Samoa to be a nonresident alien.

15. The authority citation for Subpart T continues to read as follows:

Subpart T—Totalization Agreements

Authority: Secs. 205, 233, and 1102 of the Social Security Act; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; 42 U.S.C. 405, 433, and 1302.

16. In § 404.1913, paragraph (b)(1) is revised to read as follows:

§ 404.1913 Precluding dual coverage.

* * * * *

(b) *Principles for precluding dual coverage.* (1) An agreement precludes dual coverage by assigning responsibility for coverage to the U.S. or a foreign country. An agreement may modify the coverage provisions of title II of the Act to accomplish this purpose. Where an agreement assigns coverage to the foreign country, it may exempt from coverage services otherwise covered by the Act. Where an agreement assigns coverage to the U.S. it may extend coverage to services not otherwise covered by the Act but only for taxable years beginning on or after April 20, 1983.

* * * * *

[FR Doc. 85-21321 Filed 9-6-85; 8:45 am]

BILLING CODE 4190 11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8051]

Income Tax; Disallowance of Deductions for Expenditures Incurred With Respect to Facilities Used in Connection With Entertainment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disallowance of deductions for expenditures incurred with respect to facilities, other than clubs, used in connection with entertainment. Changes to the applicable tax law were made by the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations provide the necessary guidance to the public to comply with the law.

DATES: These regulations are effective after December 31, 1978 and apply to expenses paid or incurred after that date.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 274(a) of the Internal Revenue Code of 1954. These amendments conform the regulations to the amendments made to section 274(a) by section 361 of the Revenue Act of 1978 (92 Stat. 2847) and section 103(a)(10) of the Technical Corrections Act of 1979 (94 Stat. 212). These regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

These final regulations amend paragraphs (a)(2) and (e)(1) of § 1.274-2 to deny a deduction for expenditures paid or incurred after December 31, 1978 with respect to a facility, other than a club, used in connection with entertainment. Expenditures paid or incurred with respect to clubs are not affected by the regulations.

On September 26, 1983, proposed regulations were published in the Federal Register (48 FR 43698). Only one comment was received in response to the proposed regulations.

The proposed regulations provided that dues or fees paid to any social, athletic, or sporting club, although treated as items with respect to facilities, are deductible if certain tests are met. The commenter suggested that the regulations define the term "club" in order to prevent confusion by taxpayers and tax auditors. This suggestion was not adopted in the final regulations. For purposes of these regulations, the term "club" is given its generally understood meaning.

A public hearing was not requested, and therefore, a public hearing was not held. The proposed regulations are adopted without change by the Treasury decision.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of these regulations is Donald W. Stevenson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 274, as published in the Federal Register on September 26, 1983 (48 FR 43698), are hereby adopted without change.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 5, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

PART 26—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.274–2 is amended by revising paragraph (a)(2), by revising paragraph (a)(3)(iii), by revising the heading of paragraph (e), and by revising paragraph (e)(1). The amended and revised provisions read as follows:

§ 1.274–2 Disallowance of deductions for certain expenses for entertainment, amusement, or recreation.

(a) *General rules.* * * *

(2) *Entertainment facilities*—(i) *Expenditures paid or incurred after December 31, 1978, and not with respect to a club.* Except as provided in this section with respect to a club, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure paid or incurred after December 31, 1978, with respect to a facility used in connection with entertainment.

(ii) *Expenditures paid or incurred before January 1, 1979, or with respect to a club.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure paid or incurred before January 1, 1979, with respect to a facility used in connection with entertainment or at any time with respect to a club used in connection with entertainment, unless the taxpayer establishes—

(*a*) That the facility or club was used primarily for the furtherance of the taxpayer's trade or business, and

(*b*) That the expenditure was directly related to the active conduct of that trade or business.

The deduction shall not exceed the portion of the expenditure directly related to the active conduct of the taxpayer's trade or business.

(3) *Cross references.* * * *

(iii) "Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or at any time with respect to clubs", see paragraph (e) of this section, and

* * * * *

(e) *Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or any time with respect to clubs*—(1) *In general.* Any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred at anytime with respect to a club, used in connection with entertainment shall not be allowed as a deduction except to the extent it meets the requirements of paragraph (a)(2)(ii) of this section.

* * * * *

Par. 3. Section 1.274–5(c)(6)(iii) is amended by revising the first two sentences thereof to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(c) *Rules for substantiation.* * * *

(6) *Special rules.* * * *

(iii) *Primary use of a facility.* Section 274(a) (1)(B) and (2)(C) denies a deduction for any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred at any time with respect to a club, used in connection with an entertainment activity unless the taxpayer establishes that the facility (including a club) was used primarily for the furtherance of his trade or business. A determination whether a facility before January 1, 1979, or a club at any time was used primarily for the futherance of the taxpayer's trade or business will depend upon the facts and circumstances of each case. * * *

* * * * *

Par. 4. Section 1.274–6 is revised to read as follows:

§ 1.274–6 Expenditures deductible without regard to trade or business or other income producing activity.

The provisions of §§ 1.274–1 through 1.274–5, inclusive, do not apply to any deduction allowable to the taxpayer without regard to its connection with the taxpayer's trade or business or other income producing activity. Examples of such items are interest, taxes such as real property taxes, and casualty losses. Thus, if a taxpayer owned a fishing camp, the taxpayer could still deduct mortgage interest and real property taxes in full even if deductions for its use are not allowable under section 274(a) and § 1.274–2. In the case of a taxpayer which is not an individual, the provisions of this section shall be applied as if it were an individual. Thus, if a corporation sustains a casualty loss on an entertainment facility used in its trade or business, it could deduct the loss even though deductions for the use of the facility are not allowable.

Par. 5. Section 1.274–8 is revised to read as follows:

§ 274–8 Effective date.

Except as provided in § 1.274–2 (a) and (e), §§ 1.274–1 through 1.274–7 apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.

[FR Doc. 85–21335 Filed 9–6–85; 8:45am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85–15]

Marine Event; Bluewater Race of Champions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Bluewater Race of Champions. This event will be held on 21 and 22 September 1985 at Parker, Arizona. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on September 21, 1985 and terminate on September 22, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 8 August 1985, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–15) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast

Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

The C.O.B.R.A., "Bluewater Race of Champions" will be conducted from 8:00 am to 5:00 pm on 21 and 22 September 1985 on the Colorado River, Parker, Arizona from Bluewater Marina Park to 100 yards north of Badenochs River Marina. This event will have approximately 100 high speed boats 10 to 18 feet in length that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations:

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended to read as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. A temporary § 100.35 11–85–15 is added to read as follows:

§ 100.35 11–85–15–Bluewater Race of Champions, Parker, Arizona.

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic: that portion of the Arizona side of the Colorado River, Parker, Arizona from Bluewater Marina Park to 100 yards north of Badenochs River Marina.

(b) *Effective Dates:* These regulations will be effective from 8:00 am to 5:00 pm on 21 and 22 September 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta control" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

Dated: August 15, 1985.

A.B. Beran,

Commodore, United States Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85–21453 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Headstone or Marker Allowance

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has increased the monetary allowance payable in lieu of a Government-furnished headstone or marker from $68 to $70. The need for this action resulted from the fact that the average actual cost of a Government-furnished headstone or marker for fiscal year 1984 was $70. The effect of this amendment will be to permit payment of up to $70 in lieu of a Government-furnished headstone or marker.

EFFECTIVE DATE: This change is effective October 1, 1984, the beginning of the current fiscal year.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 20445 and 20446 of the **Federal Register** of May 16, 1985, the Veterans Administration published a proposed amendment to 38 CFR 3.1612. Interested persons were given until June 17, 1985, to submit comments, suggestions or objections to the proposed amendment. Since no comments, suggestions or objections were received, the amendment has been adopted as proposed.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Also, this change simply updates VA regulations to reflect the actual average cost to the VA of headstones and markers in fiscal year 1984. Thererfore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: August 22, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3 *Adjudication,* is amended by revising § 3.1612, paragraph (e)(2)(ii) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.*

* * * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1983 (October 1, 1982 through September 30, 1983) is $68 and for fiscal year 1984

(October 1, 1983 through September 30, 1984) is $70.

(38 U.S.C. 906(d))

* * * * *

[FR Doc. 85-21386 Filed 9-6-85; 8:45 am]
BILLING CODE 8320-01-M

---

38 CFR Part 21

Veterans Education; Cancellation of Unnecessary Regulations

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is canceling several paragraphs in some sections of its education regulations dealing with the G.I. Bill. These paragraphs are redundant. No purpose is served by repeating the same information in more than one section. In fact, this sometimes causes confusion. Canceling redundant paragraphs will make 38 CFR Part 21 easier to use. The agency also proposes to amend a paragraph dealing with advance payment so that it is in agreement with other paragraphs on the same subject. If all paragraphs concerning advance payment are in agreement, confusion among users of these regulations will be eliminated.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pp. 13836 and 13837 of the **Federal Register** of April 8, 1985 there was published a notice of intent to amend 38 CFR Part 21 to cancel some unnecessary regulations and to bring all regulations dealing with advance payment of educational assistance allowance into agreement. Interested people were given 30 days to submit comments, suggestions or objections.

The VA received one letter from an educational association. The letter writer commented that he had no objection to the proposed changes. Accordingly, the VA is making the proposal final.

The VA has determined that the paragraphs in the regulations it is cancelling are not major rules as that term is defined by E.O. 12291, entitled Federal Regulation. The agency has determined that the paragraph it is amending is not a major rule. These changes will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that cancellation and amendment of these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed cancellation and amendment of these regulations, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

This certification can be made because this is a technical change. The material contained in these canceled regulations is retained in other regulations which are not being canceled. For example, the canceled portions of 38 CFR 21.4136 and 21.4137 are covered adequately in 38 CFR 21.4138. Similarly, the material being deleted from 38 CFR 21.235 and 21.4237 is retained in 38 CFR 21.4200. The material in the amended regulation is not new. It merely brings 38 CFR 21.4137 into agreement with other similar regulations.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this cancellation and amendment of regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 15, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended as follows:

§ 21.4136 [Amended]

1. Section 21.4136 is amended by removing and reserving paragraph (h).

2. Section 21.4137 is amended by removing and reserving paragraph (e), and by revising paragraph (g)(2) and the introductory portion of paragraph (g)(3) to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. chapter 35.

* * * * *

(e) [Reserved]

* * * * *

(g) *Advance payment.* * * *

(2) *Payment.* (i) The amount of payment is the allowance for the month or fraction thereof in which the course will begin plus the allowance for the following month.

(ii) The VA will mail an advance payment check to the institution for delivery to the eligible person upon registration when—

(A) The VA has received an application, together with an enrollment certification or other information as required by paragraph (g)(3) of this section.

(B) The provisions of subparagraph (2)(v) of this paragraph do not prevent making an advance payment to the eligibile person.

(C) The provisions of paragraph (g)(4) of this section are met, and

(D) There is no evidence in the eligible person's file showing that he or she is not eligible for an advance.

(iii) The educational institution shall not deliver the advance payment check more than 30 days in advance of commencement of the program.

(iv) The VA shall make subsequent payments each month subject to the certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. The VA will withhold final payment if absence reporting is required, until the VA receives the required certification and makes any necessary adjustments.

(v) The Director of the VA field station of jurisdiction may direct that advance payments not be made to eligible persons attending an educational institution if—

(A) The educational institution demonstrates an inability to comply with the requirements of subparagraph (2)(iii) of this paragraph, or

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible person or return to the VA, or

(C) The Director determines, based on compelling evidence, that the institution demonstrates its inability to discharge its responsibilities under the advance payment program.

(3) *Certification.* Advance payment will be authorized at the beginning of each term preceded by an interval of nonpayment for 30 days or more, provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person

contains the following information: (38 U.S.C. 1780(d))

* * * * *

§ 21.4235 [Amended]

3. In § 21.4235, paragraphs (g), (h) and (i) are removed.

§ 21.4237 [Amended]

4. In § 21.4237, paragraphs (g), (h) and (i) are removed. (38 U.S.C. 210(c))

[FR Doc. 85-21387 Filed 9-6-85; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3123/R788; PH-FRL 2895-2]

Pesticide Tolerance for Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide carbofuran and its metabolites in or on the raw agricultural commodity artichokes. The regulation, to establish a maximum permissible level for residues of carbofuran in or on artichokes, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on September 9, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4E3123/R788], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
By Mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 7, 1985 (50 FR 31894), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 4E3123 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the agricultural experiment station of California. The petition proposed the establishment of a tolerance for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the raw agricultural commodity artichokes at 0.4 part per million (ppm), of which no more than 0.2 ppm is carbamates. The petitioner further proposed that the use of carbofuran on artichokes be limited to California based on the geographic representation of the residue data submitted. .

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of carbofuran. Based on the data submitted, the Agency has determined that the establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 3, 1985.

Steven Schatzow,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.254 is amended by redesignating and revising the introductory paragraph as the introductory paragraph to paragraph (a) and adding paragraph (b); to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

(a) Tolerances are established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3,-oxo-7-benzofurandiol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodities:

Commodities	Parts per million
* * * * *	

(b) Tolerances with regional registration are established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,3-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodities	Parts per million
Artichokes (of which not more than 0.2 ppm is carbamates)	0.4

[FR Doc. 85-21571 Filed 9-6-85; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 420

[Doc. No. 0031A]

Grain Sorgum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporatiopn (FCIC) proposes to revise and reissue the Grain Sorgum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Restrict the insured's share of indemnity when the crop is transferred; (2) increase the minimum acreage which must be replanted before earning replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to clarify when land located outside the county is included in the county; and (6) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in cost or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the grain sorghum policy are:

1. *Section 2.c.*—Add a clause to restrict the insured's share when the crop is transferred after planting and before harvest.

2. *Section 8.a.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnitics in a more timely fashion.

3. *Section 9.f.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment, at the time of final planting. This reduces the number of inspections by eliminating small replant payments and paperwork, and specifies the time for determining whether the acreage to be replanted qualifies.

4. *Section 17.*—Add a definition of "ASCS". Amend the "County" definition to add land identified by an ASCS farm serial number but located outside the county. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years, to read as follows:

PART 420—GRAIN SORGHUM CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

420.1 Availability of grain sorghum crop insurance.
420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
420.3 OMB control numbers.
420.4 Creditors.
420.5 Good faith reliance on misrepresentation.
420.6 The contract.
420.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crops Years

§ 420.1 Availability of grain sorghum crop insurance.

Insurance shall be offered under the provisions of this subpart on grain sorghum in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grain sorghum which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 420.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 420.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, executiion, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 420.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the grain sorghum insurance contract, whenever: (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be grnted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 420.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the grain sorghum crop as provided in the policy. The contract shall consist of the application, the policy, and the county acturial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 420.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the grain sorghum crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a grain sorghum contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Grain Sorghum Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grain Sorghum Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuariable table or section 9e(8).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good grain sorghum farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good grain sorghum irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be grain sorghum which is initially planted to a combine-type hybrid grain sorghum for harvest as grain, which is grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grain sorghum planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported

by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured grain sorghum at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to grain sorghum, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer grain sorghum;

(6) Planted to a forage sorghum or initially thick-planted for silage or fodder;

(7) Of a second grain sorghum crop following a grain sorghum crop harvested in the same crop year;

(8) Planted to a type or variety of grain sorghum not established as adapted to the area or excluded by the actuarial table; or

(9) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good grain sorghum irrigation practice.

f. Unless otherwise provided in the actuarial table and if not irrigated, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation. If such acreage is destroyed and replanted to any grain-producing type grain sorghum in any planting pattern, the acreage will be considered insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of grain sorghum in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grain sorghum planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the grain sorghum is planted and ends at the earliest of:

(a) Total destruction of the grain sorghum;

(b) Combining, threshing, or removal from the field;

(c) Final adjustment of a loss; or

(d) The following dates immediately after planting:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Countries, Texas, and all Texas counties south thereof—September 30;

(2) All other Texas counties and all other states—December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant grain sorghum damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the grain sorghum on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the grain sorghum and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested grain sorghum (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the grain sorghum on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the grain sorghum on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the grain sorghum which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grain sorghum on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of grain sorghum on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower

premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature grain sorghum production which, due to insurable causes:

(a) Has a test weight of less than 51 pounds per bushel; or

(b) Contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of such grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day the insured grain sorghum is sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(5) The amount of production of any unharvested grain sorghum may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grain sorghum is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured grain sorghum replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed 7 bushels multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published semi-annually in the **Federal Register** on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the grain sorghum is planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We many void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grain sorghum produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract. Failure to maintain and keep such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date satisfactory records of the previous year. The Field Actuarial Office may assign a yield for that year if, prior to the cancellaton date, you show to our satisfaction that the records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county:	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crocett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We have change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any written notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of grain sorghum crop insurance:

a. "Actuarial table" means the forms and related material for the crop year appoved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grain sourghum insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and any:

(1) Additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(2) Land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the grain sorghum is normally grown and will be designated by the calendar year in which the grain sorghum is normally harvested.

e. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to grain sorghum.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the grain sorghum or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of grain sorghum in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grain sorghum on such land will be considered as owned by the lessee. Units will be determined when the acrage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on August 14, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21361 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 423

[Doc. No. 2441S]

Flax Crop Insurnace Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) add as a cause of loss the unavoidable failure of irrigation water supply; (3) change the method of computing indemnities when acreage, share or practice is underreported; (4) shorten the time in which to give notice of loss; (5) change the cancellation and termination dates and filing dates in certain counties; (6) add definitions for the terms "ASCS" and "Loss ratio"; (7) redefine "county" to clarify when land located outside the county is included in the county; and (8) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop

Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the flax policy area:

1. *Section 1.a.(8)*—Add the failure of the irrigation water supply because of unavoidable cause after planting as an insurable cause of loss. This clarifies intent since it was implied in Section 2.e.(2).

2. *Section 5.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to loss the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. *Section 8.a.(4)*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

4. *Section 9.d.*—Change the method of computing the indemnity when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

6. *Section 17.*— Add definitions for "ASCS" and "Loss ratio" for clarity. Amend the "county" definition to clarify land located outside the county. Amend the "unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires removal of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 423

Crop Insurance, Flax.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years, to read as follows:

PART 423—FLAX CROP INSURANCE REGULATIONS

Subpart—Regulation for the 1986 and Succeeding Crop Years

Sec.

423.1 Availability of flax crop insurance.
423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
423.3 OMB control numbers.
423.4 Creditors.
423.5 Good faith reliance on misrepresentation.
423.6 The contract.
423.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crops Years

§ 423.1 Availability of flax crop insurance.

Insurance shall be offered under the provisions of this subpart on flax in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for flax which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 423.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400 in Title 7 CFR.

§ 423.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution,

bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 423.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the flax insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of Corporation: (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 423.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the flax crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 423.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the flax crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a flax insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Flax Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Flax Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good flax farming practices;
(3) The failure to follow a good flax irrigation practice;
(4) The failure or breakdown of irrigation equipment;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be flaxseed ("flax") planted for harvest as seed, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be flax planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured flax at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to flax, and such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of volunteer flax;
(6) Planted to a type of variety of flax not established as adapted to the area or excluded by the actuarial table; or
(7) Planted with another crop except perennial grasses or legumes other than vetch.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good flax irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share and practice.

You must report on our form:

a. All the acreage of flax in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any flax planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the flax policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deduction for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the flax is planted and ends at the earliest of:

(a) Total destruction of the flax;

(b) Combining, threshing, or removal from the field;

(c) Final adjustment of a loss; or

(d) October 31 following planting.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(i) During the period before harvest, the flax on any unit is damaged and you decide not to further care for or harvest any part of it;

(ii) You want our consent to put the acreage to another use; or

(iii) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the flax and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested flax (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(i) Total destruction of the flax on the unit;

(ii) Harvest of the unit; or

(iii) October 31 following planting.

b. You must obtain written consent from us before you destroy any of the flax which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the flax on the unit;

(2) Harvest of the unit; or

(3) October 31 following planting.

b. We will not pay any indemnity unless you:

(1) Establish the total production of flax on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of flax to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature flax which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by:

(i) Dividing the value per bushel of the insured flax by the price per bushel of U.S. No. 2 flax; and

(ii) Multiplying the result by the number of bushels of insured flax.

The applicable price for No. 2 flax will be the local market price on the earlier of the day the loss is adjusted or the day insured flax is sold.

(2) Appraised production to be counted will include:

(i) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good flax farming practices;

(ii) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(iii) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(i) Not put to another use before harvest of flax becomes general in the county and reappraised by us;

(ii) Harvested; or

(iii) Further damaged by an insured cause and reappraised by us.

(4) The amount of production of any unharvested flax may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the flax is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act

of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the flax is planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have conceled or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity of insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for you loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all flax produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in concellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the Contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract may be canceled if you do not firnish to us, on or before the concellation date, satisfactory records of production for the previous crop year. If you show to our satisfaction, prior to the cancellation date, that the records are not available due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for the year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such drop year for the contract on which the amount is due. The date or payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of flax crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding flax insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the country but physically located in another county.

d. "Crop year" means the period within which the flax is normally grown and will be designated by the calendar year in which the flax is normally harvested.

e. "Harvest" means the completion of combining or threshing of flax on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the flax or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of flax in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss.

We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on August 21, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21365 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 432

[Amdt. No. 1; Doc. No. 0030A]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years by revising and reissuing the crop policy. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) increase the amount of acreage which must be replanted to obtain replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to add certain land located outside the county; and (6) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the corn policy are:

1. *Section 2.c.*—Change the method of calculating the share of an indemnity on crops transferred before harvest. This provision restricts the payment of an indemnity to insureds actually having an interest in the crop.

2. *Section 9.g.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment, at the time of final planting. This change will reduce the number of inspections by eliminating small replant payments and paperwork. It also provides a specific time frame for determining whether the unit qualifies for replanting payments.

3. *Section 8.a.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change will allow FCIC to determine indemnities in a more timely fashion.

4. *Section 17.*—Add a definition of "ASCS". Amend the "County" definition to add land located outside the county in certain instances. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years, in the following instances:

PART 432—[AMENDED]

1. The authority citation for 7 CFR Part 432 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 432.7(d) is amended by revising the Corn Insurance Policy for the 1986 and succeeding crop years to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(9).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good corn farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good corn irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be field corn ("corn") planted for harvest as grain or silage, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured corn at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to corn, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer corn;

(6) Planted to a type or variety of corn not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop except sorghum (grain or forage-type) when the sorghum is not more than 20 percent of the stand.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good corn irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All acreage of corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the corn is planted and ends at the earliest of:

a. Total destruction of the corn;

b. Harvest;

c. Final adjustment of a loss;

d. The date immediately following planting as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof—September 30;

(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington—October 31;

(3) All other counties where our actuarial table shows:

(a) Only a silage guarantee; or

(b) Both a grain and a silage guarantee on any acreage of corn harvested for silage—September 30;

(4) All other counties—December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant corn damaged due to any insured cause (See subsection 9.g.);

(b) During the period before harvest, the corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of unharvested corn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the corn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of corn and/or silage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see section 9f) by the price election; and

(4) Multiplying this result by your share.

d. If a unit contains acreage to which both a grain and silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted will be determined separately for each portion and then added together to determine the total amount for the unit.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production to be counted for a unit will include all harvested and appraised production.

(1) When the actuarial table shows only a grain guarantee, all production and appraisals will be determined in bushels. When the actuarial table shows only a silage guarantee, all production and appraisals will be in tons. When the actuarial table shows both a grain and silage guarantee, the production and appraisals will be determined in bushels for any unharvested acreage and in bushels or tons for any harvested acreage, depending upon whether the acreage is harvested for grain or silage.

(2) Mature grain production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Which, due to insurable causes, has moisture over 40 percent; test weight below 40 pounds per bushel; or kernel damage more than 15 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(ii) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the ealier of the day the loss is adjusted or the day such corn was sold. The quality adjustment will not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(3) If the actuarial table shows both a grain and silage guarantee or only a silage guarantee, the corn is harvested as silage, a grain appraisal is made concurrently with a silage appraisal, and the grain appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. There will be no reduction allowed for harvested silage production if a representative sample (at least 10 feet wide and the entire length of the field) for each 25 acres of corn harvested for silage is not left until appraised by us.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of corn becomes general in the country and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(6) The amount of production of any unharvested corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If the actuarial table shows a silage guarantee or both a grain and silage guarantee and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production by the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(8) If the actuarial table shows only a silage guarantee, we may convert bushels of grain to tons of silage, and increase all production harvested after the normal silage harvesting period by the factor designated by the actuarial table to reflect the normal mositure content of silage harvested during the normal silage harvesting period.

(9) If you elect to exclude hail and fire as insured causes of loss and the corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to exclude Hail and Fire."

g. A replanting payment may be made on any insured corn replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, except that:

(a) If the actuarial table shows only a grain guarantee or both a grain and silage guarantee, the payment will not exceed 8 bushels multiplied by the price election, multiplied by your share; or

(b) If the actuarial table shows only a silage guarantee, the payment will not exceed 1 ton multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium deterrmined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a fianl judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** on or about January 1, and July 1 of each year. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid ot the person(s) determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity detemined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right of indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date, satisfactory records of production for the previous year. The Field Actuarial Office may assign a yield for that year if, prior to the cancellation date you show, to our satisfaction that the records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county:	*Cancellation and termination dates*
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the corn is normally grown and will be designated by the calendar year in which the corn is normally harvested.

e. "Harvest" means the completion of combining, picking, or cutting the corn for the purpose of livestock feed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to corn.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

m. "Tenant" means a person who rents land from another person for a share of the corn or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of corn in the county on the date of planting for the corp year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 25, 1985.

Merritt W. Sprague,

Manger, Federal Crop Insurance Corporation.

[FR Doc. 85-21364 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 433

[Amdt. No. 1; Doc. No. 2445S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years by revising § 433.7(d). The intended effect of this rule is to: (1) Provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify provisions regarding failure to replant bean acreage; (4) increase the amount of acreage which must be replanted to obtain replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemity; (6) allow a quality adjustment for appraisal purposes when crop is mature but not harvested; (7) add a definition for the term "ASCS"; (8) redefine "County" to specify when land located outside the county will be included in the county; and (9) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1990.

Merritt W. Sprague, Manager, FCIC has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the dry bean policy are:

1. *Section 2.d.*—Add a clause to clarify the method of calculating the insured's share of an indemnity on crops sold before harvest. This change prevents the practice of collecting an indemnity on a crop in which the insured no longer has an interest.

2. *Section 2.e.*—Specify the varietal groups of beans to assure equal treatment of producers.

3. *Section 9.g.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment and apply a specific time frame for determining the replant for the unit. This change will reduce the number of inspections by reducing the insignificantly small replant payments and paper work.

4. *Section 8.a.*—Shorten from 30 to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change allows FCIC to determine indemnities more efficiently and more quickly.

5. *Section 9.f.*—Remove the requirement that the beans be threshed to allow quality adjustment for field appraisals when the crop is mature but not harvested. Change "threshed" to "mature" to allow quality adjustment for field appraisals, when the crop is mature but not harvested.

6. *Section 17.*—Add a definition for "ASCS". Amend the "County" definition to clarify when land located outside the county is included in the county. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

On March 14, 1985 at FR 50 10201, the regulations for the 1986 and subsequent crop year Dry Bean Crop Insurance were revised and rewritten effective December 1, 1985. It is now proposed that the policy published in that revision be amended as set out herein. If this proposed rule is adopted, the effective date will be December 2, 1985.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for

public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry beans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years, in the following instances:

PART 433—[AMENDED]

1. The authority citation for 7 CFR Part 433 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

§ 433.7 [Amended]

2. 7 CFR 433.7(d) is amended by revising the Dry Bean Insurance Policy for the 1986 and Succeeding Crop Years, to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

DRY BEAN CROP INSURANCE POLICY

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the acturial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good bean farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow good bean irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and
(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract executed with a seed company before the acreage reporting date; which are grown on insured acreage and for which a guarantee and premium rate are provided by the acturial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the acturial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured beans at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(4) Which is destroyed, it is practical to replant to the same varietal group of garden seed beans or the same varietal group of dry edible beans, and such acreage is not replanted;
(5) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;
(6) Of volunteer beans;
(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;
(8) Which does not meet the rotation requirements designated by the actuarial table; or
(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting to carry out a good bean irrigation practice.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but if insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans before the final planting date will be regarded as insured acreage.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the dry bean policy for the 1985 crop year, you will continue to receive

the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or it Agencies.

7. Insurance period.

Insurance attaches when the beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (See Section 9.g.);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) total destruction of the beans on the unit;

(2) harvest of the unit; or

(3) the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity on each unit of bush varieties of garden seed beans will be determined by subtracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obatined by multiplying, by variety, the production guarantee per acre by the insured acreage, and the result by the price per pound at which indemnities will be computed. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent; or

(b) Of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table, or would not meet these requirements if properly handled, or if a conversion factor is not designated by the actuarial table, any mature beans which do not grade No. 2 or better in accordance with the Official United States Grain Standards, will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium white, the price will be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date estabished by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but

will not exceed the product obtained by multiplying 100 pounds times the price election, times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all beans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for the previous crop year. If you show to our satisfaction, prior to the canellation date, that the records are not available due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agrcilture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31.
All other states	April 15.

f. If you die or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acrage, and related information regarding dry bean insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and: (1) Any additional land located in a local producing erea bordering on the county, as shown by the acturial table; and (2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

e. "Harvest" means the completion of combining or threshing of beans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes, and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 5, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21363 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 442

[Amdt. No. 3; Doc. No. 2606S]

Prevented Planting Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Prevented planting Crop Insurance Regulations (7 CFR 442.7), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) remove the Premium Adjustment Table; (2) change the method of computing indemities when acreage or share is underreported; (3) remove the provision for transfer of insurance experience basesd on premium adjustments from one contract to another; (4) add definitions of "ASCS" and "Loss Ratio"; and (5) redefine "County" to provide that land identified by an ASCS farm serial number an located outside the county will be included in the county and redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202)447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the prevented planting policy are:

1. *Section 5.*—Remove the Premium Adjustment Table.

The Premium Adjustment Table is being removed. Insurance is now based on the actual production history (APH). Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year, or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the premium Adjustment Table eliminates the need for these provisions.

2. *Section 9.d.*—Change the method of computing indemnities when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

3. *Section 17.*—Add definitions of "ASCS" and "Loss ratio". Amend the "County" definition to clarify, that land identified by an ASCS farm serial number and located outside the county will be included in the county. Amend the "Unit" definition by deleting the provision allowing unit division.

The difficulty of maintaining and auditing accurate and adequate records

of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 442

Crop insurance, Prevented planting.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Prevented Planting Crop Insurance Regulations (7 CFR Part 442), effective for the 1986 and succeeding crop years as follows:

PART 442—[AMENDED]

1. The Authority Citation for 7 CFR Part 442 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

2. 7 CFR 442.7(d) is revised to read as follows:

§ 442.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Prevented Planting Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Prevented Planting—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable prevention of planting insured acreage during the insurance period due to excessive moisture conditions occurring within the insurance period, unless this cause is excepted, excluded, or limited by the actuarial table.

b. We will not cover any prevention of planting due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) The failure to plant insured acreage due to a cause other than excessive moisture.

2. Acreage and share insured.

a. The acreage insured for each crop year will be the cultivated acreage intended for planting in which you have a share, as reported by you or as determined by us, whichever we elect and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The insured share will be your share as landlord, owner-operator, or tenant in the insured prevented planting at the time insurance attaches.

c. "Cultivated acreage intended for planting" means land that was ready or, except for excessive moisture could have been made ready, for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which a crop was planted prior to the acreage reporting date;

(2) On which a prevented planting indemnity was claimed the prior crop year if such land is not worked prior to the October 31 prior to the crop year; or

(3) Which was not or will not be planted to comply with any other United States Department of Agriculture or state programs or for any other reason.

3. Report of acreage and share.

You must report on our form:

a. All the cultivated acreage intended for planting in the county in which you have a share; and

b. Your share at the time of reporting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any insurable acreage in the county. This report must be submitted annually on or before the January 31 reporting date. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the prevented planting policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches March 5 of the crop year and ends at the earliest of:

a. Planting of the acreage; or

b. The prevented planting date.

8. Notice of damage or loss.

a. If you are going to claim an indemnity on any unit, we must be given notice not later than 5 days after the prevented planting date.

b. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on the unit was directly caused by excessive moisture during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Subtracting therefrom the amount obtained by multiplying the spring-planted acreage, plus any acreage intended for planting from which a forage crop is harvested, plus any acreage which could have been planted, times the amount of insurance; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported and not on the actual information determined.

e. You must not abandon any acreage to us.

f. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

g. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and a submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published semi-annually in the **Federal Register** on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an idemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the insured, uninsured and planted acreage in your farming operation. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will by conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of prevented planted crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the amounts of insurance, coverage levels, premium rates, insurable and uninsurable acreage, and related information regarding prevented planting insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and any:

(1) Additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(2) Land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the crops to be planted are normally planted and will be designated by the calendar year in which the crops are normally planted.

e. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indeminity to premium.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Prevented planting date" means the latest date established by the crop actuarial tables that we will insure any spring-planted crop in the county, except tobacco. This date includes any extended date or final date offered under any late planting agreement option.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by your or designated by us.

k. "Spring-planted acreage" means the insured acreage:

(1) Planted to any crop during the insurance period; or

(2) Which could have been planted during the insurance period to a crop normally included in your farming operation or shown in the actuarial table as suitable for production in the county.

l. "Tenant" means a person who rents land from another person for a share of the crop(s) or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage in the county which you intend to plant:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the prevented planting on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to

affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on July 16, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21362 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-73-AD]

Airworthiness Directives; DeHavilland Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the internal circuitry of the paralleling control box of the 400 HZ AC electrical power system on certain Model DHC-7 airplanes. Reports indicate that failures of the 400 HZ inverters do not activate crew warning lights. This action is proposed to assure proper operation of the crew warning lights and thereby reduce the potential for complete failure.

DATES: Comments must be received on or before October 29, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator befor taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Canadian Department of Transport (DOT) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain DeHavilland Model DHC-7 airplanes. There have been several reports of failures of the 400 HZ inverters without a corresponding warning light activating on the Master Caution Panel. To prevent this from recurring, the DOT issued an airworthiness directive on September 10, 1982, which requires that the 400 HZ AC electrical system paralleling control box be modified in accordance with DeHavilland Service Bulletin 7.24.13.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the electrical system in accordance with the previously mentioned service bulletin.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately one man-hour per airplane to accomplish the required actions, and that the average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $560.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DHC-7 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to Model DHC-7 airplanes, serial numbers 1 through 14 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To assure proper crew warning in the event of the loss of the 400 HZ AC electrical power system, accomplish the following:

1. Modify the 400 HZ AC system in accordance with DeHavilland Service

Bulletin 7–24–13, Revision A, dated September 10, 1982.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 30, 1985.

Charles R. Foster,
Director, Northwest Mountain Region.

[FR Doc. 85–21367 Filed 9–6–85; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM85–11–000]

Revision of FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis

September 4, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend FERC Form No. 73 and the instructions applicable to the collection of service life depreciation data from oil pipeline companies. The information collected on FERC Form No. 73 supplies the data base for several computer programs known collectively as the Depreciation Life Analysis System (DLAS), which assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates. The book depreciation rates which are computed using the FERC Form No. 73 data are used by oil pipeline companies to compute the depreciation portion of their operating expenses for cost of service purposes.

The Commission has reviewed FERC Form No. 73 as part of its ongoing program to reduce unnecessary reporting burdens by eliminating the reporting of information that is no longer used for decision making in the regulatory process. As a result of its review, the Commission proposes to modify the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format.

DATE: Comments must be filed by 4:30 p.m. on October 24, 1985.

ADDRESS: Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM85–11–000. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Gwendolyn D. Prioleau, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357–8479.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission, or FERC) proposes to revise FERC Form No. 73, which is used to collect service life depreciation data from oil pipeline companies. The proposed rule would modify the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format, and add a new § 357.3 to the Commission's regulations to set forth the filing requirements and the format for FERC Form No. 73.[1] The Commission's objectives in proposing this rule are to reduce the reporting burden of oil pipeline companies and to make the data used in the analysis of oil pipeline depreciation rates and service lives easier to process at the Commission. Amending the format and filing instructions for FERC Form No. 73 as proposed would reduce the information required from oil pipelines and the amount of time required by Commission employees to process the data for input to the Depreciation Life Analysis System (DLAS) programs.

II. Background

The Commission's jurisdiction over oil pipelines was transferred from the Interstate Commerce Commission (ICC) to this Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act)[2] and Executive Order No. 12009.[3] The scope of this Commission's jurisdiction over oil pipelines includes the authority to regulate the rates and charges of oil pipelines for the transportation of oil in interstate commerce, and the authority to establish valuations for oil pipelines. Section 705(a) of the DOE Act provides that the rules and regulations relating to functions transferred to this Commission will continue in effect until modified by the Commission.

Regulations governing oil pipeline depreciation accounting for carrier property are set forth in the General Instructions to Title 18 CFR Part 352.[4] Oil pipeline companies are required to submit depreciation information to the Commission pursuant to 1–8(b)(2) and 1–8(b)(3) of the General Instructions found at 18 CFR Part 352. These instructions require oil pipeline carriers to compute percentage rate studies for their depreciable property accounts, and to maintain records as to the service life and net salvage value of their property and property retirements.

The Commission uses the information reported in the FERC Form No. 73 to conduct a depreciation rate investigation for oil pipelines on an average of once every five years. The information is used as a data base to several computer programs known collectively as the DLAS, which assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates.[5] The book depreciation rates which are computed using the FERC Form No. 73 data are set forth in orders periodically issued by the Commission and are used by oil pipeline companies to compute the depreciation portion of their operating expenses for cost of service purposes.

The proposed rule would eliminate certain data currently collected from oil pipeline companies and modify the instructions to conform to data submitted as input to the DLAS computer programs. The Commission believes that the proposed changes to the data submittal instructions and

---

[1] The proposed format for FERC Form No. 73 will not be printed in the **Federal Register** or the Code of Federal Regulations. A copy of the proposed form, including all instructions to the form, is available for review at the Public Reference Sections, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8118.

[2] 42 U.S.C. 7155 and 7172 (1982).

[3] 42 FR 46267 (Sept. 13, 1977).

[4] Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act.

[5] The definitions for "depreciation" and "service life" set forth in 18 CFR Part 352 are as follows: "Depreciation" means the loss in service value not restored by current maintenance and incurred in connection with the consuption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, and the effect of which can be forecast with a reasonable approach to accuracy. "Service life" means the period between the date that property is placed in service and the date of its retirement.

format of FERC Form No. 73 will reduce the amount of time required by Commission Staff to process the data and reduce the reporting burden on affected pipelines, while making the data required more relevant to the purpose for which it is ultimately used.

III. Summary of the Proposed Rule

A. Standard Format for FERC Form No. 73

The proposed rule requests that all actuarial data be submitted on magnetic computer tape. Information would be submitted on FERC Form No. 73 only as an alternative to magnetic computer tape. The proposed amendment to the instructions would reverse the current preference for reporting data on FERC Form No. 73, in favor of magnetic computer tape.

The proposed rule requests that actuarial data be reported by vintage year from the year 1900, or the date of initial operations if later than 1900. The proposed format for FERC No. 73 specifies that the year 1900 is the earliest date for which respondents are required to submit actuarial data. This requirement would amend the existing instructions to delete the requirement that actuarial data must be reported by vintage year "from December 31, 1935 or date of initial operations, whichever is earlier, to the present date." Since the Commission on longer uses data prior to the year 1900 in the selection of oil pipeline service lives and book depreciation rates, it is unnecessary to require data prior to the year 1900 if initial operations began before that date.

Also, the Commission is proposing to eliminate from FERC Form No. 73 the reporting of data on net salvage. Consistent with the Commission's proposal to eliminate from FERC Form No. 73 data in the net salvage category. it is proposing to eliminate the requirement for submitting net salvage data from the instructions for submission of actuarial data by oil pipeline carriers.

The proposed rule would eliminate the option to submit simulation data on cards, and would require that data be submitted on either FERC Form No. 73 or on magnetic computer tape. The instructions for simulation data would also be amended by the proposed rule. Specifically, it would indicate that simulation data should be submitted for each transaction year from the year 1900, or the date of initial operations if later than 1900. The proposed format for FERC Form No. 73 specifies that the year 1900 is the earliest date for which respondents are required to submit simulation data. This requirement would amend the existing instructions for simulation data to delete the requirement that data be submitted for each transaction year "from December 31, 1935 or date of initial operations, whichever is earlier, to the present date." Since the Commission no longer uses data prior to the year 1900 in the selection of oil pipeline service lives and book depreciation rates, it is unnecessary to require data prior to the year 1900 if initial operations began before that date.

In addition, the proposed rule would list categories "Installation Year," "Corrected Transaction Year," "Number of Units," "Gross Salvage," and "Cost of Removal" as not applicable in the instruction for simulation data to reflect the fact that the DLAS simulation programs do not use this information.

B. Addition of New § 357.3 to Regulations

If promulgated, the proposed rule adds a new § 357.3 to the Commission's regulations. The proposed new § 357.3 states that any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates must submit data in the format prescribed in FERC Form No. 73.

IV. Request for Specific Comments

The Commission is specifically seeking comments on the following issues: (1) The average amount of time currently required by respondent oil pipeline carriers to complete the filing requirements of FERC Form No. 73 for actuarial and simulation data, for both initial and updated information and specifying whether respondent currently reports on FERC Form No. 73, computer cards, magnetic tape or some other format; (2) whether respondent anticipates an increase in the amount of time required to prepare initial or updated information for either actuarial or simulation data if it reports by magnetic tape, as opposed to FERC Form No. 73; and (3) whether and how the Commission's decision in Opinion No. 154–B [6] affects the Commission's need for the data collected in FERC Form No. 73.

V. Paperwork Reduction Act Statement

The proposed revisions to the information collection provisions set forth in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.13 (1984). Interested persons can obtain information on these proposed revised information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Gwendolyn D. Prioleau (202) 357–8479). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. In defining small entities, the RFA refers to the Small Business Act's definition of a small business concern which is a business independently owned and operated, and which is not dominant in its field of operation.[7] Pursuant to section 605(b), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities since the majority of oil pipeline companies subject to the Commission's jurisdiction are not independently owned and operated.

In addition, the data required by FERC Form No. 73 is readily available to the oil pipeline carriers and imposes the least burden possible on respondents because no new burden is created by the proposed revision of FERC Form No. 73, and the proposed rule provides alternative methods for submitting the data collected by FERC Form No. 73. Once the data base is established during an initial depreciation rate investigation, only minor updates are required for a subsequent rate investigation.

VII. Written Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning the proposed changes to FERC Form No. 73 and the instructions for submitting depreciation data that are set out in this notice. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should reference Docket No. RM85–11–000. An original and 14 copies of such comments should be filed with the Commission by October 24, 1985.

---

[6] Williams Pipe LIne Co., Op. No. 154–B, 31 FERC ¶ 61.377 (1985).

[7] 5 U.S.C. 601(3) (1982).

All written submissions to this rulemaking will be placed in the Commission's public file and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 357

Pipelines, Reporting requirements.

In consideration of the foregoing, the Commission proposes to amend FERC Form No. 73, the instructions for submitting depreciation data, and Part 357 of Chapter I, Subchapter S, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 357—[AMENDED]

1. The authority citation for Part 357 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); EO 12009, 3 CFR 142 (1978).

2. Part 357 is amended by adding a new § 357.3 to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company only during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available at the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[FR Doc. 85–21458 Filed 9–6–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENTOF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulations Amendments Relating to Prior Disclosures of Violations of 19 U.S.C. 1592

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: This document extends the period of time for the submission of written comments from interested members of the public with respect to a proposal to amend the Customs Regulations relating to prior disclosure of violations of 19 U.S.C. 1592. The proposal clarifies the issue of when a person is presumed to have knowledge of the commencement of a formal investigation of a violation. The proposed changes also would provide that a prior disclosure is precluded after any Customs officer determines that there is reasonable cause to believe that a violation of 19 U.S.C. 1592 has occurred. A notice inviting the public to comment on the proposal was published in the **Federal Register** on July 8, 1985 (50 FR 27829). Comments were to have been received on or before September 6, 1985.

Customs has been requested to extend the comment period by the Customs and Tariffs Committee, Section of Administrative Law of the American Bar Association, so that they can discuss this matter and obtain approval of their comments on the proposal at their next Council meeting scheduled for September 28, 1985. Inasmuch as this Committee represents a significant segment of the Customs Bar whose views should be considered before a final determination is made on the proposed changes, this request has merit. Therefore, the comment period is being extended to October 6, 1985.

DATE: Comments must be received on or before October 6, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

Comments

All comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani or Charles D. Ressin, Commercial Fraud and Negligence Penalties Branch, U.S. Customs Service, Room 2338, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8317).

Dated: August 30, 1985.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 85–21434 Filed 9–6–85; 8:45 am]

BILLING CODE 4820-02-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2642

Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed revision of the Interim Regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642) would amend the rules under which multiemployer pension plans may change the method by which they allocate unfunded vested benefits to withdrawing employers under section 4211 of the Employee Retirement Income Security Act of 1974. Generally, plans may adopt any of the statutory allocation methods described in section 4211 subject to the approval of the Pension Benefit Guaranty Corporation. In addition, section 4211(c)(5) of ERISA authorizes the PBGC to prescribe regulations under which plans may adopt other allocation methods or modifications to the statutory methods either with or without the PBGC's approval. The PBGC's regulation implementing these provisions has been in effect since January 1981. Since then, the PBGC has identified a number of ways in which the PBGC might simplify the regulation, as well as areas in which the PBGC needs either to broaden or limit the rules. Accordingly, the effect of this proposed revision, if adopted, would be to make clarifications and corrections in the regulation, to simplify the process for requesting PBGC approval of amendments, to add to the modifications that do not require PBGC approval, and to prohibit certain types of alternative allocation methods.

DATE: Comments must be submitted by November 8, 1985.

ADDRESSES: Comments should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006. The PBGC will make written comments available for public inspection at the PBGC Communications

and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–254–4860 (202–254–8010 for TTY and TDD). (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Statutory Background

Under section 4201 of the Employee Retirement Income Security Act ("ERISA"), an employer that withdraws from a multiemployer pension plan may incur withdrawal liability to the plan. Withdrawal liability represents the employer's allocable share of the plan's unfunded vested benefits determined under section 4211 of ERISA, adjusted in accordance with other provisions of ERISA. The withdrawal liability rules, as amended by section 558 of the Tax Reform Act of 1984, apply to withdrawals after September 25, 1980.

Section 4211 of ERISA prescribes four methods for determining an employer's allocable share of unfunded vested benefits, and also provides for possible modifications of those methods and for the use of allocation methods other than those prescribed. The four allocation methods set forth in section 4211 are the presumptive method (paragraph (b)), the modified presumptive method (paragraph (c)(2)), the rolling–5 method (paragraph (c)(3)), and the direct attribution method (paragraph (c)(4)). Section 4211(b)(1) requires most plans, unless amended, to use the presumptive method. Section 4211(d)(1) requires a plan described in section 404(c) of the Internal Revenue Code to use the rolling–5 method unless it is amended to adopt one of the statutory alternatives.

Pursuant to section 4211(c)(1), plans may, by amendment, adopt any of the other three statutory methods for allocating unfunded vested benefits. Plans may also adopt other, nonstatutory, allocation methods, or modifications to the statutory methods, under regulations issued pursuant to section 4211(c)(5). All changes to a plan's allocation rules are subject to the approval of the PBGC.

The Interim Regulation

On January 19, 1981, the PBGC published its Interim Regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642). Subpart B of the regulation prescribed adjustments to the statutory allocation methods that could be adopted without PBGC approval. Subpart C of the regulation established a procedure under which plan sponsors could submit other alternative allocation methods for PBGC approval. The PBGC invited comments on the regulation but did not receive any.

The PBGC has since determined that the interim regulation needs several changes. Accordingly, the PBGC is proposing to revise the regulation as described herein and requests public comments on this proposal.

The Proposed Regulation

In general, the proposed revision preserves the organization of the interim regulation. However, the PBGC has rearranged a few provisions. The subject matter of portions of interim §§ 2642.5(a) and 2642.12 and all of interim § 2642.5(c) is now in revised §§ 2642.1(a) and 2642.2. These provisions are descriptive (rather than prescriptive) and clarify the purpose of the regulation, which is the subject of Subpart A. Revised § 2642.1(a) now contains a brief description of the four statutory allocation methods and the basic statutory rules on the applicability of allocation methods to plans of various kinds. Revised § 2642.2 describes the statutory exceptions to these basic rules.

Modifications Not Subject To PBGC Approval

As in the interim regulation, Subpart B covers changes in a plan's allocation method that may be made without PBGC approval. Principal among these changes is adoption of one of the other statutory allocation methods. Section 4220(a) of ERISA allowed such changes without PBGC approval for the first 36 months after the effective date of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act (originally April 29, 1980; since changed to September 26, 1980). This 36-month period has now expired. Thus, plan amendments adopting one of the statutory allocation methods require PBGC approval. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods.

Revised § 2642.5 reflects the PBGC's class approval of amendments adopting statutory allocation methods. It thus represents a change from the corresponding provisions in the interim regulation (which followed the 36-month rule), as well as a consolidation of provisions that were separately stated in the interim regulation. Section 2642.5(a), pertaining to nonconstruction industry plans, is derived from interim § 2642.5(a) (last sentence) and (b). Revised § 2642.5(b), pertaining to construction industry plans, comes from the last sentence of interim § 2642.12. Together, these provisions authorize the adoption, without PBGC approval, of two types of changes in a plan's allocation method. One type of change thus allowed is the adoption of a modification to the plan's allocation method; the permissible modifications are described in Subpart B. The second type of change allowed by § 2642.5 is the adoption, by any plan other than a construction industry plan, of one of the statutory alternative allocation methods.

The PBGC has carried over § 2642.6, which deals with the contributions used in determining allocation fractions, from the interim regulation without substantive change. In a few places, however, the PBGC has clarified some of the wording. For example, in § 2642.6(a), the wording now makes clear that the PBGC does not consider withdrawal liability payments and amounts that employees contribute to be contributions for purposes of computing allocation fractions under the presumptive, modified presumptive and rolling-5 methods.

Similarly, the PBGC has added language in § 2642.6(b) to clarify that, in computing the denominator of an allocation fraction under any of the § 2642.6(b) modifications, if a plan includes contributions in the "total amount contributed" for one year, it may not also count the same contributions as delinquent contributions for another year in computing the same denominator. The PBGC has reworded paragraphs (b)(2) and (b)(3) of § 2642.6 to specify exactly what contributions a plan is to take into account under each alternative in the computation of allocation fractions. Finally, revised § 2642.6(b)(4)(i) reflects the change in the effective date of the withdrawal liability provisions of ERISA.

That date change also appears in revised § 2642.6(c). More significantly, the PBGC has reworded § 2642.6(c) to correct an incomplete description of the time period that a plan is to look at in determining which employers' contributions are excluded under the statute in computing allocation fractions. Under the presumptive, modified presumptive and rolling-5 methods, plans must exclude from the computation of any such fraction the contributions of all employers that have ceased to contribute to the plan or ceased covered operations before the end of the period of plan years used to determine the fraction. The interim regulation excluded contributions by all employers whose cessations occurred

before the end of the plan year preceding the withdrawal for which the fraction was being determined. This is correct for some fractions but not for others. The reworded provision excludes contributions by all employers that had withdrawn before the end of the period of plan years used to determine the fraction. As modified, the provision is correct for all fractions.

The PBGC has deleted interim § 2642.6(d) from the revised regulation. That paragraph provided examples of the operation of the provisions of § 2642.6(c). The examples did not deal with all aspects of amendments made under those provisions and in some cases might have been misunderstood.

The substance of § 2642.7 (a) and (b) remains unchanged. The PBGC has deleted § 2642.7(c), which, under the interim regulation, authorized plans to apply the denominator modifications described in § 2642.6 to certain denominators used in the direct attribution method. Since plans using the direct attribution method must have complete records on all employers, they do not need the administrative relief afforded by § 2642.6. Furthermore, the denominators described in section 4211(c)(4)(D) (ii) and (iii) under the direct attribution method cover the lifetime of the plan and include an interest factor. They are thus significantly different from the denominators used under the other methods, which are limited to ten years and do not include interest. Use of the denominator modifications described in § 2642.6 may therefore introduce greater inaccuracies under the direct attribution method than under other methods. Such inaccuracies appear unjustified in the absence of a significant need for administrative relief.

Section § 2642.8 of the revised regulation would allow an additional modification to the presumptive method without PBGC approval. The presumptive method allocates to employers shares of a plan's unfunded vested benefits, determined as of the end of the last plan year before the effective date of the Multiemployer Pension Plan Amendments Act of 1980, and shares of annual "change amounts" for subsequent years, based on the amount of increase or decrease in unfunded vested benefits each year. In a year when unfunded vested benefits decrease, the change amount for that year can be negative—*i.e.*, a credit. If a plan that has had unfunded vested benefits reduces them to zero, the total credits will, in the aggregate, offset the total charges. For a particular employer, however, credits and charges may not balance.

In Opinion Letter 83–19 (August 11, 1983), the PBGC took the position that a withdrawing employer may incur withdrawal liability under the presumptive method even though the plan has no unfunded vested benefits. The PBGC has received a request for reconsideration of Opinion Letter 83–19, which is the subject of a separate notice inviting public comment.

If the PBGC concludes that the position stated in Opinion Letter 83–19 is a correct interpretation of the statute, then new § 2642.8 would permit a plan with no unfunded vested benefits, other than a construction industry plan, to avoid assessing withdrawal liability under the presumptive method by setting the unamortized amounts under section 4211(b)(1) (A), (B), and (C) at zero for the year in which full funding is achieved and all prior years. This adjustment would operate whenever vested benefits became fully funded.

If the PBGC determines that the position taken in Opinion Letter 83–19 is incorrect, and that ERISA does not require the assessment of withdrawal liability by plans with no unfunded vested benefits, then new § 2642.8 would provide a specific method for implementing a plan's change in status when its vested benefits become fully funded.

The PBGC requests comments on its proposal to add new § 2642.8 to the revised regulation.

Modifications Subject To PBGC Approval

Under the proposed regulation, the PBGC has added a new § 2642.11(b) to incorporate the next-to-last sentence of interim § 2642.12. That sentence and interim § 2642.11(a), both of which dealt with changes to allocation methods that are subject to PBGC approval, are carried over from the interim regulation without any change in substance, although the PBGC has modified their wording.

Revised § 2642.11(c) is a new provision. It prohibits the use of any allocation method that systematically and substantially overallocates unfunded vested benefits, *i.e.*, that consistently over time allocates to contributing employers an aggregate amount of unfunded vested benefits that exceeds 100% of the plan's unfunded vested benefits.

An example of such a method is one under which an employer's withdrawal liability is the greater of the amounts determined under two different allocation methods. In the past, the PBGC has approved such methods because they do not pose a risk of loss to participants and the insurance program. Further analysis, however, has led the PBGC to conclude that systematic overallocation, except when rendered necessary by compelling administrative considerations, is contrary to the intent of the statute.

In section 4211(b) and (c), Congress has provided four examples of what an "allocation method" is. While these four methods vary in the means that they use to allocate unfunded vested benefits among employers, they are uniform in allocating, to the extent feasible, 100% of total unfunded vested benefits. ERISA alludes to this characteristic of an "allocation method" in section 4211(c)(5)(B), which requires that "any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits . . . ."

The legislative history of the Multiemployer Pension Plan Amendments Act indicates that Congress sought through withdrawal liability to achieve an equitable allocation of plan liabilities among all employers. Thus, a Senate floor explanation of withdrawal liability stated:

> [T]he bill generally requires that all withdrawing employers fund a share of the plan's unfunded liabilities when they withdraw. . . . The Committees support the proposed withdrawal liability rule as a way of better assuring equity among employers . . . . (126 Cong. Rec. 20193 (July 29, 1980.)

The limited degree of overallocation that may be produced by the statutory allocation methods or the modifications described in Subpart B of this regulation has the acceptable and legitimate purpose of reducing what would otherwise be an overwhelming administrative burden. For example, the numerators of the allocation fractions under the presumptive, modified presumptive, and rolling-5 methods are the amounts that the withdrawing employer was *required* to contribute during a specified period, while the denominators are the amounts that all employers *actually* contributed in the aggregate. If any employer has contributed less than its required amount, the sum of all employers' fractions will exceed 100% of the plan's unfunded vested benefits. This overallocation is nevertheless appropriate, first, because it is unlikely to be substantial and, second, because there is no administratively feasible alternative. To use required contributions as the denominator would necessitate annual audits of all employers' contributions; to use actual contributions as the numerator would

reward employers that failed to meet their obligations to the plan.

When a plan creates a custom allocation method, no similar necessity for overallocation exists, and the PBGC has concluded that the inequity of imposing an artificially high liability on early-withdrawing employers is not justified by the consequent increase in plan assets. Plans that have previously adopted such methods may not continue to apply them after the effective date of this revised regulation. See § 2642.14.

There are extensive language changes in revised § 2642.11(d), derived from interim § 2642.11(b), but the PBGC intends these changes only for clarification. The PBGC has deleted interim § 2642.11(c), which contained a special rule concerning the effective date of plan amendments adopted on or before January 31, 1981, because it is no longer necessary. The PBGC has also deleted a related provision, interim § 2642.13(a), regarding the time for submitting such amendments to the PBGC.

Since the PBGC has incorporated interim § 2642.12 into revised §§ 2642.1(a), 2642.2(a), 2642.5(b) and 2642.11(b), that section has been deleted, and interim § 2642.13 is now § 2642.12. This section deals with PBGC approval of alternative allocation methods. The PBGC has revised it to reflect two substantial modifications in the approval procedure. The first revision is at the end of paragraph (a), where the PBGC has deleted a reference to date of filing. Under the revised rule, it is unnecessary to establish the date of filing, since the PBGC has deleted the time limit for PBGC action on approval requests. (The elimination of this limit is discussed at greater length below.)

The second important change in this section involves the information that the PBGC requires a plan to submit with an approval request. In order to ascertain whether an allocation method meets the condition for approval, the PBGC may need to study how the alternative method will operate. Originally, interim § 2642.13(d)(6) required that a request for approval of an alternative method contain an example demonstrating the application of the method in various circumstances. The interim regulation described these examples in §§ 2642.14 and 2642.15. The PBGC has since found that such examples are usually unnecessary to enable it to determine whether proposed alternative allocation methods satisfy the standards for approval. Therefore, the PBGC has deleted interim §§ 2642.14 and 2642.15, and revised § 2642.12(d) no longer contains the requirement that plans submit an example. The PBGC does, however, retain the right to request an example when needed (§ 2642.12(e)). Interim § 2642.13(d)(7) has become revised § 2642.12(d)(6), which the PBGC has reworded to make clear that a plan need supply only the allocation method in use immediately before the amendment that is being submitted. Finally, the PBGC has added a new provision, revised § 2642.12(d)(7), requiring submission to the PBGC of a statement certifying that notice of the adoption of the alternative allocation method has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan. This statement will serve to inform the PBGC that the plan has complied with section 4214(b) of ERISA in adopting the amendment changing its allocation method.

Revised § 2642.13 comes from interim § 2642.16. Paragraphs (a) and (b) of this section are essentially unchanged. The PBGC has substantially rewritten paragraph (c) to eliminate references to the requirement under the interim regulation that the PBGC act on approval requests within 120 days. The PBGC included this requirement, which is not in ERISA, in the interim regulation to assure plans that they could proceed quickly to implement changes in allocation methods immediately following adoption of the Multiemployer Pension Plan Amendments Act. That need for urgent action no longer exists. In most cases, furthermore, the primary impact of the 120-day rule was to create paperwork in connection with fixing (and notifying submitters of) the filing date, as successive materials were submitted to the PBGC in connection with a request for approval. Such successive submissions are often necessary in order to correct (or demonstrate the non-existence of) problems appearing on the face of amendments as initially submitted to the PBGC. Finally, the PBGC anticipates that it will, in fact, be able to continue ruling on these requests within 120 days after its receipt of all necessary information.

The proposed regulation adds a new § 2642.14 to deal with allocation methods that the PBGC has heretofore approved but that contravene revised § 2642.11(b) discussed above; *i.e.*, allocation methods that assess to employers the greater of two amounts of unfunded vested benefits. The PBGC proposes to prohibit the use of these methods after the effective date of the final regulation. If a plan sponsor of a plan that has been using such a method does not amend the method before the regulation's effective date, the plan will be deemed to have the allocation method that would be applicable under ERISA if the plan had never been amended, *i.e.*, the presumptive method. Since all of the two-pronged methods that the PBGC has approved have included some variant of the presumptive rule as one of the two allocation rules used, a change to the use of the presumptive rule alone should not create undue administrative burdens because plans will be able to use records they have been maintaining under their existing allocation methods.

The PBGC published a Multiemployer Bulletin dated March 6, 1985, announcing that it is considering the adoption of a regulation that would permit plans, without PBGC approval, to make certain modifications to their allocation methods that would ease the burden of complying with section 558 of the Tax Reform Act of 1984. This amendment will be the subject of a separate rule.

Compliance With Rulemaking Guidelines

The PBGC has determined that this proposed regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. ERISA requires the PBGC to establish, by regulation, rules for the adoption of modifications and alternatives to the allocation methods under secton 4211 of ERISA. This proposed rule would, if adopted, revise an existing regulation fulfilling that requirement.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, such plans represent less than 14% of all multiemployer plans covered by the PBGC (346 out of 2485). Further, small multiemployer plans represent only .4% of all small plans covered by the PBGC (346 out of 84,288). This regulation will affect only those plans that choose to

change their allocation methods. The PBGC estimates, based on its experience to date, that no more than 16 multiemployer plan sponsors per year will amend their plans under ERISA section 4211 in a manner requiring PBGC approval. Thus, the PBGC expects there to be very few small plans that will need to file amendment approval requests under these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

The collection of information requirements contained in this proposed regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Public Comments

The PBGC invites interested parties to submit comments on this proposed regulation. Comments on the collection of information requirements may be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for Pension Benefit Guaranty Corporation, Washington DC 20503. Other comments should be addressed to the Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006. The PBGC will make written comments available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each comment should include the commenter's name and address, identify this proposed regulation, and give reasons for any recommendation. The PBGC may change this proposal in light of the comments it receives.

List of Subjects in 29 CFR Part 2642

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, the PBGC proposes to revise 29 CFR Part 2642 to read as follows:

PART 2642—ALLOCATING UNFUNDED VESTED BENEFITS

Subpart A—General

Sec.

2642.1 Purpose and scope.
2642.2 Special rules for construction industry and IRC section 404(c) plans.

Subpart B—Changes Not Subject to PBGC Approval

2642.5 Changes not subject to PBGC approval.
2642.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.
2642.7 Modifications to the direct attribution method.
2642.8 Modifications to the presumptive method for plans with no unfunded vested benefits.

Subpart C—Changes Subject to PBGC Approval

2642.11 Changes subject to PBGC approval.
2642.12 Requests for PBGC approval.
2642.13 Approval of alternative method.
2642.14 Special rule for certain alternative methods previously approved.

Authority: Sections 4002(b)(3) and 4211 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D), Pub. L. 93-46, 88 Stat. 829, 1004 (1974), as amended by sections 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302, 1228-29, 1232 (1980) (29 U.S.C. 1302(b)(3) and 1391 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D)).

Subpart A—General

§ 2642.1 Purpose and scope.

(a) *Purpose.* The Multiemployer Pension Plan Amendments Act provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: The presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 2642.2, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocation method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C of this regulation sets forth the criteria and procedures for PGBC approval of non-staturory alternative allocation methods. Section 4211(c)(5) of the Act also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B of this regulaiton contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under Subpart C.

(b) *Scope.* This part applies to all multiemployer plans covered by section 4021(a) of ERISA and not excluded by section 4021(b).

§ 2642.2 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in the next sentence, a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act, adopt, by amendment, one of the statutory alternative methods or a non-statutory allocation method. Any such amendment is subject to PBGC approval under Subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications to the presumptive method set forth in § 2642.6.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Internal Revenue Code (a plan established before January 1, 19854, as a result of agreement between employee representatives and the United States during a period of government operation, under seizure powers, of a major part of the productive facilities of an industry) or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods without PBGC approval; adoption of any other allocation method is subject to PBGC approval under Subpart C so this part. A section 404(c) plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in Subpart B.

Subpart B—Changes Not Subject to PBGC Approval

§ 2642.5 Changes not subject to PBGC approval.

(a) *General rule.* A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§ 2642.6, 2642.7 and 2642.8, without the approval of the PBGC.

(b) *Building and construction industry plans.* A multiemployer plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in § 2642.6 without the approval of the PBGC.

§ 2642.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *"Contributions made" and "total amount contributed".* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts (other than withdrawal liability payments) considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Internal Revenue Code. For plan years before section 412 applies to the plan, "the sum of all contributions made" or "total amount contributed" means the amount reported to the Internal Revenue Service or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on line 14(c) of that form. Employee contributions, if any, shall be excluded from the totals.

(b) *Changing the period for counting contributions.* A plan sponsor may amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph shall be applied consistently to all plan years. Contributions counted for one plan year may not be counted for any other plan year. If a contribution is counted as part of the "total amount contributed" for any plan year used to determine a denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Internal Revenue Code.

(2) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period that section 412(c)(10) of the Internal Revenue Code and regulations thereunder describe.

(3) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and regulations thereunder.

(4) A plan sponsor may amend a plan to provide that—

(i) For plan years ending before September 26, 1980, "the sum of all contributions made" or "total amount contributed" means the amount reported on line 14(c) of Form 5500 and, for years before the plan was required to file Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the Internal Revenue Service; and

(ii) For subsequent plan years, "the sum of all contributions made" or "total amount contributed" means the amount described in paragraph (a) of this section, or the amount described in paragraphs (b)(1), (b)(2) or (b)(3) of this section.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that cease to have an obligation to contribute to the plan or cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), "significant withdrawn employer" means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of the Act; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1% of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan shall treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A "concerted withdrawal" means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

§ 2642.7 Modifications to the direct attribution method.

(a) *Error in direct attribution method.* The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum of the employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (c)(4)(B) of the Act, and the employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E) and allocated to the employer under section 4211(c)(4)(F). Plan sponsors should allocate unattributable liabilities on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method shall modify the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan" in section 4211(c)(4)(F) by substituting "subparagraph (B)" for "subparagraph (C)" in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of the Act, the employer's share of the plan's unattributable liability shall be

determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) The numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not less than five) ending before the withdrawal; and

(2) The denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

§2642.8 Modifications to the presumptive method for plans with no unfunded vested benefits.

(a) *General rule.* Subject to the restriction in paragraph (b) of this section, the plan sponsor of a plan using the presumptive method may amend the plan to provide that if, as of the end of any plan year, the plan has no unfunded vested benefits, then the unamortized amounts under section 4211(b)(1) (A), (B), and (C) of the Act as of the end of that plan year shall be deemed to be zero for purposes of applying the presumptive method to employer withdrawals occurring after that plan year.

(b) *Interest rate.* This section shall apply only if the interest rate used in the plan's valuation is no higher than the rate used to determine compliance for that plan year with Part 3 of Title I of the Act (the "minimum funding" standards).

Subpart C—Changes Subject to PBGC Approval

§ 2642.11 Changes subject to PBGC approval.

(a) *General rule.* Subject to the approval of the PBGC pursuant to this subpart, a plan, other than a plan that primarily covers employees in the building and construction industry, may adopt by amendment, any allocation method or modification to an allocation method that is not permitted under Subpart B of this part.

(b) *Building and construction industry plans.* Subject to the approval of the PBGC pursuant to this subpart, a plan that primarily covers employees in the building and construction industry may adopt, by amendment, a statutory or non-statutory allocation method applicable only to its employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act, or any modification to an allocation method that is not permitted under § 2642.6

(c) *Substantial overallocation not allowed.* No plan may adopt an allocation method or modification to an allocation method that results in a systematic and substantial overallocation of the plan's unfunded vested benefits, such as a method that allocates to employers the greater of two amounts of liability determined under two allocation rules.

(d) *Use of method prior to approval.* A plan may implement an alternative allocation method or modification to an allocation method that requires PBGC approval before that approval is given. However, the plan sponsor shall assess liability in accordance with this paragraph.

(1) *Demand for payment.* Until the PBGC approves the allocation method or modification, a plan may not demand withdrawal liability under section 4219 of the Act in an amount that exceeds the lesser of the amount calculated under the amendment, or the amount calculated under the allocation method that the plan would be required to use if the PBGC did not approve the amendment.

(2) *Adjustment of liability.* When necessary because of the PBGC decision on the amendment, the plan shall adjust the amount demanded from each employer under paragraph (c)(1) of this section and the employer's withdrawal liability payment schedule. The length of the payment schedule shall be increased, as necessary. The plan shall notify each affected employer of the adjusted liability and payment schedule and shall collect the adjusted amount in accordance with the adjusted schedule.

§ 2642.12 Requests for PBGC approval.

(a) *General.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(b) *Who shall submit.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to submit.* The plan shall submit the request by mail or by hand to the Insurance Operations Department (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street NW., Washington, DC 20006.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the fully authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) that the Internal Revenue Service assigned to the plan sponsor and the three-digit Plan Identification Number (PIN) that the plan sponsor assigned to the plan, and, if different, also the EIN–PIN that the plan last filed with the PBGC. If the plan has no EIN–PIN, the request shall so indicate.

(4) The date the amendment was adopted.

(5) A copy of the amendment, setting forth the full text of the alternative allocation method or modification.

(6) The allocation method that the plan currently uses and a copy of the plan amendment (if any) adopting the method.

(7) A statement certifying that notice of the adoption of the amendment has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan.

(e) *Additional information.* In addition to the information listed in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information that the PBGC determines is necessary for the review of an alternative allocation method or modification to an allocation method.

§ 2642.13 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under Subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits directly attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and

differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of the Act.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to Part 2606 of this chapter.

§ 2642.14 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after the effective date of this section an allocation method that allocates to that employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Issued in Washington, D.C., this 28th day of August 1985.

William E. Brock,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving, and authorizing its chairman to issue, this notice of proposed rulemaking.

Edward R. Mackiewicz,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 85-21477 Filed 9-6-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

32 CFR Part 230

[DoD Instruction 1000.12]

Procedures Governing Banking Offices on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed part updates Department of Defense (DoD) policies and procedures concerning banking institutions that operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. Policies governing permissible service charges and fees are made less stringent and procedures for onbase office construction are clarified.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202-697-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19140 amended Title 32, CFR, Part 230 contains the existing Office of the Secretary of Defense (OSD) procedures for the operation of onbase banking institutions. Accompanying policies are contained at Part 231. Certain provisions, formerly applicable only to credit unions have, wherever possible, been made applicable to banking institutions. A new provision precludes performance of commercial banking operations by DoD activities; DoD Components are to rely upon commercially available sources. DoD Components are required to forward requests for establishment of military banking facilities (MBFs) to the DASD(MS). Reference to the $1.00 charge for domestic encashment of Treasury checks for non-accountholders is eliminated. Domestic banking institutions are permitted to adjust services and fees to maintain consistency with competing institutions or the onbase institution's branch-wide service offerings and fee schedule. Procedures are clarified for nonself-sustaining banking office construction of a building or renovation of government space. Lease duration is for the stated term or upon determining that the office is self-sustaining, whichever occurs first. The counting of dependents is prohibited when seeking to qualify under the 250 or 1,000 population rules for part- or full-time MBFs overseas. Component implementing regulations are to provide for support of overseas MBFs under terms of DoD contracts, thereby reducing procedural details formerly in the issuances. Overseas commanders having on base MBFs are required to "accept" services rendered and report service shortfalls under identified procedures. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions.

List of Subjects in 32 CFR Part 230

Banks, Military banking facilities, Savings and loan associations.

Accordingly, 32 CFR Part 230 is proposed to be revised to read as follows:

PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DoD INSTALLATIONS

Sec.

230.1 Reissuance and Purpose.
230.2 Applicability
230.3 Definitions.
230.4 Responsibilities.
230.5 General Operating Policies and Procedures.

Enclosure 1—Procedures for Establishing, Supporting and Terminating Onbase Banking Offices.

Enclosure 2—Operations of Onbase Banking Offices.

Authority: 10 U.S.C. 136

§ 230.1 Reissuance and Purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11 [1] concerning relationships with banking offices located on Department of Defense (DoD) installations.

§ 230.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

(b) Its provisions also pertain to all banking institutions that operate on DoD installations.

§ 230.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention: Code 301. located on Department of Defense (DoD' installations.

activated by a plastic debit card in combination with pushbottons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial installation and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking service at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent operated by a banking institution on a DoD installation. Also includes savings and loan association and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state or federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex and martial status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of (a) occupation or association or (b) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulating agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD installation A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed as "payday service facility."

Regulatory Agency. Includes the Office of the Comtroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve

Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loan Association. A state or federally chartered mutual or stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, that operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, to operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 230.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management & Personnel).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overses banking facilities and specify the charges or fees, or the basis for such charges or fees, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas banking facilities as depositaries and financial agents of the U.S. Government.

(4) Maintain liaison, as necessary, with Federal and equivalent state bank regulatory agencies as defined at enclosure 2 of DoD Directive 1000.11.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation for acquiring banking services to meet justified requirements at overseas DoD installations.

(6) Serve as principal liaison with banking institutions that operate banking offices on overseas DoD installations. In this capacity, monitor banking facility managerial and operational policies, procedures and operating results and take action as appropriate.

(7) Review DoD Component actions that contemplate removal for cause of a banking institution from an installation prior to final decision and referral to the appropriate regulatory agency.

(8) As necessary, negotiate government-to-government agreements for the provison of banking services on overseas DoD installations in accordance with DoD Instruction 2050.1.[2]

(9) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsecton F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsecton F.3. of DoD Directive 1000.11.

(d) The *Heads of DoD Components* shall:

(1) Prescribe procedures for soliciting banking institutions to establish banking offices on respective domestic DOD installations. Such procedures shall prohibit DOD personnel from subjecting banking institutions to any form of coercion either while banking arrangements are under consideration or after banking offices are established.

(2) Review proposals to establish banking offices on respective domestic DOD installations, select the banking institution making the best offer and recommend designation of that institution to the cognizant regulatory agency.

(3) Forward proposals to establish banking facilities to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

(4) Provide for liaison to banking institutions operating banking offices on respective domestic DOD installations.

(5) Supervise the use of banking offices on respective DOD installations within the guidance contained herein and in DOD Directive 1000.11.

(6) Evaluate the services provided by banking offices to ensure that they fulfill the requirements upon which establishment and retention of those services were justified.

(7) Examine practices and procedures of respective onbase banking offices to ensure that the welfare and interests of DOD personnel as consumers are protected, as set forth in DOD Directive 1344.7.[3]

(8) Assist respective onbase banking offices in developing and expanding necessary services for DOD personnel consistent with the provisions stated herein.

(9) Determine the level of logistic support to be provided to respective domestic banking institutions that submit reports reflecting nonself-sustaining status.

(10) Encourage the conversion of existing domestic banking facilities on respective installations to independent or branch bank status where determined to be feasible.

(11) Provide logistic support to overseas banking facilities under terms and conditions indentified in respective contracts.

(12) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas banking service or related actions emanating from overseas component commands.

(13) Refer matters requiring policy decisions or proposed changes to the provisions of this part or DOD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish banking offices in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate all banking offices in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations with the command area. Personnel assigned to security assistance positions will not be used to perform this function without the prior approval of the Director, Defense Security Assistance Agency.

§ 230.5 General operating policies and procedures.

(a) *Limitation on Service.* Only one banking institution is permitted to

[2] See footnote 1 to § 230.1

[3] See footnote 1 to § 230.1.

operate on a DoD installation, except under most unusual circumstances.

(1) If conditions at a particular installation reflect a demonstrated requirement for additional service, the banking institution operating the existing office shall be given the opportunity to provide such service before other banking institutions are considered.

(2) Thereafter, when conditions warrant consideration of a second banking institution on the installation, a request that includes full details and rationale shall be forwarded through channels to the DoD Component headquarters concerned for evaluation and appropriate action. The Head of the DoD Component, or designee, may approve and forward such requests to the cognizant regulatory agency after coordination with the DASD(MS).

(b) *Uniformity of Service.* To the maximum extent feasible, financial services provided on DoD installations shall be uniform for all DoD personnel. Such services shall be provided at overseas DoD installations under uniform service charges and fee schedules wherever possible.

(c) *Establishing Banking Offices.* (1) Banking offices shall be established on domestic DoD installations only with prior approval of the DoD Component concerned and the appropriate regulatory agency. Specific procedures are identified at enclosure 1. No commitment may be made to any banking institution regarding its proposal until a designation is made by the cognizant regulatory agency.

(2) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) shall operate on domestic DoD installations.

(3) Except under most unusual circumstances, banking facilities may be established only overseas and in those states that prohibit branch banking.

(4) At those domestic DoD installations where regular financial services cannot be provided due to lack of interest by the banking community, lack of available space on the installation, or other operational situations that restrict the introduction of banking offices, the DoD Component concerned may seek proposals from the financial community to install automated teller machines (ATMs).

(i) In acquiring such services, preference shall be given to proposals that offer shared-access ATMs.

(ii) The financial institutions selected is responsible for obtaining necessary regulatory agency approval before commencing ATM service.

(iii) Action taken in response to such proposals shall be exempt from the limitation in § 230.5(a). The availability of ATM service on an installation will not preclude the establishment of a banking office at a later time in response to a demonstrated requirement.

(5) The provision of banking services by means other than duly-chartered public sector banking offices or ATM service is subject to prior review and approval by the DASD(MS).

(d) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and onbase banking institution. As a minimum, each agreement shall include the following provisions:

(1) Service to be rendered and the conditions therefor. To the extent feasible, full financial services shall be provided; however, agreements entered into under this provision may not restrict the banking institution's right to adjust services and fees to maintain consistency with competing institutions or the banking institution's branch-wide service offerings and fee schedules.

(2) Banking institutions agreement to:

(i) Comply with this part, DoD Directive 1000.11 and implementing DoD Component regulations;

(ii) Indemnify and hold harmless the U.S. Government from (and against) and loss, expense, claim or demand to which the government may be subjected as a result of death, loss, destruction or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the banking institution; and

(iii) Favorably respond, whenever possible, to command requests for lecturers and printed materials to support consumer credit education programs. When banking office personnel are invited to participate in such programs, they shall ensure that the occasion is not used to promote the services of a particular financial institution.

(3) Agreement that neither the DoD Component concerned nor its representatives will be responsible or liable for the financial operation of the banking office or for any loss (including criminal losses), expense, or claim for damages arising from banking office operation.

(4) Installation (community) commander's agreement to provide support as specified at enclosure 1 of this part.

(e) *Liaison Officers.* In the interest of maintaining a viable relationship and effective line of communication, each installation commander with an onbase banking office shall appoint a bank liaison officer as defined at §230.3.

(1) The bank liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase banking office.

(2) The liaison officer shall maintain regular contact with the banking officer manager to confer or assist in resolving customer complaints and to discuss or recommend improvements in the quality or quantity, or both, or provided services. However, neither the liaison officer nor his superiors shall become involved in the internal operations of the banking office.

(3) No person serving on the board of directors or in another official capacity with the banking institution may serve as the bank liaison officer or credit union liaison officer.

(f) *Military Personnel as Director of Banking Institutions.* (1) DoD personnel on military active duty may not serve as directors of banking institutions that operate onbase banking offices. Exceptions may be granted by the head of the Dod Component concerned only if the appointment is based upon a justified requirement for direct liaison between the banking institution and the installation commander. Under such circumstances, no more than one individual on active duty may serve as a director at any one time and then only if such service is rendered without compensation.

(2) Members of DoD reserve components called to active duty who have been serving as directors of banking institutions that operate onbase banking offices will not be required to resign those directorships because of active duty status.

(g) *Complaints Processing.*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase banking institution first shall attempt to resolve the problem by negotiation. Failing this, a written request for investigation shall be made in accordance with implementing DoD Component regulations to the cognizant regulatory agency. The request must clearly describe and give evidence of the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report any evidence of suspected malpractice by banking office personnel in accordance with

implementing DoD Component regulations to the cognizant regulatory agency.

(3) *Follow-up.* If action by the cognizant regulatory agency fails to resolve DoD Component concerns, a full report with recommendations shall be submitted to the DASD(MS). The DASD(MS) shall take appropriate follow-up action with the cognizant regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic Support.*—(1) *Categories of Domestic Banking Offices.* For the purpose of authorizing logistic support, banking offices are categorized either as self-sustaining or nonself-sustaining.

(i) A domestic banking office is considered to be self-sustaining until, based upon financial data provided by the banking institution, the DoD Component concerned determines it to be nonself-sustaining. Payment of rent for space and reimbursement for utilities furnished shall be required from self-sustaining banking offices. Nonself-sustaining banking offices may be granted rent-free and utilities under procedures prescribed by the DoD Component concerned.

(ii) Normally, a domestic banking office shall be in a nonself-sustaining status for at least 4 consecutive calendar quarters before qualifying for logistic support. Conversely, a nonself-sustaining banking office would not be designated as self-sustaining until it had experienced 4 consecutive quarters of profitiable operation.

(2) *Detailed Procedures.* Details of required and authorized support for onbase banking offices are provided at enclosure 1.

(i) *Termination of Banking Service.*—(1) *Termination of Operations by the Banking Institution.* Should an onbase banking office plan to terminate its operations, it should so notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. If need be, the commander shall attempt to work out a mutual agreement whereby the banking office can continue operations until other arrangements can be made. Upon such notification, the commander immediately shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with § 230.5(c).

(2) *Termination for Cause.* If, after discussion with banking institution officials, the installation commander determines that the operating policies of the banking office are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a banking office from the installation shall be made only after approval by the DoD Component headquarters with the concurrence of the DASD(MS) and the cognizant regulatory agency.

Enclosure 1.—Procedures for Establishing, Supporting and Terminating Onbase Banking Offices

A. Establishing Banking Offices

1. *General.* DoD Components shall review banking institution proposals and recommend selections in accordance with § 230.5(c). Banking institutions selected for domestic onbase operation must obtain authority from the cognizant regulatory agency before commending such operation.

a. In the case of state-chartered institutions that are members of the Federal Reserve System, approval shall also be obtained from the Federal Reserve Bank for the district in which the proposed banking office is located.

b. In the case of state-chartered savings and loan associations, approval shall be obtained from cognizant state regulatory agencies. In the case of federally-chartered savings and loan associations, the determination shall be made by the Federal Home Loan Bank Board or its principal supervisory agent for the district in which the association does business.

2. *Domestic Banking Offices.*

a. Each DoD Component shall develop internal instructions that govern the submission and justification of requests to establish banking facilities on respective installations. The following information shall be included in requests to the DoD Component headquarters for banking facility establishment:

(1) Justification for establishment of a banking facility as opposed to another type of banking office.

(2) Such other supporting data as deemed necessary by the DoD Component concerned.

b. Proposals received by installation commanders to establish an independent or branch bank or a savings and loan association office shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

c. The DoD Component headquarters concerned shall evaluate each proposal to establish such offices and, if acceptable, recommend designation by the cognizant regulatory agency.

(1) If there is no existing banking office on the installation and it is determined that one is needed, the DoD Component concerned shall solicit proposals from other nearby banking institutions before making a determination.

(2) If a banking office other than a banking facility already is in operation on the DoD installation, the provisions of § 230.5(a)(1) apply.

(3) If the proposal offers to replace an existing banking facility with an independent or branch bank, the DoD Component concerned shall offer the banking institution currently operating the facility an opportunity to submit a proposal to convert the facility.

(4) With respect to a proposed independent or branch bank, preference shall be given to the banking institution that has operated the banking facility, provided that prior banking service has been satisfactory and that the institution's proposal is deemed adequate.

(5) Proposals to establish new banking facilities shall be forwarded to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

3. *Conversions of Domestic Banking Facilities to Independent or Branch Banks.* DoD Components shall encourage banking institutions that operate banking facilities to convert them to independent or branch banks, if consistent with state law. Proposals from a banking institution to convert an existing banking facility to an independent or branch bank shall be forwarded to the DoD Component headquarters concerned for its approval after coordination with the DASD(MS) and Treasury Department.

4. *Domestic Automated Teller Machine (ATM) Service.*

a. ATMs may be used to augment service provided by an onbase banking office.

b. An onbase banking facility may be authorized to site ATMs on the installation if it conforms to the following requirements. Further approval by the Treasury Department is not required. An onbase branch or independent bank may site ATMs on the installation by conforming to the following requirements and obtaining approval of the cognizant regulatory agency. Normally, regulatory approval is required only if ATMs are to be located at a site remote from the servicing banking office.

c. A banking institution that proposes to augment onbase banking office

service by installing one or more ATMs shall:

(1) Coordinate the ATM proposal through the installation commander under provisions of applicable DoD Component regulations;

(2) Provide a statement that the cost of ATM installation and maintenance shall be borne solely by the banking institution or in participation with other financial institutions; and

(3) Provide for access through debit transaction card, rather than limiting access solely to holders of a financial institution's credit card.

d. Upon approval, appropriate leases shall be negotiated in accordance with this part.

(1) No lease is required solely for siting an ATM within the existing banking office.

(2) Provided that required additional space in an existing installation structure 100 square feet of floor space or less, and modifications are made totally at banking office expense, such leases shall be negotiated and locally approved at the nominal consideration of $1.00 per annum. Such lease provisions also shall be offered if the banking office requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of maintenance and utilities shall be borne by the banking office.

(3) Leases pertaining to other situations shall be negotiated in accordance with section C, below.

5. *Overseas Banking Facilities Operated Under Contract.*

a. In implementing this part, each DoD Component shall develop internal instructions governing the submission of requests justifying the need for banking facilities proposed for establishment on respective overseas installations. Upon favorable review by the DoD Component headquarters concerned, such requests shall be submitted to the DASD(MS) with a recommendation for the inclusion in the appropriate contract, subject to the conditions set forth below.

b. As a general rule, banking facilities may be proposed when the population to be served meets the following criteria:

(1) *Full-Time Banking Facility.* Except in unusual circumstances, a full-time banking facility shall serve at least 1,000 DoD personnel, excluding dependents.

(2) *Part-Time Banking Facility.* Except in unusual circumstances, a part-time banking facility shall serve at least 250 DoD personnel, excluding dependents.

c. If the population at certain remote areas is not sufficient to qualify under the criteria for full- or part-time banking facilities, the installation (community) commander shall explore all other alternatives for acquiring limited banking services (such as check-cashing and accommodation service by disbursing officers and their agents) before requesting establishing of a banking facility as an exception to these provisions.

d. The data used to justify establishment of overseas banking facilities shall include but not be limited to:

(1) The approximate number of DoD personnel at the installation and any other persons who may be authorized to use the banking facility.

(2) The distances between the installation and the nearest banking facility and credit union offices, the operators of those institutions, and the installations (military communities) at which they are located.

(3) The availability of official and public transportation between the installation and the nearest banking facility and credit union office.

(4) The approximate loss of duty time as a result of DoD personnel leaving the installation to obtain banking services.

(5) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(6) Source(s) from which the military disbursing officer presently obtains operating and payroll cash, the frequency of these cash acquisitions, and the approximate dollar value obtained monthly.

(7) The name and location of the depositary now being used by the military disbursing officer to make official deposits for credit to the U.S. Treasury's General Account.

(8) The estimated savings to the military disbursing officer if a banking facility is established on the installation.

(9) A list of organizational and nonappropriated fund accounts, the name(s) and location(s) of the banking institution where presently deposited, and the average daily activity and balance of each account.

(10) A written description and photographs or drawings of the space proposed for banking facility use. The extent and approximate cost of required alterations, including the construction of counters and teller cages, shall be included.

(11) A statement detailing the requirements of the proposed banking facility for safes, a vault, or both; appropriate alarm systems; and camera surveillance equipment, where deemed necessary. The statement shall include the costs of such equipment and the manner in which it will be acquired.

(12) In countries where no U.S.-operated banking facilities presently exist, a statement as required by § 230.4(e)(1).

e. Establishment of an overseas banking facility is predicated upon:

(1) Designation of the facility contractor as a depositary and financial agent of the U.S. Government by the Fiscal Assistant Secretary of the Treasury;

(2) The availability of proposed banking contractors able and willing to bid for the operation of the facility and the resonableness of such proposals; and

(3) The availability of appropriated funds to underwrite such banking services.

6. *Other Overseas Banking Offices.* The banking and currency control laws of certain host countries do not permit U.S. banking institutions to operate banking facilities on DoD installations.

a. Commanders of installations (communities) in such countries shall forward requests for banking services, or unsolicited proposast from local banks, through command channels with supporting data as required in paragraph A.5.d., above.

b. If the DoD Component concerned concurs in the request, it shall be forwarded to the DASD(MS) for approval and coordination with the Fiscal Assistant Secretary of the Treasury for designation of the parent banking institution as a depositary and financial agent of the U.S. Government.

c. Banking offices under this subsection shall become operational only after Treasury designation of the parent banking institution and an indication of the institution's willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits in a form acceptable to the DASD(MS) and the Fiscal Assistant Secretary of the Treasury.

B. Support of Onbase Banking Offices

1. *General.* Implementing DoD Component regulations shall provide for installation support to all onbase banking offices including:

a. Military or civilian guards (the latter to be used within the installation only), military police, or other protective services for necessary periods of time on paydays to accompany shipments of money from the parent banking institution or other source when such monies are primarily for use by the military disbursing officer, or at other times involving unusual circumstances when required to avoid undue risks or insurance costs on the part of the onbase banking office.

b. Central locator service, under conditions identified at enclosure 3 of DoD Directive 1000.11, when requested by onbase banking offices. This service whall be provided at no cost in accordance with DoD Instruction 7230.7.[4]

---

[4] See Footnote 1 to § 230.1

c. Debt processing assistance in accordance with DoD Directive 1344.9,[4] as limited by the Privacy Act guidelines set forth in enclosure 3 of DoD Directive 1000.11. If delinquent loans or dishonored checks are not recouped within 48 hours, banking institutions operating of DoD installations may bring them to the attention of the local commander, bank liaison officer or other designee, for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

d. Clearance procedures for personnel departing their installations so as to give the onbase banking office with adequate advance notice of the impending departure of its customers. The general purpose of a clearance is to report a change of address, reaffirm allotments or any outstanding debts, and receive counseling, if desired or appropriate. Clearance may not be denied to facilitate the collection of debts or the resolution of disputes between the financial institution and its departing customers.

e. Prohibition of traveler's check and money order sales by organizations other than the onbase banking office, post office and credit union.

2. *Domestic Nonself-Sustaining Bank Offices.* When a DoD Component determines that a banking office is in a nonself-sustaining status, it may furnish logistic support, as provided herein, without charge.

a. A nonself-sustaining banking office may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods of 5 years, as prescribed in DoD Directive 4165.6.[5] The cumulative total of space authorized to be provided at one or more locations is subject to the limitations contained in DoD 4270.1–M.[5]

b. All space assigned by the GSA, whether leased or in fedral office buildings, is reimbursable to the GSA at the standard level user charge under Public Law 92–313. Consequently, any GSA space required for banking office operations shall be assigned and charged by the GSA to the benefiting DoD Component.

c. In those exceptional cases when a nonself-sustaining banking office is authorized to construct its own building or use its funds to expand, modify or renovate government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. If shall be effective until the agreed date of expiration or until the banking office is determined to be self-sustaining, whichever occurs first. The provisions of section C, below, apply to the latter event

d. Other logistic support shall include the provisions of:

(1) Adequate customer and work areas in accordance with DoD 4270.1–M. In determining the adequacy of space, it is important that the banking office be housed in a building that both is accessible to the majority of DoD personnel on the installation and is located so as to permit maximum security.

(2) Steel bars, grillwork, security doors, a vault or safes (or both), burglar alarm system, other security features normally used by banking institutions, construction of counters and teller cages, and other necessary modifications and alterations to existing buildings as limited by DoD Directive 4270.241.

(3) Adequate utilities, custodial and janitorial services, and intrastation telephone service may be furnished at no cost. Costs for long-distance toll calls shall be borne by the banking office.

(4) Airconditioning, which is considered a normal utility for those banking offices located on installations that qualify for airconditioning under applicable DoD component regulations. Banking space is classified as administrative space on DoD installations.

(5) When available from local stock, typewriters, adding machines, other office equipment and office furniture loaned by memorandum receipt.

e. All maintenance, repair, rehabilitation, alterations, or construction for onbase banking offices shall be accomplished in accordance with DoD Directive 4165.2.[6]

f. Upon determination that a banking office has become self-sustaining, its no-cost lease or permit shall be cancelled and a lease negotiated in accordance with section C., below.

3. *Additional Support in Overseas Areas.*

a. *Banking Facilities Operated Under Contract.* In addition to the logistical support identified above, the following support shall be made available to banking facilities operating under DoD contract at overseas installations:

(1) U.S. Military Postal Service under DoD Directive 4525.6.[7] Mail must bear necessary postage.

(2) AUTOVON and AUTODIN as approved on a case-by-case basis.

(3) Certificates of nonavailability, if required by the designated property administrator, when items of office equipment or furniture requested by the banking facility are unavailable for loan on memorandum receipt.

(4) Vehicle registration and purchase of fuel from government-owned facilities for bank-operated vehicles if not in conflict with host country agreements. Vehicle registrations shall be subject to normal fees.

(5) Public quarters under DoD Instruction 4165.441 to key banking facility personnel who cannot obtain suitable, reasonably priced housing in the vicinity of the DoD installation. Charges for rent shall be in accordance with DoD Instruction 4165.421.

(6) Travel of banking institution officials overseas as set forth in DoD Directive 4000.6.[8] Invitation travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(7) Other support as required under the terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts. Suggestions for change may be forwarded through military channels for consideration by the DASD(MS).

b. *Other Overseas Banking Offices.*

(1) Logistic support provided to such offices shall be negotiated with the parent banking institution and the resulting provisions incorporated into written operating agreements.

(2) Whenever possible, logistic support provided should be no more favorable than that available to domestic banking offices in the U.S. Whenever possible, parent banking institutions shall reimburse the DoD Component concerned for logistic support provided.

C. Leases of Government Real Property

1. *Government-Owned Buildings.* The lease of an existing structure to house a self-sustaining banking office shall be at appraised fair market rental value under the following terms and considerations:

a. The lease term shall be for 5 years, subject to renewal by mutual agreement and subject also to the right of the head of the DoD Component concerned to terminate the lease under conditions specified in paragraph C.2.a., below. If space occupied is under assignment from the GSA, the banking institution shall reimburse the DoD Component concerned at the standard level user charge rate for that space and other special services furnished through the GSA.

b. When the banking institution uses its own funds to modify or renovate existing government space, a lease may be negotiated for a period not to exceed 25 years. Duration of the lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

c. The lessee shall perform interior alteration and maintenance, and reimbursement shall be made by the lessee for utilities, custodial, janitorial and other services furnished.

2. *Government-Owned Land.*

a. Except as provided in paragraph B.2.c., above, land required for approved

[4] See footnote 1 to § 230.1

[5] See footnote 1 to § 230.1

[6] See footnote 1 to § 230.1

[7] See footnote 1 to § 230.1.

[8] See footnote 1 to § 230.1.

building construction at bank expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6.[9] Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or one (or more) of the following events and at the option of the government, structures and other improvements erected thereon shall be conveyed to the government without reimbursement or removed and the land restored to its original condition:

(1) Installation inactivation, closing or other disposal action; or

(2) Termination of the banking institution's lease under § 230.5(i).

b. When a banking institution participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the banking office.

c. When, under the terms of a lease, title to improvements passes to the government, arrangements shall be made:

(1) By no-cost permit or license for the continued occupancy of those improvements by a nonself-sustaining banking office if it continues to be nonself-sustaining. When the square footage involved exceeds that authorized in DoD 4270.1–M, the banking office shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space, or

(2) By lease for continued occupancy of those improvements by a self-sustaining banking office at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and reimburse the cost of utilities and services furnished in accordance with DoD Directive 4000.6.[10]

3. *Other Lease Considerations.*

a. When the term of the lease exceeds 5 years, Title 10 U.S.C. section 2667(b)(1) requires that a Military Department Secretary, or designee for such purposes, determines that a term in excess of 5 years will promote the national defense or be in the public interest.

b. Leases executed prior to issuance of this part may not be disturbed unless a lessee specifically requests that a lease be renegotiated under these provisions. No lease contract may be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the government, except as provided in § 230.5(h).

D. Construction of Bank Buildings

Proposals by banking institution officials to construct buildings on domestic DoD installations at bank expense must be reviewed and reported in accordance with DoD Instruction 7700.18.[1] In support of each construction proposal, the banking institution shall provide written assurance that:

1. It understands the potential for loss of the building in the event of installation closure or other delimiting condition identified in paragraph C.2.a., above;

2. The proposed building will be confined to the needs of the banking office and will not be used to house other activities; and

3. It agrees to be financially responsible for and to reimburse the U.S. Government for any maintenance, utilities and other services furnished. Rates shall be established in conformance with DoD Directive 4000.6 and shall be confirmed by a written agreement between the DoD installation and the banking institution.

E. Banking Office Terminations

1. *Domestic Banking Facilities.*

a. The installation commander shall notify the DoD Component headquarters concerned if a banking facility has been placed in an inactive status or if personnel reductions at the DoD installation have reduced banking facility operations below a justifiable level. The DoD Component shall advise the DASD(MS) and the Fiscal Assistant Secretary of the Treasury so that appropriate action may be taken to terminate the banking institution's authority to operate the banking facility.

b. In general, a banking facility may be terminated by the parent banking institution provided that notice in writing is furnished to the Treasury Department and the installation commander not less than 90 days before the closing date. In such cases, the Treasury Department will terminate the banking institution's authority to operate the banking facility, and the DoD Component concerned shall determine the feasibility of requesting another banking institution to provide banking service at the installation.

2. *Other Domestic Banking Offices.*

a. Requests for termination for cause shall be processed in accordance with §230.5(i)(2).

b. Banking offices other than banking facilities may be terminated by the parent banking institution provided written notice is furnished to the installation commander not less than 90 days before the closing date.

3. *Overseas Banking Facilities Operated Under Contract.*

a. The installation (community) commander shall, through DoD Component channels, notify the DASD (MS) when personnel reductions or other situations at the DoD installation (military community) have reduced banking facility activity below a level that justified continued operation.

b. Such notifications shall indicate whether a part-time facility should be established and the number of hours and days per week that such an operation is justified.

4. *Other Overseas Banking Offices.* Terminations shall be effected under termination clauses in respective operating agreements. Notice of intent to terminate, including the closing date, shall be forwarded by the overseas component commander to the DoD Component concerned. The DoD Component shall so notify the DASD(MS) and Fiscal Assistant Secretary of the Treasury so that the banking institution's authority as a depositary and financial agent of the U.S. Government may be revoked.

F. Notification of Banking Offices

Each DoD Component shall insure that banking institutions that operate one or more offices on respective DoD installations are provided a copy of its regulation that implements this part and DoD Directive 1000.11.

Enclosure 2.—Operations of Onbase Banking Offices

A. Services Rendered

1. To Individuals and Nonappropriated Fund Instrumentalities.

a. Normally, banking offices shall provide the same services on DoD installations as are provided in the local community. Service charges or fees levied for such services may not exceed those customary for the banking institution that operates the banking offices, with the following exceptions:

(1) There will be no charge to cash Treasury checks for accountholders.

(2) A reasonable charge may be made for cashing personal checks; however, checks drawn on the banking institution operating the banking office shall be cashed without charge provided sufficient collected funds are on deposit to cover such checks.

[9] See footnote 1 to § 230.1.

[10] See footnote 1 to § 230.1.

b. Counseling service shall be made available without charge to individual accountholders. Such services shall include helping members (particularly youthful or inexperienced and young married families) to budget and solve financial problems. Special attention shall be given to the counseling of military members in junior enlisted grades who apply for loans.

c. In accordance with accepted banking practice, policies on loans to individuals shall be as liberal as possible while remaining consistent with the overall interests of the banking institution and its stockholders.

(1) Onbase banking offices must strive to provide the best possible service to all customers. Such offices that evidence a policy of discrimination in their loan services are in violation of this instruction. In resolving complaints of discrimination, the installation commander will follow procedures specified in §230.5(g)(1).

(2) Onbase banking offices shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase banking office refer a prospective borrower to an offbase office of the same institution, it shall advise the latter office that the DoD requires compliance with the Standards of Fairness before executing the loan or credit agreement.

2. To Disbursing Officers.

a. Upon request, banking offices are expected to provide payroll cash to military disbursing offices. Local operating funds may be expended if the banking office requests reimbursement for costs incurred.

b. When so authorized, banking offices shall accept deposits for credit to the Treasury's General Account.

B. Staffing

1. Onbase banking offices are expected to be adequately staffed commensurate with banking industry standards for similar numbers of accountholders and financial services rendered.

2. Remote service locations at the same installation may be staffed with one person, provided that there is a direct courier or message service to the main onbase banking office.

3. All staffing shall be accomplished in full compliance with the spirit and intent of the equal employment opportunity policies and programs of the Department of Defense in accordance with DoD Directive 1100.15.[11]

4. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase banking office. However, off-duty DoD personnel may be employed by a banking office if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

C. Hours of Operation

1. *General.* Onbase banking offices may conduct operations during normal duty hours provided there is no undue interference with the performance of official duties. Banking offices are encouraged to set operating hours that meet the needs of the installation, their customers, and bank management. ATMs may be used to provide expanded service and operating hours.

2. *Overseas Banking Facilities Operated Under Contract.* Although respective contracts limit the number of operating hours per week, installation (community) commanders and banking facility managers are encouraged to agree on the specific days and hours of operation that best meet local needs.

a. Operating days may include Saturdays and operating hours may include evening hours when necessary to complement or parallel other retail service available to DoD personnel, provided the contractor agrees to provide such service at no additional cost to the government.

b. When cost implications are involved, the installation (community) commander shall forward his request for expanded or modified days or hours of operation, with a justification therefor, through military channels for consideration by the DASD(MS).

D. Deposit Insurance

Domestic onbase banking offices must provide insurance coverage by the FDIC for commercial banks or FSLIC for savings banks and savings and loan associations. A banking office not maintaining such insurance shall be suspended from onbase operation.

E. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 [12] and 1418.4 [12] to establish sound credit and savings practices through onbase banking offices.

1. The banking institution will credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement of loan proceeds to the banking office's customer. Allotments voluntarily initiated to a banking office shall continue in force at the option of the allotter.

F. Advertising

1. Advertising of onbase banking services shall be in accordance with policies set forth in DOD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.41 [13] and DoD Directive 5120.431) is prohibited with the exception of insert advertising in the *Stars and Stripes* overseas.

3. The use of the Armed Forces Radio and Television Service to promote a specific financial institution is prohibited (DoD Instruction 51210.201).

4. Onbase banking offices may use the unofficial section of the installation daily bulletin, provided space is available, to inform DOD personnel of financial services and announce seminars, consumer information programs and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising such as specific interest rates on savings or loans.

5. Onbase banking offices may use onbase information bulletin boards for announcements of a broad general nature that complement the installation's financial counseling and thrift promotion programs. Onbase banking offices may use installation message center services to distribute reasonable numbers of announcements to units for display on informational bulletin boards, provided such does not impose an unreasonable workload on the distribution system.

G. Supplemental Conditions for Overseas Operation

1. *General.* Overseas banking facilities will operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

2. *Authorized Customers.* Respective banking contracts specify personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals and organizations that qualify for individual

[11] See footnote 1 to § 230.1

[12] See footnote 1 to § 230.1.

[13] See footnote 1 to § 230.1

logistic support under the regulations of the DoD Component concerned, provided that use of banking services is not precluded by status of forces or other intergovernmental agreement or local law.

3. Services Rendered. Services to be rendered and the charges therefor are specified in respective contracts. Suggestions for expansion or modification of authorized services, fees or charges may be forwarded through military channels for consideration by the DASD(MS). Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host country law.

4. Acceptance of Services Rendered. DoD Component implementing regulations shall provide that each commander with a banking facility serving his installation (military community), or a designee, shall:

a. Review monthly income, expense and activity statements provided by full-time banking facilities.

b. Report any deficiency in the delivery of banking services under current contracts to the banking facility manager within 7 calendar days of the identification of the deficiency. If the deficiency is not remedied within 30 calendar days after its identification, the commander shall report the deficiency through military channels to the DASD(MS).

5. Other Operating Conditions.

a. Both the banking facility contractor and DoD disbursing officers shall ensure that cash management practices minimize the cash required to meet joint needs.

b. Banking facility provision of foreign currencies to authorized customers shall be in accordance with DoD Directive 7360.111.

c. When military payment certificates are prescribed for the area in which the overseas banking facility is operating, they shall be used in accordance with DoD Instruction 7360.5 [14] and implementing command regulations.

d. Overseas major commanders shall cooperate with banking facility contractors in developing and maintaining plans for the provision or termination of banking services in the event of hostilities or other emergencies.

6. Other Overseas Banking Offices.

a. Operating agreements shall specify authorized customers, services rendered and charges therefor, and conditions of operation. To the extent feasible, services and charges shall be negotiated to at least parallel those provided by banking facilities operated under the DoD banking contracts.

b. Before such agreements are executed, they shall be coordinated with the Unified Commander, or his designee, and forwarded to the DoD Component concerned for coordination with the DASD(MS) and approval.

[14] See footnote 1 to § 230.1

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1985.

[FR Doc. 85-21479 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

32 CFR Part 231

[DoD Directive 1000.11]

Financial Institutions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed Rule.

SUMMARY: This proposed part updates Department of Defense (DoD) policies and procedures concerning banking institutions that operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. Policies governing permissible service charges and fees are made less stringent and procedures for onbase office construction are clarified.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202-697-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19138 amended Title 32, CFR, Part 231 contains the existing Office of the Secretary of Defense (OSD) policies for the operation of onbase banking institutions. Accompanying procedures are contained at Part 230. Certain provisions, formerly applicable only to credit unions have, wherever possible, been made applicable to banking institutions. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions.

List of Subjects in 32 CFR Part 231

Banks, Military banking facilities, savings & loan associations.

Accordingly, 32 CFR Part 231 is proposed to be revised to read as follows:

PART 231—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.
231.1 Reissuance and Purpose
231.2 Applicability
231.3 Definitions
231.4 Objectives
231.5 Policies
231.6 Responsibilities
Enclosure—Guideline for Application of the Privacy Act to Financial Institutions on DoD Installations

Authority: 10 U.S.C. 136.

§ 231.1 Reissuance and purpose.

This part consolidates and clarified policies for financial institutions that serve DoD personnel on DoD installations worldwide. Associated procedures are contained in DoD Instruction 1000.10[1] and DoD Instruction 1000.12 [1]

§ 231.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

§ 231.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbottoms and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access at ATMs refers to the customer's ability

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention Code 301.

to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking services at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent bank operated by a banking institution on a DoD installation. Also includes savings and loan associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state or federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex and marital status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of (a) occupation or association or (b) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulation agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a band office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD.Installation. A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loan Association. A state or federally chartered mutual stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231.4 Objectives

The objectives of this part are to ensure that:

(a) Arrangements for the provision of services by financial institutions are consistent among the DoD Components.

(b) Financial institutions operating on DoD installations provide and are provided support consistent with the policies stated herein.

§ 231.5 Policies.

(a) Duly-chartered financial institutions may be authorized to provide services where demonstrated and justified needs exist to facilitate the administration of public and quasi-public monies and enhance the morale and welfare of DoD personnel.

(b) Financial institutions shall be established on DoD installations only after approval by the cognizant regulatory agency and the DoD Component concerned.

(1) Given their unique role in promoting morale and welfare, credit unions operating on DoD installations shall be recognized and assisted by DoD Components at all echelons. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(2) Independent or branch banks, full-service credit unions, and savings and loan associations are the preferred sources of onbase service at domestic installations.

(3) Banking facilities shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, banking facilities shall be used only at overseas locations and in states that prohibit branch banking. In times of mobilization, it may become necessary to designate additional banking facilities as an emergency measure. Upon recommendation by a DoD Component, banking facilities are designated by the Treasury Department under authority contained in 12 U.S.C. 265.

(4) The extension of banking facility and credit union services overseas is encouraged, consistent with the policies stated herein and with pertinent status of forces agreements, bilateral arrangements, and local laws.

(5) Retail banking operations shall not be performed by DoD activities. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.[2]

(c) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in DoD Instruction 1000.10 and DoD Instruction 1000.12.

(d) Military disbursing offices, nonappropriated fund instrumentalities, and other DoD installation activities shall use servicing onbase financial institutions to the maximum extent feasible and consistent with sound management practice.

(e) The termination of operations by an onbase financial institution shall be initiated by a DoD Component only under one of the following conditions:

(1) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating the requirement for financial services.

(2) Active military operations preclude continuation of onbase financial services.

(3) The performance of the financial institution in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the procedures prescribed in DoD Instruction 1000.10 and DoD Instruction 1000.12. Termination actions begun on the basis of inadequate performance shall be substantiated by sufficient evidence and concurred in by the appropriate regulatory agency and the Assistant Secretary of Defense (Comptroller) before being carried out.

(f) DoD personnel who tender uncollectible checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and affect the public image of all DoD personnel. Furthermore, losses sustained by financial institutions on DoD installations as a result of these actions increase operating costs and may reduce the institutions' viability. Such added operating costs must be borne by other customers and, in some cases, may increase the cost to the government in providing these financial services. Military financial counselors or legal advisors shall recommend workable repayment plans that avoid further endangering credit ratings and careers of affected personnel. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only as a last resort when on other alternative will alleviate the situation.

§ 231.7 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall:

(1) Develop and monitor policies and procedures governing the establishment, operation, and termination of financial institutions on DoD installations.

(2) Monitor industry trends, conduct studies and surveys and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinating as necessary with DoD Components, financial institutions and trade associations.

(3) Maintain liaison, as appropriate, with financial institution regulatory agencies at federal and state levels.

(4) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies to respective memberships and to aid in resolving mutual concerns that affect the provision of financial services.

(5) Coordinate with the Assistant Secretary of Defense (Force Management & Personnel) on all aspects of moral and welfare and Assistant Secretary of Defense (Acquisition & Logistics) on all aspects of logistic support for onbase financial institutions.

(6) Take final action on requests for exceptions to this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall develop and monitor policies and procedures governing logistic support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall advise the ASD(C) on all aspects of onbase financial institution services that affect the morale and welfare of DoD personnel.

(d) The *Heads of DoD Components* shall:

(1) Take action on requests to establish or terminate financial institution operations on respective installations subject to the provisions of DoD Instructions 1000.10 and 1000.12.

[2] See footnote 1 to § 231.1

(2) Supervise and encourage the use of financial institutions on DoD installations as a means to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of onbase activities.

(ii) Assist DoD personnel to manage their personal finances by participation in direct deposit programs and regular savings plans. Use of onbase financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(3) Recognize the right of military personnel and civilian employees to organize and join credit unions formed under duly constituted authority, and encourage the application and expansion of the principles of the credit union movement throughout the DoD establishment.

(4) Encourage and assist duly-chartered financial institutions to provide complete financial services on DoD installations where there is a demonstrated need for such services.

(5) Establish liaison, as appropriate, with federal and state regulatory agencies and financial institution trade associations, leagues, and councils.

(6) Provide debt processing assistance to onbase financial institutions in accordance with the Privacy Act guidelines set forth in the enclosure to this part.

Enclosure—Guidelines for Application of the Privacy Act to Financial Institutions on DOD Installations

A. The following guidelines govern the application of DoD Directive 5400.11 [3] to those financial institutions that operate under this Directive.

1. Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of Title 12, U.S.C. 1751.

a. These financial institutions do not fit the definition of "agency" to which the Privacy Act applies: ". . . any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or an independent regulatory agency." (Title 5 U.S.C. 552(e) and 552a(a)(1)).

b. Nor are they "government contractors" within the meaning of Title 5, U.S.C. 552a(m), as they do not operate a system of records on behalf of an agency ". . . to accomplish an agency function." According to the Office of Management and Budget Privacy Act Guidelines (OMB Circular A–108), the provision relating to Government contractors applies only to systems of records ". . . actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act." Clearly, the subject institutions do not meet these criteria.

c. Since the Act does not apply to them, these financial institutions are not required to comply with the provision of Title 5, U.S.C. 552a(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within onbase banking and credit union offices.

2. The financial institutions concerned hold the same position and relationship to their accountholders and members and to the government as they did before enactment. Within their usual business relationships, they still are responsible for safeguarding the information provided by their accountholders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

3. Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their accountholders or members:

I hereby authorize the Department of Defense and its various Departments and Commands to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

When the financial institution presents such signed authorizations, the military commands or installations shall provide the appropriate information.

4. Even though the agreement described in subsection A.3. has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment consistent with the Privacy Act, DoD Directive 5400.11, [4] and Freedom of Information Act, DoD Directive 5400.7. [4] Some examples of personal information pertaining to DoD personnel that normally can be released without the creation of an unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

5. In those cases in which DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, the remedy is to seek the locator assistance of the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor shall either furnish the individual's new official duty location address to the financial institution or forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance that the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department of Defense may, at its discretion, forward correspondence to the individual's last known home address. The individual may choose not to respond and the Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with it.

B. Questions concerning this guidance should be forwarded through channels to the Deputy Assistant Secretary of Defense (Management Systems), Office of the Assistant Secretary of Defense (Comptroller), The Pentagon, Washington, D.C. 20301–1100.

Dated: September 4, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 85–21480 Filed 9–6–85; 8:45 am]

BILLING CODE 3810–01–M

[3] See footnote 1 to § 231.1.

[4] See footnote 1 to § 231.1.

---

32 CFR Part 231a

[DoD Instructon 1000.10]

Procedures Governing Credit Unions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This part codifies, for the first time, provisions concerning the operation of credit unions on DoD installations. The proposed rule provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules

formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. For credit unions, use of the ninety-five percent membership rule is clarified and a goal of January 1, 1988 is established for all onbase credit unions to acquire federal share insurance.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301–1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202–697–8281.

SUPPLEMENTARY INFORMATION: Title 32, Code of Federal Regulations, contains the existing Office of the Secretary of Defense (OSD) procedures (Part 230) and policies (Part 231) for the operation of onbase banking institutions. These provisions, formerly applicable only to banking institutions have, wherever possible, been made applicable to credit unions. Data requirements to justify establishment of domestic onbase financial institutions are reduced. A new provision permits, subject to local negotiation and nominal consideration of $1.00 per annum, the lease of 100 square feet or less additional government building space or less than 250 square feet of land for bank or credit union installation of automated teller machines. Onbase financial institutions are asked to give installation commanders advance notice before public disclosure of planned termination. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions. Use of the 95% membership rule is clarified. Certification is required initially upon formation of the credit union, at 3-year intervals and upon renewal of each no-cost lease or license. Rent-free lease duration is for the stated term or upon failure to meet the 95% rule, whichever occurs first. The goal of January 1, 1988 is established for all onbase credit unions to acquire federal share insurance.

List of Subjects in 32 CFR Part 231a

Credit unions, Defense credit unions.

Accordingly, 32 CFR is amended to include Part 231a to read as follows:

PART 231a—PROCEDURES GOVERNING CREDIT UNIONS ON DoD INSTALLATIONS

Sec.

231a.1 Issuance and purpose.
231a.2 Applicability.
231a.3 Definitions.
231a.4 Responsibilities.
231a.5 Procedures.
Enclosure Operations of Defense Credit Unions

Authority: 10 U.S.C. 136.

§ 231a.1 Insurance and purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11 [1] concerning relationships with credit unions that serve Department of Defense (DoD) personnel.

§ 231a.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

(b) Its provisions also pertain to all credit unions that operate on DoD installations.

§ 231a.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbuttons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD Civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking services at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent bank operated by a banking institution on DoD installation. Also includes savings and loan associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state of federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan service, by a financial institution to DoD personnel and their dependents on the bais of race, color, religion, national origin, sex and marital status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions of a DoD installation (including nonappropriated fund instrumentalities); and their dependents.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention: Code 301.

On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membeship because of a common bond of (1) occupation or association or (2) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulating agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD Installation. A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loans Association. A state or federally chartered mutual or stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD credit union program, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management & Personnel).

(2) Maintain liaison, as necessary, with the National Credit Union Administration (NCUA) and equivalent state regulatory agencies.

(3) Review DoD Component actions that contemplate removal for cause of a credit union from an installation prior to final decision and referral to the appropriate regulatory agency.

(4) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Heads of DoD Components* shall:

(1) Supervise the use of credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(2) Assist respective onbase credit unions in developing and expanding necessary services for DoD personnel, consistent with the provisions stated herein.

(3) Encourage DoD personnel to serve on credit union boards and committees on a voluntary noncompensatory basis when neither conflict of duty nor conflict of interest is involved as stated in DoD Directive 5500.7.[2] Such personnel may be allowed to attend credit union conferences and meetings in accordance with DoD Directive 1327.5,[2] Civilian Personnel Manual (CPM) Supplement 990–2 and CompGen Decision B–212457.

(4) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas credit union service or related actions emanating from overseas component commands.

---

[2] See footnote 1 to § 231a.1.

(5) Refer matters requiring policy decisions or proposed changes to the provisions of this part or DoD Directive 1000.11 to the DASD(MS).

(e) The Commanders of Unified and Specified Commands, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish credit union service in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate all credit union service in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate credit union operations within the command area. Personnel assigned to security assistance positions will not be used to perform this function without the prior approval of the Director, Defense Security Assistance Agency.

§ 231a.5 Procedures.

(a) *Limitation on Service.* (1) Only one credit union is permitted to operate on a DoD installation, and its field of membership normally shall include all assigned DoD personnel. Where more than one credit union already exists, each is entitled to the benefits defined in this part as if it were located on a separate installation.

(2) Literature from competing credit unions may not be disseminated through installation activities, to include military exchange outlets, at locations served by onbase credit unions.

(b) *Establishing Domestic Credit Union Service.* (1) When there is a demonstrated need for credit union services, these services may be obtained by establishing a new full-service credit union or opening a branch office or facility of an existing credit union under the common bond principle.

(2) Each DoD Component shall develop internal instructions, consistent with the following, that govern the submission and justification of requests to establish credit unions on respective installations. .

(i) DoD personnel seeking to establish either a full-service credit union or a branch or facility of an existing credit union shall submit a proposal to the installation commander for review. Such proposals shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

(ii) The DoD Component shall notify credit unions that operate on DoD installations of the need for service; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and recommend designation of a credit union to the cognizant regulatory agency for approval, with an information copy provided to the DASD(MS).

(iii) No commitment may be made to a credit union regarding its proposal until a selection is announced by the cognizant regulatory agency.

(c) *Establishing Overseas Credit Union Service.* (1) When the installation (community) commander determines that there is a demonstrated need for credit union services, these services may be provided by requesting establishment of a branch or facility of an existing Defense credit union. However, it must be recognized that the basic decision concerning such extensions of service rests with the credit union.

(2) In addition to the requirements stated in § 231a.5(b)(2) of this section, installation commanders will provide the following information in support of requests to higher headquarters for overseas credit union service:

(i) In countries not presently served, a statement concurred in by the Unified Commander that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation. Identify any conditions imposed by the host country.

(ii) The names and location of the nearest credit union branch or facility.

(iii) The distance between the installation and the nearest credit union branch or facility and the availability of any official or public transportation.

(iv) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(3) The DoD Component shall notify federal credit unions that operate on DoD installations of this need; review the specific proposals of interested credit unions; coordinate with its field commands as approprate; and, after coordination with the DASD(MS), recommend designation of a credit union to the NCUA for approval.

(4) Recommendations to the NCUA shall include identification of the primary installation from which the proposed branch would operate and the geographical territory in which any additional branches, facilities or mobile outlets would operate.

(5) No commitment may be made to a credit union regarding its proposal until a selection is announced by the NCUA. Upon receipt of NCUA approval, the DoD Component shall so notify the DASD(MS) and facilitate, as appropriate, the timely commencement of operations.

(d) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and the onbase credit union.

(1) Each agreement shall be confined to basic relationships and mutual support activities and may not involve internal operations of the credit union. The installation commander shall agree to provide support as specified in this part.

(2) Each credit union operating on a DoD installation shall agree to:

(i) Keep the installation commander advised of credit union operations;

(ii) Give the installation commander a copy of its monthly financial report and other local credit union publications;

(iii) Invite command representatives to attend its annual meetings and other appropriate functions;

(iv) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim or demand to which the government may be subjected as a result of death, loss, destruction or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the credit union;

(v) Maintain physical security of cash and cash items in a manner consistent with the requirements of the credit union's fidelity insurer. A copy of these requirements will be provided to the installation commander upon request.

(vi) Favorably respond, whenever possible, to command requests for lecturers and printed materials to support consumer credit education programs. When credit union personnel are invited to participate in such programs, they shall ensure that the occasion is not used to promote the services of a particular financial institution;

(vii) Provide that neither the DoD Component concerned nor its representatives shall be responsible for the financial operation of a credit union or for any expense, loss (including criminal losses), or claim for damages arising from credit union operations; and

(viii) Operate in accordance with the guidelines enclosed and comply with other provisions of this part, DoD

Directive 1000.11, and implementing DoD Component regulations.

(e) *Liaison Officers.* In the interest of maintaining a viable relationship and effective line of communication, each installation commander with an onbase credit union shall appoint a credit union liaison officer as defined in § 231a.3.

(1) The credit union liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase credit union location.

(2) The liaison officer shall maintain regular contact with the credit union manager to confer or assist in resolving member complaints and to discuss or recommend improvements in the quality or quantity, or both, of services provided to members. However, neither the liaison officer nor his superiors shall not become involved in the internal operations of the credit union.

(3) No person serving on the board of directors or in another official credit union capacity may serve as the credit union liaison officer or bank liaison officer.

(f) *Complaints Processing.*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase credit union first shall attempt to resolve the problem by negotiation. Failing this, a written request for investigation shall be made in accordance with implementing DoD Component regulations to the cognizant regulatory agency. The request must clearly describe and give evidence of the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report, in writing, any evidence of suspected malpractice by credit union personnel in accordance with implementing DoD Component regulations to the cognizant regulatory agency.

(3) *Follow-up.* If action by the cognizant regulatory agency fails to resolve local command concerns, a full report with recommendations shall be submitted to the DASD(MS). The DASD(MS) shall take appropriate follow-up action with the regulatory agency and apprise the respective DoD Component of progress or resolution.

(g) *Logistic Support.*—(1) *Membership Criterion.* (i) In accordance with section 124 of the Federal Credit Union Act, the provision of no-cost office space and related real property to onbase credit unions is limited to those credit unions having at least 95 percent of their membership composed of persons who are (A) either presently military or DoD civilian personnel or were at the time of admission to the credit union or (B) members of their families.

(ii) At 3-year intervals and upon renewal of each no-cost lease or license, the credit union shall provide a written certification, prepared on credit union letterhead and signed either by its president or general manager, that the credit union continues to meet the 95 percent criterion. This certification shall serve as justification and documentation for the allocation and continuation of available free government space, to include space renovated or constructed with credit union funds.

(2) *Criteria for Use of Space in Government-Owned Buildings.* (i) A credit union may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods of 5 years, as prescribed in DoD Directive 4165.6.[3] The cumulative total of space authorized to be provided at one or more locations is subject to the limitations contained in DoD 4270.1–M.[3]

(ii) A credit union that fails to meet the 95 percent criterion shall be charged fair market rental for space provided. In addition, a credit union whose field of membership does not encompass all DoD personnel assigned on the installation shall not be provided free government space. This latter limitation is waived in cases where more than one credit union already operates on the installation.

(iii) All space assigned by GSA, whether leased or in federal office buildings, is reimbursable to the GSA at the standard level user charge under Pub. L. 92–313. Consequently, the space required for credit union operations shall be assigned and charged by the GSA to the benefiting DoD Component. Such space then is subject to the provisions of paragraphs (g)(2) (i) and (ii) of this section.

(iv) When a credit union uses its own funds to expand, modify or renovate government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion, whichever occurs first. The provisions of paragraph (g)(2)(ii), of this seciton, apply to the latter event.

(3) *Utilities, Base Services and Equipment.* (i) When available, janitorial services, utilities (such as air-conditioning, heat and light), fixtures and maintenance shall be furnished at no cost to a credit union occupying space in a government building. Costs for other services, such as telephone lines, long-distance toll calls and space alterations shall be borne by the credit union.

(ii) When available from local stock, typewriters, adding machines, other office equipment and office furniture may be loaned to an onbase credit union on memorandum receipt.

(iii) Central locator service shall be provided under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by Defense credit unions. This service shall be provided at no cost in accordance with DoD Instruction 7230.7.[4]

(iv) DoD Components shall provide debt processing assistance to Defense credit unions in accordance with DoD Directive 1344.9 [1], as limited by the Privacy Act guidelines set forth in enclosure 3 of DoD Directive 1000.11. Unless otherwise prohibited, Defense credit unions may bring delinquent loans or dishonored checks to the attention of the local commander, credit union liaison officer or other designee, for assistance in effecting restitution of the amount due.

(v) DoD Components shall prescribe clearance procedures for personnel departing their installations so as to provide the onbase credit union with adequate advance notice of the impending departure of its members. The general purpose of a clearance is to report a change of address, reaffirm allotments or any outstanding debts, and receive counseling, if desired or appropriate. Clearance may not be denied to facilitate the collection of debts or the resolution of disputes between the credit union and its departing members.

(4) *Additional Support in Overseas Areas.* In addition to the logistic support identified above, the following support may be made available to Defense credit unions operating at overseas installations:

(i) Military postal service may be authorized in accordance with DoD Directive 4525.61.

(ii) AUTOVON and AUTODIN may be provided on a case-by-case reimbursable basis.

(iii) Travel of credit union officials overseas shall be as set forth in DoD Directive 4000.6.[5] Invitational travel

[3] See footnote 1 to § 231a.1

[4] See footnote 1 to § 231a.1

[5] See footnote 1 to § 231a.1

orders that authorize travel at no expense to the U.S. Government may be issued by the component commander for official onsite visits.

(h) *Construction of Credit Union Buildings.* Proposals by credit union officials to construct buildings on DoD installations at credit union expense must be reviewed and reported in accordance with DoD Instruction 7700.18.[6] In support of each construction proposal, the credit union shall provide written assurance that:

(1) It understands the potential for loss of the building in the event of installation closure or other delimiting condition specified in paragraph (i)(1) of this section.

(2) The proposed building will be confined to the needs of the credit union and will not be used to house other activities; and

(3) It agrees to be financially responsible for and to reimburse the U.S. Government for any maintenance, utilities and other services furnished. Rates shall be established in conformance with DoD Directive 4000.6 and shall be confirmed by a written agreement between the DoD installation and the credit union.

(i) *Leases of Government Land.* (1) Except as provided in paragraph (g)(2)(iv) of this section, land required for approved building construction at credit union expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or one (or more) of the following events and at the option of the government, structures and other improvements erected thereon shall be conveyed to the government without reimbursement or removed and the land restored to its original condition:

(i) Installation inactivation, closing or other disposal action; or

(ii) Termination of the credit union lease under paragraph (k) of this section.

(2) When a credit union participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the credit union.

(3) When, under the terms of a lease, title to improvements passes to the government, arrangements shall be made:

(i) By no-cost permit or license for the continued occupancy of those improvements by the credit union if it continues to meet the 95 percent membership criterion cited in paragraph (g)(1) of this section. When the square footage exceeds that authorized in DoD 4270.1-M [1], the credit union shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that space and associated maintenance of the premises and reimbursement for utilities and services furnished in accordance with DoD Directive 4000.6 [7]; or

(ii) By lease for continued occupancy of those improvements should the credit union no longer qualify under the 95 percent rule. The lease shall be at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and reimburse the cost of utilities and services furnished in accordance with DoD Directive 4000.6.

(j) *Automated Teller Machine (ATM) Service.* (1) ATMs may be used to augment service provided by an onbase credit union.

(2) An onbase credit union that proposes to augment its service by installing one or more ATMs shall:

(i) Coordinate the ATM proposal with the installation commander under provisions of applicable DoD Component regulations;

(ii) Provide a statement that the cost of ATM installation and maintenance shall be borne solely by the credit union or in participation with other financial institutions; and

(iii) Provide for access through debit transaction card, rather than limiting access solely to holders of a financial institution's credit card.

(3) Following any necessary regulatory agency approval and prior to implementation of service, appropriate leases shall be negotiated in accordance with this part.

(i) No lease is required solely for siting an ATM in the existing credit union office.

(ii) Provided that required additional space in an existing installation structure is 100 square feet of floor space or less, and modifications are made totally at credit union expense, such leases shall be negotiated and locally approved at the nominal consideration of $1.00 per annum. Such lease provisions also shall be offered if the credit union requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of maintenance and utilities shall be borne by the credit union.

(iii) Leases pertaining to other situations shall be negotiated in accordance with § 231a.5(g)(1) and (h).

(k) *Termination of Credit Union Service.*—(1) *Termination of Operations by the Credit Union.* Should an onbase credit union plan to terminate its operations, it should so notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. If need be, the commander shall attempt to work out a mutual agreement whereby the credit union can continue operations until other arrangements can be made. Upon such notification, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of credit union services is justified, action to establish a new credit union shall be taken in accordance with paragraphs (b) or (c) of this section.

(2) *Termination for Cause.* If, after discussion with credit union officials, the installation commander determines that the operating policies of the credit union are inconsistent with this part, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a credit union from the installation shall be made only after approval by the DoD Component headquarters with the concurrence of the DASD(MS) and the cognizant regulatory agency.

Enclosure—Operations of Defense Credit Unions

A. Staffing

1. Full services shall be provided by onbase credit unions that are staffed by:

a. A loan officer authorized to act for the credit committee;

b. An individual authorized to sign checks; and

c. A qualified financial counselor available to serve members during operating hours.

2. Exceptions to 1., above, may be approved by the DoD Component concerned in the case of newly-organized credit unions.

3. When an onbase credit union can support only minimum staffing, the counselor duties may be subsumed under one of the other positions required above.

4. Remote service locations at the same installation may be staffed with one person, provided that there is a direct courier or message service to the credit union's onbase main office.

5. All staffing shall be accomplished in full compliance with the spirit and intent of the equal employment opportunity policies and

[6] See footnote 1 to § 231a.1

[7] See footnote 1 to § 231a.1.

programs of the Department of Defense in accordance with DoD Directive 1100.15.[8]

6. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase credit union. However, off-duty DoD personnel may be employed by a credit union if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

B. Counseling

Counseling service shall be made available to members of Defense credit unions without charge. Such services shall include helping members (particularly youthful or inexperienced personnel and young married families) to budget and solve finacial problems. Special attention shall be given to the counseling of military members in junior enlisted grades who apply for loans.

C. Lending

1. In accordance with accepted credit union practice, lending policies shall be as liberal as possible while remaining consistent with the best interests of the overall credit union membership. Credit unions must strive to provide the best possible service to all members.

2. Defense credit unions that evidence a policy of discrimination in their loan services are in violation of this part. In resolving complaints of discrimination, the installation commander will follow procedures specified in § 231a.5(f)(1) of this part.

3. Defense credit unions shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase credit union branch refer a prospective borrower to an offbase office of the same credit union, it shall advise the latter office that the Department of Defense requires compliance with the Standards of Fairness before executing the loan or credit agreement.

D. Hours of Operation

Onbase credit unions may conduct operations during normal duty hours provided there is no undue interference with the performance of official duties. Credit unions are encouraged to set operating hours that meet the needs of the installation, its membership and credit union management. ATMs may be used to provide expanded service and operating hours.

E. Share Insurance

Credit unions serving on DoD installations that do not have federal share insurance shall establish the objective of acquiring such coverage by January 1, 1988. In the meantime, any share insurance, that is at least equal to that required by the NCUA for federal credit unions, may be obtained through the NCUA, a state-sponsored insurance program, or a private insurance plan will continue to satisfy this DoD requirement. A credit union not maintaining share insurance shall be suspended from onbase operations.

F. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1[1] and 1418.4[1] to establish sound credit and savings practices through Defense credit unions.

1. The credit union will credit members accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the intitiation of an allotment of pay become a prerequisite for loan approval or disbursement of loan proceeds to the credit union member. Allotments voluntarily initiated to a credit union shall continue in force at the option of the member.

G. Advertising

1. Advertising of credit union services shall be in accordance with policies set forth in DoD Directive 1344.7 [9].

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 [9] and DoD Directive 5120.431) is prohibited with the exception of insert advertising in the *Stars and Strips* overseas.

3. The use of the Armed Forces Radio and Television Service (DoD Instruction 5120.20 [9]) to promote a specific credit union is prohibited.

4. Onbase credit unions may use the unofficial section of the installation daily bulletins, provided space is available, to inform DoD personnel of services afforded members and announce membership meetings, seminars, consumer information programs and other matters of broad general interest.

5. Defense credit unions may use onbase information bulletin boards for announcements of membership meetings and promotional materials of a broad general nature that complement the installation's financial counseling and thrifts promotion programs. Onbase credit unions may use installation message center services to distribute reasonable numbers of announcements to units for display on informational bulletin boards, provided such does not impose an unreasonable workload on the distribution system.

6. Competitive literature from other credit unions may not be disseminated through installation activities, to include military exchange outlets, at locations served by onbase credit unions. This does not preclude a credit union from using a direct mail approach to serve its field of membership or commercial advertising in the area of another credit union.

H. Overseas Operations

1. An overseas credit union branch or facility shall be limited to onbasa operations. It shall confine its field of membership to individuals or organizations who are eligible by law or regulation to receive services and benefits from the installation and who are not precluded from receiving these services by inter-governmental agreement or host country law.

2. Credit unions serving overseas shall have a prescribed territorial franchise. However, any credit union may continue to serve its members stationed overseas by direct mail.

3. Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host country law.

4. Credit unions may purchase foreign currency from the servicing military banking facility (MBF) at the bulk rate when used for internal vendor or payroll payments. If accommodation exchange service is provided to members, foreign currency may be purchased from the MBF at the accommodation rate. Sales to individuals must be at a rate of exchange that is no more favorable than that available from the MBF in accordance with DoD Directive 7360.11[10]

5. When military payment certificates are prescribed for the area in which the overseas credit union is operating, they shall be used in accordance with DoD Instruction 7360.5[10] and implementing command regulations.

6. In accordance with NCUA rules and regulations, no credit union loans may be made for the purpose of purchasing real property or purchasing or erecting any type of residence in any country outside the U.S., its territories and possessions, or the Commonwealth of Puerto Rico.

7. The recommendations and direction of the NCUA through its rules, regulations, procedural forms, reports and manuals shall directly apply to all Defense credit union branches and facilities operating overseas.

8. Funds shall be deposited and invested in accordance with the authority applicable to federal credit unions. Overseas Defense credit union branches and facilities shall deposit funds in accordance with instructions issued by the NCUA, giving full consideration to use of the servicing MBFs.

9. Operation of overseas Defense credit union branches and facilities shall be reviewed by the NCUA during examination of the parent credit union or as the NCUA determines necessary.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1985.

[FR Doc. 85-21478 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-17]

Marine Event; Lake Havasu Classic

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule will establish special local regulations during

[8] See footnote 1 to §231a.1

[9] See footnote 1 to § 231a.1.

[10] See footnote 1 to § 231a.1.

the Lake Havasu Classic. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Havasu Sports Federation, "Lake Havasu Classic" will be conducted between 8:00 am and 5:30 pm on November 27, thru December 1, 1985, on the Colorado River east of Spectator Point in Thompson Bay, Lake Havasu. This event will have approximately 50 tunnel and pleasure/modified V-bottom outboards 16 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11-85-17 Lake Havasu Classic, Lake Havasu City, Arizona

(a) Regulated Area: The following area will be closed intermittently to all vessel traffic: that portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130°T off Spectator Point, thence due north approximately 2200 yards, thence due west approximately 2400 yards, and thence back to the starting point.

(b) Effective Dates: These regulations will be effective from 8:00 AM to 5:30 PM on November 27, thru December 1, 1985.

(c) Special Local Regulations: All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "offical regatta patrol" consists of any Coast Gaurd, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failue to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign 'PATCOM."

Dated: August 15, 1985

A.B. Beran,

Commmodore, United States Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85-21454 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD11 85-16]

Marine Event; Annual Parker Thanksgiving Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the Annual Parker Thanksgiving Regatta. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office,

400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–16) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Southern California Speedboat Club, "Annual Parker Thanksgiving Regatta" will be conducted between 6:00 am and 5:30 pm on 29 November thru 1 December 1985 adjacent to La Paz County Park. This event will have approximately 60 boats 13 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LINE ON NAVIGABLE WATER

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11–85–16 Annual Parker Thanksgiving Regatta, Parker, Arizona.

(a) Regulated Area: The following area will be closed intermittently to all vessel traffic: That portion of the Colorado River in front of La Paz County Park, Parker, Arizona.

(b) Effective Dates: These regulations will be effective from 6:00 AM to 5:30 PM on 29 November thru 1 December 1985.

(c) Special Local Regulations: All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

Dated: August 15, 1985.

A.B. Beran,

Commodore, United States Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–21452 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD7–85–41]

Drawbridge Operation Regulations; Orange River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation the Coast Guard is considering a change to the regulations governing the State Road 80 drawbridge between Fort Myers Shores and Tice to provide that the draw need not open. This proposal is being made because of a steady decrease in requests for opening the draw. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Intersted persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The existing regulation provides that the draw shall open on signal if at least 24 hours advance notice is given. The proposed regulation would provide that the draw need not be opened for passage of vessels. Over the past 20 months the draw required to open only once. In the closed position the draw provides a vertical clearance of 11.5 feet at Mean High Water and 13.0 feet at Mean Low Water. A replacement fixed bridge is in the design phase with construction scheduled for fiscal year 1987/1988.

The Orange River is a federal project completed in 1903 with a cleared channel depth of 4 feet to Buckingham. The Corps of Engineers advises that spot shoaling exists in the waterway and that no additional improvements are planned. It is reasonable to assume that navigation upon the waterway will not change in the foreseeable future.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge has only opened once for the passage of a vessel in the past 20 months. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117–DRAW BRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.321 is proposed to be revised to read as follows:

§117.321 Orange River.

The draw of the SR 80 bridge, mile 0.9, between Fort Myers Shores and Tice need not be opened for passage of vessels.

Dated: August 21, 1985.

G.S. Duca,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85–21450 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Temporary Programs of Vocational Training

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to implement certain provisions of Pub. L. 98–543, Veterans' Benefits Improvement Act of 1984. These amendments are necessary to define Adjudication Division responsibilities with respect to newly established temporary vocational rehabilitation training programs. The effect of these amendments will be to provide authority for actions to insure participation in temporary vocational rehabilitation training programs.

DATES: Comments must be received on or before September 30, 1985. The amendments to §§ 3.341 through 3.343 are proposed to be effective February 1, 1985, as provided by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to the Administrator of Veteran Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389–3005.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement Act of 1984 provides for the establishment of two temporary programs of vocational rehabilitation training and the removal of certain financial disincentives to help disabled veterans re-enter the work force. The law provides that participation in a therapeutic or rehabilitation program under 38 U.S.C. 618 (commonly called compensated work therapy) shall not be considered evidence of employability (the ability to maintain a substantially gainful occupation for either compensation or pension purposes. In addition, veterans with total disability compensation ratings based on individual unemployability who begin to engage in a substantially gainful occupation during the period from February 1, 1985, through January 31, 1989, may not have their ratings reduced on the basis of regained employability unless they maintain such occupations for a period of 12 consecutive months. We propose to implement these provisions by appropriately amending §§ 3.342 and 3.343.

A temporary program of vocational rehabilitation is being established for veterans who are newly rated totally disabled based on individual unemployability. The program period begins on February 1, 1985, and ends on January 31, 1989. Veterans so rated during the program period will be required to participate in an evaluation to determine whether the achievement of a vocational goal is reasonably feasible. Failure to participate in such an evaluation, for reasons other than those beyond the veteran's control, will result in reduction of the veteran's disability rating to the evaluation that would be applicable without consideration of individual unemployability. The rating will remain so reduced for the duration of such failure. In addition, should the veteran fail to pursue (or fail to continue to pursue) the rehabilitation program developed for the veteran, the rating board, in a promptly scheduled review of the veterans rating shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veterans eligibility for a total disability rating based on individual unemployability and shall adjust the veterans rating as necessary.

A temporary program of vocational training is also being established for veterans awarded disability pension during the above program period. Veterans under age 50 at the time pension is awarded will be required to participate in an evaluation to determine whether the achievement of a vocational goal is reasonably feasible. If

such a veteran fails, for reasons other than those beyond the veteran's control, to participate in the evaluation process, the veteran's pension award will be suspended for the duration of such failure. The program is also available to veterans who are age 50 or older at the time pension is awarded, but participation is strictly voluntary and there is no provision for suspending awards for failure to participate in the evaluation process.

The VA is proposing amendments to §§ 3.341 and 3.342 to implement the award reduction and suspension provisions related to these two new programs. Additional rules implementing these temporary programs will be separately proposed as amendments to 38 CFR Part 21.

The Administrator hereby certifies that these proposed regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

Approved: August 5, 1985.

By direction of the Administration.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, *Adjudication*, is amended as follows:

1. Section 3.341 is amended by adding paragraph (c) to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

* * * * *

(c) *Temporary program of vocational rehabilitation.* (1) Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6513, to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evaluation process, the veteran's rating shall be reduced, in accordance with § 3.105(e), to the rating applicable to the veteran's service-connected disabilities without consideration of individual unemployability and shall remain so reduced for the duration of such failure.

(2) Veterans described in paragraph (c)(1) of this section from whom it is determined that the achievement of a vocational goal is reasonably feasible and for whom an individualized written plan of vocational rehabilitation is formulated will be required to pursue the program described in that plan. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to pursue (or to continue to pursue) such vocational rehabilitation program in accordance with § 21.6517, the rating board, in a promptly scheduled review of the veterans rating, shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veteran's eligibility for a total disability rating based on individual unemployability and shall adjust the veterans rating as necessary.

(38 U.S.C. 363)

2. In § 3.342, paragraph (b)(4) is revised and paragraph (c) is added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(b) * * *

(4) The following shall not be considered as evidence of employability:

(i) Employment as a member-employee or similar employment obtained only in competition with disabled persons.

(ii) Participation in, or the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618. (But see §§ 3.262 and 3.271 with regard to income for pension purposes.)

(38 U.S.C. 618(f))

* * * * *

(c) *Temporary program of vocationol rehabilitation training for certain pension recipients.* (1) When a veteran under age 50 is awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6050, to determine that veteran's potential for rehabilitation. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that a veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evalution process, the veteran's disability pension award shall be suspended effective the date of last payment and shall remain suspended for the duration of such failure.

(2) Veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, are also eligible to apply for participation in vocational rehabilitation training; however, such participation is strictly voluntary, and the provisions of paragraph(c) (1) of this section do not apply to such veterans.

(38 U.S.C. 524)

3. In § 3.343, paragraph (c) is revised to read as follows:

§ 3.343 Continuance of total disability ratings.

* * * * *

(c) *Individual unemployability.* (1) In reducing a rating of 100 pecent service-connected disability based on individual unemployability, the provisions of § 3.105(e) are for application but caution must be exercised in such a determination that actual employability is established by clear and convincing evidence. When in such a case the veteran is undergoing vocational rehabilitation, education or training, the rating will not be reduced by reason thereof unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic

rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him or her, or unless the physical or mental demands of the course are obviously incompatible with total disability. Neither participation in, nor the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618 shall be considered evidence of employability. (38 U.S.C. 618(f))

(2) If a veteran with a total disability rating for compensation purposes based on individual unemployability begins to engage in a substantially gainful occupation during the period beginning on February 1, 1985, and ending on January 31, 1989, the veteran's rating may not be reduced solely on the basis of having secured and followed such substantially gainful occupation unless the veteran maintains the occupation for a period of 12 consecutive months. For purposes of this subparagraph, tempoary interruptions in employment which are of short duration shall not be considered breaks in otherwise continuous employment. (38 U.S.C. 363(a))

* * * * *

[FR Doc. 85-21388 Filed 9-6-85; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2892-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a revision to the Ohio State Implementation Plan (SIP) for Ozone. This revision is an alternative emission reduction plan (bubble) with an extended compliance schedule for eight flexographic printing lines for Champion International Corporation's DairyPak Division in Olmstead Falls, Ohio. The revision also permits compliance to be determined on a monthly basis.

USEPA is proposing to disapprove this revision for the following reasons: (1) The revision request does not contain adequate support that the compliance date extension to December 1987 is expeditious. (2) The source is located in an area (Cuyahoga County) which lacks both an approved 1982 Ozone SIP and an approved attainment demonstration. Under USEPA's SIP revision policy, sources which are located in areas which lack an approved SIP cannot be considered for longer averaging periods until an approvable attainment demonstration is provided showing timely attainment and maintenance of the ozone standard, and with the requirement that areas demonstrate "reasonable further progress" (RFP) toward the goal of attainment. (3) The revision request also lacks adequate support for the monthly averaging compliance method specified in the revision request. As a result of this proposal to disapprove the revision for DairyPak, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-21-09(Y) and Rule 3745-21-04(C)(32).

DATE: Comments on this revision and on the proposed USEPA action must be received by October 9, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois, 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On August 29, 1983, the Ohio Environmental Protection Agency (Ohio EPA) submitted a SIP revision request for Champion International Corporation's DairyPak Division, which is located in Cuyahoga County. On September 1, 1983, USEPA returned to Ohio EPA as incomplete a number of draft and final SIP revision requests (including the DairyPak revision) for sources which are located in urban nonattainment areas lacking current attainment demonstrations. Because these were request to change applicable SIP requirements in areas lacking current attainment demonstrations, the requests were considered incomplete. The DairyPak revision request was included among those returned to the State.

In a letter dated February 28, 1985, USEPA requested that Ohio EPA notify the Region V office of its preferred disposition of each submittal within two weeks. If the Ohio EPA elected to withdraw the revisions, USEPA stated it would take no further action on them. If, on the otherhand, the State did not withdraw them, USEPA stated that it would have to propose to disapprove them because they were requests to change applicable SIP requirements in areas lacking current attainment demonstrations. On April 4, 1985, the State notified USEPA that it still considered each of these SIP revision requests pending, and requested USEPA to approve them.

Based on its review of the SIP revision request for Champion International Corporation's DairyPak Division, USEPA is today proposing to disapprove this revision as a result of several deficiences. Each of the deficiencies is discussed in detail below. The remaining SIP revision requests which were the subject of the September 1, 1983 and February 28, 1985, letters will be discussed in future **Federal Register** notices.

Summary of SIP Revision

Champion International Corporation, Dairy-Pak Division operates eight flexographic printing lines in Omstead Falls (Cuyahoga Country). The lines are used for the printing of polyethylene coated paper milk cartons. Because DairyPak has chosen to pursue a waterborne ink conversion program, it is subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-21-09(Y)(1)(a)(ii)[1] which requires that the VOC content of each coating and ink employed in the printing lines not exceed 25 percent by volume of the volatile content. In addition, DairyPak is also subject to the December 31, 1982, compliance date contained in OAC Rule 3745-21-04(C)(32). In lieu of the requirements mentioned above, Ohio EPA has submitted a bubble and an extended compliance date to December 31, 1987, for DairyPak.

DairyPak has primarily employed solvent-based coatings and inks in the

[1] If the source had chosen a low-solvent conversion program, it would be subject to 3745-21-09(Y)(1)(a)(i). If the source complied by the use of add-on control equipment, it would be subject to OAC Rule 3745-21-09(Y)(1)(b).

printing lines. During 1981, the baseyear, the VOC emissions from these sources were approximately 261 tons, or 2.96 pounds of VOC per pound of coating and ink solids delivered to the lines. Under the proposed bubble, DairyPak will convert to waterborne coatings and inks in order to obtain an emission reduction of 196 tons/year from the facility. This overall reduction in 1981 base year emisisons will result in a VOC emission rate of 0.74 pounds of VOC per pound of coating and ink solids. This limit is generally equivalent to the 75 percent overall reduction requirement that would be achieved if DairyPak were to strictly comply with the requirements in OAC Rule 3745-21-09(Y)(1)(a)(ii). Under this bubble, some of the printing lines would be able to emit above the 0.74 limitation, and others would be below it. The variance would permit compliance with this limit to be determined on a monthly basis.

To ensure reasonable progress in achieving the alternative emission limitation, minimum reductions in the monthly average FOC content of all coatings and inks has been specified in the variances. In addition, the variances contain recordkeeping and reporting requirements.

If compliance with the alternative limitation of 0.74 pounds of VOC per pound of coating and ink solids cannot be achieved solely through the use of waterborne coatings and inks the variance requires the installation of add-on control equipment, as necessary to achieve compliance with the requirements of OAC Rule 3745-21-09(Y)(1)(b) by December 31, 1987.

SIP Deficiencies

USEPA is proposing to disapprove this revision, because of several deficiencies with the SIP revision request for DairyPak. Each of the deficiencies is discussed below.

1. Compliance-Date-Extension

Ohio EPA has requested a compliance date extension to December 31, 1987, for Dairy-Pak. Section 172(a)(2) of the Clean Air Act (CAA) requires that areas with extensions until December 31, 1987, for final attainment of the national ambient air quality standard (NAAQS) for ozone (such as Cuyahoga County) must, nevertheless, demonstrate that they are attaining the standard "as expeditiously as practicable". Therefore, for each individual compliance date extension request, USEPA must determine whether or not the request does, in fact, evidence an expeditious time frame. USEPA's technical criteria for evaluating compliance date extensions for VOC sources are set forth in an April 16, 1984, letter from Steve Rothblatt, Chief Air and Radiation Branch, to the Region V State Air Directors and an August 17, 1984, letter from Joseph Cannon, Assistant Administrator for Air and Radiation, to Richard Lillquist, President of the Flexible Packaging Association. In order to demonstrate that a compliance-date extension represents an expeditious timeframe, the source must provide evidence of having made reasonable efforts to develop and/or install low-solvent technolgoy at its facility from the adoption of the applicable regulations without any significant periods of inaction. The April 16, 1984 and August 17, 1984, letters are included in the docket of this rulemaking action and are available at the Region V office.

Ohio EPA's RACT II regulations were adopted by the State of February 12, 1981 (see 47 FR 28097, June 29, 1982). Although Dairy-Pak has identified some problems that it encountered in converting to low-solvent inks, it has not adequately described the steps it took to investigate the possibility of successfully using complying inks. Without this detailed explanation, it is not possible to substantiate DairyPak's claim that an extension to the end of 1987 is appropriate.

Adequate substantiation should include copies of correspondence between DairyPak and its ink suppliers, as well as a description and analysis of any tests that it performed with low-solvent inks. It should also include a showing that it has contacted those suppliers that could reasonably be expected to supply inks to DairyPak, and that significant problems exist which require an extended compliance schedule of about seven years.

In addition, the submission includes very limited information regarding the number and type of inks tried or the results of any trial runs. Therefore, insufficient information has been provided to determine whether the DairyPak SIP variance meets the requirements of the CAA that the SIP represents as expeditious as practicable attainment of the ozone NAAQS. Based on the information provided to USEPA thus far, the SIP request cannot be approved.

Nor can USEPA approve a relaxation (compliance date extension) in an area that lacks approvable attainment demonstration because without such a demonstration it is impossible for USEPA to determine whether or not the requested SIP variance will interfere with attainment and maintenance of the ozone NAAQS and with the requirement that nonattainment areas demonstrate "reasonable further progress" toward the goal of attainment prior to the final attainment date. USEPA's policy is set forth in a July 29, 1983, memorandum from Sheldon Meyers, former Director of the Office of Air Quality Planning and Standards to the Regional Offices. As discussed further below, on July 25, 1984 (49 FR 29973), USEPA proposed to disapprove the Ohio 1982 ozone SIP for the Cleveland ozone nonattainment area, which includes Cuyahoga County, based on measured violations of the ozone NAAQS in 1983. Therefore, because the State of Ohio does not yet have an approved attainment demonstration, USEPA cannot approve the compliance date extension and relaxation for DairyPak.

2. Monthly Averaging in Areas Lacking an Approved SIP

Ohio SIP Rule 3745-21-09(B) requires compliance to be determined on a daily basis. The DairyPak revision, however, would permit compliance determinations on a monthly basis.

Generally, Agency guidance specifies the use of daily averaging for State VOC regulations (as adopted by Ohio) as the preferred alternative where continuous compliance with current RACT requirements is not feasible. In USEPA's view, the use of daily averaging for VOC sources is generally necessary to assure timely attainment and maintenance of the ozone NAAQS, to be consistent with the short-term ozone standard, and to prevent circumvention of the installation of overall RACT level controls. Under certain specific circumstances, however, USEPA will allow longer averaging periods of up to 30 days. USEPA's current policy concerning averaging times for VOC sources is set forth in a January 20, 1984, memorandum entitled "Averaging Times for Compliance with VOC Emissions Limits." Among other things, the memorandum states that sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations cannot be considered for longer averaging periods than 24-hours until the SIP has been revised to demonstrate attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone. In addition, the State must demonstrate that RFP will be maintained in the area with respect to maximum daily emissions even if the source is allowed to switch to long-term averaging.

In the absence of these demonstrations, it is impossible for USEPA to determine whether or not the requested SIP variance will interfere with attainment or maintenance of the

ozone NAAQS, or with the requirement that nonattainment areas such as Cuyahoga County demonstrate reasonable further progress toward the goal of attainment.

The DairyPak revision consists of a bubble with monthly averaging. USEPA cannot approve this revision because based on 1983 data showing measured violations of the ozone NAAQS in the Cleveland ozone nonattainment area including Cuyahoga County, USEPA proposed to disapprove: (A) the demonstration from Ohio that the SIP provides for attainment by the end of 1982, an (B) its request for recission of the current extension of the attainment date to 1987 [2]. Until Ohio's ozone SIP for Cleveland is approved as meeting Part D requirements or unless Ohio submits an approvable attainment demonstration, USEPA cannot approve a site-specific SIP revision that provides a longer than daily averaging time for determining compliance.

3. Inadequate Documentation to Support a Monthly Averaging Compliance Method

Another deficiency with this SIP revision request relates to the monthly averaging period specified in the variance. According to the Agency's January 20, 1984, SIP revision policy mentioned earlier, a demonstration also must be made that either the source operations are such that daily VOC emissions cannot be determined or the application of RACT is not economically or technically feasible on a daily basis.

The revision request cites the short length of product run and the large number of colors as the major factors that make daily recordkeeping for inks infeasible. The submittal also states that inks are brought to the press at the beginning of each production shift in five-gallon containers and completion of an order may use only a portion of the ink in each container. The unused inks are then returned to the ink room. In order to measure the actual ink usage, DairyPak states that each container would have to be weighed and the weight recorded each time a container was removed from, or returned to, the ink room. DairyPak also states that a data processing system would be required, as well as additional personnel, in order to properly comply with daily recordkeeping requirements.

The revision further states that the major factor making daily recordkeeping of solvents used infeasible is DairyPak's method of storing and dispensing of solvents. The solvents used in this plant are purchased in bulk, and stored in underground tanks located outside the building. They are pumped into the ink storage room and dispensed to the machines via three-gallon and five-gallon containers. DairyPak claims that this activity would be difficult to control.

Although this revision request demonstrates that it will be less convenient and possibly more expensive for DairyPak to keep daily records, it does not demonstrate that keeping daily ink and solvent records is infeasible.

Longer-term averaging can also be justified by a demonstration that the application of RACT for each emission point is not economically or technically feasible on a daily basis. However, DairyPak has not provided sufficient information demonstrating that, upon completion of its conversion program, it will be infeasible to convert a sufficient number of solvent based inks and coatings to allow DairyPak to comply on a daily basis. For these reasons, it is USEPA's view that DairyPak has not adequately demonstrated that it should be allowed to determine compliance with VOC emission limits on a monthly basis.

Conclusion

USEPA is proposing to disapprove the SIP revision request for Champion International Corporation's DairyPak Division in Cuyahoga County, Ohio for the following reasons:

1. The source has not demonstrated that the requested compliance date extension to the end of 1987 constitutes an expeditious schedule as required by the CAA.

2. The source is located in an area (Cuyahoga County) that lacks an approved 1982 ozone SIP and an approved attainment demonstration. Under USEPA's SIP revision policy and the CAA, sources that are located in areas lacking an approved SIP cannot be considered for longer averaging periods until an approvable attainment demonstration is provided in order to evaluate whether granting a relaxation will interfere with attainment of the ozone standard or interfere with the requirement of RFP toward attainment.

3. The source has failed to demonstrate that it cannot determine VOC emissions on a daily basis and that the application of RACT at that facility is economically or technically infeasible on a daily basis.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

(42 U.S.C. 7401–7642)

Dated: April 24, 1985.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 85–21293 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

[2] USEPA determined that the 1983 exceedances were not attributed to source noncompliance with the existing SIP. This is discussed in detail in the July 25, 1984 **Federal Register** notice (49 FR 29973).

---

40 CFR Part 52

[A–9–FRL–2893–6]

Approval and Promulgation of Implementation Plans; Nevada Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Nevada post 1982 State Implementation Plan (SIP) revisions for the Las Vegas Valley ozone (O_3) nonattainment area. These revisions have been evaluated against the requirements of the Clean Air Act and EPA policy for areas with federally approved 1979 SIPs that did not attain the National Ambient Air Quality Standards (NAAQS) by December, 1982 and thus were required to revise their SIPs. EPA has found that the proposed SIP revision for Las Vegas Valley successfully meets these requirements, except for minor deficiencies concerning projected emission inventories.

DATE: Comments must be submitted to EPA by October 24, 1985.

ADDRESS: Send comments to: Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Liaison Section (A–2–2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the SIP revision and EPA's evaluation may be inspected during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, A–2–2 (Address noted above), (415) 974–7634, FTS: 454–7634.

SUPPLEMENTARY INFORMATION:

Introduction

The review of the proposed SIP revision for the Las Vegas Valley is based on EPA's final rule for

"Compliance with the Statutory Provisions of Part D of the Clean Air Act" and the "Policy for Correction of Part D SIPs for Nonattainment Areas", published on November 2, 1983 (48 FR 50686). Additional criteria for plan review is part of the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas" dated January 27, 1984.

Background

The Clean Air Act (CAA) Amendments of 1977 required states to revise their SIPs by January 1979 for all areas that had not attained the NAAQS. These "1979 SIP revisions" were to provide for attainment of the NAAQS by December 31, 1982.

EPA took final action to conditionally approve the 1979 SIP revisions for Las Vegas Valley on April 14, 1981 (46 FR 21758). On April 13, 1982 (47 FR 15790) EPA revoked the conditions because they had been fulfilled by the State. However, it was determined at a later date that the Las Vegas Valley would not attain the O_3 NAAQS by December, 1982 and, on February 3, 1983 (48 FR 49721), EPA proposed to find the SIP inadequate and to impose a major source construction ban under section 110(a)(2)(I) of the CAA. In the November 2, 1983 rulemaking action, EPA ruled that the section 110(a)(2)(I) construction ban did not automatically apply in nonattainment, nonextension areas that failed to attain by December 31, 1982; the Agency set forth a policy for correcting the problems identified in the February 3, 1983 proposed rulemaking.

On February 24, 1984, EPA notified the Governor of Nevada that the SIP for Clark County did not adquately provide for attainment of the O_3 standard and called for a revised SIP that would cure this inadequacy. EPA Region 9 provided further explanation for the SIP call and specific guidance on what portion of the SIP needed revision in letters, dated 16 March 1984, to the State and lead planning agency. To meet these EPA requirements, the Governor of Nevada submitted the post 1982 Ozone Update of the Las Vegas Valley Air Quality Implementation Plan on January 11, 1985.

Plan Evaluation

This evaluation is divided into two parts. The first part provides a summary of the federal requirements for correcting Part D plans for areas which did not demonstrate attainment of the NAAQS by December 1982. The second part evaluates the Las Vegas Plan Update in light of these requirements. The detailed evaluation is based on a more comprehensive review contained in EPA's Technical Support Document (TSD) which is available at the EPA Region 9 address listed above.

A. General Summary

All SIP revisions called for under section 110(a)(2)(H) must be prepared in accordance with the requirements of Section 110 and Part D of the Act and the General Preamble for developing 1979 SIPs, dated April 4, 1979 (44 FR 20372).[1] The November 2, 1983 policy and the January 27, 1984 Guidance Document supplement these original plan requirements. Post-1982 areas are required to attain the NAAQS as expeditiously as practicable; EPA presumes that such areas should be able to attain generally no later than December 31, 1987. The plan must provide for the implementation of all reasonably available control measures and for additional measures needed to attain the NAAQS as expeditiously as practicable and to assure reasonable further progress in the interim. The SIP must contain an emission offset program and/or an increment for growth which meets the requirements of section 173(1) and the General Preamble.

The three most recent areas of air quality must be included in the plan. Emission inventories must be prepared for a base year not more than two years prior to the year of the SIP submittal and projected to the attainment year and sufficiently beyond to assure maintenance of the standard. Air quality models used should be among those listed in the EPA modeling guidelines or specifically approved by EPA. Other general plan requirements are to ensure: (1) Conformity of all federal actions with the SIP, (2) coordination of all affected jurisdictions in the development and implementation of the SIP, (3) provisions for a contingency plan and (4) enforcement of the existing SIP.

Additionally, those areas which failed to meet the ozone and/or the carbon monoxide standards by 1982 were required to either submit SIP revisions that also met the requirements of the January 22, 1981 policy (46 FR 7182) or provide justification to EPA for not meeting any such requirement. The policy called for the application of Reasonably Available Control Technology for all sources covered by an EPA published Control Techniques Guidance document, a fully adopted, enforceable vehicle inspection and maintenance program and all reasonably available control measures for the transportation sector. Air quality data for O_3 modeling should be sufficient to meet the Level III modeling requirements as specified in Appendix D of the January 22, 1981 policy statement.

B. Detailed Plan Evaluation

Las Vegas Valley

The control strategy for attaining and maintaining the O_3 standard is based on an EKMA/OZIPP modeling analysis which was modified to incorporate chlorine reactions. Clark County had determined that chlorine played a key role in the formation of O_3 in the southeast portion of the Las Vegas Valley. The allowable emission level for chlorine was calculated to be 70 lbs/hr. Adopted regulations controlling chlorine are projected to limit emissions to 7 lbs/hr. by 1988. 1984 emissions were 25–30 lbs/hr. Reductions in nitrogen oxides and hydrocarbons will result from control measures including an inspection/maintenance (I/M) program previously approved as part of the Nevada SIP. However, the attainment demonstration does not project specific emissions of nitrogen oxides and hydrocarbons beyond 1987, or for chlorine beyond 1988.

The chlorine regulations were adopted by the County in May, 1984; EPA finds them legally enforceable. The plan contains the necessary commitments from the state and local agencies to implement the plan and the schedule is considered to be as expeditious as practicable. The plan shows that the O_3 standard is currently being achieved in the Las Vegas Valley and that the new regulations provide an enforceable mechanism that will ensure continued attainment. The plan also contains a demonstration that the adoption of regulations for sources covered by the CTGs issued by EPA will not lead to more expeditious attainment. Such controls are also not needed for maintenance. An I/M program is being implemented in Clark County and was previously approved by EPA.

Therefore, the plan satisfies the requirements for a demonstration that the standard will be attained by December 31, 1987, and the adoption of all necessary measures. To address the reasonable further progress requirements, the state has demonstrated that sufficient reductions have occurred to provide for attainment of the O_3 standard. In addition, the plan satisfies the following requirements: (1) Adequate evidence of public and governmental involvement; (2) A contingency provision which describes

[1] EPA published four additional notices supplementing the General Preamble: July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

the process for correcting a failure to meet reasonable further progress; (3) Procedures to ensure conformance with the SIP for transportation plans, programs, and projects which are approved by the metropolitan planning organization; (4) A commitment to developing, expanding or improving public transportation to meet basic transportation needs and (5) Enforcement of the existing SIP.

Proposed Actions. Based on the above evaluation, EPA is proposing to approve fully the post 1982 Nevada SIP Update for the Las Vegas Valley portion of Clark County if the State submits projected emission inventories beyond 1987 prior to EPA's final rulemaking. The Plan Update satisfactorily meets all other CAA Part D requirements and subsequent regulations and policy for nonattainment areas.

Interested parties are invited to comment on all aspects of these proposed actions. Comments should be submitted to the EPA Region 9 office.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: (42 U.S.C. 7401–7642).

Dated: June 27, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85–21492 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 65

[A–3–FRL–2893–8]

Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Graphic Packaging Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order isued by the Pennsylvania Department of Environmental Resources to Graphic Packaging Corporation. The Order requires the company to bring air emissions from its rotogravure and flexographic printing facility located in Tredyfferin Township, Chester County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Compliance shall be achieved by December 31, 1986 utilizing low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 9, 1985.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: Graphic Packaging Corporation operates a rotogravure and flexographic printing facility in Tredyfferin Township, Chester County, Pennsylvania. The Order under consideration addresses emissions from the printing processes, which are subject to § 129.67, of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and are part of the federally-approved Pennsylvania State Implementation Plan for the control of ozone. The Order requires final compliance with the regulation by December 31, 1986 through the use of low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the printing facility is a major source of VOC emissions. The facility is located in the Metropolitan Philadelphia Interstate Air Quality Control Region, and non-attainment area for the National Ambient Air Quality Standard for ozone. The facility as presently constructed is unable to comply with regulations limiting emissions of VOCs codified at section 129.67 of Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance by December 31, 1986 utilizing LST and April 21, 1987 should LST be abandoned and add-on controls installed. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for public hearing were received by the State. The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7) of the Clean Air Act. The first increment of progress, which requires installation of dryers on two selected printing stations by January 31, 1985, has been completed. The 1983 estimated VOC emissions of 670 Tons/Year (T/Y) will be reduced by 75 percent to 167 T/Y by December 1986 if low solvent coatings are chosen, but in any event no later than April 21, 1987.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides substantial emissions reduction in a manner which permits the company to

move toward the use of either low solvent coatings or facility alterations to install add-on controls.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). As required by section 113(d)(1)(E) of the Act, the Order notifies Graphic Packaging Corporation of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Adminiatrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Authority: 42 U.S.C. 7413, 7601.

Dated: August 28, 1985.

James M. Seif,

Regionol Administrator, Region III.

[FR Doc. 85-21440 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 439

[OW-FRL-2893-9]

Pharmaceutical Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: In the preamble to the final regulations for the pharmaceutical manufacturing point source category (see 48 FR 49808, October 27, 1983), the Agency stated that it was not establishing regulations controlling the discharge of volatile priority pollutants form pharmaceutical plants. However, the Agency has received new information concerning the possible harmful effects of discharges containing methylene chloride and has begun reconsideration of its policy on regulating other volatile priority pollutants. If the Agency reaches new conclusions on discharges containing methylene chloride and other volatile priority pollutants, this may warrant reconsideration of the decision not to promulgate regulations controlling the discharge of methylene chloride and other volatile priority pollutants from pharmaceutical plants. Accordingly, EPA is reviewing and updating data for technologies capable of removing methylene chloride and other volatile organics from wastewater. Steam stripping technology will remove volatile organics from wastewater and, at the same time, minimize exposure of workers and the general public to these chemicals. The purposes of this notice are (a) to summarize previously available data and to make available new information on the ability of steam stripping technology to reduce discharges of waterborne volatile priority pollutants from pharmaceutical manufacturing plants and the cost estimates associated with this technology, (b) to request comments on the available information, and (c) to seek additional information concerning steam stripping technology. As part of an integrated regulatory investigation of methylene chloride, the Agency will consider control options applicable under the several statutes administered by EPA. One of the controls that may be proposed would be regulations controlling the discharge of methylene chloride and other volatile pollutants if such regulations are warranted based on all of the available information.

DATE: Comments must be submitted on or before November 8, 1985.

ADDRESSES: Comments should be submitted in triplicate to Dr. Frank H. Hund, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The information described in this notice will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear), Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. EPA regulations provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Frank H. Hund at (202) 382-7182 for information regarding the technical data.

SUPPLEMENTARY INFORMATION:

I. Reason for this Notice.
II. Summary of Previously Available Information.
III. Summary of Information Being Made Available.
IV. Solicitation of Comments.

I. Reason for This Notice

As a result of new information concerning methylene chloride and new data concerning air emissions of methylene chloride and other toxic volatile substances, the Agency is reevaluating its position with regard to toxic volatile regulations for the pharmaceutical manufacturing point source category. New information indicates that methylene chloride causes cancer in animals and that the effects of methylene chloride discharges from pharmaceutical manufacturing plants may be more harmful than was previously believed. The Agency is also concerned about air emissions of methylene chloride and other toxic volatile pollutants from publicly owned treatment works (POTWs) which are a direct result of waterborne discharges from pharmaceutical plants as well as air emissions from the biological treatment systems operated by pharmaceutical manufacturing plants. Air emissions of volatile priority pollutants from the treatment works operated by organic chemical and pesticide manufacturing plants and from the POTWs to which some of them discharge have also been a source of concern. In a recent notice (July 17, 1985), the Agency presented a discussion of toxic volatile emissions from the biological treatment systems of organic chemical manufacturing plants at 50 FR 29068. As discussed in this notice, the Agency believes that while the biological treatment systems remove large amounts of volatile organic pollutants, much of this removal is accomplished through transfer of the pollutants to the air via air stripping. This statement also applies to pharmaceutical and peaticide manufacturing plants who also have significant amounts of toxic and other volatile organics present in their raw wastewater and who also employ biological treatment. The Agency is also concerned that high concentrations of toxic volatile organics within the sewer systems of POTWs which are a direct result of waterborne discharges may endanger workers in these systems and may create conditions leading to explosions and/or fires.

The Agency believes that both the concentrations of toxic volatile organics

in the discharges from pharmaceutical plants and the air emissions from treatment works can be significantly reduced by effective in-plant source control. Steam stripping technology, employed on an in-plant basis, will remove toxic volatiles from wastewater while at the same time minimizing the exposure of workers and the general public to these substances.

II. Summary of Previously Available Information

In the preamble to its November 26, 1982 proposal concerning the pharmaceutical manufacturing point source category, the Agency estimated that a level of 1.2 mg/l for TTVO (total toxic volatile organics) may be achievable by steam stripping technology and specifically requested comments on this estimate. Following the proposal, the Agency received a number of comments from the industry and other sources concerning this estimate as well as comments questioning the need for toxic volatile regulations in general. (For a complete listing of all comments and responses, see "Summary of Comments and Responses on the November 1982 Proposed Regulations," located in the public record of the September 1983 final regulations (see **ADDRESSES**).

After receipt of these comments, the Agency solicited additional information on the discharge of toxic volatile organic pollutants by sending questionnaires to pharmaceutical manufacturing plants. Additionally, the Agency obtained operating data for two steam strippers at a pharmaceutical manufacturing plant and developed suggested limitations for use by local authorities in the event that they must establish controls on toxic volatile organic discharges. Specifically, the Agency sampled a packed column steam stripper designed to remove methylene chloride and a flash tank (a one theoretical plate steam stripper) which was used to remove toluene from wastewater. The suggested limitations for mthylene chloride, chloroform, benzene fnd toluene derived from these sampling data are presented in Section VIII of "Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category," (EPA 440/1–83/084). Also inlcluded in Section VIII is a discussion of how the data were obtained and the methodology used to develop the suggested limitations.

The statistical approach used to calculate the 30-day maximum average and daily maximum variability factors is discussed in "Statistical Support for Pharmaceutical Rulemaking—September 1983", which is also part of the final regulation record. The design parameters used to estimate plant-by-plant steam stripping costs are presented in Appendix A of the final development document. Actual plant cost estimates developed by using these design parameters and the information from the volatiles questionnaire responses may be found in the public record of the final regulations.

III. Summary of New Information Being Made Available

The technical data used to derive the suggested limitations which are presented in Section VIII of the development document were obtained at a pharmaceutical plant during a sampling study in which both the plant and EPA participated. However, only the data obtained by EPA was presented in the development document supporting the October 27, 1983 final regulations. The plant, in addition to providing comments on EPA's data and methodology, also obtained data from the two steam strippers in question. We are now making available the plant's data, along with the plant's comments concerning EPA's data and our methodology for developing limitations. The Agency is also making available its response to the issues raised by the plant concerning the steam stripping data and the methodology used to develop the suggested limitations. Interested parties are also invited to review the steam stripping data found in the rulemaking records for the organic chemical, plastics, and synthetic fibers and the pesticides categories for comparison purposes.

The Agency is making available the information described in this notice for review and comment by interested parties. After receipt and review of comments and new information provided in response to this notice, the Agency may devleop proposed toxic volatile BAT, PSES, NSPS and PSNS regulations for the pharmaceutical manufacturing point source category which take into account these comments and information along with other data and information.

IV. Solicitation of Comments

The Agency is making available all information and comments received since November 26, 1982 regarding the capability of steam stripping technology to remove toxic volatile pollutants from pharmaceutical manufacturing wastewaters and the estimated costs associated with this technology. EPA invites and encourages public participation in response to this notice of availability. Of particular interest to EPA are information and data relating to the following:

1. Information from individual plants indicating what portion of the process wastewater flow would have to be steam stripped to meet the suggested limitations along with estimates of the associated costs.
2. Comments on the design specifications that are presented in Appendix A of the final development document.
3. Comments on the methodology EPA used to develop the suggested limitations.
4. Comments from pharmaceutical plants which may have to pretreat their waste streams prior to steam stripping. The comments should include information about required pretreatment technology and associated costs.
5. Additional data on the performance of steam stripping technology in the removal of toxic volatile organics from wastewater. These data should include daily volatile organic concentrations influent to and effluent from the steam strippers along with the appropriate design information and data which technically describe the strippers. We also request information on the capital and operating costs of these strippers.
6. Significant changes in the information concerning solvent usage, process flows, employment, and plant wastewater treatment operations reported EPA in 308 questionnaire responses between the years 1978 and 1984.

Dated: August 26, 1985.

Henry L. Longest II,

Acting Assistant Administration for Water.

[FR Doc. 85–21491 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 80–113]

Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Notice of rescheduling of public hearing and further extension of comment period.

SUMMARY: On January 11, 1985 the Coast Guard published in the **Federal Register** a Notice of Proposed Rule Making dealing with requirements for improving

the stability of the inflatable liferafts used aboard merchant vessels and drill rigs of U.S. registry (50 FR 1558). At the time the Coast Guard was not planning to conduct a public hearing. The Coast Guard was not planning to conduct a public hearing. The Coast Guard, on the basis of several written comments, decided a public hearing was desirable. The hearing was scheduled for September 12, 1985 (50 FR 27628). The manufacturers of inflatable liferafts have requested that the public hearing be rescheduled so that results of tests currently being conducted will be available at the hearing. In conjunction with the decision to reschedule the public hearing, the comment period is extended.

DATE: The Coast Guard will hold a public hearing on the above subject on Wednesday, December 11, 1985, 9:30 a.m. to 12:00 noon, Washington, DC. Attendance is open to the public. Persons wishing to present oral testimony at the hearing should notify the Executive Secretary of the Coast Guard Marine Safety Council no later than the day before the hearing. Written comments must be received by January 10, 1986.

ADDRESS: The public hearing will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street SW., Washington, DC 20593. Written comments intended for presentation at the public hearing should be mailed or delivered to the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Captain R. F. Ingraham, Executive Secretary, Marine Safety Council (G–CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, telephone (202) 426–1477.

W.J. Ecker,

Captian U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

September 4, 1985.

[FR Doc. 85–21449 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 50. No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan and Deductions

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is updating (1) the Thrifty Food Plan which determines the maximum amount of food stamps which participating households receive, (2) the amount of the standard deduction which is available to all households, and (3) the maximum amounts for the excess shelter and dependent care deductions available to certain households. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3427. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Mr. O'Connor.

SUPPLEMENTARY INFORMATION

Publication

State agencies must implement this action on October 1, 1985, and need adequate advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485-46487 (October 19, 1982) annual statutory adjustments to the Thrifty Food Plan and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment, or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o) requires that the October 1, 1985 change in food stamp allotments be based upon the June 1985 cost of the Thrifty Food Plan for a family of four persons consisting of a man and woman ages 20-54 and children 6-8 and 9-11. Adjustments are made to take into account household size, economies of scale, and a requirement to round the final results down to the nearest dollar increments. Section 5(e) requires that the standard deduction and excess shelter and dependent care deductions be adjusted on October 1, 1985 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1985.

Benefits

This action increases maximum food stamp allotments and deductions based on the rising cost of living.

Costs.

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $318 million in Fiscal Year 1986.

Background

Thrifty Food Plan (TFP)

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggest amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups. This update will be based on the TFP outlined in the **Federal Register** Notice published July 29, 1983 (48 FR 34700).

The TFP also constitutes the basis for allotments for food stamp households. As such, the cost of the TFP is the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the TFP for their household size by 30 percent of the household's net income. As prescribed by the statute, these maximum benefit amounts are based on the TFP for a particular four-person household, and adjusted to take into account household size, economies of scale, and rounding.

The cost of the TFP is adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended, provides that the next adjustment will take place on October 1, 1985, based upon June 1985 TFP costs for a family of four persons consisting of a man and woman ages 20-

54 and children 6–8 and 9–11. In June 1985, these TFP values were $268.50 in the 48 States and D.C.; $350.20 in Alaska; $415.60 in Hawaii; $395.80 in Guam; and $345.20 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household in each area were divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. In Alaska, where the TFP is based on Anchorage prices, the urban allotment was computed by adding an additional 6.4 percent to take into account food prices in other urban areas of the States. The rural Alaska allotment was computed by adding 50.7 percent to take into account significantly higher food prices in rural areas. Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and D.C.

The following table shows the new allotments for the 48 States and D.C., urban and rural Alaska, Hawaii, Guam, and the Virgin Islands.

THIRFTY FOOD PLAN AMOUNTS [1]—OCTOBER 1985, AS ADJUSTED

Household size	48 States and District of Columbia	Urban Alaska [2]	Rural Alaska [3]	Hawaii	Guam [4]	Virgin Islands [4]
1	$80	111	158	124	118	103
2	147	204	290	228	217	189
3	211	293	415	327	311	271
4	268	372	527	415	395	345
5	318	442	626	493	470	409
6	382	530	752	592	564	491
7	422	586	831	654	623	543
8	483	670	949	748	712	621
Each additional member	+60	+84	+119	+94	+89	+78

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and rounding.
[2] Increased by 6.4 percent to account for significantly higher food prices in urban cities and towns.
[3] Increased by 50.7 percent to account for significantly higher food prices in rural areas.
[4] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural Alaska.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income. The standard deduction is available to all households. The combined excess shelter expense/dependent care deduction is available to those with extremely high shelter cost and/or dependent care expenses.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households in the 48 States and D.C. shall be allowed a standard deduction of $85. The standard deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $145, $120, $170, and $75, respectively. The law also provides for periodic adjustments in the level of the standard deduction to take into account changes in the CPI–U published by the BLS, for items other than food and the homeownership component of shelter costs. These deductions were last adjusted effective October 1, 1984 (see table). Since the homeownership component was no longer available, BLS had recommended that the Department use "homeowners' costs" and "maintenance and repairs" to achieve a comparable deduction adjustment. this procedure was first used in connection with the deduction adjustments effective October 1, 1984. It was also used for the adjustments which are to take effect October 1, 1985. These additional adjustments reflect changes for the twelve month period ending June 30, 1985. The adjustments are, by law, rounded to the nearest lower dollar. (See table).

Standard deductions	Previous deductions (effective October 1, 1984)	New unrounded numbers (October 1, 1985)	Deductions effective October 1, 1985
48 States and DC	$95	$98.57	$98
Alaska	162	168.14	168
Hawaii	134	139.18	139
Guam	190	197.13	197
Virgin Islands	83	86.97	86

Adjustment of the Shelter Deductions

Sections 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain dependent care and excess shelter expenses. The maximum excess shelter/dependent care deduction specified in the Act for the 48 States and D.C. is $115. The maximum excess shelter/dependent care deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $200, $165, $140, and $85, respectively. The law provides for periodic adjustments in the level of the excess shelter/dependent care deduction to take into account changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of housing costs in the CPI–U published by the BLS. These deductions were adjusted upward effective October 1, 1984 (see table). The next adjustments provided for in the law are to take effect October 1, 1985 to reflect changes for the twelve month period ending June 30, 1985 (also shown in the table). The adjustments are, by law, rounded to the nearest lower dollar. As with the standard deduction, the procedure for the shelter/dependent care deduction substituted the homeowners' and maintenance and repairs components of the CPI–U for the homeownership component.

Shelter deductions	Previous deductions (effective October 1, 1984)	New unrounded numbers (October 1, 1985)	Deductions effective October 1, 1985
48 States and DC	$134	$139.22	$139
Alaska	233	242.11	242
Hawaii	192	199.75	199
Guam	163	169.48	169
Virgin Islands	99	102.90	102

(91 Stat. 958 (7 U.S.C. 2011–2029))

Dated: September 3, 1985.

John W. Bode,

Assistant Secretary.

[FR Doc. 85–21339 Filed 9–6–85; 8:45 am]

BILLING CODE 3410-30-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 27, 1985, at the Riverfront Hilton, 2 Riverfront Place, Argenta East Room, North Little Rock, Arkansas. The purpose of the meeting is to plan future activity and to elect a vice-chair.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lloyd V. Hackley, or J. richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC., September 3, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21375 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on September 27, 1985, at the Holiday Inn Riverview, 141 Summit Street, Heron Room, Toledo, Ohio. The purpose of the meeting is to plan future projects and to elect committee officers.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel G. Prock, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21376 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 18, 1985, at the Jackson Federal Building, 915 Second Avenue, Room 3080, Seattle, Washington. The purpose of the meeting is to discuss proposed plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Arnold Manseth or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246, (TDD 206/442-4744).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC., September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21377 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Tuesday, September 24, 1985, at 1:00 p.m., Room 6802, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230 (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:00 p.m. Review of import trends, international activities, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982)) and listed in 5 U.S.C. 552b (c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce (202) 377-3031.

For further information or copies of the minutes contact Helen LeGrande (202) 377-4217.

Dated: September 3, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-21382 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

For Duty-Free Entry of Scientific Instrument; University of Arizona

Section 240 of the Trade and Tariff Act of 1984 which pertains solely to the application described below requires the Department of Commerce to determine whether a scientifically equivalent instrument is being manufactured in the United States. We must publish our decision within 90 days after we determine we have a sufficient description of the article to make this finding. We had a sufficient description as of August 28, 1985. We invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Applicant: University of Arizona, Tucson AR 85721. Instrument: Submillimeter Telescope and associated equipment. Manufacturer: Max Planck Institute for Radiostronomy, West Germany. Intended Use: The instrument is intended to be used to investigate deep space objects at previously unattainable wavelengths. Application received by Commissioner of Customs: June 11, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21380 filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Colorado; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85-161. Applicant: University of Colorado, Boulder, CO 80309. Instrument: FR-IR Spectrometer, Model LZMO3. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 50 FR 23171.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an unapodized resolution of 0.01 cm^{-1}. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21381 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Carbon Band Saw Steel; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to carbon band new steel.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . ."

We have received a short supply request for carbon band saw steel with a width ranging from ¼ inch to 11¾ inches and a thickness ranging from 0.025 inch to 0.035 inch. It will be used in the manufacture of band saws.

Parties interested in commenting on these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information shold clearly so label the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: September 4, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21442 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Announcment of Workshop for NBS/OSI Workshop for Implementors of OSI

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces six (6) workshop sessions to discuss the continued development of international computer network protocols. The following consititutes the schedule for the workshop through December 1986. The dates are firm.

December 10-12, 1985
February 11-13, 1986
April 29—May 1, 1986
July 22-24, 1986
September 30—October 2, 1986
December 9-11, 1986

(The meetings will be hosted by NBS and will be held at a hotel in the Rockville-Gaithersburg area.)

The workshops will cover protocols in six layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshop. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

To register for the workshops, companies should telephone (301) 921-2601 and send a request on company letterhead to: OSI Workshop Series, Attn: Sharon M. Reeves, National Bureau of Standards, Bldg. 225, Rm B217, Gaithersburg, MD 20899.

The registration request must name the company representatives(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contract Jerry Mulvenna (301) 921-2601.

Dated: September 4, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-21414 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Modification to Letters of Exemption Marine Mammals

On February 14, 1984, Notice was published (49 FR 5645) that a Letter of Exemption to incidentally take small numbers of marine mammals during groundfish gillnet operations was issued to the New England groundfish gillnetters.

On June 20, 1984, Notice was published (49 FR 25271) that a Letter of Exemption to incidentally take small numbers of marine mammals during menhaden purse seine operations was issued to the National Fish Meal and Oil Association.

Notice is hereby given that pursuant to section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and Special Condition 4 of the Letters of Exemption issued to the National Fish Meal and Oil Association and the New England goundfish gillnetters, the Letters are respectively modified as detailed below.

1. Condition 3 of each Letter is deleted and replaced by:

"3. Marine mammals taken as authorized herein may be taken in waters subject to U.S. jurisdiction as described in the application."

The Letters of Exemption as modified are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW. Washington, DC.

Dated: September 3, 1985.

Richard B. Roe, Director,

Office of Protected Species, and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 21433 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations on Certain Cotton Textile Products in Category 301 Produced or Manufactured in Taiwan

September 3, 1985.

On August 21, 1985, the American Institute in Taiwan (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products for Taiwan, requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of combed cotton yarn in Category 301, produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 301, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the Untied States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21385 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Yugoslavia

September 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 9, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 11, 1984 a notice was published in the **Federal Register** (49 FR 48207), which announced the establishment, under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 21 and 22, 1984, as extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, of a new specific limit for men's and boys' wool suit-type coats in Category 433, produced or manufactured in Yugoslavia and exported during the eighteen-month period which began on July 1, 1984 and extends through December 31, 1985. The notice further stated that the new limit could be adjusted for swing, but not for carryover or carryforward. A further notice was published on December 27, 1984 (49 FR 50234) which announced establishment of a limit for women's, girls, and infants' wool suits in Category 444, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1985. Under the terms of the bilateral agreement and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the limit for Category 433 is being increased by the application of swing to 12,075 dozen; the limit for Category 444 is being decreased to 6,990 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 3, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 6 and December 21, 1984, which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Yugoslavia.

Effective on September 9, 1985 the directives of December 6 and 21, 1984 are hereby amended to include adjusted restraint limits for wool textile products in the following categories:

Category	Adjusted restraint limit [1]
433	12,075 doz.
444	6,990 doz.

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1984 (Category 433) or December 31, 1984 (Category 444).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21384 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Certification of Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands from Imported Parts

September 4, 1985.

On March 4, 1985 a notice was published in the **Federal Register** (50 FR 8650) which announced that, effective on April 15, 1985, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which are determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), which are certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 70,000 dozen. This

limited exception is to be effective for sweaters exported during the period which began on November 1, 1984 and extends through October 3, 1985.

The notice also stated that a certification stamp would be required as verification of assembly in the CNMI. A facsimile of the stamp has been provided by CNMI authorities and is published as an enclosure to the letter to the Commissioner of Customs which follows this notice. The following CNMI officials have been authorized to issue the certifications:

Major Pete P. Reyes, Chief, Customs Services Division
Capt. Joaquin B. Cruz, Asst. Chief, Customs Services
Lt. Henry M. Sablan,
Lt. Herman S. Taitano

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 27, 1985, which directed you, effective on April 15, 1985, to permit entry or withdrawal from warehouse for consumption in the United States of 70,000 dozen cotton, wool and man-made fiber textile products in certain specified categories, produced in any foreign country or foreign territory, which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985. The directive stated that a facsimile of the certification stamp would be provided when received from authorities in the CNMI.

Enclosed is a facsimile of the stamp that will be used to certify the exports described above. A shipment shall be certified by the placing of an original circular stamped marking in blue ink on the front of the original commercial invoice. Each certification stamp shall include its visa number, date of issuance, quantity of the shipment in dozens, the correct category, the signature of the authorized issuing official, and the country of origin. The stamp will also include a statement certifying that assembly was performed in the CNMI. Any shipment which is not accompanied by a valid and correct certification shall be denied entry unless the Government of the Commonwealth of the Northern Mariana Islands specifically authorizes entry for a qualified shipment under this exemption. The foregoing notwithstanding, if the quantity indicated on the certification stamp is more than that of the qualified shipment, entry shall be permitted.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure.

CERTIFICATION STAMP FOR CERTAIN SWEATERS ASSEMBLED IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND EXPORTED TO THE UNITED STATES



[FR Doc. 85-21383 Filed 9-6-85; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded, and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Parent Subsidiary Verification System

The annual publication entitled, "100 Companies Receiving the Largest Dollar Volume of Prime Contract Awards," provides total DoD awards reported during a fiscal year to a company and all of its subsidiaries. To ensure that the published data are accurate, a listing is sent to the companies likely to appear in this publication requesting information on their subsidiaries. The companies are not required to respond.

Business Firms.

Responses 150.
Burden hours 300.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Cynthia Springer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0665.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21472 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee: Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 129. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 129 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

CIVILIAN PERSONNEL PER DIEM BULLETIN NUMBER 129

TO THE HEADS OF THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: TABLE OF MAXIMUM PER DIEM RATES IN LIEU OF SUBSISTENCE FOR UNITED STATES GOVERNMENT CIVILIAN OFFICERS AND EMPLOYEES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTH OF PUERTO RICO AND POSSESSIONS OF THE UNITED STATES

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702 (a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 128 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$19
Anaktuvuk Pass	140
Anchorage	116
Atqasuk	215
Barrow	139
Bethel	138
Coldfoot	122
College	104
Cordova	124
Deadhorse	131
Dillingham	114
Dutch Harbor-Unalaska	105
Eielson AFB	104
Elmendorf	116
Fairbanks	104
Ft. Richardson	116
Ft. Wainwright	104
Juneau	109
Ketchikan	113
Kodiak	129
Kotzebue [3]	123
Murphy Dome [3]	104
Noatak	123
Nome	136
Noorvik	123
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	131
Sand Point	103
Shemya AFB [3]	30
Shungnak	123
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	129
St. Mary's	100
Tanana	136
Valdez	129
Wainwright	165
Wrangell	113
Yakutat	100
All other localities [3]	90
American Samoa	81
Guam M. I.	91
Hawaii:	
Hawaii, Island of	63
Oahu	94
All other islands	85
Johnston Atoll [3]	23
Midway Islands [1]	13
* Puerto Rico:	
Bayamon:	
12-16—5-15	132
5-16—12-15	105
Carolina:	
12-16—5-15	132
5-16—12-15	105
Fajardo (including Luquillo):	
12-16—5-15	132
5-16—12-15	105
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	132
5-16—12-15	105
Ponce (including Ft. Allen NCS)	99
Roosevelt Roads:	
12-16—5-15	132
5-16—12-15	105
Sabana Seca:	
12-16—5-15	132
5-16—12-15	105
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	132
5-16—12-15	105
All other localities	111
* Virgin Islands of U.S.:	
12-1—4-30	126
5-1—11-30	112
Wake Island [3]	20
All other localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters of US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21475 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Software; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 22-23 October and 26 November 1985 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. The meetings on 22-23 October and 26 November 1985 will consist of briefings on various DoD software activities and discussion by the Task Force members on these various initiatives.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, approximately one week prior to the scheduled meeting times. Space is limited and will be awarded on a first come first served basis. Telephone: (202) 695-7181.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21473 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

ACTION: Notice of Meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management will meet September 17 to September 18, 1985 at 736 Jackson Place NW., Washington, DC 20503.

AGENDA: September 17 to September (0900-1530): Presentations and discussions will focus on DoD Acquisition Management procedures and policies.

FOR FURTHER INFORMATION CONTACT: Any additional information concerning the meeting may be obtained from Mr. Herb Hetu, 1835 K Street #400, Washington, DC 20006, telephone (202) 638-0799 or (202) 395-3198.

Dated: September 4, 1985.

Linda M. Lawson

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21469 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement (Pending Legislative Change)

Report of DOD and Defense Related Employment

DD Form 1787 is completed by former military members 0-4 and above, and civilian employees GS-13 and above, who are released by DOD and employed by a Defense contractor awarded a negotiated contract of $10 million or more. Civilians employed by DOD from a Defense contractor (negotiated contract of $10 million or more).

Individuals, Responses 2,400, Burden hours 1,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This is not for contract.

Dated: September 3, 1985.

Linda M. Lawson,

A Hernote OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21474 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a DEIS on a Regulatory Plan for Regulating Commerical Dredging Activities in the Kansas River, KS

1. *Description of Proposed Action:* Commercial sand and gravel dredgers desiring to operate on the Kansas River in Kansas are required to secure a permit from the US Army Corps of Engineers in accordance with Section 10 of the Rivers and Harbors Act of 1899. In response to various questions and issues which have been raised in recent years regarding the impacts commercial dredging activities may have on the river, the Kansas City District, Corps of Engineers (KCD) conducted several studies which addressed potential impacts on the morphology and ecology of the river system. It was concluded from these studies that commercial dredging activities have had an adverse impact on the river system and that continued dredging has a high potential to further adversely impact the system. Subsequently, KCD determined that a Regulatory Plan should be developed and used as a guide in issuing or denying permits for commercial sand and gravel dredging on the Kansas River. Notice is hereby given that a Draft Environmental Impact Statement (DEIS) will be prepared to assess the impacts associated with implementation of such a plan.

2. *Description of Reasonable Alternatives:* Alternatives which will be considered during preparation of the DEIS range from eliminating all Kansas River commercial dredging to expanding the existing level of dredging. Between these extremes, various other alternatives will be examined, some of which could include limitations on distances between adjacent dredges, restrictions on the maximum number of dredges in a particular reach, and restrictions on the quantity of material to be extracted from a given reach.

3. *Description of Scoping Process:*

a. The US Environmental Protection Agency, US Fish and Wildlife Service, and the State of Kansas have been requested to act as cooperating agencies in the preparation of the DEIS; the Kansas City District, Corps of Engineers, will be the lead agency.

b. A Scoping Meeting will be held on October 9, 1985, at 7:30 P.M. in the Community Room of the Commercial State Bank, 309 Oak, Bonner Springs, Kansas. All members of the public, special interest groups, local, state, and Federal agencies, and other interested parties are invited to attend.

4. *Date of EIS:* It is estimated that the DEIS will be made available for public review and comment in June, 1986.

5. Questions regarding the proposed DEIS should be directed to Mr. Michael Bronoski, Biologist, US Army Corps of Engineers, ATTN: MRKPD-R, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896. Commercial telephone 816-374-3358 or FTS 758-3358.

Dated: August 29, 1985.

Philip L. Rotert,

Chief, Planning Division.

[FR Doc. 85-21378 Filed 9-6-85; 8:45 am]

BILLING CODE 3710-KN-M

Defense Logistics Agency

Public Information Collection Requirement submitted on OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Assignment and Verification of Commercial and Government Entity (CAGE) Code

The Defense Logistics Agency, office of the Secretary of Defense needs the DD Forms 2051/2051-1 to verify name, address and affiliation required by Title 10 U.S.C., Chapter 145, and also to acquire socio-economic data in compliance with Presidential Executive Order 12138, and the Small Business Act, form all entities, contractors that do business with the Government. These forms are used exclusively by Government activities. The DD Form 2051 is used to make the initial solicitation for information for code assignment. The DD Form 2051-1 is for triennial verification of the information recorded in the central data bank for each entity assigned a code. Additionally, these forms may be used to report changes, in each entity's status as they occur. The Defense Logistics Services Center (DLSC) is responsible for assigning CAGE codes.

Business Firms—Small Business or Organizations.

Responses 95,660.

Burden hours 23,915.

Information is elicited on a voluntary basis.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, Telephone 202/746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Gladys Frye, Action Officer, Defense Logistics Agency, ATTN: DLA-SC, Cameron Station, Alexandria, Virginia 22304-6100, telephone 202/274-6491.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21470 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Regular

Government Industry Reference Data Edit and Review (GIRDER)

The GIRDER report is the only method available to verify manufacturer's names and part numbers which are associated with National Stock Numbers (NSNs) in the Federal Catalog System. This Federal Catalog System maintenance avoids erroneous invitations to bid and erroneous NSN assignment and is in consonance with the intent of Title 10 U.S.C., Chapter 145.

Business Firms—Small Business or Organizations.

Responses 100.

Burden hours 2,270.

Information is elicited on a voluntary basis.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Gladys Frye, Action Officer, Defense Logistics Agency, ATTN: DLA-SC, Cameron Station, Alexandria, Virginia 22304-6100, telephone 202/274-6491.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21471 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Defense Mapping Agency Advisory Committee on Mapping, Charting and Geodesy (MC&G); Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DMA Advisory Committee on MC&G has been scheduled as follows:

Thursday, 19 September 1985, Defense Mapping Agency, Washington, D.C. and Friday 20 September 1985, DMA Special Program Office for Exploitation Modernization, McLean, Virginia. The entire meeting, commencing at 0800 hours each day is devoted to the

discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and, therefore, will be closed to the public. The Committee will receive briefings on and discuss several current critical MC&G issues and advise the Director, DMA on related scientific and technical matters.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21476 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Council on Educational Research; Full Council Meeting

Matters to be Discussed: Receive committee reports, Reports from the Acting Director of the National Institute of Education; and the Assistant Secretary for the Office of Educational Research and Improvement; and Council business:

Date: September 19th and 20th, 1985.

Address: National Institute of Education, 1200 19th Street NW. Washington, DC (Room 823).

Status: Open.

Time: September 19, 9:00 a.m.–5:00 p.m.; September 20, 9:00 a.m.–12:00 noon.

For Further Information Contact: Patricia Hines, National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, 202–254–7490.

Supplementary Information: The National Council on Educational Research is established under Section 405 of the General Provisions Act.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Council on Educational Research at 2000 L Street, NW., Suite 617–B, Washington, DC 20036 between the hours of 9:00 a.m. to 5:00 p.m.

A summary of the activities and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: September 3, 1985.

Patricia Hines,

National Council on Educational Research.

[FR Doc. 85-21370 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 9, 1985.

ADDRESSES: Written comments should be addresse to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 3, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review Requested: Revision
Title: Performance Report and Recordkeeping—Bilingual Education Programs
Agency Form Number: T85–3P
Frequency: Close-out
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden, Responses: 250; Burden Hours: 11,250
Recordkeeping Burden, Recordkeepers: 875; Burden Hours: 31,500

Abstract: Grantees are required under Education Department General Administrative Regulations (EDGAR), 34 CFR 74.82, to submit a final performance report which is used to monitor compliance with program requirements. In addition, grantees are required to adhere to the recordkeeping requirements in 34 CFR 74.20–74.25.

Office of Educational Research and Improvement

Type of Review Requested: Revision
Title: Library Services and Construction Act (P.L. 98–480) Application and Project Plans for State Administered Programs—Titles I, II and III
Agency Form Number: ED 921 and ED 915
Frequency: Annually
Affected Public: States
Reporting Burden, Responses: 54; Burden Hours: 2,430
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: The application, consisting of the Basic State Plan, the Long-range Program and the Annual Program, is a required submission from States in order to receive Federal funds under Title I (Library Services), Title II (Public Library Construction), and Title III (Interlibrary Cooperation and Resource Sharing) of the Library Services and Construction Act, as amended by P.L. 98–480.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Program Announcements—Fund for the Improvement of Postsecondary Education—New Awards and Continuations
Agency Form Number: ED 0001 and ED 0002
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden, Responses: 1.5; Burden Hours: 30,189
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This is a grant application for competitive awards with a two-stage application process: preliminary and final. Continuation awards are granted only to those postsecondary institutions

currently receiving grants and whose progress has been satisfactory.

[FR Doc. 85-21456 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Septemaber 24–25, 1985, 9:00 A.M. until conclusion of business each day.

ADDRESS: Fort Washakie Tribal Council Chambers, Fort Washakie, Wyoming 82514 (307/225-8257).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, N.W., Suite 574, Washington, D.C. 20036 (202)/634-6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) NACIE Budget—FY '85 & '86;
(2) NACIE activities for FY '86;
(3) Committee activities for FY '86;
(4) Other Business;
(5) Public testimony;
(6) On-site visits to Indian Education Programs and Schools in the Riverton, Wyoming area (September 25, 1985).

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 2000 L Street, N.W., Suite 574, Washington, D.C. 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C.

Dated: September 4, 1985.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85-21460 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Publication of Sample Cases and Expected Parental Contributions for the National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Correction notice and extension of closing date.

On July 22, 1985, the Secretary of Education published in the **Federal Register** a notice of sample cases and expected parental contributions that the Secretary will use to approve need analysis systems for award year 1986-87 under the campus-based programs (50 FR 29720-29721).

This notice corrects the asset protection allowance on page 29720, Column 3, line 31 to read "$31,500."

Also as a result of this error, the "August 21, 1985" closing date is extended to October 10, 1985.

Dated: September 4, 1985.

(Catalog of Federal Domestic Assistance No. 84.038 National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007 Supplemental Educational Opportunity Grant Program)

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education

[FR Doc. 85-21455 Filed 9-6-85; 8:45 am]

BILLION CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Request for Comments on Proposed Revision of Form RW-859

AGENCY: Department of Energy.

ACTION: Notice of the proposed revision of Form RW-859, "Nuclear Fuel Data" and solicitation of comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing information collections. This program helps ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, the EIA, in cooperation with the Office of Civilian Radioactive Waste Management (OCRWM), is proposing a revision of Form RW-859, "Nuclear Fuel Data." This form collects historical and projected data on spent nuclear fuel inventories, characteristics, and movements, and on handling and storage capabilities from the operators of all operating and planned commercial nuclear power plants. After approval by the Office of Management and Budget (OMB) is obtained, the EIA will begin using the revised form in early 1986 to collect calendar year 1985 data.

DATES: Written comments must be submitted on or before October 9, 1985.

FOR FURTHER INFORMATION, OR TO OBTAIN COPIES OF THE REVISED FORM, CONTACT: Kathy Gibbard (EI-531), Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration, Room 2F-048, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252-1718.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Action.
III. Comment Procedures.

I. Background

Pursuant to section 205(a)(2) of the DOE Organization Act (Pub. L. 95-91, 42 U.S.C. 7132(a)(2)), the Energy Information Administration is responsible for carrying out a central, comprehensive, and unified energy data and information program. The program collects, evaluates, assembles, analyzes, and disseminates data and information in support of the DOE's Office of Civilian Radioactive Waste Management (OCRWM). Every operator of a nuclear power plant shall file annually the Form RW-859 with respect to each qualifying reactor that it operates or is responsible for constructing. A qualifying plant is any existing or planned commercial nuclear fueled unit which generates electricity to be sold commercially. A planned unit is one that is expected to be in commercial service within 7 years of the end of the reporting year. The form must also be completed by all others who possess irradiated nuclear fuel generated in commercial nuclear reactors. The form must be submitted within 30 working days of receipt of the preprinted form or by February 13 of the year following the calendar year being reported, whichever occurs later.

II. Current Action

Judging from the initial data collection using the RW–859, the information that the EIA and the OCRWM desired was not always clear to the respondents. To clarify the required information, we are proposing several resivions to the Form RW–859. First, questions concerning the types of assemblies storable in pools, when the reactor will run out of storage space, the utility's plans for applying for the Federal Interim Storage Program, and information on roadway and rail access to the reactor have been added. Questions on pool configurations, specific cycle information relating to data as of midnight, April 6, 1983, and to the number of Effective Full Power Days per cycle have been deleted. The method required for presenting aggregate data on irradiated fuel in handwritten form has been changed; utilities now must provide these data on assembly level of detail in machine readable form. The method of submitting data on unirradiated fuel has also been changed from machine readable form to handwritten form.

For the data collection using the revised Form RW–859 with the proposed changes, it is estimated that the average time required to complete the form will be 53.3 hours. This amounts to a 66.7 percent reduction in reporting burden from last year's figure of 160 hours per response when respondents were required to submit and verify a considerable amount of historical data. For future collections, respondents will be required to verify the accuracy of previously submitted historical data which will be preprinted on the form.

III. Comment Procedures

To solicit comments on this proposed revision, copies are being sent to the affected nuclear power plant operators concurrent with publication of this notice. Other interested persons or organizations are also invited to participate by submitting information, views, or proposed changes. Comments should be submitted no later than October 9, 1985, to the address indicated above in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice and should be identified on the outside envelope and on the document with the designation: "Proposed Revision To The Data Collection Form: RW–859."

The following general guidelines are provided to assist in the preparation of responses:

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will your utility require to complete and submit a form for each reactor?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for OMB approval of the data collection and will become a matter of public record.

Issued in Washington, DC, September 4, 1985.

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 85–21436 Filed 9–6–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA85–16–20–000,001]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 30, 1985.

Take notice that Algonquin Gas Transmission Company (Algonquin Gas) on August 15, 1985 tendered for filing Sixth Revised Sheet No. 203 and Seventeenth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1. According to § 381.103(b)(2), (iii) of the Commission's regulations (18 CFR 381.103(b)(2)((iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 28, 1985.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–2 and Rate Schedule S-IS decreases in Consolidated Gas Transmission Corporation's (Consolidated) underlying Rate Schedule RQ and Rate Schedule E, as set forth in their semi-annual PGA filing.

Algonquin Gas requests that the Commission accept Sixth Revised Sheet No. 203 and Seventeenth Revised Sheet No. 213, to be effective September 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protestants should be filed on or before September 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. And person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21397 Filed 9–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA 85–3–40–000,001]

Raton Natural Gas Co.; Change in Rates

August 30, 1985.

Take notice that Raton Natural Gas Company (Raton), on August 28, 1985, tendered for filing, proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of Thirty-fifth Revised Sheet No. 3a. The change in rates is for jurisdictional gas service. The proposed effective date is September 28, 1985.

Raton states that the instant of change in rates is occasioned solely for changes in cost of gas purchased from Colorado Interstate Gas Company (CIG). The tracking of CIG gas cost change results in increase of $3.95 per MCF Demand

Charge and decrease of 41.34 per MCF in Commodity Charge. On an annual basis the changes result in a revenue decrease of $60,215.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21402 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-002]

Sea Robin Pipeline Co; Filing of Revised Tariff Sheets

August 30, 1985.

Take notice that on August 23, 1985 Sea Robin Pipeline Compay (Sea Robin) tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Forty-First Revised Sheet No. 4
Twenty-First Revised Sheet No. 4-a

Original Volume No. 2

Twenty-Fourth Revised Sheet No. 127-D
Twenty-Fourth Revised Sheet No. 135-C

According to section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 28, 1985.

Sea Robin states that these tariff sheets have been filed in compliance with the Commission's Order issued July 24, 1985, in the above-style docket. Paragraph (D) of the July 24, 1985 order required Sea Robin to file revised tariff sheets to reflect the Commission's decision in Opinion No. 227-A within thirty days of the issuance of said order to be effective July 1, 1985.

Sea Robin states that it mailed copies of the proposed tariff sheets and supporting data to its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21403 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-42-000]

Southeastern Gas Co.; Petition for Declaratory Order

Issued August 30, 1985.

Take notice that on August 7, 1985, Southeastern Gas Company (Southeastern) filed a petition for a declaratory order pursuant to section 207(a)(2) of the Commission's Rules of Practice and Procedure, requesting the Commission to declare that it is proper to collect a uniform price for gas sold to each of its Kentucky customers based on the weighted average of the applicable NGPA ceiling price for all gas produced by Southeast and sold to Kentucky customers.

The gas involved is gathered from approximately 92 wells located in eastern Kentucky. The production from wells that serve Kentucky customers is subject to sections 104, 107 and 108 of the NGPA. A small amount of this gas is sold to 121 domestic customers located within one-half air mile of Southeastern's gathering system as required by Kentucky law. Kentucky customers are served by those wells located upstream of the delivery points on Southeastern's system. Since the gas does not arrive at a single commingling point prior to being delivered to the various domestic customers, customers in the same locale may purchase gas from wells qualified under different NGPA categories or may receive a gas mix combining several NGPA pricing categories.

Southeastern states that it would be inequitable to charge similarly situated customers different rates for gas based solely on their proximity to upstream wells that are qualified under different NGPA categories. In addition, Southeastern states that calculating the various NGPA rates imposes an administrative burden. Finally, Southeastern states that the Commission has approved a virtually identical NGPA pricing methodology, also involving consumers in eastern Kentucky, in *Ashland Exploration Inc.*, 17 FERC ¶ 61,305 (1981).

Southeastern requests expeditious treatment of its petition and requests that the notice period be reduced to the shortest reasonable time. For good cause shown, the normal notice period is shortened.

Within fifteen days of publication of this notice in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. If you wish to become a party, you must file a petition to intervene pursuant to Rule 214. 18 CFR 385.214 (1984).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21404 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-192-000]

Southern Natural Gas Co.; Compliance Filing

August 30, 1985.

Take notice that on August 27, 1985, Southern Natural Gas Company (Southern) tendered for filing Third Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states that this filing is being made pursuant to Ordering Paragraph (B) of the Federal Energy Regulatory Commission's June 7, 1985 order in Docket No. CP85-464-000 and that the revised sheet sets forth the rates to be effective under its Flexible Discount Rate Schedule during September of 1985. Southern is requesting an effective date of September 1, 1985.

Southern indicates that copies of the filing have been mailed to all its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21405 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-191-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Filing of Tariff Rate Adjustment Provisions

(August 30, 1985)

Take notice that on August 27, 1985 Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective September 27, 1985:

Original Volume No. 1

Original Sheet No. 203
First Revised Sheet Nos. 53, 212, 329
Second Revised Sheet Nos. 198, 202
Third Revised Sheet No. 199
Fourth Revised Sheet No. 200
Sixth Revised Sheet No. 201

Tennessee states that the purpose of this filing is to revise the Purchased Gas Adjustment (PGA) provision of its tariff to recover its purchased gas costs on an "as-billed" basis.

Tennessee states that under the as-billed method, Tennessee will recover the demand component of its purchased gas costs, comprised of demand charges form Tennessee's suppliers, through the demand charge in Tennessee's rate schedules with three-part rates (demand, commodity and gas) and through the commodity charge, reflecting an imputed load factor, in Tennessee's rate schedules with two-part rates (commodity and gas). Tennessee will recover the remainder of its purchased gas costs through its gas rates. Tennessee will maintain separate demand and gas subaccounts to record the demand and gas components of the unrecovered cost of purchased gas in Account 191 and to compute the demand and gas surcharges required to amortize the balance of unrecovered purchased gas costs in Account 191. Tennessee further states that it intends to reflect the as-billed method in its next scheduled PGA rate change to be filed on May 31, 1985.

Tennessee states it is also cancelling its Rate Schedule SO-4 because that Commission has now permitted Tennessee to abandon all sales pursuant to that rate schedule.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regualtory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21406 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-6-29-000, 001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 30, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on *August 23*, 1985 tendered for filing Substitute Revised Thirty-Fifth Revised Sheet No. 12 and Second Substitute Thirty-Sixth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective dates of these tariff sheets are August 1, 1985 and September 1, 1985, respectively. The revised tariff sheets reflect a rate increase, in accordance with section 4.1(c) of Transco's Rate Schedule LSS, which is attributable to increased rates for storage service rendered by Penn-York Energy Corporation (Penn-York).

As a result of Penn-York's filing of July 31, 1985 in Docket No. RP85-69-002 which resulted in an increase in Penn-York's monthly capacity charge for service to Transco under Penn-York's Rate Schedule SS-1, Transco is increasing the monthly capacity charge from 5.16¢ per dt of annual storage capacity to 5.39¢ under Transco's Rate Schedule LSS.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21407 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-130-028]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 30, 1985.

Take notice that Transwestern Pipeline Company (Transwestern) on August 27, 1985 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet: Substitute Second Revised Sheet No. 38.

The above mentioned tariff sheet is being filed pursuant to Article VI of Transwestern's Stipulation and Agreement dated May 9, 1985 in Docket Nos. RP81-130 *et al.* and RP83-25 *et al.* which was approved, subject to certain modifications on July 1, 1985. Substitute Second Revised Sheet No 38 sets forth Transwestern's discounted transportation rate to be charged for service under Rate Schedule TS-1 effective September 1, 1985.

On August 28, 1985, Transwestern filed with the Commission Second Revised Sheet No. 38 which reflected a discounted transportation rate under Rate Schedule TS-1 of $.2200/dth proposed to be effective September 1, 1985. The instant filing is being made in order to amend and replace in its entirety the August 28, 1985 filing and to provide for a discount rate effective September 1, 1985 of $.1682/dth.

The proposed effective date of the above tariff sheet is September 1, 1985.

Copies of the filings were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21408 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9291-000, et al.]

Hydroelectric Applications (Tery Drager et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Small Conduit Exemption.

b. Project No.: 9291-000.

c. Date Filed: June 13, 1985.

d. Applicant: Tery Drager.

e. Name of Project: Drager, Jones, Timmons Power Project.

f. Location: On existing irrigation diversion from Clark Creek approximately 5 miles South of Etna, in Siskiyou County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act (16 U.S.C. 823(a)).

h. Contact Person: Mr. Tery Timmons Drager, P.O. Box 255, Ben Lomond, CA 95005.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would be located on an existing irrigation diversion channel from Clark Creek and consists of a 12-inch-diameter, 5,280-foot-long penstock, a 20-foot-long, 15-foot-wide powerhouse containing appurtenant electrical installations and a generator with a reated capacity of 25 kW. The Applicant estimates that the average annual energy generation would be 208.05 kWh and sold to Pacific Power and Light Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

2 a. Type of Application: 5-MW Exemption.

b. Project No.: 9003-000.

c. Date Filed: March 6, 1985.

d. Applicant: Northern States Power Company.

e. Name of Project: Riverdale Hydro.

f. Location: Apple River, St. Croix County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702.

i. Comment Date: October 15, 1985.

j. Description of Project: The project would consist of: (1) An existing concrete gravity dam, 163 feet long and 32 feet high, flanked by 15-foot-high earth dikes on each side, approximately 180 feet long on the left, and 350 feet long on the right side of the dam; (2) an existing reservoir with a surface area of 86 acres and a gross storage capacity of 569 acre-feet; (3) an existing powerhouse integral with the dam, containing 2 generating units with a nameplate capacity of 250 kW each, which would be rewound and upgraded to a total generating capacity of 620 kW; (4) an existing tailrace, approximately 90 feet long; and (5) appurtenant facilities. The estimated average annual generation of 3,610,000 kWh would be used in the applicants interconnected system.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

l. This notice also consists of the following standard paragraph: A3, A9, B, C and D3a.

3 a. Type of Application: 5-MW Exemption.

b. Project No.: 9002-000.

c. Date Filed: March 6, 1985.

d. Applicant: Northern States Power Company.

e. Name of Project: Apple River Hydro.

f. Location: Apple River, St. Croix County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702.

i. Comment Date: October 15, 1985.

j. Description of Project: The project would consist of: (1) An existing concrete and masonry gravity type diversion dam, approximately 343 feet long and 47 feet high, (2) an existing reservoir with a surface area of 52 acres and a gross storage capacity of 668 acre-feet; (3) an existing, 313-foot-long, 12-foot-diameter penstock; (4) an existing powerhouse containing 4 generating units with a name plate capacity of 750 kW each, which would be rewound and upgraded to a total generating capacity of 3,700 kW; (5) an existing tailrace, approximately 220 feet-long; and (6) appurtenant facilities. The estimated average annual generation of 13,507,700 kWh would be used in the applicant's interconnected system.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

l. This notice also consists of the following standard paragraph: A3, A9, B, C, and D3a.

4 a. Type of Application: Amendment of License.

b. Project No.: 503-002.

c. Date Filed: January 22, 1985.

d. Applicant: Idaho Power Company.

e. Name of Project: Swan Falls.

f. Location: On the Snake River in Ada and Owyhee Counties, Idaho, partially on lands of the United States administered by the U.S. Department of the Interior.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul L. Jaurequi, Idaho Power Company, P.O. Box 70, Boise, ID 83707.

i. Comment Date: October 15, 1985.

j. By order issuing new license for Project 503 on December 22, 1982, Applicant was authorized to construct the following new project works, which would replace corresponding existing works: (1) A gated spillway structure; (2) a powerhouse containing two generating units with a total rated capacity of 25 MW (the existing powerhouse has a rated capacity of 10.2 MW); (4) a 1.2-mile-long, 138-kV transmission line connecting to a line owned and operated by Applicant; (5) a 120-foot-wide, 1,400-foot-long tailrace channel; and (6) a 700-foot-long access road.

In its application for amendment, Applicant proposes to postpone

replacing the existing powerhouse and generating units until such time as the additional capacity is needed.

k. This notice also consists of the following standard paragraphs: B, C and D1.

5 a. Type of Application: Amendment of License.

b. Project No.: 4800–002.

c. Date Filed: April 25, 1985.

d. Applicant: City of Bountiful, Utah.

e. Name of Project: Moon Lake Hydroelectric Project.

f. Location: On Lake Fork River in Duchesne County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Dean S. Stahle, Mayor, City of Bountiful, 790 South 100 East, Bountiful, Utah 84010.

i. Comment Date: October 15, 1985.

j. Description of Project: Project No. 4800 as licensed on June 10, 1983 consisted of (Paragraph (B)(2)): (1) Two steel penstocks, one 48-inches in diameter and 7,500 feet long (No. 1), and the other 24-inches in diameter and 300 feet long (No. 2)—with No. 1 leading to (2) a lower powerhouse containing a turbine-generator unit having a rated capacity of 4,250 kW, and with No. 2 leading to (3) an upper powerhouse containing a turbine-generator unit having a rated capacity of 475 kW; (4) two tailraces; (5) 12.5-kV transmission lines and an interconnection to a 69-kV transmission system; and (6) appurtenant facilities. The total capacity of the two powerplants is 4,725 kW.

The proposed amendment would change: (1) The 48-inch-diameter penstock to 62-inch-diameter, and the 24-inch-diameter penstock to 34-inch-diameter; (2) one 4,250 kW turbine-generator unit to 2 turbine-generator units having a total capacity of 4,550 kW; and (3) a 475 kW turbine-generator unit to a 400 kW one. The total capacity of the two powerplants would change from 4,725 kW to 4,950 kW. The total estimated average annual generation would change from 14.8 million kWh to 19.9 million kWh.

k. Purpose of Exemption: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraph: B, C and D1.

6 a. Type of Application: Amendment of License.

b. Project No.: 2365–005.

c. Date Filed: September 18, 1984.

d. Applicant: Madison Paper Industries.

e. Name of Project: Anson.

f. Location: On the Kennebec River in Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jack E. Chinn, President, Madison Paper Industries, P.O. Box 129, Madison, ME 04950.

i. Comment Date: September 30, 1985.

j. Description of Project: The project as licensed consists of: (1) A concrete gravity type dam approximately 38 feet high and with an overall length of about 630 feet topped with 5-foot flashboards (except for a 50-foot section) and having a crest elevation of 241.67 feet (U.S.C. & G.S.); (2) a 14-foot log sluice; (3) a 50-foot waste gate section near the powerhouse; (4) a powerhouse integral with the dam equipped with five turbines rated 1,500 hp each, connected to five generators with a total installed capacity of 9,000 kW; and (5) appurtenant facilities. Project energy would continue to be sold to the Central Maine Power Company.

The Applicant proposes to amend the license by increasing the gross head at the powerhouse by 3 feet by constructing a 400-foot-long replacement dam 100 feet downstream of the existing dam. No additional capacity is proposed; however, the increased gross head will increase the average annual generation from 46,000 MWh to 55,000 MWh.

k. This notice also consists of the following standard paragraphs: B, C, and D1.

7 a. Type of Application: Amendment of Exemption.

b. Project No.: P–4008–005.

c. Date Filed: March 19, 1985.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Dolgeville Project.

f. Location: On the East Canada Creek, near the Village of Dolgeville in Herkimer and Fulton Counties, New York..

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act) 16 U.S.C. 2705 and 2708.

h. Contact Person: Paul J. Elston, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: September 30, 1985.

j. Description of Project: The project as exempted consists of: (1) An existing limestone gravity dam 19.5 feet high and 190 feet long; (2) 2-foot-high flashboards; (3) an existing reservoir having a surface area of 16 acres, a storage capacity of 207 acre-feet, and a normal water surface elevation of 736 feet m.s.l.; (4) one gate leading to a 12-foot-diameter fiber-glass penstock 710 feet long; (5) a powerhouse containing one 5.0 MW generating unit; (6) a tailrace; (7) a 50-foot-long, 46-kV transmission line; and (8) appurtenant facilities. The Exemptee estimates the average annual generation is 17,500,000 kWh.

The Exemptee proposed to amend the exemption by: (1) replacing the 2-foot-high flashboards with 4-foot-high flashboards; and (2) increasing the reservoir surface area to 31.2 acres, the storage capacity to 244 acre-feet, and the normal water surface elevation to 738 feet msl. The estimated annual generation would be increased to 19,000,000 kWh.

k. Purpose of Project; All project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: B, C, and D3a.

8 a. Type of Application: License (5 MW or Less).

b. Project No.: 6907–001.

c. Date Filed: December 24, 1985.

d. Applicant: Georgia Hydro Associates.

e. Name of Project: High Falls Hydropower Project.

f. Location: On the Topwaliga River in Monroe County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Philip M. Hoover, Synergics, Inc., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: October 18, 1985.

j. Description of Project: The High Falls Dam is owned by the state of Georgia. The proposed project consists of: (1) The existing 606-foot-high and 35-foot-long, stone and mortar dam; (2) the existing reservoir with a surface area of 573 acres and a storage capacity of 8,600 acre-feet at powerpool elevation of 587 feet m.s.l.; (3) an existing 20-foot-wide by 10-foot-deep by 1,600-foot-long power canal; (4) a proposed intake structure, which would be connected to the power canal; (5) a proposed 300-foot-long, 6-foot-diameter bifurcated penstock, which would be connected to the intake structure; (6) a proposed powerhouse containing two generating units rated at 1,000 kW each; (7) a proposed tailrace; (8) a proposed 1,500-foot-long, 12.5–kV transmission line; and (9) appurtenatnt facilities.

The estimated average annual energy output for the project is 6,500,000 kWh.

k. Purpose of Project; Power generated at the project would be sold either to the Georgia Power Company or the Municipal Electric Authority of Georgia.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No: 8964–000.

c. Date Filed: February 19, 1985.

d. Applicant: Cities of Colorado Springs and Aurora, Colorado.

e. Name of Project: Homestake Tunnel.

f. Location: Homestake Tunnel, near Leadville, in Lake, Pitkin, and Eagle Counties, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Lefebvre, Black & Veatch, Engineers-Architects, P.O. Box 8405, Kansas City, Missouri 64114 (913) 967–2164.

i. Comment Date: September 30, 1985.

j. Competing Application: Project No. 8349 Date Filed: June 5, 1984.

k. Description of Project: The proposed project would be located within the San Isabel National Forest and would consist of: (1) An existing 267-foot-high, 2,700-foot-long, earth-filled dam owned jointly by the Applicants; (2) the existing Homestake Reservoir with a surface area of 334 acres and a storage capacity of 44,360 acree-feet at power pool elevation 10,260 feet m.s.l.; (3) a 45-foot-long, 7-foot-diameter steel pipe which would be connected to the existing Homestake Tunnel; (4) a 75-foot-long, 4-foot-diameter steel penstock; (5) a concrete powerhouse containing a single turbine-generator unit with a rated capacity of 3,470 kW and producing an estimated average annual generation of 12.72 GWh; (6) a 25-foot-wide, 10-foot-long concrete tailrace discharging to Turquoise Lake; and (7) a 115-kV, 1,350-foot-long transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feaslibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

1. This notice also consists of the following standard paragraphs: A6, B. C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9164–000.

c. Date Filed: May 2, 1985.

d. Applicant: Okeechobee Associates.

e. Name of Project: Kissimmee (Structure 65D).

f. Location: On the Kissimmee River at Canal 38 in Okeechobee County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Okeechobee Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers drop Structure 65D and would consist of: (1) A proposed 60-inch-diameter penstock, 40 feet long; (2) a new powerhouse, 90 feet by 30 feet, housing one turbine-generator unit with an installed capacity of 2,500 kW; (3) a proposed tailrace, 47 feet long and 30 feet wide; (4) approximately 51 feet of new transmission line at 12.5-kV; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 7.5 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9165–000.

c. Date Filed: May 2, 1985.

d. Applicant: Lorida Associates.

e. Name of Project: Structure 65B Hydro (Canal 38).

f. Location: On Canal 38 off the Kissommee River in Okeechobee County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Lorida Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers drop Structure 65D and would consist of: (1) A proposed 60-inch-diameter penstock, 40 feet long; (2) a new powerhouse, 90 feet by 30 feet, housing one turbine-generator unit with a rated capacity of 1,500 kW; (3) a proposed tailrace, 47 feet long and 30 feet wide; (4) approximately 591 feet of new transmission line at 12.5-kV; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 4.0 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9222–000.

c. Date Filed: May 22, 1985.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Yaleville.

f. Location: On the Raquette River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John H. Terry, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would consists of: (1) An existing 15-foot-high, 170-foot-long concrete gravity dam; (2) a reservoir with a surface area of 80 acres, a storage capacity of 320 acre-feet, and a normal water surface elevation of 303.2 feet m.s.l.; (3) an existing 67-foot-long concrete intake structure; (4) an existing 60-foot-wide, 275-foot-long concrete forebay; (5) an existing concrete and brick powerhouse containing one existing generating unit with a capacity of 275 kW, one existing generating unit with a capacity of 125 kW, and two new generating units with a capacity of 500 kW each for a total installed capacity of 1,400 kW; (6) an existing 50-foot-wide, 200-foot-long concrete and rock-lined tailrace; (7) a new transmission line, 400 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 7,300,000 kWh. The existing dam is owned by the Niagara Mohawk Power Corporation.

k. Purpose of Project: Project power would be sold to the customers of the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to prepare an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $100,000.

13 a. Type of Application: Exemption from Licensing (5MW or less).

b. Project No: 9250–000.

c. Date Filed: May 23, 1985.

d. Applicant: Montana Natural Energy, Inc.

e. Name of Project: West Rosebud Creek Hydroelectric.

f. Location: On West Rosebud Creek, within Custer National Forest, near Columbus, in Stillwater and Carbon Counties, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Jay R. Bingham, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: September 30, 1985.

j. Description of Project: The proposed project would consist of: (1) A concrete intake structure with fish screening located on West Rosebud Creek at an elevation of 6,310; (2) a 13,250-foot-long, 48-inch-diameter steel penstock; (3) a powerhouse containing one generating unit with an installed capacity of 3,100 kW at a design head of 340 feet; and (4) a 500-foot-long, 50-kV buried transmission line connecting to an existing Montana Power Company transmission line. The estimated average annual generation would be 15.7 million KWh.

k. Purpose of Project: The project power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3. A9. B, C and D3a.

14 a. Type of Application: Minor License.

b. Project No.: 9252–000.

c. Date Filed: June 3, 1985.

d. Applicant: Glen Hydro, Inc.

e. Name of Project: Scytheville.

f. Location: On the Mascosma River in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas B. Cronmiller, Sulloway Hollis & Soden, 9 Capitol Street, Concord, NH 03301.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project run-of-river project would consist of: (1) The existing 130-foot-long, and 11.5-foot-high Scytheville Dam with a spillway crest elevation of 488.3 feet mean sea level, owned by the City of Lebanon; (2) an impoundment with a surface area of 3 acres; (3) an existing intake structure at the north abutment; (4) a new 8-foot-diameter and 210-foot-long steel penstock; (5) a new reinforced concrete powerhouse with 3 turbine-generator units with a total installed capacity of 485 kW; (6) a new 165-foot-long tailrace; (7) a new 13.2 kV, 3-phase and 250-foot-long underground tramsmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 1,700,000 kWh. This application was filed within the Applicant's preliminary permit term for this project.

k. Purpose of Project: Project energy would be sold to the Granite State Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9339–000.

c. Date Filed: July 10, 1985.

d. Applicant: Thomas J. Collins.

e. Name of Project: Oregon Hydropower.

f. Location: On the Rock River in Ogle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(r)–825(r).

h. Contact Person: Mr. Thomas J. Collins, Suite 401, 600 West Jackson Boulevard, Chicago, IL 60606.

i. Comment Date: September 30, 1985.

j. Competing Application: Project No. 9173, Date Filed May 6, 1985. Due Date: August 19, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing dam about 867.5 feet long and 12 feet high; (2) an existing reservoir with a water surface area of 900 acres and storage capacity of 3,500 acre-feet at normal pool elevation of 670.50 feet NGVD; (3) a demolished powerhouse that will be reconstructed to house four generating units, each rated at 500 kW, for a total installed capacity of 2,000 kW; (4) a new 12,000-volt transmission line about 600 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 16,000,000 kWh. The dam is jointly owned by the State of Illinois and the City of Oregon, Illinois.

l. Purpose of Project: The applicant anticipates that project energy will be sold to utility companies or to industry.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $95,000.

16 a. Type of Application: Minor License.

b. Project No.: 8997–000.

c. Date Filed: March 4, 1985.

d. Applicant: Great Bear Hydropower, Inc.

e. Name of Project: Riegelsville.

f. Location: On the Musconetcong River in Pohatcong Township, Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Terence P. McDonnell, President, Great Bear Hydropower, Inc., General Delivery, Tranquility, NJ 07879.

i. Comment Date: October 18, 1985.

j. Competing Application: Project No. 8325–000. Date Filed May 29, 1984.

k. Description of Project: The proposed project would consist of: (1) The removal of the existing wood and rock-filled diversion dam to be replaced by a three-foot-high, reinforced concrete gravity dam tied into the existing foundation; (2) the proposed concrete dam will be equipped with 18-inch-high flashboards; (3) an existing 1-acre reservoir which will become enlarged to 3.5 acres with the installation of the 18 inch-high flashboards; (4) the restoration of the 0.9-mile-long power canal; (5) an existing powerhouse with a 250-kW generator which will be rehabilitated; (6) a proposed 160-foot-long, 4.8 kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy output to be 450 MWh.

l. Purpose of Project: The applicant proposes to sell the power to the Jersey Central Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Secton 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will

be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 4, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21409 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-776-000, et al.]

Florida Gas Transmission Co. et al.; Natural Gas Certificate Filings

August 29, 1985.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP85-776-000]

Take notice that on August 13, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP85-776-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for E. I. DuPont de Nemours and Company (DuPont) of certain quantities of natural gas from an existing point of interconnection between the facilities of FGT, Transcontinental Gas Pipe Line Corporation (Transco) and Tennessee Gas Transmission Company, a Division of Tenneco Inc. (Tennessee), in Calcasieu Parish, Louisiana, to an existing point of interconnection between FGT's and Longhorn Pipeline Company's (Longhorn) facilities in Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that DuPont has contracted to purchase certain supplies of gas to be produced from the outer continental shelf area, offshore Louisiana, and has made arrangements with Transco and Tennessee to have certain volumes of said gas delivered to FGT for DuPont's account at an existing point of interconnection between the facilities of Transco, Tennessee and FGT in Calcasieu Parish, Louisiana. FGT states that it would receive said gas for DuPont and transport and deliver certain quantities to DuPont at an existing point of interconnection between the facilities of FGT and Longhorn in Jefferson County, Texas. Pursuant to the terms of a July 16, 1985, transportation agreement, FGT has agreed to transport said gas for DuPont from Calcasieu Parish, Louisiana, to Jefferson County, Texas.

FGT proposes to charge DuPont a facility charge of 12.6 cents for each million Btu of gas transported.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket No. CP85-798-000]

Take notice that on August 19, 1985, Great Lakes Gas Transmission Company (Applicant), 21000 Buhl Building, Detroit, Michigan, 48226, filed in Docket No. CP85-798-000 an application pursuant to 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of all gas received from TransCanada PipeLines Limited (TransCanada) at the Emerson, Manitoba, interconnection at a delivery pressure of 750 psig for an open-ended period as provided for in the amended agreement under the terms and conditions previously approved by the Commission, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that if the Commission issues an order in the instant docket with a termination date, then Great Lakes requests authorization for an additional five year term, ending on October 31, 1990.

It is stated that the Commission orders of July 1, 1975, as amended, in Docket Nos. CP66-110, CP70-100, CP70-19, CP71-222 and CP71-299 authorized initially the receipts of natural gas from TransCanada at a pressure of 750 psig. It is further stated that the Commission order of October 31, 1980 extended the initial authorization for a term of five years, which would terminate on October 31, 1985.

Applicant states that an analysis of the construction costs of constructing Applicant's own compression, shows that it would be economically advantageous to continue to pay TransCanada's compression charge rather than to install Applicant's own compression facilities.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Michigan Gas Storage Company

[Docket No. CP85-777-000]

Take notice that on August 13, 1985, Michigan Gas Storage Company (Gas Storage), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-777-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Clark Materials Systems Technology Company (Clark), under the certificate issued in Docket No. CP84-451-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Storage proposes to transport up to 1.0 billion Btu of natural gas per day on an interruptible basis for Clark for a term ending October 31, 1985. Gas Storage indicates that the gas to be transported would be purchased from Walls Energy and Gas Company, and that it would receive said volumes from Panhandle Eastern Pipe Line Company (Panhandle) for Clark's account at the inlet of Storage Company's Freedom compressor station. Gas Storage states it would transport said volumes through its station and redeliver thermally equivalent quantities of natural gas to Panhandle at the outlet of said compressor station. It is stated that Panhandle has agreed to transport certain volumes of natural gas to Battle Creek Gas Company (Battle Creek) for

Clark's account. It is further stated that Battle Creek would transport said volumes of gas to Clark to be used as fuel for space heating of its Battle Creek plant. Gas Storage commenced this transportation July 1, 1985, utilizing existing facilities, under the automatic authority of Section 157.209.

Gas Storage indicates that it would charge Clark 3.25 cents for each million Btu of natural gas transported which is in accordance with its Rate Schedule T-2.

Gas Storage also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Clark. The flexible authority requested is to apply only to points related to sources of gas supply, and not to delivery points in the market area. Gas Storage will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not increase those quantities.

Comment date: October 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-764-000]

Take notice that on August 7, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-764-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon and for a certificate of public convenience and necessity, respectively, permitting Applicant to reduce the currently authorized level of firm entitlement sold to Iowa Public Service Company (IPS) by 1,300 Mcf of natural gas per day, and authorizing Applicant to sell and deliver 1,300 Mcf of natural gas per day to the City of Rock Rapids, Iowa (Rock Rapids), a new municipal utility, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that natural gas service to the community of Rock Rapids, Iowa, is currently provided by IPS, the local distribution company. It is explained that the current level of firm entitlement assigned to Rock Rapids through IPS under Applicant's FERC Gas Tariff, Third Revised Volume No. 1, as approved on July 29, 1983, in Docket No. CP82-500-001 is as follows:

Community	Firm entitlement (Mcf per day)			
	CD	SS	WPS	Total
Rock Rapids, IA	900	60	45	1,005

Applicant further states that the citizens of Rock Rapids have elected to form a municipal utility, the City of Rock Rapids, Iowa, to provide natural gas service to its community, and to purchase the necessary local distribution facilities from IPS to accommodate such natural gas deliveries.

Applicant seeks authority to sell and deliver 1,300 Mcf of natural gas per day to the community of Rock Rapids and to reduce the currently authorized firm entitlement of IPS by the same volume. Applicant states that it is proposed that the 1,005 Mcf per day of firm entitlement currently sold to IPS for delivery to Rock Rapids be transferred from IPS to the new municipal utility. Applicant states that in order to meet the anticipated natural gas requirements of Rock Rapids, an additional 295 Mcf per day of firm entitlement currently assigned to Sioux City, Iowa, through IPS is required to be transferred to Rock Rapids.

Applicant states that it is estimated that Rock Rapids would use 1,800 Mcf of gas on a peak day and 175,000 Mcf on an annual basis during the first three years of service. Applicant also states that although Rock Rapids has only agreed to purchase 1,300 Mcf of gas per day of firm entitlement from Applicant, Rock Rapids has indicated to Applicant that requirements in excess of its authorized firm entitlement would be met through purchases of authorized overrun service from Applicant and utilization of the peak shaving facility located in Rock Rapids.

Applicant declares that since its authorized level of firm entitlement would be unchanged as a result of this proposal, it would have no impact on Applicant's peak day supply or annual deliveries. Applicant also states that no additional facilities are required to be constructed to accommodate the proposed natural gas deliveries.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation, United Gas Pipe Line Company

[Docket No. CP80-13-004]

Take notice that on August 5, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-13-004 a joint petition to amend the order issued February 20, 1980, in Docket No. CP80-13-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation and exchange of natural gas from additional sources of supply and additional delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued February 20, 1980, Petitioners were authorized to exchange up to 40,000 Mcf of natural gas per day pursuant to a gas exchange agreement dated August 31, 1979. It is stated that United delivers up to 40,000 Mcf of natural gas per day to Texas Eastern at an existing interconnection in West Cameron Block 508, offshore Louisiana. It is further stated that Texas Eastern redelivers thermally equivalent volumes, less fuel and losses and unaccounted for gas, to Trunkline Gas Company for United's account at existing onshore points of interconnection in Allen and/or Beauregard Parishes, Louisiana.

It is stated that United in return for such service utilizes a portion of its capacity in the pipeline system owned by Sea Robin Pipeline Company (Sea Robin) to transport up to 40,000 Mcf of gas per day for Texas Eastern. It is explained that United causes Sea Robin to accept such gas at the producers' platforms in Eugene Island Blocks 333 and 256, offshore Louisiana, and to redeliver equivalent volumes, less fuel and other uses, to Columbia Gas Transmission Corporation (Columbia Gas) for Texas Esatern's account at an existing point of interconnection at Erath, Louisiana.

Pursusant to an amendment to the transportation and exchange agreement dated December 2, 1980, Petitioners propose to establish an additional exchange point to United for gas purchased by Texas Eastern in Block 143, South Marsh Island Area, offshore Louisiana. It is stated that United causes Sea Robin to accept gas from Columbia Gulf Transmission Company (Columbia Gulf) which transports Texas Eastern's Block 143 gas to an interconnection with Sea Robin in South Marsh Island Block 127.

Pursuant to an amendment dated November 4, 1982, Petitioners propose to establish an additional exchange delivery point to United for gas purchased by Texas Eastern from East Cameron Block 336, offshore Louisiana. It is stated that Texas Eastern delivers and United causes Sea Robin to accept such gas at a delivery point on a

producer platform in East Cameron Block 335.

Pursuant to an amendment dated July 26, 1984, Petitioners propose three additional exchange delivery points between them. United proposes to deliver gas from West Cameron Block 253, offshore Louisiana, to a delivery point on Texas Eastern's offshore Cameron system in West Cameron Block 250. Texas Eastern proposes the delivery of natural gas produced in Eugene Island Blocks 181 and 182 to Sea Robin for the account of United at a point of delivery in Eugene Island Block 197, offshore Louisiana. It is further stated that Columbia Gulf would transport and deliver gas purchased by Texas Eastern in Eugene Island Block 312 from Eugene Island Block 313 "B" Platform to an exchange delivery point in Eugene Island Block 313 where United would cause Sea Robin to accept the gas.

It is asserted that deliveries of the new sources of gas at the additional delivery points would not increase the authorized exchange volumes of 40,000 Mcf per day.

Comment date: September 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation

Take notice that on August 7, 1985, Eastern Transmission Corporation (TETCO), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85–762–000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport quantities of fuel oil displacement gas for the B.F Goodrich Company (Goodrich), an eligible end-user, under the certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

TETCO states that the transportation service would be provided pursuant to a service agreement, dated May 30, 1985, wherein TETCO would transport volumes of fuel oil displacement gas for Goodrich. TETCO is advised that Goodrich has entered into a gas purchase agreement with Texas Eastern Gas Trading Company, for the purchase of volumes of natural gas. TETCO states that on June 8, 1985, it commenced a transportation service, for the account of Goodrich, for an initial automatic period of 120 days and subject to Commission authorization has agreed to provide transportation until October 31, 1985.

It is explained that pursuant to the service agreement, TETCO would take receipt of up to 3,600 dt equivalent of natural gas per day, for the account of Goodrich, at an existing interconnection with United Gas Pipe Line Company at TETCO's metering and regulating station No. 217 in Attala County, Mississippi, and at an existing interconnection with Valero Transmission Company at metering and regulating station No. 2448 in La Vaca County, Texas. TETCO states it would then transport and deliver such volumes of natural gas, less applicable shrinkage, to Philadelphia Electric Company (Philadelphia) for the account of Goodrich, at existing points of interconnection between TETCO and Philadelphia designated as TETCO metering and regulating stations Nos. 033 and 125, located in Chester and Montgomery Counties, Pennsylvania, respectively. Philadelphia would then transport and redeliver such volumes of natural gas to Goodrich at its Oaks, Pennsylvania, plant, it is said.

TETCO advises that Philadelphia has sufficient capacity to perform the transportation service without detriment to its other customers. TETCO indicates that no facilities need be constructed to provide the transportation serivce. TETCO has also submitted an affidavit from Goodrich indicating that the quantities of natural gas transported would be utilized for fuel oil displacement. The end-use of natural gas at Goodrich's plant would be 85 percent boiler fuel and 15 percent fabric treating, it is asserted.

TETCO proposes to charge Goodrich its currently effective TS–2 (fuel oil displacement) transportation rate. It is explained that for volumes of natural gas received at TETCO's M&R Station 217, TETCO would reduce the volumes received by 3 percent for fuel and losses and charge Goodrich 33.84 cents per dt equivalent of gas transported and for quantities received at TETCO's M&R Station 2248, TETCO would reduce the volumes received by 4 percent and charge Goodrich 67.00 cents per dt equivalent of gas transported. TETCO states that it would also charge Goodrich a Gas Research Institute Surcharge of 1.21 cent per dt equivalent for all gas transported for Goodrich.

TETCO also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. TETCO will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 15, 1985, in accordance with Stnadard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP85–763–000]

Take notice that on August 7, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85–763–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of A.E. Staley Manufacturing Company (Staley), under the certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 6,000 dt equivalent of natural gas per day for Staley from an existing interconnection with Westchester Gas Company, designated as Applicant's M&R Station 2163 in Harrison County, Texas, for delivery to Philadelphia Electric Company (Philadelphia), for the account of Staley, at existing points of interconnection between Applicant and Philadelphia, designated as Applicant's M&R Station 033 and M&R Station 125 in Chester and Montgomery Counties, Pennsylvania, respectivley. Philadelphia would then transport and redeliver the gas to Staley at its Morrisville, Pennsylvania, plant for fuel oil displacement.

Applicant estimates peak day and average day transportation quantities of 6,000 dt and 4,500 dt, respectively, and total annual quantities 1,642,500 dt.

Applicant indicates that no facilities need be constructed to provide the transportation service.

Applicant proposes to charge Staley its TS–2 (fuel oil displacement) transportation rate of 67.00¢ per dt transported for Staley and retain 4% for fuel and losses. Applicant would also charge Staley a Gas Research Institute surcharge of 1.21¢ per dt transported.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Staley. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area.

Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation Columbia Gulf Transmission Company

[Docket No. CP85-750-000]

Take notice that on August 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (Applicants), filed in Docket No. CP85-750-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that both Transco and Columbia Gas Transmission Corporation (Columbia Gas), an affiliate of Columbia Gulf, purchase gas from South Lake Arthur wells (McDonell Estate well No. 1 and the State Lease 7712 well Nos. 1, 3, and 4 located in the South Lake Arthur field, Vermilion Parish, Louisiana). It is explained that some of the South Lake Arthur wells are connected to Transco's Lake Arthur lateral and that the remaining South Lake Arthur wells are connected to Transco's Lake Arthur lateral and that the remaining South Lake Arthur wells are connected to the Columbia Gulf system. It is stated that pursuant to the terms of a gas exchange agreement between them dated December 31, 1981 (the exchange agreement), as amended October 3, 1983, and July 14, 1984, Transco has agreed to receive for the account of Columbia Gulf at the point where gas enters Transco's system in the South Lake Arthur field, and Columbia Gulf has agreed to receive for the account of Transco at the point where gas enters Columbia Gulf's system in the South Lake Arthur field, quantities of gas up to a maximum of 25,000 Mcf per day.

Applicants state that they intend the quantities of gas received at South Lake Arthur field receipt points to be approximately equal. It is explained that the exchange agreement, as amended, provides that any imbalances in the quantities of natural gas received at the receipt points would be delivered by the owing party's delivering, or causing to be delivered, quantities of gas at the existing interconnections between Transco and Columbia Gulf located (1) in Terrebonne Parish, Louisiana, (2) at the outlet of Conoco Inc.'s Acadia plant in Acadia Parish, Louisiana, and (3) at any other mutually agreeable points. Applicants state that neither Transco nor Columbia Gulf shall charge a rate for providing the exchange service or for delivering any imbalance quantities as provided by the exchange agreement, as amended.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21410 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-652-000, et al.]

William T. White, III, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. William T. White III August 29, 1985.

[Docket No. QF85-652-000]

On August 14, 1985, William T. White III (Applicant), of P.O. Box 1537, Kamuela, Hawaii 96743 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 17 kilowatt wind facility is located in Kamuela, Hawaii.

2. Starrett City, Inc.

[Docket No. QF85-654-000]

August 29, 1985.

On August 16, 1985, Starrett City, Inc., (Applicant), of 1310 Pennsylvania Ave., Brooklyn, New York 11239 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Starrett City Power Plant, 165 Elmira Loop, Brooklyn, New York 11239. The facility will

contain four (4) steam boilers, two (2) steam turbine generators, three (3) dual fuel engine generators equipped with exhaust heat recovery boilers (HRB). The exhaust steam from the turbine and the HRB is used in the City's steam distribution system for space and water heating and also in the absorption chillers for air conditioning. The primary energy source is natural gas with the distillate oil as alternate fuel. The power production capacity of the facility is 16,000 kW. The facility has been in operation since 1974.

3. Pacific Lighting Energy Systems

[Docket No. QF85-645-000]

August 27, 1985.

On August 12, 1985, Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in the district of Ewa, on the island of Oahu, in the state of Hawaii. The facility will consist of combustion turbine/generator units or internal combustion engine/generator units fueled by landfill gas, generated from the anaerobic digestion of refuse and other solid waste deposited in a sanitary landfill. The electric power production capacity of the facility will be approximately 1,700 kW. The primary source of energy will be biomass in the form of biomethane. The use of either gas, oil or coal is not anticipated.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21411 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-21-000]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

August 30, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated), on August 26, 1985, tendered for filing the following proposed changes in its FERC Gas Tariff Original Volume No. 2 and 3, to be effective September 27, 1985:

Volume No. 2: First Revised Sheet No. 4 Superseding Original Sheet No. 4; Original Sheet Nos. 5, 631, and 631A.

Volume No. 3: First Revised Sheet No. 1 Superseding Original Sheet No. 1.

First Revised Sheet No. 4 and Original Sheet No. 5 to Volume No. 2 contain a part of the Table of Contents to Volume No. 2 and are being filed to reflect the addition of Rate Schedules X-49 through X-57 to Volume No. 2.

Original Sheet No. 631 is the title page to Rate Schedule X-50 and was inadvertently omitted when the rate schedule was filed. Original Sheet No. 631A is being filed as a result of repaginating the pages of Rate Schedule X-50 to allow for Original Sheet No. 631.

First Revised Sheet No. 1 to Volume No. 3 contains the Table of Contents to Volume 3 and is being filed to reflect cancellation of Rate Schedules F-3, F-4, F-5.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21399 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-190-000]

Proposed changes in FERC Gas Tariff; Panhandle Eastern Pipe Line Co.

August 30, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 23, 1985 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Ninth Revised Sheet Nos. 694, 965, 875, and 876
Tenth Revised Sheet Nos. 694, 695, 875, and 876
Third Revised Sheet Nos. 2049 and 2242
Fourth Revised Sheet Nos. 2049 and 2242
First Revised Sheet Nos. 2672 and 2731
Second Revised Sheet No. 2672.

Panhandle proposes that Ninth Revised Sheet Nos. 694, 695, 875 and 876; Third Revised Sheet Nos. 2049 and 2242; and First Revised Sheet No. 2672 become effective December 1, 1983. Panhandle proposes that Tenth Revised Sheet Nos. 694, 695, 875, and 876; Fourth Revised Sheet Nos. 2049 and 2242; Second Revised Sheet No. 2872; and First Revised Sheet No. 2731 become effective March 1, 1985.

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Truckline Gas Company's current transportation rates as approved in Docket No. RP83-93 by Commission's Orders dated December 2, 1983 and April 10, 1985 to be effective December 1, 1983 and March 1, 1985, respectively.

A copy of this filing has been served on transport customers.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21401 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2893-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

Title: Laboratory Performance Evaluation of Water and Waste Laboratories (ICR #0234). (This is an extension of an established collection.)

Abstract: National Pollution Discharge Elimination System (NPDES) laboratories and state laboratories are tested to determine if the quality of their analyses is high enough for monitoring water. The results of these tests demonstrate whether the labs are capable of producing valid data.

Respondents: NPDES and state laboratories.

Office of Pesticides and Toxic Substances

Title: National Human Blood Network—Pilot Survey (ICR #1201). (This is a request for a new collection.)

Abstract: Volunteer blood donors will be asked to provide demographic and occupational information, together with data on residence characteristics, lifestyle, and diet. Taken together with a chemical analysis of the blood specimens, this information would be used to identify those segments of the population at risk from exposure to toxic substances, as well as potential exposure routes and sources. Such results would be used to support regulation action where appropriate.

Respondents: Voluntary blood donors who already have come to the blood center to donate blood.

Agency PRA Clearance Requests Completed by OMB

EPA #1084, New Source Performance Standards for Non-Metallic Mineral Processing Plants (SAR No. 1880), was approved 7/30/85 (OMB #2060-0050; expires 7/31/88).

EPA #1200, Surveys of Household Exposure to Common Chemical Products was approved 5/19/85 (OMB #2070-0068; expires 9/30/87).

EPA #1251, Information Requirements for Advanced Treatment Performance Standards, was approved 8/20/85 (OMB #2040-0099; expires 8/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460.

Rick Otis (ICR 0234) or Carlos Tellez (ICR 1201), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: August 30, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Division.

[FR Doc. 85-21489 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59204; FRL-2894-6]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 24, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59204]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-64

Close of Review Period. October 10, 1985.

Manufacture. Confidential.

Chemical. (G) Substituted phenoxy alkyl acid ester.

Use Production. (G) Confidential. Destructive use intermediate. Prod. range: 2,700 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 6 workers, up to 1.0 hr/da.

Environmental Release/Disposal. 0.5 kg/batch released. Disposal by incineration and Resource Conservation and Recovery Act (RCRA) approved site.

T 85-65

Close of Review Period. October 11, 1985.

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified lignosulfonic acid sodium salt.

Use Production. (G) A fluid loss additive. Prod. range. Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture and use: Dermal, a total of 25 workers.

Environmental Release/Disposal. No release.

T 85-66

Close of Review Period. October 11, 1985.

Manufacturer. Confidential.

Chemical. (G) Ethylene vinyl fatty ester co-polymer.

Use Production. (G) Consumptive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-21438 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140067; FRL 2894-4]

Access to Confidential Business Information by Two Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractors, Delliotte, Haskins, and Sells (DHS), of Washington, D.C., and Dynatrend, Inc. (Dynatrend), of Arlington, VA, with access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under these contracts will take place no sooner than September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has selected two contractors to perform work to support its activities relating to securing information claimed as confidential under TSCA. In accordance with 40 CFR 2.306(j), EPA has determined that its contractors, DHS and Dynatrend, may require access to confidential business information submitted to EPA under TSCA to perform work on the two contracts described in the following paragraphs. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide access to TSCA CBI to these contractors on a need-to-know basis.

Contract No. 68-02-4231 provides that DHS, 1101 15th Street, NW., Washington, D.C. will assess the effectiveness of safeguards used by EPA to protect CBI stored on the TSCA CBI computer, which is located at the National Computer Center in Raleigh, North Carolina, and of the mechanisms used by EPA to communicate between the computer and EPA Headquarters. DHS will also evaluate security aspects of software development by EPA's Office of Toxic Substances for the TSCA CBI computer. Under this contract DHS employees will be authorized for TSCA CBI computer access and will be given access to all information on the TSCA CBI computer, which includes information collected under all reporting provisions of TSCA. Such TSCA CBI access by DHS employees will be incidental to their evaluation of the security systems and will be non-substantive. All access to TSCA CBI under this contract will take place at either EPA Headquarters or the National Computer Center. Clearance for access to TSCA CBI under this contract is scheduled to expire on June 30, 1986.

Under Contract No. 68-01-6927, Dynatrend, of 1911 N. Ft. Meyer Drive, Arlington, VA, will install, operate, and maintain the electronic card entry systems that guard TSCA CBI secured storage areas. In order to perform these duties, Dynatrend employees will require authorization for access to secured storage areas containing TSCA CBI collected under all reporting provisions of TSCA. Any actual access to TSCA CBI by Dynatrend employees will be incidental and non-substantive. All access to TSCA CBI under this contract will take place at EPA Headquarters. Clearance for access to TSCA CBI under this contract is scheduled to expire on Septmeber 15, 1986.

DHS and Dynatrend have been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Contractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 30, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-21488 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-2893-4]

Region 6; Approval of PSD Permits, Extension of PSD Permits, and Rescission of a PSD Permit

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-76M-3—Sohio Chemical Company: Green Lake Chemical Plant located approximately 18 miles southeast of Victoria, Victoria County, Texas. PSD-TX-76M-3 modifies PSD-TX-76M-2 to make the permitted emission rates and PSD permit conditions consistent with the corresponding Texas Air Control Board permit (C-6289). This modified permit was issued on April 17, 1985.

2. PSD-LA-326S-1—BF Goodrich Company: Convent Chemical Corporation located on State Highway 14, approximately 3 miles northwest of Convent, St. James Parish, Louisiana. PSD-LA-326S-1 modifies PSD-LA-326 to replace the coal boiler and bunkerhouse with a natural gas fired cogeneration system. This modified permit was issued on April 18, 1985.

3. PSD-TX-649—Amoco Oil Company: This permit issued on April 24, 1985, authorizes the construction of a steam generation facility at the existing refinery located at 2401 Fifth Avenue, Texas City, Galveston County, Texas.

4. PSD-TX-653—Champlin Petroleum Company: This permit, issued on April 26, 1985, authorizes the increase of the capacity of the No. 2 fluidized catalytic cracking unit at the existing refinery located at 1801 Nueces Bay Boulevard, Corpus Christi, Nueces County, Texas.

5. PSD-LA-531—Crown Zellerbach Corporation: This permit, issued on May 29, 1985, authorizes the construction of a gas turbine cogeneration system at the existing pulp and paper mill located approximately five miles southwest of St. Francisville, West Feliciana Parish, Louisiana.

6. PSD-LA-520—PPG Industries, Inc.: This permit, issued on June 10, 1985, authorizes the construction of a cogeneration facility at the existing chemical plant located on Columbus Southern Road adjacent to Interstate Highways 10 and 210 in Lake Charles, Calcasieu Parish, Louisiana.

7. PSD-TX-486M-1—Lower Colorado River Authority: PSD-TX-486M-1 modifies PSD-TX-486 to authorize design refinement for the lignite, limestone and ash handling systems, and the increase of the material handling requirements for the Fayette

Power Project No. 4 located approximately seven miles east of LaGrange, Fayette County, Texas. This modified permit was issued on June 11, 1985.

8. PSD–TX–047M–1—Texas Utilities Generating Company: Oak Knoll Steam Electric Generating Station located near Kosse, Limestone County, Texas. PSD–TX–047M–1 modifies PSD–TX–047 to reflect changes in the Standards of Performance for New Stationary Sources for Fossil-Fuel-Fired Generators since the original issuance of the permit. This modified permit was issued on June 13, 1985.

9. PSD–TX–630M–1—Amoco Production Company: Slaughter Gas Plant located on Highway 301, approximately 4 miles west of Sundance, Hockley County, Texas. PSD–TX–630M–1 modifies PSD–TX–630 to: (1) Increase the allowable NO_x and CO emissions for the turbine because preliminary performance testing demonstrated that the manufacturer's emission estimates were too low; and (2) to allow continuous pilot burning in the two 48 MMBtu/hr heaters so that a smooth and quick start of full rate firing can be accomplished when the turbine goes down. This modified permit was issued on June 20, 1985.

10. PSD–TX–626—Delhi Gas Pipeline Corporation: This permit, issued on June 21, 1985, authorizes the temporary shut-down of the Claus sulfur recovery unit at the existing amine sweetening plant located approximately four miles southeast of Teague, Freestone County, Texas.

11. PSD–TX–648—Air Products Manufacturing Corporation: This permit, issued on June 24, 1985, authorizes the construction of a natural gas fired cogeneration unit at the existing chemical plant located at 412 Davison Road in Pasadena, Harris County, Texas.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD–TX–464M–1—Warren Petroleum Company: This modified permit was issued on June 20, 1984, authorizing the increase of the allowable emissions of NO_x from 11.02 lb/hr at 1000 hp to 16.3 lb/hr for each engine based on stack sampling. The original permit, PSD–TX–464, issued on August 5, 1982, authorized the addition of six residue gas compressors to the existing Sandhills gas processing plant located approximately 2.7 miles northwest of Crane, Crane County, Texas.

The company requested a extension because they have delayed construction of the sixth compressor engine due to contract negotiations with gas producers. The extension was granted on May 2, 1985, to a new expiration date of June 30, 1986.

2. PSD–TX–047—Texas Utilities Company: This permit was issued on February 9, 1978, for the construction of two 750 megawatt lignite-fired electric generating units located approximately 10 miles east of Kosse, Limestone County, Texas. The company suspended construction on March 23, 1983, because of financial limitations and less than anticipated system electric load growth. The extension was granted on June 13, 1985, to a new expiration date of March 24, 1986.

3. PSD–TX–480—Central Power and Light Company: This permit as issued on September 2, 1983, for the construction of two 70 megawatt natural gas/distillate fuel fired gas turbines for peaking purposes at the existing J. L. Bates Power Station located approximately three miles east of Penitas, Hidalgo County, Texas. Construction has not commenced due to changes in load growth projection and financial considerations which have resulted in schedule modifications. The extension was granted on May 6, 1985, to a new expiration date of September 2, 1986.

4. PSD–TX–481—Central Power and Light Company: This permit was issued on October 12, 1983, for the construction of two 70 megawatt natural gas/distillate fuel fired gas turbines for peaking purposes at the existing Laredo Power Station located approximately 3.3. miles north of Laredo, Webb County, Texas. Construction has not commenced due to changes in the load growth projections and financial considerations. The extension was granted on May 6, 1985, to a new expiration date of October 12, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

Notice is hereby given that the Environmental Protection Agency (EPA) Region 6, rescinded the following Prevention of Significant Deterioration (PSD) permit:

1. PSD–TX–450—Pogo Producing Company: The permit was issued on January 18, 1982, for the construction of a gas sweetening plant to be located approximately 14.5 miles southeast of Canadian, Hemphill County, Texas. This source no longer constitutes a major stationary source since, under the new definition of "potential to emit", contained in 40 CFR 52.21 of the amended PSD regulations published in the Federal Register on August 7, 1980, the controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit was no longer required for this facility and rescinded the permit on June 20, 1985.

A notice of EPA's proposed action to extend/rescind the PSD permits was published in a newspaper in the affected area of the facility.

For Further Information Contact: Donna Ascenzi at (214) 767–1594.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirments which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of executive Order 12291.

Dated: August 26, 1985.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 85–21490 File 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00214; FRL-2894-1]

FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a meeting of a subpanel of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) which was convened by the Agency to provide a comparative study of the merits and/or deficiencies of the AOAC Tuberculocidal Activity Test and a new quantiative test method which has been recommended to the Agency as an alternative means of establishing the tuberculocidal efficacy of disinfectant products. The subpanel meeting will be chaired by SAP member, Dr. Wendell Kilgore.

DATE: The meeting will be held Monday, September 30, 1985, from 9 a.m. until mid-afternoon.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1117, Crystal Mall, Building #2, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: The AOAC Tuberculocidal Activity Test is used to support claims of efficacy against tuberculosis organisms on inanimate surfaces for disinfectant products proposed for registration under the FIFRA. The AOAC test has been in use for approximately 20 years. In recent years it has been observed that the results of the AOAC test can vary inexplicably and that therefore disinfectant label claims which result from its use may not be sufficiently stringent to protect public health.

In August 1983, Surgikos, Inc., a registrant of disinfectant products submitted to the EPA a new quantitative test method for establishing tuberculocidal efficacy claims for glutaraldehyde-based disinfectant products. Thus far, the new method has been used only to assess the efficacy of glutaraldehyde-based products. The Agency is considering whether this new test method may become an optional alternative or possible replacement to the AOAC Tuberculocidal Activity Test for all disinfectant products intended to control tuberculosis organisms.

The Agency is permitting use of this new method by registrants of glutaraldehyde-based products to support tuberculocidal efficacy claims if: (1) The AOAC Tuberculocidal Activity Test has already been relied upon successfully; and (2) use of the new method results in use directions which are more stringent, such as longer contact time and higher temperature. Before the Agency can accept the new method as a scientifically valid method for generating data that could be used alone to support a tuberculocidal efficacy claim, it must undergo independent peer review. A subpanel of the FIFRA SAP reviewed the new method in the fall of 1984 and observed that it may have scientific merit, but raised several questions which the Agency believes require additional examination. Therefore, the Agency announced in the **Federal Register** of June 19, 1985 (50 FR 25487) that it was initiating a more comprehensive, comparative peer review of tuberculocidal efficacy test methods under the auspices of a subpanel of the SAP. That notice solicited recommendations for the composition of the subpanel.

The Agency received responses to this notice from the American Society for Microbiology, the Chemical Specialties Manufacturers Association, the American Dental Association, Surgikos, Inc., the Sporocidin Company, and Wave Energy Systems, Inc. The comments recommended a total of 13 microbiologists with expertise in conducting tuberculocidal efficacy studies and/or hospital disinfection and sterilization procedures. Based on these recommendations, the Agency has selected the following individuals to serve on the subpanel:

1. Dr. Frederick J. Marsik, Associate Professor of Microbiology and Internal Medicine, Oral Roberts University School of Medicine, Tulsa, Oklahoma.
2. Mr. Gayle Mulberry, General Manager and Technical Director, Microbiological Services Division, Hill Top Research, Inc., Cincinnati, Ohio.
3. Dr. Herbert Prince, Director, Gibraltar Biological Laboratories, Fairfield, New Jersey.
4. Dr. Martin S. Favero, Chief, Nosocomial Infections Laboratory Branch, Hospital Infection Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia.
5. Ms. Anne Reeves, Hazelton Laboratories, Vienna, Virginia.
6. Mr. Donald K. Stamm, Immunosystems, Inc., Rialto, California.

The Agency has provided the subpanel with copies of both the AOAC Tuberculocidal Activity Test and the proposed new method, and representative data developed using both test methods. The subpanel members have been asked to address the following specific questions:

1. This question is intended to elicit specific information based on your practical experience in conducting the AOAC Tuberculocidal Activity Test with the following classes of antimicrobial chemicals: glutaraldehyde, substituted phenols, iodophors, chlorine and chlorine-releasing chemicals, or other chemicals.

(a) With which specific antimicrobial chemical classes have you conducted the AOAC Tuberculocidal Test?

(b) In conducting the AOAC test, did you routinely, or ever, perform the presumptive Part I of the test to determine the use dilution to be confirmed by Part II of the AOAC test? If not, how did you determine the use dilution?

(c) Did you obtain relatively consistent results if you repeated the AOAC test on the same chemical samples? Did you note any marked differences in consistency of results with individual classes of antimicrobial chemicals?

(d) Did you encounter problems with phenol resistance or the controls used, or observe any differences in the proper function of the recovery media among various classes of chemicals?

2. Do you have experience in using the proposed new protocol to conduct tuberculocidal efficacy testing with any of the antimicrobial chemical classes listed in question 1? If so, with which classes of chemicals have you conducted the test and did you observe any problems during the conduct of the test?

3. The proposed test determines the specific contact time (potentially longer than the 10 minutes specified in the AOAC test) for tuberculocidal activity of each individual disinfectant solution at any desired temperature (potentially higher than the 20°C specified in the AOAC test). Thus, differing contact times and temperatures may appear on labels of products bearing tuberculocidal claims supported by data derived by the proposed test. The AOAC test determines the tuberculocial activity of all disinfectant solutions at one given temperature (20°C) and contact time (10 minutes), which corresponds to the use conditions

recommended for disinfection (bactericidal, fungicidal and virucidal efficacy).

(a) Are there specific merits or drawbacks of conducting the test at constant, but arbitrary, contact times and temperatures? Similarly, what are the merits or drawbacks of varying the contact times and temperatures to provide use conditions where a given product will be tuberculocidal?

(b) Should the use of the AOAC Tuberculocidal Test be modified to permit testing at any time and temperature? Should it be modified specifically for glutaraldehyde-based products on the basis of the results of studies employing the proposed test protocol?

4. If used by manufacturers, could either method have a positive impact on the quality control aspects of manufacturing these disinfectant products by virtue of their potential ability to monitor and evaluate product performance variables?

5. Based on your experience with the AOAC Tuberculocidal Activity Test and the proposed new test method, is either test as currently constituted an adeugate means of evaluating tuberculocidal efficacy of all chemical disinfectants intended to control *Mycobacterium tuberculosis?*

6. Based on your comparative study of the two test protocols, could the proposed test be used as a scientifically acceptable replacement for the AOAC test, and if so, under what circumstances? Alternatively, could the proposed new test be used as a presumptive test followed by confirmation with the AOAC test, or vice versa? Based on your experience, can you recommend another possible approach?

Copies of documents relating to this peer review process may be obtained by contacting:

By mail:
Carole V. Gray, Policy and Special Projects Office (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number:
Rm. 1109B, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7102).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or telephone number given above. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements should focus on the specific questions under consideration by the subpanel. They will be made part of the record and will be taken into consideration by the subpanel in formulating comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than September 18, 1985, in order to ensure appropriate consideration by the subpanel.

Dated: August 29, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-21486 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51587; FRL-2894-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1386, 85-1387, 85-1388, 85-1389, 85-1390 and 85-1391—November 20, 1985.
P 85-1392—November 23, 1985.
P 85-1393—November 24, 1985.
P 85-1394, 85-1395, 85-1396, 85-1397, 85-1398, 85-1399, 85-1400, 85-1401, 85-1402, 85-1403, 85-1404 and 85-1405—November 25, 1985.
P 85-1406—November 26, 1985.

Written comments by:

P 85-1386, 85-1387, 85-1388, 85-1389, 85-1390 and 85-1391—October 21, 1985.
P 85-1392—October 24, 1985.
P 85-1393—October 25, 1985.
P 85-1394, 85-1395, 85-1396, 85-1397, 85-1398, 85-1399, 85-1400, 85-1401, 85-1402, 85-1403, 85-1404 and 85-1405—October 26, 1985.
P 85-1406—October 27, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51587]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1386

Manufacturer. Borg-Warner Chemicals, Inc.

Chemical. (S) Polymer of styrene, acrylonitrile and maleic anhydride.

Use/Production. (S) Site-limited and industrial component in polymer alloys commonly used in general thermoplastic applications and by itself or with inert fillers such as automotive and electronic parts and glass fillers requiring impact stength, modulus, heat resistance and clarity. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 20 workers, up to 8 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. Less than 1 kg/da devolatized. Disposal by landfill and incineration.

P 85-1387

Manufacturer. PMC Specialties Group, Inc.

Chemical. (G) Carboxy substituted aromatic sulfonamide.

Use/Production. (G) Intermediate organic chemical which is processed further by our customer to form a patented product. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 9 workers, up to 2 hrs/da, up to 160 da/yr.

Environmental Release/Disposal. Release to water. Disposal by publicly owned treatment works (POTW).

P 85-1388

Manufacturer. Confidential.

Chemical. (G) Vinyl chloride-vinyl acetate hydroxyl modified copolymer.

Use/Production. (S) Component of industrial coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1389

Manufacturer. Confidential.

Chemical. (G) Fluoro polyaryl ether ketone.

Use/Production. (S) Intermediate for manufacture of polymers. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1390

Importer. Confidential.

Chemical. (G) (Dialkyl-substitutedhydroxyphenyl)benzotriazole.

Use/Import. (G) (a) Contained use; additive for paper. (b) Open, non-dispersive use; additive for coatings. (c) Contained use; additive for polymers. Import range. Confidential.

Toxicity Data. Acute oral—>5.0 g/kg; Acute dermal—>2.0 g/kg; Irritation: Skin—Minimal; Eye—Minimal; Ames test: Negative.

Exposure. Processing: Dermal, up to 1 to 2 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. No release to air, water or land. Disposal by incineration.

P 85–1391

Importer. Confidential.

Chemical. (S) 4-isopropyl thioxanthone.

Use/Import. (S) Photo initiator (ultra violet curing agent). Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–1392

Manufacturer. Confidential.

Chemical. (G) Zinc salt of a carboxy substituted aromatic sulfonamide.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral: Male—<5.0 g/kg, female—>5.0 g/kg; Skin: Non-irritant; Eye: Severe; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1393

Manufacturer. Confidential.

Chemical. (G) Polymer of bisanhydride of Bisphenol-A, and an aromatic diamine.

Use/Production. (S) Transportation for industrial, commercial and consumer use. Prod. range. 20,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 24 workers, up to 4 hrs/da, up to 90 da/yr.

Environmental Release/Disposal. 2 to 6 kg/batch released to land. Disposal by approved Resource Conservation and Recovery Act (RCRA) approved disposal firm.

P 85–1394

Manufacturer. Confidential.

Chemical. (G) Benzenamine, N,N'-(1,4-phenylenedimethylidyne)bis[3-ethynyl].

Use/Production. (S) Industrial monomer for the production of conducting polymers and for the manufacture of fiber reinforced composites. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1395

Manufacturer. Rohm and Haas Company.

Chemical. (G) Functionalized polyacrylic acid derivative.

Use/Production. (S) Industrial, commerical, and consumer dispersant for pigment slurries, trade sales, caulks, industrial coatings, adhesives, and roof mastics. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 8 workers.

Environmental Release/Disposal. Release to water. Disposal by POTW and navigable waterway.

P 85–1396

Importer. Toyo Soda USA, Inc.

Chemical. (S) Copolymer of 2-hydroxyethylmethacrylate and sodium styrenesulfonate.

Use/Import. (S) Consumer binder for stationery and leather inks. Import range. 1,000 to 10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No release to air and water.

P 85–1397

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer latex.

Use/Production. (S) General purpose coating, modifier for inks, coatings and adhesives for industrial, commerical and consumer use. Prod. range. 300,000 to 1,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 2 hrs/da, up to 35 da/yr.

Environmental Release/Disposal. No release.

P 85–1398

Importer. Confidential.

Chemical. (G) Aliphatic polyurethane aqueous dispersion.

Use/Production. (S) General purpose coating and modifier for coatings and inks. Import range. 50,000 to 300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. Confidential.

P 85–1399

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo benenesulfonic acid.

Use/Production. (S) Site-limited dye intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1400

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenylazo disubstituted naphthalenesulfonic acid, salt.

Use/Production. (G) Site-limited isolated intermediate. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85–1401

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkyl amine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1402

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo disubstituted naphthalenesulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1403

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkylamine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1404

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted phenylazo benzenesulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85–1405

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted phenylazo benenesulfonic acid, comp. with substituted alkylamine.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1406

Importer. Confidential.

Chemical. (G) Substituted aryl-substituted aryl heterocycle, carboxylate salt.

Use/Production. (S) Industrial optical brightener for textiles Import range. Confidential.

Toxicity Data. Acute oral—5.9 ml/kg: Irritation: Skin—Non-irritant; Eye—Severe; IC_{50} (Pseudo. fluorescence): <100 mg/L; LC_0 (Branchydanio reio): 6.0 mg/L; LC_{50} (Branchydanio rerio): 5.5 mg/L.

Exposure. Processing and use: Dermal.

Environmental Release/Disposal. No release to air, land or water.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Informotion Management Division.

[FR Doc. 85–21437 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59730; FRL–2894–5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85–141—September 12, 1985.

Y 85–142, 85–143 and 85–144—September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–141

Manufacturer. Confidential.

Chemical. (G) Polymer from coconut fatty acids with alkanedioic acids and an alkanediol.

Use/Production. (G) Polymer for industrially used coatings having an open use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85–142

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings and inks. Prod. range. 50,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No Release.

Y 85–143

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic acid, sulfonated carbomonocyclic ester and alkylene glycol.

Use/Production. (G) Polymer for use as textile fiber. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85–144

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic ester, sulfonated carbomonocyclic ester and alkylene glycol.

Use/Production. (G) Polymer for use as textile fiber. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–21439 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 30, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0185
Title: Section 73.3613, Filing of Contracts
Action: Revision
Respondents: Licensees of television and radio stations
Estimated Annual Burden: 7,075 Responses; 3,538 Recordkeepers; 5,759 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–21415 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Radio Advisory Committee, Meeting

September 26, 1985.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 1:30 p.m., Thursday, September 26, 1985, in Room 330, 1200 19th Street, NW., Washington, DC.

The Committee will:

—Receive aural reports by the Chairmen of the Committee's Technical and Allocations Subgroups concerning proposals for the 1986 AM Expanded Band Conference and act upon the transmittal to the Commission of written reports concerning preparations for that Conference;
—Note the status of negotiations on revisions of international agreements, principally the AM Agreement with Mexico and the FM Agreement with Canada;
—Note recent actions relating to nighttime operation on the Canadian clear channels; and
—Take up other business raised by participants.

The meetings of the Committee are public and are open for participation by all interested persons. The meeting scheduled for September 26, 1985 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please consult the Committee Chairman, Louis C. Stephens, at FCC Headquarters. Tel.: (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–21416 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Broadcast Data Corp.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85–270; Broadcast Data Corp., File No. 10289–CM–P–80; and Kravetz Media Corporation, File No. 11608–CM–P–80; and Telecommunications Systems, Inc., File No. 50015–CM–P–81; For Construction Permits in the Multipoint Distribution Service for a new station at Jonesboro, Arkansas.

Adopted August 23, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Jonesboro, Arkansas. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Broadcast Data Corp., Kravetz Media Corporation, Telecommunications Systems, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–21417 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Broadcast Data Corp.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85–271; BROADCAST DATA CORP., File No. 10298–CM–P–80; and TELECOMMUNICATIONS SYSTEMS, INC., File No. 50020–CM–P–81; For Construction Permits in the Multipoint Distribution Service for a new station at Clarksville, Tennessee.

Adopted August 28, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Clarksville, Tennessee. The applications are therefore mutually

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Broadcast Data Corp., Telecommunications Systems, Inc. and the Chief of Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-21418 Filed 9-6-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

Digital Paging Systems, Inc.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85-272; DIGITAL PAGING SYSTEMS, INC., File No. 50089-CM-P-74; and INTRASTATE RADIO TELEPHONE INC., OF SAN FRANCISCO, File No. 50137-CM-P-74; and PRIVATE NETWORKS, INC., File No. 50179-CM-P-74; and ESTATE OF FRED A. NILES, File No. 50011-CM-P-75; and MULTIPOINT INFORMATION SYSTEMS, INC., File No. 50034-CM-P-75; and LINCOLN CLOSED-CIRCUIT, INC., File No. 50038-CM-P-75; For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at San Francisco, California.

Adopted August 28, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at San Francisco, California. The applications are therefore mutually exclusive and require comparative consideration. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Intrastate Radio Telephone Inc. of San Francisco, Private Networks, Inc., Estate of Fred A. Niles, Multipoint Information Systems, Inc., Lincoln Closed-Circuit, Inc., and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to held an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-21419 Filed 9-6-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including San Francisco, California, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003099B–002
Title: New York Terminal Agreement
Parties:
The Port Authority of New York and New Jersey (Authority)
The City of New York (City)
The State of New York (State)
Synopsis: Agreement No. 224–003099B–002 amends the basic agreement by providing for a project for the Authority to expand the Red Hook Container Terminal in Brooklyn, New York, at an approximate cost of $14,500,000 to develop twenty-six additional acres consisting of Pier 9A and 9B, and upland, with the City providing an additional ten acres needed for further expansion of the terminal. The Authority will be responsible for the construction of the expanded terminal and the operation and maintenance thereof. Revenues from the expanded terminal will be used to pay operating and maintenance costs. The remaining net revenues will be divided equally between the city and the Authority. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–003368–002
Title: Palm Beach Terminal Agreement
Parties:
The Port of Palm Beach (Port)
Eastern Cement Corporation (Eastern)
Synopsis: Agreement No. 221–003368–002 modifies the basic agreement which provides for the lease by the Port to Eastern of premises within the Port of Long Beach for the purpose of bulk cement storage and the loading and discharging of Eastern's chartered vessels. The amendment gives to Eastern a certain additional parcel of vacant real property (3.1 acres) for the construction of a warehouse for handling and storage of general cargo and equipment.

Agreement No.: 224–003930–001
Title: New York Terminal Agreement
Parties:
The Port Authority of New York and New Jersey (Authority)
The City of New York (City)
Parties: L
The State of New York (State)
Synopsis: Agreement No. 224–003930–001 amends the basic agreement which provides for the rentals to be paid at the Red Hook Container Terminal in Brooklyn, New York. The amendment will increase the basic rental to $650,000 per annum, increase the Unit Rate per revenue ton to $2.80 and will extend the term of the agreement to twenty years. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–004027–002
Title: Palm Beach Terminal Agreement
Parties:
Port of Palm Beach District (Port)
Lund and Pullara, Inc. (L&P)
Synopsis: Agreement No. 221–004027–002 amends the basic agreement which provides for the lease by the Port to L&P, a foreign freight forwarder, of office space in the Port's Maritime Office Building at the Port. The modification provides L&P the option to lease 288 square feet of office space in the building. The term of the option is for two years.

Agreement No.: 224–010645–001
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Korea Shipping Corporation (KSC)
Synopsis: Agreement No. 224–010645–001 amends the basic agreement which grants the use of the container terminal located at Berths 87 through 90 in the Port of Los Angeles to KSC. The basic agreement was effective on November 2, 1984, and has a five-year term. The basic agreement requires KSC to submit documentation to the Port of Los Angeles showing all tariff charges accured within 15 days from the date of the departure of the vessel from the Port. The Port of Los Angeles tariff No. 3 requires that documentation in such a situation be submitted within 21 days after vessel leaves the Port. In order to maintain consistency between the tariff and the agreement, Agreement No. 224–010645–001 will amend the basic agreement by revising the time period to submit documentation to the Port so that the agreement provides the same number of days as the Port's tariff.

By Order of the Federal Maritime Commission.

Dated: September 4, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85–21396 Filed 9–6–85; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amoskeag Bank Shares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of The Souhegan National Bank of Milford, Milford, New Hampshire.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Frankewing Bancshares, Inc.*, Frankewing, Tennessee; to become a

bank holding company by acquiring 100 percent of the voting shares of The Bank of Frankewing, Frankewing; Tennessee.

2. *Newton County Bancorporation, Inc.*, Newton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Newton County Bank, Newton, Mississippi.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Indiana National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of The Fidelity Bank of Indiana, Carmel, Indiana.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southside Bancshares Corp.*, St. Louis, Missouri; to acquire 80 percent of the voting shares of Bank of Ste. Genevieve, Ste. Genevieve, Missouri.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Burns Bankshares, Inc.*, Burns, Kansas; to become a bank holding company by acquiring 95 percent of the voting shares of Burns State Bank, Burns, Kansas.

Board of Governors of the Federal Reserve System, September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21391 Filed 9-6-85; 8:45 am]

BILLING CODE 6210-01-M

Policy Statement Regarding National Security Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amended Policy Statement.

SUMMARY: This policy statement, implementing Executive Order 12356, 47 FR 14,874 (1982), and the Information Security Oversight Office Directive, 47 FR 2837 (1982), relates to the classification, downgrading, declassification and safeguarding of national security information. It updates a previous policy statement on this subject.

EFFECTIVE DATE: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Robert E. Frazier, Director, Division of Support Services, (202) 452-3818 or Joy W. O'Connell, Telecommunication Device for the Deaf, (202) 452-3244, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Policy Statement Regarding National Security Information

I. Policy

The national security information policy of the Board of Governors of the Federal Reserve System shall be consistent with Executive Order 12356, 47 FR 14,874 (1982), and the Information Security Oversight Office (ISOO) Directive, 47 FR 2837 (1982), relating to the classification, downgrading, declassification, and safeguarding of national security information.

The policy governs the processing of national security information, which means information that has been determined pursuant to Executive Order 12356 or any predecessor executive order to require protection against unauthorized disclosure and that is so designated.

II. Program

The Assistant Director of Office Services in the Division of Support Services ("Assistant Director") is the senior official responsible for the Board's information security policy and program. Questions, suggestions, and complaints regarding this program shall be directed to the Assistant Director, who is responsible for changes to the program and for assuring that it is consistent with Executive Order 12356.

The Assistant Director serves as the Board's official contact for all requests for declassification of materials in accordance with the provisions of Executive Order 12356.

The Assistant Director and the Secretary of the Board will coordinate requests submitted under the Freedom of Information Act and the Privacy Act for documents classified pursuant to Executive Order 12356, or predecessor executive orders.

III. Procedures

A. *Mandatory Review of the Declassification Requests.* A mandatory review procedure has been established to handle requests by United States citizens or permanent resident aliens, federal agencies and state and local governments to declassify and release national security information pursuant to Executive Order 12356.

In coordination with the Secretary of the Board, all requests for mandatory review shall be handled by the Assistant Director or a designee. The Assistant Director and the Secretary of the Board shall refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the Privacy Act and the mandatory review provisions of Executive Order 12356 if the fact of its existence or non-existence is itself classifiable under Executive Order 12356, or predecessor executive orders.

B. *Handling.* The Assistant Director and other designated senior officials of the Board are authorized to receive certain classified national security information in accordance with their official responsibilities. Classified documents shall be made available only to those persons or their designees whose official duties require knowledge or possession of such materials.

Documents bearing the classifications "TOP SECRET," "SECRET," or "CONFIDENTIAL" shall be delivered to the International Information Center (IIC), Room B-1127, Board of Governors Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551. The staff of the IIC shall deliver such documents expeditiously to an authorized recipient. If an authorized person or designee is not available to receive such documents, the documents shall be turned over to the IIC or to the office of the Assistant Director for storage, unopened, until the authorized person is available.

C. *Storage.* Classified documents relating to national security information must be stored in a combination safe located in the IIC, or in other containers authorized by the Assistant Director and consistent with Executive Order 12356. Combination locks shall be changed as required by ISOO Directive #1, S2001.43. Combinations shall be known only to authorized staff and appropriate Board security officials.

D. *Reproduction.* Classified materials may be reproduced only in accordance with Executive Order 12356, Section 4.1, and ISOO Directive No. 1 S2001.46. Copies are subject to the same controls as original documents. Records showing the number and distribution of copies shall be maintained by the handling office, and logs shall be stored with the original documents. These measures do not prohibit reproduction for the purpose of mandatory review.

E. *Employee Education.* All employees who have been granted a security clearance and who have occasion to handle classifed material shall be advised of detailed handling, reproduction and storage procedures, and shall be required to review Executive Order 12356 and appropriate Information Security Oversight Office directives.

F. *Agency Terminology.* The Board does not have the authority to classify national security information. Material prepared at the Federal Reserve Board shall not bear the classification "TOP SECRET," "SECRET," or "CONFIDENTIAL," except in relation to

information contained within the material that has been classified for national security purposes by an authorized agency.

G. *Derivative Classification.* Information derived from classified documents, will be given the same classification as the original document from which the information was derived, after verifying the current level of the original document classification. The markings will be in accordance with Executive Order No. 12356. Dates or events for declassification or review shall be carried forward from the source material. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source materials shall be applied.

Board of Governors of the Federal Reserve System, September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21392 Filed 9-6-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Interagency Committee on Smoking and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory body scheduled to assemble during the month of October 1985:

Interagency Committee on Smoking and Health, October 1, 1985; 9:30 a.m.–3:00 p.m., Hubert H. Humphrey Building Auditorium, 200 Independence Avenue, SW., Washington, DC 20201.

Open.

Contact: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1–10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1575.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services and the Assistant Secretary for Health on the: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local health agencies, with respect to smoking and health activities.

Agenda: The entire meeting will be open to the public. It will include discussion of the smoking and health issue and the future directions of the Committee.

Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from the contact person listed above.

Dated: September 4, 1985.

John Bagrosky,

Executive Secretary.

[FR Doc. 85-21428 Filed 9-6-85; 8:45 am]

BILLING CODE 4160-17-M

Office of the Assistant Secretary for Health

Intent To Issue an Exclusive Patent License; Research Corp.

Pursuant to 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations and 41 CFR 101–4 of the Federal Procurement Regulations, notice is hereby given of an intent to issue to Research Corporation an exclusive license to manufacture, use, and sell an invention of Drs. Elliott Schiffman and Leonard C. Altman entitled "Formyl-Methionyl Chemotatic Peptide Antibiotic Conjugates Useful in Treating Infections." United States Patent No. 4,427,660 issued January 24, 1984.

Copies of the above United States patent may be obtained upon written request to Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, MD 20205.

The proposed license will run for the life of the patent with permission to sublicense, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department of Health and Human Services will grant the license unless, within 60 days of this Notice, the Chief of the Patent Branch receives in writing any of the following, together with supporting documents:

A. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

B. An application for a nonexclusive license to manufacture, use or sell the invention in the United States is submitted in accordance with 41 CFR 101–4 of the Federal Procurement Regulations, and 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101–4.

Dated: August 27, 1985.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 85-21358 Filed 9-6-85; 8:45 am]

BILLING CODE 4110-12-M

Notice of Intent to Issue an Exclusive Patent License; Thermedics, Inc.

Pursuant to 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations and 41 CFR 101–4 of the Federal Procurement Regulations, notice is hereby given of an intent to issue to Thermedics Inc. an exclusive license to manufacture, use, and sell the inventions listed below:

Patent No.	Title	Inventor(s)
4,016,303	Method of Flocking Blood-Contacting Surfaces on Artificial Implant Devices.	Victor L. Poirier, John T. Keiser
4,023,468	Blood Pump Stroke Volume Limiter.	Victor L. Poirier.
4,047,849	Pneumatic Pulsator Pumping System with Pulsator Fluid Venting Value.	Warren C. Clay.
4,064,266	Artifical Implant with Fiber-Flocked Blood-Contacting Surface.	Victor L. Poirier, John T. Keiser.
4,066,653	Pneumatic Pump Monitor	David B. Gernes.
4,066,665	Artificial Blood Conduit	Victor L. Poirier.
4,104,005	Pneumatic Bladder Pump Having Stiffness Symmetry.	Do.
4,133,616	Stroke Volume Limiter of Collapsible Wall Blood Pump System.	Do.

Copies of the above United States patents may be upon written request to Mr. Leroy B. Randall, Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, MD 20205.

The proposed license will have a duration of 5 years from the date of first commercial sale of the product or 8 years from the date of the license, whichever comes first, with permission to sublicense, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services (HHS) Patent Regulations. HHS will grant the license unless, within 60 days of this Notice, the Chief of the Patent Branch, named hereinabove, receives in writing any of the following, together with supporting documents:

A. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

B. An application for a nonexclusive license to manufacture, use, or sell the inventions in the United States is submitted in accordance with 41 CFR 101–4 of the Federal Procurement Regulations, and 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations, and the applicant states that he has already brought the inventions to practical application or is likely to bring the inventions to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101–4.

Dated: August 27, 1985.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 85–21357 Filed 9–6–85; 8:45 am]

BILLING CODE 4110-12-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings; Correction

This notice is to correct a document that was published in Federal Register Volume 50, Issue 66, Page 34755, Document Number 85–20424 on August 27, 1985 as follows: The open portion of the September 14 meeting of the Mental Health Small Grant Review Committee, NIMH, will be from 1:00–2:00 p.m., instead of 9:30–10:30 a.m. The open portion of the September 12 meeting will remain as originally published (1:30–2:00 p.m.).

Dated: September 3, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–21371 Filed 9–6–85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85N–0397]

Direct-to-Consumer Advertising of Prescription Drugs; Withdrawal of Moratorium

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the voluntary moratorium on direct-to-consumer advertising of prescription drugs first requested in 1983. FDA has concluded that, for the time being, current regulations governing prescription drug advertising provide sufficient safeguards to protect consumers. The agency will continue to regulate prescription drug advertising in accordance with the Federal Food, Drug, and Cosmetic Act and applicable regulations.

The moratorium was intended to allow time for a dialogue among consumers, health professionals, and industry on the issue of direct-to-consumer advertising of prescription drugs. It was also intended to allow time for the conduct and interpretation of research by interested parties on aspects of consumer-oriented drug advertising. These two principal purposes for which FDA sought the voluntary moratorium have now been realized.

DATE: This notice is effective September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lloyd G. Millstein, Center for Drugs and Biologics (HFN–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3730.

SUPPLEMENTARY INFORMATION:

Background

In a speech to the Pharmaceutical Advertising Council, delivered on February 17, 1983, the Commissioner of Food and Drugs appealed for restraint on the part of the pharmaceutical industry in the promotion and advertising of prescription drugs directly to consumers. That appeal resulted in part from events suggesting that several pharmaceutical companies were preparing to undertake consumer-oriented advertising campaigns via electronic and print media. Such advertising had occurred earlier on a limited scale; a pneumonia vaccine had been advertised nationally in a widely distributed popular magazine, and a drug for the treatment of herpes had been promoted in an advertisement that appeared in a Washington, DC, daily newspaper. In addition, several firms notified FDA that consumer advertising campaigns were under active development.

Although consumer-oriented advertising via electronic and print media is permitted, law and regulations governing prescription drug advertising require, with certain exceptions, a brief summary of all necessary information related to side effects and contraindications in any advertisement that promotes a drug for a particular use. This requirement reflects the recognition that virtually all prescription drugs have side effects whose potential occurrence must be weighed in any decision to prescribe or use the drug. The brief summary is intended to ensure a "fair balance" between a drug's potential benefits and risks in all prescription drug advertisements.

Previous Statement of Policy

FDA issued a policy statement on September 2, 1983, to clarify the Commissioner's call for a period of cautious restraint on the part of would-be prescription drug advertisers. The two principal purposes of the moratorium were to allow time for a dialogue among consumers, health professionals, and industry on the issue of direct-to-consumer advertising of prescription drugs, and to allow time for the conduct and interpretation of research by interested parties on aspects of consumer-oriented drug advertising. In addition to setting out the principal reasons for the moratorium, the statement explained the desire to gather needed information to allow the agency to reach decisions on the regulation of consumer-oriented advertising of prescription drugs. The policy statement also explained the intended scope of the moratorium, which was to apply to all product-specific advertising that promoted a drug for its intended uses. The moratorium, however, did not apply to institutional advertisements that educate consumers about specific diseases but avoid reference to products manufactured by the sponsoring firm, because the public clearly can benefit from this type of advertising. The moratorium also did not cover advertisements comparing the prices of identical prescription drug products and meeting the requirements of 21 CFR 202.1(e)(2)(i) because of the potential of this advertising to promote competition and lower consumer prices. Being outside the scope of the moratorium from its outset, the continued appearance of these kinds of advertising is in no way affected by the agency's present action.

Public Dialogue

In the agency's opinion, the public dialogue on direct-to-consumer advertising of prescription drugs has provided interested individuals and organizations ample opportunity to consider and express opinions on the issue. FDA aided this dialogue by arranging a number of meetings in Washington, DC, and elsewhere at which spokespersons for industry,

consumers, and the health professions were invited to address the issue of consumer advertising of prescription drugs. Other organizations arranged similar meetings, the most notable of which was a symposium held April 30 through May 1, 1984, in Washington, DC, under the sponsorship of the University of Illinois and the Stanford Research Institute.

Congressional interest in this issue was reflected in a Staff Report of September 1984 prepared for the use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives.

In addition to wide public discussion, the issue of consumer-oriented prescription drug advertising has also been the subject of numerous research endeavors, including studies undertaken by FDA, Cable Health Network/Lifetime, and the Federal Trade Commission. Results of these studies have been made public and some were presented and discussed at the symposium mentioned above.

Conclusion

The two major purposes for which FDA sought a voluntary moratorium on prescription drug advertising to the general public have been met. FDA has concluded that, for the time being, current regulations governing prescription drug advertising provide sufficient safeguards to protect consumers. It is now appropriate that the moratorium be withdrawn. FDA will continue to regulate prescription drug advertising, regardless of its intended audience, in accordance with section 502(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) and the implementing regulations (21 CFR Part 202).

Dated: September 3, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-21435 Filed 9-4-85; 2:37 pm]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 47 FR 44620, October 8, 1982) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

FDA is retitling the Executive Secretariat as the Office of the Executive Assistant (OEA) and adding several functions for the coordination of program issues. OEA will remain in the Immediate Office of the Commissioner.

OEA will perform program coordination, management tracking, and other management and coordination functions for FDA.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (a-1), *Executive Secretariat (HFA-D).*

2. Insert new subparagraph (a-1), *Office of the Executive Assistant (HFA-D).*

(a-1) *Office of the Executive Assistant (HFA-D).* Coordinates identfication of and expedites development and implementation of the agency's highest program priorities for the Commissioner.

Coordinates and facilitates, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key agency officials on all activities that affect agencywide programs, projects and initiatives.

Performs special agencywide assignments involving complex problems and issues related to agency programs, strategies and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

Reviews, analyzes and evaluates pertinent aspects of the agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing materials, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and reponses to executive communication memoranda directed, to, or of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Commissioner and Deputy Commissioner, including drafting of texts and obtaining appropriate agency clearances.

Dated: August 30, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

[FR Doc. 85-21459 Filed 9-6-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[I-21547]

Realty Action; Exchange of Public Land in Jerome County for Private Land Within Blaine County, ID

In FR Doc. 85-19811, beginning on page 33642, in the issue of Tuesday, August 20, 1985, make the following corrections on page 33642:

In the third column, in the legal description under Blaine County, Idaho:

1. The first line should read "T. 2N., R. 18E., B.M."

2. In the sixteenth line, "NW¼SE¼" should read "SW4SE4".

BILLING CODE 1505-01

[Alaska AA-48334-C]

Proposed Reinstatment of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48334-C has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21, S., R. 4 E.,

Sec. 3, NE¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48334–C as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1985, subject to the terms and conditions cited above.

Dated: August 26, 1985.

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 21349 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–JA–M

Bureau of Reclamation

Cancellation of Scoping Workshop for Fallon Indian Reservation Irrigation and Drainage System Environmental Impact Statement

The Scoping Workshop date for the Fallon Indian Reservation Irrigation and Drainage System Environmental Impact Statement previously published on page 32121 in the **Federal Register** of August 8, 1985, (50 FR 32121) for September 11, 1985, at 7:30 p.m. in the Fallon Community Convention Center, 100 Campus Way, Fallon, Nevada, has been cancelled. No new Scoping Workshop date has been scheduled at the present time. When a new date is scheduled, another notice will be given.

The contact person for this environmental impact statement is Joel Verner, Attention: MP–410, telephone (916) 978–5049, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

Dated: September 6, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85–21671 Filed 9–6–85; 11:49 am]

BILLING CODE 4310–09–M

National Park Service

Intention To Negotiate Concession Permit; Vern-Del Enterprises, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Vern-Del Enterprises, Inc., authorizing it to continue to provide snackbar food service, general merchandise, sundries, and beach equipment rental for the public at Indiana Dunes National Lakeshore, Indiana, for a period of Five (5) years from January 1, 1986, through December 31, 1990.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which will expire by limitation of time on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304, for information as to the requirements of the proposed permit.

Dated: August 16, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85–21443 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, September 26, 1985, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Earnest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Mr. Charles Gould
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are the Marin Committee report on the Coast Guard Station Fort Point's proposed move to East Fort Baker and an update report on the feral pig problem.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent John H. Davis, Golden Gate National Recreational Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by October 25, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: August 29, 1985.

W. Howell White,

Acting Regional Director, Western Region.

[FR Doc. 85–21445 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–70–M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold its regularly scheduled public meeting on Tuesday, September 10, 1985 at 7:30 p.m. at Diamond X Ranch, 26412 Mulholland Drive, Calabases, California.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa

Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

The minutes of the meeting will be available by September 30, 1985.

Dated: August 19, 1985.

Daniel R. Kuehn,

Superintendent.

[FR Doc. 85-21466 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council; Meeting

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 27, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. §1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C. Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 30, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-21444 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-122 (Sub-2)]

Lease of Equipment and Drivers to Private Carriers—Petition for Modification

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to reopening of policy statement.

SUMMARY: In a notice served August 1, 1985 (50 FR 31439, August 2, 1985), the Commission instituted this proceeding seeking comments on whether the requirement of a 30-day lease should be deleted in leases of equipment and drivers to private carriers. A 30-day comment period was provided. The purpose of this document is to give notice that the time for filing comments has been extended 30 days.

DATES: Comments must be received by October 3, 1985.

ADDRESS: An original and 15 copies of comments should be sent to: Ex Parte No. MC-122 (Sub-No. 2) Office of the Secretary Case Control Branch Interstate Commerce Commission Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein (202) 275-7912

or

Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION: The Truck Renting and Leasing Association (TRALA) has filed an emergency petition to extend for 30 days the time for filing comments in this proceeding.

TRALA actively participated in the original MC-122 (Sub-No. 2) proceeding, as well as in the proceeding to eliminate the 30-day rule from regulated carrier leases (Ex Parte No. MC-43 (Sub-No. 15)). The membership of the association represents a substantial segment of the transportation industry that would be affected by the proposed petitions. TRALA desires to further deliberate on its position in the instant proceeding, as well as the tenor of its comments to the Commission. TRALA's appropriate committee meetings are scheduled for September 28, 1985, with discussion of this proceeding as part of the agenda.

The 30-day extension of time for filing comments in this proceeding is reasonable and warranted. The extension will provide additional time for all parties to prepare comments without unduly delaying the completion of this proceeding.

It is ordered: TRALA's request for an extension of time for filing comments in this proceeding is granted. Comments are now due October 3, 1985.

Decided: August 30, 1985.

By the Commission, Malcolm M. B. Sterrett, Acting Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-21427 Filed 8-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-141)]

Seaboard System Railroad, Inc.; Abandonment in Lake County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc. to abandon its 14.54 mile rail line between Leesburg and Howey, in Lake County, FL, from milepost AS 802.16 to AS 808.60 and from milepost ASF-803.3 to milepost ASF-816.4.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-21426 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-33)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment in Contra Costa and San Francisco Counties, CA; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Santa Fe Railway Company to abandon its 10.4-mile rail line between Richmond (milepost 1191.69) and San Francisco (milepost 1202.09) in Contra Costa and San Francisco Counties, CA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Secton AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-21424 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 94X); Finance Docket No. 30714]

Southern Pacific Transportation Co.; Abandonment Exemption; Sacramento County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval (1) under 49 U.S.C. 10903, et seq., the abandonment by the Southern Pacific Transportation Company of certain track in Sacramento County, CA, subject to standard labor conditions; and (2) under 49 U.S.C. 10901, the operation by Southern Pacific Transportation Company over railroad track in Sacramento, Sacramento County, CA.

DATES: These exemptions shall be effective on September 6, 1985. Petitions to reopen must be filed by September 30, 1985.

Send pleadings referring to Docket No. AB-12 (Sub-No. 94X) and Finance Docket No. 30714 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 298-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-21425 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

September 4, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;
(2) The office of the agency issuing the form;
(3) The title of the form;
(4) The agency form number, if applicable;
(5) How often the form must be filled out;
(6) Who will be required or asked to report;
(7) An estimate of the number of responses;
(8) An estimate of the total number of hours needed to fill out the form;
(9) An indication of whether section 3504(h) of Public Law 96-511 applies; and,
(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

- **Revision of a Currently Approved Collection**

(1) Larry E. Miesse, 202/633-4312
(2) Correctional Programs Branch, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice
(3) National Prisoner Statistics
(4) NCRP-1A, NCRP-1B, NCRP-1C
(5) Annually
(6) State and local governments, Federal agencies or employees. Used to enumerate and describe annual movements of adults and youthful offenders into and out of state and Federal correctional systems and to provide statistics describing the Nation's parole population.
(7) 322,000 respondents
(8) 1,200 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

- New

(1) Larry E. Miesse, 202/633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Applicant Background Questionnaire (Investigator)
(4) DEA-466
(5) On occasion (for initial employment)
(6) Individuals or households. Will be required of persons applying to the Drug Enforcement Administration for the critical/sensitive position of Investigator, which requires the conduct of a background investigation in compliance with Executive Order 10450.
(7) 700 respondents
(8) 1,750 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

• **Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection**

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service
(3) Application for Cuban refugee for permanent residence
(4) I–485A
(5) On occasion
(6) Individuals or households. Form is used by Cuban refugee to apply for permanent residence. Data is used by INS to determine eligibility.
(7) 15,000 respondents
(8) 7,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application to file declaration of intention
(4) N–300
(5) On occasion
(6) Individuals or households. Section 334(f) of the I&N Act provides for issuance of a declaration of intention to become a citizen of the United States. Form is used by INS to determine if applicant is eligible for issuance of declaration.
(7) 4,000 respondents
(8) 2,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Affidavit of witness
(4) I–488
(5) On occasion
(6) Individuals or households. Used in various Service proceedings such as suspension of deportation and voluntary departure; also used in connection with application for creation of record of lawful admission under Section 249 of the I&N Act, and is needed for adjudicating petitions and applications.
(7) 2,500 respondents
(8) 416 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Agreement by transportation line to assume responsibility for removal of aliens
(4) I–259A
(5) On occasion
(6) Individuals or households. Section 233 of the I&N Act provides for the master or agent of a vessel or aircraft to assume responsibility for the removal of aliens who are or may be excludable under Section 212(a) of the Act. This form is used as the vehicle for such an agreement.
(7) 6,000 respondents
(8) 516 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for transfer of petition for naturalization
(4) N–455
(5) On occasion
(6) Individuals or households. Used by applicant for naturalization to request transfer of petition to another court and by INS to make recommendation to the court.
(7) 800 respondents
(8) 133 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,
Agency Clearance Officer, Department of Justice.
[FR Doc. 85–21423 Filed 9–6–85; 8:45 am]
BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

American Folklife Center Board of Trustees; Meeting

In accordance with Pub. L. 94–463, the Board of Trustees of the American Folklife Center announces its meeting to be held in Washington, D.C. on Friday, September 27, from 9:30 a.m. to 4:30 p.m. in the Whittall Room of the Library of Congress. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Ray Dockstader, American Folklife Center (202) 287–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members for Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,
Deputy Director, American Folklife Center.
[FR Doc. 85–21379 Filed 9–6–85; 8:45 am]
BILLING CODE 1410–01–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974, System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Final notice of routine use for existing system of records.

SUMMARY: The purpose of this document is to publish final notice of the Merit Systems Protection Board's (MSPB) addition of a routine use to its Privacy Act system of records MSPB/Govt–1, Appeal and Case Records.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Conley, [202] 653–8902.

SUPPLEMENTARY INFORMATION: The MSPB is required by statute to conduct special studies relating to the civil service system and to other merit systems in the executive branch and to report to the President and to the Congress as to whether the civil service is adequately protected. 5 U.S.C. 1205(a)(3). In order to carry out this function, the MSPB may find it necessary on occasion to provide individuals in the Office of Personnel Management (OPM) and other federal and state agencies certain identifying information about individuals who have filed appeals with the Board. This identifying information would be used to obtain from the appropriate agencies the information necessary to support MSPB's statautorily mandated research projects. The information provided by these sources would not be used in a personally identifiable manner in the resulting projects. The information would be used only as a basis for developing aggregate statistics. Further, the information obtained would not be used to make decisions about the rights, benefits or privileges of specific individuals. Upon completion of the project for which information was obtained, the MSPB would ensure that any personal identifying information is destroyed.

For example, in order to obtain current information on federal employees for the purpose of developing an address listing for use in mailing out questionnaires, the Board may provide

Social Security numbers from its appeal files to OPM. The information would be matched with OPM's listing of the servicing personnel offices for those federal employees whom the Board wishes to contact for study participation. The Board would then obtain the employee's address from information provided by the servicing personnel office. Questionnaires would be mailed to the survey population. Data from the returned questionnaires would only be reported in the aggregate. Personally identifiable information, such as the employee's address, would not be included in the MSPB's final report.

MSPB/GOVT-1 last appeared in 47 FR 57803 dated December 28, 1982. The MSPB now adds one new routine use of MSPB/GOVT-1, Appeal and Case Records, as follows:

MSPB/GOVT-1

SYSTEM NAME:

MSPB/GOVT-1, Appeal and Case Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

* * * * *

l. To federal and state agencies for the purpose of providing the MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in the MSPB's research projects mandated by 5 U.S.C. 1205(a)(3).

* * * * *

Dated: September 3, 1985.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 85-21441 Filed 9-6-85; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Senior Executive Service; Performance Review Board Membership

AGENCY: National Credit Union Administration.

ACTION: Notice of appointment to performance review board.

SUMMARY: Notice is hereby given of appointment of members of the Performance Review Board.

DATES: Effective August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy W. Foster, Director, Personnel Office, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456; Telephone (202) 357-1156.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Mrs. Elizabeth F. Burkhart, Member, NCUA Board.
2. Mr. Harvey J. Baine III, Director, Region II (Capital).
3. Mr. Robert M. Fenner, Director, Office of Legal Services.

Dated: September 2, 1985.

P.A. Mack, Jr.,

Acting Chairman.

[FR Doc. 85-21389 Filed 9-6-85; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-322-OL]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of August 27, 1985, oral argument of the appeal of Suffolk County and the State of New York from the Licensing Board's June 14, 1985 partial initial decision on emergency diesel generators will be heard at *2:00 p.m. on Thursday, September 26, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: September 3, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-21466 Filed 9-6-85; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Station); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes the operation of the Cooper Nuclear Station at steady state reactor power levels each not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located in Nemaha County, Nebraska.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated July 11, July 28, and December 30, 1983, the licensee modified several dates as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's

commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On February 22, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments.

IV

The February 22, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the February 22, 1984 order, the licensee provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).	1b. SPDS fully operational and operators trained.
2. Detailed Control Room Design Review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.
5. Emergency Response Facilitiesd.	5a. Technical Support Center fully functional. 5c. Emergency Operations Facility fully functional.

The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee. The staff reviewed the licensee's March 1, April 16, and August 9, 1984 and March 6, and May 29, 1985 letters and discussed the dates with the licensee. As a result of these discussions, the licensee provided certain revised dates by letter dated June 18, 1985.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licenee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that Facility Operating License No. DPR–46 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this Order in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 29th day of August 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	July 31, 1986.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Prior to Startup for Cycle 13 Operation (approx. Spring 1989).
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed
	4b. Implement the upgraded EOPs	Sept. 30, 1985.
5 Emergency Response Facilities	5a. Technical Support Center fully functional	Dec. 31, 1986.
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Dec. 31, 1986.

[FR Doc. 85–21468 Filed 9–6–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Order Modifying License Confirming Additional Licensee commitments on Emergency Response Capability

I

Vermont Yankee Nuclear Power Station (the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes the operation of the Vermont Yankee Nuclear Power Station, (the facility) at steady-state power levels each not in excess of 1593 megawatts thermal. The facility is a boiling water reactor (BWR) located in Windham County, Vermont.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 19, 1983. By letters dated August 4 and 12, and November 16, 1983, the licensee modified several dates as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments. By letters dated June 12 and August 22, 1984 and May 31, 1985, the licensee requested that the completion dates for Regulatory Guide 1.97 and implementation of the Upgrade Emergency Operating Procedures (EOPs) requirements (Items 3a., 3b. and 4b. of the Table attached to the June 12, 1984 Order) be extended. By letters dated September 28, 1984 and June 6, 1985, the NRC granted this extension.

IV

The June 12, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, as modified by the NRC letters dated September 28, 1984 and June 6, 1985, the licensee letters dated October 31, 1984 and February 1 and June 21, 1985 provided completion schedules for the following requirements:

1. Satety Parameter Display System (SPDS).	1b. SPDS fully operational and operators trained.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.

The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee. The staff reviewed the licensee's October 31, 1984 and February 1 and June 21, 1985 letters and discussed the dates with the licensee.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 102, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, That Facility Operating License No. DPR-28 modified to provide that the licensee shall:

Implement items 1b and 3b described in the Attachment to this ORDER in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Exective Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 29th day of August 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	Prior to start up for cycle 14 (approximately Fall 1988).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Do
	3b. Implement (installation or upgrade) requirements	Prior to start up for cycle 13 (approximately Summer 1987).
4. Ugrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed.
	4b. Implement the upgraded EOPs	Prior to start up for cycle 12 (approximately Spring 1986).
Emergency Response Facilities	5a. Technical Support Center fully functional	Fully functional except that data acquisition will be complete when SPDS is complete.
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Nov. 1, 1985.

[FR Doc. 85-21467 Filed 9-6-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designation of Major Wine Trading Countries

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Designation of "Major Wine Trading Countries".

SUMMARY: The United States Trade Representative designates the following as "major wine trading countries": Canada, Japan, Mexico, South Korea, Trinidad and Tobago, and Taiwan.

The Trade and Tariff Act of 1984 (the "Act") was signed into law on October 30, 1984. Title IX of that Act, the Wine Equity and Expansion Act of 1984 provides USTR with specific responsibility to respond to problems that Congress has found are facing the U.S. wine industry. Among these responsibilities are: (1) The designation of "major wine trading countries" and (2) the development and coordination of reports on wine trade.

On July 18, 1985, a Federal Register notice was published requesting comments on the USTR's intention to designate Canada, Jamaica, Japan, Mexico, South Korea and Taiwan. Based on comments and other information, the U.S. Trade Representative has determined that Canada, Japan, Mexico, South Korea, Taiwan, and Trinidad and Tobago are designated pursuant to Title IX. Consultations with these will be requested soon.

Jamaica is not designated since it has recently altered its policies to eliminate certain trade barriers. However, the Office of the U.S. Trade Representative will continue to monitor the situation in consultation with the domestic industry.

Depending upon further information received, additional countries may be designated at a later date.

FOR FURTHER INFORMATION CONTACT:

Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy, Office of the U.S. Trade Representative, Room 423, 600 17th Street, NW., Washington, D.C. 20506, (202) 395-5006.

Alexander Platt, Associate General Counsel, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, (202) 395-7305.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85-21413 Filed 9-6-85; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22373; File No. SR-Phlx-85-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Notice of Proposed Rule Change and Partial Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Exchange") proposes to amend Exchange Rules 1033 and 1066 to (i) expand the definition of spread and combination orders and (ii) provide for stock-option orders, thus permitting such orders to be executed under the priority trading rule. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted. Rule 1033 Bids and Offers—Premium

(a)-(c) No change.

(d) When a member holding a spread order, a straddle order, [or] a combination order, *or a stock-option order* and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the *options* marketplace, then the order may be executed as a spread, straddle, [or] combination, *or stock-option order* at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell

at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers, *or (iii) in the case of a spread order, when the number of contracts to be purchased and sold are not the same, or do not represent the same number of shares at option (if the underlying security is a stock) or the same number of foreign currency units (if the underlying security is a foreign currency) a Registered Options Trader or a Specialist may not execute such spread pursuant to this Commentary .01 with another Registered Options Trader or Specialist.*

Rule 1066

(a)-(c) No change.

(d) Spread Order—A spread order is an order to buy a stated number of option contracts and to sell *up to three times* the [same] number of option contracts, or contracts representing *up to three times* the [same] number of shares at option (if the underlying security is a stock) or *up to three times* the [same] number of foreign currency units (if the underlying security is a foreign currency), in a different series of the same class of options.

(e)-(g) No change.

(h) Combination Order—A combination order is an order [to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts] *involving a number of call option contracts and the same number of put option contracts in the same underlying security and* representing the same number of shares at option (if the underlying security is a stock) or the same number of foreign currency units (if the underlying security is a foreign currency), [which contracts do not have both the same exercise and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts representing the same number of shares at option (if the underlying security is a foreign currency), which contracts do not have both the same exercise price and expiration date. (E.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order)]. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares at option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Over the last several years, the exchange has observed the significant and continually increasing role that spread and combination orders, as well as certain stock-option transactions, play in the options markets. In that regard, the Exchange is proposing amendments to certain options rules to provide options investors and traders with an efficient and effective marketplace within which to execute such orders.

By expanding the current definition of spread and combination orders and creating a stock-option order, all such orders would be eligible to be executed in trading crowds under the appropriate priority trading rule. The priority rule, Exchange Rule 1033, governs the execution of certain option orders which have two components ("legs"). The rule permits one leg of such an order to be executed at the established bid or offer (thus taking priority over such bid or offer) so long as the other leg of the transaction is simultaneously executed with the same party at a price which is better than the established bid or offer for such other series.

(1) Combination Orders

Conversion and reverse conversion trading continues to play an active and increasing role in the options markets. Conversion and reverse conversion trading is generally utilized by professional traders and sophisticated investors either to hedge common stock positions or to "lock in" a specific rate of return on an investment over the lift of the option components.[1]

Currently, Exchange members wishing to execute the two option legs of a conversion or reverse conversion must enter two separate orders. For example, in the case of a conversion, a member must enter an order to sell a call option and another order to purchase a put option. The member is, therefore, at risk in that one of the orders may be filled, while the other order goes unexecuted.

The Exchange now proposes to expand the definition of a combination order to include put and call options on the same side of the market (i.e., long puts and short calls or short puts and long calls) with any combination of exercise prices and expiration months. Accordingly, the options portions of a conversion or reverse conversion could be entered as a single combination order. Under the new definition, a combination order would involve the same number of puts and calls.

It should be noted that on January 29, 1982 the Commission approved a substantively *identical* rule change proposed by the Chicago Board Options Exchange ("CBOE") (see SEC Release No. 18458).

(2) Spread Orders

A spread order is an order to simultaneously buy and sell either put option contracts or call option contracts. Under the current definition, each leg of a spread order relates to the same number of shares of the underlying stock. The Exchange now proposes to amend the definition of spread orders to include ratio orders, with ratios not in excess of 1 to 3.[2] Thus, ratio orders could be entered at a total net debit or credit and executed under the priority trading rule.

Ratio orders are used by investors and traders to "roll" from one option position to another option position, as the price of the underlying stock moves. This strategy typically involves the buying of a certain number of option contracts and the simultaneous selling of up to two or three times that number of option contracts. To ensure that ratio spread orders executed under the spread priority rule facilitate public orders, the Exchange further proposes that Registered Options Traders and Specialists may execute such spreads under the priority rule only when an off-

---

[1] A conversion is a three component position comprised of a long position in common stock, a short call option and a long put option. A reverse conversion is comprised of a short position in common stock, a long call and a short put. The option components of a conversion or reverse conversion are usually, although not always, transacted with the same exercise price and expiration month.

[2] An example of a spread order under the current definition is: Buy 1 XYZ July 45 call; Sell 1 XYZ July 50 call. The new definition would permit: Buy 1 XYZ July 45 call; Sell 3 XYZ July 50 calls.

floor customer order is on the other side of the trade.

(3) Stock-Option Orders

Two of the most popular strategies used by public customers in the options markets today are covered call writing and protective put buying. Each strategy involves an underlying stock position and an off-setting (hedged) option position. A covered call is comprised of a long stock position and a short call option; a protective put is comprised of a long stock position and a long put option.

A major objective of investors in writing covered calls is to earn a greater return (from the premium income received when the call is sold) than would be earned on the stock investment alone. With regard to protective puts, investors desiring to protect profits in shares of stock currently owned or in newly acquired shares of stock often purchase put options as a hedge against a decline in stock prices. In effect, the put options provide protection—"insurance"—against a sharp near-term decline in the price of the stock.

In recognition of the importance of these two popular strategies among public customers, the Exchange proposes to create a new type of order to be called a "stock-option order." The proposal herein is limited to those options strategies that hedge stock positions on a share-for-share basis (e.g. buying 100 shares of stock and selling 1 call option).

Under the proposal, customers would be able to execute stock-option orders under the priority rule only when they are establishing both components of a covered call or protective put position. For example, an order to buy 100 XYZ shares and simultaneously sell 1 XYZ call option could be entered as a stock-option order.

Since the stock component of a covered call and protective put position may be executed in another marketplace, the proposed rule will also require stock-option orders to be appropriately marked. This will enable Exchange staff to monitor compliance for executions under the priority rule and, thus, ensure the integrity of the Exchange's options marketplace.

The Commission has recognized the utility of stock-option orders and has granted such orders limited priority under the priority trading rules (see SEC Release No. 20294, dated October 17, 1983, approving SR–CBOE–83–04). Specifically, the Commission permitted such orders to have priority over bids or offers in the trading crowd. However, the Commission did not extend priority over bids or offers on the limit order book.

The Exchange strongly believes that the extension of the priority rule is now warranted so that stock-option orders could have priority over both the trading crowd and the limit order book. As stated above, the Commission already has recognized the utility of conversions and reverse conversions (which are strategies primarily transacted by professional traders) and has allowed these orders to fall within the priority rule. Therefore, stock-option orders, which are the "backbone" of the public customer business, should receive similar treatment.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by facilitating the execution of combination, spread and stock-option orders thus enhancing depth and liquidity in the options markets.

Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectivness of the Proposed Rule Change and Timing for Commission Action

With respect to that portion of the proposed rule change described in Sections II.A. (2) and (3), within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Accelerated Approval of Proposals Described in Section II.A.(1).

As noted above, the Phlx proposal to amend the current definition of combination orders is essentially identical to a CBOE rule proposal the Commission approved several years ago.[3]

For the reasons discussed in the order approving that CBOE proposal, the Commission finds that the Phlx proposal to expand the definition of combination orders is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6. This Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission previously approved substantially identical proposals by the CBOE and the Amex, and has not received any adverse comments on these proposals.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change described in Section II.A.(1) above is approved.

V. Solicitation of Comments

The Commission is publishing this release to solicit comment on the proposed rule changes described in Sections II.A. (2) and (3) above. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that mey be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file

[3] *See* rule filing No. SR–CBOE–81–5, approved in Securities Exchange Act Release No. 18458 (January 29, 1982), 47 FR 5560 (February 5, 1982). *See also* SR–Amex–85–8, Release No. 34–22000 (April 30, 1985), 50 FR 19504 (May 8, 1985).

number in the caption above and should be submitted by September 30, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21484 Filed 9-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22372; File No. SR-MSRB-85-17]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Uniform Practice and Confirmations, Clearance and Settlement of Transactions With Customers

The Municipal Securities Rulemaking Board on August 14, 1985, filed with the Securities and Exchange Commission pursuant to Section 19 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith amendments to Board rules G-12 on uniform practice and G-15 on confirmation, clearance and settlement of transactions with customers (hereafter referred to as the "proposed rule change"). The Board has requested that the Commission delay the effectiveness of the proposed rule change for a period of 30 days following the date of Commission approval in order to provide time for information concerning approval of the proposed rule change to be circulated to all persons to be affected by it. The text of the proposed rule change is as follows: [1]

Rule G-12: Uniform Practice

(a)-(k) No change.

(l) Interest Payment Claims. A broker, dealer or municipal securities dealer seeking to claim an interest payment on a municipal security from another broker, dealer or municipal securities dealer may claim such interest payment in accordance with this section. A broker, dealer or municipal securities dealer receiving a claim made under this section shall send to the claimant a draft or bank check for the amount of the interest payment or a statement of its basis for denying the claim no later than 10 business days after the date of receipt of the written notice of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

(i) Determining Party to Receive Claim. A claimant making an interest payment claim under this section shall direct such claim to the party described in this paragraph (i).

(A) Previously Delivered Registered Securities. An interest payment claim made with respect to a security previously delivered to the claimant which is registered in the name of a broker, dealer or municipal securities dealer at the time of delivery shall be directed such broker, dealer, or municipal securities dealer. A claim made with respect to a previously delivered registered security not registered in the name of a broker, dealer or municipal securities dealer shall be directed to the broker, dealer or municipal securities dealer guaranteeing the signature of the registered owner or, if neither the registered owner nor its signature guarantor is a broker, dealer or municipal securities dealer, to the broker, dealer or municipal securities dealer that first placed a signature guarantee on any assignment or power of substitution accompanying the security.

(B) Previously Delivered Bearer Securities. An interest payment claim made with respect to a bearer security previously delivered to the claimant shall be directed to the broker, dealer or municipal securities dealer that previously delivered the security.

(C) Securities Delivered by Claimant. An interest payment claim made with respect to a security previously delivered by the claimant shall be directed to the broker, dealer or municipal securities dealer that received the securities.

(ii) Content of Claim Notice. A claimant seeking to claim an interest payment under this section shall send to the broker, dealer or municipal securities dealer against which the claim is made a written notice of claim including, at minimum:

(A) The name and address of the broker, dealer or municipal securities dealer making the claim;

(B) The name of the broker, dealer or municipal securities dealer against which the claim is made;

(C) The amount of the interest payment which is the subject of the claim;

(D) The date on which such interest payment was scheduled to be made (and, in the case of an interest payment on securities which are in default, the original interest payment date);

(E) A description of the security (including any CUSIP number assigned) on which such interest payment was made;

(F) A statement of the basis of the claim for the interest payment;

(G) If the claim is based on the delivery of a registered security, the certificate number of each security on which the claim is based and a photocopy of the certificate(s) on which the claim is based or (in lieu of such a photocopy) a written statement from the paying agent identifying the party that received the interest payment which is the subject of the claim; and,

(H) If the claim is made against the broker, dealer or municipal securities dealer that previously delivered the security on which the claim is based, or the broker, dealer or municipal securities dealer that received such security, the delivery date or settlement date of the transaction.

G-15: Confirmation, Clearance and Settlement of Transactions with Customers

(a)-(d) No change.

(e) Interest Payment Claims. A broker, dealer or municipal securities dealer that receives from a customer a claim for the payment of interest due the customer on securities previously delivered to (or by) the customer shall respond to the claim no later than 10 business days following the date of receipt of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Amendments to Rule G-12

Board rule G-12 on uniform practice sets forth certain requirments concerning transactions in municipal securities between brokers, dealers, or municipal securities dealers ("dealers"). Rule G-12(e)(xiv)(G) requires the attachment of an interest payment check

---

[1] Italics indicate new language.

for the amount of the security's next interest payment to an interdealer delivery of a registered municipal security, if the delivery occurs after the record date of the security. A delivery occurring prior to the security's record date need not be accompanied by an interest payment check (although the parties may agree that an interest payment check is required as a term of the transaction). If the dealer receiving such a delivery neither receives such an interest payment check nor accomplishes transfer of record ownership prior to the record date for the security, the interest payment will be directed to the registered owner of the security as of the record date, and the dealer will be required to obtain reimbursement for the interest payment.

To date, members of the municipal securities industry have followed informal procedures for making and processing claims for such interest payments. The lack of any formalized procedure has led to delays in the payment of interest claims. The proposed rule change would provide a standard procedure for making and responding to interest payment claims based on deliveries of registered and bearer securities. Under the proposed procedure, a claimant could file a claim, and the dealer receiving such claim would be required to respond with a check or draft for the amount of the interest payment (or a statement of the basis for denying the claim) within 10 business days or, if the claim relates to an interest payment made more than 60 days prior to the date of the claim, within 20 business days. The proposed rule change would not prohibit use of alternative claim procedures.

The proposed rule change would allow an interest payment claim based on the delivery of a registered security to be directed to the registered owner of the security as of the delivery date if the registered owner is a dealer, and to the first dealer to guarantee a signature on the security if the registered owner is not a dealer. The Board believes that this procedure, in which interest claims are made directly to the dealer that received the interest payment in question (or to the dealer whose customer received the interest payment) would provide optimum efficiency in the claim procedure.

If the registered owner of the security is not a dealer, the procedure would require that the claim be directed to the first dealer that guaranteed a signature on the security or on any attached assignment or power of substitution. In cases in which a dealer is selling a security registered in its customer's name, that dealer, in most cases, will guarantee the signature of the customer on the assignment. The procedure in the proposed rule change will allow a claim to be sent directly to that dealer, who would be in the best position to obtain the misdirected interest payment from its own customer. In cases in which neither the registered owner nor the first signature guarantor is a dealer, the proposed rule change would allow an interest payment claim to be made against the dealer whose signature guarantee first appears on the security's assignment or on any attached power of substitution. The Board is aware that this dealer may have no customer relationship with the registered owner and may have to initiate its own claim, outside of the procedure offered by the proposed rule change, in order to obtain payment on the interest claim; however, the Board notes that it would be the dealer identifiable from the physical security and associated transfer documents as having the earliest association with the chain of transactions which resulted in the misdirected interest payment.

The proposed rule change also includes standard procedures for making claims based on deliveries of bearer securities and deliveries on which an interest payment check has been erroneously attached. The proposed procedure provides that a claim for an interest payment based on a delivery of bearer securities be directed to the dealer that delivered the securities and that, in cases in which an interest payment check is erroneously attached to a delivery and not returned by the receiving dealer, the claim be made against the dealer receiving the delivery with the erroneously attached interest payment. The 10/20 day time limits for responses to claims and the requirements for certain information to be placed in the notice of claim would apply to these claims.

These provisions primarily would codify current industry practice. The Board believes, however, that the addition of definitive time limits for responses to claims would improve efficiency of the claim process.

The proposed rule change would require a dealer using the procedure to provide a written notice of the claim to the dealer against which the claim was filed, containing certain information identifying the parties involved in the claim, the securities and the interest payment on which the claim is based, a statement of the basis of the claim, and, if the claim is based on a delivery of a registered security, a photocopy of the security on which the claim is based (or a written statement from the paying agent identifying the party that received the interest payment in question). If the claim is made against the dealer that delivered the securities (or the dealer to which the securities were delivered) the delivery date or settlement date of the transaction also would be included. The Board believes that this information is necessary for the dealer receiving a claim to research its validity and respond within the prescribed time limits.

Amendment to Rule G–15

Rule G–15 sets forth certain requirements regarding confirmation, clearance and settlement of transactions between dealers and customers. The proposed rule change includes an amendment to rule G–15 that would require dealers to respond to claims for interest payments made by customers within 10 business days if the claim is not more than 60 days old, within 20 business days if the claim is more than 60 days old.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules

designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers and serves mainly to promote conformity in current industry practices with regard to claims made for misdirected interest payments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board released for public comment in November of 1984 an exposure draft of amendments to rule G–12(e)(xiv)(G) regarding attachment of interest payment checks to deliveries of registered securities and also asked specifically for comment whether the Board should provide a standard procedure for the handling of interest payment claims. Nine letters of

comment on the exposure draft were received and six of the none commentators expressed support for a standard interest payment claim procedure. Three commentators did not express an opinion on the issue.

In April 1985 the Board published for industry comment draft amendments to rules G–12 and G–15 containing a proposed standard interdealer interest payment claim procedure and time limits for responses to customer interest payment claims. The procedure described in the exposure draft would have required a claimant to direct its claim to the dealer that delivered the security. In cases involving a delivery of registered securities not registered in that dealer's name, the draft amendments contemplated that the dealer would "retransmit" the claim to the dealer from which the securities were received, this process repeating itself until the dealer that received the misdirected interest payment (or the dealer whose customer received the misdirected interest payment) received the claim. The draft amendments proposed that dealers respond to interdealer claims made under the procedure (and to all customer claims) within 10 business days of the date of the claim for claims based on interest payments not more than 60 days old and within 20 business days for older claims. The draft amendments also required a dealer seeking to claim an interest payment to send a written notice of the claim, including certain standard information identifying the parties involved in the claim, the securities on which the claim was based, the amount of the claim and a statement of the basis of the claim.

The Board recieved 10 letters of comment on the draft amendments, which generally supported the creation of a standard interest payment claim procedure. Two commentators indicated support for the procedure proposed by the draft amendments, requiring claims to be made against the dealer that delivered the securities. The majority of the commentators, however, suggested that, at least in cases in which a dealer is a registered owner, the claim should be directed to that dealer rather than the delivering dealer. They argued that, in situations involving several dealers, creating a "chain" of claims, as contemplated by the draft amendments, would result in delays in payment to the dealer initiating the claim and create unnecessary paperwork for the dealers in the middle of the "chain." The Board has included this modification in its proposed rule change.

Three commentators made specific recommendations on where claims should be directed when the registered owner is a customer. One commentator suggested that the claim be made against the delivering dealer in such a case. Two of the commentators, however, recommended that the claim be directed to the dealer guaranteeing the customer's signature. The Board believes that, because of the customer-dealer relationship that normally exists between a non-dealer registered owner and the first signature guarantor, it would be appropriate to direct claims based on a security registered in a customer's name to the signature guarantor if the guarantor is a dealer. The Board has incorporated this suggestion in the proposed rule change.

Three commentators recommended approval of the 10/20 day time frame for response to claims contained in the draft amendments. Other commentators suggested longer or shorter time frames for responses. The Board notes that researching claims sometimes may involve manual searches through records and could require information to be obtained from clearing agents. The Board believes that the 10/20 business day time limits contained in the proposed rule change provide a sufficient, but not an excessive, amount of time to research the validity of such claims. If the experience with the 10/20 day standards set forth in the proposed rule change proves to be too long or too short for general industry use, the Board would consider amendments to the rule to reflect industry experience with the procedure.

The commentators generally supported the inclusion of the standard information specified by the April exposure draft to be included in the notice of claim and suggested other information to be included in notice of claim. Several commentators suggested the inclusion of documentation sufficient to show that the party receiving the claim has been identified correctly (i.e., is in fact the registered owner or the first dealer signature guarantor of a security on which an interest payment claim is filed). The Board believes that a photocopy of the front and back of the certificate, or the certifiificate numbers of the securities and a document from the paying agent showing the party that was paid the interest payment in question, would serve this purpose and has incorporated this suggestion into the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or interest payment check nor accomplish transfer of record ownership prior to the record date of the security, the interest payment will be directed to the registered owner of the security as of the record date, and the dealer will be required to obtain reimbursement for the interest payment.

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned sefl-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21483 Filed 9–6–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22376; File No. SR-NASD-85-19]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers Relating To Proposed Fees To Be Paid for Each Interrogation of Display Device Receiving Information Disseminated by Means of the National Quotation Data Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1985, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items II, III, and IV below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Background of the Proposed Rule Change

The NASD currently offers NASDAQ quotation information to the public in three forms. NASDAQ Level 1 service provides the inside market (the best bid and offer) for a security and is carried only by vendors other than the NASD. The NASD charges subscribers $8.75 a month for Level 1, which subscribers must pay to the NASD in addition to any vendor fees which the supplier of the information may charge. Approximately 100,000 terminals receive Level 1 service.

NASDAQ level 2 service provides in addition to Level 1 information a full quotation montage showing each market maker for a NASDAQ security and its quotations. This service is provided only by the NASD, using NASDAQ terminals. Level 2 costs $150 a month per terminal. Level 3 is the same as Level 2, which the added ability to enter quotations. Level 3, also marketed exclusively by the NASD, is available only to market makers and is priced the same as Level 2. There are approximately 330 Level 2 terminals, and 1,900 Level 3 terminals.

The Commission's firm quotation rule, Rule 11Ac1-1 under the Act, required, as of April 1, 1982, the NASD to make full quotation information available to vendors on those OTC securities designated as National Market System ("NMS") Securities.[1] In light of that requirement, the NASD asked all vendors whether they were interested in receiving this quotation information on NMS Securities. Only Instinet expressed an interest in receiving the data.

The Commission granted the NASD a number of exemptions[2] from having to provide Instinet the data until after technical preparations and negotiations over access terms, with fees as the principal issue, were completed. Despite almost two years of negotiations, the parties could not reach an agreement on fees. The NASD thereupon filed with the Commission its proposed fees.[3] The terms of the NASD's proposed fees were identical to the NASD's last offer to Instinet for the service under consideration in this proceeding [referred to by the NASD as the National Quotation Data Service ("NQDS")]. Under the proposed fees, Instinet would be charged $3,200 a month for the direct computer-communication costs of transmitting the quotation information from the NASD to Instinet. Instinet's customers, who subscribed to the information, would be charged by the NASD a monthly per terminal subscriber fee based on the NASD's $150 Level 2/3 fee. The $150 fee would be reduced, however, to reflect that Instinet only would receive quotations in NMS Securities.[4]

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to Section 11A(b)(5) of the Act alleging that the fees for NQDS were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information. In its petition, Instinet, however, sought access to quotation information on all NASDAQ securities, not just NMS Securities.[5]

On August 16, 1983, the Commission issued an order pursuant to section 11A(b)(5) of the Act preliminarily finding that, at least with respect to those securities designated as NMS Securities, the proposed fees constituted a prohibition or limitation on access to services, and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the provisions of the Act.[6] In that order, the Commission also solicited comments on certain issues raised in the proceedings, including whether Instinet should receive access to quotation information on all NASDAQ securities and in a separate release instituted proceedings pursuant to Section 19 of the Act to determine whether to approve or disapprove the proposed fees.[7]

After reviewing the record of the proceeding,[8] the Commission, on April 17, 1984, issued an order,[9] among other things, determining that, because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers. Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee[10] because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet. One such function that the Commission held entailed costs the NASD should not be permitted to recover was the inquiry or quotation query function, which requires the maintenance of a database to store quotations for subscriber recall. The Commission determined that NQDS was not dependent on the query function as that service would provide Instinet raw quotation data and Instinet would have to develop and offer its own inquiry service to subscribers.[11]

---

[1] 17 CFR 240.11Ac1-1. NMS Securities are those OTC securities designated as such pursuant to Rule 11Aa2-1 under the Act, 17 CFR 240.11Aa2-1. The primary effect of designation is to subject OTC stocks to the Commission's firm quotation rule, and last sale reporting rule, Rule 11Aa3-1 under the Act, 17 CFR 240.11Aa3-1.

[2] *See* Securities Exchange Act Release Nos. 18585 (March 23, 1982), 19112 (October 12, 1982), and 19564 (March 3, 1983); 47 FR 13265, 46783, and 48 FR 10175.

[3] *See* Securities Exchange Act Release No. 19884 (June 17, 1983), ("1983 Fee Proposal Release"). 48 FR 29066. File No. SR-NASD-83-13.

[4] *See* 1983 Fee Proposal Release, *id.*, 48 FR at 29067. The NASD's proposed subscriber fee was intended to recover the costs of operating the NASDAQ system.

[5] *See* Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 15, 1983 ("Instinet Petition"). *See* Public File No. 4-256.

[6] *See* Securities Exchange Act Release No. 20068 (August 16, 1983), 48 FR 38124.

[7] *See* Securities Exchange Act Release No. 20069 (August 16, 1983), 48 FR 38131.

[8] For a discussion of what comprised the proceeding's record, see Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 ("April Order").

[9] *See* April Order, *id.*

[10] *See* Securities Exchange Act Release No. 20873 (April 17, 1984), 49 FR 17653.

[11] *See* April Order, *supra* note 8, 49 FR at 17649. In support of this finding the Commission stated that it: "rejects the NASD's assertion that it should allocate to NQDS an equal share of each of the NASDAQ system's functions because the market makers who build the database depend on all the NASDAQ system functions. There is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without

Continued

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [12] of the finding made in the April Order related to costs of the NASDAQ query function. In urging reconsideration of this finding the NASD asserted that market makers necessarily query full quotation information offered through NASDAQ in deciding whether to maintain or change their quotation. Accordingly, the NASD argued that the query function was an essential part of the update function, and, therefore, Instinet's subscribers should bear a proportionate share of the costs related to the query function. The Commission denied the motion and held that the NASD had not advanced any new data or arguments to warrant Commission reconsideration of issues resolved in the April Order.[13]

On November 19, 1984, the NASD filed a second motion requesting Commission reconsideration of the query cost finding based on new evidence.[14] The evidence was derived in part from an NASD statistical study which indicated that 76.8 percent of queries directed to the NASDAQ system were made by market makers in stocks in which they made markets. The Commission denied the motion because the NASD had not demonstrated that there were reasonable grounds for its failure to produce this evidence prior to the April Order. The NASD also had failed to show that the proffered evidence was material to any of the findings contained in the April Order, as the Commission had considered and rejected arguments that the evidence was intended to support.[15]

On July 31, 1985, the NASD filed with the Commission SR–NASD–85–19, the proposed NQDS subscriber fee.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

The proposed rule change establishes a charge of $79.00 per month per subscriber terminal receiving NQDS information disseminated by a vendor. The purpose of the proposed rule change is the creation of a fee which accurately reflects the cost of collecting, processing and preparing the NQDS information for distribution to vendors and subscribers and is consistent to the fullest extent possible with the direction contained in the Commission's Order and sound cost accounting principles. The fee represents the cost of the information as is collected, processed and prepared for distribution through NQDS, derived on the basis of a functional analysis of the NASDAQ system, the derivation of cost pools attributable to segregable functions performed-within the system and the allocation of these costs to the various services offered by NASDAQ which utilize the functions. These costs were in turn applied to the cost bearing units of sale of the information which are the average number of quotations each such service is capable of accessing.

The functional analysis performed by Coopers & Lybrand was the most comprehensive review ever performed on the inner workings and technical interrelationships of the functions and processes which occur within the NASDAQ system. The best available information was obtained or developed for use by Coopers & Lybrand in the conduct of its study of the system. All available resources were placed at its disposal. Based upon the analysis performed, Coopers & Lybrand independently established the cost basis and recommendation for adoption of the fee proposed herein.

The Commission's Order directed the Association to undertake an analysis of the NASDAQ system that would permit the allocation of costs to specific functions, i.e. collection, processing, validation, storage of quotations and retrieval of the information. The Commission further directed that the Association could recover through the NQDS fee only the costs of collecting, validating and preparing the information for shipment to a vendor, and certain storage costs, and that costs related to the Association's inquiry system, such as storing quotas for inquiry purposes and responding to inquiries or incremental capacity required for such, could not be considered in developing the fee. In sum, only the cost of those identified functions which in the opinion of the Commission were necessary to supply a vendor with the NQDS information could be taken into account in developing the fee with the remaining functions deemed to be disallowed costs. Recognizing the inherent difficulties in functionally allocating the costs of an integrated computer system, the Commission did not require the Association to prepare an economically perfect allocation of relevant costs, but only a reasonable allocation based on the best available information.

Consistent with the Commission's Order, the Association solicited proposals from several organizations believed qualified to perform the objective analysis called for by the Commission and selected Coopers & Lybrand to perform the study.

Coopers & Lybrand reviewed the Commission's Order with regard to the application legal parameters which were intended to guide the analysis of the system's costs and functions. Based thereon, Coopers & Lybrand conducted a study which assessed the regulatory economics applicable to the various market data services sold by the Association and its subsidiaries; applied sound cost accounting methodology to the collection and consolidation of the costs underlying those services; performed a functional analysis of the various system processes involved in the creation of those services, and developed a pricing methodology for application of the relevant direct and allocated costs to particular services. The conclusions outlined hereafter are primarily those of Coopers & Lybrand.

The initial functional analysis undertaken by Coopers & Lybrand sought to identify and measure the functions (collection, processing, etc.) identified by the Commission in its Order as those used to create the services offered by the NASDAQ

---

any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NQDS fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." April Order, *id.*, 48 FR at 17649 n. 91.

[12] *See* motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984.

[13] *See* Securitie Exchange Act Release No. 21471 (November 8, 1984), 49 FR 45282.

[14] *See* Request for Reconsideration based upon New Evidence submitted by Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated November 19, 1984. The NASD also has filed in the United States Court of Appeals for the District of Columbia Circuit a petition seeking review of the Commission's orders issued in this proceeding. *See* NASD v. SEC, No. 85–1012 (D.C. Cir. filed Jan. 7, 1985).

[15] *See* Securities Exchange Act Release No. 21832 (March 8, 1985), 50 FR 10565.

system, i.e. Level 1, Level 2/3 and NQDS. In-depth interviews were conducted with management and technical personnel; detailed inspections were made of available system documentation, system statistics, program libraries and flow charts, and standard system measurement tools were utilized to monitor network traffic, CPU cycle time and other system performance statistics.

According to Coopers & Lybrand, this analytical approach was found to be incapable of yielding identifiable system resource use directly related to the functions contained in the Commission's Order. The analysis demonstrated that the NASDAQ System is a monolithic, fully integrated data collection and storage system which supports many different forms of access to a central database of information. As such, the underlying software processes which support the system could not be isolated and measured in a meaningful way given existing documentation and measurement tools. The NASDAQ system software was found to consist of over one thousand program modules and service routines which serve multiple purposes depending on the way they are combined. Unlike more modern computer systems, Coopers & Lybrand found that the NASDAQ system does not have incorporated within it the functional design techniques (including logical organization and available documentation) which would facilitate the isolation of internal functions and processes.

Precise identification of internal system functions, as suggested by the Commission, could be approached, if at all, only through a process of reverse engineering of the NASDAQ system. Coopers & Lybrand stated this would involve the examination of hundreds of programs and tens of thousands of instructions in order to develop an understanding of how they work in combination with each other in the system as it is configured. The inductive methodology encompassed by such an approach is believed by Coopers & Lybrand to be totally impractical because of the protracted period for completion and its estimated cost of approximately $1 million. Furthermore, it is the professional opinion of Coopers & Lybrand, that it is extremely uncertain such an approach could be successfully completed. In view of the foregoing, Coopers & Lybrand utilized an alternative methodology believed by it to be equally acceptable to analyze and develop a cost based pricing approach to NQDS service.

The alternative method of analysis involved tracking each of the different transaction types within each functional category of service (e.g. broadcast, query, update and NQDS) across the various physical system resources and measuring the workload imposed upon the NASDAQ system by each individual transaction.

Under this approach each type of identifiable transaction, irrespective of whether it utilized part or all of the system, was measured. The transaction measured system usage and formed, in combination with other transactions, the components which support a particular function, which in the case of NASDAQ services are the general broadcast function, NQDS broadcast function, query activity function and update activity function.

The individual transactions identified are the only differentiated and measurable factors within and across the system. NASDAQ services, such as Level 1, Level 2/3, and NQDS were found to have no independent or otherwise identifiable meaning within the system based upon the documentation and measurement techniques currently available. Rather, these services are only convenient methods of packaging and disseminating data resident in the NASDAQ database of information. Similarly the transactions themselves are not components *per se* of a particular service, but rather a particular function. These functions are not the sole components of any NASDAQ service but operate in combination with each other to create the individual services.

An example of the foregoing is illustrative. The basic query function embodies a number of individual transaction types which include NASDAQ bid/ask queries, NASDAQ/NMS bid/ask queries, NASDAQ volume queries, NASDAQ/NMS volume queries, market summary queries, index queries, news queries and miscellaneous queries. The update function embodies NASDAQ and NASDAQ/NMS quote updates, NASDAQ volume updates and NASDAQ and NASDAQ /NMS supervisory control transactions. The NQDS function encompasses only transactions that are relevant to the NQDS quote. Each separate transaction forms a logical component of either the query, update function or NQDS function. Each of these transactions have a measurable volume within the system. Similarly, each transaction makes measurable use of some or all of the three basic component resources of the NASDAQ system, i.e. the network/communications resource, the processor/CPU resource and the data storage resource. System statistics were compiled which identified the physical length of each transaction and the duration of occupancy of the transaction within a particular category of resource. Thus, the amount of network/communications resource was measured for those transactions drawing upon this aspect of the system by recording each message sent over the network during a test period and determining the type of transaction involved by means of its program identification number. The processor/CPU resource utilization was determined by measurement of the CPU cycle time and calculations of the mean number of input/output operations each transaction used in the processors. Data storage resource utilization was accomplished by the allocation of mass storage on the basis of a traffic analysis of transaction volume within each function.

Through this alternative method of measurement, Coopers & Lybrand was able to objectively identify the external processes of the NASDAQ system as represented by the transaction types making up the four major NASDAQ functions as well as those transactions and functions of non-NASDAQ services which have been measured and the costs of which have been excluded from the calculations relevant to the NASDAQ system. The resource occupancy measurement for these functions provided a strong, inferential view of what is functionally occurring within the NASDAQ system.

Coopers & Lybrand concluded that the measurement of individual transactions has objective reality and served as a basis for the assignment of cost in relation to the proportional use by any discrete transaction of particular system resources. Thus, Coopers & Lybrand gathered and consolidated all cost data applicable to the operation of the system. Seven distinct cost pools were created, which included the allocated costs of the network/communications, processor/CPU and data storage resources, and the allocated indirect costs for general and administrative expenditures, systems development expenditures and overhead expenditures. The seventh cost pool consisted of NASDAQ terminal costs but was excluded in its entirety from the calculation of transaction costs underlying the relevant NASDAQ services since these costs are recovered separately.

With respect to network/communications, processor/CPU and data storage cost pools, cost allocations were made for each resource on the

basis of the percentage of use of the individual transaction of the total use made of each particular resource. The total resource costs were then added together as were the total allocated costs for each resource for each transaction and the percentage of allocated resource cost to total resource cost was determined. This composite percentage represented an average resource utilization factor which was multiplied by each of the indirect cost pools to obtain the allocated indirect costs of each transaction. Thus the allocated cost for each transaction type is based upon the objectively measured use made of system resources.

Costs attributable to individual transactions are meaningless, however, absent recombination in a manner related to the categories of NASDAQ service dependent upon or supported by the transactions. The applicable transactions measured are not directly translatable into Level 1, 2, 3 or NQDS services. As noted above, Coopers & Lybrand established that the NASDAQ system is a monolithic integrated system, the purpose of which is the collection of data created by the processing of quotation updates to support a number of information products. As such, it constitutes a system whose primary function is that of maintaining a database of securities information. The transactions are physical operations drawing upon physical resources while the services represent access in one form or another to the information contained in the database. For example, a number of processes internal to the NASDAQ system have been clearly recognized as part of the broader process of collecting and processing quotation updates that simply cannot be measured on a transactional basis. These include verification, best bid/asked calculation, regulatory examination of locked markets, excess spread review, testing for quote reasonability of range and regulatory reporting. These internal pocesses cannot be separately identified, nor do they have any direct relationship to the services being sold. They are examples of the internal system processes which make use of the database in combination with other processes. This shared use of the database cannot be reflected in the measurement of a transaction which only demonstrates how long it took a transaction to go through the system and proportionately how much of the system's resources were used by the transaction. Thus, the transactional measurements do not take into account the access to the database or the internal processes required by the individual services. Rather, these processes and forms of access are shared between a number of functions supporting particular services with the result that they are primarily weighted toward and reflected in the query function as a result of the disproportionate volume of traffic in the transactions comprising this function.

The Coopers & Lybrand study approached this conundrum by developing a methodology of capturing the costs reflected by the various transactions and applying them in an appropriate fashion to the NASDAQ services supplied. Two standard cost accounting approaches that exist were considered for application to NASDAQ services; Job Order Costing which is the method used when each job or product is unique and its components are easily identifiable, and Process Costing which is the method used when there is mass production of functionally identical units. The Process Costing method was found to be the proper method of cost accounting to be applied to NASDAQ services because of the monolithic nature of the system and the inability to separately identify specific internal processes of the system such as those mentioned earlier in connection with updating quotations. Because the process costing methodology isolated costs of individual transactions underlying functions, and these functions were not directly translatable into services, further refinements to these functions were found to be required.

The refinements were based upon three basic assumptions. The first assumption, supported by the findings that the primary portion of the system traffic and resource utilization is for the query function which disproportionately incorporates shared processes in the cost, is that part of the cost of the query function should be included in the costs to be shared by all NASDAQ services. System statistics revealed that approximately 76% of query traffic originates from market maker terminals and goes against security records in which that market maker makes a market. This action of querying a security to review a market maker's own and competitors' quotes is an essential pre-activity in the process of quotation maintenance and update. It is important to note that query activity related to the update process is not made on a one-to-one basis, rather a number of queries may be made to review competitor's prices that result in the market maker deciding to maintain a particular price for a security. The continuous monitoring of the supply and demand situation within the marketplace is an important ingredient in the decision to maintain or update a securities price. Hence, queries constitute a correspondingly larger component of system traffic than the update. The essential nature of this pre-activityy is supported by the affidavits of market makers previously supplied to the Commission in connection with its reconsideration of the denial of the original NQDS fee. As a result of the actual use made by market makers of the query function in connection with their update activity, the costs of the queries arising from market maker activity should be included in the costs shared by all NASDAQ services.

The second assumption is that the basic product sold is access to information, created by continuous, logically inseparable processes within a monolithic system. The basic unit of sale for Level 1, 2, 3 or NQDS service is the quote, and this is the unit that must be used to transfer costs to the ultimate buyer of the NASDAQ services. Cost differentials between one NASDAQ service and another are solely determined by the number of quotes available under the packaging of that service. System statistics demonstrate that the average number of market maker quotes per security is approximately eight. Based upon the foregoing, the number of quotes accessible through each of the NASDAQ services is determinable. Level 1 offers a single bid/asked quotation equivalent to access to one quotation. Level 2, 3 and NQDS each access eight individual market maker quotes plus the best bid/asked quote derived therefrom resulting in a mean access capability to nine total quotes. The number of quotations accessible by each of the individual NASDAQ services were determined to be the appropriate cost bearing units of sale.

The third assumption is that market makers activity involved in entering and reviewing quotes is the key activity in creating the NASDAQ database and maintaining the NASDAQ marketplace. This market maker activity, and the query and update costs it represents, is a sharable component of the common costs of creating the information for sale.

It is essential to note that Coopers & Lybrand has stated that the foregoing assumptions are the foundation of the study. It has stated that a change or invalidation of these assumptions by the Commission would invalidate the study. Specifically, it stated that if the market maker query costs were to be backed

out of the common cost, the logic and integrity of the balance of the analysis would fail.

Proceeding on the foregoing assumptions, Coopers & Lybrand developed a unit pricing methodology for Level 1, 2, 3 and NQDS services. The product being sold was found to be access to the integrated NASDAQ database, with differentiation between the various services occurring primarily at the point of delivery. The only substantial differences found to exist in processing for Level 1, 2, 3 and NQDS services were the amount of data being transmitted and the form of the transmission (i.e. broadcast or screen display). Once accessibility is established by subscribing to a service, the number of physical accesses actually performed is immaterial. Access can be assumed to be continual, since broadcasts of Level 1 and NQDS information occur constantly and the entire database is continuously available for access from Level 2 and 3 terminals. The mechanics of delivery result in very small additional costs in the case of the Broadcast services, Level 1 and NQDS, and significant delivery costs for the delivery of Level 2 and 3 service over NASDAQ lines.

According to Coopers & Lybrand, cost based pricing requires identifying and using an objective and shared cost bearing unit of sale. To fairly apportion costs to products, it is customary to include the costs of all the processes which are involved in creating the product. As noted previously, NASDAQ Level 1, 2, 3 and NQDS services sell the same product, access to NASDAQ market data information. Therefore, a unit of information for cost application was required which varies quantitatively among the different services. The unit selected was the basic component of quotation information, with one unit attributable to Level 1 service and nine units attributable to Levels 2, 3 and NQDS service which were seen as functionally equivalent in terms of access to the database, since they enable access to all market maker quotations for a given security.

To establish the total costs for Levels 1, 2, 3 and NQDS service, it was necessary to further refine the seven functional cost pools defined by the costing analysis performed. In order to create the most objective assignment of cost by product, it was determined desirable to create individual cost pools specific to each service, common cost pools in which all services share on a proportionate basis, and assign cost to each unit of information sold, regardless of how it is sold. In conformance with this approach, cost pools for each NASDAQ product were created as follows—the sum of all costs attributable to NASDAQ functions for the period studied was determined. If all costs of operation were deemed sharable, this would be the common cost pool. They are not all sharable however. From this amount, the specifically allocated cost of the broadcast function and NQDS function were calculated but retained in the common cost pool. Based upon the assumption of shareability of market marker query costs (76% of such costs), 24% of the cost of the query function, representing non-market maker queries was removed from the common pool and included in the individual cost pool allocated to Level 2/3 service. The remainder represents the common cost pool to be shared among all services.

In order to establish a price with stability for a period of years, it was also necessary to define a factor over cost. This is necessary in order to yield an appropriate surplus for system maintenance and enhancement, response to technological change, the need for sophisticated backup facilities, and other growth requirements. Actual and budgeted cost data for NASDAQ show a growth rate which may be used to create that factor. Based upon the rate of growth of expenses, actual and budgeted, during the period 1982 through 1985, a continued growth rate of 15% was projected as being a conservative expectation over the next three to five years. In order to establish a price that will be reliable over this same period, it was determined that a factor of 50% should be added to the cost base for NASDAQ services for 1984. Barring extraordinary increases in costs for 1986 through 1989, the 50% over-cost pricing should enable NASDAQ to offset the effect of 15% compounded growth in its budget; however, even using this cost multiplier a deficit is projected if it is applied through a full five year period. This deficit will first occur in the fourth year and increase substantially in the fifth year. At the end of three years, projected revenues and expenses are about equal though there is a slight revenue shortfall. This would probably necessitate reevaluating the rate no later than after three years.

As stated, the pricing utilized to recover present cost and the anticipated growth in expenses must be stable. Therefore, a measurement would be required which would not be susceptible to great fluctuation over a reasonable planning horizon. The number of user terminals receiving NASDAQ services is large enough and a stable enough population for this purpose. The number of terminals combined with the units of information were found by Coopers & Lybrand to provide a pricing formula which accurately sets forth the true cost of providing any particular service to a subscriber.

Projections were made of the anticipated demand for the various services through terminal populations for each individual service. The number of units of information accessible by each such service were then multiplied by the number of terminals expected to subscribe to each such service which permitted the calculation of the total number of units of accessible information to be derived from the NASDAQ system over the period of the next three to five years.

In calculating the cost attributable to each service, Coopers & Lybrand utilized the following basic formulae: Common costs per unit of accessible information were determined by dividing the common cost pool by the total number of accessible units of information divided by twelve months. The individual costs per unit of accessible information were calculated by dividing the individual cost pool applicable to a particular NASDAQ function by the total number of accessible units in that function divided by twelve months. Total costs per unit were calculated by adding the common cost per unit plus the individual cost for those units. Finally, the price per unit was determined by multiplying the total cost per unit times 1.5 (50% growth multiplier). These calculations resulted in a NQDS cost based fee of $79.02. Therefore, the Board determined to impose a fee of $79.00 per month for NQDS services per terminal.

The fee proposed herein and the methodology employed is believed to be objective, logical, fully supportable and reasonable in application to assure, consistent with the mandate embodied in section 14A(b)(5) of the Act, the equitable allocation of reasonable charges for the services offered through the NASDAQ system. Similarly, it is believed that the methodology employed is fully consistent with the language of section 11A(c)(1) of the Act. The fee is believed to be consistent with the standard enunciated in section 11A(1)(C) that securities information processors be assured of obtaining such information as is prepared for distribution by the Association on fair and reasonable terms because no portion of the fee is required to be borne by any securities information processor receiving the NQDS information for purposes of redistribution of the

information to subscribers. The fee is believed to be consistent with the standard enunciated in section 11A(c)(1)(D) that for purposes other than distribution, exchange members, brokers, dealers, securities information processors and other perons be assured of obtaining such information as is published or distributed by the Association on terms which are not unreasonably discriminatory. To the extent this proposed fee results in a discrimination between the fees paid by NASDAQ subscribers and a securities information processor's subscribers, the Association believes that such discrimination has been effectively and improperly mandated by the Commission's Order. The Association continues to believe that the purpose of this section of the Act was to permit self regulatory organizations certain latitude in the formulation of its fees and not to authorize the Commission to foster discrimination in the fees paid by different categories of subscribers. The information accessible by a NQDS subscriber is the same information "as is published or distributed" by NASDAQ for the Commission's approved fee of $150 per month to its subscribers. There is no difference in the substance of the information received, only the persentation of the information, which has been reformatted at the option of the securities information processor to comport with its particular service.

B. Self Regulatory Organization's Statement on Burden on Competition

The Association had Coopers & Lybrand perform a functional analysis of the NASDAQ system and is submitting herein a proposed NQDS fee based upon that study only as a result of being directed to do so by the Commission in its Order dated April 17, 1984. That order is premised upon the Commission's determination that fees must be cost related based upon a functional analysis of the system in respect to those services of NASDAQ which are the subject of competition from private vendors. The Association continues to believe application of the existing Level ⅔ fee of $150 per month per subscriber of NQDS users is proper, consistent with the Act and does not represent an unjustified burden upon competition. In fact, the Commission had previously so determined when the fee was first adopted. However, to the extent the application thereof to NQDS users is considered an unjustified burden on competition because of the Commission's conclusion that NASDAQ is in competition with private vendors, such has been obviated by the proposal which would apply a new cost-based fee on the users of NQDS service.

Nevertheless, while the functional analysis was conducted in accordance with the Commission's Order and costs were likewise attributed to the various functions in determining the amount of the fee being filed herewith, the premise of the Commission's Order is in error because the intangible that was not taken into consideration by the Commission in making its "in competition" determination is that the Association is committed, as it must be as a matter of law, to make NASDAQ service available on a nationwide basis irrespective of the remoteness of the location to be serviced. Vendors of NQDS service do not have to do so and thus can maximize profits, and minimize expenses, by offering their services only in high concentration areas. They can also adjust their prices as deemed necessary on a subscriber-by-subscriber basis. Thus, irrespective of the level of the fee to be charged NQDS users, if lower than NASDAQ subscriber charges in any respect, and inappropriate burden is placed upon NASDAQ subscribers and a concomitent benefit given to subscribers of NQDS vendor systems. NQDS vendors are not, therefore, in competition with NASDAQ in the manner suggested by the Commission in its Order. The potential discrimination in geographic availability and charges may result in significant competitive imbalances between subscribers to NASDAQ and NQDS services. Such competitive imbalances would be exacerbated by any greater differential between the fee applicable to NQDS and Level ⅔. Further application of the interim NQDS rate of $8.75 per subscriber terminal would result in magnification of these competitive disparities. In sum, the Commission had determined that NASDAQ fees must be regulated as if it were a monopoly, while its assumed monopolized market is in fact open to free and unregulated competition.

Nevertheless, while the NASD disagrees with and contests the premise of the Commission's Order, the fee is fully cost based and hence consistent with the Commission's Order and, therefore, does not impose an unjustified burden upon competition. It departs from the Commission's Order in connection with costs attributable to the query function in Order to maintain consistency with generally accepted cost accounting principles.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

The NASD's proposed rule change raises a number of issues under the Act regarding the dissemination of market information. These issues include, first, questions regarding the appropriate prices and terms that an exclusive processor of securities data can impose on vendors that may compete with the exclusive processor in the Terminal Service market. In this regard, Section 11A(c) of the Act provides that the Commission may, by rule, assure that "all securities information processors may, for purposes of distribution and publication, obtain [securities data made available by an exclusive processor] on fair and reasonable terms." [16]

Second, the proposed fee must be reviewed for whether such fee is fair and reasonable and is consistent with the Congressional mandate in Section 11A(c)(1) of the Act to assure "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." [17]

Third, the proposed rule change must be consistent with Section 15A of the Act. Specifically, the proposal must be consistent with:

- Section 15A(b)(5) of the Act, which requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls."

[16] Section 11A(c)(1)(C) of the Act.

[17] Section 11A(a)(1)(C)(iii) of the Act.

• Section 15A(b)(6) of the Act, which requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

• Section 15A(b)(9) of the Act, which requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in futherance of the purposes of [the Act].

In considering whether the NASD's proposed fee is consistent with these provisions of the Act, the Commission requests that commentators consider the proposal in light of the Commisison's previous determinations in this matter. Specifically, the Commission, in the April Order, determined that, "at least in the circumstance where an exclusive processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, the exclusive processor's fees should be based strictly on the expenses it incurs in providing information to vendors." [18] In this connection, the Commission stated that—

The NASD may recover only the costs of collecting, validating, [footnote omitted] and preparing the information for shipment to Instinet. Costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing an NQDS subscriber charge. In addition, incremental capacity built into its computer and communications system [footnote omitted] necessary to operate an inquiry service, but not necessary for a quotation collection service, cannot be considered costs relevant to the NQDS service.[19]

The Comission also stated that, "barring demonstrable differences in cost, all subscribers to NASDAQ information through vendors other than NASDAQ should pay the same basic fee to the NASD whether they receive the NASDAQ Level 1 best bid and offer service or the Instinet full quotation service." [20]

In order to evaluate the issues raised by the NASD's proposed rule change, the Commisison requests that commentators, in addition to any general comments concerning the rule change, specifically respond to the following questions:

1. Would the proposed fee structure provide vendors' subscribers access to NASDAQ securities quotation information in a non-discriminatory manner at a cost which would not impose an unnecessary or inappropriate burden on competition?

2. Was the methodology used by Coopers & Lybrand to ascertain the costs associated with the NQDS reasonable?

3. By including NASDAQ market maker query costs in the formulation of the proposed fee, the method of establishing the fee appears to be inconsistent with the April Order. Nevertheless, how do commentators evaluate the reasons and methodology used by the NASD to include these costs in the proposed NQDS subscriber fee?

4. How do commentators assess Coopers & Lybrand's statement that if market maker query costs were backed out of common cost, the "logic and integrity of the balance of the [cost] analysis would fail"?

5. Should NASDAQ Level 2 and 3 services bear a heavier proportion of any particular cost pool identified by Coopers & Lybrand?

6. Should NQDS bear a heavier portion of any particular cost pool identified by Coopers & Lybrand?

7. Assuming that the NASD reasonably has calculated costs and constructed appropriate cost pools, would it be consistent with a cost-based methodology as opposed to a value-of-service approach to apportion nine times more common costs on NQDS because that service on average has access to eight more quotations than Level 1 service?

8. Are the assumptions underlying the 15% expected budget growth multiplier that was used in setting the proposed fee reasonable?

In order to assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 35 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–85–19.

Copies of the submission, all written statements with respect to the proposed rule change between the Commisison and any person, other than those which may be withheld from the public, [21] will be available for inspection and copying at the Commission's Public Reference Room.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated: August 30, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21482 Filed 9–6–85; 8:45 am]

BILLING CODE 8010–01–M

[18] April Order, *supra* note 8, 49 FR at 17847.

[19] April Order, *id.*, 49 FR at 17856–59.

[20] April Order, *id.*, 49 FR at 17859.

[21] 17 CFR 240.24b–2.

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[CM–81882]

Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1986 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering programs under the Soviet and Eastern European Research and Training Act. All awards will be annual and based on an open, national competition among individual organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983, Pub. L. 98–164, Title VIII, 97 Stat. 1047–50.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1986 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by October 11, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of State, INR, Soviet-Eastern European Studies Advisory Committee, Room 6747, Washington, D.C. 20520.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the U.S. Secretary of State.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of State, INR, Soviet-Eastern European Studies Advisory Committee, Room 6747, 2201 C Street, N.W., Washington, D.C.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

The Soviet-Eastern European Research and Training Act of 1983 provides for U.S. Government assistance to develop and maintain a national capacity for advanced research and training in the field of Soviet and Eastern European studies by authorizing support for graduate training, advanced research, public dissemination of research data and results, contact and collaboration among government and private specialists, and acquisition by specialists of first-hand experience in the Soviet Union and the countries of Eastern Europe.

The *purpose* of the program and eligibility requirements are set forth in the Act, Pub. L. 98–164, Title VIII, 1047–50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, shall approve policies and shall make final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct national programs in the field of Soviet and Eastern European and related studies furthering the goals of the Act as follows:

(1) Programs of support for research on the Soviet Union and Eastern Europe at the postdoctoral or equivalent level, such research to be conducted, on a shared-cost basis by the sponsoring organization/institution and the government, through American institutions of higher education or not-for-profit corporations;

(2) Programs offering graduate, postdoctoral, and teaching fellowship support for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted on a shared-cost basis by the sponsoring organization/institution and the government, at American institutions of higher education;

(3) Programs to carry out advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe, and to facilitate access for American specialists to research facilities and resources in those countries;

(4) Programs to facilitate dissemination of research methods, data and findings in Soviet Union and Eastern European studies. Dissemination would include publication of papers, speeches, conference proceedings, the holding of meetings, funding of serial publications, bibliographical materials, etc.; and

(5) Programs to facilitate research collaboration among specialists and between government and private researchers in the field of Soviet and Eastern European studies and by conducting seminars, conferences, etc.

To be eligible for consideration, proposed programs must be national in scope as regards the constituencies to be served, and the competitions to be held in making awards. Local or regional programs having a demonstrable national impact are eligible. However, it is not intended to consider applications from individuals to further their own training or research, or from institutions or organizations proposing programs that do not meet the stipulated criteria for national scope.

In making its recommendations, the Committee will seek the development of a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced effort which, over the life of the Act, will ensure attention to all the countries of the area, though with emphasis on the USSR. In choosing programs to recommend for funding it will seek to foster interdisciplinary studies and the development of secondary competences. Special emphasis will be placed on those disciplines and topics where the existing base of expertise most needs strengthening in the light of national needs. In this context, emphasis will also be given to innovative programs.

Part III

Available Funds

Congress has renewed its Title VIII funding for Fiscal Year 1986 for $4.8 million; actual awards will be based on the State Department appropriations bill still in Congress.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 pages, double-spaced with a 1 page executive summary, a budget, and vitae of professional staff.

Budget

Applicants should familiarize themselves with OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education . . . Uniform Administrative Requirements," and indicate or provide the following information.

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) Include a budget request containing total amount, a detailed program budget, and a detailed administrative budget listing direct administrative expenses and indirect costs. *NB* Indirect costs are limited to 10 percent of total grant agreements.

(3) Include the applicant's cost-sharing proposal, if applicable, containing appropriate details/cross references to the requested budget.

(4) Whether payment is requested on a reimburseable basis or by advance methods; re the latter, for grants above $120,000, advance funds will be made through a letter of credit, but if less than $120,000, advance of funds will be made by Treasury checks through wire transfers.

Applicants should also include the organization's most recent audit report (the most recent U.S. Government audit report if available) and the name,

address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Advisory Committee will evaluate applications on the basis of the nature and extent of the applicant's experience in administering programs of this kind in the Soviet-Eastern European field (35 points); their responsiveness to the objectives set forth above in *Part II, Program Information* (35 points), the quality of applicant key personnel and the adequacy of supporting resources (15 points), and budget and cost effectiveness (15 points).

Further Information

For further information, contact Paul K. Cook, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR, Department of State, Room 6747, Washington, D.C. 20520. Telephone: (202) 653–5144 or (202) 647–2800.

Dated: August 28, 1985.

Paul K. Cook,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 85–21470 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–32–M

[CM–8/880]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on October 31, 1985, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting is to complete preparations for the 14th Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for November 11–22 in London. In particular, the SHC will discuss the development of the U.S. position dealing with, inter alia, the following topics:

Reports of the various Committees;
Long-term work plan;
Relations with the U.N. and the specialized agencies;
Status of conventions.

Members of the public are invited to attend up to the seating capacity of the room.

Interested persons may seek information by writing to Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street, SW., Washington, D.C. 20593, Telephone (202) 426–2280.

Dated: September 2, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85–21464 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–07–M

Shipping Coordinating Committee; Two Meetings

The Shipping Coordinating Committee will conduct an open meeting on September 23, 1985 at 9:30 a.m. in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting is to review the results of the 54th Session of the International Maritime Organization (IMO) Legal Committee, and to consider the U.S. position for the 55th Session, to be held in London on October 7–11, 1985.

The agenda for the meeting includes the following topics:

Revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues;
Proposals to amend the 1969 Intervention on the High Seas Convention;
Issues relating to the draft Convention on Noxious and Hazardous Substances (NHS);
The draft Convention on Maritime Liens and Mortgages;
A work program for the Legal Committee for 1986–87 and a long-term work program.

Members of the public are invited to attend up to the seating capacity of the room.

For further information, contact Captain F.F. Burgess, Jr., U.S. Coast Guard (G–LMI), Washington, D.C. 20593, Telephone (202) 426–1527.

National Committee for the Prevention of Marine Pollution

The National Committee for the Prevention of Marine Pollution (NCPMP) will conduct an open meeting at 9:30 AM on November 21, 1985 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting is to complete preparations for the 22nd Session of the Marine Environment Protection Committee (MEPC) which is scheduled for December 2–6, 1985 in London. In particular, the NCPMP will discuss the development of the U.S. positions dealing with, inter alia, the following topics:

Uniform interpretation;
Oily-water separators and monitoring equipment;
Harmonized system of survey and certification;
Enforcement of pollution conventions.

Members of the public are invited to attend up to the seating capacity of the room.

Interested persons may seek information by writing to Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street, S.W., Washington, D.C. 20593, Telephone (202) 426–1527.

Dated: August 27, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85–21465 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/884]

Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 12, 1985 at 10:30 a.m. in Room 5941, Department of State, 2201 C Street, NW., Washington, DC. Due to the need for immediate advice and the conflict of schedules of public members to a later meeting time, we are not providing the normal two-week advance notice.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on Telecommunications Development will review issues related to and concerning the improvement or expansion of telecommunications in developing countries.

The purpose of the meeting on September 12 is to discuss issues related to the proposed ITU Centre for Telecommunications Development. The Ad Hoc Group will make recommendations on possible U.S. positions regarding the Advisory Board of the Centre and a preparatory meeting of donor countries on the Advisory Board.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion subject to instructions of the

Chairman. Admittance will be limited to seating avilable. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend should so advise Mr. Barbely, Department of State; telephone (202) 632–5832. All attendees must use the 21st Street entrance to the building.

Dated: September 4, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85–21558 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Application of Las Vegas Express Airlines, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 85–9–5) Docket 42715.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Las Vegas Express Airlines, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATE: Persons wishing to file objections should do so no later than September 16, 1985.

ADDRESS: Objections and answers to objections should be filed in Docket 42715 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–9–5 is available from the Documentary Services Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85–9–5 to that address.

Dated: September 3, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–21430 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–62–M

[Order 85–9–4; Docket 42668]

Application of Las Vegas Express, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85–9–4) Docket 42668.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Las Vegas Express, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than September 16, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42668 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Office of General Counsel, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–7631.

Dated: September 3, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–21429 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–62–M

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB July 22, 1985—August 16, 1985

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period July 22, 1985—August 16, 1985 to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from July 22, 1985-August 16, 1985:

DOT No: 2602
OMB No. 2132–0520
By: Urban Mass Transportation Administration
Title: Section 19 (EEO) as it Applies to UMTA Grant Programs
Form: None

Frequency: Annually
Respondents: State or local governments and businesses or other for-profit organizations.
Need/Use: The data derived from written EEO and affirmative action plans will be utilized by the UMTA Office of Civil Rights in monitoring the transit properties' compliance with applicable EEO laws, rules, regulations, and statutes. The purpose of this monitoring and enforcement activity is to ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

DOT No: 2603
OMB No. 2133
By: Maritime Administration
Title: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes
Forms: None
Frequency: On Occasion
Respondents: Ship Owners, Ship Operators
Need/Use: To collect vessel voyage data to enable MARAD to provide fair and reasonable rate guidelines to Federal shipper agencies.

DOT No: 2604
OMB No: 2115–0503
By: U.S. Coast Guard
Title: Plan Approval and Records for U.S. Vessels Carrying Oil in Bulk
Forms: None
Frequency: Recordkeeping and on Occasion
Respondents: Vessel Operators
Need/Use: This information collection is needed to ensure that:
(1) Sufficient information is available to the Coast Guard to determine that a vessel is complying with regulations;
(2) Sufficient information is available to vessel operating personnel for safe operation of the vessel and the equipment; and
(3) A means is available to appeal Coast Guard decisions.

DOT No: 2605
OMB No: New
By: Research and Special Programs Administration
Title: Evaluation of Training Programs for Incident Prevention and Response
Forms: Training, Response, and Planning Evaluation
Frequency: One time
Respondents: State and local governments; Businesses or other for-profit organizations; Federal agencies; non-profit institutions; and small businesses
Need/Use: Needed by the Materials Transportation Bureau to evaluate needed training programs for incidents prevention, response, and transportation of hazardous materials under Congressional mandate of Pub. L. 96–559.

DOT No: 2606
OMB No: New
By: Research and Special Programs Administration
Title: Bulk Packaging and Miscellaneous Proposals
Forms: None
Frequency: On Occasion
Respondents: Bulk shippers of hazardous materials
Need/Use: To alert emergency response and transportation personnel of bulk containers containing hazardous materials and need for special handling and proper response in case of an incident involving the hazardous materials.

DOT No: 2607
OMB No: 2120–0034
By: Federal Aviation Administration
Title: Medical Standards and Certification—FAR 67 Cooperative Shippers Association
Forms: FAA Form 8500–7, FAA Form 8500–8, FAA Form 8500–14, FAA Form 8500–20
Frequency: On Occasion
Respondents: Individuals
Need/Use: To determine if applicant is medically fit to perform aviation duties.

DOT No: 2608
OMB No: 2125–0034
By: Federal Highway Administration
Title: Certification of Enforcement of Vehicle Size and Weight Laws
Forms: None
Frequency: Annually
Respondents: State highway agenices
Need/Use: For FHWA to obtain information from States to support an annual certification of size and weight law enforcement as required of the States by 23 U.S.C. 141.

DOT No: 2609
OMB No: 2106–0006
By: Office of the Secretary
Title: Part 323—Terminations, Suspensions or Reductions, Suspensions or Reductions of Air Service
Forms: N/A
Frequency: On Occasion
Respondents: Air Carriers and State and Local Governments
Need/Use: Required to inform DOT and community when an air carrier intends to terminate, suspend or remove air service below a community's essential air service level.

DOT No: 2610
OMB No: 2130–0035
By: Federal Railroad Administration
Title: Railroad Operating Rules
Forms: None
Frequency: On Occasion
Respondents: Railroads
Need/Use: FRA uses this information to determine the condition of operating rules and practices with respect to trains and the instructions that railroads provide to their employees.

DOT No: 2611
OMB No: 2130–0500
By: Federal Railroad Administration
Title: Accident/Incident Reporting and Recordkeeping Requirements
Forms: FRA–F–6180.45; FRA–F–6180.54; FRA–F–6180.55; FRA–F–6180.55A; FRA–F–6180.56 and FRA–6180.57.
Frequency: On Occasion; Monthly; Annually
Respondents: Railroads
Need/Use: FRA needs this information to identify hazardous conditions on the railroad and uses it to assure compliance with the Railroad Safety Act.

DOT No: 2612
OMB No: 2130–0526
By: Federal Railroad Administration
Title: Control of Alcohol and Drug Use in Railroad Operations
Forms: FRA–F–6180.73 and FRA–F–6180.74
Frequency: On Occasion
Respondents: Railroads
Need/Use: The Federal Railroad Administration and railroad industry will use the information to determine the extent of the alcohol and drug program and to curtail any wide-spread use.

DOT No: 2613
OMB No: 2115–0043
By: U.S. Coast Guard
Title: Plan Approval and Records for Load Lines
Forms: LL 9–A, LL 10–A, LL 18–E, LL 40–A, LL 101–A
Frequency: On Occasion/Anually
Respondents: Owners of merchant vessels over 150 gross tons or 79 feet long engaged in commerce on international or coastwise voyages
Need/Use: This information collection requirement is needed and used to: (1) Provide vessel owners procedures for obtaining load line certificates; (2) determine if the vessel complies with the minimum design standards prior to certification; (3) ensure continued vessel compliance with design requirements after certification; (4) allow masters to continue to operate their vessel in compliance with the load line regualtions; and, (5) prove

noncompliance in case of delinquent vessels.

DOT No: 2614
OMB No: After consolidation 2132-0502
By: Urban Mass Transportation Administration
Title: Sections 3 and 9 Urbanized Area Capital Assistance Program
Form(s): N/A
Frequency: Varied (annually/quarterly)
Respondents: State and local governments
Need/Use: The respondents are State and local government entities responsible for public transportation. The reports are usually submitted to the cognizant Regional program office to determine the applicants eligibility for funding and subsequently thier progress in implementing and completing project activities. The data ensures compliance with provision of the UMTA Act and OMB Circular A-102

DOT NO: 2615
OMB NO: 2132-0008
By: Urban Mass Transportation Administration
Title: Section 15 Reporting System
Forms: UMTA 2710 Series
Frequency: Annually
Respondents: State and local governments; businesses or other for-profit organizations
Need/Use: Section 15 of the Urban Mass Transportation Act of of 1964, as amended, mandates a uniform system of accounts and records and a reporting system for mass transit operators to enable the operators to compare performance with peers and to assist local, State, and Federal government and the general public in setting policy and in making investment decisions.

Issued in Washington, D.C. on August 29, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85-21432 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-62-M

Fitness Determination of Big Island Air, Inc. d.b.a. Big Island Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-8-84, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Big Island Air, Inc. d.b.a. Big Island Air is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, and serve them on all persons listed in Attachement A to the order. Responses shall be filed no later than September 21, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-8-84 is available from the Documentary Services Division, Room 4107, 400 7th Street SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-8-84 to that address.

Dated: August 29, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21431 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP85-13; Notice 1]

Motor Vehicle Safety Standards; Union City Body Company, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Union City Body Company, Inc., Union City, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1318 et seq.) for a noncompliance with 49 CFR 571.302, "Flammability of Interior Materials." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Federal Motor Vehicle Safety Standards (FMVSS) No. 302 requires that interior materials must have horizontal burn rates no greater than 4 inches per minute. Section S5.2.2 of this standard requires that the test specimen be cut in the direction that produces the most adverse test results, and the specimen be oriented so that the surface closest to the occupant compartment air space faces downward on the test frame.

Through a misinterpretation, Union City Body Company tested samples of seat fabric oriented so the surface closest to the occupant compartment air space faced upward instead of downward. This orientation produced burn rates ranging from 1.7 to 2.9 inches per minute—well within the 4 inch per minute specification. When the test were repeated with the surface closest to the occupant compartment air space facing downward, burn rates ranging from 4.5 to 5.4 inches per minute were obtained and the material was determined to be out of compliance. The petitioner states that new complying material was obtained and production resumed on July 15, 1985. This apparent noncompliance affects 5,808 vehicles produced from 1981 through July 8, 1985, which are owned and operated by United Parcel Service (UPS).

Union City Body Company argues that the noncompliance is inconsequential as far as vehicle safety is concerned because (1) the noncompliance is marginal, (2) UPS vehicles involved are designed for occupancy by only a driver, (3) these UPS vehicles are destroyed at the end of their service life (4) very little material is exposed when the seat is occupied by the driver, with the seat back and cushion area being approximately 16 by 17 inches, and (5) all units carry a 5-BC fire extinguisher.

Interested persons are invited to submit written data, views and arguments on the petition of Union City Body Company, Inc. described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Robert Williams and Taylor Vinson, respectively.

Comment closing date: October 9, 1985.

(Sec. 102, P.L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 3, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR. Doc. 85-21373 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Deposit Insurance Corporation	1, 2
Federal Home Loan Bank Board	3
Federal Mine Safety and Health Review Commission	4
Overseas Private Investment Corporation	5

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:57 p.m. on Friday, August 30, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Moncor Bank, National Association, Hobbs, New Mexico, which was closed by the Senior Deputy Comptroller for National Operations, Office of the Comptroller of the Currency, on Friday, August 30, 1985; (2) accept the bid for the transaction submitted by United Bank of Lea County, Hobbs, New Mexico, a newly-chartered State nonmember bank; (3) approve the applications of United Bank of Lea County, Hobbs, New Mexico, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Moncor Bank, National Association, Hobbs, New Mexico, and for consent to establish the three branches of Moncor Bank, National Association as branches of United Bank of Lea County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting purusant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21537 Filed 9-5-85; 11:15 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21538 Filed 9-5-85; 11:15 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Friday September 13, 1985, at 9:00 a.m.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Technical Amendments to the Net-Worth Regulation.
Corporate Governance.
Securities Offerings.
Appraised Equity Capital.

Jeff Sconyers,

Secretary.

[FR Doc. 85-21494 Filed 9-5-85; 8:55 am]

BILLING CODE 6720-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 4, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, September 11, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Tammsco, Inc., Docket Nos. LAKE 81-190-M and LAKE 82-65-M. (Issues include whether the administrative law judge erred in vacating a citation issued for an alleged violation of 30 CFR 57.5-5, a mandatory standard dealing with control of employee exposure to airborne contaminants.)

2. Minerals Exploration Company, Docket No. WEST 81-189-RM. (Issues include whether employees of the Department of Labor engaged in improper actions, warranting dismissal of the proceeding, during the course of litigation.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission

may, subject to the limitations of 29 CFR § 2706.150(a)(3) and § 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–21576 Filed 9–5–85; 3:31 pm]

BILLING CODE 6735–01–M

5

OVERSEAS PRIVATE INVESTMENT CORPORATION

Metting of the Board of Directors

TIME AND DATE: 9:00 a.m. (closed portion). 10:00 a.m. (open portion). Tuesday, September 17, 1985.

PLACE: Offices of the Corporation, fourth floor Board Room 1615 M Street NW., Washington DC.

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9:00 a.m. to 10:00 a.m.):

1. Finance Project in Near Eastern Country.
2. Finance and Insurance Project in Near Eastern Country.
3. Insurance Project in Near Eastern Country.
4. Insurance Project in South American Country.
5. Legislative Renewal; Status Report.
6. China Projects: Status Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:00 a.m.):

1. Approval of the Minutes of the Previous Meeting.
2. Approval of Scheduled Board Meetings.
3. Allocation of Retained Earnings.
4. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 457–7015.

Elizabeth A. Burton,

Corporate Secretary.

September 4, 1985.

[FR Doc. 85–21532 Filed 9–5–85; 11:06 am]

BILLING CODE 3210–01–M

federal register

Monday
September 9, 1985

Part II

Environmental Protection Agency

40 CFR Parts 66 and 67
Assessment and Collection of Noncompliance Penalties; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 66

[FRL 2539-8(a)]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 28, 1980 the Environmental Protection Agency published rules for the assessment and collection of noncompliance penalties pursuant to section 120 of the Clean Air Act, 42 U.S.C. 7420. The penalty is designed to calculate the economic benefit enjoyed by a source that delays compliance with applicable legal requirements.

This final rule modifies the Section 120 regulations in three respects. The modifications respond to the decision and order of the D.C. Circuit in *Duquesne Light Co.* v. *EPA*, 698 F.2d 457 (1983).

First, the rule implements the statutory exemption for violations that result from a source's inability to comply for reasons entirely beyond its control by allowing a source to petition for exemption without prejudging what kinds of circumstances qualified for exemption.

Second, the rule provides for adjudicatory hearings in all cases addressed by section 120 without administrative denial of hearings for immaterial or insufficient contentions.

Third, the rule clarifies that in cases of subsequently-approved SIP revisions the statutory "period of covered noncompliance" terminates at the end of four months after submission of the SIP revision.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman, Office of General Counsel (202) 382–7624.

SUPPLEMENTARY INFORMATION: On July 28, 1980, EPA published rules for the assessment and collection of administrative noncompliance penalties under Section 120 of the Clean Air Act, 42 U.S.C. 7420 (48 FR 50086, 40 CFR Parts 66 and 67).

In a decision dated January 7, 1983, the D.C. Circuit upheld the EPA rules in all major substantive and procedural respects, *Duquesne Light Co.* v. *EPA*, 698 F.2d 457, but remanded three secondary aspects of the rule to EPA for further consideration. This rule responds to the order in *Duquesne*. It was proposed for comment on March 12, 1984 (49 FR 9236), with the exception of one additional change which is noted under Section 2 below.

The *Duquesne* court remanded for further consideration issues related to 1) implementation of the statutory exemption for sources whose noncompliance results from an inability to comply which is beyond the source's control; 2) implementation of the statutory provision for hearings upon receipt of a source's petition challenging a source's liability for a penalty or disputing EPA's recomputation (under 40 CFR 66.51(2)); and 3) the effect on the amount of a source's penalty of late EPA approval of a revision of the relevant SIP provision.

1. Implementation of the "Inability to Comply" Exemption

Section 120 exempts violations from penalty which (i) have been recognized [1] as resulting from the "inability" of the source to comply with applicable regulations, if (ii) the inability arose entirely "for reasons beyond" the control of the source. In the rule which the Court remanded for further consideration, EPA had listed seven categories which it considered constituted grounds for exemption.[2] The Court held that EPA could not limit the possible categories. It remanded for consideration of a rule that would allow a source to qualify for exemption whenever its inability to comply resulted from factors beyond its control.[3]

The rule allows a source to assert a claim for an "inability to comply" exemption without regard to whether the cause fits any preconceived category.[4]

2. Administrative Denial of Hearing

Section 120 requires EPA to "provide a hearing on the record" of any petition challenging EPA's issuance of a notice of noncompliance or claiming an exemption, section 120(b)(4)(5). It also authorizes EPA to recompute penalty amounts after "notice and opportunity for a hearing on the record", section 120(b)(8). Because of the administrative burdens in providing an adjudicatory hearing for all petitions whether meritorious or not, EPA regulations provided for administrative denial of hearings if (i) the petition presented no information "which, if true" would tend to disprove the existence of a violation, show entitlement to an exemption, or alter the amount of a penalty assessment [5], or (ii) the petitioner failed adequately to supplement the information in its petition after a request by EPA to do so, 40 CFR 66.41(a)(2) and (a)(3), 40 CFR 66.53(b).

The Court, however, found that the statute required hearings in all such cases.

Consistent with the Court's ruling, the rule requires EPA to provide a hearing upon receipt of petitions challenging a notice of noncompliance, claiming entitlement to an exemption or challenging EPA's recomputation of a source's penalty assessment, provided that EPA need not provide a hearing if and to the extent that it administratively grants the relief requested in a petition. The issue whether the petition presented any material factual issue would therefore be determined in the first instance on motion before an administrative law judge.

The rule published today includes two revisions to § 66.41(a)(4) which were not included in the proposed rule. These additional revisions are entirely consistent with and a logical extension of the revisions to § 66.41 already proposed. Consistent with the Court's ruling, the additional revisions to § 66.41(a)(4) taken together require EPA to provide a hearing, before denial of a petition, whenever petitioner fails to supplement his petition adequately after an EPA request so to do.

3. Subsequently-Approved Revisions to SIP Requirements

Section 120 imposes a penalty for violation of "applicable" SIP requirements, section 120(a)(2)(A). The pendency of proposed revisions to applicable SIP requirements does not, therefore, affect a source's liability for violations of existing SIP requirements. Upon EPA approval of the SIP revision, however, the prior SIP would no longer provide a basis for penalty assessment

---

[1] To be eligible for an inability to comply exemption a source must have received a Section 113(d) order or EPA-approved judicial order authorizing delayed compliance. Section 120(a)(2)(B)(iv), 40 CFR 66.31(c), 698 F.2d 478.

[2] To establish whether the inability resulted from factors beyond a source's control, EPA required that the inability result from Act of God, fire, embargo, strike, capital shortage, unforeseeable equipment failure or failure of supply, 40 CFR 66.31(c).

[3] The Court specifically held, however, that "technological impossibility" did not constitute a basis for exemption, 698 F.2d 477.

[4] An alternative approach discussed by the Court would be to retain the seven categories but to allow sources to seek rule amendments (with retroactive effect) to establish new bases of qualification as needed, 698 F.2d 477. This approach, however, seems unnecessarily time consuming and cumbersome.

[5] Under the statute a source must compute a penalty upon receipt of a notice of noncompliance, Section 120(b)(4). EPA may accept or reject the source's computation, Section 120(b)(8). The regulations track these statutory requirements, 40 CFR 66.13(a)(1), 66.51(2).

as of the date of EPA approval of the revision.

Section 110 requires EPA to take action on proposed nonvoluntary SIP revisions within four months of submission to EPA, section 110(a)(2). For purposes of section 120, a similar four-month limit applies to voluntarily-submitted SIP revisions, 698 F.2d 471.

Were EPA to delay more than four months to act on a SIP revision which it eventually approved, EPA delay could result in a penalty amount larger than the penalty a source would owe had EPA acted within the four-month limit.

Apparently assuming that EPA claimed the right to collect a Section 120 penalty in such cases, i.e., for the period of EPA's delay past four months in cases of eventual EPA approval of SIP revisions, the Court remanded for reconsideration of the regulation in this respect, 698 F.2d 472.

One method to carry out the Court's ruling would be to abate the penalty for the period after four months of submission until EPA approval of the SIP revision. This approach, however, assumes that penalty payments are attributable to specific monthly periods rather than to a prorated portion of the entire period of noncompliance. Such an approach also involves unnecessary complexities: It cannot be known in advance whether a SIP revision will be submitted or whether EPA action will be delayed. This means that *any* Section 120 payments would have to be abated four months after the filing of a SIP revision if EPA had not acted by that time.

The final rule does not adopt the "abatement" approach. Instead, it adopts, as proposed, a "reconciliation" approach which recognizes that EPA approval of a SIP revision terminates the "period of covered noncompliance" which forms the basis for the penalty calculation.[6] It states that the final penalty adjustment will assume that the period of covered noncompliance in such cases ends on the date four months from submission of a subsequently approved SIP revision. As in all other cases, any overpayment would be refundable with appropriate interest, see 698 F.2d 484.

Response to Comments

EPA received seven comments on its proposed rule. None of the comments criticized EPA's proposal with respect to the first two modifications. Some of the comments criticized EPA's proposed approach to the modification relating to the effect of late-approved SIP revisions. These commenters argued that EPA's approach was inconsistent with the "abatement" approach described in the mandate of the *Duquesne* Court.

In its proposal, EPA acknowledged that its proposed approach differed from the "abatement" approach described by the *Duquesne court*. EPA believes that the *Duquesne court* was primarily concerned with ensuring that any EPA delay in acting on SIP revisions not result, unfairly, in larger penalty amounts in the case where (i) EPA eventually approves a revision to an applicable SIP and (ii) the source is in compliance with the revised SIP. The court's reference to "abatement" in EPA's view does not preclude use of equivalent and, in EPA's judgment, more workable approaches.

EPA believes that an abatement approach would introduce unnecessary uncertainty and complexity into calculating and collecting penalties. More generally, the abatement approach, if applied in this situation would single out for an anomalous "mid-course correction" the effect of one "error" (among all possible eventual "errors") in the initial computation. Under the existing regulations, all such errors are corrected in the reconciliation computation at the close of the period of covered noncompliance, with interest to be paid on any under- or over-payment.

EPA does not know in advance the outcome of a SIP revision. An abatement approach would therefore require (i) that all penalties be suspended by EPA (ii) through an intermediate agency action separate from the initial computation or final reconciliation, (iii) on receipt (or later) of the SIP revision.

The suspension would affect payments attributable to the entire period of covered noncompliance, not just to the period of delay to act on a SIP. This is because the penalty amount represents an aliquot fraction of the present value of delay for the entire period of covered noncompliance. In other words, the abatement approach does not allow EPA to discriminate, as the court may have believed it did, between payments attributable to any particular month or any particular portion of the period of covered noncompliance.

EPA's approach accomplishes the same result more efficiently than an abatement approach. By waiting until EPA knows whether the SIP revision is effective, it avoids interruption of penalty payments for cases in which pending revisions are eventually disapproved. It clarifies that—for purposes of Section 120 and in cases where EPA approves a SIP "late"—the period of covered noncompliance terminates at the end of four months from the date the SIP revision was submitted to EPA. Coupled with the existing provision for payment of interest, this approach puts the source in the same place as if EPA adopted the "abatement" approach. It is the same approach as that used for any source which, as it turns out, overpays as a result of information not known at the time of the initial calculation. Given that EPA "benefits" neither from the initial "error" regarding the length of the period of covered noncompliance nor from any EPA-caused delay to act on SIP revisions, it is just as fair, and it is simpler, to rectify this error, like others, through the reconciliation process.

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore to be accompanied by a regulatory impact analysis. Executive Order 12291 requires such an analysis if the regulation would result in 1) an annual effect on the economy of $100 million or more, 2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major. We expect that it will have little if any economic effect.

The regulation has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

This regulation is not expected, for similar reasons, to have significant effect on a substantial number of small entities as specified under Section 605 of the Regulatory Flexibility Act.

Lee M. Thomas,

Administrator.

May 2, 1985.

List of Subjects in Part 40 CFR 66

Administrative practices and procedures, Air pollution control, penalties.

Therefore, Title 40, Chapter 1, Part 66 is amended as set forth below:

[6] EPA's approval of the revision of the SIP terminates the "period of covered non-compliance" whether or not the source is in compliance with the new SIP. If the source is violating the new SIP, a new "period of covered noncompliance" would begin and would form the basis of a different penalty computation.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

1. The authority for 40 CFR Part 66 continues to read as follows:

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

2. Section 66.31 is amended by revising paragraph (c) to read as follows:

§ 66.31 Exemptions based on an order, extension or suspension.

* * * * *

(c) In any exemption claim based on paragraph (a)(4) of this section, the source owner or operator must demonstrate:

(1) That the source owner or operator or an affiliated entity in no manner sought, caused, encouraged or contributed to the inability; and

(2) That the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

* * * * *

3. Section 66.41 is amended by removing paragraph (a)(2), revising and redesignating paragraph (a)(4) as (a)(2), and removing and reserving paragraph (b) to read as follows:

§ 66.41 Decision on petitions.

(a) * * *

(2) The petition does not contain sufficient information to demonstrate that the source owner or operator is entitled to part or all of the relief requested. The Administrator shall specify what deficiencies exist and request that the source owner or operator supplement his petition within thirty days of receipt of that request. If the petition is not supplemented adequately within this time, or, if supplemented adequately, still fails to demonstrate entitlement to relief, the Administrator shall grant a hearing under paragraph (a)(3) of this section. Any supplemental material provided pursuant to the Administrator's request shall be evaluated as provided in paragraphs (a)(1) and (a)(3) of this section.

(b) [Reserved]

4. Section 66.53 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 66.53 Decisions on petitions.

* * * * *

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

5. Section 66.71 is amended by adding paragraph (d) to read as follows:

§ 66.71 Determination of compliance.

* * * * *

(d) In the event that the applicable legal requirement (as defined in § 66.3(c)) the violation of which forms the basis for the penalty is superseded by another applicable legal requirement (as defined in § 66.3(c)) the owner or operator of a source liable for a noncompliance penalty under this part shall notify the Administrator in writing that the owner or operator believes that the applicable legal requirement is superseded and that the period of noncompliance covered by the notice of noncompliance is ended. The notice shall be accompanied by the legal arguments which the source owner or operator believes support such a claim. Within 30 days of receipt of a source owner or operator's notice, the Administrator shall determine whether the period of covered noncompliance is ended and shall notify the source owner or operator of this determination in writing. In cases where the superseding EPA-approved requirement was not approved by EPA within the time period required by statute, the period of covered noncompliance shall be deemed to have ended on the date when EPA under the statute should have acted.

6. Section 66.72 is amended by adding paragraph (d) to read as follows:

§ 66.72 Additional payment or reimbursement.

* * * * *

(d) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(d) that the period of covered noncompliance ended on the date the applicable legal requirement was superseded (or, in event of EPA delay past an applicable statutory deadline, on the date the applicable legal requirement would have been superseded if there had been no delay past the statutory deadline), the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and Manual together with data necessary for verification. The revised calculation shall include interest on any underpayment. Paragraphs (b) and (c) shall apply to caiculations submitted under this paragraph.

7. Section 66.81 is amended by revising paragraph (a)(5) to read as follows:

§ 66.81 Final action.

(a) * * *

(5) A notice of denial of a petition for reconsideration under §§ 66.71 or 66.73.

* * * * *

[FR Doc. 85-21101 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 66 and 67

[FRL-2539-8]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 28, 1980, the Environmental Protection Agency promulgated rules for the assessment and collection of noncompliance penalties pursuant to Section 120 of the Clean Air Act, 42 U.S.C. 7420.

This rule modifies the Section 120 penalty computation in three respects. Two of the changes revise the model to conform to recent changes in tax law and data sources. The third change revises the use of the 30-year time horizon to eliminate certain discontinuities.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman, Office of General Counsel, (202) 382-7624.

SUPPLEMENTARY INFORMATION: On July 28, 1980 the Environmental Protection Agency promulgated a mathematical model for penalty computations as part of the regulations implementing Section 120 of the Clean Air Act. (45 FR 50086) 40 CFR 66 and 67. Section 120 requires EPA to assess and collect an administrative penalty for noncompliance with specified legal requirements by specified sources. The penalty is to be equal to an amount calculated pursuant to EPA regulations and no less than the economic value of delay to the noncomplying source.

The model which EPA promulgated is described in a technical support document set out as Appendix A to the regulations, 45 FR 50122, 40 CFR Part 67 Appendix A. The method for calculating the penalty is described in an instruction manual set out as Appendix B to the regulations, 45 FR 50166, 40 CFR Part 67 Appendix B. The computer program embodying the model is reprinted as Appendix C to the regulations, 45 FR 50241, and is available from EPA.

Implementing the changes requires revision of the technical appendices

promulgated in 1980 rather than revision of the text of 40 CFR Parts 66 and 67. The changes implementing the proposal are embodied in appendices attached to and hereby incorporated within this notice. These appendices have been so extensively revised that it is not useful or even practical to identify specific language changes. The remainder of this notice is intended to describe the changes and their significance.

The proposed action was published for comment on April 23, 1984 (49 FR 17041). Comments received supported EPA's proposed action.

A. *Change in Time Horizon.* The penalty is designed to calculate the economic benefit enjoyed by a source while it delays compliance with applicable legal requirements. The rules established, among other things, a mathematical model to be used in computing the penalty owed by sources which have received a notice of noncompliance. The model is anomalous in that penalty computations increase in a discontinuous fashion rather than a continuous fashion throughout the period of time during which benefits from noncompliance are assumed to accrue. The discontinuity results from the combined effect of two model assumptions: the assumption that the time period during which benefits accrue is finite, or limited, and the (unstated) assumption that the last of an assumed series of replacements of pollution control equipment in certain circumstances should be treated mathematically as a cycle avoided rather than as a cycle deferred. The rule assumes, instead, that the benefit of deferring the last replacement, like that of deferring all preceding replacements, is equal to the value of alternative use of the money for the time remaining, if the time remaining is shorter than the useful life of the pollution control equipment.

The model computes the value of delaying compliance by comparing two cash flows. It compares the cash flow of expenditures that would have occurred had the source come into compliance on the date it received a notice of noncompliance (the "on-time" scenario) against the same cash flow deferred by the period of delay. The period of delay is not necessarily equal to, and is usually much shorter than, the period of time over which benefits accrue to the source for having delayed compliance. That disparity occurs because a delay in installing the equipment needed for initial compliance produces corresponding delays (with attendant savings) in installation of replacement equipment. The benefits of alternative use of the money during the period of delay accrue over a "time period" terminating with, or bounded by, a "horizon" representing the point after which fundamental economic conditions can no longer be assumed to remain the same.

EPA assumed this "time period" or "time horizon" to be equal to thirty years. (45 FR 50093 2nd col. July 28, 1980.) This assumption is consistent with conventional business economic theory. The model assumption of a finite, thirty-year time horizon represented a change from the proposed model, which assumed a non-finite horizon (44 FR 17339, March 21, 1979). The model assumptions in this respect were modified by EPA in response to industry, including utility, comments criticizing the assumption of a non-finite time horizon.

On September 26, 1980, the Utility Air Regulatory Group (UARG) petitioned EPA for reconsideration of the noncompliance regulations. The petition sought reconsideration, among other things, of the use of a finite thirty-year time horizon. UARG contended that the use of the horizon gave rise to anomalies in the penalty computation which were unjustified. It suggested using time horizons based, e.g., on the useful life of control or process equipment. On May 7, 1981, EPA denied UARG's reconsideration petition with respect to the anomalies described by UARG. EPA pointed out that such anomalies were "boundary-related," i.e., were a function of the introduction of a finite horizon, which industry comments had specifically requested. EPA also pointed out that UARG's proposed solution did not solve, but only relocated, the problem.

The problem arises because the model assumes that pollution control equipment has a fixed useful life and that the deferral of pollution control expenditures on replacement equipment defers not only the initial expenditure but also expenditures on replacement equipment. Part of the economic benefit of delay is, therefore, the benefit of delaying successive replacement cycles over whatever time horizon is chosen. If a non-finite time horizon is chosen, all replacement cycles are assumed to be delayed. No anomalies of the kind described by UARG result in this case. If a finite horizon is chosen, it is assumed that no purchase of replacement equipment will take place after the close of the "time horizon" and that only those cycles recurring before the close are delayed. This assumption results in anomalous discontinuities in penalty computation which are most pronounced where the end of the last replacement cycle approaches or coincides with the end of the time horizon.

Small changes in the length of a time horizon can lead to large discontinuous changes in the number of replacement cycles it includes. Take, for example, a hypothetical industry with a seven year useful life cycle. A company in that industry which complied "on time" would anticipate three full term replacements and 2/7 of a fourth replacement (in addition to the original installation) of equipment within the assumed 30-year time horizon.[1] If a similarly-situated competitor delayed compliance for two years, installation and replacement would be deferred by two years (compared to the "on-time" scenario). The last replacement would coincide with the end of the time horizon and would not be "counted." This is logical so far as it goes. A problem arises, however, when the next step is taken. The next step is to compute the value of delay by comparing the "on-time" case to the "delayed case." The two cases are no longer strictly symmetrical. As far as the model is concerned, the delaying source has benefitted from delay by deferring three replacement cycles and by *avoiding* the fourth, or final, replacement cycle. This asymmetry is the result of introducing a boundary, or limit, to the model. It can result in an artificial overstatement of the penalty amount.

EPA's change deals with this asymmetry as follows. First, it uses a "floating" 30-year horizon, i.e., to make a 30-year cash flow calculation for *both* the on-time and delay cases. This eliminates the possibility of an entire replacement cycle's being avoided merely by virtue of the intrusion of the time horizon. In the hypothetical illustration, it would "count" three full terms and two-sevenths of a replacement in both the "on time" and the "delayed" cases. The revision states, in effect, that the cash flows in the two cases are identical in all respects except real time. It will, to that extent, achieve the same effect as EPA's initial non-finite time horizon assumption.

EPA's change also assigns a value to the last replacement cycle proportioned to the time remaining in the cycle. In other words, the model now assumes that the value of delaying the last

[1] The EPA model assumes that the "salvage" value of the remaining useful life of the equipment at the end of the time horizon is zero. This assumption states nothing about the actual value of installed equipment since the purpose of the model is to calculate the value of failure to install equipment.

replacement cycle is the value of the cycle multiplied by a fraction which represents the years remaining (in the "on time" case) until the end of the time horizon divided by the years in a complete cycle. Treatment of the last cycle of depreciation and other costs which assume a complete life cycle are modified in a similar fashion.

B. *Change in Tax Treatment.* EPA's changes also reflect the passage of tax legislation which instituted an accelerated cost recovery system (ACRS) in lieu of the depreciation methods assumed in the model. The computer program is revised to assume either the use of rapid amortization (up to 85 percent of the asset's purchase price with the remainder subject to normal (ACRS) depreciation) or the use of ACRS to depreciate the entire value of the asset. The program selects the preferred method automatically. A second tax law change reflected in the proposal is the reduction of a firm's basis in the pollution control equipment equal to one-half of the investment tax credit taken where a firm takes the entire investment tax credit.

C. *Change in Source Data.* A third change relates to the specification of the computer data source for interest rates in industrial development bonds. This data source is one of the model "inputs" to determine the firm's cost of capital. The name of the source specified by EPA, *Bond Market Review*, has been changed to *Credit Market Comment.*

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore to be accompanied by a regulatory impact analysis. Executive Order 12291 requires such an analysis if the regulation would result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because we expect that it will have the effect, if any, of reducing the cost of penalties to affected sources.

This regulation has been submitted to the Office of Managment and Budget for review as required by Executive Order 12291.

This regulation is not expected, for similar reasons, to have significant impact on a substantial number of small entities as specified under Section 605 of the Regulatory Flexibility Act.

Dated: May 2, 1985.

Lee Thomas,

Administrator.

List of Subjects in 40 CFR Parts 66 and 67

Administrative practice and procedure, Air pollution control, Penalties.

Therefore, Title 40 CFR Parts 66 and 67 are amended as set forth below.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTIES

1. The authority citation for 40 CFR Parts 66 and 67 continues to read as follows:

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

2. Parts 66 and 67 are amended by revising Appendices A, B, and C as follows. (Appendix C as revised to correspond with Appendices A and B is available upon request from EPA. See note to Appendix C.)

Editorial Note:

The Environmental Protection Agency has advised the Office of the Federal Register that certain portions of Appendices A and B and the text of Appendix C may be omitted from Federal Register and Notice Publication on the ground that the omitted portions are not regulatory but are reproductions of publicly available documents or illustrative examples. The EPA has advised that it will make copies of these materials and of Appendix C available upon request from Director, Division of Stationary Source Enforcement, EN–341, 401 M Street, S.W., Washington, D.C., 20460.

Appendix A—Clean Air Act, Section 120, Noncompliance Penalties, Technical Support Document

Contents

I. Introduction and Summary
II. Economic Savings and the Noncompliance Penalty
III. Assumptions Underlying the Penalty Calculations
IV. Definitions of Parameters and Sources of Data
V. Derivation of Formulae

Attachments:

A. Definition of Symbols
B. Investment Tax Credit Qualification
C. Depreciation
D. Tax Rate Adjustments
E. Weighted Average Interest Rate
F. Facilities with Limited Useful Lives
G. Application to Government Facilities

Section I—Introduction and Summary

The decision to install pollution control equipment implies a decision to commit financial resources, both initially in the form of capital investment and over time in the form of operating and maintenance expenses. While the acquisition of such equipment and its operation may result in improved environmental quality, it is unlikely to yield any direct economic benefit to the firm. If these financial resources were not required for pollution control equipment, they presumably would be invested in projects which would give a direct economic benefit to the firm. Thus, from an economic point of view, it is usually in the firm's interest to delay the commitment of funds for the purchase and operation of pollution control equipment.

Congress acted in 1977 to remove this incentive for noncompliance. The Clean Air Act ("the Act") was amended to require the imposition of penalties against firms not in compliance with pollution control regulations. These penalties must be based on the savings which accrue to a firm as a result of its noncompliance. Section 120(d)(2) of the Act states:

> The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—
>
> (A) the amount determined . . . which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source."

The Administrator of the Environmental Protection Agency (EPA) is given responsibility for carrying out this provision. This appendix describes the economic basis and the mathematical formulation of a noncompliance penalty to be used in conforming with the requirements set forth in the Act. It is intended to serve three distinct purposes. First, it presents in broad, conceptual terms the nature of economic savings which can accrue to a firm through delayed compliance and the calculation of a penalty to remove those savings. Second, it provides a mathematical formulation of the noncompliance penalty and the assumptions used in deriving it. Finally,

it provides a complete specification of the sources of all the data needed to calculate the penalty for a particular incidence of noncompliance.

This appendix is not intended to serve as an instruction manual for persons calculating noncompliance penalties. A separate appendix issued by EPA serves that purpose.[1]

The Value of Delay

For the purposes of noncompliance penalties, the economic value, or savings, from noncompliance is defined to have two components: (1) the return which can be earned on the capital costs of pollution control equipment whose purchase has been delayed, and (2) the operating and maintenance costs avoided as a result of not having installed the equipment and the return on these savings. The first component, the capital cost savings, arises because owners of noncomplying sources have the opportunity to invest their funds in projects other than pollution control equipment during the period of delay. These other investments yield a monetary return during the period of delay and in the future equal to the firm's marginal return on capital; whereas, the purchase of pollution control equipment typically yields no direct monetary return. Thus a delay in compliance creates the opportunity for the owner of such sources to benefit by the amount of earnings which could be expected from alternative investments.

The second component of savings from delayed compliance is based on the operating and maintenance costs which would be incurred if the pollution control equipment were installed. These include the costs of labor, raw materials, energy and any other expenditures directly associated with the operation of the pollution control equipment. Unlike capital expenditures which are only delayed, delaying compliance allows these operating and maintenance expenditures to be avoided altogether and therefore the noncomplying firm benefits by their amounts in addition to the return that can be earned on these savings.

The Noncompliance Penalty

The two components of economic savings can be quantified using generally accepted economic and financial principles and estimates of such factors as equipment costs, financing costs, the inflation rate, and the length of the delay. These same techniques can then be employed to convert the savings into the basis for a penalty. As part of that conversion, an adjustment is made to incorporate the effect of capital and operating expenditures made after a notice of noncompliance has been given but prior to the time at which full compliance is achieved. The resulting penalty schedule appears as a series of quarterly payments which increase with inflation.

As implied above, the calculation of the penalty requires estimates of capital and operating costs, the rate of return on equity capital, and the inflation rate. Because these estimates are often made well in advance of the actual expenditures, they are subject to error. Once compliance has been achieved the capital cost is known and a better estimate of the operating and maintenance costs may be possible. More current estimates of the rate of return on equity capital and the inflation rate are also possible since more recent data on the rates will become available during the period of noncompliance. The Act calls for a recalculation of the penalty using these revised figures. A refund will then be paid or additional penalty payment assessed based on the new estimate of economic savings.

Plan of This Appendix

Following the introductory section, Section II contains a discussion of the legal and economic rationale for the procedures which have been adopted for calculating the penalty. Although an attempt has been made to present the discussion in such a way it can be understood by persons not familiar with this subject, the need to keep intact the integrity of the underlying financial theory requires that the discussion remain somewhat technical.

Section III contains a summary of the assumptions used in deriving the formulae and the reasons for adopting these assumptions. Section IV defines the various parameters included in the formulae and the sources which should be used to acquire the data needed to calculate the penalty in specific cases.

Finally, Section V presents the development of the formulae needed to compute the noncompliance penalty. The attachments describe the treatment of certain cases which require adjustment of either the data or the formulae.

Section II—Economic Savings and the Noncompliance Penalty

The costs associated with controlling pollution arise from many sources. The most apparent are the original purchase cost of the control equipment and the annual operating and maintenance expenditures. There may also be costs associated with the financing of the original purchase; for example, interest would be paid if a portion were financed with borrowed funds.

In addition to the direct costs, other financial impacts result from the purchase of equipment. Depreciation, for example, has the effect of reducing income tax liability in years subsequent to the original investment. Similarly, the original purchase may result in an investment tax credit, acting much the same as if a discount were given on the purchase price. Both of these have the effect of lowering the net cost to the firm.[2]

To calculate the economic value to a firm from delaying compliance with pollution control regulations, it is necessary to evaluate on a consistent basis the effect of all costs avoided or delayed, and related tax consequences, between the date by which compliance is required and the date on which compliance actually occurs. Because the various savings do not all occur at the same time, they must first be converted into values which are comparable with respect to the time-value of money (that is, the sooner a savings is generated, the more valuable it is). This conversion is accomplished by discounting all estimated future savings into their "present value" equivalents, a technique described below. Finally, the sum of the discounted values must be converted into series of level quarterly penalty payments as prescribed by the Act.

This section describes the process of translating the estimated costs and tax consequences associated with the purchase and operation of pollution control equipment into a penalty. That penalty reflects the savings that a firm realizes by delaying its compliance with pollution control regulations.

Pollution Control Cash Flows

The above discussion of the financial impact of delaying an investment in pollution control equipment was expressed in terms of costs, net or related tax consequences. A question arises as to the appropriate metric with which to measure these costs. The financial literature is clear on this subject: the appropriate metric is the incremental cash flow, positive or negative, associated with each cost.[3]

---

[1] Appendix B, Clean Air Act Section 120 Noncompliance Penalties, Instruction Manual.

[2] The term "firm" will be used to designate the owner of the pollution source. The discussion is equally applicable to sources owned by individuals.

[3] See, for example, Weston, J. F. and Brigham, E.F., *Managerial Finance*, The Dryden Press, Hinsdale, Illinois, 1975, pp. 275–281, or Van Horne, R.C., *Financial Management and Policy*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1974, pp. 78–81.

In order to measure each incremental cash flow properly, account must be taken not only of the initial effect but also of any offsetting tax effects. Available tax deductions can reduce the amount of income otherwise taxable and tax credits can reduce the amount of tax otherwise payable. These tax effects reduce the cash flow impact of an investment in pollution control equipment since they reduce the amount of tax payable in the presence of such expenditures. For example, payments for operations and maintenance are tax deductible. Therefore, the incremental cash flow resulting from such payments consists of the initial expense less any reduction in tax liability. For most corporations this means that the net cash flow resulting from tax deductible payments will usually be approximately one-half of the stated pre-tax cost.

There are three categories of cash flow arising from the purchase and operation of pollution control equipment. These are: (1) the initial capital outlay required to purchase and install equipment; (2) the subsequent monthly flows associated with depreciation and financing of the initial capital outlay; and (3) the subsequent monthly expenses of operating and maintaining the equipment. The first category is equal to the cost of purchasing or constructing the equipment, less the amount of any applicable investment tax credit. The investment tax credit constitutes a reduction in tax liability which has the effect of a discount on the purchase price. The second category of cash flow includes the tax shield from depreciation and interest as well as principal payments on debt and preferred stock. The third category is equal to expenditures for operation and maintenance less the applicable tax deductions. All of these cash flows are repeated when the equipment is replaced at the end of its useful life.

Discounting of Cosh Flows

Once all incremental cash flows have been estimated, they must be converted into a set of values which reflect the timing of their occurrence. This procedure is necessary because two cash flows of equal dollar value occurring many years apart do not have equal impact on the firm. This differential arises because the firm can invest funds at some positive rate of return. If a dollar of expenditure can be postponed for one year, that dollar can be invested in the interim. At the end of the year the dollar of expenditure can be made and the return on the investment during the intervening period accrues to the benefit of the firm.

The technique used to compensate for this effect is called discounting. Discounting involves reducing the value of future cash flows to amounts which are equivalent in terms of their present value. As an example, suppose that a firm faced with a $100 expenditure could delay that expenditure by one year (assume no inflation). If the firm could invest money for that year at a 10 percent return, it would not need to put aside a full $100 to make the payment one year later. In fact, if it invested only $90.91 at a 10 percent return, that amount would grow to $100 in one year. Therefore, $90.91 is the present value, at 10 percent, of a $100 cash flow one year in the future.

Similarly, $82.64 invested at 10 percent would grow to $100 in two years (it would grow to $90.91 in one year and to $100 in the second year). Thus, $82.64 is the present value, at 10 percent, of a $100 cash flow two years hence. The present value of cash flows for other numbers of years in the future is found in a similar fashion. The formula is given by:

$$\text{Present value} = \frac{\text{Future value}}{(1+E)^J} \qquad (1)$$

Where:
E = The discount rate, expressed as a fraction (e.g., 0.10 corresponds to 10 percent)
J = the number of years in the future in which the cash flow occurs
Future Value = the value of the cash flow in the future

Applying this technique to all future pollution control cash flows converts each cash flow into its present value equivalent.[4] The sum of these individual values represents the equivalent cost, in terms of a single present value, of all future cash flows arising from the requirement to purchase and operate pollution control equipment.

The Value of Delay

For each polluting facility there is a date by which compliance should have been achieved. Under section 120 of the Act, as implemented, the period of covered noncompliance—i.e., the period over which a noncompliance penalty must be assessed—begins on the date on which a notice of noncompliance is received. Therefore, for purposes of calculating the penalty, it will be assumed that all capital expenditures should have been made by or on that date and that operating and maintenance expenditures should begin on that date.

The economic value of delay is assessed by comparing two sets of cash flows. The first consists of the flows that the firm would have experienced had it come into compliance on time. These include the flows attributable to the purchase of the original equipment as well as those associated with any future replacement cycles. The second set of flows consists of those which the firm will experience when, following the delay, it actually does come into compliance. This second set of flows will have three properties:

- It will be similar to the first set in that it will have the same sequence of capital interest and dividend payments, and so forth.
- It will begin at some time after the first day of noncompliance.
- The magnitude of each of its individual component flows will be greater than the corresponding flow in the first set to the extent that any given cost has inflated during the period of delay.

The present value of both sets of cash flows, as of the first day of noncompliance, can be calculated in the manner described above. The present value of the second set will be lower, reflecting the fact that delaying compliance yields a financial benefit to the firm. The economic value of delay is equal to the present value of the cash flows in the first set (on-time compliance) less the present value of those in the second set (delayed compliance) plus the present value of avoided operating and maintenance expenditures. This calculated value of economic savings in turn becomes the basis on which the noncompliance penalty is derived.

The Effect of Precompliance Expenditures

It is implicitly assumed in the above discussion that capital expenditures associated with delayed compliance were made in a single payment on the first day that the firm is projected to come into compliance and that no operating and maintenance expenditures were required prior to that time. The Act requires that the penalty take into account any expenditures on pollution control equipment made by the firm prior to the date the firm comes into compliance. The procedure used to account for these precompliance expenditures is begun by dividing the value of delay into its two components. The first component is the return earned on the capital costs of the pollution control equipment whose purchase has

[4] For a more thorough discussion of this concept see the capital budgeting chapters in the Weston and Brigham or Van Horne texts previously cited.

been delayed. The second component is the operating and maintenance costs avoided during the period of delay. An adjustment is made to each of these components of the penalty to account for the firm's precompliance expenditures.

To adjust the capital component, the capital component of each period's penalty is multiplied by a factor representing the proportion of the capital investment which is still to be made. The result is the adjusted capital component of the penalty. Thus the firm receives a credit (a reduction in the capital component of the penalty) in proportion to the amount of the capital investment in pollution control equipment already made.

The operating and maintenance component of the savings is adjusted to a value which is net of any actual operating and maintenance expenditures made during the period of noncompliance. The present value of the operating and maintenance expenditures made by the firm during the period of noncompliance, on an after-tax basis, are subtracted from the operating and maintenance component of the savings. The remainder is the adjusted operating and maintenance component of the penalty.

Conversion of Savings into the Noncompliance Penalty

The Act specifies that the total penalty assessment is to be paid in a series of equal quarterly payments. EPA interprets this provision to mean equality in real or constant dollar terms. The quarterly payments, therefore, should increase at the projected rate of inflation. When deflated, such penalty payments will be equal in real terms (that is, in constant dollars).

Once the present value of the savings from delay has been calculated and adjustments have been made to account for precompliance expenditures, the magnitude of the required quarterly payments may be determined. Since the period of noncompliance has been estimated,[5] the next step is to create a series of quarterly payments during this period (with each payment increasing at the rate of inflation) and with the present value of all payments summing to the economic value of delay which was just calculated. A formula for making this conversion is described in Section V.

Post-Compliance Settlement

The initial calculation of the noncompliance penalty is based on estimates; that is, an estimate of the costs of purchasing and operating the required pollution control equipment, an estimate of the schedule of precompliance capital and operating expenditures, and so forth. These estimates will have represented the best judgment of the firm's management or of independent consultants. The law, however, requires that a procedure be established whereby the penalty can be adjusted after compliance has been achieved to arrive at a final computation of the benefit of delayed compliance.

As described in the preceding discussion, the noncompliance penalty has two components, one related to capital costs and the other to operating and maintenance expense. The settlement process is similarly divided into capital and operating and maintenance components.

Once the capital equipment has been purchased and installed, the associated costs can be determined from the firm's accounting records. These, however, do not represent the costs which, had estimation been perfectly accurate, would have been used in the original penalty calculation. The cost used then was the estimated amount which would have been expended at the time the penalty was first assessed had the firm come into compliance on that date. The actual expenditure, coming at a later date, would reflect the impact of inflation. Therefore, for purposes of recomputing the penalty, the amount actually spent to comply must be deflated to remove the effect of inflation.

Similarly, the actual operating and maintenance costs cannot be determined until after the pollution control equipment has been in operation for some time. If a post-compliance settlement were to reflect the actual level of such costs most accurately, settlement could not take place for months or even years after compliance has been achieved. However, the Act requires settlement within six months of the date on which compliance is achieved. If at the time of post-compliance settlement it is apparent that the original estimate for operating and maintenance expense was inaccurate, an adjustment to the original savings calculation should be made by revising the operating and maintenance component.

The rate of return on equity capital and the rate of inflation are both estimated using historical averages. This is true of the shares of firm's capital structure represented by debt, preferred stock and common equity as well. More current information will become available during the period of noncompliance. Therefore, at the time of the post-compliance settlement, the historic averages will be updated using the current information available to provide more recent estimates of the rate of return on equity capital, rate of inflation, and the firm's capital structure.

These revised estimates—capital costs, operating and maintenance costs, the rate of return on equity capital, the inflation rate, and the firm's capital structure—and the actual schedule of precompliance expenditures are then substituted into the noncompliance penalty formula and a revised penalty series is calculated. The difference between the penalties actually paid and the revised amounts constitutes the basis for the post-compliance settlement. If the penalty has been overpaid, the excess will be refunded with interest. If it has been underpaid, the deficiency must be paid, also with interest. Under the Act, the rate of interest for underpayments and the rate of interest for overpayments will be set by the Secretary of the Treasury.

Section III—Assumptions Underlying the Penalty Calculation

The basic concept underlying calculation of the noncompliance penalty is that the economic savings resulting from delaying compliance with pollution control regulations should be removed. Implementing this concept requires several assumptions which were only implicit in the discussion in the previous section. These assumptions are explained in this section.

The calculation of the savings to a firm from delaying compliance is based on principles of financial and economic theory which are widely accepted or which have been selected as most appropriate for the purpose of calculating the penalty. The methodology itself is routinely used by firms making their own investment decisions. The assumptions involved are, for the most part, integral to the methodology itself. Similarly, the parameters and the data sources specified for such parameters are, with few exceptions, those which would commonly be employed by financial analysts.

1. *The relative mix of debt, preferred stock and common equity allocated to pollution control equipment is the same as that found in the firm's capital structure as shown on its balance sheet.*

On the balance sheet of any firm, total net assets, including net working capital, are exactly equal to total long-term financing. Any increase or decrease in net assets must be accompanied by a

[5] Any error in its estimation can be corrected at the time of the post-compliance settlement.

similar change in long-term financing. Under the allocation scheme assumed in the formulae, each asset is allocated a share of each source of long-term financing (long-term debt, preferred stock, and equity) proportionate to its share of the total net asset structure. Thus the sum of the shares of each source of long-term financing allocated to an asset will exactly equal the net book value of that asset. As the asset is depreciated, its share of each source of long-term financing declines but, other factors being equal, the *mix* of debt, preferred stock, and equity associated with that asset is unchanged.

Implicit in the assumed allocation system is the related assumption that the mix of total sources of financing is optimal and therefore constant over the life of any particular asset. The mix of financing employed by a firm may fluctuate on a year-to-year basis due to short-run discontinuities.[6] The mix may also be subject to long-term, secular changes due to gradual changes in the evaluation of management or financial markets as to what mix is optimal. During the intermediate period in which the useful lives of most assets fall, however, the mix of debt, preferred stock, and equity is assumed to be constant and unaffected by the addition or subtraction of any particular asset for which financial support is required. Given this assumption, it follows that an appropriate basis for allocating financial sources to particular assets is the *pro rata* basis used here.

An alternative and less desirable approach would be to assume that the addition or subtraction of pollution control equipment from a firm's total net asset structure will lead to a long-term change in the firm's financial structure. Using this approach, it would be appropriate to assign to an asset a pattern of financing different from that of the firm as a whole. In theory, financing could be provided solely by debt or by equity. As is discussed below, however, there is no reason to believe the nature of the asset involved will have a unique effect requiring financing different from other assets.

[6] Firms are often observed issuing new stock or selling bonds, but rarely do the two occur simultaneously. Thus, the capital structure of a firm may fluctuate from year to year. However, as discussed below, an accepted principle of financial theory is that each firm has an optimal financial structure which it aims to preserve over the long run. Obtaining long-term financing, such as a new debt or equity issue, is expensive and time-consuming and, therefore, firms tend to secure large amounts at one time. Thus, the firm's capital structure may fluctuate on a year-to-year basis, even though the long-term structure remains unchanged.

At one extreme is the assumption that the entire cost of the equipment is financed by equity, typically the most expensive source.[7] This assumption is based on the argument that pollution control equipment is not a "normal" investment, that is, an investment which holds the promise of creating future returns. It is the expectation of future returns which enables the firm to borrow since its capacity to earn returns and hence honor fixed debt obligations is not diminished. An investment which does not increase productive capacity, it is argued, does not add to the firm's ability to carry debt and would therefore be funded entirely from equity. This would tend to increase the cost of the pollution control investment and hence increase the penalty for delaying that investment.

This argument incorrectly assumes that non-productive pollution control equipment will generate no return to the firm. While such equipment does not generate a direct return, some of the cost will be passed through to the customers of the firm and will result in indirect revenue effects. Assuming (as the penalty provision seeks to ensure) that pollution control requirements are applied equally throughout the economy, there is no reason to believe that pollution control costs will not be eventually recovered through the increased price of the firm's products. Thus, the addition of pollution control assets need not in the long run alter a firm's debt-coverage capability.

At the other extreme is the assumption that the firm will finance the investment in pollution control equipment entirely with debt. The argument advanced for making this assumption is that a firm may issue new debt, often in the form of pollution control bonds or some other low-cost instrument, in order to raise the funds needed to purchase the pollution control equipment since debt is generally the least expensive form of financing. However, the fact that pollution control equipment may be financed with cheaper debt does not mean that the installation of such equipment will alter the perceived optimal capital structure of the firm. While pollution control equipment may create an increase in debt in the short run (because new debt can be acquired on favorable terms), the imbalance will eventually be rectified by increases in equity and/or reductions in other long-term debt. This is because the maximum amount a firm will be able to borrow depends on management's and lenders' perceptions of risk—that is, the underlying ability of the firm to support a certain proportion of debt. The addition of pollution control equipment should not change this perception of risk, other factors being equal. Thus, a temporary increase in debt would be eventually adjusted to the perceived optimal level.

The assumption of a constant financial structure over the life of an asset is therefore reasonable. Given this assumption, it is appropriate to assign to any particular asset a mix of financing which is identical to the overall mix which supports the total asset base. Hence, the *pro rata* system utilized in the penalty formulation follows directly. This assumption also represents middle ground between all-equity and all-debt financing with respect to the size of the resulting noncompliance penalty.

2. *Cash flows are discounted using the equity method.*

The rate used to discount future cash flows is the firm's return on equity. The equity discounting method is one of several approaches to evaluating capital investments which have been developed. The equity discounting method provides the advantage of explicitly recognizing the cash flows arising from debt and preferred stock financing by subtracting out all cash flows arising from debt or preferred stock financing. The remainder is discounted at the rate of return on equity.

This method of discounting explicitly recognizes the fact that debt is a fixed obligation. Regardless of the return earned on the project, the bondholders will receive the agreed upon interest and principal payments.[8] If a project earns more than the firm's required return, the bondholders will be given no share of the excess return, the bondholder will be given no share of the excess return. If a project earns less than the firm's required return, the bondholders' return is not reduced. The equity discounting method acknowledges these financial arrangements by explicitly accounting for interest and principal payments and then discounting the residual by the cost of equity.

The equity discounting method also holds constant the capital structure of the firm by recognizing that if a project earns less than the firm's required return, the shortfall must be funded using additional equity capital. Since the

[7] See, for example, Pogue, Gerald A., *Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments*, Environmental Protection Agency, EPA-230/3-76-001, November 1975, pp. 5-16.

[8] The only exception occurs if the firm declares bankruptcy and there are insufficient funds to repay the bondholders in full.

shortfall will reduce the retained earnings of the firm (an equity account), the firm must compensate for this reduction by eventually raising additional equity capital in order to keep a constant capital structure. If this shortfall were funded with both debt and equity, the portion of debt in the capital structure would rise. This implies that projects which result in inadequate returns would increase the debt capacity of the firm. Although, as discussed above, long-term debt capacity may not be lowered due to the undertaking of the pollution control investment, it is unlikely to increase as a result of this investment.

An alternative to the equity discounting method is the weighted average cost of capital method. This is the method often illustrated in introductory textbooks in corporate finance.[9] The method works by discounting incremental operating cash flows. That is, it computes cash flows resulting from investment in pollution control equipment without considering how the investment is financed. This rate is developed by computing a weighted average cost of capital with the weightings based on the overall capital structure of the firm.

While the weighted average cost of capital is the commonly accepted method for ranking investment alternatives, it is not the appropriate method to use in the special case of a required investment which yields no direct return to the firm. It ignores the fact that debt is a fixed obligation and that the agreed upon interest and principal must be paid, regardless of the inadequate earnings on the project.

3. *The noncompliance penalty is computed as a non-tax-deductible expense to the firm.*

In calculating the costs on which the penalty is based, the normal tax consequences of interest, depreciation, and operating and maintenance expenditures are taken into account. If the penalty were to be allowed as an expense for tax purposes, it would need to be adjusted upward such that its after-tax cost to the firm would be the amount calculated herein.

4. *Cash flows take place at the end of each month.*

While expenditures such as those for operating and maintaining equipment obviously are incurred throughout the course of the month, this assumption greatly simplifies the computation. Its effect is to lower the penalty slightly from the level it would have if these expenditures were assumed to be made on a continuous basis throughout the month.

Similarly, the cash flows arising from depreciation and those associated with long-term financing, both principal repayment and interest or dividend payments, are assumed to take place at the end of each month.

5. *The rate of inflation of pollution control operating and maintenance expenditures is the same as that for pollution control capital costs.*

The assumptions of the model regarding inflation of pollution control capital costs are described in Section IV in the discussion of the sources of data. Just as there is no index of pollution control capital costs, currently there is no identifiable index of pollution control operating and maintenance expense. The development of an index reflecting past increases in operating and maintenance expense would require substantial resources and would probably not result in a significant increase in the accuracy of the penalty. The inflation in operating and maintenance expenses will depend primarily on the inflation in labor and materials cost. As described in section IV, the index of inflation for pollution control capital costs includes both of these elements.

6. *The noncompliance penalty is calculated using a thirty-year time horizon.*

Firms benefit from delay both by having funds for other investments during the period of noncompliance and by displacing into the future the need to replace the pollution control equipment. In order to assess the benefit from a delay in compliance appropriately, all the case flows incurred over a specified time period must be considered.

A time horizon was selected as the thirty year period beginning at the time the notice of noncompliance is received. There exists no standard long-range planning horizon throughout all industries. However, thirty years is a common estimate, and it is a reasonable assumption for most industries. Many firms evaluate long-term, large scale investments such as pollution control equipment over a long-term planning horizon. Since the use of a thirty year planning horizon to calculate penalty amounts is consistent with the planning procedure of many firms, the use of a thirty year horizon will make the firm indifferent to the alternatives of ontime compliance or delayed compliance plus a penalty.

One alternative to the thirty year time horizon considered was the use of a specified number of replacement cycles. However, the use of a fixed number of replacement cycles has the disadvantage that it implies a vastly different time horizon for different industries. Suppose, for example, that a total of three life cycles of equipment were assumed. If the useful life in one industry were seven years while the useful life in another were 15 years, the planning horizon would be 21 years in one case and 45 in the other. This type of result argues against using the fixed number of replacement cycles approach.

The use of an infinite number of replacement cycles was also considered. The use of an infinite number of replacement cycles assumes an endless chain of similar pollution control devices will be installed on the underlying source of pollution. It can be argued that this is not the case since clean air regulations will change over time, technological advances in pollution control equipment will occur, and the underlying source of pollution will be retired, altered or otherwise modified. Thus firms are unlikely to consider costs incurred more than thirty years in the future in their decision to delay an investment in pollution control equipment.

The use of a single cycle was also considered. However, it is clear that a delay in the installation of pollution control equipment confers an advantage to the firm beyond the first cycle of equipment. Even though future requirements for pollution control are uncertain, it is likely that there will be requirements for pollution control beyond the first cycle of equipment. The use of a single cycle would therefore ignore the benefits that accrue to the firm from the delay of the purchase of future replacement equipment of whatever type. The use of a single cycle would understate the penalty and thus fail to capture the economic benefits enjoyed by the firm.

7. *Fractional capital investments are made when a replacement cycle would extend beyond the thirty-year horizon.*

Pollution control equipment is assumed to be replaced at the end of its useful life. This process repeats itself throughout the thirty-year planning horizon. In some cases, those in which the useful life divides evenly into thirty, the process will terminate automatically at the horizon. In other cases, however, the last replacement cycle would normally extend beyond the horizon. A proportionate capital expenditure will be assumed in these cases.

For example, suppose that pollution control equipment has a life of 14 years. The original equipment is assumed to be replaced in 14 years. At the end of 28 years, the firm is assumed to make a

[9] See Weston and Bringham, *op. cit.*

capital expenditure equal to 2/14 of the the original cost (adjusted for inflation).

If the final fractional cycle is greater than or equal to the depreciation life, normal depreciation schedules will be used. If the final fractional cycle is less than the depreciation life, the fractional capital expenditure will be depreciated on a straight line basis over the fractional cycle.

In all cases, full cycle or fractional cycle, the equipment is assumed to have no salvage value at the end of the cycle.

8. *The discount rate is not less than the inflation rate.*

If a firm has a choice between making an investment which yields a direct positive return and an investment which yields no direct returns, it would choose to make the former. The firm required to invest in pollution control equipment might seek to delay such an investment since the longer it delays, the longer it can keep its funds invested in projects producing positive returns.

However, when the inflation rate is greater than the discount rate, this benefit from delay may no longer exist. For example, assume that the firm could invest $1,000 in projects returning seven percent but that the pollution control equipment costs were increasing each year at an eight percent rate. If the firm delayed compliance one year it would have earned $70 on its investment but the pollution control equipment would cost $80 more. Under such circumstances, in terms of capital cost, the firm would be better off complying immediately if it planned to comply at some time.[10] A firm that nonetheless delays is most likely doing so because its own estimate of the returns available to it on alternative investments is higher than the discount rate used in computing the penalty or because the value of the operation and maintenance expenditures avoided during the period of delay exceeds the increase in the present value of the capital costs.

It is possible that the discount rate might be less than the inflation rate for some historical period in the data sources to be used for calculating noncompliance penalties. EPA considers such data an inappropriate basis for future expectations. Therefore, in the unlikely event that computations using the historical data yield a discount rate less than the inflation rate, the discount rate will be set equal to the inflation rate. A similar adjustment will be made, if necessary, in the post-compliance settlement.

[10] In some circumstances, there may still be a benefit to delay even if the inflation rate exceeds the discount rate. If the firm delays a sufficiently long period, the firm may avoid an entire replacement cycle.

Section IV—Definitions of Parameters and Sources of Data

Calculation of the penalty requires estimates of a large number of financial parameters, many of which are specific to the noncomplying firm. This section contains definitions of these parameters and sources from which their numerical values are to be drawn.

1. *Capital Investment Schedule.*

This schedule is an estimate of monthly expenditures to be made for purchase and installation of the required pollution control equipment. It includes not only direct purchase costs, including sales taxes, but also such expenditures as site preparation, engineering design, shipping costs, and installation expenses.

In the event that contracts have been signed or construction for purchase of the required equipment, they should be used as the basis for such costs. Other possible bases include engineering estimates, quotations from equipment manufacturers and, where no other data are avaible, reasonable estimates by the owner of the facility.

2. *Operating and Maintenance Expense.*

This parameter is an estimate of the monthly cost of operating and maintaining the required pollution control equipment. That is, this amount should represent the average monthly operating and maintenance expense the firm would have incurred in the initial year of compliance. There is a provision in the formulation which automatically adjust future months' operating and maintenance expense for anticipated inflation.

Losses in production capacity and incremental energy costs which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category. On the other hand, the value of any byproduct recovery resulting from such operating should be deducted. To the extent that these or other factors will result in the real cost of operating and maintenance varying over time, an estimaterd schedule of payments must be provided.

Sources of estimates for operating and maintenance expense include equipment manufacturers, engineering consultants and the owner of the facility. These estimates should include all recommended operating and maintenance procedures, training and planning costs, cost of warranties, recordkeeping and costs of monitors.

3. *Investment Tax Credit.*

This credit is a reduction in federal or state income taxes payable as a result of making qualified capital investments. It is equal to a specified percentage of the portion of the intitial capital costs which qualify under U.S. Internal Revenue Service (IRS) regulations. The investment tax credit is included in the formulation because it has the effect of reducing the cash outflow required to purchase the pollution control equipment.

The applicable percentage is given in the Internal Revenue Code as are the Criteria for qualifying investments. Further details are provided in Attachment B.

4. *Marginal Income Tax Rate.*

This rate is the fraction of the last dollar of taxable income which must be paid by the firm to federal, state and lcoal governments. It is the amount by which taxes would increase if taxable income were to increase. It is different than the average income tax rate—total income tax divided by taxable income.

The tax rates of the various levels of government are specified by statute and depend on the level of taxable income reported by the owner of the polluting facility. A formula for computing the marginal income tax rate for a firm subject to income taxation by more than one level of government is given in Attachment D.

The noncompliance penalty is based on the incremental savings from delaying investment in pollution control equipment. The tax effects will depend on the rate applied to the incremental cash flows—the firm's marginal income tax rate.

An alternative to using the marginal income tax rate would be to use the average rate. The advantage of using such a rate is that it can be calculated directly from data contained in the firm's financial statements. However, the use of an average rate would not result in a correct computation of the tax consequences of an incremental investment. It was therefore rejected as the appropriate tax rate.

5. *Inflation Rate.* This is the annual rate at which both capital and operating and maintenance costs are expected to grow. These cost increases are the result of inflation in various factors such as labor, capital goods and energy.

For purposes of computing the noncompliance penalty, the annual compounded change in the *Chemical Engineering* Plant Cost Inflation Index for the most recent 60 months of data is to be used as an estimate of the future rate increase in pollution control

expenditures.[11] The *Chemical Engineering* Plant Cost Index is based on a weighted average of four cost components: (a) fabrication and equipment, (b) engineering and supervision, (c) construction labor, and (d) building costs. The weight are determined by a survey of the chemical industry made by *Chemical Engineering* magazine. The cost components are derived from the producer price indices complied by the Bureau of Labor Statistics.

There is no widely available index of pollution control equipment costs as such. The *Chemical Engineering* index is based on factors which are clearly important components of such costs. The principle alternative considered was to use some broader and more universally recognized index, such as the GNP implicit price deflator. This was considered to be an inferior choice since it is based on a broad range of factors (food, housing, medical costs and so forth) only loosely related to the cost of pollution control equipment.

A problem with using any historical index to project the future is that changing conditions may make the estimates inaccurate. Using an inflation rate over the past several years as an estimate of the future rate may appear to be an example of such a problem. Offsetting this problem to a great extent is the fact that a similar approach is being used for the discount rate. Since the inflation and discount rates act in opposite directions with respect to pollution control cash flows (that is, the inflation rate is used to increase future values while the discount rate is used to reduce them), any error introduced by using an historic inflation rate is counteracted by using an historic return on equity as the discount rate. Furthermore, both the discount rate and the inflation rate will be updated using more current information at the time of post-compliance settlement.

6. *Discount Rate.*

This is the percentage rate to be used as the basis for discounting cash flows in future years. Such discounting is necessary to convert cash flows occurring in different years into present values. The source of the discount rate is the industry average return or the all-manufacturing average return on the net book value of common stockholders equity, whichever is higher. These rates are reported by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*[12] They are based on an exhaustive sample of the firms in each industry and, subject to the limitations found in all accounting data, represent an accurate estimate of the past performance of U.S. industries. To smooth out year-to-year fluctuations, the discount rate used in computing the noncompliance penalty is the average of the most recent twenty quarters. However, as was discussed in Section III, a discount rate cannot be used that is lower than the inflation rate.

In theory, the appropriate rate to include in the formulae is the marginal rate of return on equity; that is, the rate which investors would require in order to commit additional common equity funding to the firm. The estimation of such a rate is difficult. One possible estimate of this rate is the internal "hurdle rate" which firms use to evaluate capital investments. This rate would automatically provide an insight into the firm's own estimate of the opportunity cost of additional equity capital. However, because a hurdle rate is not used internally by all firms, because it is often very subjectively determined, and because it would be administratively difficult to obtain, it was rejected as an estimate of the discount rate.

Another alternative means of estimating the discount rate is the expected future return on a share of the firm's common stock. Unfortunately, only the stocks of a small percentage of firms are publicly held and frequently traded and hence, have realistic share prices. Moreover, even if such prices exist, the expected return would have to be estimated. It is doubtful whether a satisfactory means could be found for providing these estimates.

Other estimates of the opportunity cost of equity funds based on economic and finance theory are available in the literature.[13] However, there currently exists no commonly accepted methodology for making such estimates and the cost of updating these estimates is prohibitive. Hence, these estimates were also rejected as a source of the discount rate. The use of either these theoretical estimates or the hurdle rate estimates would have resulted in higher penalties since these estimates tend to be higher than the average return on equity over the past five years.

The shortcomings of the methods described above have led to the selection of a return on equity which is based on book values. However, since the appropriate discount rate should reflect the expected earnings on the firm's current investment opportunities rather than its past investments, the higher of the industry average rate or the all-manufacturing average rate of return is used rather than a firm-specific rate. It is assumed that firms in industries which historically have earned more than the all manufacturing rate of return will continue to have investment opportunities available to them which will yield a higher than average rate of return. For firms in industries which have historically earned less than the all manufacturing rate of return, the all manufacturing rate of return is more indicative of the return on the future investment opportunities available to the firm.[14]

Certain consequences result from the use of industry average rather than firm-specific data. If firm-specific data were employed, those firms with high historical returns would, all else being equal, pay higher penalties. Similarly, firms whose returns have been below industry average would pay lower penalties. Since the savings to a firm from delaying compliance is related to future returns on equity, the question becomes whether the future returns of a specific firm will best be estimated by its own past performance. The fact that individual firm performance is influenced by a variety of factors, often peculiar to the firm and not likely to be repeated, and that future returns are more closely related to the investment opportunities available to industry argues for the use of industry average data.

The use of an industry average rate or the all-manufacturing rate also eliminates the need to verify firm-specific rate of return calculations. Particularly in the case of small firms, the amount and timing of reported earnings could be significantly altered such that a rate of return computed on their book value would be meaningless. In the case of partnerships or sole proprietorships, it would be difficult to disentangle personal finances from company finances. The lack of sufficient

[11] *Chemical Engineering*, McGraw-Hill, Inc., biweekly issues, 1978–1982. For the period November 1977 to November 1982, this rate was 8.6 percent.

[12] For public electric utilities, the return on equity data is found in the most recent issue of Standard and Poor's *Industry Survey*. The electric utility return on net worth is to be used as the discount rate for electric utilities.

[13] See, for example, Gerald A. Pogue, *Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments*, Environmental Protection Agency, EPA–230/3–76–001, November 1975.

[14] The industry average rate of return is employed as the discount rate for utilities, even if the all manufacturing rate is higher, since the investment opportunities available to utilities may be limited by federal or state law or public utility commission practice.

resources to verify these data argue strongly for the use of an average rate.

7. *Interest Rate.*

This is the current rate of interest which would be paid by the firm if additional debt were to be acquired. The interest rate is found by taking the average yield as published in Moody's *Bond Record* on corporate bonds of a grade equal to that on the firm's bonds having the highest rating.

If a firm's debt is not rated, the interest rate is found by using the current rate of interest on grade "A" corporate industrial bonds, published in the *Bond Record.* The current interest rate on grade "A" corporate bonds was chosen because it is a widely available figure which estimates the rates appropriate to a large percentage of firms. Since Moody's *Bond Record* does not provide average yields for bonds rated lower than "Baa", firms with debt rated "Baa" or lower will use the "Baa" rate of interest.

If the firm expects to use industrial development bonds (IDB's) to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate bond rate and the IDB rate [15] will be used as the interest rate in the model. The calculation of this weighted average is explained in the Attachment E.

8. *Preferred Stock Dividend Rate.*

This is the rate which would be paid by the firm to its preferred stockholders on new issues of preferred stock. Like return on equity and the interest rate, the dividend rate on preferred stock represents the marginal cost of this component of long-term financing.

If a firm has preferred stock outstanding which has a rating, the preferred stock dividend rate is given by taking the average yield on public utility preferred stock [16] of that rating as reported in Moody's *Bond Record.* If the stock is not publicly traded or has no rating, the rate is found by using the current preferred stock yield on grade "a" issues. Since Moody's *Bond Record* does not provide average yields for preferred stock rated lower than "baa" or higher than "aa", firms with stock rated "baa" or lower should use the "baa" rate and firms with stocks rated "aa" or higher should use the "aa" rate.

9. *Debt Share.*

This share is the proportion of long-term financing provided by long-term loans, bonds and other long-term interest-bearing instruments. It is a fraction, the numerator of which is the sum of all long-term accounts on the firm's balance sheet. The denominator of the fraction is the sum of these debt accounts plus preferred stock plus common equity investment.

The source of the fraction of debt is the share of debt in the firm's capital structure averaged over the five most recent years. The five year average is used to smooth out year-to-year fluctuations.[17]

10. *Equity Share.*

This share is the proportion of the firm's long-term financing which is provided by common shareholders. It is a fraction, the numerator of which is the sum of all common equity accounts on the firm's balance sheet including common stock, retained earnings, capital surplus and any other accounts representing common equity investments.[18] The denominator of the fraction is given by adding to the numerator the sum of the preferred stock account plus all long-term debt issued by the owner (excluding portions of such debt in the current account).

The source of the fraction of equity in the investment is the average fraction of equity in the capital structure as given in the firm's five most recent annual financial statements.

11. *Preferred Share.*

This share is the fraction of long-term financing provided by preferred stock. The numerator is given by the preferred stock accounts in the firm's balance sheet and the denominator by the quantity: long-term debt plus preferred stock plus common equity interest.

The source of the fraction of preferred stock in the investment is the average fraction of preferred stock in the capital structure as given in the firm's five most recent annual financial statements.

12. *Depreciation.*

Computation of the noncompliance penalty involves consideration of the depreciation-related tax benefits of an investment in pollution control equipment. The depreciation schedule depends on the asset's depreciable life. EPA's computer program to calculate the penalty automatically selects the appropriate depreciation schedule.

The depreciation life is the number of years over which a particular investment in pollution control equipment may be depreciated. This figure depends on the type of asset being depreciated. It is either 3, 5, 10, or 15 years. The IRS publishes regulations specifying the category to which each asset belongs. Most pollution control equipment will fall into the five-year category. If the figure is greater than ten years, a ten-year limit is used, consistent with the requirements of the Act.

13. *Useful Life.*

The useful life of the pollution control equipment is the number of years it can be expected to operate before replacement.

The source of the useful life of the pollution control equipment is the asset guideline period for the appropriate class. These are provided by the Internal Revenue Service in *Revenue Procedure 77–10* (26 CFR 601.105). They represent IRS estimates of the average lives of assets within a particular industry. They were established after an exhaustive study of actual asset lives and will be updated as appropriate.

Section V—Derivation of Formulae

Pollution Control Cash Flows

The savings from delaying pollution control investment has both a capital and an operating and maintenance component. The calculation of savings is performed sperately for each component.

To compute the capital component of the savings from delaying pollution control investment requires that the cash flows be estimated over a thirty year time horizon. The simplest approach to calculating the present value of the cash flows over thirty years is to calculate the present value of cash flows in the initial cycle of N months [19] and use that value as a basis for future replacement cycles. If a fractional cycle is needed at the horizon, a separate calculation is made for that cycle. The derivation described below uses such an approach.

Initial Cycle of Equipment

The first category is the cash flow resulting from the initial investment of equity. It is given by:

---

[15] The interest rate on IDB's is published by Smith, Barney, Harris Upham & Company in the *Credit Market Comment.* This review is published weekly and the current yield on pollution control bonds is printed on the last page.

[16] Average yields are published only for public utility preferred stocks. Non-utility corporations, as well as utilities, should use these average yields if preferred stock is a part of their capital structure.

[17] If financial statements are unavailable, which may be the case for some privately-held firms, the fraction of debt and equity used in the penalty calculation will be the five year average debt and equity share for the firm's industry. This can be calculated from the financial statement provided for the industry by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*

[18] Some firms carry Treasury stock as an asset on their balance sheet. Such stock should properly be shown as a contra-account to common stock. In cases where it is shown as an asset, it should be used to reduce the common equity accounts for purposes of this calculation.

[19] N represents the useful life of the pollution control equipment in months.

$$EI = II * Q \quad (1)$$

where:
- II = the capital cost of the pollution control equipment.
- Q = the fraction of the firm's capital structure made up of equity.

From this amount must be subtracted the effect of the investment tax credit whose cash flow is given by:

$$ITC = II * t_{ITC} \quad (2)$$

where:
- t_{ITC} = the adjusted investment tax credit rate.

The investment tax credit rate must be adjusted if not all of the investment qualifies for the credit. This adjustment is explained in Attachment B. Further, if the investment is financed with industrial development bonds and rapid amortization is selected (see Attachment C), only one-half of the normal investment tax credit is allowed on that portion of the investment so financed.

The initial cash flow at the beginning of the cycle is found by subtracting equation (2) from equation (1):

$$\begin{aligned} INITIAL_0 &= EI - ITC \\ &= II * Q - II * t_{ITC} \\ &= II * (Q - t_{ITC}) \end{aligned} \quad (3)$$

This cash flow occurs at the beginning of the first cycle—at the end of month 0. The initial cash flow in the remaining months of the first cycle is zero. ($INITIAL_m = 0$ for $m \neq 0$.)

The second category of cash flow is the capital-related flow which occurs over the depreciable life of the equipment. It is made up of depreciation and the flows associated with financing the equipment. The effect of depreciation is to reduce the firm's tax liability. The depreciation cash flow in month m is given by:

$$DEP_m = II * d_m * t_{TR} \quad (4)$$

where:
- d_m = the fraction of the original cost depreciated in month m (see Attachment C).
- t_{TR} = the firm's marginal income tax rate (see Attachment D).

As the equipment is depreciated, the book value of the equipment declines. The book value of the equipment at the beginning of month m is given by:

$$(BOOK\ VALUE)_m = II * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (5)$$

where:
- $d_0 = 0$ by definition

The remainder of the annual capital-related cash flow consists of principal repayments and financing charges (i.e., interest and dividends) on the debt and preferred stock issued to finance the equipment purchase. The amount of the initial investment financed by debt is given by:

$$DEBT\ SHARE = II * B \quad (6)$$

where:
- B = the fraction of the firm's capital made up of debt.

Debt is repaid each month in proportion to the depreciation of the asset. That is, at the end of each month the same fraction of the principal is repaid as the original book value of the investment is depreciated.[30] Therefore, the repayment of principal in month m is given by:

$$PRIN_m = d_m * II * B \quad (7)$$

Interest is paid at the end of each month on the principal outstanding at the beginning of month m.

$$(INTEREST\ CHARGE)_m = R_{INT} * (PRINCIPAL\ OUTSTANDING)_m \quad (8)$$

where:
- R_{INT} = the firm's monthly interest rate (expressed as a decimal fraction).[31] See Attachment E

Since interest is tax deductible, only the after-tax effects should be considered in calculating the cash flow. Therefore, the interest payment net cash flow in month m becomes:

$$INT_m = R_{INT} * (PRINCIPAL\ OUTSTANDING)_m * (1 - t_{TR}) \quad (9)$$

The principal outstanding is the original amount borrowed, II * B, less the amount which has been repaid prior to the beginning of the month. The amount repaid prior to the beginning of month m is:

$$(AMOUNT\ REPAID)_m = \sum_{k=0}^{m-1} II * d_k * B \quad (10)$$

where:
- $d_0 = 0$ as before.

The principal outstanding at the beginning of month m is the amount initially borrowed less the amount repaid by the end of month m−1.

$$(PRINCIPAL\ OUTSTANDING)_m = II * B - \sum_{k=0}^{m-1} II * d_k * B \quad (11)$$

Combining equations (9) and (11) yields a formula for the interest-related cash flow in year month m:

$$INT_m = R_{INT} * II * B * (1 - t_{TR}) * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (12)$$

[30] A variety of assumptions could be made concerning the debt repayment schedule. The formulae assume that debt is repaid over the depreciation life of the equipment. This assumption is made in order to hold constant the capital structure of the firm over the time horizon.

[31] The monthly interest rate, R_{INT}, equals $(1+R)^{1/12} - 1$, where R is the annual interest rate paid by the firm on new issues of debt.

The portion of the investment financed by preferred stock is given by:

$$\text{PREFERRED Share} = \Pi * F \quad (13)$$

where:

F = the fraction of preferred in the firm's capital structure.[22]

Just as the additional debt is repaid, the preferred stock is redeemed as the asset is depreciated. At the end of each month, the same fraction of the preferred stock is redeemed as the original book value of the investment is depreciated. Redemption in month m is given by:

$$PREF_m = d_m * \Pi * F \quad (14)$$

Dividends on preferred stock are paid at the end of each month on the amount of stock outstanding at the beginning of the month.

$$DIV_m = R_{DIV} * (\text{PREFERRED OUTSTANDING})_m \quad (15)$$

where:

R_{DIV} = the monthly dividend rate on preferred stock (expressed as a decimal fraction).[23]

These dividends are not tax deductible. The preferred outstanding is the original amount issued, $\Pi * F$, less the amount redeemed prior to the beginning of the month. The amount redeemed prior to month m is:

$$(\text{AMOUNT REDEEMED})_m = \sum_{k=0}^{m-1} \Pi * d_k * F \quad (16)$$

where:

$d_0 = 0$ as before.

The amount of preferred outstanding at the beginning of month m is equal to the amount originally issued less the amount redeemed.

$$(\text{PREFERRED OUTSTANDING})_m = \Pi * F - \sum_{k=0}^{m-1} \Pi * d_k * F \quad (17)$$

The preferred dividend paid at the end of month m is found by combining equations (15) and (17).

$$DIV_m = R_{DIV} * \Pi * F * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (18)$$

Therefore, the total monthly capital-related charges for each month m of the initial cycle are:

$$\text{MONTHLY CAPITAL RELATED}_m = -DEP_m + PRIN_m + INT_m + PREF_m + DIV_m \quad (19)$$

The negative sign preceding the depreciation cash flow results from the fact that this component represents a reduction in cash outflow. These monthly capital-related cash flows will occur over the depreciable life of the equipment. After the equipment is fully depreciated, these cash flows will be zero until the next cycle of equipment is installed.

[22] Note that Q+B+F must be equal to 1.

Future Cycles of Equipment

The process just described must now be repeated for any future replacement cycles which fall within the thirty-year time horizon. For the initial investment, the values in future cycles can be computed by making a simple adjustment for inflation.

For example, the replacement of equipment after N months, when the original equipment wears out, gives rise to an initial equity investment equal to:

$$INITIAL_N = INITIAL_0 * (1+i)^N \quad (20)$$

In general, the initial equity investment at the end of month m will be equal to the investment made N months ago inflated at a monthly inflation rate, i. The initial capital expense at the end of month m is, therefore, equal to:

$$INITIAL_m = INITIAL_{m-N} * (1+i)^N$$

This can also be generalized as:

$$INITIAL_{(j-1)N} = INITIAL_0 * (1+i)^{(j-1)N} \quad (21)$$

for the jth cycle.

[23] The monthly dividend rate, R_{DIV}, equals $(1+R)^{1/12}-1$, where R is the annual dividend rate paid by the firm on new issues of preferred stock.

In most months this value will be zero. Cash flows due to the initial investment at the beginning of a cycle will occur only in months 0, N, 2N, 3N and so forth until the end of the thirty year (360 month) time horizon. If a cycle should end precisely at the end of the thirty year time horizon, it is assumed that the firm will not invest in replacement equipment at the end of the horizon. $INITIAL_{360}$ will always be zero.

The monthly capital-related charges for each future cycle may be calculated according to:

$$\text{Monthly Capital Related}_m = \text{Monthly Capital Related}_{m-N} * (1+i)^N \quad (22)$$

The monthly capital-related cash flows will occur in the first n months of each replacement cycle, where n is the depreciation life of the equipment in months. In all other months, the value of these cash flows will be zero.

The monthly cash flow for each month m is the sum of the initial cash flow and the capital-related cash flow.

$$MCF_m = INITIAL_m + \text{MONTHLY CAPITAL RELATED}_m \quad (23)$$

These cash flows can be calculated for each of the 360 months in the planning horizon.

Treatment of Last Cycle Before Time Horizon

If the useful life of the equipment is such that a cycle ends at the thirty year horizon, no special horizon effects need be taken into account. If the final replacement cycle would extend beyond the thirty year horizon, a fractional investment is assumed. This fractional investment is proportional to the time remaining until the thirty year horizon.

The fractional investment is given by:

$$\Pi_K = \Pi * (1+i)^K * \frac{360-K}{12 \times N} \quad (24)$$

where K = month in which fractional investment is made.

Depreciation on the final fractional cycle depends on the cycle length. If the cycle is at least as long as the depreciable life, normal depreciation is used. If the cycle is shorter than depreciation life, straight line depreciation is used over the fractional cycle length.

Discounting the Cash Flows

The present value of the cash flows in each month will be:

$$^{PV}MCF_m = \frac{MCF_m}{(1+e)^m} \quad (25)$$

where: e = the monthly discount rate.[24]

The sum of the present value of the cash flows for each month represents the cost to the firm of on-time compliance.

$$^{PV}PCE = \sum_{m=0}^{360} {}^{PV}MCF_m \quad (26)$$

$$= \sum_{m=0}^{360} \frac{MCF_m}{(1+e)^m}$$

The Value of Delay

The quantity just calculated is the present value, as of the day on which compliance should have been achieved, of cash flows that the firm would have experienced had it not delayed pollution control investment. If compliance is delayed for L months, the series of cash flows will also be delayed for L months. Each monthly cash flow, however, will be higher because of the effects of inflation. It will become:

$$MCF_m = MCF_{m-L} * (1+i)^L \quad (27)$$

Thus, each cash flow in the delay case corresponds to a cash flow in the on-time case. The delay case cash flows are larger by a factor equal to $(1+i)^L$. However, because they are displaced in time by L months, their present value will be smaller. The present value of the delay case cash flows can be calculated by:

$$PV_{DELAY} = PV_{PCE} * \left(\frac{1+i}{1+e}\right)^L \quad (28)$$

The capital component of the savings from delay is found by subtracting the present value of the delay case cash flows from the present value of the on-time cash flows:

$$SAVINGS_{CAP} = PV_{PCE} - PV_{DELAY} \quad (29)$$

The second component of savings is that associated with monthly operating and maintenance expenditures. These expenses grow each month at the monthly inflation rate. Like interest and dividend payments, they are assumed to be paid at the end of the month. They are tax deductible so their associated cash flows must reflect the effect of income taxes.

Let $O\&M_m$ be the cash flow resulting from operating and maintenance expense in month m. Define M_0 as the monthly operating and maintenance expense before tax stated in current dollars as of the beginning of the period of noncompliance. The first payment actually made will be this amount escalated by the monthly inflation rate. The resulting cash flow is given by:

$$O\&M_1 = M_0 * (1-t_{TR}) * (1+i)$$
$$O\&M_2 = O\&M_1 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^2 \quad (30)$$
$$O\&M_3 = O\&M_2 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^3$$

where i = the monthly inflation rate.

In general, the monthly O&M expense in month m is:

$$O\&M_m = M_0 * (1-t_{TR}) * (1+i)^m \quad (31)$$

The savings from O&M is simply equal to the present value of the O&M cash flows during the period of noncompliance. Thus,

$$\text{Savings}_{O\&M} = \sum_{m=1}^{L} \frac{O\&M_m}{(1+e)^m}$$

$$= M_0 * (1-t_{TR}) * \sum_{m=}^{L} * \left(\frac{1+i}{1+e}\right) \quad (32)$$

The total savings from delayed compliance is equal to the sum of the capital and O&M components.

$$SAVINGS = SAVINGS_{CAP} + SAVINGS_{O\&M} \quad (33)$$

Conversion of Savings into Monthly Equivalents

In order to convert the savings from noncompliance into a series of penalty payments, it is necessary to express savings as a series of equivalent monthly amounts.[25] This series, which will be referred to as the "savings equivalent," must have two attributes:

- It must have the same present value as the cash flows which would have resulted from investment in and operation of the required pollution control equipment. When these amounts are translated into a penalty, this requirement is intended to insure that a firm which continues to delay its pollution control expenditures will not benefit by doing so.
- The savings equivalents must escalate at the rate of inflation. If this requirement is not met, the early penalty payments overstate the savings to the firm while later payments understate it.

Let S_j be the savings equivalent at the beginning of month j.[26] The requirement that the series escalate with inflation implies that:

$$S_2 = S_1 * (1+i)$$
$$S_3 = S_2 * (1+i) = S_1 * (1+i)^2$$
$$S_j = S_{j-1} * (1+i) = S_1 * (1+i)^{j-1} \quad (34)$$

where: i = the monthly inflation rate.

The present value of each of these terms is calculated by discounting:

$$PV_{s\,j} = \frac{S_j}{(1+e)^{j-1}} \quad (35)$$

Combining with equation (34) yields:

$$PV_{s\,j} = \frac{S_1 * (1+i)^{j-1}}{(1+e)^{j-1}} \quad (36)$$

The present value of these L monthly savings equivalents must be equal to the savings from delay. Thus:

$$SAVINGS = \sum_{j=1}^{L} PV_{s\,j}$$

$$= \sum^{L} S_1 * \left(\frac{1+i}{1+e}\right)^{j-1}$$

$$j=1$$

$$\text{or} \quad S_1 = \frac{SAVINGS}{\sum_{j=1}^{L} \left(\frac{1+i}{1+e}\right)^{j-1}} \quad (37)$$

This represents the first term in the series. All terms after the first month

[24] As stated in Chapter III, the discount rate cannot exceed the inflation rate. The monthly discount rate, e, is equal to $(1+E)^{(1/12)}-1$, where E is the annual discount rate.

[25] The final penalty payment will be made on a quarterly basis. However, in order to increase the accuracy of the penalty calculation, all adjustments to the economic savings are made on a monthly basis.

[26] It is assumed that penalties are paid at the beginning of each period in contrast to the cash flows which are assumed to occur at the end of each period.

can be computed by multiplying S_1 by the quantity (1+i) raised to the appropriate power. For example, the savings equivalent at the beginning fo the kth month would be:

$$S_k = S^1 * (1+i)^{k-1} \quad (38)$$

The present value of these monthly savings equivalents is equal to the present value of the costs avoided during the period of noncompliance.

The Effect of Precompliance Expenditures

The series of savings equivalents just developed is based on the assumption that a firm installing pollution control equipment will pay for it when installation is completed and operation begins. In fact, substantial precompliance expenditures will often be required before final installation is completed. In calling for the imposition of a noncompliance penalty, Congress explicitly required that these precompliance expenditures be accounted for in the penalty calculation. The adjustments needed to incorporate the effect of precompliance expenditures are described below. The procedure is begun by dividing the savings equivalent into its capital and its operating and maintenance components. The adjustment of the capital component of the penalty is described, followed by a description of the procedure for adjusting the operations and maintenance component of the penalty.

Adjustments to Capital Components

The method used to account for precompliance capital expenditures is to adjust the capital component of a month's savings equivalent by multiplying it by a factor representing the proportion of the capital investment which is still to be made prior to the beginning of that month.[27] For example, if one-third of the total investment will have been made *prior* to the fifth month, the adjusted capital component of the savings for the fifth month is equal to two-thirds (the fraction of the investment still to be made) of the savings equivalent.

The computational procedure starts by rewriting formula (37) using formulae (32) and (33). This gives:

$$S_1 = S^C_1 + S^M_1 \quad (39)$$

where:

$$S^C_1 = \frac{\text{SAVINGS}_{CAP}}{\text{SAVINGS}} * S_1$$

$$S^M_1 = \frac{\text{SAVINGS}_{O\&M}}{\text{SAVINGS}} * S_1$$

The superscript C refers to the capital component of the savings equivalent and M refers to operating and maintenance component. Equation (38) for the capital component can then be rewritten as:

$$S^C_k = S^C_1 * (1+i)^{k-1} \quad (40)$$

Let A^C_k be the month k capital component adjusted for precompliance expenditures. That is, A^C_k is equal to S^C_k times a factor representing the fraction of the initial capital investment (II) which remains to be made. If X^C_k is the fraction of the initial investment which has been made prior to the beginning of month k [28] then:

$$A^C_k = (1 - X^C_k) * S^C_k \quad (41)$$

Adjustment of Operation and Maintenance Component

The operating and maintenance component of the savings must be adjusted to a value which is net of any actual O&M expenditures made during the period of noncompliance. The adjustment of the operating and maintenance component, A^M, is equal to the present value of the operating and maintenance component of the savings ($\text{SAVINGS}_{O\&M}$ as defined in equation (32) less the present value of any precompliance O&M expenditures made during the period of noncompliance.[29] Thus:

$$A^M = \text{SAVINGS}_{O\&M} - \sum_{k=1}^{L} \frac{P^M_k}{(1+e)^k} \quad (42)$$

where:

P^M_k = precompliance operating and maintenance expense incurred in month k of the noncompliance period.

Calculation of Quarterly Penalties

The Act requires that the noncompliance penalty payments be made on a quarterly basis and that all payments be of equal value. The EPA interprets this requirement to mean equality in real rather than nominal terms. Consequently, the series of payments must increase with inflation. This can be done by converting the monthly values of the capital component of the savings computed above into their present value equivalent, adding the present value of the O&M component of the savings, and the converting that present value into a new series of escalating quarterly payments. Let L be the number of months which compliance is delayed. Then the present value is given by:

$$PV\text{ADJUSTED SERIES} = A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}} \quad (43)$$

The series of escalating payments must have this same present value.[29a] Thus, if P_q is the payment to be made at the beginning of quarter q, the following equality must exist:

---

[27] Note that the capital expenditure credit includes only those payments made prior to the beginning of the month. The capital expenditure credit does not include expenditures made in the current month since cash flows are assumed to occur at the end of the month. Therefore, the firm was able to earn a return during the month on the current month's capital expenditure which it would not have earned if compliance had not been delayed. Hence, the firm's savings from delay in the current month should include this return.

[28] Note that X^C_k has a value between 0 and 1.

[29] If this calculation should result in an adjusted O&M penalty less than zero the present value of the adjusted O&M penalty, A^M, shall be set equal to zero. The firm will not be allowed to offset any portion of the capital component of its penalty with precompliance O&M expenses.

[29a] The number of required quarterly payments is determined from the months out of compliance using the formula:

T = Integer [(L+2)/3]

where:

Integer = the closet integer less than or equal to the number in the brackets.

L = number of months out of compliance.

[29b] The quarterly equivalent discount and inflation rate is found by taking the monthly equivalent discount and inflation rate to the third power. Thus:

$e' = (1+e)^3 - 1$

$i' = (1+i)^3 - 1$

where:

e = monthly equivalent discount rate.

i = monthly equivalent inflation rate.

$$A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}} = P_1 + \frac{P_2}{(1+e')} + \ldots + \frac{P_T}{(1+e')^{T-1}} \quad (44)$$

where:

e'=the quarterly equivalent discount rate.[29b]

T=the number of quarterly payments.

However, since $P_q = P_{q-1} * (1+i)$

$$A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}} = P_1 * \sum_{q=1}^{T} \left(\frac{1+i'}{1+e'} \right)^{q-1}$$

where:

i'=the quarterly equivalent inflation rate.

or

$$P_1 = \frac{A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}}}{\sum_{q=1}^{T} \left(\frac{1+i'}{1+e'} \right)^{q-1}} \quad (45)$$

and

$$P_q = P_{q-1} * (1+i') = P_1 * (1+i')^{q-1} \quad (46)$$

These payments have the following properties:

- They are equal in real terms.
- Their present value is equal to the present value of savings after adjustments for pre-compliance capital and operating and maintenance expenditures.
- If either the assumed schedule of expenditures for compliance, the amounts of those expenditures, or the compliance date are inaccurate, the payments must be revised. This is discussed below.

Post-Compliance Settlement

The original penalty computation is based on the costs which the firm would have experienced had compliance not been delayed. If compliance is delayed, inflation will result in the actual expenditures being somewhat larger. This inflation-induced variation is already accounted for in the formulation described above. However, simple estimation error may also contribute to the difference and it is this error that the post-compliance settlement is intended to remedy.

The method involves recomputing the penalty using revised estimates of capital costs and operating and maintenance costs, and revised estimates of the discount rate, the inflation rate and the capital structure of the firm. These revised estimates are then used in conjunction with the actual schedule of precompliance expenditures to recalculate the penalty payments. The settlement is based on the difference between these payments and those actually paid.

The settlement amount is the cumulative overpayment or underpayment at the end of the noncompliance period plus interest on each month's outstanding balance (the cumulative overpayment or underpayment at the end of each month). The formula for computing the settlement payment is as followings: Let Δ_k be the difference between the penalty that was paid in month k and the amount which should have been paid in that month. Let Z_k be the cumulative overpayment or underpayment at the end of month k, including interest. Then:

$Z_1 = \Delta_1 * r$

and $Z_2 = (\Delta_2 - Z_1) * r$

In general,

$$Z_k = (\Delta_k + Z_{k-1}) * r$$

where:

Z_k=the cumulative overpayment or underpayment at the end of month k, including interest.

Δ_k=the difference between the penalty amount paid in month k and the penalty amount which is computed using the revised estimates.

r=the monthy equivalent rate of interest determined by the Secretary of the Treasury.[30]

The total post-compliance settlement as of the date of compliance is given by:

$Z = Z_L$

where:

Z=the total post-compliance settlement as of the date of compliance.

L=The total number of months of noncompliance.

Z_L=the cumulative overpayment or underpayment at the end of the noncompliance period, including interest.

The total post-compliance settlement as of the day of compliance is then adjusted to reflect delay in the actual settlement payment. The final settlement amount is:

$Z = Z * (1+r)^D$

where:

Z=the actual settlement to be paid (or refunded) on the day of the settlement.

Z=the total post-compliance settlement as of the date of compliance.

r=the monthly equivalent rate of interest specified by the Secretary of the Treasury.[31]

D=the number of months between the date of compliance and the actual settlement.

Delayed Penalty Payments

In general, any time a penalty payment (P) is delayed by k months, the actual payment should be equal to:

$P * (1+e)$

For example, if the first penalty payment is not paid until six months after the notice of noncompliance has been received, the first and second quarterly payments will be delayed for six and three months, respectively. If this occurs, the penalty payment after an initial six-month delay is equal to:

$P_1 * (1+e)^6 + P_2 * (1+e)^3 + P_3$

Attachment A—Definition of Symbols

Note.—All variables denoted with an asterisk (*) are expressed as decimal fractions in the formulae in Section V. In the Instruction Manual the user is instructed to

[30] The Secretary of the Treasury will designate an annual rate of interest for overpayments and an annual rate of interest for underpayments. For underpayments, the Secretary of the Treasury has determined that the rate of interest will equal the discount rate. Therefore, for each month with a positive outstanding balance indicating a cumulative overpayment ($\Delta_k + Z_{k-1}$ greater than zero), r will equal the monthly equaivalent of the interest rate for overpayments. For each month with a negative outstanding balance indicating a cumulative underpayment ($\Delta_k + Z_{k-1}$ less than zero), r will equal the montly equivalent of the discount rate as revised in the post-compliance settlement.

[31] The interest rate, r, will be the monthly equivalent of the interest rate for overpayments if Z is greater than zero. If Z is less than zero, r will equal the monthly equivalent of the discount rate as revised in the post-compliance settlement.

enter some of these variables as percentages; that is, 10 percent as opposed to 0.10. The computer model then converts these percentages to decimal fractions for use in the model.

A_C^k = the monthly equivalent of the capital component of savings adjusted for precompliance expenditures.
A^M = the O&M component of savings adjusted for pre-compliance expenditures.
B = the fraction of debt in the owner's capital structure (book value).*
b = the fraction of the investment financed by industrial development bonds and depreciated using rapid amortization.*
CF_{FINAL} = cash flow at end of thirty year time horizon if compliance is not delayed.
CF'_{FINAL} = cash flow at end of thirty year time horizon if compliance is delayed.
D = the number of months between the date of compliance and the payment of the post-compliance settlement.
DEP_m = the net after-tax cash flow in month m resulting from depreciation of the initial investment.
DEP_{FINAL} = tax shield from writeoff of remaining book value of the equipment at the end of the thirty year time horizon.
d_m = the fraction of original asset value depreciated in month m.*
D_j = the fraction of original asset value depreciated in year j.*
Δ_k = the difference between the penalty paid in month k and the amount computed using revised figures for capital and O&M costs.
DIV_m = the dividend payment in month m on the preferred stock used to finance the initial investment.
E = the discount rate.*
e = the monthly equivalent of the discount E.*
e' = the quarterly equivalent of the discount rate E.*
EI = the amount of cash provided by equity investors to finance the initial investment.
f = the fraction of the initial investment which is amortized on a straight line basis over five years.*
F = the fraction of preferred stock (at book value) in the owner's capital structure.*
G = the depreciation life of the pollution control equipment in years.
I = the annual rate of inflation for pollution control expenditures.*
i = the monthly equivalent of the annual inflation rate I.*
i' = the quarterly equivalent of the annual inflation rate I.*
IBD = the dollar value of industrial development bonds issued to finance the pollution control equipment.
INITIAL = initial equity investment at the beginning of a replacement cycle.
INT_m = the interest payment cash flow (after the effect of taxes) in month m on the debt used to finance the initial investment.
II_{qual} = amount of initial capital investment which qualifies for the investment tax credit.
II = the initial investment in pollution control equipment; the amount which will be capitalized on the books of the firm and amortized over the life of the equipment.
ITC = the dollar amount of the investment tax credit.
j,k,m = indices, usually indicating the year or month in which a cash flow occurs.
K = the number of owners of the firm.
L = the number of months the firm is expected to be out of compliance.
M_o = monthly operating and maintenance expense in current dollars as of the beginning of the period of noncompliance.
MCF_m = cash flow in month m if compliance is not delayed.
MCF'_m = cash flow in month m if compliance is delayed.
MONTHLY CAPITAL RELATED $_m$ = capital-related cash flows in month m.
N = the useful life of the pollution control equipment in months.
n = the depreciation life of the pollution control in months.
$O\&M_m$ = the net operating and maintenance cash flow in month m.
P_q = the penalty payment to be made at the beginning of quarter q.
P^M_k = the precompliance operating and maintenance expenditure incurred in month k.
PV = the present value of cash flow.
PV_{MCF_m} = present value of cash flow occurring in month m.
PV_{PCE} = present value of all cash flows resulting from the purchase and operation of the original and all future replacement cycles of pollution control equipment over the thrity-year time horizon.
PV_{DELAY} = present value of the costs of the original and all future cycles of pollution control equipment if compliance is delayed, as of the day compliance should have been achieved.
$PREF_m$ = the repayment of reallocation of preferred stock in month m.
$PREF_{FINAL}$ = repayment of outstanding preferred stock at the end of the thirty year time horizon.
$PRIN_m$ = the repayment of reallocation of debt in month m.
$PRIN_{FINAL}$ = repayment of outstanding debt at the end of the thirty year time horizon.
q = index indicating the quarter in which penalty payment is made.
Q = the fraction of common equity (at book value) in the owner's capital structure.*
r = the monthly rate of interest paid on post-compliance settlement amounts.*
R_{BOND} = the monthly interest rate on corporate or public utility bonds.*
R_{DIV} = the monthly dividend rate on perferred stock.*
R_{IDB} = the monthly interest rate in industrial development bonds.*
R_{INT} = the monthly rate of interest on long-term debt.*
S_k = the monthly equivalent of savings.
S^C_k = the monthly equivalent of the capital component of savings.
S^M_k = the monthly equivalent of the O&M component of savings.
SAVINGS = savings from delaying compliance.
$SAVINGS_{O\&M}$ = savings from forgone Q&M expenditures during period of delay.
$SAVINGS_{CAP}$ = savings from delaying capital-related cash flows.
T = the number of quarterly payments.
t_{FED} = the marginal federal income tax rate.*
t_{ITC} = the adjusted investment tax credit rate.*
t_L = the marginal local income tax rate.*
t_S = the marginal state income tax rate.*
$t_{s,l}$ = the marginal state and local income tax rate.*
t_{TR} = the marginal income tax rate.*
W_j = the fraction of common stock held by stockholder j.*
X^C_k = the fraction of the capital investment which has been made prior to the beginning of month k.*
X^M = the portion of the total operating and maintenance expense incurred during the period of noncompliance at a replacement source.*
Y = the statutory investment tax credit rate.*
Z = the actual post-compliance settlement to be paid or refunded.
Z_k = the cumulative overpayment or underpayment of the penalty at the end of month k, including interest.
Z = the total post-compliance settlement as of the date of compliance.

Attachment B—Investment Tax Credit Qualification

Only certain assets qualify for the investment tax credit. Most buildings are among the assets that do not qualify.[1] If the installation of pollution control equipment involves expenditures which will be capitalized and amortized over the tax life of the equipment, but which do not qualify for the investment tax credit, then the calculation of the credit must be adjusted.

Let II_{qual} be the investment which qualifies for the investment tax credit and let II be the total investment. If the investment tax credit rate specified in the Internal Revenue Code is Y, the adjusted rate for use in the noncompliance penalty calculation is:

$$t_{ITC} = \frac{II_{qual}}{II} * Y$$

A further adjustment must be made if the investment is financed by the sale of tax-exempt industrial development bonds. If rapid amortization is used, only one-half of the credit can be taken on the investment. Investment projects partially financed by industrial development bonds and using rapid amortization receive an investment tax credit weighted to reflect the loss of one-half of the credit on the portion paid for by bonds. This is shown below:

[1] An exception exists for the rehabilitation of certain older structures.

$$t_{ITC} = \left(\frac{1-b}{2}\right) * Y$$

where:

t_{ITC} = the adjusted investment tax credit rate.

b = the proportion of the investment financed by industrial development bonds and using rapid amortization.

Y = the investment tax credit rate specified in the Internal Revenue Code.

State investment tax credits should also be included in the investment tax credit rate. For example, Connecticut provides an investment tax credit for plants built in distressed areas. This tax credit lowers state taxes. Because state taxes are deductible from Federal taxes, only a portion of the credit benefits the firm. The total investment tax credit rate in states where the credit is based on actual investment is given by:

$$t_{ITC} = t_{ITC\ FEDERAL} + [(1 - t_{TR\ FEDERAL}) * t_{ITC\ STATE}]$$

where:

t_{ITC} = the adjusted investment tax credit rate.

$t_{ITC\ FEDERAL}$ = the adjusted Federal investment tax credit rate.

$t_{TR\ FEDERAL}$ = the marginal federal income tax rate.

$t_{ITC\ STATE}$ = the adjusted state investment tax credit rate.

Attachment C—Depreciation

The cash flow resulting from depreciation is given by:

$$DEP_m = d_m * II * t_{TR}$$

where d_m is the fraction of the original cost depreciated in month m and t_{TR} is the marginal income tax rate. The value of d_m will depend on the recovery class to which the asset belongs. The following schedule gives the depreciation fraction for each class. The fraction of the original cost depreciated in month m, d_m, will be one-twelfth of the annual amount under each of these schedules.

If the full 10 percent investment tax credit is taken, the basis must be reduced by 5 percent. Thus, the effective depreciation fractions are 95 percent of those listed in the schedule.

ANNUAL DEPRECIATION PERCENT

Recovery year	3-year	5-year	10-year	15-year public utility
1	25	15	8	5
2	38	22	14	10
3	37	21	12	9
4		21	10	8
5		21	10	7
6			10	7
7			9	6
8			9	6
9			9	6
10			9	6
11				6
12				6
13				6
14				6
15				6
Total	100	100	100	100

Rapid Amortization

Special rules governing the depreciation of pollution control equipment allow 85 percent of the investment to be written off on a straight line basis over a period of 60 months. That is, the depreciation in each month is equal to 1/60 of the capital cost. This approach is known as rapid amortization.

Only 85 percent of the capital is subject to rapid amortization, The remaining 15 percent must be depreciated using normal depreciation methods.

Attachment D—Tax Rate Adjustments

The calculation of the savings from noncompliance requires use of the firm's marginal income tax rate. For most large corporations operating in states with no state income tax, this figure would be 46 percent.[1] However, a state income tax or a non-corporate form of organization complicates the matter. This appendix discusses the adjustments necessary to deal with these two factors.

State and Local Income Taxes

Firms in some locations are subject to income taxation by more than one level of government. If state and local income taxes are deductible on the federal return, the rate of taxation on income, t_{TR}, must be computed according to the following procedure:

Let t_{FED} be the federal marginal tax rate and $t_{S\&L}$ be the rate on state and local returns. Taxes paid to state and local governments are deductible expenses on the federal return. Hence, this after-tax rate is given by:

$$t_{S\&L} * (1 - t_{FED})$$

The overall tax rate is the sum of federal and state and local effects. It is given by:

$$t_{TR} = t_{FED} + [t_{S\&L} * (1 - t_{FED})]$$

It is possible that certain local income taxes will be allowed as deductions when state income taxes are computed. In such cases, $t_S\&_L$ is given by:

$$t_S\&_L = t_S + t_L * (1 - t_S)$$

where:

t_S = the marginal state income tax rate.

t_L = the marginal local income tax rate.

If the local income tax is not deductible from the state, the combined rate is given by:

$$t_S\&_L = t_S + t_L$$

Multiple Ownership, Partnerships and Sole Proprietorships

The assumption in employing the tax rate, t_{TR}, and its components, t_{FED} and $t_S\&_L$, is that these rates represent the marginal income tax rates applicable to the owning firm. If there is more than one owner, as might be the case if the firm were a partnership of a Subchapter S corporation, the rate used in the noncompliance penalty should be a weighted average of the rates appropriate to each owner. In the case of sole proprietorships, the tax rate will be the marginal income tax rate applicable to the individual owner.

The formula for either t_{FED} or $t_S\&_L$ would then be given by:

$$t = W_1 t_1 + W_2 t_2 + \ldots + W_k t_k = \sum_{k=1}^{K} W_k t_k$$

where:

t = the weighted average marginal income tax rate.

W_k = the fraction owned by the kth owner.

t_k = the marginal income tax rate of the kth owner.

K = the number of owners.

Attachment E—Weighted Average Interest Rate

The interest rate used in the formulae is the marginal rate of interest which would be paid by the firm if additional debt were acquired. If Industrial Development Bonds (IDB's) are not used, this rate is simply the most recent average yield on corporate bonds of a grade equal to that on the firm's bonds having the highest rating. If the firm expects to use IDB's to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate (or public utility) bond rate and the IDB rate will be used as the interest rate in the model.

The weighted average interest rate will equal:

$$R_{INT} = \frac{IDB}{B*II} * R_{IDB} + \left(\frac{-IDB}{B*II}\right) * R_{BOND} \text{ for } IDB < B*II$$

[1] As of January 1981.

Where:

R_{INT} = the monthly weighted average interest rate (expressed a decimal fraction).

IDB = the dollar value of issued industrial development bonds.

B*II = the amount of the initial investment financed by debt.

R_{IDB} = the monthly equivalent of the interest rate on industrial development bonds (expressed as a decimal fraction).

R_{BOND} = the monthly equivalent of the interest rate on corporate or public utility bonds (expressed as a decimal fraction).

If the dollar value of industrial development bonds issued to finance the pollution control equipment exceeds the amount of the initial investment, the interest rate used in the formulae will be set equal to the interest rate on industrial development bonds. Thus:

$$R_{INT} = R_{IDB} \text{ for } IDB > B^*II$$

Attachment F—Facilities With Limited Useful Lives

In some cases, a noncomplying source of emissions will not be brought into compliance but instead will be retired or replaced by a complying source. For example, a steel company with a noncomplying open hearth furnace may wish to retire that furnace rather than bring it into compliance, and may replace its steel-making capability with a basic oxygen furnace. The basic oxygen furnace would have sufficient emission controls to allow it to meet the standards for new sources.

If the firm wishes to operate a noncomplying source for a limited period of time and then retire that source, the noncompliance penalty is calculated based on the capital and operating and maintenance costs which *would have been incurred* in bringing the source into compliance. These are the costs which are foregone in continuing to operate the noncomplying source and are the basis of the savings which accrue to the owner in so doing. Since the source is never brought into compliance, there are no precompliance expenditures. The full capital cost of compliance is assumed to be incurred in the final month before retirement.

When the firm plans to replace a noncomplying source with a new facility after some period of noncompliance, a similar approach is used. The basic calculation is based on the costs that would have been incurred in bringing the older source into compliance. However, an adjustment is then made for the precompliance expenditures made on the *new* complying facility. In other words, expenditures made on the construction of the new source are used to adjust the penalty much the same as precompliance expenditures on the older source would be used if they occurred. This procedure is explained below.

The basic equations utilized in the consideration of precompliance expenditures were detailed in Section V. These equations begin by breaking the savings equivalent into its capital and operating and maintenance components. The capital component is then adjusted for precompliance expenditures as shown in equation (41):

$$A^C_k = (1 - X^C_k) * S^C_k \qquad (41)$$

where:

A^C_k = adjusted capital component in month k

X^C_k = fraction of total capital investment made prior to the beginning of month k

S^C_k = unadjusted capital component in month k

In the case of a firm replacing an older noncomplying facility with a new source which meets the emission standards, the equation above would be used with X^C_k based on the total investment (for both productive capacity and pollution control equipment [1]) in the new facility and S^C_k based on the capital costs of bringing the old source into compliance. As such, X^C_k would represent the fraction of the *total* investment required for the new facility expended prior to the beginning of month k.[2]

The adjusted value of the operating and maintenance component—A^M—is equal to the amount which would have been spent at the old source in complying adjusted for the portion of the total operating and maintenance expenses of the equipment at the new source made during the period of noncompliance. The equation for adjusting operating and maintenance expenditures is written as:

$$A^M = (1 - X^M) * SAVINGS_{O\&M} \qquad (42)$$

where:

A^M = adjusted operating and maintenance component of the penalty.

X^M = the present value of the operating and maintenance precompliance expenditures made during the period of noncompliance at the new source divided by the present value of the total operating and maintenance expense of the new source had it been in operation during the period of noncompliance.[3]

$SAVINGS_{O\&M}$ = the present value of the operating and maintenance expense of the old source had it been in compliance during the period of noncompliance: that is, the savings from forgone O&M expenditures during the period of delay.

[1] Both production and pollution control expenditures are considered because in this case technology substitution itself as well as control equipment contribute to meeting the emission standards.

[2] The value of X^C_k cannot exceed one.

[3] The value of X^M cannot exceed one.

As described above, noncompliance penalties for facilities with limited useful lives are based on the costs which would have been incurred in bringing the facility into compliance. Because the source is retired rather than brought into compliance, no post-compliance settlement based on the capital and operating and maintenance costs actually incurred is possible. However, if the noncomplying source is replaced with a new facility, the noncompliance penalty is adjusted based on planned precompliance capital and operating and maintenance expenditures. In such cases, a post-compliance settlement is possible and necessary to adjust for differences between planned versus actual precompliance expenditures and the resulting alterations in the noncompliance penalty. The estimates of the discount rate, the inflation rate, and the firm's capital structure are also updated at the time. Such a settlement involves three steps:

- The actual capital and operating and maintenance expenditures for each month are converted to dollars as of the date of noncompliance.
- Each monthly constant dollar capital expenditure's percentage of the total capital expenditure is calculated. The percentage of the total operating and maintenance expenditures made during the period of noncompliance is also calculated.
- The percentages of total capital expenditures and total operating and maintenance expenditures made during the period of noncompliance are used to adjust the respective penalty components computed in the initial penalty calculation.

The formulae are identical to those shown in Section V for the post-compliance settlement.

Attachment G—Application to Government Facilities

The noncompliance penalties described in this document are designed to remove the economic savings realized by a firm due to delayed compliance with pollution control requirements. Similar savings are realized by government-owned facilities—emission sources owned or under the control of municipal, state, federal and other government and quasi-government entities. The statute contemplates that noncompliance penalties will be assessed against such facilities as well.

The calculation of penalties for government facilities is carried out using the same general logic as presented in this document with two important changes:

1. Cash flows due to tax effects are no longer relevant.

2. A discount rate appropriate for use with government projects is used.

Each of these changes is described below.

Tax Effects

Because government facilities do not pay income taxes, cash flows which result from tax effects in the private sector are not included in the noncompliance formulae for government facilities. As a result, cash flows due to tax savings from depreciation, interest expense, and operating and maintenance expense are not included in the formulae for government noncompliance penalties. The replacement of t_{ITC} and t_{TR} with zero in all formulae developed in Section V will accomplish this change.

Discount Rate

The choice of a discount rate for use in analyzing government investments has been a widely debated subject for a number of years. One commonly held view is that the appropriate discount rate for evaluating government investments is the rate of return that the resources utilized would have provided in the private sector.[1] The correct discount rate is, therefore, the opportunity cost of funds in the private sector. This rate is extremely difficult to estimate since it involves calculating the weighted average of the rates of return in various productive sectors of the economy from which resources are withdrawn for the government investment under consideration.

For the purpose of noncompliance penalties, the discount rate of 10 percent specified by the Office of Management and Budget (OMB) for use in federal project analysis is utilized.[2] OMB argues that the discount rate of percent represents an estimate of the average rate of return on private investment. This discount rate is often used by government, particularly in analysis of investments that will receive partial or full federal funding. Thus, use of this rate will insure that the calculation of noncompliance penalties for government facilities is accomplished on the basis consistent with the analysis of investments carried out by governmental decision makers.

All cash flows in the noncompliance formulae should be discounted using the 10 percent discount rate. In order to accomplish this using the formulae derived in Section V, the variables F (preferred stock share) and B (debt share) should be set equal to zero and the variable Q (the equity share) should be set equal to one. The variable E is redefined to be the government discount rate and should be set equal to 10 percent. These changes and those in the tax rate variables described above result in the following cash flow values for government facilities.

$$INITIAL_0 = II \cdot I \qquad (3)$$

$$MONTHLY\ CAPITAL\ RELATED_m = O \qquad (19)$$

$$O\&M_m = M_0 \cdot (1+i)^m \qquad (31)$$

Thus, the cash flows resulting from the purchase and operation of pollution control equipment each month for a government facility is the sum of these contributions:

$$MCF_m = INITIAL_m + O\&M_m \qquad (23a)$$

Equation (23a) can be substituted for equation (23) in the subsequent formulae derivation presented in Section V.

Discounting all the cash flows associated with noncompliance at the 10 percent discount rate is theoretically correct for government-funded projects. Some government-owned entities, however, may more closely resemble private corporations in the manner in which they raise and repay their capital. All government-owned entities will be treated in the manner described in Attachment G unless the source being considered demonstrates by providing appropriate data that either the debt-equity ratio or the discount rate or both is inappropriate and therefore that the exception provided by Attachment G should not apply to the entity in question.

Appendix B—Clean Air Act, Section 120, Noncompliance Penalties Instruction Manual

Contents

I. Introduction
II. Data Requirements and Data Sources
III. Using the Computer Program
IV. Calculation of the Post-Compliance Settlement
V. Special Conditions

Section I—Introduction

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 amendments to the Clean Air Act (the Act). The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control.

The economic benefits of a delay in the installation of pollution control equipment has two components. First, the firm benefits by delaying the capital expenditure needed for pollution control. The firm can earn a return on the capital costs of the pollution control equipment whose purchase has been delayed. The second component of the economic benefit is the operating and maintenance costs avoided as a result of not having installed the equipment and the return on expenditures avoided.

Implementing the Noncompliance Penalty

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document. This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry. When this adjustment requires several computations, a worksheet has been provided.

Level of Knowledge Required

The appendix has been written on the assumption that the user has had little formal training in business finance. Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document. It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document.

Plan of the Document

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program. As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer. An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II.

Section IV describes the calculation of the post-compliance settlement based on data used in Sections II and III.

Section V discusses the calculation of the penalty under special conditions. These conditions include investments financed with industrial development bonds, penalties for limited life

---

[1] See, for example, William J. Baumol, "On the Discount Rate for Public Projects," *Public Expenditure & Policy Analysis*, Robert H. Haveman and Julius Margolis, eds., Rand McNally Publishing Company, 1977, pp. 161–79.

[2] OMB Circular A–94.

facilities, and penalties for government facilities.

Section II—Data Requirements and Data Sources

Calculation of the noncompliance penalty requires a substantial amount of financial data. It is expected that most of these data, as well as the calculation itself, will be provided by the firm. This is in accordance with Section 120 of the Clean Air Act which will:

". . . require each person to whom is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3)) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator."

However, some firms may not comply with the requirement. Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments. This will require collection of data from several public sources. This section discusses the method used to collect data and prepare it for the calculation of the penalty.

Case Study

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company. While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry. The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations. Data prepared in the case discussion below will be entered in the computer program to determine a penalty in section III.

The Fertilizer Company

On August 31, 1983, the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act. The source of emissions was an incinerator used for the disposal of a waste byproduct from the manufacture of the firm's most profitable product.

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000. The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions.

In addition to the capital investment, it was estimated that $15,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated. It was also estimated that $1,890 in precompliance maintenance expense was necessary to make the equipment operational.

Engineers for the Fertilizer Company believed that it would be at least nine months before the equipment was installed and shake-down was completed. Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified.

The Fertilizer Company is a publicly-owned corporation with assets of $770 million. The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists.

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments. It had also submitted the data used in calculating the penalty. The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source. The computer program would check the accuracy of the firm's penalty calculation.

Preparing Data for Entry into the Program

The computer program will request data in a specific sequence. Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided. The following paragraphs follow the same sequence as is used to enter data into the computer program.

Initial Penalty Calculation or Post-Compliance Settlement

The program can be used to calculate both the initial penalty when the notice of noncompliance is received and the post-compliance settlement after compliance has been achieved. In the example of the Fertilizer Company, the initial penalty will be calculated in Section III and the post-compliance settlement will be calculated in Section IV.

Limited Life Facility

The program calculates a penalty based on eventual compliance at the source. However, some firms will attain compliance by shutting down the source or by replacing it with a new source. This option is discussed in detail in section V. For the Fertilizer Company, the source is not a limited life facility.

Industrial Development Bonds

The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V. For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds.

The Number of Months the Source Will Be Out of Compliance

The period of noncompliance is measured from the first day of the month following the month in which the notice of noncompliance is issued until the month standards are actually met. This will include installation time and shakedown period for the equipment. The firm is assumed to be in compliance during the entire month in which compliance is finally achieved. In the Fertilizer Company example, the firm stated that it will come into compliance in nine months.

Schedule of Capital Investments

This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment. It is assumed that all capital expenditures are completed when compliance is achieved.[1]

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management. They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense. In addition, the value of lost production due to downtime of production equipment should be included. These temporary losses of productive capacity are included in capital expenditures. Permanent losses of productive capacity are included in operating and maintenance expenditures. All costs must be stated in terms of the actual expenditures the firm expects to make each month.

The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II–1 to justify the estimate. Expenditures to the manufacturer for the equipment

[1] If a portion of the capital expenditures is expected to be incurred after compliance is achieved, these expenditures should be added to the capital expenditures made in the final month before compliance is achieved.

will be made in three equal installments, during the second, fourth, and ninth months of noncompliance. Each payment will be $166,666.67 ($500,000 divided by 3).

Schedule of Precompliance Operating and Maintenance Expenditures and Post-Compliance Monthly Operating and Maintenance Expense

These are costs the firm will incur for operation of the equipment to be installed.[2] They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a byproduct is created during equipment operation, disposal costs are included as an operating expense. If the byproduct can be sold or used in another process, the value of the byproduct should be subtracted from operating and maintenance expense.

Exhibit II–1—Calculation of the Capital Expenditure Input, [3] Fertilizer Company

1. List price or estimated price of the equipment	$485,903.65
2. Less: Discount from manufacturer	9,718.17
3. Equals net price of equipment	476,190.48
4. Plus: Sales tax on equipment [4]	23,809.52
5. Plus: Freight and delivery charge	0
6. Plus: Installation charge	0
7. Equals estimated cost of equipment installed	500,000.00
8. Plus: Value of lost production	0
9. Plus: Cost of building modifications	0
10. Equals Total Capital Expenditure	500,000.00

[2] This calculation uses Worksheet A in Attachment IV.
[4] Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1—Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.
Note.—Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit. Qualified percentage investment tax credit: Line 7 divided by Line 10 equals $500,000 divided by $500,000 multiplied by 10* equals 10%
*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II–16.

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act. For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense. Operating expense would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method. Hence, permanent losses in productive capacity which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category.

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners or actual data from similar operations. Two different estimates of operating and maintenance expense are necessary—those incurred before compliance and those estimated for the period after compliance. These amounts should be stated as the actual expense the firm would expect to incur in each month before compliance and the average monthly expense which will be incurred after the firm comes into compliance.

The Fertilizer Company supplied the data in Exhibit II–2 as estimated precompliance operating and maintenance expense. For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II–3.

Exhibit II–2—Estimate of Monthly Pre-Compliance Operating and Maintenance Expense Fertilizer Company

Pre-Compliance Operating Expense	
Months 1–6	0
Month 7: Labor (10 hours @ $10)	$100.00
Month 8:	
Labor (100 hours @ $10)	1,000.00
Power (1500 Kwh @ .0333 kwh)	50.00
Total	1,050.00
Month 9:	
Labor (50 hours @ $10)	500.00
Power (7200 Kwh @ .0333 kwh)	240.00
Total	740.00

Exhibit II–3—Post-Compliance Annual Operating and Maintenance Expense Fertilizer Company

1. Annual labor expense: [5] 840 hours×$10 per hour	$8,400.00
2. Power cost: 90,090 Kwh×$.0333 per Kwh	3,000.00
3. Water cost: Gallons×$—— per gallon	0
4. Raw materials and supplies: 1,000 lbs.×$1 per lb	1,000.00
5. Yearly increase in property tax	3,000.00
6. Cost of production lost due to maintenance or use of equipment	0
7. Total cost (1+2+3+4+5+6)	15,400.00
8. Less: Value of byproducts: 800 lbs. @ $.50 per lb	400.00
9. Annual operating and maintenance (7–8)	15,000.00
10. Average monthly operating and maintenance (9+12)	1,250.00

[5] This calculation uses Worksheet B in Attachment IV. All expenses should be stated in dollars as of the date the firm comes into compliance.

Investment Tax Credit Rate [6]

The investment tax credit is a percentage of the investment that can be used to directly reduce federal income tax. Although the maximum federal tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the revenue code: [7]

- Investments in the three year class receive a six percent credit.
- Certain investments do not qualify for the credit.

Investments in the 5, 10, and 15 year classes qualify for the full ten percent credit.

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure.[8] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life.

State investment tax credits should also be included in the investment tax credit rate. For example, the State of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas. Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis. The adjustment is made by multiplying the state investment tax credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[9]

---

[2] This should not include any operating and maintenance expenditures incurred in operating pollution control equipment installed prior to the date the notice of noncompliance is received.

[6] Information on the investment tax credit is contained in the Internal Revenue Service Code, Chapter 1, Subpart B—*Rules for Computing Credit for Investment in Certain Depreciable Property*.

[7] In addition to the two listed restrictions, [8] investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used. This adjustment is made automatically by the computer program.

[8] The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation. Thus, the adjustment described above should be ignored for qualified rehabilitation investments.

[9] The formula for determining the investment tax credit in a state having a tax credit is:

$$t_{ITC} = ITC_{FEDERAL} + (1 - \text{Tax Rate}_{FEDERAL}) * ITC_{STATE}$$

For the Fertilizer Company, the entire investment qualifies for the investment tax credit. If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[10]

Income Tax Rate

The income tax rate to be entered into the program must be the marginal rate—that is, the rate which the firm would pay on an additional dollar of income. The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local tax rates. The state and local tax rates should not include sales tax, inventory tax, charter tax or taxes on property. If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate. Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense.

In most cases involving large firms, the marginal federal tax rate will be 46 percent.[11] Small corporations and some partnerships or privately-owned firms could have lower rates. In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes. The steps for calculation are as follows:

- The marginal federal, state and local income tax rates are determined.
- The local tax rate is adjusted for the state tax.[12]
- The local and state tax are adjusted for the federal tax.
- The effective tax rate is computed.

Exhibit II–4 contains a calculation of the tax rate for the Fertilizer Company.

Inflation Rate

This is the estimated future increase in the capital and operating cost of pollution control equipment.[13] The inflation rate to be used in the Fertilizer Company penalty calculation is 8.6 percent. This was the compound annual rate of increase in the Chemical Engineering Plant Cost Inflation Index for the period November 1977 to November 1982.[14]

Exhibit II–4—Calculation of the Tax Rate [15] Fertilizer Company

1. Marginal Federal tax rate, 46%
2. Marginal State tax rate, 5%
3. Marginal Local tax rate, 2%

Calculation of adjusted local tax: (1−State Tax Rate)×Local Tax Rate=(1−.05)×.02=.95×.02=.019=Adjusted Local Tax Rate

Calculation of adjusted state and local tax: (1−Federal Tax Rate)×(State Tax Rate+Adjusted Local Rate)=(1−.46)×(.05+.019)=(.54×.069=.0373=Adjusted Local and State Tax

Calculation of tax rate: 100×(Federal Tax Rate + Adjusted Local and State Tax)=100×(.46+.0373) =100×.4973=49.73=Tax Rate

Discount Rate

The discount rate is an estimate of the firm's cost of new equity capital. For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry and for all manufacturing corporations in Table D of the Federal Trade Commission's *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.* Attachment I contains a copy of Table D for the second quarter of 1982. The higher of the industry average rate of return on equity or the all-manufacturing rate of return on equity is used as the discount rate.

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the *Standard Industrial Classification Manual,* published by the Office of Management and Budget, should be used.[16]

The FTC does not report rates of return on equity for public utilities. For these organizations, the annual percent return on net worth published in the most recent issue of Standard and Poor's *Industry Survey* should be used as the discount rate. Attachment I includes a table listing this information for 1978 to 1982.

EXHIBIT II–5.—FERTILIZER COMPANY, JULY 1978, AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

Year	Quarter	Return on equity (percent)	
		Chemicals & Allied products	All manufacturing
1977	3	14.8	13.3
	4	13.8	14.4
1978	1	14.3	12.4
	2	16.5	16.6
	3	15.1	14.9
	4	16.3	16.1
1979	1	17.6	15.8
	2	16.3	18.1
	3	15.9	16.3
	4	15.3	15.7
1980	1	18.0	15.4
	2	15.3	13.6
	3	15.0	12.5
	4	13.6	14.0
1981	1	16.6	13.3
	2	15.6	15.6
	3	13.9	13.4
	4	13.3	12.0
1982	1	13.0	10.1
	2	12.2	10.5
Total		304.4	284.0
Average		15.22	14.20

For the Fertilizer Company, the correct industrial category to use is Chemicals and Allied Products. The calculation of the average return on equity for twenty quarters is shown in Exhibit II–5. Since the 15.22 percent rate of return for Chemicals and Allied Products exceeds the average rate of return of 14.20 percent for all manufacturing corporations, the discount rate used is 15.22 percent.

Interest Rate

The interest rate is the current cost of new debt for the firm.[17] Determination of the firm's interest rate requires two steps.

- The quality rating for the firm's bonds is found in Moody's *Bond Record.* If the firm does not have rated debt, an "A" rating is assumed. If it has more than one issue, that with the highest rating is used.
- The most recent yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the *Bond Record.*

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C." The lowest average yield reported is "Baa"; a firm whose bonds have a rating of "Baa" or lower will use the yield reported for the "Baa" average. The bonds are listed in the *Bond Record* in alphabetical order by corporation. Convertible bonds are considered in the same manner as all other bonds.

---

[10] Computed as ($500,000 minus 150,000 divided by 500,000 multiplied by 10% equals 7%.

[11] As of January 1982. This rate must be adjusted for future changes in the tax laws.

[12] If the local tax is not deductible from the state tax, the numbers should be added.

[13] *Chemical Engineering,* McGraw Hill; Inc., biweekly issues, 1978–1982. The compound rate of increase is computed as:

$[[(\text{Index in Final Month})/(\text{Index in Initial Month})]^{1/N} - 1] \times 100$

Where N equals the number of years between the first and last months.

[14] The inflation rate of 8.6 percent is only applicable to the example described in the manual. Actual penalty determination will require calculation of the inflation rate using the above formula and the Plant Cost Inflation Indices for the most recent month and the month five years prior to the most recent month.

[15] This calculation uses Worksheet C in Attachment IV.

[16] If the firm is a subsidiary of a larger corporation, the SIC category used should be the category appropriate for the smallest entity with audited financial statements which includes the source not in compliance.

[17] This discussion assumes that Industrial Development Bonds (IDB's) are not used. If IDB's are sold to finance the pollution control investment, see Section V.

Note that the interest rate is *not* taken from the so-called coupon rate on the bond. For example, in Exhibit II–6, rates of 9.75 percent and 4.5 percent are listed. These are historical rates which were in effect at the time the bonds were issued. They do not reflect current market rates.

The *Bond Record* reports a number of different yields. If the firm is a utility, the Public Utility Average is used. If the firm is not a utility, the Industrial Bond Average is used.

For the Fertilizer Company, the debt was not rated, so the most recent yield reported for the industrial "A" bonds is used (13.81%). Attachment II contains the average bond yields as reported in a recent issue of the *Bond Record*.

Preferred Dividend Rate

The method used for determining the preferred dividend rate is identical to that used to select the interest rate. The quality rating of the firm's preferred shares is found in Moody's *Bond Record* in the Preferred Stock section. If the stock is not rated, an "a" rating is assumed.

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities. However, these figures should be used for non-utility firms as well. If the stock has a rating of "baa" or lower, the firm should use the "baa" average yield. Firms with preferred stock rated "aa" or higher should use the "aa" yield. The latest monthly average is used and entered exactly as shown in the averages. Attachment III contains an example of the *Bond Record* preferred averages.

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 12.13 percent, the rate found by using the return on "a" rated preferred stock.

Equity Share of Investment

This is the percentage amount of equity in the firm's capital structure. The capital structure of the firm is the dollar amount invested in the firm for periods over one year. Thus it does not include current liabilities or deferred federal income tax.

The equity share of the investment is calculated using data contained in the firm's five most recent annual reports.[18]

[18] This is available either directly from the firm or, for large corporations, in *Moody's Industrial Manual*. An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation.

If the firm does not have five years of annual reports, a shorter period of time may be used. For firms without audited financial statements, the fraction of preferred stock, debt, and equity used in the penalty calculation will be the five year average preferred stock, debt, and equity share for the firm's industry. This can be calculated from the financial statements provided for the industry by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations*.

Firms which are subsidiaries of a larger corporation should use the financial statements of the smallest entity with audited financial statements which includes the source not in compliance.

The procedure involves the following steps:

- *Step 1.* The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt. This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock, and long term debt. If Treasury stock is shown as an *asset* on the balance sheet, it should be subtracted from the total capital.
- *Step 2.* The dollar amount of all equity accounts except preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step. This is the equity share of the investment for the year.
- *Step 3.* The equity shares for each of the five most recent years are averaged to yield an equity share for input to the penalty calculation.

Preferred Stock Share of the Investment

The computation of the preferred stock share of the investment is analogous to the computation of the equity share of the investment, as described above. The sum of all preferred stock accounts is divided by the total capital computed in Step 1 above for each of the five most recent years. These figures are then averaged to yield a preferred stock share for input to the penalty calculation.

Debt Share of the Investment

The sum of all long-term debt accounts is the amount of debt in the capital structure each year. This sum is also divided by the yearly total capital found in Step 1 above yielding the debt share of the investment for the year. These figures are then averaged to yield a debt share for input to the penalty calculation.

The sum of the equity share, the debt share, and the preferred share of the investment must equal one hundred percent.

The balance sheet of the hypothetical Fertilizer Company is shown in Exhibit II–6. Exhibit II–7 illustrates the calculation of the equity, preferred stock, and debt share of the investment for a single year.

Depreciation Life in Years

This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes. It depends on the class of asset to which the control equipment belongs. Current tax law provides for "recovery periods" of 3, 5, 10, and 15 years. The IRS has published regulations specifying the rules for assignment of all assets to one of these classes. The Fertilizer Company's pollution control equipment falls in the 5 year class.

The Useful Life in Years

The useful life is used to determine the length of each replacement cycle in the penalty calculation. It is provided by *Revenue Procedure 77–10* under the heading "Asset Guideline Period" (26 CFR 601.105). If this contains a fractional part of a year the number should be rounded up to the next integer. The useful life *must* always be greater than or equal to the depreciation life in years.

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used. This is eleven years. Had it been 11.5 years, it would have been rounded up to twelve.

Exhibit II–6.—Fertilizer Company Balance Sheet, Dec. 31, 1978.

[In thousands]

Assets	
Cash	$18,881
Marketable securities	60,552
Notes and accounts receivable (Net)	79,156
Income tax refunds Inventories	116,940
Prepaid expenses	4,290
Total Current Assets	279,819
Property, plant and equipment	828,703
Less: Reserve for depreciation	423,554
Net Property Account	405,149
Construction funds held by trustee	3,913
Other Assets	83,495
Total Assets	772,376
Liabilities	
Notes payable to bank	122
Accounts Payable & Accruals	54,109
Preferred Dividends Payable	23
Income Tax	28,335
Current Maturities Long Term Debt	8,929
Total Current Liabilities	91,518
Deferred Federal Income Taxes	57,563
4.5% Debentures	21,531

Exhibit II–6.—Fertilizer Company Balance Sheet, Dec. 31, 1978.—Continued

[In thousands]

9.75% Notes	60,000
Long-term lease obligation	43,932
Pollution control facility revenue bonds	46,000
Other long term debt	9,230
4.5% perferred stock ($100 par)	22,044
Common Stock ($5 par)	100,000
Capital surplus	58,236
Retained earnings	262,799
Total Stockholders; Equity	443,079
Less: Treasury stock	477
Net Stockholders' Equity	442,602
Total Liabilities and Net worth	772,376

Exhibit II–7—Calculation of the Equity, Debt and Preferred Share of the Investment [18] Fertilizer Company (In Thousands)

The first step in obtaining the equity, debt and preferred share of the investment is to sum the equity and long term debt.[20]

4.5% debentures	$21,531
9.75% notes	60,000
Long term lease	43,932
Pollution control revenue bonds	46,000
Other long term debt	9,230
4.5% preferred stock	22,044
Common stock	100,000
Capital surplus	58,236
Retained earnings	262,799
	623,772
Less: treasury stock	(477)
Total long term capital	623,295

The second step is to divide the preferred stock by the total long term capital.

$$\frac{\text{Preferred stock}}{\text{Total long term capital}} = \frac{22{,}044}{623{,}295} = .035 \text{ or } 3.5\%$$

The third step is to take the sum of the long-term debt accounts. Divide this by the total long-term capital.

4.5% debentures	$21,531
9.75% notes	60,000
Long-term lease	43,932
Pollution control revenue bonds	46,000
Other long-term debt	9,230
Total debt	180,693

$$\frac{\text{Total Long-Term Debt}}{\text{Total long-term capital}} = \frac{180{,}693}{623{,}295} = .290 \text{ or } 29.0\%$$

The fourth step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Comon Stock	$100,000
Capital Surplus	58,236
Retained Earnings	262,799
Total	421,035
Less: Treasury Stock	(477)
Total common equity	420,588

$$\frac{\text{Total common equity}}{\text{Total long-term capital}} = \frac{420{,}558}{623{,}295} = .675 \text{ or } 67.5\%$$

Thus, 3.5 percent is the preferred stock share of the investment, 29.0 percent is the debt share of the investment and 67.5 percent is the equity share of the investment for a total of 100.0 percent.

[18] For the purposes of this example, preferred, debt, and equity share are caluclated for one year only. In actual penalty calculations the preferred, debt, and equity share will be the average of the most recent five years.

[20] Deferred taxes are not included in the calculation of the debt, equity, and preferred share of the investment.

Electric Utility Average Return on Common Equity

[Percent]

1978	11.3
1979	11.1
1980	11.4
1981	12.6
1982	12.4

Source: Standard and Poor's *Industry Survey*, Volume 2, Utilities—Electric Chapter, "Key Financial Statistics and Ratios for Investor-Owned Electric Utilities," average return on common equity, September 9, 1982 issue.

Attachment II—Moody's Corporate Bond Yield Average

[Note.—Attachment II shows Moody's Corporate Bond Yield Averages 1974–1980 and is available upon request from EPA. See editorial note following Part 67.]

Attachment III—Moody's Public Utility Preferred Stock Yield Average

[Note.—Attachment III shows Moody's Public Utility Preferred Stock Yield Averages 1975–1982 and is available upon request from EPA. See editorial note following Part 67.]

Attachment IV—Worksheets

This attachment contains worksheets which can be used to calculate input data. Each worksheet will also contain reminders for points which may be overlooked in calculations.

Worksheet A.—Calculation of the Capital Expenditure Input

1. List price or estimated price of the equipment: $
2. Less: Discount from manufacturer= .....
3. Equals net price of equipment=
4. Plus: Sales tax on equipment [1]
5. Plus: Freight and delivery charge=
6. Plus: Installation charge= _____
7. Equals estimated cost of equipment installed=
8. Plus: Value of lost production=
9. Plus: Cost of building construction or modifications= _____
10. Equals Total Capital Expenditure= $

Note: Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

[1] Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 — Tax Rate) and subtracted from the cost of the equipment rather than added as in Step 4.

Qualified Percentage Investment Tax Credit

Line 7 / Line 10 × 10 = _____%

If the depreciable life of the equipment is les than 7 years, this figure must be adjusted as described on page II-16.

Worksheet B.—Operating and Maintenance Expense [1]

1. Annual Labor Expense:
   _____ hours × $_____ per hour = _____
2. Power Cost:
   _____ kwh × $_____ per kwh = _____
3. Water Cost:
   _____ gallons × $_____ per gallon = _____
4. Raw Materials and Supplies
   _____ lbs. × $_____ per lb. = _____
5. Yearly Increase in Property Tax = _____
6. Cost of Production Lost Due to Maintenance or Use of Equipment = _____
7. Total Cost (1 + 2 + 3 + 4 + 5 + 6) = _____
8. Less: Value of Byproducts:
   _____ lbs at $_____ per lb. = _____
9. Annual Operating and Maintenance (7–8) = _____
10. Average Monthly Operating and Maintenance (9÷12) = $_____

[1] All costs should be stated in dollars as of the date compliance is expected to be achieved.

Worksheet C.—Calculation of Income Tax Rate

1. Marginal Federal Tax Rate _____
2. Marginal State Tax Rate _____
3. Marginal Local Tax Rate _____

Calculation of Adjusted Local Tax
(1—State Tax Rate) × Local Tax Rate
=(1—_____) × _____
=_____ × _____
=_____ = Adjusted Local State Tax Rate

Calculation of Adjusted State and Local Tax
(1—Federal Tax Rate) × (State Tax Rate + Adjusted Local Rate)
=(1—_____)×(_____+_____)
=_____×_____
=_____= Adjusted Local State Rate

Calculation of Tax Rate
100×(Federal Tax Rate+Adjusted Local and State Tax)
=100×(_____ + _____)
=100×_____
=_____= Tax Rate

Worksheet D—Weighted Average Interest Rate

1. Total Capital Expenditure _____
2. Debt Percent of the Investment _____
3. Amount of the Investment Financed with Debt _____
   (1) ____ * (2) ____ ÷ 100 = ____
4. Dollar Value of Issued Industrial Development Bonds _____
5. Interest Rate on Corporate (or Public Utility) Bonds _____
6. Interest Rate on Industrial Development Bonds _____

A. If (4) is larger than or equal to (1), the interest rate entered into the computer is (6).

B. If (4) is larger than (3), the interest rate entered into the computer is (6).

C. If (4) equals zero, the interest rate entered into the computer is (5).

D. If A, B, and C are not true, the interest rate is found using the following formulae:

7. Portion of investment financed with Industrial Development Bonds
   (4) ____ = (7) ____
   (1)
8. Weighted Average Interest Rate
   (7) ____ * (6) ____ +
   1–(7) ____ * (5) ____ =
   ____ + ____ = (8) ____

The interest rate entered into the computer is (8).

Section III—Using the Computer Program

Gaining Access to the System

The computer program used to calculate the noncompliance penalty is written in the language FORTRAN. It is designed to operate on a time sharing computer only. The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system. The following description of the accessing procedure should only be considered a general guide to time sharing and not as an exact procedure for any one system.

1. *Switch on the terminal.* The on/off switch is usually located on the keyboard, but same models have switches on the top or back of the terminal.

2. *Contact the computer system.* This can be done by one or two methods: an acoustic coupler or a so-called "hardwire" connection. The hardwire is easiest to use; it only requires pushing the return" key on the keyboard. The computer will then respond with some indication that contact is established.

If an acoustic coupler is used, the computer's telephone number must be dialed. When the system responds, a loud piercing sound is heard. At this time, the telephone receiver is placed in the coupler and the "return" Key is pushed. The computer will respond as in the case of the hardwire.

3. *Account and code number.* At this time the computer will ask for an account number. This number is specific to the computer system and must be known beforehand. The number is entered by typing it on the key board and pressing the "return" key. The same procedure applies to the code number. After every entry, push "return."

4. *Obtaining access to the FORTRAN language.* Different computers have different ways of indicating that FORTRAN is to be used. The specific command will vary, but it is probably something like: USE 16K FORTRAN or LOAD 16K FORTRAN. The computer will then signal that the command is understood.

5. *Loading program.* The program must now be retrieved from its storage area within the computer and be loaded into the working area. The command that accomplishes this is PENALTY. The computer will respond with a message that the command is understood and that the program is ready to be used.

6. *Running the program.* The command RUN will start the program. From this point forward, the computer will ask specific questions. Each time a question is answered, the "return" key must be pushed.

Once the program PENALTY has been loaded into the computer, it is necessary to enter the data. The following section describes the data entry procedure.

Entering The Data

It is important in using a computer to understand that the computer requires a specific form of data entry. For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry *10.0* is acceptable. Entries such as *10%*, *TEN*, and *.10* are all incorrect. The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0.10 percent and used in the computation as that value. The result will be an incorrect figure for that penalty.

If a wrong number is entered and the return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number. The procedure for deleting a number before the return is pushed varies with the computer system. The deletion procedure should be checked before the program is run. If during data entry a wrong number is entered and the return key is pushed, operation of the program can be halted by pushing the *Break* key. The computer will respond by printing *STOP* and some system accounting data. To start the program again, type *RUN*.

The following paragraphs discuss general rules to be followed in entering data into the computer program. Exhibit II–1 contains an example of the completed entry for the Fertilizer

Company. Figures which are underlined have been entered by the program user. After each line is entered the carriage return should be pressed. It should also be noted that each question asked by the computer must be answered. Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate. Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds. These special cases are discussed in later sections.

1. *Post-Compliance Settlement.* This number is entered only as a 0 or 1. For the Fertilizer Company this is an initial calculation and a 0 is entered.

2. *Limited Life Facility.* This number is entered as 0 of 1. For the Fertilizer Company this is not a limited life facility and a 0 is entered.

3. *Percent Financed by Industrial Development Bonds.* This is entered as a percent. For the Fertilizer Company, a 0 is entered.

Exhibit III—1.—Entering Data

```
1. Is this an initial penalty calculation or a post-compliance adjustment calculation? 0=Initial, 1=Post-Compliance:
?
0
2. Is this a limited Life Facility? 1=Yes 0=No
?
0
3. Percentage financed by industrial development bonds=
?
0
4. Months out of compliance=
?
9
How many months have precompliance capital or precompliance O&M expenditures?
?
5
For each month of precompliance capital or O&M enter the number of the month, the capital expenditure and the O&M expense separated by commas.
Month, Capital, O&M
?
2,166666.67,0
?
4,166666.67,0
?
7,0,100.00
?
8,0,1050.00
?
9,166666.67,740.00
5. Initial monthly O&M expense=
?
1250.00
6. Investment tax credit rate=
?
10.0
7. Income tax rate=
?
49.73
8. Forecast inflation rate=
?
8.6
9. Discount rate=
?
15.22
10. Interest rate=
?
13.81
11. Preferred stock dividend rate=
?
12.13
12. Equity share or investment=
?
67.5
13. Preferred stock share=
?
3.5
14. Debt share of investment=
?
29.0
15. Depreciation life=
?
5
16. Useful life=
?
11
17. How many months after the first day of noncompliance will the initial penalty payment be made?
?
0
18. Do you wish to see a lump sum settlement? 1=Yes, 0=No:
?
1
19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
0
```

4. *Number of Months Out of Compliance.* This number is entered only as an integer. Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in nine months. This is entered as 9.

Schedule of Precompliance Capital and Precompliance Operating and Maintenance Expenditures. The program will then ask for the number of months the firm will make precompliance capital or operating and maintenance expenditures. For the Fertilizer Company, the firm will make precompliance capital expenditures in months 2, 4, and 9. Precompliance operating and maintenance expenditures will be made in months 7, 8, and 9. Thus there are five months in which either precompliance capital or operating and maintenance expenditures are made (months 2, 4, 7, 8, and 9).

If no precompliance capital expenditures are to be made, the entire capital expenditure is entered in the last month of the noncompliance period. If the Fertilizer Company made no precompliance capital expenditures, the entire $500,000 would be entered in month 9.

The program will then ask for the number of the month, the capital expenditure and the operating and maintenance expenditure separated by commas for each month with precompliance capital or operating and maintenance expenditures. For months which have precompliance capital expenditures but no operating and maintenance expenditure, a zero must be entered for the operating and maintenance expenditure. Similarly, if the firm makes a precompliance operating and maintenance expenditure but no capital expenditure in a month, a zero must be entered for the capital expenditure. All dollar values are entered without dollar signs. The number of cents, however, should be entered following a decimal point.

For the Fertilizer Company, the schedule of precompliance capital and operating and maintenance expenditures is:

Month	Capital expenditure	Operating and maintenance expenditure
2	166,666.67	0
4	166,666.67	0
7	0	100.00
8	0	1,050.00
9	166,666.67	740.00

5. *Initial Monthly O&M Expense.* The initial monthly operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating. For the Fertilizer Company, the initial monthly operating and maintenance expense is $1,250.00.

6. *Investment Tax Rate.* This is entered as a percent and not as a decimal. Thus, for example, 7.5 percent would be entered as 7.5. The program is designed to test for data entered as a decimal and print an error message. In the Fertilizer Company example, the investment tax rate was 10.0 percent.

7. *Income Tax Rate.* This is also entered as a percent. For the Fertilizer Company the tax rate is 49.73 percent.

8. *Inflation Rate.* The inflation rate is entered as 8.6 percent.

9. *Discount Rate.* This is entered as a percent. The lower bound for any discount rate used is the rate of inflation. The program will not accept

discount rates lower than the rate of inflation and will print a message to that effect. If the discount rate entered is lower than the inflation rate, the program will set the discount rate equal to the inflation rate.

For the Fertilizer Company, the discount rate is the higher of the twenty quarter average after-tax return on equity for the chemicals and allied products industry, or the twenty quarter average after-tax return on equity for all manufacturing corporations. This is calculated to be 15.22 percent.

10. *Interest Rate.* The interest rate is entered as a percent. For the Fertilizer Company this is the average return on "A" rated industrial bonds. The latest reported average is 13.81 percent.

11. *Preferred Dividend Rates.* This is entered as a percent. If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero. For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks. It is entered as 12.13 percent.

12. *Equity Share of Investment.* This is entered as a percent. It was computed to be 67.5 percent for the Fertilizer Company.

13. *Preferred Share of Investment.* The preferred share of the investment is entered as a percent. For the Fertilizer Company this was computed at 3.5 percent.

14. *Debt Share of Investment.* This is entered as a percent. For the Fertilizer Company the debt share is 29.0 percent. If the sum of the preferred share, the debt share and the equity share of the investment is not equal to 100.0 percent, an error message is printed.

15. *Depreciation Life in Years.* This number must be entered as an integer. Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was five (5) years.

16. *Useful Life in Years.* The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven (11) years.

17. *Month of Initial Penalty Payment.* The program asks "How many months after the first day of noncompliance will the initial penalty payment be made?" The Fertilizer Company paid the first quarterly penalty on the day the notice of noncompliance was issued. Therefore, a zero (0) was entered into the computer in response to this question.

18. *Lump Sum Settlement.* The firm has the option to have the computer calculate a lump sum settlement. The Fertilizer Company selected this option by entering a 1.

19. *Month of Lump Sum Settlement.* If the firm selects the option of a lump sum settlement (by entering a 1 in response to question 18), the program requests the number of months from the first day of noncompliance the lump sum settlement will be made. The Fertilizer Company wanted to see the value of the lump sum settlement as of the first day of noncompliance. Therefore, a zero (0) was entered into the computer in response to this question.

Error Messages for Data Entry

The program for computing the noncompliance penalty was designed to test for errors in the data as they are entered into the computer. If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected. Examples of such error messages follow.

1. *Equity, Debt and Preferred Share.* The program will print an error message if the sum of the equity share, debt share, and the preferred share of the investment is not equal to 100 percent. This is illustrated in Exhibit III–2.[3]

2. *Entering Data as a Decimal.* An error message will be printed if the investment tax rate is entered as a decimal. This is illustrated in Exhibit III–3.

3. *Inflation Rate Higher Than Discount Rate.* The program will print message if the inflation rate is higher than the discount rate. For this type of error the program continues. If the user wishes to stop the program at this point, the *break* key should be pushed. If the user continues, only the O&M portion of the penalty will be calculated and the discount rate will be set equal to the inflation rate. This is illustrated in Exhibit III–4 where the discount rate of 15.91 percent was erroneously entered as 5.91 percent.

Exhibit III–2—Equity Debt and Preferred Share of Investment Greater Than 100 Percent

```
        12. Equity share of investment=
?
65.0
        13. Preferred stock share=
?
3.5
        14. Debt share of investment=
?
29.0
        Equity + preferred + debt not=100, try again
```

[3] The computer program allows for some rounding errors and hence an error message is not printed if the sum of the debt, equity, and preferred stock shares is within one half of one percent of 100 percent. Thus the error message will be printed only if the sum exceeds 100.5 percent or is below 99.5 percent.

```
        12. Equity share of investment=
?
67.5
        13. Preferred stock share=
?
3.5
        14. Debt share of investment=
?
29.0
```

Exhibit III–3—Data Entered as a Decimal and the Warning Message

```
        6. Investment tax credit rate=
?
.10
        7. Income tax rate=
?
49.73
        8. Forecast inflation rate=
?
8.6
        9. Discount rate=
?
15.22
        10. Interest rate=
?
13.81
        11. Preferred stock dividend rate=
?
12.13
        18. Do you wish to see a lump sum settlement? 1=Yes, 0=No:
?
1
        19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
0
        Note that at least one of your data entries has a percentage value of less than one
```

Exhibit III–4—Entering Inflation Rate That is Higher Than Discount Rate

```
        8. Forecast inflation rate=
?
8.6
        9. Discount rate=
?
5.91
        Discount rate not greater than inflation rate. Only the O&M component of the penalty will be calculated. The discount rate is set equal to the inflation rate.
```

Output From the Program

The output from the computer program is structured in the following way.

- The amortization and depreciation method used in calculating the penalty is printed. For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used.

• The program prints the quarterly penalty payments the firm must make during the period of noncompliance.

• If the option to compute a lump sum settlement is selected, the program prints the value of the lump sum settlement.

• The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III–5.

The output printed in Exhibit III–5 illustrates only a few of the possible variations in penalty calculation possible with the computer program. The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output.

Exhibit III–5—Calculation of Noncompliance Penalty

Month and Payment

1—$4,945.15
4—$5,048.21
7—$5,153.41
The value of the noncompliance penalty computed as of 0 months after the date of noncompliance is $14,618.74

1. *Quarterly Penalty Payments.* Exhibit III–5 illustrated the payment made if the firm paid the first quarterly penalty on the day that the notice of noncompliance was issued. The first quarterly payment was $4,945.15. The second payment would be made ninety days later and it would equal the penalty shown for the fourth month $5,048.21. The final payment is in month seven and equals $5,153.41.

A more realistic example might involve a three-month delay in the first payment. In this case, the output would appear as in Exhibit III–6. The first penalty payment includes the amounts that should have been paid at the first and fourth months, escalated forward to the time of actual payment. Such escalation is required to keep the present value of all penalties paid equal to the present value of savings from noncompliance. The next quarter penalty payment is due three months later, putting the firm back on the original penalty schedule. The present value of the payment in Exhibit III–6 is equal to the present value of the penalty payments in Exhibit III–5.

2. *Lump Sum Settlement.* A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for three quarters, it could either pay the three quarterly payments shown in the output or pay the lump sum settlement. In terms of present value, the amount eventually paid is the same in each case. Exhibit III–7 illustrates a six month delay in the lump sum settlement.

Exhibit III–6—Three-Month Delay in Payment of Penalty

17. How many months after the first day of noncompliance will the initial penalty payment be made?
?
3

18. Do you wish to see a lump sum settlement? 1=yes, 0=no:
?
1

19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
0

Month and Payment

4—$10,171.63
7—$5,153.41
The value of the noncompliance penalty computed as of 0 months after the date of noncompliance is $14,618.74

Exhibit III–7—Six Month Delay in Payment of Lump Sum Settlement

19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
6

Month and Payment

4—$10,171.63
7—$5,153.41
The value of the noncompliance penalty computed as of 6 months after the date of noncompliance is $15,691.71

Thus, for the Fertilizer Company, delaying the lump sum settlement six months increased the settlement to $15,691.71 from the $14,618.74 shown in Exhibit III–5. The $1,072.97 difference between the lump sum settlement delayed six months and the settlement paid on the date of noncompliance is the result of escalating the initial lump sum settlement forward to the time of actual payment.

Only a single payment ia required if the first penalty payment is delayed longer than the firm is out of compliance. In this event, the firm will not make quarterly payments but will make one lump sum settlement. Exhibit III–8 shows the output from the program if a ten-month delay in penalty payment occurs. The Fertilizer Company was out of compliance nine months.

3. *New Computation.* The user has several options here. By typing in 0 (zero) and pushing the carriage return, the program can be terminated. Typing 999 will result in a printing of all of the data that are currently in the program; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III–9.

If changes are desired in the input, the following steps must be taken:

• Enter the number of changes desired.

• For each change, the computer will respond with a question mark. When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate.)

• The computer will print the name of the item. Enter the new data desired and push the carriage return.

An example of changing inputs is shown in Exhibit III–10.

Exhibit III–8—Penalty Payment When Delay is Longer Than Noncompliance Period

17. How many months after the first day of noncompliance will the initial penalty payment be made?
?
10

Month and Payment

11—$16,450.42
The value of the noncompliance penalty computed as of 6 months after the date of noncompliance is $15,691.71

Exhibit III–9—Printing Data That Have Been Entered in Program

How many variables do you wish to change?
?
999

1. Is this an initial penaty calculation or a post-compliance adjustment calculation? 0=Initial, 1=Post-Compliance: 0.
2. Is this a limited life facility? 1=Yes 0=No 0.
3. Percentage financed by industrial development bonds=0.0
4. Months out of compliance=9

Precompliance Expenditures

Month	Capital	O&M
2	166666.67	0.0
4	166666.67	0.0
7	0.0	100.00
8	0.0	1050.00
9	166666.67	740.0

5. Initial Monthly O&M expense=1250.00.
6. Investment tax credit rate=10.00.
7. Income tax rate=49.73.
8. Forecast Inflation rate=8.60.
9. Discount rate=15.22.
10. Interest rate=13.61.
11. Preferred stock dividend rate=12.13.
12. Equity share of investment=67.50.
13. Preferred Stock Share=3.50.

14. Debt share of investment=29.00.
15. Depreciation life=5.
16. Useful Life=11.
17. How many months after the first day of noncompliance will the initial penalty payment be made? 0.
18. Do you wish to see a lump sum settlement? 1=Yes, 0=No: 1.
19. How many months after the first day of noncompliance will the lump sum settlement be made? 0.

Exhibit III–10.—Altering Data in the Program

How many variables do you wish to change?
?
3
Enter a list of variables to be changed separated by commas.
?
10, 13, 14
10. Interest rate=
?
13.81
13. Preferred stock share=
?
3.50
14. Debt share of investment=
?
29.00

Section IV—Calculation of the Post-Compliance Settlement

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather then the estimates used in the original penalty calculation. More current estimates of the inflation rate, the discount rate, and the capital structure of the firm are also used. For this purpose, ten types of data are needed:

- A schedule of actural capital expenditures made by the firm in reaching compliance.
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance.
- A new estimate of post-compliance monthly operating and maintenance expense based on the firm's experience and any additional information which becomes available prior to the post-compliance settlement.
- The compound annual inflation rate over the most recent sixty months.
- The discount rate averaged over the most recent twenty quarters.
- The average equity, preferred stock, and debt share of the capital structure over the most recent five years.
- The number of months between the day of compliance and date of post-compliance settlement.
- A post-compliance settlement interest rate chosen by the Department of Treasury for overpayments.
- A listing of the actual penalty payments made by the firm and the months in which they were made.
- The actual portion of the investment financed with industrial development bonds.[4]

In addition to these new data, it will be necessary to have available the remaining financial parameters originally used to calculate the noncompliance penalty for the firm. To continue the example of the hypothetical Fertilizer Company, Exhibit IV–1 contains the date originally used to calculate the noncompliance penalty.

Preparing New Data for Entry Into the Program

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III–1 to III–3. After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement. The computer program will then ask for the data requested in the initial penalty calculation. These data should be entered in the following manner.

1. *Limited Life Facility.* The same response as entered in the initial calculation should be entered. For the Fertilizer Company this value is zero (0).

2. *Industrial Development Bonds.* The actual percentage of the investment financed with industrial development bonds should be entered. For the Fertilizer Company this value is zero (0).

3. *Months Out of Compliance.* The actual number of months the firm is out of compliance should be entered. The Fertilizer Company was actually out of compliance nine (9) months.

4. *Months With Precompliance Expenditures.* The actual number of months with precompliance capital or operating and maintenance expenditures should be entered. The Fertilizer Company made precompliance expenditures in three (3) months.

Exhibit IV–1—Fertilizer Company, July 1979, Data Used for Original Noncompliance Penalty Calculations[5]

How many variables do you wish to change?
?
999

1. Is this an initial penalty calculation or a post-compliance adjustment calculation? 0=initial, 1=post-compliance: 0
2. Is this a limited life facility? 1=Yes 0=No 0
3. Percentage financed by industrial development bonds=0.0
4. Months out of compliance=9

Month	Capital	O&M
2	166666.67	0.0
4	166666.67	0.0
7	0.0	100.00
8	0.0	1050.00
9	166666.67	740.0

5. Initial monthly O&M expense=1250.00
6. Investment tax credit rate=10.00
7. Income tax rate=49.73
8. Forecast inflation rate=8.60
9. Discount rate=15.22
10. Interest rate=13.81
11. Preferred stock dividend rate=12.13
12. Equity share of investment=67.50
13. Preferred stock share=3.50
14. Debt share of investment=29.00
15. Depreciation life=5
16. Useful life=11
17. How many months after the first day of noncompliance will the initial penalty payment be made? 0
18. Do you wish to see a lump sum settlement? 1=Yes, 0=No: 1.
19. How many months after the first day of noncompliance will the lump sum settlement be made? 0

5. *Schedule of Precompliance Expenditures.* The actual precompliance expenditures should be entered. Exhibits IV–2 and IV–3 present the actual precompliance capital and operating and maintenance expenditures, respectively, made by the Fertilizer Company. These expenditures were:

Month	Capital expenditure	Operating and maintenance expenditure
7	$184,050.00	$0.00
8	184,050.00	679.96
9	184,050.00	1,324.40

6. *Initial Monthly O&M Expense.* An estimate of the average monthly operating and maintenance expense which will be incurred over the first year of operating the pollution control equipment should be entered. This can be the estimate used in the initial calculation or, if better information is available, an updated estimate based on this better information. Exhibit IV–4 illustrates the new estimate of monthly

[4] If this portion differs from the original estimate, the interest rate must be adjusted as discussed below.

[5] Listed during original penalty calculations by typing 999 when changes in input data were requested.

operating and maintenance expense for the Fertilizer Company. The new estimate is $1,333.33.

7. *Investment Tax Credit Rate.* This should be the actual investment tax credit as a percent of the initial investment. In the case of the Fertilizer Company this will be line (7) of Exhibit IV–2 divided by line (10) of Exhibit IV–2 multiplied by the statutory rate of 10 percent. This will be 10 percent since the entire investment qualifies for the full investment tax credit.

8. *Income Tax Rate.* The income tax rate used in the initial calculation should be entered. For the Fertilizer Company this rate is 49.73 percent.

9. *Inflation Rate.* The most recent five year average inflation as recorded by the *Chemical Engineering* plant cost index should be entered. In the Fertilizer Company example, this is 8.6 percent.

10. *Discount Rate.* The most recent five year average of the discount rate should be calculated using the data source which was used in the initial calculation. For the Fertilizer Company the discount rate is 15.22 percent.

Exhibit IV–2—Fertilizer Company Calculation of Actual Capital Expenditure, June 1, 1980

1. List price or estimated price of the equipment=	$536,588.92
2. Less: Discount from manufacturer=	(10,731.78)
3. Equals net price of equipment=	525,857.14
4. Plus: Sales tax on equipment [6]=	26,292.86
5. Plus: Freight and delivery charge=	0
6. Plus: Installation charge=	0
7. Equals estimated cost of equipment installed=	$552,150.00
8. Plus: Value of lost production=	0
9. Plus: Cost of building construction or modifications=	0
10. Equals total capital expenditure=	$552,150.00

The capital expenditures were made in three equal monthly payments of $184,050.00 starting in the seventh month of compliance.

[6] Sales tax in this case was not subtracted from revenue in the year of purchase.

Exhibit IV–3—Actual Monthly Pre-Compliance Operating and Maintenance Expense, Fertilizer Company, June 1, 1980

Pre-compliance Operating Expense:		
Months 1–9		$0
Month 10		
Labor (84 hrs @ $10)	$840.00	
Power (1200 kwh @ .0333 kwh)	39.96	
Total		$879.96
Month 11		
Labor (110 hrs @ $10)	1,100.00	
Power (6739 kwh @ .0333 kwh)	224.40	
Total		$1,324.40

EXHIBIT IV–4—Fertilizer Company Operating and Maintenance Expense, June 1, 1980

1. Annual Labor Expense: *1072* Hours×*$10.81* per hour=	$11,588.32
2. Power Cost: *89991.5* kwh×$.038 per kwh=	3,419.68
3. Water Cost: ——— gallons×$———per gallon=	0
4. Raw Materials and Supplies: *1200* lbs.×*$1.20 per lb.*=	1,440.00
5. Yearly Increase in Property Tax=	0
6. Cost of Production Lost Due to Maintenance or Use of Equipment=	0
7. Total Cost (1+2+3+4+5+6)=	16,448.00
8. Less: Value of Byproducts *800* lbs. at *$.56* per lb.=	(448.00)
9. Annual Operating and Maintenance (7–8)=	16,000.00
10. Average Monthly Operating and Maintenance (9÷12)=	1,333.33

11. *Interest Rate.* The interest rate used in the initial calculation should be entered unless the amount of industrial development bonds sold differs from the estimated amount used in the initial penalty calculation. If the amount of industrial development bonds sold differs from the estimated amount, the interest rate must be altered to reflect this.

To re-estimate the interest rate, the total capital expenditure and the dollar value of issued industrial development bonds should be updated on Worksheet D, and the interest rate should be recalculated. (See Worksheet D, lines 1 and 3.) The interest rates on corporate bonds and industrial development bonds entered on the worksheet should not be updated.

For the Fertilizer Company, the interest rate used in the initial calculation, 13.81 percent, is entered.

12. *Preferred Stock Dividend Rate.* The rate used in the initital calculation should be entered. For the Fertilizer Company, the preferred stock dividend rate is 12.13 percent.

13. *Equity Share, Debt Shore, and Preferred Stock Share of the Investment.* The equity, debt, and preferred stock share should be calculated as illustrated in Section II using the most recent five years of annual statements. The Fertilizer Company's five year average equity share, preferred stock share, and debt share are 67.5 percent, 3.5 percent, and 29.0 percent, respectively.

14. *Depreciation Life.* The depreciation life used in the initial calculation should be entered. This is five (5) years for the Fertilizer Company.

15. *Useful Life.* The useful life used in the initial calculation should be entered. This is eleven (11) years for the Fertilizer Company.

After these data are provided, the computer program will ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following manner:

1. *Number of Penalty Payments Made by the Firm.* This is the actual number of payments made by the firm. If more than one payment is made in a month, they should be totaled and counted as one payment.

2. *Month of Penalty Payment.* This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one. If a six month delay in payment occurred, a seven would be entered.

3. *Actual Penalty Payment.* This is the dollar amount of the penalty actually paid by the firm in each month. The payment entered should not include any of the penalty for late payment. The data entered in the Fertilizer Company example are identical to the penalties calculated in the last section and shown in Exhibit III–5. They are:

Month	Penalty payment
1	$4,945.15
4	5,048.21
7	5,153.41

The program now asks for the Treasury interest rate to be used in the calculation of the interest on overpayments [7] and the number of months from compliance until settlement. These data are entered in the following manner.

1. *Treasury Interest Rate.* This is an annual interest rate set by the Secretary of the Treasury for the calculation of interest on overpayments. It is entered as a percent. For the Fertilizer Company, the rate chosen was 15.22 percent.

2. *Months From Compliance to Settlement.* The firm should enter the number of months from the date it comes into compliance to the date of the post-compliance settlement. In the example, the post-compliance settlement was made two months after the Fertilizer Company came into compliance.

Exhibit IV–5 illustrates all the input for the post-compliance settlement for the Fertilizer Company.

[7] The Treasury has determined that the interest rate used to calculate the interest owed on underpayments will be the discount rate that has already been entered into the computer.

Output from the Post-Compliance Settlement Calculation

The output from the post-compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance. The output consists of two parts:

- Printing of the penalty paid in each month and the penalty determined from actual expenditures. The difference betweeen the acutal penalty and the payment made by the firm is calculated in each month.
- The settlement due EPA or due to the firm is calculated.

The output from the post-compliance settlement for the Fertilizer Company is shown in Exhibit IV–6. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post-compliance penalty calculation. The second column contains the actual payment made by the firm. The third column is the penalty based on actual expenditures made by the firm coming into compliance.

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures. The difference between the payment made and the actual penalty is then charged interest at the rate specified by the Treasury for overpayments if the penalty paid exceeds the actual penalty or at the discount rate if the penalty paid is less than the actual penalty.[6]

Exhibit IV–5.—Input for Calculation of Post-Compliance Settlement

1. Is this an initial penalty calculation or a post-compliance adjustment calculation? 0=Initial, 1=Post-Compliance:

?
1

Items 4 and 5 should show amounts actually expended.

2. Is this a limited life facility? 1=Yes 0=No

?
0

3. Percentage financed by industrial development bonds=

?
0

4. Months out of compliance=

?
2

How many months have precompliance capital or precompliance O&M expenditures?

?
3

For each month of precompliance capital or O&M enter the number of the month, the capital expenditure and the O&M expense separated by commas. Month, Capital, O&M

?
7,184050.00,0
?
8,184050.00,879.96
?
9,184050.00,1324.40

5. Initial monthly O&M expense=

?
1333.33

6. Investment tax credit rate=

?
10

7. Income tax rate=

?
49.73

8. Forecast inflation rate=

?
8.6

9. Discount rate=

?
15.22

10. Interest rate=

?
13.81

11. Preferred stock dividend rate=

?
12.13

12. Equity share of investment=

?
67.5

13. Preferred stock share=

?
3.5

14. Debt share of investment=

?
29.0

15. Depreciation life=

?
5

16. Useful life=

?
11

20. How many penalty payments were made?

?
3

20. Payment number 1: enter month, amount

?
1,4945.15

20. Payment number 2: enter month, amount

?
4,5048.21

20. Payment number 3: enter month, amount

?
7,5153.41

21. Treasury interest rate=

?
15.22

22. Months from compliance until adjustment=

?
2

Exhibit IV–6—The Post-Compliance Settlement

Month	Paid	Penalty	Due EPA	Due firm
1	4945.15	7605.86	2660.71	0.0
4	5048.21	7764.37	2716.16	0.0
7	5153.41	7926.17	2772.76	0.0

Adjustment due EPA=8956.20

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance. The total post-compliance settlement paid by the firm to EPA is $8,956.20.

Section V—Special Conditions

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately-owned and when compliance is achieved by modification of existing plant and equipment. In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations.

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds.
- The source is operated by a local, state or federal government.
- The source has a limited useful life.

The noncompliance penalty in all three cases is calculated using the program PENALTY. However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations. The following section describes special data requirements and modifications in data entry. It should be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required.

Industrial Development Bonds

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at

[6] The method for calculating the interest on the amount of overpayment or underpayment is described in detail in Section V of the Technical Support Document.

an interest cost lower than the current rate on industrial bonds.

This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bondholder are exempt from federal income tax. The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often a few percentage points below corporate debt of similar quality.

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used. For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax credit. The computer program will automatically pro-rate the investment tax credit. The user must provide two types of data.

- The percentage of the investment financed by industrial development bonds.
- The weighted average interest rate for the investment.[9]

Data are gathered for the calculation of the penalty in the same manner as described in Section II. In addition, the user must perform the following calculations.

1. *Percent financed with industrial development bonds.* This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment. In the Fertilizer Company example, the estimated capital investment was $500,000. If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty. This would be entered as *40.0.* If the percentage exceeds one hundred, *100.0* should be entered.[10]

2. *Interest rate on industrial development bonds.* The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris, Upham & Co., in the *Credit Market Comment.* The Review is published weekly and the current yield on bonds is printed on the last page. The most recent yield published will be the interest rate used for industrial development bonds.

There are thus only two changes in the data entered for industrial development bonds. A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is the weighted average calculated using Worksheet D of Section II. All other data entry remains the same.

Government-Owned Facilities

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated. In addition, the discount rate for all cash flows is entered at ten percent. Exhibit V–1 shows the data entry procedure for noncomplying sources owned by governments. Data labeled "no change" are calculated using the methods described in Section II.

Facilities With Limited Useful Lives

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives. In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used. Capital and operating and maintenance cost estimates are made based on what it *would cost* to bring the source into compliance and the calculation proceeds in the normal manner. In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month. There is no post-compliance settlement.

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present. In such cases the program will:

- Ask if the calculation is for a limited life facility that is being replaced,
- Request an estimate of the capital and annual operating expenses required to bring the old source into compliance,
- Request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,
- Request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- Request an estimate of monthly production costs including pollution control operating and maintenance expenses at the new source.

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures at the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a post-compliance settlement can be made. Such a settlement will consider changes in the compliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out and updates of the monthly production costs, the inflation rate, the discount rate, and the capital structure of the firm.

Exhibit V–1—Data Entry for Government Facilities

Data category	Program entry
Precompliance Capital Expenditures	(1)
Precompliance Operating and Maintenance	(1)
Initial Monthly Operating and Maintenance	(1)
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	(1)
Discount Rate	10.0
Interest Rate	0
Preferred Dividend Rate	0
Equity Share of the Investment	100.0
Preferred Share of Investment	0
Debt Share of Investment	0
Depreciation Life in Years	(1)
Useful Life in Years	(1)

[1] No change.

Appendix C—Computer Program

Note.—EPA will make copies of Appendix C available from: Director, Division of Stationary Source Enforcement, EN–341, 401 M Street, NW., Washington, DC 20460. See editorial note following part 67.

[FR Doc. 85–21102 Filed 9–6–85; 8:45 am]
BILLING CODE 6560–50–M

[9] A worksheet is included in Section II (Worksheet D) to aid in calculating the weighted average interest rate.

[10] The firm may issue bonds in a volume much higher than the capital investment. In this case financing is entered as 100 percent. The program will not accept data higher than 100 percent.

federal register

Monday
September 9, 1985

Part III

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158

Reception Facility Requirements for Waste Materials Retained on Board; Interim Rule

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 151 and 158

[CGD 78-035]

Reception Facility Requirements for Waste Materials Retained on Board

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations put into effect the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). MARPOL 73/78 controls the amount of waste materials ships can discharge at sea, and requires reception facilities at ports and terminals to receive materials retained on board as a result of compliance with MARPOL 73/78. The regulations provide criteria for determining the adequacy of reception facilities, and administrative procedures for granting Certificates of Adequacy to ports and terminals.

DATES: Effective March 10, 1986.

Comment Deadline: Written comments must be received on or before December 9, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/22) (CGD 78-035), U.S. Coast Guard, Washington, D.C. 20593. The comments may be delivered to, and will be available for inspection or copying at, the Marine Safety Council (G-CMC/22), Room 2110, Coast Guard Headquarters Building, 2100 Second Street SW, Washington, D.C. 20593. Normal working hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Copies of the final evaluation and the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, it is requested that requests for the final evaluation and the environmental assessment not be included in the comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ellis H. Davison, II or Lieutenant Timothy M. Mallon, Office of Marine Environment and Systems, (G-WPE-3), telephone 202-426-9578. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking (ANPRM) was published in the March 24, 1983 issue of the **Federal Register** (48 FR 12395) that invited comments. The comment period ended on June 22, 1983, a 90 day period, and comments were received from 69 sources, including individuals, businesses, industry organizations, other Federal agencies, and state and local governments.

A notice of proposed rulemaking (NPRM) was published in the June 19, 1984 issue of the **Federal Register** (49 FR 25196) that invited comments. The comment period ended on August 20, 1984, a 60 day period, and comments were received from 75 sources, in the same categories as were received in response to the ANPRM.

A public hearing, announced in the July 24, 1984 issue of the **Federal Register** (49 FR 29809), was held in Washington, D.C. on August 14, 1984. It was attended by 26 members of the public, seven of whom made oral statements.

A public meeting of the National Committee for the Prevention of Marine Pollution (NCPMP) Working Group on Reception Facilities, announced in the September 21, 1984 issue of the **Federal Register** (49 FR 37202), was conducted at Coast Guard Headquarters on October 12, 1984. It was attended by a total of 17 persons that included members of the Working Group and the general public.

Written comments in response to the NPRM received prior to December 4, 1984, and written comments submitted and verbal comments made at the public hearing and NCPMP Working Group public meeting were considered before issuing this interim rule. Individual comments are addressed in the Section-by-Section Analysis, below.

The Coast Guard has consulted with the Administrator of the Environmental Protection Agency, as required by the Act (33 U.S.C. 1905(a)). Comments from EPA officials, including informal comments at meetings and formal comments on a draft of this rulemaking, have been considered before issuing this interim rule.

In reviewing the comments to the proposed regulations, the Coast Guard has reconsidered the assignment for responsibility for reception facility operation contained in proposed § 158.163. Depending on the circumstances, certain aspects of reception facility operation may be beyond the direct, effective control of a "person in charge who holds a Certificate of Adequacy". A Port Authority may hold a Certificate of Adequacy on behalf of a number of terminals in a geographic area, using a number of waste haulers under contract as reception facilities. It may be inappropriate to assess a civil penalty against the Port Authority for the failure of one of the waste haulers to fulfill the appropriate criteria of adequacy. To accommodate this, and other circumstances, the Coast Guard has changed § 158.163(a) so that the person in charge of a port or terminal, or the person who is in charge of a reception facility, may be held accountable for a violation of a requirement under Part 158.

The Coast Guard has determined that it would be impractical and contrary to the public interest to delay the publication of these comprehensive regulations. The U.S. obligation to ensure the adequacy of reception facilities at U.S. ports and terminals, under Annex I Regulation 12 of MARPOL 73/78, was effective on October 2, 1984. To honor this obligation and to minimize the burden of MARPOL 73/78 on oceangoing ships it is important that this program be implemented without further delay. Threfore, these regulations have been designated an "interim rule request for comment" to indicate that further consideration will be given to the assignment of responsibility in § 158.163(a).

Interested persons are invited to comment on the change made to the assignment of responsibility in § 158.163(a) by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number, CGD78-035, and give reasons for their comments on the changes to § 158.163(a). All comments received before expiration of the comment period will be evaluated by the Coast Guard. No additional public hearing is planned.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Ellis H. Davison, II and Lieutenant Timothy M. Mallon, of the Office of Marine Environment and Systems, and Mr. Stanley M. Colby, Project Counsel, of the Office of Chief Counsel.

Background

The purpose of MARPOL 73/78 is the reduction of accidental and operational pollution from ships. In order to reduce operational pollution, MARPOL 73/78 requires that some ship wastes be discharged to reception facilities. It contains two annexes, concerning Oil (Annex I) and Noxious Liquid Substances (Annex II), that must be implemented by countries ratifying MARPOL 73/78 when it enters into force. MARPOL 73/78, including Annex I, into entered force on October 2, 1983. Parties to MARPOL 73/78 are obligated to ensure that adequate reception

facilities for Annex I are available after October 2, 1984. Annex II will become effective on October 2, 1986, unless the parties to MARPOL 73/78 postpone that date. The requirements for reception facilities in Annex II are effective when the Annex itself becomes effective.

Annex I limits the amount of oily wastes that can be discharged into the sea. Waste which may require disposal as a consequence of Annex I will be be derived from the bulk shipment of oil and from the use of oil as a fuel and lubricant in ship's propulsion and auxiliary systems. Reception facilities must be available to receive oily ballast water, oil-contaminated water and concentrated bilge slops which cannot be discharged in accordance with the Annex.

Oil tankers may have a need to dispose of oily ballast water and tank cleaning water. All self-propelled ships accumulate bilge water in their engine rooms, and this bilge water often contains high concentrations of oil resulting from lubricant drippings and other routine losses. Under Annex I, ships may either process this contaminated bilge water to remove the oil, which is then retained on board as a residue for discharge to a reception facility, or they may discharge the contaminated water itself to a reception facility. Fuel oils for diesel propulsion systems and lubricants for both steam and diesel propulsion systems when processed on board ship usually produce an oily residue. Such residues, which cannot be discharged into the sea in compliance with Annex I, must be retained on board or discharged to reception facilites.

Under Regulation 12 of Annex I, adequate reception facilities must provide for the reception of residues and mixtures containing oil in—

(a) All ports and terminals in which crude oil is loaded into oil tankers where such tankers have immediately prior to arrival completed a ballast voyage of not more than 72 hours or of not more than 1,200 nautical miles;

(b) All ports and terminals in which oil other than crude oil in bulk (product) is loaded at an average quantity of more than 1,000 metrics ton (7,000 barrels) per day;

(c) All ports having ship repair yards or tank cleaning facilities;

(d) All ports and terminals which handle ships provided with sludge tanks that meet MARPOL 73/78;

(e) All ports which handle ships retaining oily bilge water and other residues; and

(f) All loading handling combination carriers retaining oily residue on board.

These regulations apply to all ports and terminals used by oceangoing tankers or any other oceangoing ships of 400 gross tons or more, with certain execeptions. The regulations do not apply to those ports and terminals used only by smaller oceangoing ships for two reasons:

a. The regulatory scheme developed for larger ports and terminals would be unnecessarily complex and burdensome for small ports and terminals.

b. The 400 gross ton demarcation for equipment requirements on non-tankers contained in Regulation 9 of Annex I of MARPOL 73/78 provides a logical demarcation line between "large" and "small" oceangoing ships.

It should be noted that these regulations do not exempt oceangoing ships under 400 gross tons from compliance with MARPOL 73/78. If these ships need to discharge oily wastes to reception facilities they may do so at large ports, or there may in fact be reception facilities available in a port not required to hold a Certificate of Adequacy.

The Coast Guard will consider further rulemaking for ports and terminals used exclusively by non-tankers of less than 400 gross tons after an appropriate regulatory scheme can be developed.

Annex II—Noxious Liquid Subtances

The ANPRM addressed Annex II of MARPOL 73/78, and many comments to the ANPRM concerned issues related to this Annex. Changes to Annex II are being considered by the International Maritime Organization (IMO) Marine Environment Protection Committee and Sub-committee on Bulk Chemicals. Uncertainty as to the outcome of these changes makes a detailed approach to Annex II reception facilities impractical at this time. Therefore, the detailed proposal for implementing Annex II will be made in a separate notice of proposed rulemaking at a later date.

Need

This rulemaking implements those parts of MARPOL 73/78 which require contracting states to ensure that reception facilities are available to receive wastes from ships, as described above. The Act to Prevent Pollution from Ships (the Act) (94 Stat. 2297, 33 U.S.C. 1901), which is the implementing legislation for MARPOL 73/78, specifically directed the establishment of regulations setting criteria for determining the adequacy of reception facilities and procedures for certifying a port or terminal as having adequate reception facilities. The Act applies only to "seagoing" ships (33 U.S.C. 1903(a)). In order to be consistent with other regulations implementing MARPOL 73/78, as published in the Federal Register of October 6, 1983 (48 FR 45704), this rule uses the term "oceangoing" ship instead of "seagoing" ship. In defining the term "oceangoing" ship § 158.120 incorporates 33 CFR 151.05(j), which reads, including the Note, as follows:

(j) "Oceangoing" ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the territorial sea of the United States as defined in § 2.05 of this chapter; or

(5) Is operated under the authority of a country other than the United States.

Note.—A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada; is not an "oceangoing" ship.

Section-by-Section Analysis

1. *Section 151.09(f)*—a. Four commenters addressed the notification requirements proposed in § 151.09(f)(2). One recommended that the 24 hour notification be changed to 72 hour notification if a mobile reception facility is used. Two recommended 48 hours, and one recommended that tankers on voyages of less than 36 hours be exempted from the requirement. The Coast Guard does not agree with the commenters and has retained the 24 hour notification. Coast Guard experience has shown that most ships are capable of predicting their arrival at least 24 hours in advance, in complying with the requirements of 33 CFR 160.207. The Coast Guard has also found that pollution clean-up contractors, many of whom will be supplying mobile reception facilities, are capable of responding well within 24 hours of notice of a need for their services. In addition, the requirement is compatible with other Coast Guard advance notice regulations, thus easing the burden on the reporting ship. If 24 hour notice is impracticable for a reception facility, a wavier of that criteria in § 158.200(a) would be available under § 158.150.

b. One commenter suggested that proposed § 151.09(f)(2)(i) was subject to misinterpretation, because it was unclear whether the estimated duration of the discharge or the time of day that the ship would be ready to discharge was required. The Coast Guard agrees

with this comment and has clarified the text to indicate that the time of day when the ship would be ready to discharge is required.

c. The Independent Liquid Terminals Association (ILTA) and three other commenters requested that additional information be provided by the ship with the advance notice. This ILTA comment, as well as the other ILTA comments discussed below, was supported by 23 other commenters. The ILTA requested that the notification include information on the characteristics of the residues and mixtures containing oil and the information required of a "generator" of "hazardous waste" under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*) and implementing regulations. Two other commenters requested a requirement for the ship to list and certify the contents of the residues and mixtures containing oil to be discharged. One commenter requested a requirement for information on content that might damage storage or treatment equipment. Numerous commenters expressed concern over the relationship of the proposed regulations with Federal and state waste management programs. These issues are considered together.

This rule imposes no hazardous waste regulations that are not already imposed by Federal, State, and local hazardous waste or occupational safety programs. EPA, state, and local regulations governing hazardous waste are independent of, and are not affected by, the Coast Guard's Certificate of Adequacy procedures or criteria. Those members of the regulated public who intend, or expect to handle hazardous wastes, should contact EPA, state, or local officials with any specific questions as to how hazardous waste regulations apply to them.

Numerous commenters expressed a concern over who would be considered a "generator" of any "hazardous waste". The ILTA expressed the opinion that the oceangoing ship would be "the generator of the waste as currently provided under the EPA regulations." The Coast Guard has no authority under the Act to reach these issues. The decision on the matter discussed in this and the prior paragraph has been delegated to the U.S. Environmental Protection Agency (EPA) under RCRA. The question of who may be a generator of hazardous waste, and thus subject to RCRA regulation, can only be answered by considering who falls within the definition of generator. EPA's regulations define "generator" as any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation (40 CFR 260.10). Under this definition, more than one person may be considered the "generator" of a hazardous waste because, although one person may produce the waste, others may first cause that waste to become subject to regulation. Questions as to which person or persons are considered "generators" in a particular situation should be referred to the appropriate EPA officials.

The Coast Guard randomly sampled oily bilge water and sludge to determine the amount of "hazardous waste" that might be involved. The random sample was not large enough to be statistically significant, but there was evidence that very little of this waste will be hazardous. No samples of oily bilge water were determined to be hazardous. Only one sludge sample out of seven was, by virtue of a 135 °F flashpoint, "ignitable" and therefore "hazardous" (40 CFR 261.21(a)(1)). The remaining sludge samples had flashpoints substantially higher.

The Coast Guard realizes that "hazardous waste" warrants consideration, but not in this rulemaking that is concerned with standards for determining the adequacy of reception facilities. A number of states have extended the coverage of their hazardous waste programs to include all oily waste. Additionally, there are Federal regulatory and legislative proposals that concern non-"hazardous" oily waste. Regardless of the amount of waste ultimately found to be hazardous, those persons managing such wastes must do so in accordance with EPA's RCRA regulations, and any applicable state or local regulations.

The ILTA proposal would require all ships to have EPA RCRA generator numbers, although they may never generate a hazardous waste or visit a port in a state requiring such a number for all oily waste. This would clearly extend the applicability of the EPA's regulations. The Coast Guard has no authority to do this, since it would require ships to obtain generator numbers in situations where the EPA's regulations do not.

Other comments requested that these regulations require oceangoing ships to provide additional information. The difficulty lies in the variety between oily waste programs in the different states. Once again, the Coast Guard has no authority to extend the effect of one state's regulations to ships visiting ports in another state. Although it is not possible for the Coast Guard to establish uniform Federal regulations in this area under its present authority, it would be appropriate to alert ship owners that various information requirements may apply to them, and that is why a note has been added to follow § 151.09(f). This note cautions the readers that various Federal, state, and local programs may affect their operations when meeting the Act and MARPOL 73/78.

Several commenters expressed concern over additional burdens placed on "imported" wastes. This is a matter for EPA interpretation. Whether a particular MARPOL waste is considered "imported" will depend on particular circumstances, and questions should be referred to appropriate EPA, state, or local officials.

One commenter noted that Annex I residues and mixtures containing oil might contain materials that would damage storage or treatment systems. The commenter recommended a requirement that oceangoing ships provide such information. This concern is valid, but the Coast Guard disagrees that a regulatory requirment would be in accordance with the Act. This is a commercial matter and, therefore, not one that Congress intended the Coast Guard to regulate. The Coast Guard can only certify that the port or terminal has adequate reception facilities available. In the absence of other direction from Congress, conditional contracts, governed by whatever state, Federal, local, or common law principles apply to the kind of transaction, would be the means available to the commenter.

Other commercial aspects of reception facility transactions were commented on extensively in response to the ANPRM and the NPRM. The reception facility operator provides a service to the ship similar to other services, such as bunkering, repair, provisioning etc., and may do so under similar terms. Such terms would include (but are not limited to):

a. A right to reasonable compensation for the service.

b. A right to reasonable assurance of payment.

c. A right to know the characteristics of the materials the reception facility will be receiving, not only to comply with regulatory requirements but also to protect personnel and equipment.

If an owner or operator of an oceangoing ship does not agree to reasonable commercial terms, a reception facility may refuse to take the ship's residues and mixtures containing oil without invalidating its Certificate. A reception facility operator that consistently demanded unreasonable terms would be hurt economically by

under-use of those facilities. A port or terminal that has reception facilities available only under prohibitive terms would be at an economic disadvantage compared to ports and terminals where the costs were more reasonable. The Coast Guard will rely on these market forces to keep the reception facility terms reasonable, but would seek appropriate regulatory authority from Congress for supervising the commercial aspects if the industry is unsuccessful in self regulation.

2. *Section 158.100*—One commenter suggested that this section excludes tank barges from the regulations and that the definition of "tank barge" be deleted from § 158.120 accordingly. The Coast Guard disagrees with this commenter because tank barges are included in the definition of oceangoing ship as defined by 33 CFR 151.05(j). In addition, the Act requires reception facilities to be adequate to receive residues and mixtures from ships, which is defined as "a vessel of any type whatsoever, including hydrofoils, air cushion vehicles, submersibles, floating craft whether self propelled or not, and fixed or floating platforms."

3. *Section 158.110*—a. Three commenters pointed out that they interpreted this section to require each terminal to receive oily bilge waste and sludge, and suggested this be clarified by adding a statement that every terminal would not be required to be prepared to receive oily residues. The Coast Guard disagrees, in that this section only concerns applicability and contains no requirements. In order to be granted a Certificate of Adequacy, a port or terminal would have to show availability or reception facilities meeting the appropriate criteria of Subpart B, including criteria for sludge and oily bilge water. Those ports or terminals who desire a Certificate of Adequacy without meeting a particular criteria may apply for a waiver under § 158.150.

b. Another commenter mentioned the lack of available facilities for handling the oily waste and suggested that, where port authorities exist, they be responsible for applying for certification. The Coast Guard disagrees with this comment. Survey results on the availability of reception facilities indicated that the need could be met in most ports by the existing fixed and mobile facilities. Also, terminals may join with others to apply as a port or choose to make their own arrangements to ensure that ships are provided reception facilities. The variety in the authority and responsibility of "port authorities" in the United States does not permit the Coast Guard to impose a uniform regulatory responsibility on these entities. The Coast Guard has no direct authority to require reception facilities, only to certify their adequacy.

c. The United States Department of the Interior (DOI) requested that oil rigs, both fixed and floating, be specifically addressed in these regulations. Fixed and floating drilling rigs and other platforms are included in the definition of "ship" contained § 151.05(q) of this subchapter and are not regulated under Part 158. A note has been added following the definition of "terminal" under § 158.120 to inform the reader.

d. One commenter requested exclusion of all cargoes and fuel loaded for the government, irrespective of government or non-government controlled tonnage, because of the commercial disadvantage involved with handling and dealing with government requirements. The Coast Guard disagrees with this comment. If Congress had intended to exclude government cargoes, it would have excluded them from the Act.

e. Two commenters suggested that dedicated private terminals be exempted from the regulations. They felt that their terminals were not open to just any shipper, and that a low frequency of use, less than five ships per week, justified an exemption from the regulations for their terminals. The Coast Guard has not identified a rationale under MARPOL 73/78 to justify such an exemption.

f. Six commenters requested that ports and terminals be exempted from the regulations when they are not used or intended to be used for the transfer of oil or oily mixtures. Power generating plants, chemical and ship repair facilities felt they are included in this category. These comments relate to the definition of "terminal", and are considered below with other comments concerning § 158.120.

g. One commenter requested clarification whether the 400 gross ton criteria would be calculated under the present U.S. system or the new international tonnage system (International Convention on Tonnage Measurement of Ships, 1969). Since these regulations implement MARPOL 73/78 reception facility requirements, IMO Resolution A. 541 (XIII), *Interim Scheme for Tonnage Measurement for certain Ships for the Purpose of MARPOL*, applies. Under this resolution, the owner of any U.S. vessel built before July 18, 1994 and measuring less than 400 gross tons as determined under a U.S. admeasurement system pre-existing the international system, has the option of using either the U.S. gross tonnage or the international gross tonnage.

4. *Section 158.120*—a. *"Daily average"*. A definition of the term "daily average" has been added to provide uniformity in the sections where the term "average" was proposed in the NPRM; §§ 158.140, 158.210, 158.220, and 158.230. A commenter requested clarification on what is meant by the term "annual data" proposed in § 158.220. To alleviate further confusion the concept of "annual data" has been incorporated into the definition of "daily average", and the term "annual data" has been removed from the regulations.

b. *"Harmful substance"*. One commenter requested that the definition of the term "harmful substance" be included in the regulations. The Coast Guard agrees and has added the definition from MARPOL 73/78, Article 2(2).

c. *"Oceangoing ship"*. Three commenters acknowledged that the proposed rule applies to "oceangoing ships" but requested clarification of the definition of that term in 33 CFR 151.05, as it applies to barges. Oceangoing barges are "oceangoing ships", but the need to make reception facilities available for them will depend on the configuration of particular barges. Section 158.110 has an exception for barges that do not carry oil in bulk and for tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route.

d. *"Oil" and oily mixture"*. Two comments were received which requested that the definition of oil and oily mixture as defined under MARPOL 73/78 be included in § 158.120. It was felt by the commenters that this would provide clarification that chemicals covered by Annex II, as well as both animal and vegetable oils are excluded from the 1,000 metrict ton calculations under § 158.220. Also, it was requested that the definition of oily mixture be expanded to include bilge slops, oily waste, oily residues (sludge), oily ballast water, and washing from cargo tanks, but exclude oil-like chemicals such as xylene, toluene, and cyclohexane. The Coast Guard has added the definition for "oil" as it appears in Annex I, Regulation 1 of MARPOL 73/78. This definition excludes chemicals regulated by Annex II of MARPOL 73/78: xylene, toluene, and cyclohexane are Category C substances under Annex II. The definition for "oily mixture", "a mixture with any oil content" (MARPOL 73/78, Annex I, Regulation 1), is incorporated by the Act but since it is self-

explanatory, it was not added to these regulations.

e. *"Person in charge"*. One commenter suggested that ports and terminals leased from Port Authorities should be exempted from the regulations, or that the regulations should designate the Port Authority as "person in charge" of the port or terminal. The Coast Guard disagrees with this comment. The Act makes no provision for an exemption of this kind. Whether or not the Port Authority would fit the definition of "person in charge" of a leased facility would depend on the nature of the lease agreement, and would vary from port to port.

Another commenter stated that the regulations were unclear as to who would be required to be designated as the "Person in Charge" of the port or terminal. The Coast Guard intent is to provide enough flexibility to allow the concerned parties to resolve this matter. It is envisioned that ports and terminals within a port would coordinate and make their own arrangements in designating a "person in charge." Of course, ports and terminals not in a group will be as free in their designations as those ports and terminals that are in a group. This designation, appointment, or assignment need only be made for the purpose of applying for and holding a Certificate of Adequacy, and may be independent of other responsibilities in the port. A reception facility operator could be designated, appointed, or assigned as a "person in charge" to simplify division of responsibilities concerning reception facilities and the ports and terminals.

One commenter recommended adding the term "reception facility operator" in order to distinguish division of both responsibility and liability between the reception facility operator and "person in charge" of the port or terminal. The Coast Guard has used the term "person who is in charge" of the reception facility, to differentiate from the "person in charge" of the port or terminal. The division of responsibilities is further discussed under § 158.163. For these reasons, there is no need to add a definition of "reception facility operator".

f. *"Port"*. One commenter suggested that paragraph (a) in the definition of port be changed by adding the words "that elects to be considered a port for the purposes of this part". The Coast Guard agrees with the commenter and has made the recommended change.

g. *"Reception facility"*. Two commenters requested that the definition of reception facility be revised to expand mobile facilities to include drums, portable containers, ISO containers, and any other container suitable for transport. The Coast Guard agrees with the comments and this definition has been changed to reflect its unrestrictive intent. To clarify that the reception facility need not be permanently installed at the port or terminal, the Coast Guard has added the words "be permanently or temporarily located in the port or terminal" to § 158.200(a).

One commenter requested that the definition of "reception facility" be revised by deleting the words chemical waste because neither MARPOL 73/78 nor the Act authorizes the regulation of chemicals other than those "noxious liquid substances" designated by Annex II of MARPOL. Since chemicals will be addressed under separate rulemaking, the definition was changed by eliminating the words "oil or chemical wastes" and adding the words "residues and mixtures containing oil" in their place.

h. *"Terminal"*. Four commenters felt that the note following the definition stating that a ship repair yard is a terminal, was inaccurate because the primary purpose of the ship repair yard is to repair ships, not to be used as a "port" or terminal for the transfer or other handling of a harmful substance as used in the definition of a terminal. It was suggested that a new definition be added for "ship repair yard" as meaning a facility whose primary business is that of building, converting, and repairing ships. The Coast Guard disagrees with this interpretation. This definition is not intended to imply that the primary purpose of a "terminal" need be "transfer or other handling of a harmful substance. A "facility" or "structure" is within the definition even if the transfer or other handling is incidental to its business, such as the removal of tank residues at a ship repair yard. The note stating that a ship repair yard is a terminal by definition is retained since incidental handling of residues and mixtures containing oil, a "harmful substance", occurs at all ship repair yards.

Four commenters including the ILTA felt that the words "harmful substance" in the definition of terminal should be replaced with "cargo or passengers" since the proposed rule relates to oceangoing ships in general, not only those which might be transporting a harmful substance. This rule applies to ports and terminals serving oceangoing ships that must comply with MARPOL 73/78 and not just those transporting harmful substances. While it might be possible to clarify this point by modifying the definition in the way the commenter suggests, the Coast Guard may not do so since the definition is in the Act (33 U.S.C. 1901(9)) and it requires an Act of Congress to change it.

One commenter suggested that they had difficulty distinguishing the difference between a terminal and port. The statutory definition of "terminal" provides some overlap in defining it as a "port or facility". Since the criteria for adequacy are based on the type and number of oceangoing ships using the port or terminal, and their trades, whether or not the facility or structure is a "port" or "terminal" is immaterial. The Coast Guard has changed the word "terminal" and inserted the word "port" in paragraph (c) of the definition of "port", for clarification.

5. *Section 158.130*—a. Section 158.130(a)(1)—One commenter questioned COTP authority to conduct an inspection stating that an inspection for compliance with MARPOL 73/78 is inappropriate since the convention requires that administrations assure that adequate facilities are available in accordance with broad guidelines. The Coast Guard disagrees that it has no authority to inspect since the Act specifically requires an inspection prior to issuance of a Certificate of Adequacy (33 U.S.C. 1905(c)). The inspection is part of the statutory program which will ensure that adequate reception facilities are provided, meeting the U.S. obligations under MARPOL 73/78.

b. *Section 158.130(a)(2)*—The same commenter further noted that the words "the requirements of" are redundant in paragraph (a)(2). The Coast Guard agrees with the commenter and the words have been deleted from paragraph (a)(2).

c. *Section 158.130(c)*—The same commenter also suggested inserting the words "the intent" after "violate" because both MARPOL 73/78 and the Act only give guidelines, not specific requirements. The Coast Guard agrees that the Act contains no specific requirements. However, MARPOL 73/78 contains the requirement that Administrations ensure the adequacy of reception facilities at their ports and terminals, and the COTP may not issue a waiver that violates that requirement. For these reasons, the Coast Guard has removed the words "the Act" but has not inserted the words "the intent of".

d. *Section 158.130(d)*—One commenter suggested that this paragraph may be interpreted to require a terminal to accept harmful substances even if it chooses not to do so. The Coast Guard does not agree. This is a delegation to the Captain of the Port (COTP), not a requirement. The COTP must have the power to designate ports where

necessary to fulfill the U.S. obligation to ensure the adequacy of reception facilities in U.S. ports and terminals. The Coast Guard expects that this will rarely be necessary, since reception facilities meeting the criteria of Subpart B, provided by terminals applying for a Certificate of Adequacy either individually or as a voluntary "port", will be adequate. If a group of terminals is designated as a "port" under this section, it will be up to the group rather than an individual terminal to provide reception facilities necessary for a Certificate of Adequacy.

e. *Section 158.130(e)*—One commenter recommended adding the words "of 400 gross tons or more" after the word "oceangoing" to be consistent with § 158.110. This section might be interpreted to permit the denial of entry to smaller oceangoing ships, even though the ports and terminals which receive only such smaller ships are not required to have Certificates of Adequacy for reception facilities. The Coast Guard agrees with the recommendation and has made the change to follow the words "oceangoing ship".

One commenter pointed out that nowhere is it defined what a "group of ports" means and why ships should be denied entry under § 158.130 to a group of ports presumably as one entity, if each port is required to have separate certificates. The Coast Guard agrees with the commenter. The term "group of ports" was left in this section in error, and has been removed.

7. *Section 158.140*–a. *Section 158.140(a)*—One company commented that, if there is a port authority, the port authority should be responsible for obtaining the Certificate of Adequacy for all terminals within the port that receive ships of more than 400 gross tons. In the absence of an existing port authority, individual terminals would either join together to obtain a Certificate of Adequacy or individually obtain it. The Coast Guard disagrees with this comment. This would place an undue burden on those entities called "port authorities" that do not have the authority, expertise, or resources to make the arrangements necessary to apply for a Certificate of Adequacy.

b. *Section 158.140(b)(3)*—Two commenters suggested that the requirement to ascertain the principal trade of ships created a burden on applicants for Certificates of Adequacy. The Coast Guard disagrees since applicants are only required to ascertain the general type of commodity handled (petroleum, chemical, or other), whether or not it is shipped in a tanker, barge, or dry cargo ship, and whether it is loaded or unloaded. Much of this information is readily available from a port or terminal's records, and is critical in determining whether or not the facility conforms to the criteria of Subpart B.

Two commenters recommended that a definite time period be included when applicants provide the number of ships using the port or terminal. The Coast Guard partially agrees with this comment. Establishing a particular 12-month period could result in an inaccurate figure for some ports and terminals. Additionally, it could be burdensome for ports and terminals using a different period for accounting and statistical purposes. For these reasons the Coast Guard has used the phrase "typical continuous 12-month period" in the definition of "daily average".

c. *Section 158.140(b)(4)(i)*—One commenter recommended that this section be modified so that an application for a Certificate of Adequacy contain the minimum volume of residues and mixtures that the port or terminal can receive each day, rather than total volume that the terminal can receive each day. They felt that this would eliminate the written notification requirement when ports and terminals using mobile facilities change the total volume of waste handled daily. The Coast Guard did not intend this interpretation of the proposed language, but agrees that it could be misconstrued as indicated by the commenter. However, the alternative recommended by the commenter would also be subject to misinterpretation. To clarify the intent of this paragraph, the Coast Guard has replaced the word "total" with the words "daily average" to comply with the commenter's recommendation. In order to be consistent with this change, § 158.140(b)(4)(iv) has text that parallels § 158.140(b)(4)(i).

d. *Section 158.140(b)(4)(ii)*—One commenter recommended changing the words "transfer rate" to "maximum allowable transfer rate". The Coast Guard agrees that the terminology proposed in the notice is confusing, but disagrees that the change suggested is appropriate. Defining a term such as "maximum allowable transfer rate" would be difficult in view of the variety of products to be handled and the variety of equipment used. Instead, this paragraph has been changed to require "a statement indicating whether or not the transfer rate under § 158.200 can be met". This resolves the issue raised by the commenter without raising new problems in interpretation.

e. *Section 158.140(b)(5)*—Five commenters mentioned that requiring terminal applicants to provide copies of each license, permit, and document pertaining to the storage, handling, transportation, processing and disposal of residues and mixtures containing oil would place a burden on the industry.

The ILTA and one other commenter suggested that nearly all ports and terminals that handle oceangoing ships have no licenses, permits, or documents for the storage, handling, processing, and disposal of residues and mixtures containing oil. An additional ILTA comment suggested that this section be deleted because questions about the treatment, transport, processing and disposal of wastes will be resolved by the parties concerned and those having the responsibility for enforcing or implementing the laws governing these activities. The Coast Guard concurs with the above comments and this requirement has been removed from the regulations.

A new subparagraph (5) has been added to this section that restates the inherent power of the COTP to request additional information that may be required to assess the adequacy of a port or terminal.

8. *Section 158.150.*—a. *Section 158.150(a)*—Two commenters addressed the lack of adequate facilities to handle oceangoing tankers and other oceangoing ships of 400 gross tons or more. Included in this concern was the lack of ocean mooring facilities and the need to construct new facilities to handle oil residue and oily mixtures. This would result in large capital expenditures even though the frequency of use would be low. In those cases, they felt waivers would have to be granted.

One commenter felt that Congress intended to exempt smaller ports from certification. The commenter viewed the proposed regulations as requiring small ports to obtain a Certificate of Adequacy and then a waiver. In both of these situations the commenters correctly note the incongruity of the Coast Guard granting a Certificate of Adequacy in situations where all criteria may be waived. This is necessary because of the U.S. obligation under MARPOL 73/78 to ensure that adequate reception facilities are available. In applying for a waiver, the port or terminal will account for how it takes care of, or will take care of, its ships' reception needs. This will assure the COTP that the waiver may be granted without undermining the intent of MARPOL 73/78. If this kind of port or terminal fell under a blanket exemption, there would be no way for the COTP to determine whether or not the ships using

it had adequate facilities elsewhere and the Coast Guard's obligation to ensure adequacy would not be fulfilled.

The ILTA raised a question about the preamble to the NPRM and the possibility that the proposed section allows a waiver based on reception facilities provided at locations other than the port or terminal applying for the certificate. Such a waiver would be allowed if the person in charge can show that it meets the requirements of the section. For example, it may be "impracticable" (§ 158.150(a)(2)(i)) to provide reception facilities at a small, remote port because compliance would jeopardize the economic viability of the port. However, to receive a waiver the person in charge must show that oceangoing ships using the port or terminal can use the proposed alternatives without undue delay and without hampering their ability to comply with the discharge requirements of MARPOL 73/78. The best evidence of this would be certified statements of this fact from the operators of oceangoing ships that use the port.

Likewise, it may be "unreasonable" (§ 158.150(a)(2)(i)) to provide oily ballast water reception facilities at a terminal that does not presently have such facilities, if the terminal has arrangements with another terminal nearby that has facilities with excess capacity. For this alternative reception facility to meet MARPOL 73/78, the person in charge should show that mobile facilities to transfer waste from one terminal to another are unavailable, or economically or physically impracticable, and the alternative arrangement will not result in undue delay to oceangoing tankers loading at each of the terminals, and will not hamper their ability to comply with the discharge requirements of MARPOL 73/78. The best evidence of this would be certified statements of these facts from the operators of the oceangoing tankers and the terminal having the alternative reception facilities.

These two examples do not represent the full range of situations where "alternatives meeting MARPOL 73/78" may be available to relieve the burden of "impracticable or unreasonable" reception facilities. Other evidence may be acceptable to the COTP to show that an alternative meets MARPOL 73/78. The Coast Guard has kept the regulatory requirements for a waiver simple to encourage maximum use of existing facilities as alternative reception facilities.

Seven commenters, including the ILTA, suggested that COTPs must be given specific guidelines for granting waivers. The Coast Guard agrees that such guidelines will help provide uniformity in application of this section. However, these guidelines are internal instructions which are excepted from notice and comment by 5 U.S.C. 553.

In order to clarify the intent of this paragraph, the Coast Guard has added the words "reasons why the requirement is unreasonable or impracticable" to § 158.150(a)(2)(i), and "that meet MARPOL 73/78" to § 158.150(a)(2)(ii).

9. *Section 158.163(a)*—a. The ILTA recommended that a paragraph (d) be added to clarify that ports or terminals are not required under this part to receive residues and mixtures containing oil from any ship not transferring cargo or passengers at that port or terminal. Another commenter recommended that this section be expanded to include the provision that "a port or terminal is not required to receive oil residue or mixtures for which the person in charge of the ship has failed to provide a written certificate as to the composition of the material to be discharged". The Coast Guard disagrees with the commenters. There is no provision in the law or regulations which can be interpreted to require each port or terminal to accept all oceangoing ships that choose to discharge waste in that port or terminal, or to accept wastes of unknown composition. Therefore, adding the provisions recommended is not necessary.

One commenter stated that the requirement for the person in charge holding a Certificate of Adequacy to ensure that the reception facility operates in compliance with the regulatory statutes is not possible to meet since proposed § 158.200(b) and § 158.200(c) (now § 158.200(a)(3)(ii) and § 158.200(a)(3)(iii)) are under the control of the ship. Another commenter suggested that a port authority choosing to submit an application on behalf of several terminals within the local geographical area would not be able, as the person in charge of the port, to ensure the proper operation of a reception facility. Because of this, they felt that the holder of a Certificate of Adequacy should not be required to guarantee the performance of the contractor over which he has no real control. The Coast Guard agrees that, depending on the circumstances, aspects of reception facility operation may be beyond the effective control of the holder of a Certificate of Adequacy, and it is desirable to bring enforcement measures to bear on those more directly responsible. To accomplish this, the phrase "who holds a Certificate of Adequacy" has been deleted from § 158.163 and the phrase "and each person who is in charge of a reception facility" has been added, thereby recognizing the responsibilities of the owner or operator of the port or terminal and those of the owner or operator of the reception facility. In each instance when enforcement action is contemplated, the party or parties most responsible for the violation will be determined. Additionally, lack of personal control over the incident will go to the mitigation of any action taken. The Coast Guard will accept further comment on this change, as indicated under **SUPPLEMENTARY INFORMATION.**

One commenter recommended adding the requirement for ships to have an operations manual and that port and terminal personnel be familiarized with the ship procedures for waste transfers. The Coast Guard feels that adding these requirements to this part would be redundant since oil transfer procedures and a familiarization requirement in the form of a pre-transfer conference prior to signing the Declaration of Inspection, among other requirements, are already required in 33 CFR Parts 154, 155, and 156. Additionally, Part 158 is restricted to the standards for adequacy and the issuance of a Certificate of Adequacy and does not address ships.

10. *Section 158.165*—a. *Section 158.165(c)*—Two commenters indicated that the information collected to meet the requirements of § 158.140 will be continually changing. They suggested that the requirement to notify the COTP of all changes in this information be modified to "major changes which would materially affect the operation of the reception facility". Another commenter felt that the written notification requirement should be increased from 10 to 30 days in order to allow sufficient time to meet this requirement. The Coast Guard must evaluate the changes which affect reception facility operations but appreciates the administrative burden imposed by a 10 day deadline for written notification. This section was changed to require this short notification only for a change of information required under § 158.140(b)(4), which is the information most directly related to reception facility operations.

b. *Section 158.165(d)*—One commenter requested the requirement to submit written notification of changes, that are not considered major, be increased from 30 to 60 days. The Coast Guard has determined that 30 days is an adequate period, since the amount of information required under paragraphs (b)(1), (b)(2), and (b)(3) of § 158.140 is not extensive and should not change very often. In order to fulfill U.S. responsibilities under MARPOL 73/78, the Coast Guard must

receive this information sooner than 60 days.

Two commenters felt very strongly that failure to notify the COTP of changes covered under paragraph (d) or paragraph (c) of § 158.165 did not warrant suspension and revocation proceedings and that a civil penalty provision was more appropriate. The Coast Guard agrees with the commenter that immediate suspension and revocation action may be an extreme first step. Along the same lines, another commenter suggested that civil penalty action be considered prior to invoking suspension and revocation proceedings. The Coast Guard agrees that the language in proposed paragraph (d) could be interpreted as limiting the COTP's discretion on enforcement options. Since this was not the intent of the proposal, proposed paragraph (d) has been changed by removing the references to revocation proceedings. The option remains to initiate suspension and revocation procedures for flagrant violators, in addition to initiating civil or criminal penalty action.

11. *Section 158.170*—a. *Section 158.170(a)*—One commenter asked that the Coast Guard consider negotiation or civil penalty prior to certificate revocation. The Coast Guard intended to apply this type of enforcement approach for reception facilities. The language of § 158.170 does not limit the COTP's discretion as to what enforcement mechanism to use, since the procedure only applies where suspension or revocation has been chosen. A new § 158.195 has been added, which duplicates the civil and criminal penalty provisions from the Act (33 U.S.C. 1908) to remind both Coast Guard personnel and the general public of this option. The COTP retains the inherent discretion to use less formal enforcement mechanisms such as negotiation and letters of warning where warranted.

Another commenter felt that this section provides for the possible immediate suspension of a Certificate of Adequacy when the COTP has evidence that a port or terminal has failed to submit a timely, written report of changes to information supplied under § 158.140. They suggested that this evidence should not permit immediate suspension but serve as a basis for notifying the port or terminal of the existence of such evidence. The port or terminal should then be allowed to reply to the notification or correct any deficiencies. A forty-five day grace period was recommended, after which the COTP should reevaluate the situation in light of the reply or corrective action taken. Only thereafter would suspension be appropriate. Two separate points need to be addressed. The Coast Guard intended the suspension and revocation procedures discussed in this section to apply to reception facility operations outlined in § 158.163, as well as the notification requirements for the person in charge discussed in § 158.165. Reference was erroneously made to § 158.165 in proposed § 158.170 and this was interpreted as limiting suspension and revocation action to § 158.165 notification requirements. Since § 158.163 concerns itself with the operation of the facility, a correction was made in § 158.170 to indicate this. The second point, concerning notification prior to suspension or revocation, is provided for in § 158.170(a). The provision for immediate suspension is retained so that the COTP can deal with serious situations, such as a port or terminal having a Certificate but no reception facilities. For less serious situations, the procedure in § 158.170(b) should result in at least a 30 day delay before any action is taken.

Another commenter requested clarification that the "undue delay" in proposed § 158.170(a) refers to delay due to reception facilities, rather than unrelated port or terminal operations. The Coast Guard does not agree that clarification is necessary. The reference to § 158.163 in the beginning of the paragraph establishes the connection to reception facility operations. The paragraph has been changed to clarify that the undue delay concerns oceangoing tankers or any other oceangoing ships of 400 gross tons or more.

b. *Section 158.170(b)*—One commenter expressed concern over the authority vested in the COTP to suspend or revoke the certificate and order any measures, without qualification, to correct the deficiencies noted. Two points need to be considered. The COTP is in fact limited by these regulations in requiring action to correct deficiencies. Only requirements prescribed in this part may be ordered by the COTP. Also, where the Certificate is revoked or suspended, the action may be appealed in accordance with § 158.190 (proposed as a second § 158.180, in error).

12. Section 158.180—Almost every commenter expressed concern about the need for a grace period after the regulations are published in order to provide time to comply with the regulations. The grace periods suggested by the commenters ranged from four months to two and one half years. Since the U.S. obligation to ensure the adequacy of reception facilities in U.S. ports and terminals was effective October 2, 1984, it would be contrary to the public interest to wait for 2½ years to put these regulations in effect. Based on all the information received, a 180 day time period between the publication date and effective date is considered reasonable time for ports and terminals to meet the requirements of this part.

Along the same lines, one commenter recommended that ports and terminals operating in compliance with MARPOL 73/78 be allowed to continue to operate without a Certificate of Adequacy where the certificate was not issued due to Coast Guard administrative delays. The Coast Guard concurs with this recommendation but the 180 day grace period should allow sufficient time for ports and terminals to comply with the requirements of this part, and for the COTP to issue Certificates. If, for any unforeseen circumstances, a port or terminal cannot meet the effective date, the COTP should be contacted to determine what arrangements can be made.

One commenter noted that one of the purposes of the reception facility regulations was to avoid delay of ships. The sanction of denial of entry punishes the very ships that the regulations intend to benefit. The basic scheme outlined by these sections is dictated by the Act (33 U.S.C. 1905) and the Coast Guard may not change it. The delay of a few ships by denial of entry will avoid the delay of many ships, over the long term, due to inadequate reception facilities.

One commenter suggested that a new paragraph be added which allows tankers and other ships of 400 gross tons or more to enter the port or terminal for repair or conversion work as deemed necessary by the owner, even if no Certificate of Adequacy has been issued. The Coast Guard feels that this change is unnecessary because scheduled repairs and conversions can be planned for in advance and this will provide ship repair facilities ample opportunity to make arrangements for handling the oil residue and oily mixtures generated on board the ship. If a vessel enters a port or terminal not having a Certificate in an emergency, the force majeure exception in § 158.180 could apply.

Two commenters, including the ILTA, recommended that a provision be included in the regulations which allow ships to enter a port or terminal not holding a valid Certificate of Adequacy if the ship elects not to discharge the waste. The clear language of the statute

requires that the Secretary deny entry to an oceangoing ship which is required by MARPOL 73/78 to retain on board while at sea, residues and mixtures containing oil, if the port or terminal is one required by MARPOL 73/78 or the regulations to have adequate reception facilities and the port or terminal does not have a valid Certificate of Adequacy.

13. Section 158.190—a. Section 158.190(a)—One commenter suggested that there may be many appeals unless the requirements of the proposed part are relaxed somewhat. The Coast Guard feels that the changes made to the proposal meet the requirements of the Act and the needs of the port, terminal, and ship owners and operators and, therefore, there should be fewer actions to appeal.

One commenter raised a question concerning which plaintiffs have "standing" to appeal action taken by the Coast Guard. They felt that "any person directly affected by the action" was not consistent with the Act (33 USC 1910(a)), and that plaintiffs must have an interest "which is or can be adversely affected". They recommended the regulations be modified to be consistent with the Act in order to avoid problems associated with "relaxed standing". The Coast Guard disagrees with the recommendation since § 1910 of the Act does not refer to administrative procedures allowed under § 1905. Additionally, the Coast Guard has used the language "directly affected" in other administrative appeal provisions (e.g. 33 CFR 157.06) and has not experienced difficulties associated with "relaxed standing".

b. Section 158.190(b)—One commenter suggested that the Act (33 U.S.C. 1905(c)) provides for appeal of the suspension and revocation action to the Secretary of Transportation and recommended that this section be revised accordingly. This change is not necessary because the Secretary, defined by the Act as "the Secretary of the department in which the Coast Guard is operating" (33 U.S.C. 1901(7)), has delegated to the Commandant of the Coast Guard the functions vested in the Secretary by the Act with certain exceptions and any reservations of authority (49 CFR 1.46(hh)). The Coast Guard does agree that an additional level of appeal is appropriate, and has changed the section to provide for a further appeal to the Chief, Office of Marine Environment and Systems. At this level of review the appeal can be resolved quickly and finally, and by someone in enough of a different administrative framework to provide an impartial consideration of the appeal.

14. Section 158.200—a. Section 158.200(a)(2) (Proposed § 158.200(d))—Four commenters requested that the requirement for holding each state, local, and Federal permit and license required by law and regulation be omitted. This provision was considered by the commenters to be beyond the scope of the Coast Guard's authority and interest. The Coast Guard agrees that the focus of this requirement should be narrowed, and has done this by adding the word "environmental" before the word "law", and by adding the phrase "concerning residues and mixtures containing oil" after the word "regulation". It is a valid criteria of adequacy since a reception facility that could not operate for lack of any permit or license would clearly be inadequate. One commenter noted that some reception facilities may not be required to hold any licenses or permits. These regulations do not require licenses and permits where they are not otherwise required by Federal, state, or local law.

Three commenters, including the ILTA, suggested that this section is unnecessarily vague since it gives no guidance to the COTP concerning acceptable alternatives, for a waiver under § 158.150(b)(2), to the apparent requirement that the terminal have permits for the treatment, storage, and disposal of wastes or that the terminal have a contract with a facility that does have such permits for ship wastes. The Coast Guard does not anticipate waiving this criteria, because it cannot waive requirements of laws.

Six commenters, including the ILTA, mentioned that the time it would take for a reception facility to receive residues and mixtures containing oil is substantially controlled by the design and operation of transfer systems on the ship. They objected to the wording of proposed paragraphs (b) and (c) of § 158.200, which appeared to place an absolute time requirement on reception facilities. The Coast Guard agrees with these commenters and has changed paragraphs (a) and (b) by inserting the words "be capable of" to indicate a standard of performance.

b. *Section 158.200(a)(3)(i) (Proposed § 158.200(a))*—Five commenters, including the ILTA, recommended changes to the 24 hour notification limit. Four recommended that it be increased to 48 hours, and one recommended a four week notification to conform to the notice requirements for hazardous waste from a foreign source, citing 40 CFR 264.12. This criteria is related to the 24 hour notice requirement proposed in § 151.09(f), and several comments to that section addressed identical concerns. The Coast Guard has rejected this recommendation for the same reasons given under paragraph 1.a of this preamble. The Coast Guard considers it unlikely that any "hazardous wastes" received under these regulations will be considered "imported". The discussion of this issue is in paragraph 1.c of this preamble.

c. *Section 158.200(a)(3)(ii) Proposed § 158.200(b))*—Two commenters claimed that the proposed less than 10 hour completion time for receiving ballast was too short. One of these proposed a 24 hour completion time. Another commenter recommended the Coast Guard specify a transfer rate, rather than a time criteria. Two commenters felt that it was inappropriate to set a time criteria, one because transfer time was under control of the ship and the other because the volume criteria were enough to ensure adequacy. One commenter recommended that time criteria be eliminated, and that the reception facility only need be capable of receiving the wastes while the oceangoing ship was at the pier. The Coast Guard has retained the less than 10 hour completion time for receiving ballast, which is within the range proposed by commenters to the ANPRM, since 24 hours would exceed the normal turn-around time of many oceangoing ships affected by these regulations. Specifying transfer rate is impractical because of the variety of oceangoing ships involved. Since this criteria is now qualified by the words "be capable of", variations in ships' transfer rates should not now affect the reception facility's ability to meet the criteria. It is necessary to retain a time criteria because the purpose of these regulations is to avoid undue delay to ships. Specifying only that the reception facility must be capable of completing the reception of the residues and mixtures containing oil while the oceangoing ship was at the dock would not ensure that other ships would not be delayed.

d. *Section 158.200(a)(3(iii) (Proposed § 158.200(c))*—Two commenters recommended that the proposed 4 hour completion time for receiving oily waste other than ballast be increased, one suggesting 8 hours and the other suggesting 10 hours. The Coast Guard has retained the proposed 4 hour completion time because many oceangoing ships, such as container ships and roll-on/roll-off ships, only remain at a pier for that period of time and allowing a longer time would result in undue delays to these ships. In those trades where this time criteria is impracticable and unnecessarily short, a waiver could be applied for under § 158.150.

e. *Section 158.200(b)*—Five commenters felt that the time criteria of paragraphs (a), (b), and (c) of proposed § 158.200 should not apply to ship repair yards. The commenters noted that ships stay at ship repair yards longer than other terminals, and the disposal of residues and mixtures containing oil is usually based on a contractual arrangement. Removal of residues and mixtures containing oil is usually coordinated with repair work to more efficiently use receiption capacity. The Coast Guard agrees with the commenters and has adopted the text suggested by a commenter, which requires the reception facility to be capable of completing reception of residues and mixtures containing oil before the oceangoing ship departs from the ship repair yard. This change relieves the burden on terminals without adding to the burden on oceangoing ships.

15. *Section 158.210*—a. *Section 158.210(a)*—One commenter stated that, in order to be consistent with MARPOL 73/78, the proposed requirement to handle 10 metric tons of sludge should only be for crude oil loading ports or terminals receiving ships with tanks for sludge generaged from on board processing of fuel and lubricating oil. Another commenter requested clarification of the proposal. The Coast Guard disagrees that this requirement should be changed. The sludge that is the subject of this requirement is produced oceangoing tankers propelled by diesel engines burning heavy fuel oil. Some steam propelled oceangoing tankers produce a smaller amount of this kind of sludge from lubricating oil. With the increase in proportion of diesel powered oceangoing tankers under U.S. flag, the Coast Guard expects that almost all crude oil loading terminals will serve ships in one of these categories. In the rare instance that a crude oil loading terminal serves only steam propelled oceangoing tankers not producing sludge, this fact may be documented in applying for a waiver of this paragraph under § 158.150.

One commenter suggested that this section be rewritten to exclude any slop oil containing chemicals, or tank washings and residues where chemicals or additives have been used in tank cleaning without prior approval of the reception facility. This issue was discussed under § 151.09(f), paragraph 1.c of this preamble. In order to receive a Certificate of Adequacy, a terminal need only have reception facilities for residues and mixtures containing oil. The reception facility would not be considered inadequate for refusing to accept materials containing chemicals that are not "oil" as defined in § 158.120, or if the oceangoing tanker refuses to supply reasonable information on the characteristics of the material to be discharged. Additionally, this particular paragraph addresses only capacity, and does not address the type of wastes received.

b. *Section 158.210(b) (proposed §§ 158.210(b) and 158.210(c))*—Proposed §§ 158.210(b) and 158.210(c) have been combined to simplify and clarify the regulations.

One commenter recommended that the words "use", "using", and "uses to" be replaced with the words "load from", "loading from", and "loads from". The Coast Guard agrees that this change would clarify some provisions relating to capacities, and has made changes accordingly, however it is inappropriate to change paragraph (b) because it, along with paragraph (a), applies to all oceangoing ships using the terminal, whether they load or not.

One commenter requested that the oily bilge water criteria be combined with the ballast criteria since oceangoing tankers are likely to combine these wastes and handle them together. This comment was also made to the proposed requirements in § 158.220(b) concerning oil, except crude oil, loading ports. The Coast Guard has retained separate categories for different kinds of residues and mixtures containing oil for clarity. There is nothing to prohibit a port or terminal from using the same reception facility for all categories providing it meets the cumulative total of the applicable criteria.

One commenter questioned whether the proposed criteria of 2 metric tons (2.2. short tons) is consistent with MARPOL 73/78 Annex I. They felt that this requirement is too specific in regard to capacities required. This comment was also made for the proposed capacity requirements in §§ 158.220(c), 158.230(c), and 158.230(d). The Coast Guard disagrees with this comment. The Act requires the Coast Guard to establish criteria for determining adequacy (33 U.S.C. 1905(a)) and the Coast Guard had to be specific in the criteria for capacity.

c. *Section 158.210(c) (proposed § 158.210(d))*—One commenter felt that only ships with ballast needs should be included in the calculations and requested that crude oil tankers having ballast voyages of greater than 72 hours or 1200 nautical miles be exempted from the calculations of ballast handling requirements. The Coast Guard disagrees with this comment. As stated in the ANPRM, most crude oil loading terminals serve at least some ships completing a short ballast voyage (48 FR 12397). Additionally, factors such as rough weather encountered by oceangoing tankers en route to crude oil loading terminals will frequently prevent the oceangoing tankers from achieving a clean ballast condition, even on voyages of greater than 72 hours or 1,200 nautical miles. This is consistent with the intent of MARPOL 73/78, since there was no intention to exempt ports and terminals handling oceangoing tankers on voyages of over 72 hours or 1,200 nautical miles from meeting the ballast reception needs of such tankers when they have not achieved a clean ballast condition. (See Regulation 12(3)(a) of MARPOL 73/78.) This can be compared with Regulation 12(2)(b) of MARPOL 73/78, concerning ports and terminals loading oil other than crude oil, where the criteria of greater than 1,000 metric tons per day was specifically intended to exempt ports and terminals loading a smaller amount of oil from having to provide reception facilities for the oceangoing tankers they handle. It will be easier for both terminal operators and COTPs to document the actual needs of oceangoing tankers using particular crude oil loading terminals than the length of their voyages. Even if this were to be considered an expansion of the MARPOL 73/78 criteria, this expansion would be permissible under the Act since the rules would meet the mandate to "prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol" (see 33 U.S.C. 1903(b)).

Two commenters proposed that the capacity requirements for handling oily ballast be decreased from 30% to 15% of the deadweight tonnage. One commenter suggested that the large volumes necessary to meet the 30% deadweight tonnage capacity requirement might overload most refinery waste treatment capabilities. Still another requested the 30% figure be lowered to 20%. Two other commenters suggested that the 30% requirement is excessive. The Coast Guard recognizes that actual requirements may vary substantially between different geographic locations and different trades, but must retain the 30% figure for several reasons. The 30% guideline suggested in the IMO's "Guidelines on the Provision of Adequate Reception Facilities in Ports" (IMO Guidelines) was arrived at through careful deliberation and must be given substantial weight for this criteria. The 30% figure has been used for the

reception facility criteria of the Coast Guard's regulations for exemption from 33 CFR 157.10a (33 CFR 157.304) and has proved to be practical in that context. Additionally, the COTP would not have the discretion to require a larger percentage than specified in the criteria should the circumstances demand. For these reasons, the Coast Guard retains the 30% criteria while recognizing that the COTP must remain open to waivers if the applicant or holder can prove that the requirement is unreasonable or impracticable.

Two commenters requested that oceangoing tankers be excluded from the capacity calculations when they are equipped with segregated ballast (SBT), crude oil washing (COW), or dedicated clean ballast tanks (CBT). Along the same lines, credit in the calculations was requested for back load cargoes. The intent of the proposed regulations was to exclude SBT and CBT, and the text of this section has been changed accordingly. The Coast Guard agrees that oceangoing tankers equipped with COW should also be excluded from the capacity calculations, and has changed the wording of this section to reflect this and relieve this burden. The Coast Guard does not agree that credit in the calculations should be allowed in this section for back load cargoes. The effect of back load cargoes in reducing or eliminating the need for ballast reception facilities will vary substantially from terminal to terminal and must be considered on an individual basis for a waiver by the COTP.

One commenter suggested that this section was unclear. The commenter requested that this section clearly indicate that it concerns only the loading of crude oil into oceangoing tankers. The Coast Guard agrees with the commenter and has changed this section accordingly.

Two commenters suggested that the capacity requirements should be calculated using an average of the deadweight tonnage of the oceangoing tankers serviced by the port or terminal. The Coast Guard disagrees with these comments, because this would be contrary to the intent of MARPOL 73/78 in that it would lead to the Coast Guard certifying as adequate reception facilities that would not have sufficient capacity for many of the oceangoing tankers loading at the port or terminal.

16. *Section 158.220*—a. *General*—Six commenters recommended that the word "transferring" be replaced by the word "loading". The Coast Guard concurs with this recommendation since ports and terminals receiving product oil would be under proposed § 158.230. The words "transfer" and "transferring" were replaced with "load" and "loading", as applicable.

One commenter requested clarification of this section to show that the regulations do not apply to terminals that load exclusively to tank barges that do not ballast or wash cargo tanks while proceeding en route. The Coast Guard agrees with this comment as a matter of policy, since this kind of tank barge would not have any reception needs related to MARPOL 73/78. However, the exclusion was placed in § 158.110. One commenter recommended that the words "have the capacity to" be inserted in the exception for tank barges between "do not" and "ballast". The Coast Guard agrees with the intent of this comment, but has elected to use the following: "tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route".

One commenter requested that bunker fuel be excluded from the 1,000 metric ton per day loading criteria. The Coast Guard agrees with the commenter and the words "or bunker oil" have been added after the words "crude oil" in this section to relieve this burden. A definition of "bunker oil" has been added to § 158.120 to clarify that only "oil loaded into bunker tanks for use as fuel" is under the exception, but bunker oil carried as cargo is not.

Another comment indicated that during heavy traffic periods the required reception facility may be inadequate to meet demand and that provisions need to be incorporated into the regulations which allow for this. The Coast Guard considered this issue in deciding how the average tonnage should be calculated, realizing that many product trades are cyclical in nature. Calculating on the basis of heavy traffic periods would assure that reception facility capacity would almost never be exceeded, but the chronic under-use of such capacity would create a burdensome expense for ports and terminals. The Coast Guard has determined that using a daily average, based on a typical continuous twelve month period, which would reasonably represent the activity at the port or terminal, achieves a fair balance of these factors and is consistent with the intent of MARPOL 73/78 and the Act, and has not so defined the term "daily average".

b. *Section 158.220(c) (Proposed § 158.220(d))*—Three commenters stated that they felt the requirement for reception facilities "to have capacity for receiving a total amount of oily ballast equal to 30% of the deadweight tonnage of the largest tanker using the port" is excessive. Figures were proposed ranging from 10% to 20% in place of the 30% requirement. The Coast Guard has retained the 30% criteria for the reasons given under § 158.210(c), paragraph 15.c of this preamble.

Two commenters suggested that the words "not having SBT or CBT" be added after ". . . multiplied by the average number of tankers, . . ." in the proposal. The Coast Guard agrees with the intent of this comment, and has constructed paragraph (c) to contain this qualification. This comment also applies to § 158.210(c), and resulted in the same construction of the paragraph.

Two commenters recommended that the word "uses" be replaced with "loads at" to indicate that only ships loading at the port or terminal need be included in this calculation. The Coast Guard agrees with the comment and has changed "using" to "loading from" in this section.

One commenter recommended that the word "capable" be inserted before the words "deadweight tonnage" and that "average" be inserted before the words "tanker that uses". The Coast Guard does not agree with this comment, since calculating for an average of oceangoing tankers in this case would result in a reception facility that is inadequate for an unacceptable number of larger-than-average oceangoing tankers.

c. *Section 158.220(d) (Proposed § 158.220(e))*—One commenter recommended that provisions be included which exclude oceangoing tankers equipped with SBT and CBT from the total cargo residue capacity calculations. The Coast Guard does not agree with this comment because oceangoing tankers with SBT or CBT clean cargo tanks and therefore require reception facilities for cargo residues. Another commenter supported the Coast Guard's point of view.

Another commenter recommended the capacity requirements be calculated by taking a percentage of the deadweight tonnage of the largest oceangoing tanker that loads at the port or terminal and multiplying by the average number of such tankers loading at the port or terminal each day, allowing this multiplier to be a fraction less than one. Allowing a fractional average less than one would be contrary to the intent of MARPOL 73/78, as it would result in a Certificate of Adequacy being issued to a port or terminal that did not have reception facilities with sufficient capacity for many of the oceangoing tankers loading at the port or terminal. The Coast Guard has clarified this intent by providing that the deadweight tonnage of the largest oceangoing tanker is multiplied by the daily average of oceangoing tankers only when this

would result in a greater required capacity. This change has also been made to §§ 158.210(c) and 158.220(c), for the same reasons.

A second commenter suggested that this section be omitted or transferred to § 158.240 since cargo residue is only removed when the oceangoing tanker is cleaned in a repair yard. The Coast Guard does not agree with this comment, since tank cleaning, either for a change of product or to maintain product purity, is common in the product trade.

17. *Section 158.230*—a. *General*—One commenter suggested that ports served strictly by barges should be exempted from these requirements because barges do not accumulate the residues and mixtures containing oil that other oceangoing ships do. The Coast Guard agrees with this comment. Those tank barges that do accumulate residues and mixture containing oil only do so through cargo operations and are thus covered under § 158.210 and § 158.220. This section has been modified by adding the words "and those that are used exclusively by tank barges" to the exception. Another commenter recommended that provisions be included to exempt tank barges that do not ballast or wash cargo tanks while proceeding en route. The Coast Guard agrees with this concept but prefers to use the language "tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route", for the reasons given under § 158.220, paragraph 16.a of this preamble. This change has been made to § 158.110.

In order to clarify and simplify the regulations, proposed § 158.230(b) has been combined with § 158.230(a), and proposed §§ 158.230(c) and 158.230(d) have been combined to form § 158.230(b).

b. *Section 158.230(a) (Proposed §§ 158.230(a) and 158.230(b))*—One commenter requested that provisions be included in the regulations which limit the capacity requirements to apply only to terminals which handle ships with tanks for sludge generated from the on board processing of fuel oil and lubricating oil, to be consistent with MARPOL 73/78. This issue was considered under § 158.210(a), paragraph 15.a of this preamble. The reasons for retaining these paragraphs as written are even more forceful for this class of ports and terminals. The majority of oceangoing shipping to and from U.S. ports and terminals is foreign flag. The overwhelming majority of foreign flag oceangoing ships are propelled by diesel engines burning heavy fuel oil. The Coast Guard considers that very few ports and terminals will be served exclusively by oceangoing diesel ships burning lighter fuel oil or oceangoing steamships not accumulating this kind of sludge. In the rare instances when this does happen, the person in charge of the port or terminal can document this fact in applying for a waiver under § 158.150.

18. *Section 158.240*—a. *Section 158.240(c) (Proposed § 158.240(a))*—Seven commenters stated that the criteria for tanker ballast in proposed § 158.240(a) was excessive. Four commenters recommended that volume be left to the contractual relationship between the oceangoing ship and the ship repair yard. One commenter noted a heavy burden placed on smaller ship repair yards by this criteria. Two commenters noted that a capacity of 10,000 barrels had been adequate in the past to cover all contingencies, and one of these noted that this corresponded to 4½% of the deadweight tonnage of the oceangoing tanker considered in the comment. The Coast Guard agrees that the proposed criteria was excessive, but leaving the volume to be settled as a matter of contract would be inconsistent with the intent of the Act. The Coast Guard has combined the ballast criteria (proposed § 158.240(a)) with the wash water criteria (proposed § 158.240(d)) to form a combined criteria of the lesser of 1,500 metric tons (approximately 10,000 barrels) or 4½% of the deadweight tonnage of the largest oceangoing tanker serviced. This represents a reduction from proposed criteria to a level considered reasonable by commenters.

b. *Section 158.240(d) (Proposed § 158.240(e))*—One commenter requested definitions for "black product" and "white product" as used in the proposed paragraph. The Coast Guard will accept the common industry usage of these terms, so there is no need for special definitions for the purposes of these regulations.

19. *Section 158.250—a. Section 158.250(a)*—One commenter stated that the standard discharge connection would be too small to transfer residues and mixtures containing oil within the time criteria of § 158.200. The commenter erroneously concluded that this connection would be used for all residues and mixtures containing oil, including such high volume materials as oily ballast. The connection is only intended for oily bilge water. Using the flow rates provided by the commenter, the connection would be sufficient to transfer between 35 and 58 metric tons per hour. Since most reception facilities will only be required to take 10 to 20 metric tons of oily bilge water within 4 hours to meet the criteria of adequacy, the size of the connection has not been changed.

b. *Section 158.250(b)*—One commenter recommended this paragraph state that hoses and pipes should be compatible with a connection that meets the 33 CFR 155.430 criteria. The Coast Guard considers that the term "attaches to" covers the aspect of compatibility more clearly than the language proposed. Another commenter suggested that the reception facility would be in violation of this criteria if it could not match any and all waste discharge fittings of the oceangoing ship. The commenter has misinterpreted this section. In order to be certified as being adequate, the reception facility must have a connection meeting the same specification that is required for all oceangoing ships of 400 gross tons or more equipped with sludge tanks. Nothing in this section prohibits the reception facility from removing oily bilge water with other fittings or connections if they should prove more convenient than the standard discharge connection.

Summary of Analysis

The costs, benefits, and other impacts of Federal regulation of reception facilities are best viewed in context with the entire MARPOL 73/78 Annex I scheme. When fully implemented, Annex I is expected to reduce the discharge of oil from ships into the sea from the pre-MARPOL 13.41 million barrels (562.8 million gallons) per year to approximately .93 million barrels (39.06 million gallons) per year. Of the 12.48 million barrels (523.74 million gallons) reduction per year worldwide, 25% is attributable to trade in and around U.S. waters for a total of 3.12 million barrels (131.04 million gallons) per year. (The NPRM stated the reduction as being from 280 million gallons per year total to 50 million gallons, and did not allocate a portion of this reduction to trade in and around U.S. waters. The figures were revised upwards to conform with the International Maritime Organization study, *Petroleum in the Marine Environment.*) Counting the value of the oil, and the saved cost of damaged wildlife and of clean-up, this oil is valued at $161.70 per barrel. The total annual benefit will be $504.5 million for oil not discharged in and around U.S. waters. While the costs of various aspects of the Annex I scheme can be attributed to the various implementing regulatory programs with reasonable accuracy, it is virtually impossible to apportion the benefit of reduction of discharge. The principal aspects of the Annex I scheme are as follows:

a. *Ship Equipment and Operational Requirements* (MARPOL 73/78, Annex I, Regulations 13 through 26; 33 CFR Parts 155 and 157). This aspect includes equipment and procedures to minimize the need for discharging oily wastes at sea and to minimize accidental discharges during casualties such as collisions and groundings.

b. *Ship Discharge Limits* (MARPOL 73/78, Annex I, Regulations 9 and 10; 33 CFR Parts 151 and 157). This aspect includes the limits placed on the amount of oily wastes ships can discharge at sea, and the circumstances in which allowable wastes may be discharged.

c. *Reception Facilities* (MARPOL 73/78, Annex I, Regulation 12; 33 CFR Part 158). This aspect includes regulations to minimize the impact of the discharge limits on ships. The intent is to avoid the expense of delay from ships having to arrange for reception facilities on a case-by-case basis, and to avoid ships being placed in the position of having to contravene discharge requirements because of lack of reception facilities.

The analysis below only considers the costs attributable to reception facility regulations, and the benefits directly attributable to this progam. However, some portion of the overall $504,520,170 MARPOL benefit is attributable to reception facilities and will serve to further balance the costs.

Final Regulatory Evaluation

For the NPRM these regulations were considered non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. The Coast Guard has reevaluated these regulations under Executive Order 12498, and they are now considered significant because of the unusual public interest and the unusual interest to other Federal agencies, particularly the EPA. A final regulatory evalution has been prepared and placed in the rulemaking docket and may be inspected or copied as detailed under ADDRESSES above. Copies may also be obtained from LT Davison as detailed under "FOR FURTHER INFORMATION CONTACT" above.

The final evaluation projects costs to the Federal Government and the private sector. These costs include administrative costs associated with the preparation and processing of a Certificate of Adequacy, and the costs of providing reception facilities where they are not presently available. The Coast Guard assumes that two oil loading ports and terminals, one private and one Federal Government, will have to install ballast reception facilities. The Coast Guard further assumes that ten ports will have to purchase and operate tank trucks to serve as mobile reception facilities for oily bilge waste and sludge. Cost information was solicited from commenters on the ANPRM and from independent waste haulers. Based on multiple cost estimates that were received, the high estimate of a total annual cost is $8.9 million. Using averages of cost estimates would result in a total annual cost of $6.2 million. Most of the increase in cost over those estimated in the NPRM, $7.8 million and $5.4 million, is due to the use of revised figures for total number of terminals affected (from 1,348 to 2,403), resulting in increased costs to both the public and the Coast Guard. This revision has resulted from a more detailed analysis of the Maritime Administration figures in conjunction with development of the Port and Environmental Safety Operating Program Plan. Part of the increase is due to revised estimates of the cost to the Coast Guard for enforcement, and the remainder due to inflation. All figures are in 1985 dollars.

Economic benefits could not be accurately quantified; environmental benefits are discussed below. The primary economic benefit will be in the avoidance of delay of oceangoing ships. The Coast Guard projects that an average of 10,938 oceangoing ships will use reception facilities annually. Based on an unweighted average of the demurrage rates provided by one commenter, each average hour of delay for reception facilities results in an overall cost of $8.1 million in ship operating expenses annually. (The $7.5 million figure in the NPRM has been adjusted for inflation.) While the Coast Guard cannot at this time estimate how many hours, on the average, will be saved by Federal regulation of reception facilites, the costs and benefits will balance if an average of 1.09 hours were saved per ship using reception facilities, without counting the overall MARPOL 73/78 benefit attributable to reception facilities. The increase in the 1.09 hour figure from the 1.04 figure noted in the NPRM is due to the increase in estimated costs, while the estimated benefits remained the same except for inflation. This cost/benefit ratio does not take into account the overall MARPOL 73/78 benefit of $504.5 million, some portion of which is attributable to these regulations as noted under "Summary of Analysis".

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, a regulatory flexibility analysis which discusses the impact of the proposal on small entities has been made part of the Final Regulatory Evaluation.

In light of comments to the ANPRM, the Coast Guard, in the NPRM (49 FR 25201), proposed using the Small Business Administration's (SBA) definition of "small business" for SBA loans for concerns engaging in transportation and warehousing (13 CFR 121.3–10(f)). Under this definition, a concern is considered small if its annual receipts do not exceed $1.5 million. Since there were no comments challenging this criteria, the Coast Guard has adopted it.

The Coast Guard does not have any information that will indicate how many of the estimated 2,403 terminals or ports affected by the proposed regulations will be considered small entities under the SBA definition. Some small ports and terminals are affiliated with large corporations having a substantial monetary interest in the cargo while others are independent contractors for wharfage and warehousing. For this reason the analysis was limited to expected impact on an individual small port or terminal. For purposes of meeting the Regulatory Flexibility Act, the Coast Guard assumes that a "substantial" number of small entities will be affected.

The Coast Guard expects that many small entities will either use existing mobile reception facilities or will be able to use reception facilities located elsewhere with a waiver under § 158.150. Costs to small entities will consist of the administrative costs of application for a Certificate of Adequacy. In many cases these costs will be substantially reduced, since many small entities will combine their efforts and apply as a port. The cost of this one-time effort is expected to be $843.00 per small entity, and is not considered to be significant. (The increase from the figure of $780.00 in the NPRM results from inflation in updating to 1985 dollars.)

Paperwork Reduction Act

This rulemaking contains information collection requirements in the following rules: Sections 151.09, 158.140, 158.150, 158.165, and 158.190. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Section 151.09 has been assigned RCS/OMB number 2115–0544, and §§ 158.140, 158.150, 158.165 and 158.190 have been assigned RCS/OMB number 2115–0543. Due to changes in analysis discussed above, primarily in the number of terminals estimated to be covered by the

regulations, the Coast Guard has requested a change to RCS/OMB number 2115–0543. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

The Coast Guard is developing a form which will combine the Certificate of Adequacy, the application required under § 158.140, and work sheets for determining adequacy of reception facilities. The intent of this form is to reduce the paperwork burden on both the public and the Coast Guard. The applicant would fill out the application and the work sheets, and the COTP would fill in and issue the Certificate of Adequacy. The Coast Guard is considering mandating the use of the application part of this form, in which case an NPRM will be published proposing a change to § 158.140 and allowing the public an opportunity to comment. The form will remain optional until such a change is made final. Until that time the form will be available from the COTP, but applicants may satisfy the requirements of § 158.140 in any format they choose as long as they supply the required information.

The form is appended as an Appendix A to this rulemaking, and the public is invited to submit their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Impact

As noted under **Summary of Analysis**, other laws and regulations restrict the amount of waste that can be discharged into the ocean, and require that wastes not legally discharged be retained for disposal ashore. Implementation of MARPOL 73/78 Regulation 12 formalizes the indirect requirement that shore reception facilities be provided in order for ships to comply with the discharge restrictions. The regulations will not change the demand for reception facilities because they will neither reduce the generation of oily waste nor further restrict discharges to the ocean. They will not affect the type of volume of oily waste coming ashore for processing and disposal.

The regulations will affect the locations where these wastes come ashore since, under the status quo, ports might not make reception facilities available just because of a market demand. Without the regulations ship wastes would be concentrated at ports where reception facilities are already available and at those where they will be provided in response to market demand. As to the environmental significance of this effect, one commenter to the ANPRM indicated that industrialized areas are already overloaded with waste disposal problems, while several others thought that the industrialized ports will be better equipped to handle wastes than remote ports. The Coast Guard estimates that approximately 400,000 metric tons of oily wastes might be dispersed to local reception facilities under these regulations. However, the Coast Guard considers that this dispersal will be environmentally neutral since oily wastes can be readily transported, and disposed of or recycled.

As noted under **Summary of Analysis**, above, the proposed reception facility regulations are part of the overall MARPOL 73/78 scheme which is expected to result in a net reduction of 3.12 million barrels (131.4 million gallons) per year of oily wastes discharged in and around U.S. waters. As further noted under **Summary of Analysis**, this estimate represents the part attributed to U.S. trade of a worldwide reduction from 13.41 million barrels (562.8 million gallons) per year to approximately .93 million barrels (39.06 million gallons) per year. The NPRM stated the reduction as being from 280 million gallons per year total to 50 million gallons, and did not allocate a portion of this reduction to trade in and around U.S. waters. The figures were revised upwards to conform with the International Maritime Organization study, *Petroleum in the Marine Environment*. While it is impractical to accurately apportion the amount of this reduction attributable to reception facility regulation, the Coast Guard considers that this environmental benefit more than compensates for any negative environmental impact that might be attributed to this regulatory program.

An environmental assessment and a finding of no significant impact have been prepared and are available as detailed under **"ADDRESSES"** above.

BILLING CODE 4910-14-M

Appendix A.—Certificate of Adequacy and Optional Application Form

U.S. Department of Transportation
U.S. Coast Guard
CG-5401 (7-85)

CERTIFICATE OF ADEQUACY
FOR
RECEPTION FACILITIES

THIS CERTIFIES THAT _____
(TERMINAL/PORT)
HAS FACILITIES ADEQUATE TO RECEIVE RESIDUES AND MIXTURES CONTAINING
_____
_____
_____
(OIL OR CHEMICAL OR GROUP OF CHEMICALS)

FROM OCEANGOING SHIPS, AS REQUIRED BY THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL OF 1978 RELATING THERETO (MARPOL 73/78), THE ACT TO PREVENT POLLUTION FROM SHIPS, AND ASSOCIATED U.S. REGULATIONS IN 33 CFR 158.

THIS CERTIFICATE IS ISSUED PURSUANT TO AN APPLICATION DATED _____, A COPY OF WHICH IS ATTACHED TO, AND IS A PART OF, THIS CERTIFICATE. EACH TERMINAL LISTED IN THE APPLICATION SHALL MAINTAIN A COPY OF THIS CERTIFICATE AVAILABLE FOR INSPECTION BY COAST GUARD PERSONNEL AND THE MASTER, PERSON IN CHARGE OR AGENT OF ANY SHIP, USING OR INTENDING TO USE, THE TERMINAL.

TERMINALS AND PORTS REQUIRED TO HAVE AN OPERATIONS MANUAL FOR OIL TRANSFERS DESCRIBED IN 33 CFR 154.300 SHALL ATTACH A COPY OF THIS CERTIFICATE, INCLUDING ANY WAIVERS, TO THAT OPERATIONS MANUAL.

THE TERMINAL/PORT PERSON IN CHARGE IDENTIFIED IN THE ATTACHED APPLICATION SHALL NOTIFY THE U.S. COAST GUARD CAPTAIN OF THE PORT (COTP) IN WRITING WITHIN 10 DAYS AFTER ANY OF THE RECEPTION FACILITY INFORMATION SUPPLIED UNDER 33 CFR 158.140(b)(4) CHANGES. THE TERMINAL/PORT PERSON IN CHARGE SHALL NOTIFY THE U.S. COAST GUARD COTP IN WRITING WITHIN 30 DAYS AFTER ANY OF THE TERMINAL/PORT INFORMATION SUPPLIED UNDER 33 CFR 158.140(b)(1)-(3) CHANGES.

THE TERMINAL/PORT OWNER, OPERATOR, OR PERSON IN CHARGE SHALL ENSURE THAT THE RECEPTION FACILITY DOES NOT OPERATE IN A MANNER THAT VIOLATES ANY REQUIREMENT OF 33 USC 1901-1911 OR REGULATIONS IN 33 CFR 158 OR BE LIABLE FOR CIVIL PENALTIES OF UP TO $25,000.

THIS CERTIFICATE IS VALID UNLESS SUSPENDED OR REVOKED AT WHICH TIME IT SHALL BE PROMPTLY RETURNED TO THE U.S. COAST GUARD COTP.

SIGNATURE OF CAPTAIN OF THE PORT _____

TYPED NAME OF CAPTAIN OF THE PORT _____

COTP ZONE _____ DATE _____
PHONE _____ ( )

THE FOLLOWING WAIVERS TO THIS CERTIFICATE OF ADEQUACY ARE GRANTED. THESE WAIVERS SHALL BE ATTACHED TO AND ARE A PART OF THIS CERTIFICATE.

WAIVER DESCRIPTION	DATE

INSPECTION ENDORSEMENT

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5401A (8-85)

APPLICATION FOR CERTIFICATE OF ADEQUACI
FOR
RECEPTION FACILITIES

1. General. The United States as a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) is required by Annex I and the Act (33 USC 1901) to issue certificates to reception facilities verifying their adequacy to receive oily waste from ships. Regulations implementing the United States waste reception facility program are in 33 CFR 158.

2. The Certificate of Adequacy remains valid until suspended or revoked.

3. Upon suspension or revocation a Certificate of Adequacy shall be promptly returned to the issuing U.S. Coast Guard Captain of the Port (COTP).

4. The Application, as submitted, shall be permanently attached to and become a part of the Certificate of Adequacy upon issuance.

5. A copy of the Certificate of Adequacy with the Application attached shall be available at each port and terminal to which it applies and shall be available for inspection by Coast Guard personnel and the master, person in charge or agent of a oceangoing ship using or intending to use the reception facility.

6. A copy of the Certificate of Adequacy shall be attached to the operations manual for marine oil transfer facilities described in 33 CFR 154.300.

7. The terminal/port person in charge identified in the Application shall notify the U.S. Coast Guard Captain of the Port (COTP) in writing within 10 days after any of the reception facility information supplied under 33 CFR 158.140(b)(4) changes. The terminal/port person in charge shall notify the U.S. Coast Guard COTP in writing within 30 days after any of the terminal/port information supplied under 33 CFR 158.140(b)(1)-(3) changes.

8. Civil Penalties. A person who after notice and an opportunity for a hearing, is found:

   a. to have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

   b. to have violated the Act to Prevent Pollution from Ships, or the regulations issued thereunder, shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

INSTRUCTIONS FOR COMPLETING
THE CERTIFICATE OF ADEQUACY (COA) APPLICATION

The following instructions for individual line items are provided to assist in completing the Application for a Certificate of Adequacy (COA). If you have any questions or need assistance in completing the Application, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the Application is provided in 33 Code of Federal Regulations Part 158 (33 CFR 158).

1.A. Indicate terminal if you are applying as a single terminal or indicate port if you are applying as a group of terminals. Do not mark "COTP Designated Port," unless you have a letter from the COTP with such a designation. COTP designation of a facility or an area as a port is for unusual situations. If you have a question as to whether COTP designation as a port applies to your situation, contact the COTP for your area.

1.C.(1) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization by which the group of terminals is legally known.

1.C.(3) Enter the name of a person authorized to act in behalf of the terminal or port.

1.C.(5) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization of which the person in charge is a member.

1.D.(1) Those applying as terminals do not have to complete this section, since the information is the same as in 1.C. Ports are to provide this information for each of the terminals indicated in 1.B.

2.A.(1) Enter the company or corporation name of the reception facility.

2.A.(5) Check as many of the types of reception facilities as may be used.

3.A. Enter the value as calculated on the Coast Guard optional worksheet line "A" or other calculation sheet.

3.B. Enter the value as calculated on the Coast Guard optional worksheet line "B" or other calculation sheet. Calculate from vessel traffic at the terminal/port for the last 12 months.

3.C. Describe the waste the reception facility can receive. Enter "oil" for all types of oily waste.

3.D. Describe the ship types or principal trades, e.g., crude tankers, product tankers, container ships, grain ships, fishing vessels, etc.

3.E. Enter a value based upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. Oily ballast discharge rates may be based on discharging through more than one connection if all of the vessels and reception facilities have this capability.

3.F. Enter a value based upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections.

FORM A
APPLICATION FOR A RECEPTION FACILITY
CERTIFICATE OF ADEQUACY
FOR OIL

1. PARTICULARS OF TERMINAL OR PORT

A. APPLYING AS (Mark one): ___ Terminal ___ Port ___ COTP Designated Port

B. NUMBER OF TERMINALS TO WHICH THIS APPLICATION APPLIES: _____

C. (1) NAME OF TERMINAL/PORT
(2) ADDRESS OF TERMINAL/PORT

(3) NAME OF TERMINAL/PORT PERSON IN CHARGE
(4) TITLE/POSITION
(5) ORGANIZATION
(6) OFFICE PHONE NUMBER ( )

D. INDIVIDUAL TERMINAL INFORMATION: If applying as a port, list the information indicated for each terminal in the port. If more space is needed, continue on a separate sheet and attach to the back of the Application. Signature of person in charge of terminal acknowledges that terminal agrees and consents to being considered as a member of the port, described in section 1, for the purposes of reception facilities. Complete the terminal name, location, etc. below.

(1) a. NAME OF TERMINAL
b. ADDRESS OF TERMINAL

c. NAME/TITLE PERSON IN CHARGE

d. OFFICE PHONE NUMBER ( )

e. SIGNATURE TERMINAL PERSON IN CHARGE

(2) a. NAME OF TERMINAL
b. ADDRESS OF TERMINAL

c. NAME/TITLE PERSON IN CHARGE

d. OFFICE PHONE NUMBER ( )

e. SIGNATURE TERMINAL PERSON IN CHARGE

2. PARTICULARS OF RECEPTION FACILITY. Enter information for each reception facility used by the terminal/port. If necessary, continue on a separate sheet and attach to the back of the Application.

A. (1) NAME OF RECEPTION FACILITY _____
(2) ADDRESS _____

(3) NAME/TITLE PERSON IN CHARGE _____

(4) OFFICE PHONE NUMBER _____ ( )

(5) TYPE OF RECEPTION FACILITY: Check those that apply.

FIXED ___ MOBILE: Tank Truck ___ Tank Barge ___ Other ___
(Describe other: _____)

3. RECEPTION AND TRANSFER REQUIREMENTS:

A. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY: (metric tons) _____

B. ESTIMATED DAILY CAPACITY REQUIREMENT OF TERMINAL/PORT: (metric tons) _____

C. TYPES OF WASTE THE RECEPTION FACILITY CAN RECEIVE: _____

D. SHIP TYPES OR PRINCIPAL TRADES OF SHIPS VISITING TERMINAL(S): _____

E. OILY BALLAST WASTE TRANSFER RATE (GPM): _____

F. ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE (GPM): _____

G. RECEPTION FACILITY CAN RECEIVE ALL THE OILY BALLAST FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 10 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

H. RECEPTION FACILITY CAN RECEIVE OTHER OILY RESIDUES AND MIXTURES FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 4 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

I.1. RECEPTION FACILITIES FOR OIL WASTE WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

J. OILY WASTE WILL BE TRANSFERRED PRIOR TO SHIP LEAVING SHIP REPAIR YARD. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE TERMINAL/PORT PERSON IN CHARGE _____
PRINTED OR TYPED NAME OF PERSON IN CHARGE _____
DATE SIGNED _____

RECEPTION FACILITY INFORMATION SHEET

•••••••••• THIS PAGE FOR COMPLETION BY U.S. COAST GUARD ••••••••••

COAST GUARD COTP COMPLETE THE FOLLOWING INFORMATION AND FORWARD TO DISTRICT (m) FOR QUARTERLY SUBMISSION TO COMMANDANT (G-MPE-3):

COTP ISSUING CERTIFICATE OF ADEQUACY _____

NAME OF TERMINAL/PORT _____

LOCATION OF TERMINAL/PORT (City/State) _____

NAME AND PHONE NUMBER OF PERSON IN CHARGE _____

( ) _____

TYPE OF WASTE THE RECEPTION FACILITY CAN RECEIVE _____

CAPACITY OF RECEPTION FACILITY (metric tons) _____

OILY BALLAST WASTE TRANSFER RATE (GPM) _____

ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE (GPM) _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5401A (7-85)

WORKSHEET FOR A CERTIFICATE OF ADEQUACY FOR RECEPTION FACILITIES

Instructions for completing the Worksheet

The following instructions for individual line items are provided to assist in completing the worksheet for a Certificate of Adequacy (COA) Application. If you have any questions or need assistance in completing the worksheet, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the worksheet are contained in 33 Code of Federal Regulations Part 158 (33 CFR 158.120).

Reception Facility Section: This section consisting of line items "A" through "R" is for calculating the estimated capacity of the proposed reception facilities. Those values which require calculation are entered in boxes with the applicable formula printed below.

"A" Enter a value based upon receiving oily ballast through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. If more than one mobile reception facility is used, enter the transfer rate of the slowest mobile reception facility.

"R" Enter a value based upon receiving oily residues and mixtures through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. If more than one mobile reception facility is used, enter the transfer rate of the slowest mobile reception facility. Discharge rates may be based on discharging through more than one connection, if all of the vessels and reception facilities have this ability.

"P" to "R2" Enter data for the types (fixed, tank truck, barge, other) of reception facilities to receive oily waste as appropriate. The types completed should correspond to the entry in 2.A.(5) of the COA Application. Enter estimates of time requirements to the nearest tenth of an hour, e.g. 3.1 hours.

"P" Enter the daily amount of waste that can be removed from the storage tanks by processing or by transfer to a processing or disposal facility.

"F" If more than one mobile tank truck reception facility is used, enter the number of tank trucks available.

"L" If more than one mobile barge reception facility is used, enter the number of barges available.

"R1" and "R2" If the reception facility used is not described above, describe the reception facility and show the calculations for daily capacity and transfer time requirements (attach additional sheets if necessary).

Vessel Waste Section: This section consisting of line items "S" through "AX" is for calculating the estimated capacity of the terminal or port in accordance with the regulations in 33 CFR 158. It is divided into four parts, (I) through (IV). Part (I) is for terminals loading crude oil; Part (II) is for terminals loading oil (other than crude oil) in capacities of 1000 metric tons or more per day; Part (III) is for other terminals loading oceangoing ships; and Part (IV) is for ship repair yards.

Applicants applying as terminals should complete the parts that describe their operation. It may be necessary to complete more than one part. For example a terminal servicing both crude carriers and product carriers would complete Part (I) and either Part (II) or (III) depending upon the volume of product transferred per day.

Ports which have more than one terminal in each category are to enter consolidated information for each part. For example if a port has three terminals loading crude oil, the number of oceangoing crude tankers visiting the port per year reported in section "S" would be equal to the sum of the crude tankers visiting each of the terminals.

The procedures for calculating the estimated reception facility capacities are based upon the specific values and requirements in 33 CFR 158. Applicable conversion factors are as follows:

1 metric ton equals 336 gallons
1 metric ton equals 8 barrels
1 metric ton equals 1 DWT deadweight ton

For lines "U" and "AC" do not include crude tankers equipped with dedicated clean ballast or segregated ballast tanks or non-self propelled tank barges that do not ballast or wash cargo tanks while proceeding enroute. Base values for the average number of ships visiting the terminal on a typical continuous 12 month period. Data should be available to support entries.

Adequacy Criteria Section: This section consisting of line items "AY" through "BM" compares the capacities, transfer rates and ability to provide timely reception facility service to the regulatory requirements. The Certificate of Adequacy cannot be issued unless the following conditions are met for terminals and ports other than ship repair yards.

"AZ" is less than "AY";
"BB" is less than 10 hours;
"BF" is less than 4 hours;
"BG" is N/A; and
"BH" is YES.

For ship repair yards the COA cannot be issued unless the following conditions are met:

"AZ" is less than "AY";
"BG" is YES; and
"BH" is N/A.

NOTE: Sections "BB" and "BF" are not applicable to ship repair yards.

For ship repair yards the COA cannot be issued unless the following conditions are met:

"AZ" is less than "AY";

"BG" is YES; and

"BH" is N/A.

NOTE: Sections "BB" and "BF" are not applicable to ship repair yards.

WORKSHEET FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR OIL

NAME OF TERMINAL/PORT _____

ADDRESS _____

RECEPTION FACILITY CAPACITY AND TRANSFER RATE:

A MAXIMUM TRANSFER RATE CAPABILITY FOR OILY BALLAST. _____ GALLONS PER MINUTE

B MAXIMUM TRANSFER RATE CAPABILITY FOR ALL OTHER OILY RESIDUE AND MIXTURES. _____ GALLONS PER MINUTE

C RECEPTION FACILITIES WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. _____ YES OR NO

CALCULATION OF RECEPTION FACILITY'S DAILY CAPACITY;

FIXED RECEPTION FACILITIES:

D WASTE PROCESSING CAPABILITY OR TRANSFER FROM STORAGE FACILITY. _____ METRIC TONS PER DAY

MOBILE TANK TRUCK RECEPTION FACILITIES:

E NUMBER OF TANK TRUCKS AVAILABLE. _____ NO. OF TRUCKS

IF TANK TRUCKS ARE NOT OWNED, LIST THE NAME AND ADDRESS OF COMPANY(S) WHICH IS/ARE RENTING, LEASING, OR OTHERWISE PROVIDING THEM:

_____

_____

_____

_____

F CAPACITY OF SMALLEST TANK TRUCK. _____ GALLONS

G TIME REQUIRED TO FILL TANK TRUCK WITH OILY BALLAST. [ ] HOURS

$$\frac{\text{"F"}}{\text{("A" X 60)}}$$

H TIME REQUIRED TO FILL TANK TRUCK WITH OTHER OILY MIXTURES. [ ] HOURS

$$\frac{\text{"F"}}{\text{("B" X 60)}}$$

I ESTIMATED TIME BETWEEN FILLING OF TANK TRUCKS: i.e. TIME FOR TANK TRUCK TO OFFLOAD AND RETURN, TIME FOR MAKING CONNECTIONS TO SHIP, etc. _____ HOURS

J ENTER THE VALUE FROM LINE "G" OR "H" WHICHEVER IS GREATEST. [ ] HOURS

K DAILY CAPACITY OF MOBILE TANK TRUCK RECEPTION FACILITIES. [ ] METRIC TONS PER DAY

$$\frac{\text{(0.07 X "E" X "F")}}{\text{("J" + "I")}}$$

BARGE RECEPTION FACLITY CAPACITY:

L NUMBER OF BARGES AVAILABLE. _____ NO. OF BARGES

IF BARGES ARE NOT OWNED, LIST THE NAME AND ADDRESS OF COMPANY(s) RENTING LEASING, OR OTHERWISE PROVIDING THEM.

_____

_____

_____

_____

_____

M CAPACITY OF SMALLEST BARGE. _____ GALLONS

N TIME REQUIRED TO FILL BARGE WITH OILY BALLAST MIXTURES. [ ] HOURS

"M" / "A" X 60

O TIME REQUIRED TO FILL BARGE WITH OTHER OILY RESIDUES. [ ] HOURS

"M" / "B" X 60

P IF ONLY USING 1 BARGE, ESTIMATE OF LONGEST TIME REQUIRED TO OFFLOAD AND RETURN TO TERMINAL. IF MORE THAN ONE BARGE ENTER 0. _____ HOURS

Q THE VALUE FROM LINE "N" OR "O" WHICHEVER IS GREATER. [ ] HOURS

R DAILY CAPACITY OF BARGE RECEPTION FACILITIES. [ ] METRIC TONS PER DAY

0.07 X "M" / ("Q" + "P")

OTHER RECEPTION FACILITY CAPACITY:

DESCRIBE COMPETELY AND SHOW CALCULATIONS USED TO ARRIVE AT THE DAILY CAPACITY IN METRIC TONS AND DAILY AVERAGE TRANSFER RATE IN GPM:

_____

_____

_____

_____

R1 [ ] METRIC TONS PER DAY **R2** [ ] GALLONS PER MINUTE

SIGNATURE OF RECEPTION FACILITY PERSON IN CHARGE _____

PRINTED NAME OF RECEPTION FACILITY PERSON IN CHARGE _____

DATE SIGNED _____

TERMINAL/PORT ESTIMATED RECEPTION FACILITY DAILY CAPACITY REQUIREMENTS

COMPLETE PARTS (I) THROUGH (IV) FOR THE TYPES OF OCEAN GOING SHIPS OR OPERATIONS CONDUCTED AT YOUR TERMINAL OR PORT. FOR EXAMPLE IF YOUR TERMINAL LOADS CRUDE OIL AND PRODUCT OIL MORE THAN 1000 METRIC TONS PER DAY, COMPLETE PARTS (I) AND (II). PORTS SHOULD ENTER THE SUM OF THE OPERATIONS FOR THE TERMINALS CONSIDERED PART OF THE PORT.

(I) TERMINAL/PORT LOADING CRUDE OIL; ESTIMATED RECEPTION FACILITY CAPACITY REQUIREMENTS

S OCEANGOING CRUDE TANKERS VISITING TERMINAL/PORT PER YEAR. _____ NO. OF TANKERS PER YEAR

T OCEANGOING CRUDE TANKERS VISITING TERMINAL/PORT PER DAY. [ ] NO. OF TANKERS PER DAY

"S" / 365

U EXPECTED AVERAGE NUMBER PER DAY OF OCEANGOING OIL TANKERS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING EN ROUTE. _____ NO. OF TANKERS PER DAY

V LARGEST OCEANGOING OIL TANKER EXPECTED TO VISIT TERMINAL/PORT THAT IS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ DEADWEIGHT TONS

(NOTE: DEADWEIGHT TONS EQUALS METRIC TONS)

METRIC TONS PER DAY

W SLUDGE ESTIMATED CAPACITY REQUIREMENT (ENTER AT LEAST 10 METRIC TONS). _____

(1 METRIC TON = 1.1 SHORT TONS = 2,200 POUNDS)

METRIC TONS PER DAY

X OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. _____

10 OR ("T" X 2) WHICHEVER IS GREATER

Y OILY BALLAST ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY

0.30 X "V" X "U"

Z TOTAL ESTIMATED CAPACITY REQUIREMENTS FOR TERMINAL/PORT LOADING CRUDE OIL. [ ] METRIC TONS PER DAY

"W" + "X" + "Y"

(II) TERMINAL/PORT LOADING MORE THAN 1000 METRIC TONS OF OIL PER DAY EXCEPT CRUDE OIL OR BUNKER OIL: ESTIMATED DAILY RECEPTION FACILITY CAPACITY REQUIREMENTS.

AA OCEANGOING OIL TANKERS VISITING TERMINAL/PORT PER YEAR _____ NO. OF TANKERS PER YEAR

AB OCEANGOING OIL TANKERS VISTING TERMINAL/PORT PER DAY. [ ] NO. OF TANKERS PER DAY
"AA"
365

AC EXPECTED AVERAGE NUMBER PER DAY OF OCEANGOING OIL TANKERS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ NO. OF TANKERS PER DAY

AD LARGEST OCEANGOING OIL TANKER EXPECTED TO VISIT TERMINAL/PORT IN METRIC TONS, THAT IS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ METRIC TONS
(NOTE: DEADWEIGHT TONS EQUALS METRIC TONS)

AE CARGO CAPACITY OF LARGEST TANKER USING THE TERMINAL/PORT IN METRIC TONS. _____ METRIC TONS

AF AMOUNT OF OIL, EXCEPT CRUDE OIL, LOADED TO TANKERS THAT BALLAST OR WASH CARGO TANKS EN ROUTE IN METRIC TONS PER YEAR. _____ METRIC TONS PER YEAR

AG AMOUNT OF OIL, EXCEPT CRUDE OIL, LOADED PER DAY. [ ] METRIC TONS PER DAY
"AF"
365

AH SLUDGE CAPACITY ESTIMATED REQUIREMENT. (ENTER AT LEAST 10 METRIC TONS). _____ METRIC TONS PER DAY

AI OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY
10 OR ("AB" X 2) WHICHEVER IS GREATER

AJ OILY BALLAST CAPACITY ESTIMATED REQUIREMENT. [ ] METRIC TONS PER DAY
0.30 X "AD" X "AC"

AK CARGO RESIDUE CAPACITY ESTIMATED REQUIREMENT. [ ] METRIC TONS PER DAY
0.002 X "AE" X "AB"

AL TOTAL ESTIMATED CAPACITY REQUIREMENTS FOR TERMINAL/PORT LOADING MORE THAN 1000 METRIC TONS OF OIL, EXCEPT CRUDE OIL AND BUNKER OIL. [ ] METRIC TONS PER DAY
"AH" + "AI" + "AJ" + "AK"

(III) OTHER TERMINALS AND PORTS RECEIVING OCEANGONG SHIPS, EXCEPT SHIP REPAIR YARDS; ESTIMATED DAILY RECEPTION FACILITY CAPACITY REQUIREMENTS.

AM OCEAN GOING SHIPS VISITING TERMINAL/PORT PER YEAR. _____ NO. OF TANKERS PER YEAR

AN OCEAN GOING SHIPS VISITING TERMINAL/PORT PER DAY. [ ] NO. OF TANKERS PER DAY
"AM"
365

AO SLUDGE ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY
"AN" OR 10 WHICHEVER IS GREATER

AP OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY
10 OR ("AN" X 2) WHICHEVER IS GREATER

AQ TOTAL ESTIMATED CAPACITY FOR OTHER TERMINALS AND PORTS RECEIVING OCEANGOING SHIPS, EXCEPT SHIP REPAIR YARDS — [ ] "AO" + "AP" — METRIC TONS PER DAY

(IV) SHIP REPAIR YARD; ESTIMATED RECEPTION FACILITY CAPACITY

AR BUNKER CAPACITY OF LARGEST OCEANGOING SHIP SERVICED — _____ — METRIC TONS

AS METRIC TONS OF LARGEST TANKER SERVICED — _____ — METRIC TONS

AT ESTIMATED CAPACITY REQUIREMENT FOR OILY BUNKER BALLAST. — [ ] 0.08 X "AR" — METRIC TONS

AU ESTIMATED CAPACITY REQUIREMENT FOR SLUDGE AND SOLIDS FROM CARGO TANKS. — [ ] 0.001 X "AS" — METRIC TONS

AV ESTIMATED CAPACITY REQUIREMENT FOR OILY BALLAST WATER AND WASH WATER FROM INPORT WASHING OF CARGO TANKS. — [ ] 1500 OR (0.045 X "AS") WHICHEVER IS LESS — METRIC TONS

AW LIQUID CARGO RESIDUES — [ ] — METRIC TONS

"AS" TIMES .01 IF LARGEST OCEANGOING TANKER IS A CRUDE CARRIER

"AS" TIMES .005 IF LARGEST OCEANGOING TANKER IS A BLACK PRODUCT* CARRIER

"AS" TIMES .002 IF LARGEST OCEANGOING TANKER IS A WHITE PRODUCT* CARRIER

SEE DEFINITIONS

AX TOTAL ESTIMATED CAPACITY REQUIRED FOR SHIP REPAIR YARD. — [ ] "AT" + "AU" + "AV" + "AW" — METRIC TONS

COMPARISON OF RECEPTION FACILITY CAPACITY TO TERMINAL/PORT RECEPTION CAPACITY REQUIREMENTS.

AY TOTAL RECEPTION FACILITY ESTIMATED DAILY CAPACITY. *enter this value on line 3.a. of the COA application* — [ ] "D" + "K" + "R" + ("R1" IF APPLICABLE) — METRIC TONS PER DAY

AZ TOTAL ESTIMATED DAILY CAPACITY REQUIRED FOR TERMINAL/PORT. *enter this value on line 3.b. of the COA application* — [ ] "Z" + "AL" + "AO" + "AX" — METRIC TONS PER DAY

IF "AZ" IS LARGER THAN "AY", THEN ADDITIONAL RECEPTION FACILITY CAPACITY IS REQUIRED

WASTE TRANSFER RATE REQUIREMENTS

OILY BALLAST TRANSFER RATE REQUIREMENT

BA DAILY OILY BALLAST ESTIMATED CAPACITY. — [ ] "Y" OR "AJ" WHICHEVER IS LARGER — METRIC TONS PER DAY

BB TIME REQUIRED TO TRANSFER OILY BALLAST. — [ ] "BA" / (.18 X "A") — HOURS

IF THIS VALUE IS LARGER THAN 10 HOURS, THEN THE RECEPTION FACILITY'S TRANSFER RATE FOR OILY BALLAST IS INADEQUATE.

ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE REQUIREMENT

BC SLUDGE AND BILGE WASTES FROM TERMINALS SERVICING CRUDE OIL TANKERS. — [ ] "W" + "X" — METRIC TONS PER DAY

BD SLUDGE AND BILGE WASTES GENERATED FROM TERMINALS LOADING MORE THAN 1000 METRIC TONS OF OIL PER DAY EXCEPT CRUDE OR OIL. — [ ] "AH" + "AI" + "AK" — METRIC TONS PER DAY

BE GREATEST AMOUNT OF BILGE AND SLUDGE WASTES THAT CAN BE EXPECTED TO BE GENERATED. — [ ] "BC", "BD" OR "AP" WHICHEVER IS LARGER — METRIC TONS PER DAY

BF ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE REQUIREMENT _____ HOURS

"BE"
(0.16 X "B")

IF VALUE IS GREATER THAN 4 HOURS, THE TRANSFER RATE FOR OTHER OILY RESIDUES AND MIXTURES IS INADEQUATE

BG OILY WASTE WILL BE TRANSFERED PRIOR TO THE SHIP LEAVING THE SHIP REPAIR YARD. _____
YES, NO OR N/A

IF THE ANSWER IS NO, THEN OTHER ARRANGEMENTS MUST BE MADE

BH RECEPTION FACILITIES FOR OIL WASTE WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. _____
YES, NO OR N/A

IF THE ANSWER IS NO, THEN THIS RECEPTION FACILITY DOES NOT MEET THE MINIMUM REQUIREMENTS

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS WORKSHEET FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF PERSON COMPLETING WORKSHEET _____

PRINTED OR TYPED NAME OF PERSON COMPLETING THIS WORKSHEET _____

DATE SIGNED _____

BILLING CODE 4910-14-C

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

In consideration of the preceding, Subchapter O, Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

PART 151—[AMENDED]

1. The authority citation for Part 151 reads as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b), E.O. 11732, 49 CFR 1.46(m).

2. By revising § 151.09(f) to read as follows:

§ 151.09 Control of discharge of oil.

* * * * *

(f) The person who is in charge of an oceangoing ship that cannot discharge oil residues into the sea in compliance with paragraphs (a), (b), (c) or (d) of this section shall ensure that those residues are—

(1) Retained on board; or

(2) Discharged to a reception facility.

If the reception facility is in a port or terminal in the United States, each person who is in charge of each oceangoing tanker or any other oceangoing ship of 400 gross tons or more shall notify the port or terminal, at least 24 hours before entering the port or terminal, of—

(i) The estimated time of day the ship could discharge residues and mixtures containing oil;

(ii) The type of residues and mixtures containing oil to be discharged; and

(iii) The volume of residues and mixtures containing oil to be discharged.

Note.—There are Federal, state, or local laws or regulations that could require a written description of the residues and mixtures containing oil to be discharged. For example, a residue or mixture containing oil might have a flashpoint less than 60°C (140°F) and thus have the characteristic of ignitability under 40 CFR 261.21, which might require a description of the waste for a manifest under 40 CFR Part 262, Subpart B. Occupational safety and health concerns may be covered, as well as evironmental ones.

The notice required in this section is in addition to those required by other Federal, state, and local laws and regulations. Affected persons should contact the appropriate Federal, state, or local agency to determine whether other notice and information requirements, including 40 CFR Parts 262 and 263, apply to them.

* * * * *

3. By adding a new Par' 158 to read as follows:

PART 158—RECEPTION FACILITIES

Subpart A—General

Sec.

158.100 Purpose.
158.110 Applicability.
158.120 Definitions and Acronyms.
158.130 Delegations.
158.140 Applications for Certificates of Adequacy.
158.150 Waivers.
158.160 Issuing the Certificate of Adequacy.
158.163 Reception Facility Operations.
158.165 Certificate of Adequacy: Validity.
158.170 Suspension and Revocation of Certificates of Adequacy: Procedure.
158.180 Denial of Entry.
158.190 Appeals.
158.195 Penalty Procedure.

Subpart B—Criteria for Reception Facilities: Residues and Mixtures Containing Oil.

Sec.

158.200 General.
158.210 Ports and Terminals Loading Crude Oil.
158.220 Ports and Terminals Loading more than 1,000 Metric Tons of Oil other than Crude Oil or Bunker Oil.
158.230 Ports and Terminals other than Ports and Terminals under §§ 158.210, 158.220, and 158.240.
158.240 Ship Repair Yards.
158.250 Standard Discharge Connection.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances [Reserved]

Authority: Sec. 4, 94 Stat. 2298 (33 U.S.C. 1903(b)), 49 CFR 1.46(hh).

Subpart A—General

§ 158.100 Purpose.

This part establishes criteria for determining the adequacy of reception facilities and procedures for certifying that those reception facilities are adequate for receiving residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more.

§ 158.110 Applicability.

This part applies to each port or each terminal in the United States or under the jurisdication of the United States that is used by oceangoing tankers or any other oceangoing ships of 400 gross tons or more, except those ports and terminals that are used only by non-self-propelled—

(a) Tank barges carrying oil in bulk that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route;

(b) Tank barges that are not carrying oil in bulk; or

(c) Barges other than tank barges.

§ 158.120 Definitions and acronyms.

As used in this part:

"Bunker oil" means oil loaded into bunker tanks for use as fuel.

"Captain of the Port" (COTP) means the U.S. Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this chapter.

"Clean ballast" has the same meaning as contained in § 157.03(e) of this subchapter.

"Commandant" means Commandant, U.S. Coast Guard.

"Daily average" means the total number of vessels, or quantity of oil or oily waste, handled over a typical continuous 12 month period, divided by 365.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"MARPOL Protocol" (MARPOL 73/78) stands for the international Convention for the Prevention of Pollution from Ships, 1973, (done at London, November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 (done at London on February 17, 1978).

"Oceangoing ship" has the same meaning as contained in § 151.05(j) of this subchapter.

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL 73/78 and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL 73/78.

"Person" has the same meaning as contained in § 151.05(n) of this subchapter.

"Person in charge" means an owner of, an operator of, or a person authorized to act in behalf of a port or terminal.

Note.—The "person in charge" in this part is not necessarily the same person as the "person in charge" referred to in Parts 154, 155, and 156 of this subchapter (as defined in § 154.105 of this subchapter).

"Port" means—

(a) a group consisting of terminals that elect to be considered a port for the purposes of this part;

(b) a port authority or other organization that elects to be considered a port for the purposes of this part; or

(c) a place or facility that has been specifically designated as a port by the COTP.

"Reception facility" means anything capable of receiving shipboard residues

and mixtures containing oil, that includes, but is not limited to—

(a) fixed piping that conveys wastes from the ship to a storage or treatment system;

(b) tank barges, railroad cars, or tank trucks and other mobile facilities; and

(c) any combination of fixed and mobile facilities.

"Segregated ballast" has the same meaning as contained in § 157.03(r) of this subchapter.

"Ship" has the same meaning as contained in § 151.05(q) of this subchapter.

"Tank barge" has the same meaning as contained in 46 CFR 30.10–65.

"Tanker" means a ship constructed or adapted primarily to carry oil in bulk in the cargo spaces.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note.—A ship repair yard is a terminal by definition. A fixed or floating drilling rig or other platform is not a terminal because it is, by definition, a "ship" under § 151.05(q) of this subchapter.

"The Act" means the Act to Prevent Pollution from Ships (94 Stat. 2297, 33 U.S.C. 1901 *et seq*).

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct an inspection of each reception facility for which an application is submitted under § 158.140 to determine if it meets the requirements of—

(1) MARPOL 73/78; and

(2) subpart B of this part;

(b) After determining that the reception facility passes the inspection under paragraph (a) of this section, issue a Certificate of Adequacy to the applicant;

(c) Grant waivers under § 158.150 that do not violate MARPOL 73/78;

(d) Designate ports; and

(e) Deny entry to each oceangoing tanker and any other oceangoing ship of 400 gross tons or more to each port or terminal not holding a valid Certificate of Adequacy issued by the COTP under this delegation.

§ 158.140 Applications for Certificates of Adequacy.

(a) The person in charge may request the Coast Guard to certify that the port's or terminal's facilities for receiving residues and mixtures containing oil from oceangoing tankers or any other oceangoing ships of 400 gross tons or more are adequate by applying to the COTP of the Zone in which the port or terminal is located.

(b) Each application for a Certificate of Adequacy must be in writing and contain the following:

(1) The name, mailing address, and telephone number of the person in charge.

(2) The geographic location of each terminal.

(3) The types, principal trades, and daily average number of oceangoing tankers and any other oceangoing ships of 400 gross tons or more using each port and terminal.

(4) The following information for each reception facility:

(i) The daily average amount of residues and mixtures containing oil that it can receive.

(ii) A statement indicating whether or not the transfer rate under § 158.200 can be met.

(iii) The name, address, and telephone number of the person who is in charge of the reception facility.

(iv) If the reception facility is not under the control of the person in charge of the port or terminal, a statement from the person who is in charge of the reception facility of the daily average amount of residues and mixtures containing oil that will be accepted from oceangoing ships using the port or terminal.

(5) Any additional information requested by the COTP.

§ 158.150 Waivers.

(a) If the person in charge believes that a requirement in this part is unreasonable or impracticable for the port's or terminal's operations, the person in charge may submit an application for a waiver to the COTP. This application must—

(1) Be in writing; and

(2) Include the—

(i) Reasons why the requirement is unreasonable or impracticable;

(ii) Proposed alternatives that meet MARPOL 73/78; and

(iii) Additional information requested by the COTP.

(b) If the COTP grants a waiver under this section, the waiver—

(1) Is in writing; and

(2) Specifies each alternative that applies and the requirement under this part for which the alternative is substituted.

(c) The waiver issued under paragraph (b) of this section must be attached to the Certificate of Adequacy issued under § 158.160.

§ 158.160 Issuing the Certificate of Adequacy.

(a) After reviewing the application, conducting an inspection, and consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP—

(1) Issues a Certificate of Adequacy to the applicant; or

(2) Denies the application for the Certificate of Adequacy and informs the applicant in writing of the reasons for the denial.

(b) The Certificate of Adequacy shows any waivers that are granted under § 158.150 at issuance.

§ 158.163 Reception facility operations.

(a) Each person in charge and each person who is in charge of a reception facility shall ensure that the reception facility does not operate in a manner that violates any requirement under this part.

(b) A copy of the Certificate of Adequacy must be—

(1) At each port and terminal; and

(2) Available for inspection by the COTP and the master, person who is in charge, or the agent of an oceangoing ship.

(c) Ports and terminals required to have a Coast Guard Operations Manual must have a copy of the Certificate of Adequacy, including any waivers, attached to that operations manual.

§ 158.165 Certificate of Adequacy: Validity.

(a) Each Certificate of Adequacy remains valid unless suspended or revoked under § 158.170.

(b) A Certificate of Adequacy which has been suspended or revoked must be returned to the COTP.

(c) The person in charge shall notify the COTP in writing within 10 days after any of the information supplied under paragraph (b)(4) of § 158.140 changes.

(d) The person in charge shall notify the COTP in writing within 30 days after any of the information supplied under paragraph (b)(1), (b)(2), or (b)(3) of § 158.140 changes.

§ 158.170 Suspension and revocation of Certificates of Adequacy: Procedure.

(a) If the COTP has evidence that the reception facility does not operate in accordance with § 158.163, the COTP notifies the person in charge of the grounds for suspension or revocation. After notification, the COTP may immediately suspend the Certificate of Adequacy if continued operations will result in undue delay to oceangoing tankers or any other oceangoing ships of 400 gross tons or more.

(b) Evidence or arguments for the retention of the Certificate of Adequacy that are submitted to the COTP within thirty days after notice or suspension occurs under paragraph (a) of this section are considered before further action is taken. If the person in charge fails to meet any measures ordered by the COTP, the COTP may do the following:

(1) Suspend or revoke the Certificate of Adequacy.

(2) Initiate civil or criminal penalty action under Subpart 1.07 of this chapter.

(c) The suspension or revocation of the Certificate of Adequacy by the COTP may be appealed under the procedure in § 158.190.

§ 158.180 Denial of entry.

After March 10, 1986, no oceangoing tanker or any other oceangoing ship of 400 gross tons or more, required by Regulation 9 of Annex I of MARPOL 73/78 to retain on board while at sea, oil or oily mixtures, may enter any port or terminal to which this part applies unless—

(a) The port or terminal has a valid Certificate of Adequacy; or

(b) The ship is entering under force majeure.

§ 158.190 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the Coast Guard District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard, Washington, D.C. 20593; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Chief, Office of Marine Environment and Systems issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 158.195 Penalty procedure.

(a) Section 9 of the Act (33 U.S.C. 1908) states:

(a) A person who knowingly violates the MARPOL Protocol, this chapter, or the regulations issued thereunder shall, for each violation, be fined not more that $50,000 or be imprisoned for not more than 5 years, or both.

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol, this chapter, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation; or

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, this chapter, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.

(b) Civil and criminal penalty procedures are in Subpart 1.07 of this chapter.

Subpart B—Criteria for Reception Facilities: Residues and Mixtures Containing Oil.

§ 158.200 General.

(a) Except as allowed in paragraph (b) of this section, the reception facility used to meet Subpart A must—

(1) Be permanently or temporarily located in the port or terminal;

(2) Hold each state, local, and Federal permit and license required by environmental laws and regulations concerning residues and mixtures containing oil; and

(3) Be capable of—

(i) Receiving residues and mixtures containing oil from the ship within 24 hours after notice by that ship;

(ii) Completing the reception of oily ballast from the ship in less than 10 hours after waste transfer operations begin; and

(iii) Completing the reception of other residues and mixtures containing oil in less than 4 hours after the transfer operation begins.

(b) Reception facilities for ship repair yards do not have to meet paragraphs (a)(3)(i) through (a)(3)(iii) of this section, but must be capable of completing transfer of residues and mixtures containing oil from each oceangoing ship before the ship departs from the ship repair yard.

§ 158.210 Ports and terminals loading crude oil.

The reception facility for a crude oil loading port or terminal must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons);

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing tankers using the port or terminal, whichever quantity is greater; and

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading crude oil at the port or terminal that do not have clean ballast tanks (CBT), segregated ballast tanks (SBT), or crude oil washing (COW) meeting Part 157 of this subchapter, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater.

§ 158.220 Ports and terminals loading more than 1,000 metric tons of oil other than crude oil or bunker oil.

The reception facility for an oil loading port or terminal that loads a daily average of more than 1,000 metric tons (1,100 short tons) of oil other than crude oil or bunker oil to oceangoing tankers must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons);

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing tankers using the port or terminal, whichever quantity is greater;

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, at the

port or terminal, that do not have CBT or SBT meeting Part 157 of this subchapter, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater; and

(d) Cargo residue in the amount of 0.2% of the total cargo capacity of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, from the port or terminal, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater.

§ 158.230 Ports and terminals other than ports and terminals under §§ 158.210, 158.220, and 158.240.

Reception facilities for ports and terminals other than those under §§ 158.210, 158.220, and 158.240 of this subpart and those that are used exclusively by non-self-propelled tank barges, must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons), or 1 metric ton (1.1 short tons) multiplied by the daily average number or oceangoing ships using the port or terminal, whichever quantity is greater; and

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing ships using the port or terminal, whichever quantity is greater.

§ 158.240 Ship repair yards.

The reception facility that services oceangoing ships using a ship repair yard must have a capacity for receiving—

(a) An amount of ballast from bunker tanks, and the wash water and residues from the cleaning of bunker tanks and sludge tanks, equal to 8% of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of oily solids from cargo tanks equal to 0.1% of the deadweight tonnage of the largest oceangoing tanker serviced;

(c) An amount of oily ballast water and wash water from in-port tank washing equal to—

(1) 1,500 metric tons (1,650 short tons), or;

(2) 4½% of the deadweight tonnage of the largest oceangoing tanker serviced; and

(d) An amount of liquid cargo residues based on the following percentages of deadweight tonnage of the largest oceangoing tanker serviced:

(1) For crude oil oceangoing tankers, 1%.

(2) For black product oceangoing tankers, 0.5%

(3) For white product oceangoing tankers, 0.2%

§ 158.250 Standard discharge connection.

Each reception facility that received oily bilge water must have a standard discharge connection that—

(a) Meets § 155.430 of this subchapter; and

(b) Attaches to each hose or pipe that removes oily bilge water from oceangoing ships.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances—[Reserved]

Dated: April 3, 1985.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 85–20964 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

Federal Register

Monday
September 9, 1985

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 36

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 36

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations

August 19, 1985.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which establishes minimum academic standards for the basic education of Indian children and national criteria for dormitory situations. The minimum academic standards shall apply to all schools operated by the Bureau of Indian Affairs. The national criteria for dormitory situations shall apply to all Bureau-operated and all Indian controlled contract schools having dormitories.

EFFECTIVE DATE: These regulations shall become effective on or before October 9, 1985.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, D.C. 20245, telephone number (202) 343–4872.

SUPPLEMENTARY INFORMATION: The authority for issuing these rules is Pub. L. 95–561, the "Education Amendments of 1978", and 25 U.S.C. 2003. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary Indian Affairs by 209 DM 8.

On March 23, 1983, the Bureau of Indian Affairs published a proposed rule on the Minimum Academic Standards For The Basic Education Of Indian Children and National Criteria For Dormitory Situations in the Federal Register (48 FR 12312). This rule establishes:

(1) Minimum academic standards for the basic education of Indian children for Bureau-operated schools; and

(2) National criteria for dormitory situations for schools operated by the Bureau of Indian Affairs and Indian-controlled contract schools operating dormitories.

The public was invited to offer comments on the proposed rule on or before May 9, 1983. Seventy-eight public commenters responded on time. All comments were carefully considered. From the 78 public commenters, there were 580 comments on specific sections and 68 comments addressing the larger concerns of education. Each comment was considered by the Office of Indian Education Programs, which accepted, rejected, or adopted a modified version of each comment.

The Bureau's responses to the comments received have been organized first by broad general category and then by subpart. The broad general comments are categorized and responses are provided, then each specific comment is addressed in the section of the proposed regulations to which it relates. Some accepted responses necessitated removing sections or paragraphs of the proposed regulations and adding new sections or paragraphs. In several instances, these changes required redesignating sections. For purposes of consistency, all section numbers appearing in this **SUPPLEMENTARY INFORMATION** portion of the Preamble refer to the proposed regulations as published in the **Federal Register** on March 23, 1983. Each comment is followed by the Bureau's response.

General Comments

Sixty-eight comments addressed under this section are those concerned with the broad areas of Indian education rather than specific sections in the proposed rulemaking.

Comment. One commenter corrected the statement in the Supplementary Information section that said, "Historically, the Bureau of Indian Affairs has not established written Bureau-wide standards for the basic education of Indian Children attending Bureau-operated schools."

Response. The Bureau acknowledges the error in the statement that the Bureau had no educational standards prior to the present proposed standards. The commenter points out correctly that minimum standards had been developed in 1959 and 1961, and housekeeping requirements for boarding and day schools were issued in 1962.

Comment. Four commenters opposed the omission of pre-kindergarten standards from the proposed minimum academic standards.

Response. The Bureau omitted the pre-kindergarten standards based on Pub. L. 95–561 § 1121 which provides only for the establishment of basic academic program standards. The Bureau does not believe pre-kindergarten programs should be considered as a basic program standard.

Comment. Twenty-one commenters focused on issues such as the goals and philosophy of Indian education, degree of local involvement, appropriateness of the proposed standards, discrimination through application of state standards, demands made by the standards, staff certification requirements, and undercutting the role of tribes and local school boards in selecting and developing their own standards.

Response. Many questions were asked about how to improve the education of Indian children. Questions included: What should the philosophy of Indian education be? What standards should be required? Does the degree of local involvement make a difference? The question of appropriateness and similar questions have differing points of view, and even educators cannot agree on many of the answers. The Bureau, in developing the standards, believes the following: To have clear objectives is desirable; to plan is sensible; to coordinate is reasonable; to regulate ensures equal treatment; to follow procedures is to ensure fairness; and to require rules and regulations can help schools become more equitable, efficient, and effective. Furthermore, the intent of these regulations is to establish only the basic minimum requirements and allow the local schools to build on the basic requirements. The basic minimum requirements would allow the Bureau to establish a benchmark for evaluating its educational program. The basic requirements would lay the foundation from which the Bureau can document the progress of its basic programs. That documentation would provide the Bureau of information with which to guide its educational policies.

Comment. Twenty-six commenters addressed issues concerning adequate funding for the implementation of the proposed minimum academic standards and the dormitory criteria and the inadequacy of the Indian School Equalization Program (ISEP) in meeting the standard requirements for small schools.

Response. Upon final publication of this part, Pub. L. 98–46, the technical amendments for the "Education Amendments of 1978" (Pub. L. 95–561), requires the Bureau to revise the Indian School Equalization Program (ISEP) to reflect the cost and funding required to implement the academic standards and dormitory criteria.

Comment. Five commenters recommended that the proposed academic standards and dormitory criteria be placed on hold, withdrawn, or rejected. The commenters believed that: School boards and students should be given a chance for more input; the proposed standards violate the Bureau's education policies; and the standards erode the rights of school boards and tribes.

Response. Sections 1121 and 1122 of Pub. L. 95–561 require the Bureau to consult tribes and develop academic standards and dormitory criteria for Bureau-operated schools. The proposed standards and criteria have undergone four major revisions. The first draft set of standards was developed as a result of information received from 15 field hearings. The second draft was developed by a task force selected from field locations and that draft proposed practical modifications to the first draft. A copy of the second draft was sent to all schools, Indian tribes, tribal organizations, special interest groups and selected Federal and State agencies for their comments. A second task force was established to review the comments, and a third draft was developed. A review of the third draft revealed that many of the standards and criteria as written appeared to limit the authorities of local schools. With this in mind, the Bureau attempted to rewrite the third draft reflecting the concept of local control while keeping within the limits of the law. (The notification process included copies of the proposed standards being mailed to all tribes, schools, and school boards for their comments.) The fourth and present set of standards, as required by law, attempts to develop basic educational standards. Any additional requirements would be at the discretion of the local schools and school boards. The Bureau believes that these standards meet the requirements of the law and are consistent with Bureau policy. The Bureau also believes that any standard published should be reviewed periodically and revised when necessary. The Bureau views the standards as the basic foundation for improving educational opportunities for Indian children.

Comments. Supporting comments were received from 11 persons who agreed with the contents of the proposed rulemaking and believed that the requirements in the standards could be the beginning of improving Indian education in the Bureau of Indian Affairs.

The following section responds to general and specific comments received from the public for each subpart.

Comments and Responses

Subpart A—General Provisions

General Comments. Two commenters suggested that due to the imminent proliferation of computer science education, computer literacy, and computer-assisted instruction, these terms should be defined. *Response.* The Bureau disagreed with this suggestion of including computer science education and computer-assisted instruction since the terms are not used in the standards. However, the term "computer literacy" has been added to the definition section. Two commenters suggested that the term "enrichment" should be inserted and defined in the definition section. *Response.* The term "enrichment" is not used anywhere in the proposed rulemaking, therefore, the suggestion was not accepted. One commenter recommended we include a definition of "practical arts". *Response.* The Bureau disagreed with the recommendation. The definition of "practical arts" is a standard term for a subject content area and will not be defined here. One commenter suggested adding the definition of "counselor". *Response.* We accepted the suggestion and have added the term "counselor" to the definition section. Another commenter recommended nine additional terms which should be included and defined. Each term is addressed in the following response. *Response.* The terms "goals" and "objectives" were accepted and added to the definition section. The term "program level" was rejected. However, the term was modified and the word "program" deleted and replaced with "grade", making the term "grade level", which should clarify its usage. The term "teacher" was accepted and is included under the definition section. The term "interdisciplinary approach" has been removed from the text and therefore will not be defined. The term "grading" is self-explanatory. "Criterion-referenced test" was accepted and added. The terms "textbook" and "student activities" were rejected since they are standard terms and self-explanatory. The term "Homeliving Specialist" was not accepted since it is defined at § 36.71(a).

Section 36.1 Purpose, scope, and information collection requirements.

Comment.—Effective Date of Rule § 36.1(b). Two comments were received. One commenter was concerned that the standards would take effect immediately on the day of publication. The second comment concerned additional costs that might be required for meeting the proposed standards.

Response. The sentence concerning effective date has been amended. Sections 1121 and 1122 and Pub. L. 95–561 require the Secretary to begin implementation of the academic standards and the dormitory criteria immediately upon the date of the their final publication, which in accordance with 5 U.S.C. 553(d) will be 30 days after the date of publication in the Federal Register. As to the additional need for funds to meet the proposed requirements, the Bureau is required by Pub. L. 96–46 to revise the current funding formula to reflect the cost of education based on the establishment of the standards and criteria required by §§ 1121 and 1122 of Pub. L. 95–561.

Section 36.2 Applicability.

Comment.—Bureau-operated Schools § 36.2(a). Two comments were received. One commenter agreed that minimum standards are needed for schools. The other commenter recommended that §§ 36.2(a), 36.20(d), and 36.61 need to be reconciled so they are not fragmented and contradictory.

Response. Paragraph 36.61(a) was amended to state that Bureau-operated schools, if designated by the tribal governing body, do not have to request a waiver but instead could waive, in part or in whole, the standards established under this part. However, that section was further amended to make clear that applicable standards must at all times be in effect for Bureau-operated schools. Paragraph 36.20(d) was removed since states do not have control over Bureau-operated schools. In addition, § 36.2(a) was amended to include parental notification in cases where waiver actions are taken.

Comment.—Contract Schools § 36.2(b). Two commenters disagreed with this paragraph because the minimum academic standards do not apply to Indian-controlled contract schools.

Response. No change was made. Section 1121(e) of Pub. L. 95–561 exempts Indian-controlled contract schools from the academic standards.

Comment.—Dormitory Criteria § 36.2(c). One commenter questioned the rationale for not making the minimum academic standards applicable to Indian-controlled contract schools but making the dormitory criteria mandatory for the same schools.

Response. No change has been made. Section 1122, National Criteria for Dormitory Situations of Pub. L. 95–561, does not include a waiver provision as does § 1121, Academic Standards.

Comment.—Minimum Requirements § 36.2(d). One commenter indicated that it is not clear exactly how the Bureau is to comply with this section of the law. He suggested that at the very least the Bureau should examine existing standards in states with Bureau schools to insure that the proposed standards do not fall below state standards.

Response. The Bureau amended this paragraph by removing everything after the word "program". The standards now reflect the mandate that these standards

will serve as minimum requirements for the regular school educational program.

Comment.—State Education Standards § 36.2(e). Twelve comments were received regarding this paragraph. One commenter suggested that we remove this paragraph entirely and that the Bureau provide standards for teacher performance in place of certification requirements. Two commenters indicated that this paragraph had conflicting requirements and that schools had to either adopt a "Bureau standard" or a "state standard", but not both. Five comments were made that (1) state minimum standards should also be applicable to all levels of administration; (2) state minimum standards should be applicable to Indian-controlled schools; (3) the Bureau should set its own standards above the state minimum standards; (4) there is a question of the feasibility of "accreditation accomplishment" (judgment) by the state; and (5) state standards should not contradict these proposed standards and should be realistic for Bureau schools. One commenter stated that compliance with state standards has historically resulted in poor education for Indian children. One commenter recomended that the state guidelines should be adhered to as they pertain to kindergarten students and number of instructional days. One commenter held that this paragraph is not in complete accordance with section 2001(c) of the statute (Pub. L. 95–561; 92 Stat. 2143). A last commenter held that this rule adopts "state minimum standards for education for Bureau schools in the state in which they are located".

Response. Paragraph (e) of section 36.2 was revised to clarify the language regarding minimum state standards as they apply to Bureau schools. This was corrected by requiring each Bureau school to at least meet the minimum state accreditation standards. The basic intent was to ensure that Bureau standards do not fall below the minimum accreditation standards of the state in which the schools are located.

Section 36.3 Definitions.

Comment.—Agency § 36.3(c). One commenter recommended changing the definition of "Agency" by adding "Area Offices" after the word "Bureau" in the first sentence and rewriting the second sentence to include all types of schools.

Response. The Bureau disagreed with the commenter which amends the definition of "Agency" to include "Area Offices". However, since the types of schools supervised by an Agency in the second sentence are included elsewhere in this part and defined in 25 CFR 39.2(q), this sentence was removed.

Comment.—Area Education Program Administrator § 36.3(f). One commenter indicated that this definition gives the impression that Area Education Programs Administrators are "in charge of Bureau education programs within an Area". Another commenter suggested adding "in some cases, on-reservation day schools".

Response. The Bureau disagreed with the first commenter in that the definition gives the impression that Area Education Programs Administrators are in charge of all Bureau programs in an Area. The definition includes functions in a Bureau Area Office. This does not include Agency responsibilities. However, we did agree with the second commenter and added the phrases "on-reservation day schools" and "which are not served by an Agency Superintendent for Education" for further clarification.

Comment.—Basic Academic Skills § 36.3(h). One commenter indicated that this definition is circular and no clear distinction is readily apparent between "basic academic skills" and "basic education". It was also suggested that the term "basic academic skills" be removed here and added in the term "basic education".

Response. We disagreed. However, the definition of "basic academic skills" has been amended to emphasize the mastery of school work or other activities (e.g., proficiency in planning and investigating, operational techniques, comprehension, organization, execution, remembrance, and application of knowledge to acquire a desired result).

Comment.—Basic Education § 36.3(i). Two comments were received. One commenter suggested that the term "basic education" should include meeting regional accreditation requirements. The other commenter questioned the meaning of "basic education" and whether it included core subjects or core curriculum.

Response. Basic education is usually defined as those components or subject matters that are essential for functioning in society. We disagreed with the comments because the standards define basic education as school subjects which are essential for functioning in society and because the regional accreditation definition goes beyond this definition. Regarding the comment whether basic education definition includes core subjects or core curricula, basic education includes core subjects that are make up the instructional program. No change was made.

Comment.—Staff Certification § 36.3(k). One commenter asked if the Administration would support a policy for all teachers (not just contract personnel) becoming state certified.

Response. Pub. L. 95–561 requires state certification of contract educators. Currently, a review is underway in reference to certification requirements for status quo employees. No change was made since personnel requirements are not included in these proposed standards.

Comment.—Competency § 36.3(1). Two commenters recommended that this definition be reworded because competency is not just any level of mastery.

Response. The definition was amended by inserting the phrase "a specified level of mastery" after the word "or" and removing the last phrase "in a given course of study".

Comment.—Education Media Specialist § 36.3(s). One commenter indicated that the definition "Educational media specialist" is circular and the term appears self-explanatory.

Response. The Bureau agreed with the comment, and the definition "Educational media specialist" has been removed.

Comment.—Exceptional Child Program § 36.3(t). One commenter recommended that standards be established for the "Exceptional Child Program" and included as part of these standards.

Response. Standards for the Exceptional Child Program are scheduled to be published as part of the Bureau's "Special Education Program" in the near future. Therefore, the recommendation was not accepted; however, this definition has been redesignated as § 36.3(w).

Comment.—Formative Evaluation § 36.3(v). One commenter suggested a redefinition of the term "formative evaluation" to read: "Formative evaluation" is evaluation of progress during the implementation of a program. Its purpose is to provide immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

Response. The Bureau agreed with the commenter and the definition was accepted. This definition has been redesignated as § 36.3(y).

Comment.—Indian Student § 36.3(z). Four commenters suggested that this definition should include the phrases "enrolled in a federally-recognized Indian tribe" and "be of one-quarter (¼) or more degree of Indian blood quantum".

Response. The definition of Indian tribe in § 36.3(aa) and now in § 36.3(ff) further defined "Indian student", and additional wording would be repetitive. However, the one-fourth blood degree requirement was accepted and has been included as part of the definition of "Indian student". This definition has been redesignated as § 36.3(ee).

Comment.—Intense Residential Guidance § 36.3(bb). One commenter questioned the Bureau's general personnel requirements for meeting the qualifications and duties of providing services to the "intense residential program".

Response. No change was made. The personnel requirements for the Bureau's education program are currently under review. Comments regarding personnel will be appropriate when the personnel revisions are published for public comment. This definition has been redesignated as § 36.3(gg).

Comment.—Kindergarten § 36.3(cc). Two commenters suggested that the definition of "kindergarten" should include a requirement that a student should "at least be 5 years old by December 31 of the school year".

Response. No change was made. The term "kindergarten" under this part is defined to mean grade or class level in the organization of the education program. The age requirement is defined under 25 CFR § 39.11(f) and should not be repeated here. This definition is redesignated as § 36.3(ii).

Removed.—Medically-trained Person § 36.3(ff). The term "medically-trained person" has been removed since it is not used in the standards.

Comment. Paraprofessional § 36.3(gg). One commenter recommended that the definition "paraprofessional" be removed since the term is only used twice and in both cases is unclear as to how the person "works with and assists" a professional staff member since dorm aides frequently are on duty alone.

Response. The Bureau disagreed; however, the definition of paraprofessional has been amended and additional language has been added to further clarify the term. This definition has been redesignated as § 36.3(mm).

Comment.—Peripheral Dormitory § 36.3(ii). One commenter thought this was a repeat of the definition "dormitory" under § 36.3(q).

Response. No change was made. The definition of "peripheral dormitory" refers only to boarding and lodging and is only for the purpose of students attending public schools. This definition has been redesignated as § 36.3(oo).

Comment.—Regular Program Students § 36.3(jj). One commenter indicated that the definition of "regular program students gives the impression that the handicapped student is not also a regular program student".

Response. The Bureau agreed with the comment. The word "except" in the definition has been changed to "including". All handicapped students are first regular program students and then, because of their special need, they receive additional services from the Exceptional Child Program. This definition has been redesignated as § 36.3(pp).

Comment.—School § 36.3(mm). One commenter stated that the public school portion of cooperative schools is not subject to compliance with these rules and regulations.

Response. The Bureau agreed with the commenter, and removed the last sentence of this definition. This definition is redesignated as § 36.3(ss).

Comment.—School Board § 36.3(nn). One commenter questioned the value of and need for an "Area" school board, because it would be too far removed from the schools to be of any value. Also questioned were the authorities of the board.

Response. The Bureau agreed with the comment. To ensure more local involvement and since "Area school board" is not mentioned by Pub. L. 95–561, we have removed the word "Area" in the definition of "school board". This definition has been redesignated as § 36.3(tt).

Comment.—School Day § 36.3(oo). Two comments were received concerning the terms "school day" and "instructional day". One commenter recommended that consideration be given to adopting the number of instructional days as required by the state in which the school is located. The other commenter indicated that the term "school day" is self-contradictory and recommended that the second half of the definition be removed. Further, it was recommended that any limitation on "counting" of such days be moved to § 36.20.

Response. The Bureau disagreed with the first comment for adopting the number of instructional days as required by the state in which a school is located. We believe that a standard number of instructional days should be required of all Bureau-operated schools since some states require as little as 160 days per school term. However, the Bureau agreed with the second commenter regarding the term "school day" and has removed the last sentence under this definition. The reference to counting of days is added to § 36.20(c). The definition of "school day" has been redesignated as § 36.3(uu).

Comment.—Summative Evaluation § 36.3(tt). Two comments were received. One commenter believed that "comparative evaluation" meets the definition of "summative evaluation". The other commenter beleived that the proposed definition of "summative evaluation" deviates significantly from the conventional meaning of the term and should be redefined.

Response. The Bureau agreed with both comments and the definition of "summative evaluation" has been rewritten in the standard to reflect a more conventional meaning by accepting the second commenter's definition. This definition has been redsignated as § 36.3(zz).

Added.—Definition of Teacher § 36.3(aaa). The definition of teacher reads as follows: " 'Teacher' means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation."

Removed.—Revision of Regulations § 36.4. This section has been deleted. This section is covered by Pub. L. 89–554, § 1, 80 Stat. 383, which includes the procedures for general notice of proposed rulemaking and revision for the public and interested parties and need not be repeated here.

Subpart B—Educational Management

General Comments. One commenter recommended that dormitories be included in this section of the standards. *Response.* The Bureau disagreed with the recommendation. The authority under Pub. L. 95–561 §§ 1121 and 1122 addresses two different parts. Contract schools by waiver under § 1121 may be excluded. Under § 1122, the dormitory criteria cannot be waived. Therefore, the rulemaking must address the two issues under two different parts. No change was made. *Comment.* One commenter suggested we include the "full maximum knowledge of tribal history and our great forefathers" in the statements of philosophy. *Response.* The Bureau disagreed with the suggestion. The Bureau believes the development of specific statements of philosophy should rest at the local school level. No change was made. *Comment.* One commenter suggested greater treatment in the area of "student rights and responsibilities". *Response.* Pub. L. 95–561 Section 1137 requires the Secretary to establish rules and regulations to insure the constitutional and civil rights of Indian students attending Bureau schools. Rules and regulations for students rights, currently being developed and which should be issued for public

comment in the near future, will propose to amend and modify the present 25 CFR Part 42. The suggestion was not accepted. *Comment.* One tribal contract school official questioned whether the adoption of the local school curriculum standards and school calendar would violate the requirements under this section. *Response.* It would be permissible for contract schools to adopt State curriculum standards. However, all schools must meet the 180 day requirement under ISEP. *Comment.* Three commenters stated that philosophy and educational objectives are usually not included together, and the use of the term "objective" should be moved and included in the education plan or under curriculum. Further, they suggested the term "goals" be moved from § 36.12(b) to § 36.10(a) and the heading and section be rewritten. *Response.* The Bureau agreed with the commenters. Paragraph (a) of § 36.10 was revised. The statement of objectives was moved to another paragraph (§ 36.12(a)). This paragraph has also been amended to attain clarity. *Comment.* One commenter insisted on maximum involvement of educators and parents in solving education problems at the operational as well as administrative levels. Therefore, it was recommended that the words "whenever practical" be removed from § 36.10(a). *Response.* The Bureau agreed and the term has been removed. *Comment.* Another commenter suggested that the "philosophy" should be established locally and should not include a list of required courses. *Response.* The Bureau agreed with the comment, and the listing of measurable educational objectives and content areas has been removed from this section. *Comment.* Another commenter recommended that the requirement for an annual review of the philosophy and objectives be changed to every three years. *Response.* The Bureau disagreed and believes that the philosophy, goals, and/or objectives should have an ongoing review process and be revised when necessary. However, the phrase "by each school" was added. The recommended three-year time schedule for review is too long to be realistic in this rapidly changing society and no change was made to the recommendation.

Section 36.10 Standard I—Philosophy and goals.

Comment.—Interpretation of Standards § 36.10(b). Two commenters suggested that this paragraph be eliminated since it serves no purpose because the literacy levels among Indian adults in certain areas are so low. Further, it was suggested that meeting the requirements would be too costly and that the paperwork requirement is not an adequate means of communication with Indian parents.

Response. The Bureau disagreed because it believes that the school is an important part of the community and that it is obligated to inform and involve the community. The Bureau believes that every school must make systematic efforts to explain its aspirations, policies, procedures, needs, programs, and status to the school community. However, this paragraph has been amended to provide consistency and omit redundant language. This paragraph has also been redesignated as § 36.10(e). In addition, § 36.10(a) has been divided into four separate subparts for consistency and clarity. Subpart (a) provides for the written philosophy and goals. Subpart (b) provides for the involvement of students, parents, lay citizens, school staff, and tribal members. Subpart (c) requires the philosophy and goals to be reviewed annually and revised as necessary. Subpart (d) requires copies of the philosophy and goals to be submitted to the Agency and Area Offices.

Section 36.11 Standard II—Administrative requirements.

The heading for § 36.11 has been amended to read as Standard II—Administrative requirements, and the words "organizational requirements" have been removed.

Comment.—Applicability of Program Level § 36.11(a) (1) and (2). One commenter asked if "kindergarten" programs will be required under this section. Another commenter asked if this requirement allowed for a Kindergarten through 8 organizational pattern.

Response. Due to the confusion of this section and since the program levels as stated here are definitions, the program level terms have been moved to the definition section and are in alphabetical order. "Kindergarten" has been redesignated as § 36.3(ii), "elementary school" has been redesignated as § 36.3(v), "junior high" or "middle school" has been redesignated as § 36.3(hh), and "high school" has been redesignated as § 36.3(cc).

Comment.—Teacher Certification § 36.11(b). One commenter insisted that teachers be certified and experienced in their instructional areas and have a basic knowledge of American Indian culture, and, further, that this provision be included in the staffing provision.

Response. The Bureau is in the process of reviewing its personnel standards, 25 CFR Part 38. One major issue under review is teacher and administrator certification. No change was made; however, this section has been redesignated § 36.11(a).

Comment.—Student/Teacher Ratios § 36.11(b)(1). Four commenters recommended that the student/teacher ratios be lowered. As an alternative, they suggested teacher aides be included in the present proposed ratios.

Response. The Bureau disagreed that the student/teacher ratios should be lowered. As a whole and at the time, these ratios were comparable with other state requirements where we have schools. Teacher aides are not part of a basic instructional program. We believe these ratios are better than average and will provide a benchmark for ascertaining an optimum level based on educational needs. No change was made; however, this paragraph has been redesignated as § 36.11(a)(1).

Comment.—Teacher Aides § 36.11(b)(1). Three commenters suggested that we include a teacher aide for each ratio and increase the class size by one-third.

Response. The Bureau disagreed. Teacher aides are not usually considered in the definition of basic education support. Therefore, the suggestion was not accepted. This paragraph has been redesignated as § 36.11(a)(1).

Comment.—Funding for Student/Teacher Ratios § 36.11(b)(1). One commenter questioned the insufficient funding of the ISEP formula to meet the overall student/teacher ratio requirements in the schools.

Response. Once the standards are published in final form, the Bureau is required by Pub. L. 95–561 to revise the ISEP formula to meet the cost of education and reflect the student/teacher ratio cost. No changes were made; however, this paragraph has been redesignated as § 36.11(a)(1).

Comment.—Daily Teaching Load § 36.11(b)(3). Two commenters recommended that the daily teaching load per teacher be increased from 150 to 200 if a full-time aide is provided. *Response.* The Bureau disagreed. Usually a teacher aide is not considered in the definition of basic education support. The number 150 agrees with the 25:1 student/teacher ratio and is 10 less than the state average of most public school districts. No change was made. *Comment.* One commenter suggested that the 150 student load be increased to 160. *Response.* We rejected this suggestion for the reason immediately cited above. *Comment.* Another commenter recommended that we lower the student teaching load in

departmentalized classes from 150 to 120. *Response.* The Bureau disagreed. This would be in conflict with the 25:1 student/teacher ratio under § 36.11(a)(1). This paragraph has been redesignated as § 36.11(a)(3).

Comment.—Waiver for Staffing Ratios § 36.11(b)(4). Two commenters suggested changing the 30 days to 60 days before requiring a waiver for exceeding the staffing ratios. *Response.* The Bureau disagreed. The thirty-day time limit should be enough to indicate whether another teacher will be required or if a waiver will be necessary. *Comment.* Another commenter asked if the "30 days" means "total" or "consecutive". *Response.* The word "consecutive" was added after "30" to clarify the language. *Comment.* Two commenters recommended that the word "waiver" be removed and the phrase "an exception" be substituted. Both commenters also recommended that we add a paragraph (iii) which would require an additional teacher for 12 or more students. *Response.* The Bureau disagreed with the recommendation that we substitute the term "exception" for "waiver" since the term "waiver" has a more legal connotation. We also disagreed with the recommended additional requirement of 12 or more students for justifying a teacher. This could mean that if just one class enrollment is over by 12 students, an additional teacher would be required. This may represent a class scheduling problem. No changes were made. *Comment.* One commenter suggested that the waiver period should be for more than one year when the ratio exceeds five students. *Response.* The suggestion was rejected since the five or more students over the ratio could be in a class such as a shop or lab which requires safety as a top priority and where size is restricted. No change was made. *Comment.* Two commenters recommended changing the waiver approval level from the Director, OIEP to Agency Superintendent for Education. *Response.* The Bureau disagreed. We believe that a waiver approval should be at the highest possible level. The Agency level is too close to the level of request. *Comment.* One commenter recommended adding "through the Agency Superintendent for Education or Area Education Programs Administrator" after the word "Director". *Response.* The Bureau agreed with this recommendation, and this paragraph has been amended to include the provision. *Comment.* Five commenters questioned the possible lack of funding from ISEP to support the staffing ratios. *Response.* The Bureau is required by Pub. L. 95–561 to revise the ISEP formula once the standards have been published in final to allocate resources to meet the requirements set forth by these standards. This subsection has been redesignated as § 36.11(a)(4).

Comment.—Substitute Teacher § 36.11(b)(5). Three commenters expressed concern about the requirement of schools having to provide a state-certified substitute teacher and the requirement that a class cannot have a teacher in a classroom without teaching credentials for more than 30 school days. *Response.* The Bureau understands the problem that a certified substitute teacher may be hard to find in more isolated areas.

However, in order to maintain some level of instructional quality in the classroom, a high standard of control must be maintained. *Comment.* Two commenters recommended that we add the word "consecutive" after "(30)" and before the word "school" in this paragraph. *Response.* The Bureau disagreed with the recommendation that it add the word "consecutive" after "(30)" and before the word "school". However, the number "(30)" was changed to "20" to approximate the time span delineated if the word "consecutive" were used. The "20" school days further defines the requirement that a class not be without a certified teacher for in excess of a cumulative total of 20 instructional days during the school term.

Comment.—Waiver of Staff Requirements § 36.11(b)(6). Two commenters requested that, in this provision concerning waiver of staffing requirements, the word "waived" be removed and the word "excepted" added.

Response. Review of this paragraph indicated that the language is confusing and adds no meaningful information; therefore, this entire paragraph has been removed.

Comment.—Written School Enrollment and Attendance Boundaries § 36.11(c). One commenter agreed that written school enrollment and attendance policies are necessary.

Response. No change was necessary. However, § 36.11(c) has been redesignated § 36.11(b).

Comment.—Geographic Attendance Boundaries § 36.11(d). Sixteen comments were received concerning geographic attendance boundaries. One commenter asked how this requirement would fit within the existing policy under 25 CFR Part 32.4(i)—Choice of school. *Response.* No conflict exists since the Bureau is already required to insure that, under 25 CFR Part 32.4(i): ". . . consistent with the provisions of Indian Child Welfare Act of 1978, Pub. L. 95–608 (education close to home]" is part of the policy under choice of school. *Comment.* Four commenters recommended that full involvement and concurrence by the tribes affected be one criteria for setting attendance boundaries. *Response.* The Bureau agreed and believes that the second sentence in this paragraph takes care of the full involvement and concurrence by the tribes. No change was made. *Comment.* Two commenters were concerned about the quality of education that may be found outside one's attendance area and the possibility of excluding students from those options. *Response.* The final publication of academic standards should set the minimum level of basic education so that schools offering inferior educational programs will be minimized. *Comment.* One commenter suggested that attendance boundaries are appropriate only to day school operations, and, therefore, should only apply to day schools. *Response.* The Bureau disagreed. Boundaries for residential and off-reservation boarding schools are more urgently needed so that the student movement between schools can be minimized and practical program planning can be conducted realistically. *Comment.* Two commenters questioned whether the Bureau could dictate to parents the schools to which they could send their children. *Response.* Parents have the right to send their children to a Bureau, public, contract, or secular school if the children meet the admission requirements of the receiving school. (For some schools, this may mean payments for direct cost by parents.) Once the Bureau establishes regulations for attendance boundaries, students must meet all enrollment criteria, including the attendance boundary requirements. *Comment.* One commenter indicated that in 1980 attendance boundaries were established for schools in one area but were nullified by Pub. L. 95–561. *Response.* Under current Pub. L. 95–561 regulations, the authority to establish attendance boundaries is found at 25 CFR 32.4(i) and 39.20. Authority already exists without the proposed requirement under this section. *Comment.* Two commenters were concerned about certain traditional family attendance ties which have existed for generations to certain Bureau schools and the choice of parents to transport their children to a school farther from home if there is an elementary school closer to home. *Response.* The Bureau believes in local

community involvement and control; we further believe that the establishment of local school boundaries would foster local ties and strengthen community involvement. *Comment.* Three commenters were concerned about the enforcement of attendance boundaries and the penalty for failure to observe set boundaries. *Response.* The enforcement of attendance boundaries will be monitored by the Director, OIEP through the administration of the ISEP student count certification process. Violations of the student count certification process could result in nonpayment of ISEP funds for the affected students. This paragraph has been redesignated as § 36.11(c).

Section 36.12 Standard III—Program needs assessment.

Comments.—Program Planning and Implementation § 36.12. Ten comments were received regarding this section. Two commenters were in agreement with this section. Two commenters recommended removal of the section since some parts are included in §§ 36.10, 36.13, and 36.50. One commenter indicated that this section was far too vague and the school board role needed to be clearly identified. Two commenters suggested that Pub. L. 95–561 mandated that a "Comprehensive Educational Plan" be included in this section. Another commenter suggested that we delete § 36.12(a) and correct the differences between §§ 36.10 and 36.12 with regard to needs assessments and educational objectives. Two commenters recommended that § 36.12(d) should also include future job needs, college entrance requirements, tribal priorities, etc. *Response.* After review, we have rewritten this section to agree with some of the comments. The heading "Program planning and implementation" has been revised to read "Program planning and implementation" has been revised to read "Program needs assessment" to further clarify the language of this section. Paragraph (a) under this section has been removed. Amendments in (c) and (d) of this paragraph eliminated the redundant language under §§ 36.10, 36.13, and 36.50. Subsection (b) has been redesignated (a) and the last sentence was deleted. Subsection (c) and (d) have been redesignated as (b) and (c) and a new (d) was added.

Section 36.13. Standard IV—Curriculum development.

Comment.—Involvement of Non-certified Staff Members § 36.13(a). Two commenters expressed concern over the term "certified" and suggested the addition of non-professional staff and members of the local Indian community.

Response. The Bureau agreed with the commenters, and this paragraph has been modified to include non-professional staff and the members of the local community.

Comment.—Involvement of Staff and the Tribal Community § 36.13(c). Three commenters expressed concern regarding the active participation of off-reservation school boards, elders, and concerned individuals in curriculum development. In addition, each school should provide evidence of active involvement by the community.

Response. The word "should" in the first line of this paragraph has been replaced by the word "shall" and provides for tribal involvement. This should provide the necessary involvement for compliance.

Subpart C—Minimum Program of Instruction

Section 36.20 Standard V—Minimum academic program/school calendar.

Comment.—Minimum Academic Program § 36.20(a). One commenter suggested that Agencies with Kindergarten through 12 schools coordinate the schools' curricula. Another commenter suggested that tribal representatives be added to the Agency and Area Offices for approval of each school's alternative ways of meeting the minimum academic program requirements.

Response. The concern for coordination of schools' curricula is addressed in § 36.24(d), in which the high schools are directed to coordinate their programs with feeder schools (elementary, junior high and middle schools). Regarding the second concern, school boards represent the tribes in approving instructional and alternative methods for meeting the minimum academic program. No change was made.

Comment.—Length of School Term § 36.20(b). Twelve comments were received on this paragraph. One commenter recommended that the length of the school term be increased from 180 days to 200–220 days and the length of instructional day be lengthened from 5.5 hours to 7.0 hours for high schools, with the lower grades increased appropriately. Six commenters suggested that the school term should be set at 175 instructional days or comply with the state minimum requirements. Three commenters suggested that inservice time should be included in the 180-day school term and should not be in addition thereto. One commenter asked if a school could make up a lost day of instruction. Another commenter questioned the 5.5 instructional hours per day for high school and believed that to be unreasonable.

Response. Extending the school term to 200–220 days is unrealistic at this time since not enough research has been conducted to ascertain its value. The suggested 175-day school term has been rejected. Compliance with state minimum requirements is covered by § 36.61. The 180-day school term reflects the average of most of the states. (Many states are working to increase the length of their school terms.) However, when a state surpasses the 180-day school term, each school in that state will be required to accept the longer school term. Policies concerning inservice time will be addressed with the review of the personnel standards. Inservice time will not be included in the 180-day school term. Any loss of instructional days will have to be made up; we believe that direct instructional time is too important for students to lose. The 5.5 instructional hours per day requirement for high schools reflects at least the average of most state instructional hour per day requirements. The scheduling of instructional time can be done in a number of ways to accomplish the required time per day. However, to clarify and eliminate the confusion regarding what constitutes instructional hours per school term, we have removed the number of total hours.

Comment.—Definition of School Day § 36.20(c). Three commenters recommended that this paragraph be either defined under §36.3(oo) or rewritten. One of the commenters suggested that the day should be counted as a school day if three-fourths (¾) of the daily instructional hours are met. In addition, it was stated that teacher contracts will have to be modified if the school term has to be extended.

Response. This paragraph has been amended to include the requirement that an instructional school day may be counted if three-fourths (¾) of the daily instructional hours are met. Administrative provisions for contract modification are available to allow for additional days.

Comment.—State-mandated courses § 36.20(d). One commenter suggested that state and/or tribal waiver be included in this paragaph. Four commenters suggested including under this paragraph a provision for inservice days as part of the 180-day school term.

Response. After a close review of this paragraph, it has been determined that since Bureau-operated schools are not

under state jurisdiction and tribal waivers are covered under §§ 36.2 and 36.61, this paragraph was removed. The suggestion regarding inservice time was rejected since the inservice days will be reviewed and addressed under personnel regulations (25 CFR Part 38). Further, it would diminish the instructional time these standards are attempting to emphasize. However, §§ 36.23(d) and 36.24(e) have been moved to this section and redesignated as § 36.20(d). Section 36.24(h) has been moved to this section and redesignated as §36.20(e).

Section 36.21 Standard VI—Kindergarten instructional program.

Comment.—General § 36.21. One commenter fully agreed with this section. However, it was suggested that the word "content" be added to the heading of this section.

Response. No change was made; adding the word "content" would not provide any further clarification.

Comment.—Language and Kindergarten Curriculum § 36.21(a). Two comments were received. One commenter asked why native language was being deemphasized in this paragraph. Another commenter suggested that this paragraph include certification of kindergarten teachers to include at least one course in early childhood education.

Response: The Bureau agreed with the first commenter, and § 36.21(a) has been amended to include the phrase "native language where necessary". The Bureau did not agree with the second commenter in that the course requirements for certification of kindergarten teachers should be included under this paragraph since this section addresses only the academic instructional program. We agreed that such course requirements are needed and they will be included in the personnel regulations when they are revised.

Comment.—Health Education § 36.21(b)(5). Three commenters reinforced the importance of requiring substance abuse education beginning at the kindergarten level. One of the commenters suggested that the ISEP formula be adjusted to guranteee that funding is available to carry out the requirements of the standards.

Response. The support for this paragraph requires no elaboration. As to the concern regarding adequate funding to support the substance abuse program, the allocation of funding will be addressed in the revised ISEP formula. However, the reference made to the BIAM criteria was removed since it is an internal document.

Section 36.22 Standard VII—Elementary instructional program.

Comment.—Elementary Instructional Program § 36.22. Thirteen comments were received. Eight commenters reacted to the specifications and prescriptive details after each content area as being too restrictive. Two commenters supported this section. One commenter suggested the inclusion of computer awareness. One commenter recommended requiring metric education when required by a state in which the school is located. Another commenter recommended that a separate section be established for bilingual instruction.

Response. The Bureau agreed with the comments that the prescriptive details after each content area are too restrictive. Therefore, for consistency and style, the specifications have been removed and the section reformatted. The Bureau agreed with the suggestion regarding inclusion of computer awareness; this has been included under § 36.22(b)(5) and termed "computer literacy". We disagreed with the commenter suggesting the establishment of a separate section for bilingual education. Establishment of bilingual instruction should be left up to local community needs.

Section 36.23 Standard VIII—Junior high/middle school instructional program.

Comment.—Junior High Instructional Program § 36.23. Three commenters addressed this section and suggested some general concerns. One commenter recommended provisions for bilingual education under this part. One commenter expressed concern about the availability of funds to provide the instructional program content under this section. Another commenter expressed support for the beneficial aspects of this section.

Response. Provisions for bilingual education have been rejected. Establishment of bilingual instruction should be left up to local community needs. No change was made.

Amended.—Instructional Program § 36.23(a). No comments were received for this paragraph. However, this paragraph has been amended by removing the word "nature" and the words "wherever possible". The paragraph now reads: "The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows."

Comment.—Language Arts § 36.23(b)(1). Two comments were received. One commenter suggested the addition of one-half unit of native language arts. Another commenter was concerned that reading, writing, and public speaking should receive some attention.

Response. The Bureau believes that any specific subject-matter content area should be left to the local school and school board since the specific course requirements should reflect the needs of the students. Paragraph (b) of § 36.23 was amended for clarification.

Amended.—Social Studies § 36.23(b)(2). No comments were received regarding this paragraph, but the first two sentences of this paragraph have been removed to add maximum flexibility and to conform with the other instructional program requirement sections.

Comment.—Science § 36.23(b)(4). One commenter suggested emphasizing the value of cultural diversity and recognizing the intrinsic worth of each culture in the area of science.

Response. Again, the Bureau believes that the instructional content areas should be left up to the local school board based on the needs of the students. No change was made.

Comment.—Exploratory and Elective Areas § 36.23(b)(7). Two comments were received. One commenter suggested that "practical arts" also be included in this heading. Another commenter questioned whether this paragraph was required or if schools had an option to offer electives.

Response. The Bureau agreed with the first commenter, and § 36.23(b)(5) has been amended to include "and practical arts". The first sentence has been removed to conform with the revised style. In regard to the second commenter, we believe that since "other exploratory and elective areas" does not indicate a "basic instructional requirement", it has been removed to avoid any confusion.

Comment.—Integration of Content Areas Into the Curriculum § 36.23(c). Two comments were received. One commenter suggested that metric education should be included to some degree in the math and science program content areas. Another commenter expressed the vital importance of the inclusion of the alcohol and drug abuse requirements contained in 62 BIAM 5.4A. One of the commenters questioned the use of the BIA manual as a reference in the regulations.

Response. The Bureau agreed with both commenters. However, it is our belief that the metric education content

should be integrated into the entire instructional program, not just math and science. This paragraph was amended to include "career exploration and orientation". Also, this paragraph was amended by removing the subject matter areas after health education but adding the phrase "includes meeting the requirements contained in 24 Stat. 69 and removing the BIAM reference.

Comment.—Multi-culture and Multi-ethnic Dimensions in Courses § 36.23(d). One commenter suggested that we use less vague terms in place of "offer" and "dimensions".

Response. The Bureau disagreed with the suggestion since the words "offer" and "dimensions" are understood terms in the context of this paragraph. However, we have moved this paragraph to § 36.20 and redesignated it as § 36.20(d) since it reflects more of a policy statement than a standard.

Comment.—Language other than English § 36.23(e). One commenter expressed concern that we were not emphasizing native language.

Response. The Bureau believes that this paragraph includes all non-English languages, of which a native language could be one. Again, program content is being left to the needs of the students and local school boards. No change was made; however, this paragraph has been redesignated as § 36.23(d).

Comment.—Health and Safety Standards § 36.23(f). One commenter suggested that we include, in addition to health and safety standards, the words "and tribal cultural taboos". Another commenter suggested that we include a new paragraph (g) "computer science" under this section.

Response. The Bureau disagreed with the first commenter. This paragraph pertains only to health and safety standards. No change was made. With regard to the computer science suggestion, the Bureau has included a unit requirement in computer literacy in the junior high/middle school instructional program under § 36.23(b)(6). This paragraph has been redesignated as § 36.23(e).

§ 36.24 Standard IX—Secondary instructional program.

General Comment. One commenter agreed with this entire section.

Comment.—School Philosophy § 36.24(a). One commenter suggested that the tribes' education philosophies be included in this paragraph.

Response. The Bureau agreed with the commenter's suggestion, and this paragraph has been amended to include the tribes' philosophies.

Amended.—Fine Arts § 36.24(b)(5). No comments were received. However, the words "practical arts" have been added to this paragraph to provide for a balanced curriculum offering.

Comment.—Language Courses § 36.24(b)(7). Three comments were received. Two commenters addressed the impracticality of offering courses in languages other than English, and one commenter addressed the cost of hiring language teachers on a small school budget.

Response. The Bureau, based on its review of some of the latest developments in state curriculum revisions, believes that many states will be requiring courses in languages other than English. Therefore, we do not see offering a language course other than English as impractical. The special problems in small school budgets will be addressed in the ISEP revision. No change was made.

Comment.—Vocational Education § 36.24(b)(9). One commenter suggested that emphasis in this paragraph should also include the design of a curriculum which directly relates to the actual trends of occupations.

Response. The Bureau agreed with the suggestion, and this paragraph has been amended to include actual trends of national, regional, and local occupations.

Comment.—Computer Science § 36.24(b)(9)(i)(ii). A commenter recommended that computer science be included as part of the vocational educational program for grades Kindergarten through 12.

Response. The Bureau disagreed with the commenter that computer science should be included in the vocational educational program. However, we did agree that computer literacy should be taught and therefore is included in the elementary and middle school grades. Bureau high schools will adhere to state standards for computer science requirements.

Comment.—Integration of Content Areas § 36.24(c). Five comments were received. One commenter suggested that home economics be included as a required content area. One commenter suggested including consumer rights and responsibilities. One commenter suggested requiring sex education and birth control. One commenter addressed the need for adequate funding for alcohol and drug abuse under ISEP. Another commenter recommended adding computer science under this paragraph.

Response. The Bureau disagreed with making home economics a required content area since we believe it is adequately covered under practical arts. Regarding comments concerning consumer rights asnd responsibilities, sex education, and birth control, we feel that such specific content areas should be at the discretion of the school officials and school boards. However, these content areas are usually covered by several different subject-matter areas. The adequate funding for alcohol and drug abuse under ISEP will be addressed when the formula is revised to meet the cost of education. Computer science was not included under this paragraph; it will be required by Bureau schools in those states where it is a requirement. This paragraph was also amended by removing most of the sentence after the words "health education" and retaining only the statutory requirements contained in 24 Stat. 69.

Redesignated.—Multi-culture and Multi-ethnic Dimensions § 36.24(e). No comments were received. However, this paragraph has been redesignated as § 36.20(d) since the provision will be applied to all instructional programs.

Comment.—Class Schedule § 36.24(f). Two commenters recommended that this paragraph be removed.

Response. The Bureau disagreed. Ensuring that every student's graduation requirements are met by the school is a major responsibility of a school in its yearly class scheduling. Paragraph (f) of § 36.34 is redesignated as § 36.34(e).

Comment.—Health and Safety Standards § 36.24(g). One commenter suggested that this paragraph be amended to include facilities standards to comply with § 503 of the Rehabilitation Act.

Response. The Bureau will soon undertake the development of standards for facilities, and the requirements of § 503 will be addressed at that time. Paragraph (g) of § 36.24 is redesignated as § 36.24(f).

Comment.—Intraschool Programs § 36.24(h). Two commenters recommended that § 36.24(h) be removed from this section and added to § 36.20.

Response. The Bureau agreed with the recommendation and, since the provision applies to all instructional programs, § 36.24(h) has been redesignated as § 36.20(e).

Subpart D—Student Instructional Evaluation

Section 36.30 Standard X—Grading requirements.

General Comment. One commenter agreed with § 36.30 Standard X—Grading requirements.

Comment.—Grading Requirements § 36.30(a). Ten comments were received. Eight commenters suggested removing

the words "explicit competency" since the words would be confusing to principals. One commenter was in favor of consistent standards. One commenter asked whether the mastery of course objectives would be uniform or if they could be decided locally.

Response. The Bureau agreed with removing the words "explicit competency" in § 36.30(a), and the second sentence was amended to provide clarification of the first sentence. In responding to the question about course objectives, the Bureau believes that the prescribed course objectives should be developed locally by the local school board and school officials. This requirement expects that every school subject area shall have a minimum level of mastery.

Comment.—Report Cards § 36.30(d). Thirteen comments were received. Two commenters recommended that report cards be issued to students of legal age. Eight commenters questioned the clerical work involved in issuing report cards and written academic evaluations for each student. Two commenters recommended removing this paragraph. One commenter suggested eliminating the request for parent signature.

Response. The Bureau agreed to amend this paragraph to include a provision for those students of legal age and to remove the requirement for a written student academic evaluation as being too excessive. However, the Bureau believes that report cards should be issued on a regular basis and not less than four (4) times yearly. It also believes that a parent and/or student of legal age should be required to review a report card and attest by signature that he/she has reviewed it. In addition, conference request was removed and student attendance record was added.

Section 36.31 Standard XI—Student promotion requirements.

Comments.—Promotion Policy and Requirements § 36.31(a) (1), (2), (3). Nineteen comments were received. Several comments recommended that this paragraph be completely rewritten; several other commenters suggested that teachers were not capable of developing criterion-referenced tests. Another group of commenters suggested that promotion policies should be set by local school boards; another group recommended that individual student needs, abilities, and teachers should play a major role in the evaluation process; and some commenters questioned if the mastery level meant meeting 100 percent of the course objective. Some commenters thought this paragraph was more of a retention requirement rather than a promotion standards. Another group addressed the issue of teacher written recommendations attesting to each student's mastery of the instructional objectives as being too large of a task with which to comply.

Response. The Bureau agreed with many of the comments, and this paragraph has been amended to reflect some of the recommendations. The revised paragraph eliminates some troublesome terms such as "competency" and the sentence on "demonstrate mastery". This section has also been revised and paragraph (a)(3) has been totally removed because of excessive paperwork. We agreed that for each teacher to provide a written recommendation for each student's instructional objectives would be very time consuming. This paragraph provides for each school to establish and implement a promotion policy with three minimum requirements: (a) A minimum criteria for student promotion based on a mastery of instructional objectives; (b) criterion-referenced tests to be utilized in measuring performance; and (c) a requirement that a student be in attendance or be provided educational services for 160 instructional days for promotion.

Comment.—Grounds for Rentention § 36.31(a)(4). Eleven comments were received. The commenters objected to the strict 160 instructional day requirement without some form of relief. Some commenters questioned the rationale for using 160 days per academic year. Other commenters suggested having the instructional day requirement correspond with the state public school systems. Another commenter asked if the special education exemption would still apply.

Response. The Bureau agreed with some of the comments, and this paragraph has been rewritten to include excused absences. A provision is included for a school board or school committee to review special mitigating circumstances. The 160-day requirement is based on selected school absenteeism policies, and we selected the highest rate of most of the schools reviewed. The Bureau believes that a minimum number of instuctional days should be set for all Bureau schools; however, this does not preclude school boards from adopting a local public school policy higher than the Bureau's standards. Special education exemptions as required by Pub. L. 94–142 shall still apply when adhering to these standards. Paragraph (a)(4) of § 36.31 has been redesignated as § 36.31(c).

Section 36.32 Standard XII—Graduation requirements for a high school diploma.

General Comment. Three comments of a general nature were received on graduation requirements. One commenter asked if Upward Bound credits could be considered extension study for meeting the graduation requirements under § 36.32. Two commenters asked how the FY 1984 freshmen would be affected by this and § 36.2(e). *Response.* Any course taken for credit that will be accepted as meeting graduation requirements shall be from a state-sanctioned institution and approved by the local school board prior to the course being taken. Section 36.32 and paragraph (e) of § 36.2 will not affect FY 1984 freshmen since graduation requirements must be established prior to the beginning of the school term. *Comment.* Two commenters suggested adding a foreign language course. Two other commenters recommended adding one unit in computer science. Another commenter suggested a need for sex education. *Response.* The Bureau rejected the addition of a foreign language requirement. The inclusion of a foreign or native language should be at the discretion of the local school officials. Requirements for computer science will follow state standards in the state where the school is located. As to sex education, the Bureau believes that the subject is adequately covered in other related subject areas, and it also should be relative to community needs.

Comment.—Units Required for Graduation § 36.32(b). Three commenters recommended that when state graduation requirements exceed the Bureau's standards, the state's standards should apply.

Response.—The Bureau agreed with the recommendation, and after the word "program" and before the semi-colon (;) we have inserted the phrase "unless the state in which the school is located exceeds these requirements, then the state's requirements shall apply." This paragraph has been amended.

Comment.—Math Requirements § 36.32(b)(2). Five commenters stated that the proposed requirement of three units of math will place a burden on high schools and that the math requirement should be lowered to two units.

Response.—No change has been made. The Bureau believes that within a few years most states will increase their math requirements to at least three units and in some cases more. With the increase of high technology in our

society, the Bureau believes that more math skills will be required for successful living.

Comment.—Social Studies § 36.32(b)(3). Two commenters recommended that the units required in tribal history and Indian studies be dropped because of teacher certification. Another commenter suggested that the one-half unit required in Tribal history/government should be increased to one unit.

Response.—The Bureau disagreed with the first two commenters since Pub. L. 95–561 § 1131(c)(1)(B) provides a waiver expressly for teachers of native American Indian language and cultural studies from state certification. The Bureau disagreed with the second commenter since tribal history and government are partially taught in the state history courses and no change was made.

Comment.—Science § 36.32(b)(4). One commenter questioned the need for two (2) units of science. Another commenter suggested that § 36.32(b)(4)(i) needed clarification because as proposed, paragraph (b)(4)(i) indicates that one (1) unit each is required in chemistry, physics, biology, and zoology and that one (1) unit is anatomy could replace all of these.

Response.—The Bureau believes that at least two (2) units of science must be required if students are to stay abreast with and understand the changing world. However, the Bureau agreed with the second commenter and paragraph (b)(4)(i) has been amended to avoid confusion.

Comment.—Physical Education § 36.32(b)(5). Six comments were received. Five commenters questioned the need for the Agency Superintendent for Education and/or Area Education Programs Administrator to authorize exemption for special handicapping conditions. One commenter opposed this paragraph as being in direct oppostion to the requirements of Pub. L. 94–142.

Response.—The Bureau, after reviewing the Pub. L. 94–142 requirement, agreed with the one commenter, and the exemption requirement has been removed. The Bureau agreed that each handicapped student must be afforded a regular physical education program, and this requirement will be covered by the special education regulations currently being developed for publication. This paragraph has been amended by removing the exception section.

Comment.—Fine Arts § 36.32(b)(7). Two commenters recommended that fine arts should be an elective rather than a requirement.

Response.—No change has been made. The Bureau believes that at least one unit in fine arts should be required so that students are exposed to the general subject content area.

Removed.—Substitute Courses § 36.32(e) has been removed. This subsection was deleted so that wholesale substitution of courses would be avoided. However, substitute courses shall adhere to state and Bureau regulations.

Comment.—Certificate of Achievement § 36.32(f). Three commenters took issue with providing a special "certificate of achievement" for special education students.

Response. The Bureau, after careful review, agreed with the commenters and, believing that these standards should not discriminate based on handicapped conditions, this paragraph is removed.

Comment.—State Proficiency Examinations § 36.32(g). One commenter questioned how the Bureau schools could authorize and/or endorse state proficiency examinations for their students.

Response. No change has been made. Many Bureau schools are already requiring their students to pass state proficiency examinations and, therefore, the Bureau believes that students passing such examinations should be recognized. Paragraph (g) of § 36.32 is redesignated as § 36.32(e).

Subpart E—Instructional Support

Section 36.40 Standard XIII—Library/media program.

General Comments. One commenter thought this section on the library/media program benefits small schools. Another commenter expressed concern for the financial hardship of small schools hiring librarians. Another commenter suggested that library/media services be separated as between elementary and secondary program requirements. *Response.* Under Pub. L. 95–561, the Bureau is required to revise the ISEP formula to reflect the cost of education based on the establishment of the final standards. The revision of the ISEP formula will address the allocation of funding for needed personnel in small schools. The Bureau disagreed with the suggestion that elementary and secondary requirements should be separated. This effort would only result in redundant language and would serve no further clarification purpose.

Comment.—Minimum Library/Media Program § 36.40(a). One commenter objected to Bureau-operated schools being required to meet state and/or regional standards for school libraries. The commenter believed that these standards were designed to meet urban school systems and the standards were "frills".

Response. The Bureau disagreed with the commenter. The Bureau believes that a strong library/media program is essential for a good educational program and that a minimum library/media program must be established for students to explore the world around them, especially when they are isolated from the mainstream of society. No change was made.

Comment.—Library Committee § 36.40(a)(2). One commenter recommended that a library committee should have the responsibility for the development of the library policy.

Response. The Bureau agreed with the comment, and paragraph (a)(2) of § 36.40 has been amended to include the recommendation that a library committee will develop the library policy subject to board approval.

Comment. Book Ratios § 36.40(a)(2)(i). Two commenters thought that schools have insufficient funds to comply with these book ratios. Another commenter asked why there should be a larger number of books for the lower grades than the upper grades.

Response. The allocation of funding for book ratios will address the revision of the ISEP formula as required by Pub. L. 95–561. Usually, the books for the lower grades are smaller and more pictorial in nature, thus requiring a larger selection. No changes were made. However, the Bureau has included another sentence under this paragraph to provide that materials pertaining to Indian Tribes and Alaskan Natives be integrated within the basic collections.

Comment.—Reference Books § 36.40(a)(2)(ii). One commenter objected to being required to have copies of principal textbooks in the library.

Response. The Bureau believes that copies of principal textbooks should be available in the library for student use and as reference books for further study required by other related courses being taught. This is current practice for most libraries. No change was made.

Comment.—Periodical Collection § 36.40(a)(2)(iii). Three comments were received under this paragraph. One commenter asked if newspapers were included as periodicals. Two other commenters addressed the lack of funds for meeting this requirement.

Response. Newspapers are included in the count of periodicals. The revision of the ISEP formula will address the allocation of funds for the periodical

collection requirements. No change was made.

Comment.—Library Media Center § 36.40(a)(3). Five comments were received. One commenter agreed with this standard as proposed. A second commenter said that the librarian ratios were too high to meet the special educational needs of Indian students. Three commenters addressed the cost of the staffing requirements.

Response. The Bureau, in reviewing the ratios for librarians, has amended the ADM categories for 101 to 200 and 201 to 400 to read: "101 to 200—⅙ time librarian and ½ time library aide or 20 hours of library activity; 201 to 400—1 full-time librarian or ⅚ librarian provided the school has a full-time library aide." The resources to meet these standards should be adequate.

Comment.—Inventory of Books and Materials § 36.40(a)(4). Two commenters recommended removing this paragraph since this would mean delays and would interfere with the operation of a school.

Response. To some extent, the Bureau agreed with the commenters. However, the Bureau believes that schools must be accountable for their libraries. This paragraph was amended to include an annual inventory in accordance with the acquisition and selection policies of the school.

Comment.— Equitable Distribution of Instructional Materials § 36.40(b). Two commenters recommended that this paragraph be redesignated as § 36.41(c).

Response. The Bureau agreed with the commenters, and this paragraph has been redesignated as § 36.41(c).

Section 36.41 Standard XIV—Textbooks.

Comment.—Textbook Review Committee § 36.41(a). Five comments were received. Three commenters suggested that the textbook review committee include the local school board, which will have final approval of the textbook selection. Two commenters recommended that the state-adopted textbook list should also be approved for Bureau schools. Another commenter questioned the legality of textbook committees.

Response. The Bureau agreed with the comments that would enable the school board to be included on the textbook review committee. Any school board member(s) may sit on the review committee since the school board sets policy. This paragraph has been amended to provide school board approval in the appointment of individuals to the school textbook review committees. We disagreed with a blanket approval of accepting a state-adopted textbook list since the needs of Indian students will vary with the needs of their own community. We do not believe this paragraph creates any legal problems.

Comment.—Congruency Between Textbooks § 36.41(b)(2). One commenter suggested that the word "congruency" be replaced by the word "coincide" and the word "program" be replaced by the words "grade level(s)".

Response. The Bureau agreed. In fact, we believe that § 36.41(b)(1) addresses the same issue and therefore this paragraph has been removed.

Comment.—Stereotypes in Textbooks § 36.41(b)(3). One commenter suggested removing the phrase "and avoid stereotypes" from this paragraph.

Response. The Bureau agreed with the suggestion, and the phrase was removed. This paragraph has been redesignated as § 36.41(b)(2).

Comment.—Updating of Textbooks § 36.41(b)(4). Thirteen commenters objected to the requirement that textbooks be current or published within five (5) years.

Response. The Bureau agreed with the commenters that the five (5) year publication requirement was too rigid. However, the requirement for current textbooks was retained. Paragraph (b)(4) of § 36.41 has been redesignated as § 36.41(b)(3). A paragraph (c) was added by moving § 36.40(b) and redesignating it as § 36.41(c).

Section 36.42 Standard XV—Counseling services.

General Comments. Two comments were received. One commenter pointed out the benefits this section will have for small schools. Another commenter expressed the importance of informing parents and students of the levels of performance by student and ways in which to correct any deficiencies.

Comment.—School-wide Testing § 36.42(a). Five comments were received. One commenter questioned the wording of this paragraph and suggested the proposed definition of "regular program students" in § 36.3(ii) would eliminate some students from being tested. One commenter questioned testing first graders. Two commenters stated that the testing program should not be included in the counseling program. Another commenter suggested moving this paragraph under § 36.30—Grading requirements.

Response. The definition of "regular program students", § 36.3(ii), has been changed to state that special education students will first be considered as regular students. Therefore, all students will be tested. Section 36.3(ii) has been redesignated as § 36.3(pp). Regarding testing first graders, the Bureau has amended the requirement by allowing the first graders to be tested where appropriate. The Bureau disagreed with the commenters that suggested moving the testing program from the academic counseling program. Usually, the testing is conducted by the academic counseling program personnel since they are dependent on test scores to properly provide counseling services. The Bureau also disagreed with the comment to redesignate this paragraph under § 36.30. Section 36.30 pertains to how one assigns grades, and § 36.42 is concerned with the way one is tested.

Removed.—Minimum Competency Tests § 36.42(a)(1). This paragraph was removed since it tends to confuse and duplicate § 36.31(a)(2).

Comment.—Scheduling of Standardized Tests § 36.42(a)(2). Thirteen commenters reacted to the October and April time frame for giving standardized achievement tests. Seven of the commenters recommended that we use a September and May schedule so that students are tested on a nine-month span rather than a six to seven-month span. Three of the commenters also suggested a once-a-year testing schedule. A few of the commenters questioned the cost of giving standardized tests, and one commenter stated that testing was more of an intimidation than a help for schools. Another commenter was concerned about the evaluation of subject areas other than reading, language arts, and mathematics.

Response. The Bureau agreed with the suggestion that the October and April testing dates should be changed to September and May or adhere to the norming dates of the test being given and this amendment was made. However, the Bureau disagreed with the once-a-year testing suggestion; we believe that both pre-tests and post-tests are necessary to provide an assessment that can be correlated to normed test instruments for comparative purposes. The Bureau agreed that testing will result in cost, but we believe that the importance of the data provided by testing far outweighs the cost. Furthermore, schools should view tests as a tool for improving the educational process rather than as intimidation. As to the evaluation of other subject matter, this is covered in § 36.50. Paragraph (a)(2) of § 36.42 has been redesignated as § 36.42(a)(1).

Amended.—Reporting Test Results § 36.42(a)(3). This paragraph has been amended by inserting the word "summative" after the word "the" and before the word "results," in the first sentence and adding the following

phrase and sentence "the appropriate Agency and/or Area and respective school boards. Parents will be informed of test results for each of their children." Paragraph (a)(3) of § 36.42 is redesignated as § 36.42(a)(2) and paragraph (a)(4) is redesignated as (a)(3).

Comment.—Counselor/Student Ratio § 36.42(b)(1). Three comments were received. Two commenters suggested lowering the minimum ADM of 200 students to 100 ADM for each full-time professional counselor. Another commenter recommended that the ADM requirement be increased to 300 ADM.

Response. No change was made. The Bureau believes that, based on some of the ratios found in other state, private and Federal programs, the 200 ADM requirement would be adequate for a minimum standard.

Comment.—Counselors in a Bicultural of Multi-cultural Setting § 36.42(b)(2). One commenter recommended that the words "in a bicultural" or "multicultural setting" be removed since the phrases add nothing to the intent of the standard and are subject to misinterpretation.

Response. The Bureau agreed with the recommendation and the phrases were removed.

Comment.—Counseling Assistance to Students § 36.42(b)(3)(vi). Five comments were received. The commenters addressed the unrealistic requirements for having counselors at the seventh grade. Some commenters recommended that the words "junior high or middle school" be removed. Another commenter suggested that we strengthen this paragraph to require counselors to provide students and families with college and financial aid counseling.

Response. The Bureau disagreed with the commenters. We believe that it is essential to provide academic and career planning at an early age. This enables students an early opportunity to advance toward a career goal. The proposed regulation in this section does require counseling for college and financial aid assistance. The Bureau also believes that the requirements stated here are not unrealistic and must be performed to develop a good counseling program. No change was made.

Section 36.43 Standard XVI—Student activities.

Comment.—Student Activity Program § 36.43. One commenter noticed that the second sentence is a "run-on" sentence beginning with "These programs . . ."

Response. The Bureau agreed, and the beginning of the sentence has been changed to read "Each activity program. . ."

Comment.—School Board Approval of Student Activities § 36.43(a). Five commenters recommended that all student activities should be approved by the school supervisor and the school board should approve the overall activity plans.

Response. The Bureau agreed with the recommendation, and this paragraph has been amended as recommended to include school board approval for the overall activity plan.

Comment.—Student Activity Plan § 36.43(b). Three comments was received. One commenter recommended that this paragraph be removed since it created more paperwork. Two commenters suggested that we should state to whom the plan should be submitted.

Response. The Bureau disagreed with removing this paragraph since each student activity should be authorized and approved prior to any student participation. However, the Bureau did agree with the suggestion that we specify to whom the plan should be submitted. This paragraph has been amended.

Comment.—Interscholastic Sports and Activities § 36.43(c). Two commenters did not agree that Bureau schools should abide by state rules when participating in state-recognized leagues. The commenters also recommended that this paragraph should read "belong to" rather than "participate in".

Response. The Bureau is not requiring schools to participate in state-recognized leagues. However, when a school does, it should follow and abide by state regulations. Participation is the choice of each school. No change was made.

Comment.—Participation in Interscholastic Competition § 36.43(d). One commenter wrote that this paragraph implies that there is an indefinite period of time in which "comparable competitive opportunities are not required to be provided to all students regradless of sex," and that this paragraph should be removed.

Response. The Bureau disagreed. This paragraph provides for both sexes to participate in interscholastic competition in noncontact sports until comparable sports activities are provided. There is the possibility that there could be an indefinite period of time in which comparable competitive opportunities cannot be offered. However, if comparable interscholastic activities are not offered, both sexes may participate. No change was made.

Comment.—Intramural Program for Residential Students § 36.43(e). One commenter suggested that the term "formal" should be removed and the words "its resident" should be changed to "all" in the phrase "formal intramural programs for its resident students."

Response. The Bureau agreed with the suggestion, and this paragraph has been amended accordingly.

Comment.—Student Activities Must be Education Related § 36.43(f). Two commenters requested that this paragraph be clarified, since the commenters consider many activities such as recreation programs to be related to the educational program.

Response. The Bureau included this paragraph so that all student activities would be related to the school educational program and/or outside activities would be sanctioned. However, the Bureau has amended this paragraph to provide further clarification.

Comment.—Auditing of Student Activity Accounts § 36.43(g). One commenter suggested that the term "audited" be changed to "monitored" since "audit" has specific, legal connotations requiring a qualified financial auditor.

Response. The Bureau disagreed with the suggestion. The Bureau has a regulation in 25 CFR 31.7 which requires that student activity bank accounts be audited. No change was made.

Comment.—Safety and Welfare of Students Participating in School Activities § 36.43(h). One commenter suggested that this paragraph should include "spectators" under its safety requirements.

Response. The Bureau disagreed. The requirements here pertain only to the safety and welfare of students participating in a school-sponsored activity. No change was made.

Subpart F—Evaluation of Educational Standards

Section 36.50 Standard XVII—School program evaluation and needs assessment.

General Comment. Two comments were received. One commenter suggested that this subpart should address accreditation of the whole school program under the appropriate accreditation association within that region. Another commenter expressed concern regarding the extensive provision for conducting evaluations and needs assessments by the Office of Indian Education Programs and local schools. *Response.* The Bureau believes that accreditation should be left up to

the local school board and school officials. However, schools shall follow regional and/or state or accreditation requirements equal to the state in which a school is located. The Bureau agreed that conducting evaluations and needs assessments are time-consuming but essential. Schools need to provide a systematic review of their programs and address the needs of their students.

Comment.—Evaluation Cycle § 36.50. Eight comments were received. The commenters addressed the four-year evaluation cycle in the introductory part of this section as conflicting with state, tribal, or regional accreditation, and suggestions were made to increase the evaluation cycle to seven years. Commenters also recommended that schools following regional accreditation continue to follow that procedure and evaluation cycle.

Response. The Bureau agreed with the commenters, and this introductory paragraph has been amended to increase the four-year evaluaton cycle to seven years and add the option that a school may elect to follow its own state or regional accreditation requirements or accreditation requirements at least equal to the state in which the school is located.

Comment.—Areas of Evaluation § 36.50(a). Three comments were received. Two comments suggested the inclusion of "standardized test results" and "professional staff development" as relevant requirements within the listing under this paragraph. Another commenter recommended that the areas to be reviewed be categorized under process and product evaluation.

Response. The Bureau disagreed that "standardized test results" should be required under this paragraph since test results are required under § 36.42(a). However, the Bureau does agree that "professional staff development" should be included, and § 36.50(a)(16) has been amended to include certification. The Bureau disagreed with the second commenter that a process and product evaluation be include under this paragraph. The methodology for process and product evaluation should be determined by what is to be evaluated.

Comment.—Standardized Needs Assessment and Evaluation § 36.50(b). Five comments were received. One commenter suggested that this paragraph be removed. Four commenters suggested this paragraph be amended to consider providing guidelines for developing appropriate evaluation models for schools.

Response. The Bureau disagreed with the first commenter since evaluation is a critical part in the assessment of school programs. However,the Bureau agreed with the suggestion that guidelines be provided instead of having one evaluation model. This paragraph has been amended to include the provision of guidelines for developing appropriate models for evaluating the requirements of the standards under this section.

Section 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

General Comment. Two general comments were received. One commenter agreed with monitoring requirements and addressed their importance. The other commenter felt that the monitoring section was not strong enough.

Response. The Bureau believes that monitoring is an administrative tool that provides data to management to help support and assist in the delivery of services. The results of monitoring will be used to evaluate management in meeting its performance objectives.

Comment.—Onsite Monitoring by Central Office § 36.51(a). One commenter questioned the adequacy of Office of Indian Education Programs personnel and funds to conduct onsite monitoring.

Response. The Bureau presently conducts onsite visits and, to a great extent, programs are monitored. Therefore, the Bureau should have little problem in conducting onsite monitoring. In addition, the Office of Indian Education Programs will be consolidating its onsite visits so as not to duplicate monitoring efforts. No change was made.

Comment.—Monitoring by Agency and Area § 36.51(b). Three comments were received. One commenter objected to the term "Area School Board" since the law makes no allowance for an Area School Board. Two commenters suggested including the school supervisor along with the local school board for receiving reports under this paragraph.

Response. The Bureau agreed with the commenters. The term "Area" has been removed, and the words "local school supervisors" have been added to the last sentence.

Comment.—Maintenance of Records § 36.51(c). One commenter recommended that this paragraph be removed since authorized officials may use this paragraph to require records and reports of extreme amount and diversity.

Response. The use of records is covered by the Privacy Act and Freedom of Information Act. The indiscriminate use of records can result in stiff penalties. Also, reports from the public may only be required when authorized by the Office of Management and Budget, and this should curtail the use of non-required reports. No change was made.

Comment.—Assessment of Education Policy and Administrative Procedures § 36.51(e). Five comments were received. One commenter said that this paragraph deferred more to state education systems than tribal education systems. One commenter questioned whether ISEP funding would be adequate to support the evaluation requirements under this part. Another commenter suggested that the term "summative" be changed to "summary", thus eliminating the technical overtones. Two commenters recommended the substitution of the word "school" for the words "non-Federal agencies" and adding the words "as appropriate" after "Area" and before the word "shall" in the first sentence.

Response. The reason the standards do defer more to state education systems is that the law requires the Bureau to use state standards as the basis in the development of the standards under this part. We do not see any limitation placed on tribal education systems since the law allows the tribes to waive, in part or in whole, the standards under this part. The revision of the ISEP formula will address the cost of the standards under this part. The suggestion to substitute the word "summary" for the word "summative" was rejected since the two terms do not have the same meaning; the requirement under this section is for the total evaluation and not just a summary. The Bureau agreed with the last two commenters regarding changes in the first sentence by inserting the words "as appropriate" after the word "Area", and before the word "shall", but disagreed with substituting the word "school" for the words "non-Federal agencies".

Subpart G—Compliance and Waivers

Section 36.60 Compliance for minimium academic standards.

Comment.—Time Schedule for Reporting Compliance § 36.60(b). Three commenters addressed the "within 45 day" time frame for requiring schools to submit compliance reports since this would conflict with the student count. The commenters recommended this be changed to 60 days.

Response. The Bureau disagreed with the recommendations that the time frame for reporting compliance should be extended from 45 days to 60 days. A school should know whether it will be in compliance even before the school term

begins. Each school must begin their planning during the summer prior to beginning of the next school term. The 45 day time frame would enable the schools to validate the standards according to student ratios. We see no reason for extending the time frame.

Comment.—Informing Parents of Noncompliance § 36.60(c). Nine comments were received. One commenter remarked that the requirement for reporting to parents about compliance status would improve the education offered by the Bureau. Two commenters suggested that only the school boards should provide the compliance reports to parents upon request. Six other commenters thought this paragraph would reflect the poor conditions of the schools and would encourage parents to remove their children from the schools.

Response. The Bureau agreed with the comment that the school board must be notified but did not agree that the school board may at its option issue a public notice of this condition. The school supervisor shall notify parents or legal guardians of notice of noncompliance within 60 days of the beginning of the school term; therefore, the 45 day requirement has been changed to 60 days. The welfare of the children must be a public concern and should be reported. This is in line with local decisionmaking. The Bureau believes that the reporting of poor school conditions would encourage efforts to upgrade the school.

Comment.—Requirements for Compliance Report § 36.60(d). One commenter remarked that the compliance report requirements under this paragraph were unrealistic.

Response. The Bureau disagreed. The compliance requirements contained herein are no greater than those usually required to operate a school program. Each school must go through a planning, programming, budgeting, and evaluation process annually.

Comment.—Parental Notification of Non-Compliance § 36.60(d)(4). Two commenters saw no useful purpose of this requirement and recommended that it be removed.

Response. The Bureau disagreed. Parents especially should be informed of the conditions existing in the school. However, since the requirement is covered in (c) under this section, this paragraph has been removed. Subsection (d)(5) has been redesignated as (d)(4).

Comment.—Administrative Actions for Noncompliance § 36.60(f). Three comments were received. One commenter suggested that appropriate personnel actions should also include Central Office and support services personnel who have responsibility for ensuring compliance with the standards. Another commenter stated that "all applicable levels of school administration" means that only the principal will be affected. Another commenter expressed the fear that some administrators might use this paragraph as a "big club" against subordinates.

Response. It is the Bureau's intent to develop performance objectives at all levels of administration, especially for Central Office, Area, and Agency personnel. The performance objectives will tie directly into the functions and requirements of the standards. The performance objectives for all administrative levels will address the concerns that all administrative personnel, and not just principals, be held accountable. The Bureau believes that the appeal procedures available to subordinates will help to keep a proper balance. No change was made.

Comment.—Annual Report to Congress § 36.60(g). Three comments were received. One commenter questioned the need for requiring a "detailed analysis" for each school in meeting these standards. Another commenter addressed the need for improving the data collection system and streamlining the reporting system. The last commenter recommended that the law (Pub. L. 95–561, sections 1121(f) and 1122(c)) be printed here verbatim.

Response. The law and these standards require the Bureau to submit annually to the appropriate committees of Congress a detailed plan and a status report of each school's educational program. The Bureau agreed with the last commenter, and that section of the law has been printed verbatim.

Section 36.61 Waivers and revisions.

General Comment.—One commenter questioned the wisdom of granting waivers and suggested that all schools funded by the Bureau should be required to meet the same standards.

Response. Pub. L. 95–561 authorizes tribal governing bodies to waive the academic standards established by this part for Bureau-operated schools and, subject to the approval of the Secretary of the Interior, substitute alternative standards. Contract schools may accept the standards under this part.

Comment.—Waivers of Standards § 36.61(a). Fourteen comments were received. Twelve of the commenters objected to this paragraph by pointing out that it conflicted with Pub. L. 95–561. The objection centers around the waiver requirement which provides for the Assistant Secretary to first approve a waiver before tribes can modify these standards. Two commenters questioned the review authority of the Assistant Secretary as final and unreviewable.

Response. The Bureau agreed with the commenters, and this paragraph has been amended to give the tribes or their designated school board the authority to waive, in part or in whole, these standards as provided by law. However, this section has also been modified to make clearer that in the interim between the waiver of the standard(s) and the approval of the revised standard(s), minimum state standards or the standards under this part shall apply to the affected school(s). This part was also modified to require revised standard(s) within 60 days of the waiver by the tribal governing body. The sentence which allows the Assistant Secretary to reject alternative standards, and which states that his/her review shall be final is taken directly from 25 U.S.C. 2001(d).

Comment.—Time Schedules for Waivers and Revisions § 36.61(a)(1). Three comments were received. Two commenters recommended that this paragraph be amended to add: "However, waivers may be submitted during the first six months following the initial publication date of this part." Another commenter said this requirement was impractical.

Response. The Bureau disagreed. Waivers should not be based on the first six months of publication of the regulations but rather on program need. Waivers should have prior approval so as not to disrupt programs.

Comment.—Waiver Authority § 36.61(a)(5). Two comments were received concerning the waiver authority and the time limitation. One commenter indicated that this provision overrules the law since the only limitation put on this waiver authority is that it be "local". One commenter suggested that "45" be changed to 75 since 45 days may be too short.

Response. The Bureau agreed with the first commenter since the tribal decision to waive the standards is not subject to Secretarial approval. However, provision for interim standards is included in the amended section as a necessary condition for substituting the required alternative standards. The Bureau disagreed with the second commenter that the 45 day response time from the Secretary is too short and did not change the time period. However, this part was moved and incorporated into § 36.61(a).

Subpart H—National Dormitory Criteria

Amended.—Scope of Subpart § 36.70. The introductory section was amended

to include terminology used to designate specific employee positions and their assigned responsibilities. Terminology may vary depending upon whether the dormitory is a direct Bureau operation or contract operation.

Section 36.71 General provisions.

Comment.—Homeliving Specialist § 36.71(a). Six comments were received. Three commenters questioned the title of "Homeliving Sepcialist" as the head of a dormitory. Three commenters questioned the authority given to the position of "Homeliving Specialist" and suggested that we are creating a separate power base within a school.

Response. The Bureau disagreed with the commenters since the "Homeliving Specialist" is part of the staffing structure in the personnel requirements for Bureau-operated dormitories. The Bureau believes that each dormitory should be under the guidance of an individual; however, this does not mean that a separate authority is established. The school supervisor is still the administrative authority at each school and the one to whom all subordinates report. For small schools, the staffing or positions may have to be modified to meet special requirements of the schools. No change was made.

Comment.—Guidance Program § 36.71(b). Four comments were received. Two commenters thought that this paragraph would duplicate public school requirements. Two commenters said that this paragraph inadvertently imposes academic standards on non-Bureau operated schools.

Response. The Bureau agreed with the commenters, cnd this paragraph has been revised to reflect the concerns.

Comment.—Exceptional Child Program § 36.71(c). Two comments were received. One commenter suggested that this paragraph imposes academic requirements on the dormitories of non-Bureau-operated schools. One commenter remarked that this requirement is mandated by Pub. L. 94–142 and services must be provided by a qualified person.

Response. The Bureau believes that the individual education plan as required under this paragraph must be a requirement for all schools, including non-Bureau-operated schools, as required by Pub. L. 94–142. No change was made.

Comment.—Intense Residential Guidance Program § 36.71(d). One commenter recommended that unless there are additional requirements, this paragraph should reference 25 CFR 39.11(h).

Response. The Bureau disagreed with the commenter and believes that this paragraph is too important not to be restated. No change was made.

Comment.—Career Counseling § 36.71(e). One commenter thought this paragraph had the effect of imposing academic standards on non-Bureau-operated schools.

Response. The Bureau agreed in part. The Bureau believes that strong career counseling in education and job opportunities should be required at all levels and including non-Bureau-operated schools. However, the word "provide" was changed to "make available" so as to lessen the requirement under this part. A change was made to eliminate career counseling at the kindergarten level since the service is inappropriate for this grade level.

Comment.—Scheduling of Student and Counselors § 36.71(f). Two comments were received. One commenter objected to this paragraph which seemed to imply that students should be "scheduled" as employees are scheduled. Another commenter suggested that this paragraph be rewritten.

Response. The Bureau agreed with the commenters, and this paragraph has been amended. This paragraph does allow for flexible scheduling for students.

Comment.—Administrative Handbook § 36.71(g). Three comments were received. Two commenters objected to the presumption that this paragraph will be a rather large compendium of information about the school. One commenter made the comment that this has been discussed under § 36.10.

Response. The Bureau agreed to some extent with the commenters, and subsections (3) and (5) have been deleted since they also reflect academic requirements. However, the Bureau believes that schools must provide parents and students information about their dormitories.

Comment.—Orientation Programs § 36.71(h). One commenter remarked that this paragraph had limited application and should not be retained as a national criteria.

Response. The Bureau disagreed. Where appropriate, dormitories should provide orientation programs for those students who will be coming from feeder schools so as to provide an easier transition. No change was made.

Comment.—Student Activity Program § 36.71(i). Three comments were received. One commenter remarked that this paragraph appeared to be written for larger schools and should be replaced by much briefer and more general requirements which allow for meeting school and community specific needs and wishes. One commenter suggested that in § 36.71(i)(2) the plan be submitted to the school supervisor. One commenter made the statement that this was already discussed under § 36.43(a).

Response. The Bureau disagreed with the comment of replacing this paragraph with a briefer statement. The Bureau sees these requirements as the minimum needed for accountability. The Bureau did agree with the last two commenters and changes have been made accordingly.

Removed.—Student Activity Plan § 36.71(i)(4). This paragraph has been removed since § 36.71(i)(2) addresses the same issue.

Comment.—Parent/Student/Teacher Conferences § 36.71(j). Three comments were received. One commenter remarked that this paragraph has the effect of enforcing academic requirements on non-Bureau-operated schools. One commenter recommended that this paragraph be optional for "off-reservation boarding schools and peripheral dormitories". One commenter recommended that the words "student progress" be substituted for "student grades".

Response. The Bureau agreed with the commenters and this subsection was deleted.

Section 36.72 Elementary level dormitories.

General Comment. One commenter expressed concern that the requirements of the counselor/student ratios were eroding the power of the school board in establishing a staffing pattern in conjunction with the local school supervisor. *Response.* The Bureau sees no erosion of power since these are only minimum ratio requirements and the local school supervisor has the responsibility of determining staffing patterns based on the minimum requirements.

Comment.—Qualified Counselor § 36.72(a). One commenter recommended that dormitory counselors provide personal-social guidance and leave the academic counseling to the counselors as provided for in § 36.42. This commenter also requested clarification of what type of certification would be required.

Response. Dormitory counselors are not intended to be used for academic counseling but rather to provide the personal and social types of counseling needed in the dormitory environment. The certification requirements for such counselors will be in accordance with those of the state in which the dormitory is located.

Comment.—Certified Elementary Counselor § 36.72(a). One commenter

recommended that this paragraph be changed to read, "Each dormitory shall have access to professional counseling services." This is based on the fact that some schools have cooperative relationships with outside agencies to provide professional counseling when needed. One commenter was concerned about job titles being imposed upon non-Bureau-operated dormitories. Another commenter recommended that counselors be certified.

Response. It is agreed that cooperative arrangements with outside agencies to provide professional counseling services to the dormitories would meet the requirements of this paragraph. This paragraph has been amended to reflect such change. Regarding job titles, the introductory part of § 36.70 has been amended to correct this concern. Counselors will be required to be certified.

Comment.—Counselors as Supervisors § 36.72(b). Three commenters disagreed with this paragraph, believing it was detrimental to the small dormitory operation since it is often necessary for the counselor to act in a supervisory position in the absence of the Homeliving Specialist. Another commenter stated that this paragraph should not be imposed on non-Bureau-operated schools.

Response. The Bureau agreed with the first three commenters, and the language was changed to permit assignments of counselors to school supervisory duties depending upon the local need. In reply to the last commenter, the law mandates that both Bureau and contract boarding schools meet the criteria under this section. The amendment made to this paragraph should also be of benefit to contract boarding school administration in addressing the issue of counselors being assigned administrative duties.

Comment.—Counselor/Student Ratios § 36.72(c). Four commenters questioned the adequacy of the counselor/student ratios and indicated the likelihood of not being able to meet the ratios due to FTE and budget restraints. One commenter was concerned that the small dormitories will have a disadvantage in not being able to recruit for half-time counselors, as required in the ratio for less than 75 students, and would be able to obtain only full-time counselors.

Response. The revision of the ISEP formula will address the budgetary issues. The FTE issue will need to be addressed on an individual school or dormitory basis as the need arises. The ratios were kept as proposed. In reply to the last commenter, the Bureau believes that since these are minimum requirements, a school may decide to allocate more of its resources to this program if it chooses to do so.

Comment.—Counselors' Work Schedule § 36.72(d). Four commenters recommended that this paragraph be removed entirely or that reference to specific times be eliminated by amending the paragraph.

Response. We agreed with the commenters and have amended this paragraph to reflect flexibility in the counselors' work schedule.

Section 36.73 Secondary level dormitories.

Comment.—Certified Counselor § 36.73(a). One commenter recommended adding the words "or have access to" after the words "shall provide".

Response. The Bureau agreed and added the words "or have access to" after the word "provide" and before the word "the". This allows for contracting counseling services.

Comment.—Counselors as Supervisors § 36.73(b). One commenter responded that counselors in small schools may be the next professional position in line to assume school supervisory duties. The condition that "counselors shall not be assigned school supervisory duties" is too rigid.

Response. The Bureau agreed with the commenter and the language was changed to reflect permissive assignments of counselors to school supervisory duties depending upon the local need.

Comment.—Counselor/Student Ratio § 36.73(c). One commenter felt that the ratio of one counselor for each 300 students is sufficient if academic counselors are considered separately.

Response. Academic and dormitory counselors are considered separate, therefore, no change was made.

Comment.—Counselors' Work Schedule § 36.73(d). Four commenters indicated that establishing working hours for counselors in the standards is too restrictive and prevents local management from arranging work schedules to meet the particular needs of a dormitory.

Response. The Bureau agreed, and this has been changed to reflect that counselors' duty hours shall be arranged to provide maximum availability of services to students when students are not in academic sessions.

Section 36.74 Homeliving (dormitory operations).

Comment.—Dormitory Manager § 36.74(a). One commenter believed that this paragraph should be removed because of the wide variation between facilities and staffing needs. Another commenter stated that additional moneys will have to be allocated to meet this standard. A third commenter felt that the job title "dormitory manager" should be eliminated or limited to Bureau-operated schools.

Response. The Bureau rejected the first commenter's recommendation since it felt that at least one adult should be on duty at all times when the students are in the dormitory. The allocation of funding for the dormitory criteria will be addressed in the revision of the ISEP formula. An amendment to the introductory part of § 36.70 provides that the use of the job title "dormitory manager" will be optional for non-Bureau-operated schools.

Comment.—Staff/Student Ratio § 36.74(b). Sixteen comments were received on this paragraph. A group of commenters stated that the staff/student ratio was unacceptable because the ratio was either too low or too high. Two commenters felt that it was the prerogative of the local school supervisor and local school board to establish the staffing pattern. A group of commenters had concern for the additional FTEs and funds that would be required to meet the proposed staff/student ratio. One commenter inquired if there was a relationship between the ISEP formula in § 39.13 and the staffing ratios proposed in § 36.74(b). One commenter suggested that the sentence "staff ratios on week-ends shall be reduced . . ." be modified to reflect the need for additional staff members for certain weekend functions. One commenter questioned the need for the proposed staff/student ratio during the school hours. One commenter requested clarification of the phrase ". . . at least one adult is on duty . . . ."

Response. The Bureau will retain the staff/student ratios as originally proposed since no definitive agreement was established. The proposed staff/student ratios are minimum criteria which allow the school supervisor and the local school board to establish staffing patterns beyond the proposed minimum criteria. The revised ISEP formula will address the proposed staffing ratio. The staff ratios on weekends has not been changed. The proposed staff/student ratio is based on the ADM of the dormitory, hence the ratio of 1:40 during school hours. The phrase ". . . at least one adult is on duty . . ." means one adult on duty at all times when students are in the dormitory. No change was made.

Comment.—Group Instruction and Discussion Sessions § 36.74(c). One commenter felt that this proposed

standard imposes BIA rules on non-Bureau-operated schools.

Response. Pub. L. 95–561 requires that standards be set up for all dormitory situations. As such, the Bureau's position is that group instruction and discussion sessions should be held at least once per month, but preferably weekly. This paragraph is amended to reflect a minimum criteria allowing flexibility for topic identification.

Comment.—Dormitory Maintenance § 36.74(d). One commenter stated that the entire paragraph with the exception of the first sentence is operational detail and should not be imposed on non-Bureau-operated schools. The same commenter suggested a change of wording in this paragraph. Another commenter stated that bed and bath linen should be changed a minimum of twice a week.

Response. The Bureau disagreed with the first comment. The Bureau feels that these are minimum criteria that should apply to all Bureau-funded schools. The suggested change in wording of this paragraph has merit, and this section has been modified. However, the changing of bed and bath linen once a week is a minimum criteria only.

Comment.—Laundry and Student Clothing Upkeep § 36.74(e). One commenter suggested that students in the seventh grade be allowed to wash and dry their own clothing since they are responsible for the upkeep of their clothing. One commenter stated that, due to the diminishing number of dormitory staff, it would be difficult to wash the students' clothing while providing proper supervision of students. One commenter stated that this paragraph consists of operational detail that should be in Bureau manuals and not imposed upon non-Bureau-operated schools.

Response. The Bureau agreed with the rationale, and this paragraph has been amended accordingly and included a provision for contracting. The revised ISEP formula will address the issue of adequate staff in dormitories.

Comment.—Student Accountability System § 36.74(f). One commenter considered this paragraph to be operational detail which should be written into BIA manuals rather than imposed on non-Bureau-operated schools. The same commenter stated that general and specific statements of the school's responsibility to parents were missing. Another commenter stated that a *loco parentis* statement of responsibility is needed regardless of student age. Two commenters disagreed with the number of times the attendance checks of students be taken and for what age range.

Response. The Bureau's position is that these are minimum crtieria that should be followed by Bureau-funded schools. The type of statements and criteria for the student accountability system is left up to the school supervisor and the school board. No change was made.

Comment.—Student Check Out/In Procedure § 36.74(g). Two comments were received on this paragraph. One commenter stated that this paragraph should be removed since this should be a locally developed policy approved by the school board. The other commenter stated that this paragraph was too specific and omitted mentioning parents.

Response. The Bureau disagreed with all commenters; however, this paragraph has been amended to reflect parental approval and the adopting of school board policy governing the conditions for student release.

Comment.—Sick Room § 36.74(h). One comment was received. The commenter stated that the requirements for a sick room were too specific and suggested a more general statement. The commenter further suggested that some parts of this paragraph are operational detail.

Response. The Bureau agreed with the commenter, and this paragraph has been amended to be less specific.

Comment.—Emergency Procedures § 36.74(i). One comment was received. The commenter felt that the requirements for emergency situations were too specific.

Response. The Bureau disagreed with the commenter. Procedures to protect the welfare and safety of the children must be specific and adhered to at all times. No change was made.

Comment.—Tutoring Program § 36.74(j). Three comments were received. One commenter stated that the tutoring program was too specific. Another comment was that the tutoring program should also be shared by the academic section. One commenter asked, "What tutoring method would be used and would overtime be justified for tutoring?"

Response. The Bureau's position is that these are minimum criteria and the content, procedures, etc. are at the prerogative of the local school supervisor and the school board. No change was made.

Comment.—Job Title—Homeliving Specialist § 36.74(k). Two comments were received. One commenter suggested that different titles for homeliving specialist be used. The other commenter suggested that this paragraph be rewritten without reference to a specific job title.

Response. The changes in the introductory part of § 36.70 and § 36.74(k) have addressed the issue of job title applicability; the amendment here takes care of both comments received under this paragraph.

Comment.—Leisure-time Schedules § 36.74(l). Three comments were received, all of which recommended amendments to reflect a general policy rather than being specific.

Response. All three comments recommended were considered, and this paragraph was amended to be less structured and more general.

Comment.—First-aid Training § 36.74(n). The one commenter suggested that this paragraph be amended to include school board approval of training programs.

Response. The Bureau disagreed with the commenter since the board must approve the annual residential budget. The Bureau believes that all dormitory personnel must receive training in emergency first-aid procedures. No change was made.

Section 36.75 Space and privacy.

Comment.—Elementary Sleeping Room Size § 36.75(a). Seven commenters agreed with the proposed 50 to 65 square feet per elementary student requirement, exclusive of furniture, but pointed out that current facilities would not allow continuation of the current enrollment levels. Three commenters suggested that the proposed standard should apply only to new construction criteria for dormitories. One commenter suggested that the kindergarten level be removed from this rule.

Response. The Bureau has changed the proposed square feet per student varying from 50 to 65 square feet to "averaging from 40 to 60 square feet. The Bureau agreed with the commenters concerning the need for the space requirements to apply to new dormitories and has amended § 36.75(c) accordingly. The Bureau agreed with the comment concerning kindergarten students and has changed the rule from K–8 to 1–8, since kindergarten students are not to be housed in dormitories.

Comment.—Secondary Sleeping Room Size § 36.75(b). Two commenters questioned whether the 70 square feet referred to free space, exclusive of furniture. Twelve commenters stated that the proposed 70 square feet requirement is unrealistic for current facilities, but it should be used, in a modified form, in the construction of new dormitories.

Response. The intent of the proposed rule was 70 square feet per student, exclusive of furniture. This paragraph has been amended to clarify the meaning. The Bureau agreed with the

comments concerning the 70 square feet and has amended the wording of the rule from "70 square feet" to "averaging from 50 to 70 square feet", exclusive of furniture. The Bureau agreed with the comments concerning the need for the space requirements to apply to new construction criteria for dormitories and has amended § 36.75(c) accordingly. In addition, the paragraph between (b) and (c) of this part has been moved and added to the introductory part of this section.

Comment.—Number of Students Per Room § 36.75(c). Three commenters suggested that the proposed maximum of four students per room was desirable. A fourth commenter suggested a maximum of four students per room for grades 1–8 and two students per room for grades 9–12.

Response. The Bureau disagreed with the fourth commenter regarding the two students per room requirement for grades 9–12. However, the paragraphs in §§ 36.75(a) and 36.75(b) have been amended to specify that the number of students per room will be dependent on the square footage.

Comment.—Library Media Program § 36.75(d)(i)—(iv). Two commenters disagreed with the need for a library/media program in the dormitories. Four commenters agreed that such a library/media program is needed, but they pointed out that additional funds would be needed.

Response. The Bureau disagreed with the comments that a library/media program is not needed. However, the Bureau has removed the requirements for a librarian and reduced the resource materials for peripheral dormitories. Allocation of funding will be addressed in the revised ISEP formula.

Section 36.76 Compliance for the National Criteria for Dormitory Situations.

General Comment. The general reaction by four commenters was that a question existed about the feasibility of compliance given the reality that many facilities used as dormitories cannot meet the space requirements.

Response. The Bureau disagreed with the commenters. In order for the Bureau to establish a data base for evaluating dormitory requirements, an effective date for compliance must be established. However, § 36.76(a) has been incorporated under the introduction paragraph of this section and § 36.76(b) is now redisignated as § 36.76(a).

Comment.—Parental Notification of Noncompliance § 36.76(c). One commenter felt that the school board rather than parents should be notified.

One commenter felt that a letter informing parents of noncompliance was unnecessary harassment and suggested posting a notice of noncompliance. One commenter felt the paperwork required was unnecessary.

Response. The Bureau disagreed with the commenters. The Bureau believes that parents have the right to know the status of the dormitory program. However, the 45 day notice was amended to read within 60 days of the school term. Paragraph (c) of § 36.76(c) has been amended by removing paragraph (c)(5) and has been redesignated as § 36.76(b).

Moved. § 36.76(d) has been redesignated as § 36.76(c).

Moved. § 36.76(e) has been redesignated as § 36.76(d).

Comment.—Penalty for Noncompliance § 36.76(f). Two commenters responded that the number of consecutive years of noncompliance should be stated and that efforts to correct noncompliance conditions locally should be limited to expenditure of funds other than ISEP.

Response. The comment recommending adding a specific number to identify the consecutive years of noncompliance was accepted, and this requirement was amended to reflect two consecutive years. The comment on limitations on ISEP funds to meet compliance was not accepted. Paragraph § 36.76(f) has been redesignated as § 36.76(e). No other change was made.

Added.—§ 36.76(f). A new paragraph has been added that includes a detailed plan to be included in the annual budget submission to the appropriate committees of Congress.

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. This rulemaking will apply to and affect only Bureau-operated schools and some Indian-controlled contract schools, which are funded from Congressional appropriations; no other group(s) will be affected.

The information collection requirement contained in § 36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0092.

The information collection requirements contained in §§ 36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

The primary authors of this document are Dr. Kenneth G. Ross and George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245.

List of Subjects in 25 CFR Part 36

Indian education, Schools, Students, Parents, School boards, Educational facilities.

25 CFR Chapter I is amended by adding a new Part 36 to Subchapter E, to read as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart A—General Provisions

Sec.

36.1 Purpose, scope, and information collection requirements.
36.2 Applicability.
36.3 Definitions.

Subpart B—Educational Management

36.10 Standard I—Philosophy and goals.
36.11 Standard II—Administrative requirements.
36.12 Standard III—Program needs assessment.
36.13 Standard IV—Curriculum development.

Subpart C—Minimum Program of Instruction

36.20 Standard V—Minimum academic programs/school calendar.
36.21 Standard VI—Kindergarten instructional program.
36.22 Standard VII—Elementary instructional program.
36.23 Standard VIII—Junior high/middle school instructional program.
36.24 Standard IX—Secondary instructional program.

Subpart D—Student Instructional Evaluation

36.30 Standard X—Grading requirements.
36.31 Standard XI—Student promotion requirements.
36.32 Standard XII—Graduation requirements for a high school diploma.

Subpart E—Instructional Support

Sec.
36.40 Standard XIII—Library/media program.
36.41 Standard XIV—Textbooks.
36.42 Standard XV—Counseling services.
36.43 Standard XVI—Student activities.

Subpart F—Evaluation of Educational Standards

36.50 Standard XVII—School program evaluation and needs assessment.
36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

Subpart G—Compliance and Waivers

36.60 Compliance for minimum academic standards.
36.61 Waivers and revisions.

Subpart H—National Dormitory Criteria

36.70 Scope of subpart.
36.71 General provisions.
36.72 Elementary level dormitories.
36.73 Secondary level dormitories.
36.74 Homeliving (dormitory operations).
36.75 Space and privacy.
36.76 Compliance for the National Criteria for Dormitory Situations.

Authority: 25 U.S.C. §§ 2001, 2002, 2003, Pub. L. 95–561; 5 U.S.C. 301; 25 U.S.C. 2 and 9.

Subpart A—General Provisions

§ 36.1 Purpose, scope, and information collection requirements.

(a) The purpose of this rule is to establish minimum academic standards for the basic education of Indian children for Bureau-operated schools and for those Indian-controlled contract schools which adopt these standards and to establish national criteria for dormitory situations for schools operated by the Bureau of Indian Affairs and for Indian-controlled contract schools operating dormitories.

(b) These academic standards and dormitory criteria will take effect thirty (30) days after the date of their publication in the **Federal Register**. The Bureau of Indian Affairs intends to review and evaluate the applicability of the academic standards and dormitory criteria under this part after two years and make appropriate revisions.

(c) The information collection requirement contained in § 36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0092. The information is being collected to evaluate waiver request(s) from tribal government(s) and school board(s). The information will be used to ascertain the approval of academic waiver request. The obligation to respond is mandatory under 25 U.S.C. 2001. The information collection requirements contained in §§ 36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

§ 36.2 Applicability.

(a) The minimum academic standards for the basic education of Indian children established under this part, Subparts B through G, are mandatory for all Bureau of Indian Affairs operated schools unless a tribal governing body or the local school board, if so designated by the tribal governing body, waives, in part or in whole, the standards established under this part. When a tribe(s) formally takes action to waive, in total or in part, standards contained in this part, proof of such action shall be forwarded to the Agency Superintendent for Education (ASE) or area Education Programs Administrator (EPA). Within 15 days of receipt of such documentation the ASE or EPA shall notify, in writing, the parents or legal guardians whose children are attending the school(s) affected.

(b) The minimum academic standards for the education of Indian children established under Subparts B through G are not applicable to Indian-controlled contract schools unless the Indian-controlled contract school board formally adopts them in whole or in part. The Bureau will not refuse to enter into a contract on the basis of failure to meet these standards but will, through contracting procedures, assist the school in reaching compliance, if so requested by the Indian-controlled contract school board.

(c) The national criteria for dormitory situations established under Subpart H will serve as a minimum requirement and shall be mandatory for all Bureau-operated and Indian-controlled contract schools.

(d) Standards and criteria contained under this part will serve as minimum requirements for the regular school educational program.

(e) In states where additional minimum academic standards exist or are established, those state standards shall also apply.

§ 36.3 Definitions.

For purposes of this part, the following definitions apply:

(a) "Accreditation" means a school has received an official decision by the State(s) department(s) of education, or another recognized agency having official authority, that, in its judgment, the school has met the established standards of quality.

(b) "Average daily membership (ADM)" means the aggregate days membership of a given school during a given reporting period divided by the number of days school is in session during this period. Only days on which the students are under the guidance and direction of teachers shall be considered as days in session. The reporting period is generally a given regular school term.

(c) "Agency" means the current organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

(d) "Agency school board" as defined in section 1139(1), Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency school board.

(e) "Agency Superintendent for Education" means the Bureau official in charge of education functions at an Agency and to whom the school supervisor(s) and other educators under the Agency's jurisdiction report.

(f) "Area Education Programs Administrator" means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education

(g) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

(h) "Basic academic skills" means the abilities acquired by observation, study, or experience in mental and/or physical performance (e.g., proficiency in planning and investigating, operational techniques, comprehension, organization, execution, remembrance and application of knowledge to acquire a desired result) basic to the mastery of school work or other activity.

(i) "Basic education" means those components of education emphasizing literacy in language arts, mathematics, natural and physical sciences, history, and related social sciences.

(j) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(k) "Certification" means the general process by which the State or Agency authorized by the State adjudges and

stipulates that an individual meets the established standards which are prerequisite to employment for a teacher or administrator in education.

(l) "Competency" means having the requisite abilities, skills, or a specified level of mastery.

(m) "Computer literacy" used here means the general range of skills and understanding needed to function effectively in a society increasingly dependent on computer and information technology.

(n) "Content area" means the usual school subjects of instruction, such as: Language arts, mathematics, science, social studies, fine arts, practical arts, health, and physical education.

(o) "Counselor" means a staff member, including those in both academic and dormitory situations, who helps the students to understand educational, personal, and occupational strengths and limitations; to relate abilities, emotions, and aptitudes to educational and career opportunities; to utilize abilities in formulating realistic plans; and to achieve satisfying personal and social development.

(p) "Course of study" means a written guide prepared by administrators, supervisors, consultants, and teachers of a school system or school, as an aid to teaching a given course or an aspect of subject-matter content to a given category of pupil.

(q) "Criterion-referenced test" means an achievement test designed to measure specific skills within a subject area. Test results indicate which skills a student has or has not learned.

(r) "Days" means calendar days.

(s) "Director" means the Director of the Office of Indian Education Programs in the Bureau.

(t) "Dormitory" means a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school.

(u) "Dormitory manager" means a staff member who manages the day-to-day, 24-hour operation of one or more dormitories.

(v) "Elementary school" is defined as any combination of grades K–8 except when any of these grades are included in the junior high or middle school level.

(w) "Exceptional child program" means a program for students who are eligible to receive education and related services as defined by 25 CFR 39.11(i).

(x) "Feeder school" means a school whose exiting students are absorbed by a school offering instruction on the next higher grade level.

(y) "Formative evaluation" is an evaluation of progress during the implementation of a program. Its purpose is to provide immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

(z) "Goals" means a statement of what the school system is attempting to do to meet the comprehensive educational needs and interests of its pupils, in accordance with its statement of philosophy.

(aa) "Grade" means the portion of a school program which represents the work of one regular school year; identified by a designation such as kindergarten, grade 1 or grade 10.

(bb) "Grade level" is a designation applied to that portion of the curriculum which represents the work of one regular school year.

(cc) "High school" is defined as grades nine through twelve, except when grade nine is included in the junior high or middle school organizational unit.

(dd) "Indian-controlled contract school" means a school that is operated by a tribal organization and funded under a contract with the Bureau.

(ee) "Indian student" means a student who is a member of an Indian tribe and is one-quarter (¼) or more degree of Indian blood quantum.

(ff) "Indian tribe" or "tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(gg) "Intense residential guidance" means the program for residential students who need special residential services due to one or more of the problems as stated in 25 CFR 39.11(h).

(hh) "Junior high" or "middle school" is defined as grades seven and eight, but may include grade six when it is not included in the elementary school level and/or grade nine when it is not included in the high school level.

(ii) "Kindergarten" means a group of students or a class that is organized to provide educational experiences for children for the year immediately preceding the first grade.

(jj) "Librarian" means a certificated school employee whose principal responsibilities include selection, acquisition, preparation, cataloging, and circulation of books and other printed materials; planning the use of the library by teachers and students; and instructing students in the use of library books and materials, whether the library is maintained separately or as a part of an instructional materials center.

(kk) "Local school board" when used with respect to a Bureau-operated school means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

(ll) "Objectives" means a statement of the general, long-range aims and the specific, short-range aims which indicate what the school is attempting to do to meet the needs of the students in accordance with the philosophy, goals, and policies of the school system.

(mm) "Paraprofessional" means a staff member who works with and is under the supervision of a professional staff member but who does not have full professional status, e.g., teacher aide. The term denotes a level of knowledge and skills possessed by an individual or required of an individual to perform an assignment. The level of skills is usually at a predetermined minimum level.

(nn) "Parent" means a natural parent or guardian or a person legally acting as parent.

(oo) "Peripheral dormitory" is a facility which provides students boarding and lodging during the school year for the purpose of attending a public school.

(pp) "Regular program student" means all students including those determined to be eligible for services as defined under the Exceptional Child Program, 25 CFR 39.11(i).

(qq) "Residential school" means an educational institution in which students are boarded and lodged as well as taught.

(rr) "Residential Services under Exceptional Child Program" means a program providing specialized residential care as determined by 25 CFR 39.11(i).

(ss) "School" means an edcucational institution, including elementary, junior high or middle, high school, peripheral, cooperative, and contract schools serving students in grades Kindergarten through 12 and as further defined under 25 CFR 39.2(q).

(tt) "School board" means an Agency or local school board.

(uu) "School day", "instructional day", or "teaching day" is a day on

which the school is open and students are under the guidance and direction of teachers in instructional activities where the minimum number of instructional hours are met.

(vv) "School Supervisor" means the official in charge of a school and/or peripheral dormitory who reports to an Agency School Superintendent or an Area Education Programs Administrator, as appropriate.

(ww) "Secretary" means the Secretary of the Interior.

(xx) "Self-contained class" means a class having the same teacher or team of teachers for all or most of the daily session.

(yy) "standard" means the established criterion and/or specified requirement which must be met and maintained.

(zz) "Summative evaluation" means a systematic analysis of the results or products of a program after it is completed. Its purpose is to determine the extent to which the objectives of the program have or have not been achieved. One form of summative evaluation compares results with those of another "control" program using different procedures. Other forms compare results with past results or predetermined target outcomes.

(aaa) "Teacher" means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation.

(bbb) "Unit/Unit of instruction" means a major subdivision of instruction generally composed of several topics including content and learning experiences developed around a central focus such as a limited scope of subject matter, a central program, one or more related concepts, one or more related skills, or a combination of these. One unit equals one full year of instruction in a subdividion thereof. "Unit" and "credit" shall be used interchangeably.

Subpart B—Educational Management

§ 36.10 Standard I—Philosophy and goals.

(a) Each school shall develop a written philosophy of education that addresses the accumulation of knowledge and development of skills, interests, appreciations, ideals, and attitudes within the school's total educational program. The educational philosophy shall include but not be limited to: Conservation of tribal culture and natural resources, values of democracy, devotion to equality, individual freedom, political liberty, democratic process, and the mastery of knowledge. The statement of goals shall include a statement of what the school is attempting to do to meet the needs and interests of its students and community, in accordance with the statement of philosophy.

(b) The statement of philosophy and goals shall be developed with the involvement of students, parents, lay citizens, school staff, and tribe(s) and shall be formally adopted by the local school board.

(c) The philosohy and goals shall be reviewed annually and revised as necessary by each school.

(d) A copy of the philosophy and goals shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(e) Informational provisions shall be developed in the form of a manual, handbook, brochure, or other written document(s) of the minimum academic standards of the school's programs and the basic rules and procedures of the school. The staff, students, and parents shall receive the written document or documents and have same explained to all who request explanation. The topics covered in the document(s) shall include but not be limited to the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered;

(3) A brief explanation of curricular offerings;

(4) A copy of student rights handbook;

(5) Basic practices related to:

(i) Grading system;

(ii) Graduation requirements, if applicable;

(iii) Attendance policies;

(iv) Special programs at the school; and

(v) Student activities available for students.

§ 36.11 Standard II—Administrative requirements.

(a) *Staffing.* Each school shall, at a minimum, meet the following requirements:

(1) The overall school ratio of regular program students to regular program teachers in self-contained classrooms shall not exceed the following except under the conditions set forth in paragraphs (a)(4) (i) and (ii) of this section. Average daily membership (ADM) shall be used in meeting the following ratios.

Level	Ratio
Kindergarten	20:1
1st grade—3rd grade	22:1
4th grade—high school	25:1

(2) Multi-grade classrooms that cross grade-level boundaries (e.g., K–1, 3–4, etc.) shall use the maximum of the lower grade. In grades K–8, grades shall be consolidated to meet the teacher ratios listed above.

(3) The daily teaching load per teacher in departmentalized classes shall not exceed 150 students (ADM) except in activity type classes such as music and physical education.

(4) Schools exceeding these specific staffing ratios for over 30 consecutive days during one school year shall submit a justification for a request for a waiver to the Director, through the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, which may be approved for a period not to exceed one school year and for the following reasons:

(i) Additional classroom space is not available for establishing another class; or

(ii) The school, Agency, Area and Office of Indian Education Programs Applicant Supply File has been exhausted and the required teacher position cannot be filled. However, efforts to fill the vacancy shall be continued.

(5) Each school shall provide, in the absence of a regular teacher, a certified substitute teacher who meets the State substitute teacher qualifications. In the event that such a substitute is not available, coverage will be provided by a school employee designated by the school supervisor. A class cannot have as a teacher an employee without teaching credentials for more than 20 school days during any one school year.

(b) *Written school enrollment and attendance policies.* Each school shall have written school enrollment and attendance policies in compliance with and/or consistent with 25 CFR 31, Federal Schools for Indians, the statutes of the State, and tribal education ordinances.

(c) *Geographic attendance boundaries.* Each Agency Superintendent for Education shall establish and implement non-overlapping geographic attendance boundaries within that Agency for each school within the administrative jurisdiction of that Agency. The establishment of such geographic boundaries shall require coordination with contiguous Agencies within the Area and consultation with the Agency or other relevant school boards and/or tribes and shall be reviewed each year to appropriately adjust for geographic changes in enrollment, changes in school capacities, and improvement of day school opportunities for students. The Director shall establish and implement

geographic attendance boundaries for each off-reservation boarding school under his/her administrative jurisdiction. The establishment of geographics boundaries shall require coordination with other Area Education Programs Administrators similarly affected by the requirement of this part, the affected tribes, and the Director.

§ 36.12 Standard III—Program needs assessment.

The policy and procedures of each school and its curricula shall be developed and revised based on an assessment of educational needs. This needs assessment shall be conducted at least every seven (7) years at the same frequency as required in § 36.50, School Program Evaluation. This assessment shall include at least the following:

(a) A clear statement of student educational goals and objectives. A student educational goal is defined as a statement of the knowledge, skills, attitudes, or concepts students are expected to exhibit upon completion of a grade level. Student educational objectives are defined as statements of more specific knowledge, skills, attitudes, or concepts students must exhibit in order to achieve the goal.

(b) The collection of appropriate data from which valid determinations, judgments, and decisions can be made with respect to the status of the educational program, e.g.,

(1) Perceptions of the parents, tribes, educators, and the students with regard to the relevance and importance of the goals.

(2) The extent to which educational goals and objectives have been achieved.

(3) The data developed as a result of the evaluation outlined in § 36.50 School Program Evaluation.

(c) A statement of educational needs which identifies the difference between the current status of students and the desired goals for the students.

(d) A plan of action to remediate assessed needs.

§ 36.13 Standard IV—Curriculum development.

(a) Each school shall implement an organized program of curriculum development involving certified and non-certified staff and shall provide the opportunity for involvement by members of the local community.

(b) Curriculum development program activities shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school shall involve staff and provide the opportunity for involvement by the tribal community in planning programs, objectives, and activities which meet student/teacher needs.

Subpart C—Minimum Program of Instruction

§ 36.20 Standard V—Minimum academic programs/school calendar.

(a) Each school shall meet the applicable minimum program of instruction provided in this subpart and, where applicable, the graduation requirements under §36.32. A school that has difficulty in meeting these minimum academic program requirements may seek alternative ways of meeting some portions of the minimum program. For example, courses may be taught in alternate years. Should a school wish to adopt alternative measures, the school shall submit a request for approval to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, for the adoption of alternative measures with a written justification as to how this action will meet the applicable minimum program of instruction.

(b) *Length of school term and day.* All schools shall provide an educational program of studies which is conducted for not less that 180 instructional days per school term. Regular program students shall be in instructional activities, exclusive of lunch (which must be at least 30 minutes a day), in accordance with the following minimums: Kindergarten—2.5 instructional hours/day; grades 1–3—4.5 instructional hours/day; grades 4–6—5.0 instructional hours/day; grades 7–12—5.5 instructional hours/day.

(c) If an emergency arises from an uncontrollable circumstance during the school day which results in the dismissal of students by the school administration, the day may be counted as a school day provided that three-fourths of the instructional hours are met.

(d) The educational program shall include multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(e) All intraschool programs (e.g., library, instructional labs, physical education, music, etc.) which are directly related to or affect student instruction shall provide services from the beginning of the school term through the final class period at the close of the school term.

§ 36.21 Standard VI—Kindergarten instructional program.

(a) The curriculum for kindergarten shall provide children with experiences which emphasize language development, native language where necessary as determined by 25 CFR 39.11(g), and performance of the requirements in paragraph (b) of this section. Such programs shall assist children in developing positive feelings toward themselves and others.

(b) A kindergarten instructional program shall include but not be limited to:

(1) Language (observing, listening, speaking).

(2) Exploration of the environment (number, space and time relationships, natural science).

(3) Psychomotor and socialization development.

(4) Development of imaginative and creative tendencies.

(5) Health education inclusive of the requirements contained in the Act of May 20, 1886, 24 Stat. 69.

§ 36.22 Standard VII—Elementary instructional program.

(a) The elementary instruction programs, grades one through six, shall include but need not be limited to:

(1) Language arts.

(2) Mathematics.

(3) Social studies.

(4) Sciences.

(5) Fine arts.

(6) Physical education.

(b) Each school shall integrate the following content areas into its curriculum:

(1) Career awareness,

(2) Environmental and safety education,

(3) Health education (includes requirements contained in 24 Stat. 69),

(4) Metric education, and

(5) Computer literacy.

§ 36.23 Standard VIII—Junior high/middle school instructional program.

(a) The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows.

(b) The curriculum shall include the following required instructional content areas at each grade level but need not be limited to:

(1) *Language arts.* One unit shall be required of each student every year.

(2) *Social studies.* One unit shall be required of each student every year.

(3) *Mathematics.* One unit shall be required of each student every year.

(4) *Science.* One unit shall be required of each student every year.

(5) *Fine arts and practical arts.* One unit each shall be required of each student in the junior high/middle school instructional program.

(6) *Computer literacy.* One unit shall be required of each student in the junior high/middle school instructional program.

(7) *Physical education.* One unit shall be required of each student in the junior high/middle school instructional program.

(c) The following content areas shall be integrated into the curriculum.

(1) Career exploration and orientation.

(2) Environmental and safety education.

(3) Metric education.

(4) Consumer economics (including personal finances).

(5) Health education (includes meeting the requirements contained in 24 Stat. 69).

(d) Languages other than English are encouraged to be offered as a content area beginning at junior high/middle school level.

(e) Student enrollment in any laboratory or vocational exploration class shall be consistent with applicable health and safety standards.

§ 36.24 Standard IX—Secondary instructional program.

(a) The secondary instructional program shall reflect the philosophy of the student, tribe, community, and school, and an awareness of the changing world.

(b) The secondary instructional curriculum shall include the following content areas:

(1) Language arts (communication skills).

(2) Sciences.

(3) Mathematics.

(4) Social studies.

(5) Fine arts and practical arts.

(6) Physical education.

(7) Languages other than English.

(8) Driver education. (See guidelines available from the applicable State Department of Education.)

(9) *Vocational education.* Curriculum shall be designed and directly related to actual occupational trends (national, regional, and local) and to introduce and familiarize students with various occupations in technology, industry and business, as well as required special skills and the training requisites. Programs shall be directed toward assisting students in making career choices and developing consumer skills and may include the following:

(i) Vocational exploration,

(ii) Vocational skill development, and

(iii) School/on-the-job cooperative education programs.

(c) The following shall be integrated into the curriculum:

(1) Consumer economics (including personal finances),

(2) Metric education,

(3) Safety education, and

(4) Health education. (In addition, the program shall meet the requirements contained in 24 Stat. 69.)

(d) The high school program shall provide program coordination with feeder schools, career direction, and preparation for the student entering independent living through employment, post-secondary education, and/or marriage.

(e) Yearly class schedules shall take into account the graduation requirements of each student.

(f) Student enrollment in any laboratory or vocational class shall be consistent with applicable health and safety standards.

Subpart D—Student Instructional Evaluation

§ 36.30 Standard X—Grading requirements.

(a) Each school shall implement a uniform grading system which assesses a student's mastery of the prescribed objectives of the courses of study undertaken. The mastery of prescribed course objectives shall be the primary measure of academic attainment for reporting student grades on report cards.

(b) The information derived from student instructional evaluations shall be shared with the student and with the parents and shall be used to give teachers and students direction for subsequent learning activities.

(c) Parent/teacher and parent/teacher/student conferences focused on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and school. Residential schools may meet this standard by documenting the communication of student grades on report cards to parents.

(d) Each school shall issue a report card to parents of students who are under the age of eighteen (18) and to students eighteen (18) years of age and older on a regular basis, but not less than four (4) times yearly. The report card shall include, but not be limited to, the following sections:

(1) Recommendations and probable promotion status;

(2) Appropriate signatures and request for return of report cards; and

(3) Student attendance record.

(e) A summary of each year's final card shall become part of the student's permanent school record.

§ 36.31 Standard XI—Student promotion requirements.

Each school shall establish and implement a promotion policy which shall be submitted to and approved by the local school board and Agency Superintendent for Education or Area Education Programs Administrator, as appropriate. The requirements shall include, but not be limited to, the following:

(a) Each grade level or equivalent shall have a minimum criteria for student promotion based primarily on measurable mastery of the instructional objectives.

(b) Criterion-referenced tests that evaluate student skills shall be utilized for measuring the mastery of instructional objectives. The evaluation results shall form the basis for the promotion of each student.

(c) A student who has not participated, either directly or through approved alternative instructional methods or programs, in a minimum of 160 instructional days per academic term or 80 instructional days per semester without a written excused absence shall not be promoted. A school board or a school committee may review a promotion decision and, if warranted due to compelling and/or extenuating circumstances, rescind in writing such action on a case-by-case basis. Alternative instructional methods shall be submitted in writing for approval by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

§ 36.32 Standard XII—Graduation requirements for a high school diploma.

Graduation requirements contained under this section shall be applied beginning with the graduating class of the 1987–88 school year.

(a) Satisfactory completion of a minimum number of units shall be the measure for the issuance of a high school diploma.

(b) To graduate, a student shall earn 20 units in a four year high school program unless the state in which the school is located exceeds these requirements, in which case the state's requirements shall apply; fifteen (15) units shall be required as follows:

(1) Language arts—four (4) units.

(2) Mathematics—three (3) units.

(3) Social studies—three (3) units.

(i) One (1) unit in United States history;

(ii) One-half (½) unit in civics/government;

(iii) One-half (½) unit in tribal history/government;

(iv) One-half (½) unit in Indian studies; and

(v) One-half (½) unit in any other social studies;

(4) Science—two (2) units.

(i) One (1) unit in the general science area.

(ii) One (1) unit in laboratory science areas, i.e., chemistry, physics, biology, zoology, laboratory anatomy.

(5) Physical education—one (1) unit.

(6) Practical arts—one (1) unit. Credit in any vocational course may also be used to satisfy this required unit.

(7) Fine arts—one (1) unit. Music, art, dance, drama, theatre, and other fine arts courses may be used to satisfy this required unit. These are minimum requirements; local schools may establish academic or vocational requirements beyond those prescribed by these standards.

(c) A school with an average enrollment of fewer than 75 students may offer subjects in alternate years. If schools use this pattern, alternating pairs of subjects shall be listed and approved by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(d) Credits earned through approved correspondence or extension study may be accepted if such credits are from schools approved or accredited by the state in which they are located or by a college or university which is regionally accredited for such purposes.

(e) Students who successfully complete the requirements of the High School Proficiency Examination in the State in which the school is located shall receive an endorsement so stating on their diplomas.

Subpart E—Instructional Support

§ 36.40 Standard XIII—Library/media program.

(a) Each school shall provide a library/media program which shall, as a minimum, meet the applicable state and/or regional standards, but shall not be limited to these, and shall include the following:

(1) A written set of instructional and service objectives shall be established that is intergrated and consistent with the school's educational goals and philosophy. The librarian or educational media specialist, with students and staff, shall set objectives based on assessed academic and residential needs. The program and services will be evaluated yearly by the principal and the librarian or educational media specialist to determine the degree to which all objectives have been met.

(2) A written policy for the selection of materials and equipment shall be developed by a library committee in collaboration with the librarian and be approved by the school board. The colleciton of materials shall include as a minimum the following:

(i) A collection of books suitable for the range of student abilities and interests being served in the following ADM ratios.

(A) Elementary K–6, 15 books per student

(B) Middle 7–8, 12 books per student

(C) Secondary 9–12, 10 books per student

It is required that materials pertaining to Indian Tribes and/or Alaskan Natives be integrated within this basic collection.

(ii) Eight (8) to 12 percent of the basic collection must be composed of reference books, currently relevant and in a state of good physical condition, for practical use. Single copies of the principal textbooks used to complement instruction shall be in the collection, but textbooks cannot be counted toward this standard.

(iii) A periodical collection, suitable for the range of student abilities and interests being served, consisting of one (1) periodical for every ten (10) students, shall be maintained. Schools of over 200 will have a base collection of 20 periodicals.

(iv) A professional collection for the school staff shall be developed and maintained by the librarian in cooperation with a faculty committee.

(v) A variety of audio-visual materials, suitable for the range of instruction being provided, of at least 750 items or five (5) items for each student, whichever is larger, and inclusive of materials located in the classrooms shall be maintained. This category includes some of each of the following: Tactile objects, globes, models, maps, films, film-strips, microforms, slides, audio and video tapes, recordings, transparencies and graphics, and the equipment to use all of these. Multiple items within a specific set of materials will be counted as separate items.

(3) There shall be a library media center serviced by a librarian. Schools with fewer than 200 students are encouraged, wherever feasible, to cooperate in sharing librarian resources. Schools within an Agency and/or Area may cooperatively share the costs and services of a librarian who shall facilitate sharing of the combined available resources among the cooperating schools in accordance with the following ratios:

School Enrollment (ADM)

Up to 100—⅕ time librarian

101–200—⅕ time librarian and ½ time library aide or 20 hours of library activity

201–400—1 full-time librarian or ⅘ time librarian provided the school has a full-time library aide

401+—1 full-time librarian and a full-time library aide

(4) All libraries must conduct an annual inventory of available books, materials, and equipment in accordance with the acquisitions and selection policies.

§ 36.41 Standard XIV—Textbooks.

(a) Each school shall establish a textbook review committee composed of teachers, parents, and students, and school board members. Appointment to the textbook review committee shall be subject to school board approval.

(b) The textbook review committee shall establish a procedure and criteria for the annual review of textbooks and other materials used to complement instruction. The criteria shall include, but not be limited to, the following:

(1) The textbook content shall meet the course objectives which are within the adopted school curriculum.

(2) The textbooks shall, as much as possible, reflect cultures accurately.

(3) The textbooks shall be current, in good physical condition, and varied in reading levels.

(c) Each school shall equitably distribute instructional materials to all classrooms. Each school shall inventory all property and equipment annually prior to requisitioning additional materials. Copies of the inventory shall be kept on file by the school staff.

§ 36.42 Standard XV—Counseling services.

Each school shall offer student counseling services concerned with physical, social, emotional, intellectual, and vocational growth, as determined, under this part, for each individual and the school as a whole through a school-wide testing program.

(a) School-wide testing requirements. Each Agency shall institute and supervise a uniform testing program for its schools in order to provide for the objective assessment of student academic performance. Required formal tests will be administered annually to all regular program students in grades two through 12; first grade may be included where appropriate. These formal tests and their subject content will include, but not be limited to, the following:

(1) A pre-test and post-test from nationally-normed and standardized achievement tests which can be

nationally correlated in the content areas of reading, language arts, and mathematics to be administered in September and May of each school year or the norming dates of the test.

(2) Each school shall report, as directed, the summative ressults of all formal tests under paragraphs (a)(1) of this section to the Agency or Area, as appropriate, and respective school boards. Parents shall be informed of the results of such tests for their children.

(3) Each Agency or Area, as appropriate, shall report results of all formal tests under paragraph (a)(1) above to the Office of Indian Education Programs.

(b) Each counseling program shall provide the following:

(1) Each school having a minimum school ADM of 200 students shall make provisions for the full-time professional services of a counselor, and each school enrolling fewer than 200 students shall make provisions for a part-time professional counselor.

(2) The counselors shall be familiar with the unique tribal, social, and economic characteristics of students.

(3) The counseling program shall contain the following:

(i) A written referral procedure;

(ii) Counseling techniques and documentation procedures to provide for the career, academic, social, and personal needs of the students which are based on the cultural beliefs and values of the students being served;

(iii) Preventative and crisis counseling on both individual and group bases;

(iv) Confidentiality and security of counseling records for each student; and

(v) Design and implementation of orientation programs to facilitate the pupil's transition from elementary to junior high/middle school and from junior high/middle school to high school.

(vi) Each junior or middle school and high school student shall receive academic counseling a minimum of twice yearly during which time the counselor shall assist the student in developing a written academic and career plan based on ability, aptitude, and interests. Additionally, counselors will assist high school students in selecting courses which satisfy the school's and the state's graduation requirements and the student's academic and career plan. Further, seniors will be given aid in completing registration and/or financial assistance applications for either vocational or academic post-secondary institutions.

(vii) Each high school counseling program shall be required to have on file for each student a planned academic program of studies which is available from the regular course offerings of the school to meet the student's career objectives and which will show that the student has received counseling.

§ 36.43 Standard XVI—Student activities.

All schools shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Each activity program shall help develop leadership abilities and provide opportunities for student participation but not be limited to activities that include special interest clubs, physical activities, student government, and cultural affairs. The activity program shall be an integral part of the overall educational program.

(a) All student activities shall be required to have qualified sponsors and be approved by the school supervisor, and the school board shall approve the overall activity plan. A qualified sponsor is a professional staff member of the school that is given responsibility to provide guidance or supervision for student activities.

(b) A plan of student activity operations shall be submitted, by each activity at the beginning of each school year, to the school supervisor. The plan will include the purpose, structure, coordination, and planned types of fund-raising activities.

(c) School may participate in interscholastic sports and activities on an informal or formal basis. On an informal basis, the Bureau-operated schools will coordinate with other schools in setting up a schedule of sports and games. Schools that participate in state-recognized leagues will abide by those state rules regulating inter-school competition.

(d) Until comparable competitive opportunities are provided to all students, regardless of sex, no student shall be barred from participation in interscholastic competition in noncontact sports except on the basis of individual merit.

(e) Residential schools shall plan and provide an intramural program for all students. The program shall include a variety of scholastic and sport activities.

(f) Students shall be involved only in activities which are sanctioned by the school.

(g) All student activities involved only in fund raising are required to establish a school/student activity bank account following school/student banking procedures outlined under 25 CFR 31.7. All student activity accounts shall be audited annually.

(h) The school shall provide for the safety and welfare of students participating in school-sponsored activities.

(i) Each sponsor of a student activity will be given orientation and training covering the responsibilities of a sponsor by the school supervisor.

Subpart F—Evaluation of Educational Standards

§ 36.50 Standard XVII—School program evaluation and needs assessment.

Each school shall complete a formal, formative evaluation at least once every seven (7) years beginning no later than the second complete school year following the effective date of this part. Schools shall follow state and/or regional accreditation, or accreditation requirements equal to the state in which a school is located. Each school shall follow the prescribed evaluation cycle. The primary purpose of this evaluation will be to determine the effects and quality of school programs and to improve the operations and services of the school programs.

(a) Each school's evaluation design or model will provide objective and quantitative analysis of each area to be evaluated. The analysis shall include product and process evaluation methods. The areas to be reviewed will include, but not be limited to, the following:

(1) School philosophy and objectives.

(2) Administrative and organizational requirements.

(3) Program planning and implementation.

(4) Curriculum development and instruction.

(5) Primary education.

(6) Program of studies for elementary, junior high/middle, and high schools.

(7) Grading requirements.

(8) Promotion requirements.

(9) High school graduation requirements.

(10) Library/media.

(11) Textbooks and other instructional materials.

(12) Counseling services.

(13) Medical and health services.

(14) Student activities.

(15) Transportation services.

(16) Staff certification and performance.

(17) Facilities (school plant).

(18) Parent and community concerns.

(19) School procedures and policies.

(20) School board operations.

(b) The Director, within six (6) months from the effective date of this part, shall distribute to each school, Agency or Area, as appropriate, a standardized needs assessment and evaluation instrument with guidelines for developing and applying a locally appropriate evaluation model for

carrying out the requirements of this standard.

§§ 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Educaton or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

(1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required which otherwise would be available for these standards;

(2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;

(3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and

(4) Submit annually to the Director a copy of the summative evaluation.

Subpart G—Compliance and Waivers

§ 36.60 Compliance for minimum academic standards.

Implementation of these standards shall begin immediately on the effective date of this part.

(a) A school is in compliance when it has met and satisfied all the requirements of these standards.

(b) Each school supervisor shall, within 45 days after the start of each school term, submit a compliance report to the local school board; within 15 days thereafter, the compliance report shall be submitted to the Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, which attests to whether a school is in compliance or noncompliance.

(c) In those instances where a school does not meet the requirements of these standards, the school supervisor shall inform the parents or legal guardians by letter no later than 60 days after the start of each school term.

(d) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the school has or has not met all of the requirements.

(2) A specific listing of the requirements which have not been met.

(3) A summary of an action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(e) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each school's compliance report and shall provide the Director with a summative report by November 15 of each year which includes:

(1) A listing of those schools not in compliance.

(2) A detailed statement as to why each school is not in compliance and how it proposes to reach compliance.

(3) A plan of action outlining what actions the Agency Superintendent for Education or Area Education Programs Administrator will take to assist the school(s) to reach compliance.

(f) In the event a school is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all applicable levels of school administration. Noncompliance may be acceptable grounds for dismissal.

(g) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under § 1121 of Pub. L. 95–561, 25 U.S.C. 2001.

§ 36.61 Waivers and revisions.

(a) The tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standard(s) established in this part, where the standard(s) is deemed by such body to be inappropriate and shall also have the authority to revise such standard(s) to take into account the specific needs of the tribe's children. This includes Bureau-operated schools. When the tribal governing body, or local school board if so designated by the tribal governing body, waives the standard(s) or part thereof, it shall within 60 days submit revised standard(s) to the Assistant Secretary for approval. In the interim between the waiver of the standard(s) and the approval of the revised standard(s), the standards of this part or minimum state standards shall apply to the affected school(s). In the notice of the waiver, the tribal governing body or its designee shall state whether the standards in this part or the minimum state standards apply to the affected school(s) for such interim period. The Assistant Secretary shall respond to the revised standard(s) within 45 days of receipt. Revised standard(s) shall be established by the Assistant Secretary unless specifically rejected by the Assistant Secretary for good cause and in writing. The written notice of rejection shall be sent to the affected tribe(s) and local school board. Such rejection shall be final. All revised standards shall be submitted to the Assistant Secretary in writing and will adhere to the following procedure:

(1) Waivers and revisions must be submitted at least 75 days prior to the beginning of the school term.

(2) The section or part of the standard to be waived must be specified, and the extent to which it is to be deviated from shall be described.

(3) A justification shall be included with a revised standard, which explains why the alternative standard is considered necessary.

(4) Measurable objectives of the alternative standard(s), the method of achieving the alternative standard(s), and the estimated cost of implementation must be stated.

(b) The Assistant Secretary shall assist the school board of an Indian-controlled contract school in the implementation of the standards established under this part if the school board requests that these standards, in part or in whole, be implemented. At the request of an Indian-controlled contract school board, the Assistant Secretary shall provide alternative or modified standards to those established in this part to take into account the needs of the Indian children and the Indian-controlled contract school.

Subpart H—National Dormitory Criteria

§ 36.70 Scope of subpart.

This subpart contains the criteria and mandatory requirements for all dormitories. The individual employee responsibilities, based on the terminology used to designate specific employee positions and their assigned responsibilities, may vary depending upon whether the dormitory is a direct Bureau operation or contract operation.

§ 36.71 General provisions.

(a) The Homeliving Specialist is the administrative head of the dormitory who shall have sufficient autonomy and authority to ensure the successful functioning of all phases of the dormitory program, and, in dormitories attached to a school, shall report to the school supervisor.

(b) In situations where a Bureau-funded dormitory is maintained, operated, and administered separately from the academic program, this dormitory will ensure access to or provide a guidance program equal to the standards as those under § 36.42 of this part.

(c) Students who qualify for residential services under the Exceptional Child Program must have, in their individualized education plan, objectives that are to be met in the homeliving program. Documentation to support completion of these objectives is required.

(d) Dormitories with intense residential guidance programs shall have updated written descriptions of the programs with stated purposes, objectives, activities, staffing, and evaluation system. Each student diagnosed as being in need of intense guidance services shall have a file which contains the following:

(1) Documentation of eligibility according to the definition contained under 25 CFR 39.11(h);

(2) Documentation of a diagnosis of the student's needs;

(3) A placement decision signed by a minimum of three (3) staff members;

(4) An individualized treatment plan which includes:

(i) Referral date and referral sources;

(ii) Diagnosis identifying specific needs;

(iii) Specific goals and objectives to be met;

(iv) Record of specific services including beginning and ending dates;

(v) Designation of responsible staff person(s); and

(vi) A means by which the student's progress and the effectiveness of the individualized treatment plan can be periodically reviewed and reevaluated.

(e) Each dormitory program that does not have an academic program under Subpart C shall make available career counseling information on educational and occupational opportunities and help students assess their aptitudes and interests. This shall be done on a continuing basis, beginning at the elementary level.

(f) Counseling services shall be made available for students during non-academic hours.

(g) Provisions shall be made to interpret to staff, students, and parents the administrative policies and practices of the dormitory. This provision shall be made in the form of a manual, handbook, brochure, or other written document that will be made available and explained to all who are interested. The topics shall include, but not be limited to, the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered; and

(3) A copy of the student rights handbook.

(h) Program will be designed and orientation programs implemented to facilitate the pupils' transition from elementary to middle school and from middle to high school, where appropriate.

(i) All dormitories shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Programs shall provide opportunities for student participation in, but not limited to, activities that include special interest clubs, physical activities, student government, and cultural affairs. In addition, the following provisions shall be adhered to:

(1) Dormitories shall plan and provide for an intramural program that includes a variety of scholastic and sport activities.

(2) A plan of operation shall be submitted by each activity at the beginning of each school year to the school supervisor and approved by the school board. The plan shall include the purpose, structure, and coordination of all activities.

(3) All dormitories conducting fund-raising activities are required to established a school/student activity bank account following school/student banking procedures outlined under 25 CFR Part 31.7. All accounts shall be audited annually.

§ 36.72 Elementary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training and experience in dealing with elementary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of counselor while holding the position of school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselors:

Less than 75 students: ½ time counselor
75–150 students: 1 full-time counselor
151–225 students: 1 full-time and ½ time counselor
226–300 students: 2 full-time counselors

For dormitories that exceed 300 students (ADM), additional counselor time shall be provided according to the above ratio. Dormitories within an Agency are encouraged to try a variety of approaches to guidance service. In this arrangement, the counselor's time may be shared between dormitories. As long as one half-time, professionally-trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Dormitory counselors' work hours shall be arranged to provide maximum availability of services to students when they are not in academic session.

§ 36.73 Secondary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training

and experience dealing with secondary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of a counselor while holding a position as a school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselor:

Less than 100 students: ½ time counselor
100–199 students: 1 full-time counselor
200–300 students: 1 full-time and ½ time counselor

For dormitories that exceed 300 students (ADM), counselor time will be provided according to the above radio. As long as one half-time, professionally trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Counselors' work hours shall be arranged to provide maximum availability of service to students when they are not in academic session.

§ 36.74 Homeliving (dormitory operations).

Staff shall be provided so that at least one adult is on duty at all times when students are in the dormitory. Each dormitory program shall include, but not be limited to, the following:

(a) Every dormitory facility shall be under the direct supervision of a dormitory manager. A building composed of separate wings or several floors shall be counted as one facility.

(b) Each dormitory operation shall provide the following minimum on-duty paraprofessional staff to student ratio (ADM):

	Ratio
Grades 1 to 6	
Weekdays:	
Mornings	1:30
During school hours	1:40
Evenings	1:30
Nights	1:40
Weekends:	
Mornings	1:30
Evenings	1:30
Nights	1:40
Grades 7 to 12	
Weekdays:	
Mornings	1:50
During school hours	1:80
Evenings	1:50
Nights	1:80
Weekends:	
Mornings	1:50
Evenings	1:50
Nights	1:80

Dormitory operations for grades one through eight are encouraged to provide additional staff aides during the time children in the primary grades are dressing and preparing for breakfast and school. Staff ratios on weekends shall be reduced at boarding schools to adjust for those students who go home, according to the above ratio.

(c) Group instruction and discussion session shall be held on various topics at least on a monthly basis, but preferably on a weekly basis. Topics to be presented may be determined by a committee comprised of students, staff, administrators, and parents. These topics shall include discussions of problems or needs that exist at the location and/or community.

(d) Each dormitory facility shall be cleaned daily when in operation to provide a safe and sanitary environment. Student assistance may be utilized; however, the responsibility for the cleanliness, safety, and sanitation of the facility shall rest with the dormitory administrator. Bed and bath linen shall be changed a minimum of once per week. Necessary toiletry items shall be made available to those students who are economically unable to provide them.

(e) Dormitory operations shall have access to clothes washers and dryers. Equipment shall be utilized only for students' clothing. In grades one through six, residential paraprofessionals shall be responsible for the upkeep of clothing. Students in grades seven through 12 shall be responsible for the upkeeping of their own clothing. In grades seven through 12, students shall be allowed to wash and dry their clothing after training is given in using the machines. Contracting for student clothing care may also be utilized under this part.

(f) A system of student accountability shall be established at each residential facility. Minimum requirements of the system shall include an attendance procedure at least four (4) times per normal waking day for grades one through eight and two (2) times for grades nine through 12. However, students in grades seven through 12 may be allowed to have a self check-in system provided that an employee reviews the roster within an hour of each designated check-in time. During sleeping hours, students in grades one through eight shall be checked on an hourly basis; students in grades nine through 12 shall be checked every two (2) hours. At the start of each school day, residential facilities supervisors shall report to the school office which students will not be in attendance. An intra-school pass system shall be developed and implemented.

(g) Students shall be permitted to be released from the dormitory overnight, on weekends, or during vacation periods only when prior written approval is granted by the parent or guardian and only if the local school board adopts a policy governing the conditions of release. Such policy must adhere to the concept that the dormitory/school is acting in *"loco parentis."*

(h) Dormitory facilities shall have a designated room or rooms which shall be utilized as an isolation room(s) for student health care needs. Students isolated in such room(s) shall be checked on a minimum of an hourly basis.

(i) Each dormitory operation shall develop a written procedure for handling emergency situations. Such a procedure shall include names and telephone numbers of the responsible parties to contact in case of emergencies. Situations that shall be considered emergencies include life-threatening medical/health problems, power failures, walkaways, etc.

(j) A tutoring program shall be developed and implemented to assist those students having academic difficulties. Each dormitory operation shall provide a time and place where tutoring, homework, reading, and/or studying can be done for at least one hour daily.

(k) The responsible dormitory supervisor shall be accountable for reporting any hazardous or defective items in the dormitory to the appropriate supervisor and plant manager.

(l) Leisure-time activities shall be provided to dormitory students. These activities may include recreational activities, clubs, arts/crafts, and reading of newspapers and periodicals. Television viewing shall not be considered as structured leisure time unless a scheduled program provides educational benefit.

(m) Lines of communication shall be established with other local social service agencies to assist in the resolution of problems that may extend beyond the confines of the dormitory. These agencies may be State, tribal, or Federal.

(n) Dormitory personnel will receive training in emergency first aid procedures.

§ 36.75 Space and privacy.

The configuration of sleeping space and other living areas will vary according to the grade levels of the occupants; however, sleeping rooms shall provide sufficient space and privacy for the resident students. The following space and privacy

requirements shall be required for dormitories. A dormitory shall be considered at capacity when the addition of one more student would put the school out of compliance with the space standard; and additional students shall not be admitted for residential purposes.

(a) Dormitory facilities for grades one through eight shall have space footage averaging from 40 to 60 square feet per student for sleeping rooms, exclusive of furniture (wardrobe, desks, beds, etc.).

(b) Dormitories housing students who are in grades nine through 12 shall provide sleeping rooms with a per student square footage averaging from 50 to 70 square feet, exclusive of furniture (wardrobe, desks, beds, etc.).

(c) When new dormitories are constructed or existing dormitories are remodeled, sleeping rooms shall be constructed not to exceed a maximum of four students per room for grades one through 12.

(d) Each peripheral dormitory shall have a set of encyclopedias, one dictionary for every ten students (ADM), and ten other general reference materials such as an atlas or periodical subscription.

§ 36.76 Compliance for the National Criteria for Dormitory Situations.

Implementation of the National Criteria for Dormitory Situations shall begin immediately on the effective date of this part. A dormitory is in compliance when it has met and satisfied all the requirements under Subpart H.

(a) The education supervisor(s) or peripheral dormitory supervisor shall report to their supervisor(s) within 45 days after the start of each school term with a compliance report to the local school board that attests to whether a dormitory is in compliance or noncompliance; within 15 days, the compliance report shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(b) The school supervisor or the peripheral dormitory supervisor shall notify in writing each parent or legal guardian of the dormitory noncompliance status within 60 days after the beginning of the school term.

(c) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the dormitory has or has not met all of the requirements.

(2) A specific listing of the requirements that have not been met.

(3) A detailed action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(d) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each dormitory compliance report and shall provide the Director with a detailed report by November 15 each year which shall include:

(1) A list of dormitories indicating those not in compliance.

(2) A detailed statement as to why each school indicated is not in compliance and how it is proposed to reach compliance.

(3) A plan of action outlining what actions the Agency or Area education line officers, as appropriate, will take to assist the dormitories to reach compliance.

(e) In the event a dormitory is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all appropriate levels of school/dormitory administration. Noncompliance may be grounds for dismissal.

(f) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under § 1122 of Pub. L. 95–561, and 25 U.S.C. 2002. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in relation to the criteria established under this section and specific cost estimates for meeting such criteria at each school up to the level required by such criteria.

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–21320 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–02–M

VOL
50

ISS
74

SE
9

985

UMI

federal register

Monday
September 9, 1985

Part V

Environmental Protection Agency

40 CFR Part 60

Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2865-5]

Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: On September 24, 1984 (49 FR 37548), the Environmental Protection Agency (EPA) proposed to grant, subject to the concurrence by the Governors of the States of Georgia, Michigan, Minnesota, and Missouri, innovative technology waivers, pursuant to section 111(j) of the Clean Air Act, as amended, 42 U.S.C. 7411(j), for topcoat operations at the four automobile and light-duty truck assembly plants. This action grants those waivers. These waivers provide an opportunity to demonstrate the capability of basecoat/clearcoat (BC/CC) topcoat systems to achieve equivalent or greater volatile organic compound (VOC) emission reductions than required by the existing standard of performance for topcoat operations at automobile and light-duty truck assembly plants at lower costs.

EFFECTIVE DATE: September 9, 1985. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication. The issuance of these waivers is based on determinations of nationwide scope and effect. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Under section 307(d)(2) of the Clean Air Act, 42 U.S.C. 7607(d)(2). the Administrator is required to establish two identical rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of each docket is located in Washington, D.C. at EPA's Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy of each docket is located at the EPA Regional Office for the State where the plant is located. The Regional Office locations are listed below:

For Chrysler Corporation's (Chrysler's) Sterling Heights, Michigan, plant and/or Ford Motor Company's (Ford's) St. Paul, Minnesota, plant: Environmental Protection Agency, Region V, Attention: Mr. Gary Gulezian, Docket Number (see Table 1), 230 South Dearborn Street, Chicago, Illinois 60604.

For Ford's Hapeville, Georgia, plant: Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket Number (see Table 1), 345 Courtland Street, NE., Atlanta, Georgia 30365.

For Ford's Hazelwood, Missouri, plant: Environmental Protection Agency, Region VII, Attention: Mr. Charles Whitmore, Docket Number (see Table 1), 726 Minnesota Avenue, Kansas City, Kansas 66101.

The dockets may be inspected at the listed addresses between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying.

TABLE 1. DOCKET NUMBERS

Plant	Docket No.
1. Chrysler—Sterling Heights, MI	A–84–09
2. Ford—St. Paul, MN	A–84–10
3. Ford—Hapeville, GA	A–84–11
4. Ford—Hazelwood, MI	A–84–12

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy or Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On October 5, 1979, pursuant to Section 111 of the Clean Air Act, standards of performance were proposed to limit emissions of VOC's from new, modified, and reconstructed automobile and light-duty truck surface coating operations (44 FR 57792). Final standards were published in the **Federal Register** on December 24, 1980 (45 FR 85410).

Standards of performance under Section 111 are established at levels that reflect best demonstrated technology (BDT). For automobile and light-duty truck topcoat operations, BDT was determined to be the use of low VOC content waterborne coatings applied with the best demonstrated air atomized spray techniques. The standard of 1.47 kilogram VOC per liter (kg/1) of applied coating solids for topcoat operations was based on the use of this coating system. The standard does not, however, require use of waterborne coatings. Any coating system capable of reducing VOC emissions to 1.47 kg/1 of applied coating solids may be used. Other methods which could be used independently or in various combinations to achieve the topcoat standard are low VOC content solvent-borne coatings, add-on control devices (e.g., incinerators and carbon adsorbers), and high efficiency coating application techniques.

Trends in Automobile Topcoats

Since the standard was proposed in 1979, the trend in the domestic automobile industry has been to develop and use low VOC content solvent-borne topcoats with improved transfer efficiency, rather than waterborne coatings, to reduce VOC emissions and improve finish quality. Low VOC content topcoats are available for production line use. These coatings have been demonstrated to be of acceptable quality and appearance and, when used in combination with better transfer efficiency and/or bake oven emission control systems (i.e., energy efficient incinerators), will meet the standard.

Since 1979, however, there has been an increase in the effort by the automobile manufacturers to develop BC/CC topcoats for automobiles and light duty trucks. The BC/CC topcoats consist of a relatively thin layer of highly pigmented basecoat followed by a thicker layer of clearcoat. The BC/CC coatings have a more appealing appearance than non-BC/CC topcoat systems and also offer improved chemical resistance and gloss retention. Vehicles coated with BC/CC topcoats are now being imported to the U.S. in significant quantities by both European and Japanese manufacturers. Because of the general appeal and acceptance by U.S. consumers of vehicles coated with the BC/CC topcoats, U.S. automobile and light-duty truck manufacturers claim they must duplicate the performance of this type of topcoat to be competitive.

The BC/CC coatings that are being used in foreign plants contain relatively large quantities of VOC's. If U.S. manufacturers used similar coatings, the only possible method of meeting the existing standard of performance for automobile and light-duty truck topcoat operations would be to use expensive add-on controls. Although U.S. automobile manufacturers and coating suppliers have made progress in developing lower VOC content BC/CC systems, BC/CC systems with VOC content low enough to comply without such add-on controls are not yet commercially available. The automobile

manufacturers and equipment vendors are also developing more efficient application methods for these coatings. Ultimately, this intensive industry development program will permit the automobile companies to meet the topcoat standard without having to use expensive add-on controls.

Requirements of Section 111(j)

Section 111(j) of the Clean Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to enourage the use of innovative "technological systems of continuous emission reduction" for the control of air pollutants. Their intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Clean Air Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of Section 111 for a limited time period provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed innovative system has not been adequately demonstrated;

b. The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

d. The proposed waiver for the specific innovative technological system is not in excess of the number of waivers necessary to ascertain whether or not such a system will achieve the conditions set forth in "b" and "c" immediately above.

Additionally, section 111(j)(1)(B) of the Clean Air Act requires an innolvative technology waiver to be granted on such terms and conditions during the waiver period as the Administrator determines necessary:

a. To ensure emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

b. To ensure proper functioning of the innovative technological system.

Current Waivers

On February 4, 1984, EPA granted innovative technology waivers under section 111(j) of the Clean Air Act to three General Motor Corporation (GM) plants, one Honda of America Manufacturing, Inc. (Honda) plant, and one Nissan Motor Manufacturing Corporation U.S.A. (Nissan) plant. (See **Federal Register**, Vol. 48, No. 5, Friday, February 4, 1983, pp. 5452 through 5456.) Three identical waivers were granted for the GM plants. The waivers allow VOC emissions of 1.9 kg/1 of applied coating solids from the portion of the topcoat operations that use BC/CC coatings. The waivers for the Honda plant and the Nissan plant allow VOC emissions of 3.1 and 2.3 kg/1 of applied coating solids, respectively, from the portion of the topcoat operations that use BC/CC coatings. Non-BC/CC topcoats, under these waivers, are still required to meet the standard at all times.

Waiver Requests

Chrysler submitted a request on February 9, 1984, for an innovative technology waiver under section 111(j) of the Clean Air Act for the topcoat operation at an automobile plant under construction in Sterling Heights, Michigan, until August 31, 1987. The plant was scheduled to begin production by mid-1984. Chrysler claimed that they needed to use BC/CC topcoats on most, if not all, of the cars produced at this plant so that they can compete with both domestic and foreign car manufacturers who are increasingly relying on BC/CC topcoats. The application of oven controls, the use of the lowest VOC content BC/CC coating, and the use of the best control application system available to Chrysler would have resulted in BC/CC topcoat VOC emissions of 1.68 kg VOC per liter of applied coating solids.

Ford submitted a request on February 10, 1984, for an innovative technology waiver under section 111(j) of the Clean Air Act for each new topcoat operation at three of its existing assembly plants until December 31, 1986. The Hapeville, Georgia, plant and the St. Paul, Minnesota, plant were scheduled to start their new topcoat operations at the beginning of 1985; the Hazelwood, Missouri, plant was scheduled to start its new topcoat operation in August 1984. Ford claimed that they needed to use BC/CC topcoats at these plants so they could be competitive with vehicles produced by other domestic and foreign manufacturers. The application of oven control (at the St. Paul, Minnesota, plant only), the use of the lowest VOC content BC/CC coating, and the use of the best control application system available to Ford would have resulted in BC/CC topcoat VOC emissions of 2.45 kg VOC per liter of applied coating solids at the Hazelwood plant, 2.61 kg VOC per liter of applied coating solids at the Hapeville plant, and 2.00 kg VOC per liter of applied coating solids at the St. Paul plant.

Proposed Waivers

The Agency reviewed the waiver requests with regard to the requirements under section 111(j) of the Clean Air Act and concluded that these requests met the requirements of the Clean Air Act. Therefore, the Administrator proposed on September 24, 1984, to grant innovative technology waivers to these four automobile and light-duty truck plants subject to the concurrences of the Governors of the States where the plants are located.

Public Participation

The proposed waivers were published in the **Federal Register** on September 24, 1984 (49 FR 37548). The preamble to the proposed waivers discussed in detail information relating to BC/CC systems and the requirements of waivers under section 111(j) of the Clean Air Act. Public comments were solicited at the time of proposal and interested persons were given an opportuntity to request a public hearing on each of the waivers. No public hearings were requested.

Comment letters were received from an automobile manufacturer and an environmental interest group. The comments in these letters have been considered carefully and, where determined to be appropriate by the Administrator, changes have been made to the proposed waivers. This preamble contains a summary of these comments and the Agency's responses, which serves as a basis for any revisions made to the waivers between proposal and promulgation.

Significant Comments

One commenter, Ford, pointed out that section 111(b)(1)(B) of the Clean Air Act requires 4-year reviews of new source performance standards (NSPS). The commenter also stated that a review of the present NSPS or the development of a separate category for BC/CC coatings is appropriate and necessary for the Automobile and Light-duty Truck Surface Coating Operations new source standard, which was first

promulgated on December 24, 1980. This comment, in effect, concerns the appropriateness of the current standard rather than the appropriateness of the waivers and thus is not germane to this notice.

One commenter, Earth Protector, Inc., requested the Agency to deny Ford's proposed waiver request for the Ford plant in St. Paul, Minnesota, because of the lack of information to support Ford's claim that the proposed BC/CC topcoat system that is to be used in place of the "traditional" single material topcoat system for a portion of the vehicles will not pose an unreasonable risk to public health.

One of the four determinations that must be made before the Administrator can issue a waiver is that the proposed system has been shown to the Administrator's satisfaction not to cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction [section 111(j)(1)(A)(iii) of the Clean Air Act]. To make this determination for this set of waivers, the Agency assessed both total VOC emissions and the emissions of and possible risks associated with individual compounds from topcoat operations using BC/CC systems. Based on this assessment, the Admin.strator has not found unreasonable risks to public health, safety, or welfare associated with the emissions either from the proposed topcoat operations at this Ford plant or from other plants that have waivers or are being granted waivers under this action.

The general category of compounds affected by the waiver request, VOC's, contribute to the formation of photochemical oxidants that are associated with health and welfare effects. Because of this relationship, VOC's are regulated by the NSPS. The EPA has adopted national ambient air quality standards (NAAQS) for ozone. The NAAQS are based on air quality levels that through their attainment and maintenance protect the public health and welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air (section 109(b) (1) and (2)). Before its reconstruction, the topcoat operation at Ford's St. Paul plant was emitting about 1,600 tons per year of VOC's in an area that is in attainment with the ozone NAAQS. Because this area is in attainment with this NAAQS, there is no Federal requirement for reducing these emissions from the existing facility.

The reconstruction of the topcoat operation at the St. Paul plant has resulted in the topcoat operation being subject to the NSPS. The NSPS, which is a technology-based standard, serves to reduce total emissions of VOC's, thereby lowering ambient concentrations of VOC's from the concentrations that occurred as a result of the 1,600 tons per year of VOC's being emitted before the reconstruction. Under the waiver, emissions from topcoat operations at the plant will range from approximately 800 to 1,150 tons per year, depending on the fraction of all vehicles coated using the BC/CC system.

In the evaluation of the waiver request, the Agency identified (from information obtained from Ford) the specific compounds that could be emitted from topcoat operations using BC/CC systems. Based on this information, up to 41 VOC's (including solvents, monomers, and by-products) could be emitted from topcoat ovens and spray booth exhausts, depending upon which company supplies the coating. At the present time, the only organic compounds listed as being hazardous by EPA are benzene and vinyl chloride. Benzene and vinyl chloride are not among these 41 compounds. (As essentially the same coatings are supplied to all U.S. automobile manufacturers, the Agency believes that the compounds identified are representative of all automobile topcoat operations in the U.S.) A search of available health information was then conducted to identify the potential health effects, if any, that might be associated with exposure to these compounds. The health information obtained is summarized in Docket No. A–84–10, Entry IV–B–24.

In determining whether the 41 potentially emitted compounds pose an unreasonable risk to the public, the Agency considered: (1) The maximum potential ambient concentration of each compound in comparison to occupational limits or exposure levels associated with noncarcinogenic health effects, and (2) the carcinogenicity of the compound. For most compounds, occupational threshold limit values (TLV's) were available. Where TLV's were not available, the Agency identified exposure limits that might reasonably be associated with health effects from available studies or limits recommended by coating suppliers or the raw material suppliers. For each compound for which more than one limit/level was identified, the most restrictive exposure was compared with the estimated maximum ambient concentration.

Ambient Concentrations

A dispersion model analysis performed by Ford for the St. Paul, Minnesota, plant was reviewed by the Agency. (The analysis was performed as required under a permit issued to Ford by the State of Minnesota's air pollution control agency.) The Agency's review of Ford's analysis showed that the dispersion modeling was conducted in a manner consistent with dispersion models normally used by the Agency. Using that dispersion model, the Agency calculated the maximum ambient concentrations that would occur around the plant site for each of the 41 compounds potentially emitted from the spray booths and bake ovens based on coatings provided by two different BC/CC suppliers. In addition, the calculations for the bake ovens were made assuming both normal operation and malfunction of the incinerators.

The results of the modeling (see Docket No. A–84–10, Entry IV–B–25) show that each compound's maximum potential concentration is less than its most restrictive occupational limit by a factor of 350 or more. Occupational limits are designed to protect workers, who are unlikely to be as sensitive as some subsets of the general public such as the elderly, children, and asthmatics. The maximum potential ambient concentrations to which the general public is expected to be exposed are considerably below their most restrictive occupational limits and, in the absence of information to suggest otherwise, there is no basis for concluding that exposures associated with these operations pose unreasonable risks.

Carcinogenicity of the Compounds

The Agency then considered the carcinogencity of each compound. Two of the compounds (formaldehyde and styrene) are suspected human carcinogens. In considering the potential risk of carcinogens, the Agency typically looks at two risk numbers: estimated maximum individual risk and estimated aggregate risk. (The maximum individual risk is the risk of cancer for the person exposed continually for a 70-year period to the highest estimated concentration in the ambient air. The aggregate risk is the estimated number of statistical cancer cases per year among the population if exposed continuously to the modeled concentration.) The Agency first calculated the estimated maximum individual risk for these two compounds. The maximum estimated upper limit individual risks were calculated to be 9×10^{-6} (i.e., about one chance in 100,000 of contracting cancer) for formaldehyde and 9×10^{-8} (about one chance in 10 million of contracting cancer) for

styrene. The maximum estimated individual risk for styrene also is a conservative estimate since this risk estimate is based on the emissions of monomers assuming 100 percent styrene when in fact styrene is but 1 of up to 10 different monomers that could be emitted. If styrene composes one-tenth of the total monomer emissions, then the maximum individual risk associated with styrene would decrease to 9×10^{-9}. Aggregate risk estimates also would be low given the relevant unit risk estimates, the low ambient concentrations, and the number of people residing in the vicinity of this facility.

In summary, the emissions from the topcoat operation using the proposed BC/CC system at Ford's St. Paul, Minnesota, plant, as well as other topcoat operations using BC/CC systems, result in very low ambient concentrations that pose only slight risk to the general public. These slight risks must be weighed against the substantial benefits of the waivers (e.g., compliance with the topcoat standards without the use of expensive, energy-demanding add-on controls). The Agency concludes that the proposed topcoat operations using BC/CC systems do not pose an unreasonable risk to the public in their operation, function, or malfunction.

Earth Protector, Inc., also commented that the language in the proposed waivers may allow the automobile manufacturer to violate other standards that apply to topcoat operations without penalty while the waiver is in effect and requested that language be inserted in the waivers to prevent this from possibly occurring. In making this comment, Earth Protector referred to what they claim to be a similar situation involving a stipulation agreement between a State pollution control agency and a polluter in which the polluter claimed discretionary power to violate standards not specifically included in the enforcement provisions.

In general, EPA does not believe the language in the proposed waivers afford a basis for the potential violation of other applicable standards without penalty as claimed by the commenter. Further, the commenter did not provide any specific information concerning the stipulation agreement. Thus, EPA was not able to compare the two situations in order to evaluate the claimed similarity. The waivers specifically amend the new source standards for VOC emissions from topcoat operations (Subpart MM, 40 CFR Part 60). As such, the waivers do not affect the application, enforcement, or any other aspect of any other standards that are or may be applicable to topcoat operations or any other part of automobile or light-duty truck manufacturing. In addition, the company is required to comply with interim standards and a violation of these interim standards for the BC/CC topcoat operation is enforceable as part of the NSPS. If other standards were intended to be affected, the proposed waivers would have identified those standards as being amended by the proposed waivers, as was done for Subpart MM. Nevertheless, as the intent of the waivers is not to affect the applicability, enforcement, or any other aspect of any other applicable standard and as the language suggested by the commenter would clarify the situation without imposing any additional burdens on either the industry or the Agency, EPA has incorporated in each waiver language similar to that suggested by the commenter.

Last, Earth Protector, Inc., stated that the proposed waiver for the Ford plant in St. Paul, Minnesota, should be rejected because it is unreasonable for the Agency to grant a waiver from the standard in order to allow Ford (and other U.S. automakers) to meet foreign competition.

The commenter misstates the basis for the waivers. In order to grant these waivers, the Administrator, as required by section 111(j)(1)(A) of the Clean Air Act, must determine that:

(i) The proposed innovative technology system has not been adequately demonstrated;

(ii) The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

(iii) The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

(iv) The proposed waiver for the specific technology system is not in excess of the number of waivers necessary to ascertain whether or not such a system will achieve the conditions set forth in "ii" and "iii" immediately above.

In making this determination, the Administrator considers these four requirements only. If any of these four requirements under section 111(j) had been found not to be met, the waivers would have been rejected.

The EPA recognizes that BC/CC improves the quality of topcoats and reduces the cost of compliance with the topcoat standards, and that the use of BC/CC by U.S. topcoat operations will, therefore, improve their competitive position. Indeed, the promise of improvement in quality and reductions in compliance costs are two reasons why BC/CC meets the requirements of section 111(j)(1)(A)(ii).

Summary of the Final Waivers

Chrysler

A waiver is granted to Chrysler for an automobile assembly plant located in Sterling Heights, Michigan. The waiver allows VOC emissions from the portion of the topcoast operations that use BC/CC coatings of 1.7 kg VOC per liter of applied coating solids. The waiver is effective from plant start-up to December 31, 1986.

Ford

Three waivers are granted to Ford for new topcoat operations at existing automobile or light-duty truck assembly plants in Hapeville, Georgia; St. Paul, Minnesota; and Hazelwood, Missouri. The waivers allow VOC emissions from the portion of the topcoat operations that use BC/CC coatings of 2.6 kg VOC per liter of applied coating solids at the Hapeville plant; 2.0 kg VOC per liter of applied coating solids at the St. Paul plant; and 2.5 kg VOC per liter of applied coating solids at the Hazelwood plant. These waivers are effective from start-up of the new topcoat operations to December 31, 1986.

Governor's Concurrences

Honorable Rudy Perpich, Governor of the State of Minnesota; Honorable J.F. Harris, Governor of the State of Georgia; Honorable Christopher S. Bond, Governor of the State of Missouri; and Honorable James J. Blanchard, Governor of the State of Michigan, have concurred with the innovative technology waivers as set forth herein under section 111(j)(1)(A) of the Clean Air Act, 42 U.S.C. 7411(j)(1)(A). Such concurrences are a prerequisite for the granting of innovative technology waivers by the Administrator under section 111(j) of the Clean Air Act. The waivers as set forth herein are hereby granted.

Miscellaneous

In accordance with section 117 of the Clean Air Act, publication of these final waivers was preceded by consultation with Federal departments and agencies.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget

(OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information" as defined in the Paperwork Reduction Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This rulemaking was submitted to OMB for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Automobile and light-duty truck manufacturing industry (SIC 3711), Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping.

Dated: August 13, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 is revised as set forth below and the authority citations following all the sections in Part 60 are removed.

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Subpart MM is amended by adding new paragraphs (f) through (i) to read as follows:

§ 60.398 Innovative technology waivers.

* * * * *

(f) *Chrysler Corporation, Sterling Heights, Michigan, automobile assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Chrysler Corporation's automobile assembly plant located in Sterling Heights, Michigan, shall comply with the following conditions:

(i) The Chrysler Corporation shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Sterling Heights assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Chrysler Corporation shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Sterling Heights, Michigan assembly plant, to either:

(A) 1.7 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (f)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(f)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Part, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Chrysler Corporation to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Chrysler Corporation to enforcement under sections 113 (b) and (c) of the Act (42 U.S.C. 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Michigan from imposing upon the Chrysler Corporation any emission reduction requirement at Chrysler's Sterling Heights automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(g) *Ford Motor Company, Hapeville, Georgia, automotive assemply plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in Hapeville, Georgia, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hapeville assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hapeville, Georgia, assembly plant, to either:

(A) 2.6 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (g)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(g)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, postmarked before 60 days after

the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) and the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Georgia from imposing upon the Ford Motor Corporation any emission reduction requirement at Ford's Hapeville automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(h) *Ford Motor Company, St. Paul, Minnesota, light-duty truck assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in St. Paul, Minneosta, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the St. Paul assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c), is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the St. Paul, Minnesota, assembly plant, to either:

(A) 2.9 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (h)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(h)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this wavier shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Minnesota from imposing upon the Ford Motor Corporation any emission reduction requirements at Ford's St. Paul light-duty truck assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this light-duty truck assembly plant.

(i) *Ford Motor Company, Hazelwood, Missouri, passenger van assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's passenger van assembly plant located in Hazelwood, Missouri, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hazelwood assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hazelwood, Missouri, assembly plant, to either:

(A) 2.5 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (i)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(i)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 61101, postmarked before 60 days after the promulgation of this waiver and

(OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information" as defined in the Paperwork Reduction Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This rulemaking was submitted to OMB for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Automobile and light-duty truck manufacturing industry (SIC 3711), Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping.

Dated: August 13, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 is revised as set forth below and the authority citations following all the sections in Part 60 are removed.

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Subpart MM is amended by adding new paragraphs (f) through (i) to read as follows:

§ 60.398 Innovative technology waivers.

* * * * *

(f) *Chrysler Corporation, Sterling Heights, Michigan, automobile assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Chrysler Corporation's automobile assembly plant located in Sterling Heights, Michigan, shall comply with the following conditions:

(i) The Chrysler Corporation shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Sterling Heights assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Chrysler Corporation shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Sterling Heights, Michigan assembly plant, to either:

(A) 1.7 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (f)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(f)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Part, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Chrysler Corporation to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Chrysler Corporation to enforcement under sections 113 (b) and (c) of the Act (42 U.S.C. 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Michigan from imposing upon the Chrysler Corporation any emission reduction requirement at Chrysler's Sterling Heights automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(g) *Ford Motor Company, Hapeville, Georgia, automotive assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in Hapeville, Georgia, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hapeville assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hapeville, Georgia, assembly plant, to either:

(A) 2.6 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (g)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(g)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, postmarked before 60 days after

the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) and the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Georgia from imposing upon the Ford Motor Corporation any emission reduction requirement at Ford's Hapeville automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(h) *Ford Motor Company, St. Paul, Minnesota, light-duty truck assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in St. Paul, Minneosta, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the St. Paul assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c), is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the St. Paul, Minnesota, assembly plant, to either:

(A) 2.0 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (h)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(h)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this wavier shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Minnesota from imposing upon the Ford Motor Corporation any emission reduction requirements at Ford's St. Paul light-duty truck assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this light-duty truck assembly plant.

(i) *Ford Motor Company, Hazelwood, Missouri, passenger van assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's passenger van assembly plant located in Hazelwood, Missouri, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hazelwood assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hazelwood, Missouri, assembly plant, to either:

(A) 2.5 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (i)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(i)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 61101, postmarked before 60 days after the promulgation of this waiver and

annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Missouri from imposing upon the Ford Motor Corporation any emission reduction at Ford's Hazelwood passenger van assembly plant necessary for the maintenance of reasonable further progresss or the attainment of the national ambient air quality standards for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this passenger van assembly plant.

[FR Doc. 85–21451 Filed 9–6–85; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
September 9, 1985

Part VI

Environmental Protection Agency

40 CFR Parts 85 and 600

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines; Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 600

[FRL-2860-2]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is currently considering additional options for revising portions of the EPA regulations at 40 CFR 85.1501 *et seq.*, which regulate the importation of nonconforming motor vehicles and motor vehicle engines. Nonconforming vehicles are ones which have not been demonstrated to conform with Federal emission requirements. These additional options reflect EPA's consideration of all public comments received in response to an EPA Notice of Public Workshops issued on November 4, 1983 and the original Notice of Proposed Rulemaking issued on July 21, 1980. EPA intends to hold public hearings to solicit comments on these and all other options which have been proposed. Revisions to the current regulations are needed to improve the administrative efficiency and effectiveness of the EPA program.

DATES: EPA will hold public hearings as follows:

Hearing #1: 9 a.m. EDT, Wednesday, October 9, 1985—Washington, D.C.
Hearing #2: 9 a.m. PDT, Thursday, October 24, 1985—San Diego, California

Persons wishing to provide testimony at the hearings should notify Mr. Durkee as noted below, not later than October 2, 1985 for the Washington, D.C. hearing and October 17, 1985 for the San Diego hearing. Any written comments must be received on or before December 6, 1985.

ADDRESSES: Interested parties are encouraged to participate in this rulemaking procedure by submitting comments to: Central Docket Section (LE–1318) (Attention: EN–79–9), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN–79–9 at the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery One, 401 M Street SW., Washington, D.C. 20460, and are available for review during normal business hours (8:00 a.m.–4:30 p.m.). As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

The October 9, 1985 hearing will be held in the North Auditorium, Department of Health and Human Services Headquarters, 330 Independence Avenue SW., Washington, D.C. 20201. The October 24, 1985 hearing will be held at the Holiday Inn Embarcadero, 1355 North Harbor Drive, San Diego, California 92101. Telephone: (619) 232–3861.

FOR FURTHER INFORMATION CONTACT: Stanley B. Durkee, Manufacturers Programs Branch, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382–2499.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the "Act"), prohibits the importation of any new motor vehicle or engine (hereinafter "vehicle"), 42 U.S.C. 7522, not covered by a certificate of conformity unless it is exempted by the Administrator of EPA or otherwise authorized jointly by EPA and U.S. Customs Service (Customs) regulations. Current EPA and Customs regulations at 40 CFR 85.1501 *et seq.* and 19 CFR 12.73, respectively, allow the conditional importation of a nonconforming vehicle provided that a bond is posted with Customs and the vehicle is brought into conformity with EPA emission requirements. This may be done either by modifying the vehicle to make it identical to a vehicle certified for sale in the U.S. or by successfully testing the vehicle in accordance with the Federal Test Procedure (FTP) at 40 CFR Part 86. Under the second option, which is more commonly used, some modification is usually necessary before the imported vehicle can pass the FTP (the "modification and testing" approach).

Based on experience gained since these regulations were originally published in 1972, the Agency issued a Notice of Proposed Rulemaking ("NPRM") on July 21, 1980, which proposed and solicited comments on a number of revisions to the existing importation procedures. 45 FR 48812. Subsequently, due to review of the comments received, additional Agency analysis, and proposed Congressional amendments to the Act which would have significantly altered the imports program, EPA delayed final action on the NPRM. In the interim, EPA made several changes to its enforcement procedures and policies designed to reduce the administrative burden of the imports program brought about by the increasing rate of nonconforming vehicles imported each year, and to minimize the burden of the rules in certain special circumstances. These changes allowed the importation by individuals of one nonconforming vehicle at least five model-years old at the time of importation, without having to bring the vehicle into conformity. Such vehicles were required to be for personal use only and not for resale. These policy changes also provided for similar treatment with respect to immigrants, handicapped persons and others experiencing special hardships. 48 FR 16485 (April 18, 1983).

In 1983, EPA continued its evaluation of the proposed revisions to the imports regulations, taking into account changes that had occurred since publication of the NPRM, including an increase in the number of nonconforming vehicles imported annually and allegations of abuse of certain imports procedures. As part of this reevaluation, EPA issued a Notice of Public Workshops on November 4, 1983, to discuss additional issues and options for revising the regulations. 48 FR 50902. Two workshops were held in November and December 1983; transcripts of each have been placed in the public docket for this rulemaking.

Comments submitted at or in response to these workshops have assisted the Agency in further refining the proposed revisions to the imports program. Most of the comments dealt with two major issues associated with the current "modification and testing" approach. The first issue was whether the current regulations are equitable, since they arguably impose less stringent requirements on independent commercial importers [1] of nonconforming vehicles under the "modification and testing" approach than those imposed on original equipment manufacturers or their distributors (hereinafter collectively referred to as OEMs) pursuant to the certification process. *See* 40 CFR Parts 85 and 86. OEMs generally alleged that the regulations are unfair because they result in the incurrence of lower costs of compliance to independent commercial importers, and because they result in importations which cause widespread problems (e.g., warranty claims, parts unavailability for models they do not

[1] The term "independent commercial importers" as used here means importers who do not have a contractual agreement with foreign manufacturers to act as their authorized representatives for the distribution of vehicles into the U.S. market.

sell in the U.S.), which adversely affect their reputations.

Some representatives of businesses associated with independent commercial importers argued that the current regulations were not inequitable, and also suggested that some requirements imposed on independent commercial importers are already more stringent than those imposed on OEMS. For example, independent commercial importers generally must test every imported vehicle to ensure it complies with emission standards, while OEMs are only occasionally subjected to a Selective Enforcement Audit of production vehicles.

The second major issue was the extent to which alleged improper modifications and falsification of data occur under the existing approach. Many commenters addressing this issue alleged that these problems were significant and widespread. Some representatives of independent commercial importers, on the other hand, have claimed generally that such abuses are not as extensive as their opponents claim.

Another important issue that has emerged from the comments is whether independent commercial importers who obtain a certificate of conformity have knowledge of production changes made by OEMs which could have an effect on the emissions performance of imported nonconforming vehicles. This question is relevant when a commercial importer asserts that it has modified its vehicle so that it conforms to an already-certified configuration. If unknown production line changes have been incorporated into the nonconforming vehicle, the certificate of conformity may not reflect the actual configuration of that or any subsequently produced vehicles and such vehicles may not be covered by the certificate.

Finally, to provide further information for use in the reevaluation of the program, EPA, in cooperation with the California Air Resources Board (CARB), conducted a joint program in September and October 1984 to inspect and test a sample of nonconforming vehicles. The sample of twenty-seven vehicles considered in the program utilized statistical sampling techniques and was drawn according to specified criteria from a larger number of vehicles which five test laboratories located in Southern California had reported to EPA to be in conformity at the time they were tested by the laboratories. (At the time of retesting, EPA had not approved release of the obligation on the importation bonds for any of the vehicles.) All but one of twenty-seven vehicles failed the emissions test for at least one pollutant. In many cases, failures were by substantial margins. A description of the program and the results obtained have been placed in the public docket for information and comment.

II. Discussion of Regulatory Revision Options

Based on the comments received and additional Agency analysis, EPA is considering three new options, in addition to those described in the NPRM and the Notice of Workshops. The three options are described below and in Appendices I–III of this Notice. Any of these options, if adopted, could be substituted for the current imports regulations.

While all options, both those outlined in this Supplemental Notice and those described in the NPRM and the Notice of Workshops, are being equally considered, proposed regulatory language is provided only for Options 2 and 3 (*see* Appendix IV) since the essence of Option 1 is simply deletion of the current regulations.

A. Option 1

The first additional option (Option 1) (*see* Appendix I) would prohibit the importation of nonconforming vehicles and would further prohibit independent commercial importers from obtaining certification. Only vehicles previously certified by OEMs could be imported by OEMs, independent commercial importers or individuals.[2] Most OEMs and the State of California proposed this option in response to the November 4, 1983, Notice of Public Workshops and identified several grounds for its consideration. For example, many of these commenters alleged that many businesses engaged in the importation, modification and testing of nonconforming vehicles are unreliable. Several OEMs and the California Air Resources Board (CARB) submitted information on nonconforming vehicles which had been purportedly modified and tested and, subsequently, visually inspected by dealers during the course of routine repair work or, in some cases, retested. This information appears to show that a significant number of such vehicles were either not modified or inadequately modified. It was suggested that if cars are improperly modified and tested under the present program, it is unlikely that they will be properly modified under a program that requires imported vehicles to be modified so as to be covered by a certificate of conformity.

A second reason for EPA's consideration of Option 1 is that comments were received which allege that independent commercial importers often lack sufficient knowledge to assure that modified vehicles comply with the requirements of a certificate. CARB and some OEMs claimed that independent commercial importers are not notified by OEMs of "running changes," i.e., those changes in configuration, equipment, calibration, and so forth, which may be made by a manufacturer in the course of production of a model line or engine family and which may have an effect on emission performance. The current certification regulations, at 40 CFR 86.079–33, require original equipment manufacturers to notify EPA of "running changes". This reporting requirement is essential in order for the Agency to be able to determine whether the vehicle, as altered, still conforms, in all material respects, to the description of the vehicle or engine in the application for certification. If independent commercial importers are unaware of running changes made on the production line vehicle by foreign OEMs, there is no way of knowing whether the vehicle as modified by the importer will meet the requirements of the importer's certificate.

Some OEMs also commented that the differences between U.S. and foreign versions of their models are so great that vehicles of certain foreign model lines cannot be successfully modified to ensure their compliance with emission standards for their useful lives. The Agency also is concerned that independent commercial importers generally lack access to specifications, design settings under varied operating conditions and other engineering information and data required to match engine output and emission control system characteristics, particularly durability. Since OEMs have control over the production process, they may coordinate a vehicle's engine design with the vehicle's emission performance while simultaneously considering fuel economy, driveability and emission deterioration. In contrast, independent commercial importers who install emission control components on a vehicle engine which is not originally designed for compliance with U.S. emission standards, may adversely affect fuel economy, driveability or emission control durability of the vehicle. Such adverse effects may also encourage vehicle purchasers to remove or disable emission control components

[2] Under the authority of 40 CFR 85.1509, the catalyst and other emission control parts may have to be replaced on some certified vehicles driven outside the United States prior to importation if unleaded gasoline is not generally available where the vehicle was driven.

causing severe emission deterioration. Vehicles which are not emission-durable for their full useful life should not be certified.

EPA has historically considered independent commercial importers as manufacturers under section 216(1) of the Clean Air Act. As such, they have been considered eligible to apply for certification. However, some commenters have asserted that the definition of manufacturer in section 216(1) of the Act was not intended to apply to independent commercial importers. It has also been suggested that the Agency could prohibit independent commercial importers from obtaining certification if sufficient information exists to demonstrate that it is unlikely that vehicles modified by persons other than OEMs would comply with the requirements of the Act throughout the vehicles' useful lives.

EPA seeks comments and supporting information and data on these legal and technical issues. In particular: (1) What are the differences between U.S.-certified models and their uncertified foreign counterparts? (2) Can emission control systems be successfully developed by independent commercial importers for certain foreign models that will maintain compliance for the useful lives of those vehicles? (3) Are independent commercial importers informed of all emission-related running changes and, if so, by what means? (4) What changes, if any, are made in the modifications or components applied by independent commercial importers to correct the adverse effect of such running changes on emissions? (5) Are running changes likely to adversely affect the durability of emission control systems installed by independent commercial importers, thereby causing noncompliance within the vehicles' useful lives? (6) What evidence exists that imported nonconforming vehicles, as modified under the current "modification and testing" option, are capable of meeting applicable emission standards throughout their useful lives? (7) What evidence exists that a substantial number of vehicles are incapable of complying with emission standards due to improper modifications, rather than to subsequent tampering unrelated to the modifications? (8) What evidence exists that a substantial number of vehicles are being tampered with after modification and testing due to dissatisfaction with the modification? (9) If such evidence exists, is it sufficient to support a determination that independent commercial importers as a class should not be allowed to certify? (10) Under section 206 or 216(1) of the Clean Air Act, may the Agency prohibit independent commercial importers from applying and/or obtaining certification? (11) Finally, what would be the practical effects of Option 1 which would eliminate independent commercial importers from the commercial importation market with respect to vehicles not certified by OEMs?

B. Option 2

Option 2 (*see* Appendix II) would provide that a nonconforming vehicle may only be imported if it belongs to a class of vehicles for which a certificate of conformity has been obtained. Furthermore, such vehicles could be imported only by the possessor of this certificate. Certificate holders would bear responsibility for compliance of these vehicles for their useful lives. No nonconforming vehicle, except (1) those exempted for purposes of testing, pre-certification or other reasons specified in the regulation, and (2) those covered originally by a certificate of conformity, would be admitted until a certificate is granted for that vehicle class. Additionally, each certificate of conformity issued under this option would impose a condition that no vehicle would be covered by the certificate unless it is modified according to the specifications in the application for certification. In general, such vehicles must also be tested according to the FTP to demonstrate conformity to Federal standards within 120 days of entry, such test results to have been derived at an emissions laboratory that is recognized by EPA as capable of performing the FTP.

It is not intended that certificate holders be required to actually own all of the vehicles which they import, modify and test and for which they bear responsibility. Certificate holders could make-arrangements with individuals who have purchased vehicles overseas to take responsibility for such vehicles. These vehicles would also be part of the certificate holder's "production line," and the certificate holders would be responsible for complying with requirements identical to those specified in the Act for other certified vehicles. Certificate holders must explicitly agree to these requirements as a condition of approval by EPA of final admission of the vehicle into the United States.

Independent commercial importers who hold such certificates would be required to store each vehicle for a period of fifteen (15) working days following notification to EPA of modification and/or testing to provide the opportunity for EPA confirmatory testing and inspection. EPA inspections could occur at any time. Many will focus only on examining records and vehicles while others can be expected to require re-test of a reasonable number of vehicles (that is, no more than might be expected in a Selective Enforcement Audit, *see, e.g.*, 40 CFR 86.807). Moreover, such certificate holders would have to comply with all the requirements currently imposed on traditional manufacturers by the Act, the Energy Policy and Conservation Act, 15 U.S.C. 2000 *et seq.* and the Energy Tax Act of 1978, 26 U.S.C. 4064, including the provisions for maintenance instructions, warranties, recall, emission labeling, fuel economy labeling, Corporate Average Fuel Economy (CAFE) requirements, and the "gas guzzler" tax.

If Option 2 is adopted, EPA would intend to modify its "small volume manufacturer" certification regulations at 40 CFR 86.084–14, to provide, among other requirements, that vehicles imported under this option be demonstrated to possess sufficient durability to comply with emission requirements for their useful lives. These regulations would be the subject of a separate rulemaking.

Salient features of the Option 2 certification procedures include a requirement applicable only to independent commercial importers that, unless the OEM agreed to notify the certificate holder of all running changes that could affect emissions, vehicles would have to be individually emission tested and/or inspected by the importer within 120 days of entry (for a more detailed discussion, see Section II. B. (1) below).

Due to the stringent attributes of this certification option, including the potential for revocation of certificates, EPA is considering the general elimination of the requirement for an EPA obligation on the Custom Service bond for imported nonconforming vehicles, except for certain exempted vehicles, including "test" or "pre-certification" vehicles. Eliminating the bonding requirement in most cases would reduce importation costs for the independent commercial importer and lessen the administrative burdens of EPA and Customs in overseeing the program. It would also enable the Agency to concentrate its efforts on the certification process [8] and enforcement

[8] The current small volume certification regulations (40 CFR 86.084–14) provide that EPA may conduct emission tests on prototype or test vehicles already tested by the manufacturer during the certification process. EPA intends to perform confirmatory tests on prototype vehicles, in

Continued

of the other requirements of the revised imports program.

Other salient features of Option 2 are as follows:

(1) Running Changes

This option would require certificate holders to provide assurance to EPA on each individual vehicle that any changes to the certified configuration that may have been made by the original equipment manufacturer will not cause the vehicle to exceed emissions standards. Such assurance could be provided in any of the following ways:

(i) through modification in accordance with the provisions of the certificate and presentation to EPA of an enforceable (i.e., contractual) agreement with the original equipment manufacturer which requires the OEM to provide to the independent commercial importer information concerning running changes to vehicles not originally built for the U.S. market according to the procedures of 40 CFR 86.079–33 and actual receipt by EPA of notification of those running changes by the independent commercial importer along with documentation of their effects on emissions;

or (ii) through modification in accordance with the provisions of the certificate and successful completion of an FTP test on each vehicle within 120 days of entry. In order to ensure the durability of these vehicles, emission results on each FTP tested vehicle shall be adjusted by the deterioration factor used by the independent commercial importer during certification and such adjusted results shall comply with applicable standards;

or (iii) through modification in accordance with the provisions of the certificate and successful completion of an FTP test on every third vehicle imported under the certificate. In each case, emission results shall be adjusted by the deterioration factor and such results shall comply with applicable standards. If this option is chosen, the certificate holder must also verify that each emissions-related part number on each vehicle that is *not* FTP tested is identical to the part number used in the certification vehicle or which appears in the application for certification. (Applicable emission-related parts shall be those appearing on a list to be issued by EPA.)

EPA would require that the application for final entry include reports on every FTP test conducted on each vehicle. Should the vehicle be unable to pass a second FTP, the certificate holder's application should report calibration changes it has made to ensure that the vehicle does conform with Federal emission standards. Such changes, if approved by EPA, would constitute approved "running changes" which then must be made on all subsequent vehicles modified in accordance with the certificate. In all cases, the "15 day hold" period would be in effect such that should EPA disapprove the application, final entry would be denied.

EPA invites comments on these alternatives as well as suggestions of additional alternatives which address the problems posed by running changes. In particular:

1. How many running changes are made annually by each OEM on those models not manufactured to comply with U.S. emission standards? To the extent possible, a description should be provided of each such running change made during the 1982, 1983, 1984 and 1985 model years including a quantitative estimate of the impact of the running change on exhaust and evaporative emissions.

2. How many independent commercial importers are informed of running changes in engine configurations? To the extent possible, a description should be provided of the source of the information and, where applicable, what accommodations are made in light of any running changes in the installed emission control systems.

3. What is the appropriate amount of FTP testing of individual vehicles which should be required in order to address the problems posed by running changes?

(2) Inspection, Testing and Recordkeeping

As discussed above, in order to provide additional assurance that the imported vehicles are properly modified and tested, EPA anticipates that after each vehicle is modified and has been demonstrated, where appropriate, to be in compliance with standards in accordance with the FTP, certificate holders would be required to hold *each* vehicle for 15 working days to allow inspection or testing by EPA.

EPA would reserve the right to have any retesting conducted at either the certificate holder's facility or an EPA-designated testing facility, with transportation and testing costs to be borne by the certificate holder. Additionally, the certificate holder would be required to maintain records which provide parts identification data associated with each emission control system installed and demonstrate that the emission control system was properly installed and that each vehicle was tested, where appropriate, in strict accordance with the FTP. Such records would be available for inspection by EPA and be supplied to the Agency upon request. These recordkeeping requirements would enable EPA, among other things, to ensure that the correct test settings were used during the FTP conducted by the independent commercial importer and to compare its re-test results with the results of the original FTP. The existence of any discrepancies found by this comparison may indicate the need for additional vehicle inspection, testing or other action by EPA. Furthermore, any vehicle tested by EPA which does not conform to applicable emission standards will not be covered by the importer's existing certificate of conformity and will be denied final entry.

(3) Sanctions

To encourage proper and competent modification and testing of vehicles to be brought into conformity with the provisions of a certificate, several sanctions are available under sections 206 and 207 of the Act. Certificate holders who have a significant number of vehicles which fail an inspection may have their certificates suspended or revoked. Vehicles of the same engine family experiencing such significant failures which have already been formally entered may also be subject to recall. Other grounds for the suspension or revocation of certificates may include, among others, fraud in any aspect of the importation process, the use by a certificate holder of a testing facility that has not been found qualified by EPA or improper testing or reporting procedures. Failure to allow EPA inspectors access to records, facilities and the actual testing process may also result in the suspension or revocation of a certificate. An opportunity for a hearing will be provided before such Agency action occurs. In addition to these sanctions, failure to comply with any provision of these regulations may subject the certificate holder to penalties provided in section 205 of the Act.

(4) Laboratory Requirements

To further ensure competent importation practices, EPA is proposing to codify and strengthen the requirements for laboratories which perform the Federal Test Procedure (FTP) for imported vehicles. Only laboratories which meet certain criteria, including having proper equipment, staffing, and a demonstrated ability to

---

accordance with § 86.085–29(a)(2), of certificate holders who are independent commercial importers in order to assure that the emission control systems applied by these importers are capable of compliance with appropriate emission requirements and are durable.

perform the FTP accurately, will be permitted to submit test data in the certificate holder's application for final admission of each vehicle. In addition, the laboratory must agree to periodic EPA inspections during which an EPA representative may inspect equipment, records, and vehicles, may observe the laboratory perform an FTP and may require the laboratory to perform an FTP. EPA will continue to maintain a list of laboratories shown to be qualified and only test results from laboratories on that list will be accepted. Any change in the laboratory's capability to perform the FTP or any fraud or misrepresentation by the laboratory involving information submitted to EPA may result in its removal from the list. Notice and opportunity to be heard will be given to a laboratory before any final decision to remove it from the list. In no case will any action against a laboratory relieve a certificate holder of liability for the accuracy of the test results or for the emission performance of the vehicles for which it is responsible.

(5) Additional Requirements

The certificate holder will be responsible for providing maintenance instructions, warranties and recall repair and for paying gas guzzler taxes and CAFE penalties either under applicable laws or under these regulations (see discussion under "Option 3, Other Requirements," below).

EPA is concerned that *all* vehicles, including those modified overseas, imported by independent commercial importers comply with the requirements of the imports regulations which are the subject of today's notice. In order to ensure compliance with these regulations, EPA is proposing amendments to its emission labeling regulations at 40 CFR 86.082–35. In this way, Customs Service inspectors at U.S. ports of entry will be able to distinguish between vehicles imported by OEMs and vehicles imported by independent commercial importers which are subject to the requirements of the imports regulations.

The Agency believes that questions 1–10 discussed above in connection with Option 1 are equally applicable to Option 2 and thus, the Agency specifically solicits comments on them as they relate to Option 2.

C. Option 3

Option 3 (*see* Appendix III) would permit entry both to vehicles which will be eventually modified so as to be covered by a certificate of conformity and to a relatively small number of vehicles which will not be covered by a certificate but will be modified and tested to demonstrate compliance with Federal emission requirements. This option provides that for the latter vehicles, a new modification/test (mod/test) procedure that meets EPA concerns previously expressed in this notice may be appropriate for certain models with such a low aggregate volume that the burden may be too great for any person to obtain a certificate of conformity.

The option would retain the basic institutional framework of Option 2 in that only possessors of certificates of conformity could import nonconforming vehicles not covered by a certificate and they would bear responsibility for compliance of these mod/test vehicles with emission standards for their useful lives.[4] A certificate holder would be able to import mod/test vehicles of any age but only during the production period described in one of the certificate holder's certificates of conformity. Because the potential exists that mod/test vehicles not covered by a certificate will be different from each other and from certified vehicles, the option contemplates retention of the current bonding requirement for these vehicles. However, the current policy of mitigating penalties on bonds in some cases would be eliminated and failure to bring a vehicle into conformity would lead to full forfeiture of the bond.

By limiting imports of mod/test vehicles to certificate holders, EPA believes that the emission control expertise and the technology demonstrated as a result of successful completion of the certification process can be transferred to the task of modifying mod/test vehicles not covered by a certificate. The expected result would be improved emission control system designs for mod/test vehicles as well as utilization of emission control parts with improved durability characteristics. This arrangement would also provide a stronger incentive for reliability since the certification holder must be responsible for modifying and testing the non-certified vehicle properly or face the prospect of exporting it or forfeiting the entire bond on the vehicle. In addition, as discussed in a later section, a certificate holder that is found to be modifying and testing vehicles that do not meet the emission requirements would incur the risk of being denied the continued privilege of importing mod/test vehicles and, possibly, the risk of being denied certificates in the future for any vehicles.

[4] Under these regulations, useful life is measured from the date of sale if the vehicle is owned by the certificate holder and from date of Customs release if not owned by the certificate holder.

This option would contain two sets of program requirements. The regulatory requirements applying to vehicles which will be modified so as to be covered by a certificate of conformity are identical to those specified in Option 2 and will not be repeated. Similarly, the laboratory requirements proposed under Option 2 would apply under Option 3 as well. The regulatory requirements applying to mod/test vehicles would represent a significant departure from the current modification/testing program in that they, like Option 2, would address various EPA concerns regarding enforcement, equity and durability of emission controls. The new modification/test procedure would not be available for vehicles on a "not qualified for modification/test" list of vehicles issued by EPA.

Vehicles which are eligible for the new mod/test procedure would be required to comply with standards in effect at the time such vehicles are modified. This provision will further ensure consistency between the requirements for mod/test vehicles and the requirements for certified vehicles, which must meet standards in effect at the time such vehicles are modified in accordance with the provisions of a certificate. Under the modification and testing program currently in effect, EPA requires that vehicles must comply with standards in effect at the time of original manufacture. For example, a vehicle originally manufactured in May 1975 currently has only to meet 1975 EPA standards regardless of when it is modified. Under the new mod/test provision of Option 3, the vehicle, if modified in 1985, would have to meet 1985 standards. EPA believes that this change will simplify and facilitate the administration and enforcement of Option 3.

EPA recognizes that this change in model year designation may present particular problems for significantly older model year vehicles. Therefore, EPA solicits comments on how older model year vehicles should be treated under these new imports regulations.

(1) EPA List of Vehicles "Not Qualified for Modification Test"

The EPA list would be revised annually and would be based primarily on historical data for the prior one year period ending June 30 of the year each list is issued. (These data are and will be collected normally by EPA's Imports Program.) The list would be issued in the Federal Register no later than September 1 of the same year and will be effective on January 1 of the subsequent year for that calendar year.

EPA would provide copies to each certificate holder, the U.S. Customs Service and other interested parties. The list would include two categories of models.

The first category would include all models for which certificates have been issued to date to OEMs or to independent commercial importers. Once on the list as a certified model, the model could not be imported under the modification/testing program even if the holder(s) of certificates of conformity for that model chose not to import it or if the certificate, for whatever reason, became invalid during the period.

EPA has not included any provision for removal of a model from the "not qualified for modification test" list because EPA is concerned that such a provision will result in the undermining of the certification program and an unacceptable administrative burden for EPA. However, EPA welcomes comments on the make-up of the list and, specifically, the provision that no model will be removed from the list once it is placed on the list.

The second category would include models[5] for which no certificate exists and whose aggregate importation volume as computed by EPA for the July 1–June 30 historical data period exceeds 60 vehicles. (Exempted vehicles would not be included in the aggregation calculation.) Sixty vehicles the minimum number of vehicles that is estimated in EPA's Regulatory Flexibility Analysis (RFA) as needed to amortize certification costs for an imported nonconforming vehicle without having a significant impact on sales. The limit of 60 vehicles, therefore, is high enough to provide a reasonable expectation that an entity would seek to certify vehicles within a model designation and yet low enough not to undermine the certification program for other vehicles. Having exceeded the limit, if the model is not subsequently certified, the model would be prohibited from entering under the mod/test procedure in the following years.

[5] The term "models" as used here has a broad and very special meaning and should not be confused with other uses of the term in the Act. For purposes of the list, when considering models for which a certificate does not exist, the term "model" would refer to those vehicles which are identical with respect to the (1) designation given by the original equipment manufacturer, (2) engine displacement (within a 10 percent range), and (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel). For example, all gasoline fueled Mercedes 500s regardless of weight or fuel economy characteristics would be considered within one model. EPA will make no attempt to group vehicles more narrowly since this has potential for abuse and is likely to be too complicated to be administratively feasible.

EPA is also considering various means for addressing the situation posed by models which have been introduced only since the historical data was compiled and thus do not appear therein. One idea is imposing a quota of 10 such vehicles on each individual certificate holder. In this way, the total number of the imports for such vehicles for the year under modification/test would be very limited. Such a program, however, may be difficult to administer. EPA therefore, requests comments on how to deal with these "new" models.

(2) Requirements for Emissions Testing and Durability

Certificate holders would be required to successfully emissions test each mod/test vehicle in accordance with the Federal Test Procedure within 120 days of entry. As previously stated, the fact that only certificate holders could import mod/test vehicles would itself be expected to increase the probability of the proper design and installation of emission systems using parts that are identical to those used on certified vehicles and, therefore, are more likely to be durable. In order to further assure the durability of the emission control systems of each of these vehicles, the emission test results on each vehicle would have to be adjusted by a deterioration factor assigned by EPA and such adjusted results shall comply with applicable standards. Moreover, the certificate holder would be required to furnish EPA an attestation, signed by a professional engineer (P.E.) with emission control experience, that the vehicle's emission control system is durable for its useful life. Also, if the certificate holder decides not to use the identical parts for which he has received certification, he must furnish EPA a report for each such vehicle. The report must be signed by a P.E. with emission control experience and must provide analytic evidence that such parts are durable over the period of useful life. Such analytic evidence must be approved by EPA prior to receipt of the application for approval of any individual vehicle for final entry into the United States.

(3) Requirement for "Hold" of Mod/Test Vehicles Until Bond Release

Certificate holders who import mod/test vehicles would be required to store each vehicle until release of the bond obligation by Customs. Besides ensuring compliance with the existing prohibition against use or sale of the vehicle before bond release, this provides an opportunity for EPA confirmatory testing and inspection.

(4) Other Requirements

Certificate holders who import mod/test vehicles would be required to comply with requirements similar to those imposed on them for vehicles covered by certificate of conformity, such as the provisions for maintenance instructions, warranties, recall, and emission labeling. Additionally, special inspections in lieu of some type of assembly-line audit, as described below, are envisioned. Compliance with all of these requirements, including all those that may be imposed under the Energy Policy and Conservation Act and the Energy Tax Act of 1978, together with a degree of durability assurance previously described, will likely address EPA's concerns for equity and emissions durability over the vehicles useful life.

(a) *Maintenance Instructions.* Certificate holders would be required to furnish for each vehicle not covered by a certificate, written instructions for the maintenance and use of the vehicle by the owner or purchaser as may be reasonable and necessary to assure the proper functioning of the emission control system. A copy of such instructions should be submitted to EPA, with each mod/test submittal and should provide an attestation that such instructions have been provided to the vehicle owner or will be provided to the vehicle purchaser if the vehicle owner is the certificate holder. The instructions should not contain requirements more stringent (i.e., more frequent maintenance) than those specified in § 86.087–25. Repair procedures should be in sufficient detail and clarity that the average automotive mechanic can maintain the vehicle. Certificate holders should furnish with each vehicle a list of the added emission control or related parts and the OEM's emission related parts.

(b) *Warranty.* Certificate holders would be required to provide two warranties for imported mod/test vehicles identical to those required by section 207 (a) and (b) of the Act for certified vehicles. These warranties would be transferable to each owner of the vehicle for the time periods specified. They would be insured by a mandatory service insurance policy underwritten by an independent insurance company. The warranty period would begin on the date the vehicle is delivered to its first purchaser (or owner) in the United States and must provide that in the absence of a certificate holder's repair facility being reasonably available (i.e., within 50 miles), warranty repairs can be performed anywhere. Certificate holders

will submit copies of the warranties to EPA with the application for final admission of the mod/test vehicle. Additionally, the application will provide an attestation that the warranties have been provided to the owner or will be provided to the first ultimate purchaser, and subsequent purchasers upon request.

The first warranty would be an emission control and emission related part defect warranty, identical to that required of certified vehicles by section 207(a) of the Act. The warranty would be required to cover all emission related (e.g., fuel injection system) and emission control parts regardless of whether they were furnished initially by an OEM. The scope of coverage would be determined by reference to section 207(a) of the Act and any guidelines EPA might issue pursuant to that section. Parts installed under the warranty should be of equivalent quality to those originally installed by the OEM or the certificate holder. Since the section 207(a) warranty is a defect warranty, improper maintenance or use of the vehicle would not automatically be cause for denial of a claim. Proof that improper maintenance caused the malfunction, however, would disprove a defect.

The second warranty, identical to that required of manufacturers by section 207(b) of the Act, would be a performance warranty requiring that if a noncomformity is identified in a properly maintained and used vehicle as part of an EPA approved Inspection and Maintenance test during its useful life which results in the vehicle owner having to bear any penalty or other sanction under local, state or Federal law, then the certificate holder would be responsible for remedying the cause of the test failure. This would be done at no cost to the owner; except that if the vehicle has been in operation for more than 24 months or 24,000 miles, the certificate holder would be responsible to remedy only those nonconformities resulting from the failure of "primary emission control parts." Primary emission control parts will be determined by reference to section 207(b) of the Act and the regulations promulgated thereunder, including the advisory parts list, and will cover added parts to the same extent as original parts. Proper bases for warranty denial will be determined by reference to section 207(b) of the Act and the regulations promulgated thereunder at 40 CFR 85.2100 *et seq.*

(c) *In-Use Emissions Compliance.* Certificate holders who import mod/test vehicles would be required to maintain and to provide to EPA upon request a current list of all owners of mod/test vehicles, for which they are responsible. (As with other in-use vehicles, EPA may seek to inspect or test these vehicles at any time during the useful life of the vehicles. Certificate holders would be expected to pay for the costs associated with any repairs needed for vehicles which fail to conform in use and to bring such vehicles into conformity with emission requirements. In addition, the certificate holder will be asked by EPA to explain the failures of vehicles to meet standards. When deemed appropriate by EPA (see discussion in II.C.(5) below), the certificate holder will be denied the privilege of continuing to import such vehicles by placement of its name on a list, discussed in a later section, of certificate holders ineligible to import such vehicles.

(d) *Special Inspections Prior to Final Entry.* Certificate holders of mod/test vehicles will be subject to having such vehicles inspected and retested during the 120 day conditional importation period. EPA would reserve the right to have any retesting conducted at either the certificate holder's facility, an EPA operated laboratory or an EPA designated testing facility, with transportation and testing costs to be borne by the certificate holder. In cases where a significant number of vehicles imported by a certificate holder fail to comply with emission requirements, the certificate holder may be placed on a list, discussed in a later section, of certificate holders ineligible to import such vehicles. Certificate holders will be responsible for providing repairs to all vehicles and may forfeit their importation bonds should vehicles not be repaired.

(e) *Emission Labeling.* Certificate holders would be required to provide a special emissions label for each mod/test vehicle that would duplicate the information contained on the label to be affixed on certified vehicles, as required by § 86.082–35. However, the label would clearly state in bold letters "This vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program." The label will include the certificate holder's address and a telephone number where it may be reached. The certificate holder would be required to submit a copy of the label with each vehicle's application for final admission and attest that it had been affixed to the vehicle.

(f) *Fuel Economy Labeling.* Certificate holders would be required to treat each mod/test vehicle as a separate model and perform a "highway fuel economy test" as described in 40 CFR Part 600 as part of the emissions test on each vehicle so that fuel economy data can be generated.[6] Such data will be used to determine fuel economy estimates incorporated on a fuel economy label, according to 40 CFR Part 600.

(g) *Gas Guzzler Tax.* The Energy Tax Act of 1978, 26 U.S.C. 4064, imposes a gas guzzler tax on the sale of new model year vehicles whose fuel economy fails to meet certain statutory levels. Certificate holders should comply with any applicable gas guzzler tax as determined by the Internal Revenue Service.

For vehicles imported under the modification and testing provision or under several of the exemptions (such as testing or hardship), fuel economy data must be generated in accordance with the provisions of 40 CFR Part 600, Subpart D. This data will be supplied to the Internal Revenue Service (IRS) to enable them to collect the gas guzzler tax. In order to facilitate this collection, importers will be asked to supply their taxpayer identification number whether it is an individual's social security number or a business' tax identification number. Because the IRS defines importer differently than EPA, in some cases certificate holders will be required to furnish some vehicle owners with IRS forms for payment of the gas guzzler tax.

(h) *Corporate Average Fuel Economy (CAFE).* Certificate holders should comply with any applicable CAFE requirements as required by the Energy Policy and Conservation Act, 15 U.S.C. 2000, *et seq.*, and as determined by the U.S. Department of Transportation.

(i) *Inspection, Reporting and Recordkeeping Requirements.* The basic inspection, testing and recordkeeping requirements for mod/test vehicles would be similar to those required of vehicles to be modified so as to be covered by a certificate of conformity. Each certificate holder would be required to promptly notify EPA after completion of modification and testing of each vehicle and compliance with other requirements described above. Each vehicle would be required to be stored until release of the bond obligation to satisfy section 203(a)(1) requirements and to allow EPA inspection. In addition, certificate holders would be required to retain

[6] This test is performed on a dynamometer and simulates a mixture of city/"non-city" driving. Segments corresponding to different kinds of rural roads and interstate highways are included. The test simulates a 10 mile trip and averages 48 mph. The test is run from a hot start, and has very little idling time and no stops (except at the end of the test).

detailed records on each vehicle for a period of six years following the date of release of the bond obligation on the vehicle by Customs. Such records will include parts identification data associated with each emission control system installed and copies of all documentation associated with conduct of the FTP (e.g., driver's trace, instrument traces, etc.).

Additionally, the certificate holder would be required to maintain records which demonstrate that the emission control equipment for mod/test vehicles was properly installed, including recording of all emission parts identification data, and that each vehicle was tested in strict accordance with the FTP. Copies of all documentation associated with such records would be available for inspection by EPA and be supplied to the Agency upon request. These recordkeeping requirements would enable EPA, among other things, to ensure that the correct test settings were used during the FTP conducted by the independent commercial importer and to compare any re-test results with the results of the original FTP. The existence of any discrepancies found by this comparison may indicate the need for additional vehicle inspection, testing or other action by EPA.

(5) Sanctions

Certificate holders who fail to ensure that the mod/test vehicles which they import comply with the requirements described above would incur several risks. EPA would be able to deny certificate holders who improperly modify and test vehicles the privilege to import, modify or test such vehicles for a period of not less than three years from the date of notification by EPA of such failures. Certificate holders determined to be ineligible for importing nonconforming vehicles for modification/test would be placed on a list prepared by EPA and updated as needed. The list would be distributed to the public as EPA would deem appropriate. Criteria for placement on the list would include:

(1) Fraud in the importation, modification or testing of the vehicles, or

(2) Failure of a significant number of the certificate holder's vehicles to pass required re-tests or EPA inspections, or

(3) Failure of the certificate holder to use a qualified laboratory and/or the failure of a vehicle to be emissions tested in accordance with EPA requirements.

Placement on the list may be supplemented by other sanctions depending on the severity of the problem. For example, incidents of fraud, use of inadequate testing facilities as discussed in section II.B.(4), gross incompetence or the failure of a significant number of the certificate holder's vehicles could result in possible suspension or revocation of the certificate(s) currently held by the certificate holder. Moreover, such incidents could result in rendering the certificate holder ineligible for future certificates.

Prior to any final action by the Administrator under this section, notice and an opportunity for a hearing will be given the certificate holder. (Failed vehicles, however, still must be remodified and successfully tested, or destroyed or exported in accordance with 19 CFR 12.73.) The protection given the importers will be equivalent to that given other certificate holders under § 86.613 regarding the suspension or revocation of certificates in non-import situations.

III. Exceptions, Exemptions and Exclusions

A. Five Year-Personal Use Provision.

Exceptions under the current imports enforcement policy would be considerably narrowed under either Option 1, 2, or 3. The Agency would eliminate the current enforcement policy which permits a first-time individual importer to import a vehicle at least five model years old for personal use. That policy was implemented in order to reduce the administrative burden on the Agency, particularly the review of test documentation, and to mininize the hardship to private individual importers unfamiliar with the imports requirements. However, test documentation would not exist under Option 1. Furthermore, Options 2 and 3 anticipate that the certificate holder will retain such documents and would not generally require an EPA obligation on an import bond. Therefore, the "five year personal use" policy would no longer be necessary to reduce the Agency's paperwork burden. Moreover, in light of the widespread attention and publicity given to imports of non-conforming vehicles in recent years, it is reasonable to assume that fewer individuals are unfamiliar with the imports rules. The Agency has also received numerous complaints that individuals are improperly importing vehicles under EPA's "five year" policy. For example, there are allegations that individuals and businesses have been importing vehicles by fraudulently using people's names and then selling the vehicles to others. Thus, the policy poses a number of enforcement problems. Finally, the increasing number of all nonconforming cars entering the country presumably increases the adverse air quality impact from that proportion which are at least five model years old and, therefore, never modified to comply with emission requirements. For these reasons, EPA believes that the "five year personal use" provision would no longer be appropriate in the revised imports program.

EPA has considered the matter of providing a personal use exemption for vehicles older than five model years. However, even older vehicles represent a substantial percentage of nonconforming imports and would still present the same administrative and enforcement problems discussed above. For example, EPA estimates that over 25% of the vehicles currently imported under the five model year personal use provision are ten model years old or older. Even so, EPA invites comments on whether a personal use exemption based on the age of the vehicles ought to exist and, if so, what would be the appropriate constraints of such an exemption.

B. Nonresident Policy Provision

Similarly, the current "nonresident" policy provision would be eliminated due to increasing concerns that vehicles admitted under this exemption are being resold in violation of EPA requirements. EPA lacks the administrative capability to monitor all the vehicles admitted under this exemption and detect the resale of such vehicles.

C. Hardship Exemptions

At the same time, pursuant to its authority under section 203(a)(1) of the Act to exempt individuals from the Act's prohibition against the importation of nonconforming vehicles, EPA is contemplating incorporating certain hardship exemptions in the final imports regulations to cover the following limited situations of severe hardship:

1. Handicapped individuals who need a special vehicle unavailable in a certified configuration;

2. Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

3. Individuals who have owned a vehicle for some substantial period of time (e.g., 2 years) prior to entry into the U.S.A. and did not purchase with the intention of importing into the U.S.;

4. Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

5. Other individuals in similar circumstances that give rise to a severe

hardship, as approved by the Administrator.

EPA intends to grant such exemptions only for extraordinary circumstances and expects very few vehicles to qualify.

Moreover, EPA would require approval of such exemptions prior to permitting the conditional admission of a vehicle into the United States. However, EPA may request U.S. Customs to mitigate the bond posted by the importer of a hardship exemption vehicle. Such recommended mitigation may be equivalent to 25–50% of the vehicle's market value, on vehicles imported under some of the circumstances described above. The Agency is also considering whether, as an alternative it is appropriate to impose an EPA obligation on the bond for vehicles admitted under the hardship exemption. The Agency seeks comment on this question and on the following: (1) In what circumstances should a hardship exemption be granted? (2) What is the appropriate amount of bond mitigation, if any to charge in each of the above-described circumstances of hardship or other similar circumstances? (3) What factors should the Agency consider in determining whether to raise or lower the amount of the bond mitigation? (4) What terms and conditions should be placed on the above described circumstances of hardship or other similar circumstances?

D. Testing exemption

Independent commercial importers who intend to apply for a certificate would be eligible to apply for a testing exemption as provided by the current certification regulations at 40 CFR 85.1705. Those regulations require that any person requesting the exemption must demonstrate that the proposed test program would: (1) Be for the purpose of research, investigation, studies, demonstrations or training; (2) necessitate the granting of an exemption; (3) be reasonable in scope and; (4) exhibit a degree of control consonant with the purpose of the program. However, the Agency would retain the option of imposing additional requirements, such as the posting of a bond, on manufacturers who are independent commercial importers under the authority of § 85.1705(f).

E. Pre-Certification Exemption

Similarly, independent commercial importers interested in obtaining a pre-certification exemption on a prototype vehicle for the purpose of product development, production method assessment and market promotion must apply to the Director, Manufacturers Operations Division, EPA, as required by regulations at 40 CFR 85.1706(b). It has been the Agency's experience that while numerous independent commercial importers have requested designation as a "small volume manufacturer," and even more commercial importers have requested information concerning the small volume certification program, few importers have actually applied for a certificate of conformity.

As a result, the Agency is concerned that independent commercial importers, because of their inexperience with the requirements of the certification process, may apply for the pre-certification exemption with the intention of certifying, and subsequent to importing numerous nonconforming vehicles under the exemption, decide not to pursue certification. EPA is particularly concerned because vehicles so imported might not be brought into conformity under the special provision for "modification and testing" discussed under Option 3. Consequently, EPA will require a bond for any "pre-certification" vehicle entered by an independent commercial importer which would be forfeited unless (1) a certificate of conformity is issued, (2) the vehicle is eligible for and, in fact, has been modified and tested in accordance with the proposed modification and test provision under § 85.1509 (if Option 3 is promulgated), or (3) the vehicle is exported within 120 days from the date of entry. Additionally, each independent commercial importer could import no more than one vehicle for the purpose of precertification for each model of vehicles for which it is seeking certification.

F. Exemptions for Vehicles and Engines Whose Original Manufacture Pre-Dates Applicability of Emission Standards

All vehicles and engines which were originally manufactured prior to the effective date of any Federal emission standards for that vehicle/engine type are explicitly exempted from the requirements of those regulations. For gasoline-fueled light-duty vehicles and light-duty trucks, all vehicles originally manufactured prior to January 1, 1968 are exempted; for diesel fueled light-duty vehicles, all vehicles originally manufactured prior to January 1, 1975 are exempted; for diesel fueled light-duty trucks, all vehicles originally manufactured prior to January 1, 1976 are exempted; for motorcycles, all are exempted that were originally manufactured prior to January 1, 1978; for gasoline-fueled and diesel-fueled heavy duty engines, all are exempted that were originally manufactured prior to January 2, 1970.

G. Other Exemptions

Existing display, racing, national security, repair and diplomatic exemptions will be incorporated in this Subpart for ease of reference. Anyone importing under the display, testing, national security, diplomatic, or hardship exemption shall be required to supply fuel economy data for each imported vehicle that was originally manufactured in or subsequent to the 1980 base model year.

Except as specifically indicated above, these proposed revisions to or retention of existing exceptions and exemptions would apply no matter which option is adopted.

IV. Regulations for Catalyst and O_2 Sensor-Equipped Vehicles

All options would continue the basic approach of the current regulations which require that a catalyst-equipped vehicle which is covered by a certificate of conformity at the time of manufacture and which has been driven outside the United States, Canada and Mexico be entered, by individuals or by anyone, under bond to ensure replacement of the catalyst, unless the vehicle is included in a catalyst control program maintained by the vehicle manufacturer or a U.S. government agency. A requirement to replace the O_2 sensor on O_2 sensor-equipped vehicles has been added to take account of more current technology. The purpose of the regulations is to insure vehicles which have been driven extensively on leaded gasoline, which is the only type of gasoline available in most foreign countries. These provisions would apply no matter what other revisions are made in the existing rules.

V. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small business entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The Agency has prepared an initial RFA for the options presented in this notice, and this initial analysis has been placed on the public docket for this rulemaking.

VI. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare Regulatory

Impact Analyses (RIAs) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in industry costs or prices. Finally, this action will not have a significant adverse effect on industry, competition, employment, investment, productivity, innovation or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, a preliminary RIA has not been prepared. Potential economic effects, however, are addressed in an economic impact analysis prepared in accord with the RFA requirements.

VII. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection at Public Docket EN–79–9 located in EPA's Central Docket Section (LE–131A), 401 M Street SW., Washington, D.C. 20460.

VIII. Paperwork Reduction Act

The information collection requirements in this Supplementary Notice have been submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: August 22, 1985.

Lee M. Thomas,

Administrator.

Appendix I—Option 1

1. General Approach

- Abolish current "modification/testing" option;
- Abolish importation of all nonconforming vehicles, except (1) vehicles covered originally by a certificate of conformity and (2) some special exemptions (e.g., diplomatic exemption);
- Require all vehicles to be covered by a certificate prior to entry, except categories of vehicles explicitly exempted;
- Provide that only OEMs and their distributors are eligible to be certificate holders.

2. Mitigation Policies and Exemptions

- Eliminate 5 years personal use mitigation policy;
- Eliminate nonresident policy provisions;
- Establish reduced penalties or bond for some hardship exemptions.

Appendix II—Option 2

1. General Approach

- Abolish current "modification/testing" option;
- Provide that independent commercial importers (importers for resale with no contractual agreement with OEMs for the distribution of vehicles into the U.S.) may import only vehicles of a class for which a certificate has been issued, or vehicles of a category explicitly exempted;
- Provide that only certificate holders may import nonconforming vehicles which are intended to be modified in accordance with certification requirements (except vehicles covered originally by a certificate of conformity);
- Confirm that OEMs and independent commercial importers are eligible to be certificate holders.

2. Requirements for Certificate Holders of Imported Nonconforming Vehicles

- Require certificate holders to submit data on prototype vehicles to obtain certificates of conformity; EPA intends to perform confirmatory tests on prototype vehicles for independent commercial importers;
- Require certificate holders to comply with requirements imposed on OEMs, including: Selective Enforcement Audit (SEA), Recall, Maintenance Instructions, Warranty, Emissions Labeling, and Fuel Economy Requirements, including Gas Guzzler Tax and Corporate Average Fuel Economy Requirements (CAFE).

3. Specific Requirements for Certificate Holders: Production Line Vehicles

- Require certificate holders to assure that vehicles will not exceed emissions standards by modifying them in accordance with the certificate within 120 days of entry and: (1) Providing EPA documentation, obtained through agreement with the OEM, of any running changes and their effects on emissions, or (2) providing EPA results of successful completion of FTP tests on each vehicle, *or* (3) providing results of successful completion of FTP tests only on every third vehicle (determined by date of import) while providing assurance on each vehicle not emissions tested that the emissions *related* parts numbers (i.e., those originally furnished by an OEM and appearing on a list to be issued by EPA) are identical to those in the application for certification.
- Require application of deterioration factor for all FTP tests.
- Require storage by commercial importer of each vehicle for fifteen (15) days following date of notification to EPA of modification or modification/testing to provide opportunity for EPA inspection.
- Require list of purchasers to be furnished to EPA upon request.

4. Mitigation Policies and Exemptions

- Eliminate 5 year personal use mitigation policy;
- Eliminate nonresident policy provision;
- Require bonds for some exempted vehicles which would be forfeited unless a certificate is issued within 120 days, or vehicle is exported;
- Establish bonds for precertification, testing and some hardship exemptions.

5. Enforcement Sanctions

- Provide for suspension and revocation of certificates (production line vehicles);
- Provide for bond forfeiture (exempted vehicles and vehicles admitted under special circumstances).

Appendix III—Option 3

1. General Approach

- Establish same framework and requirements as Option 2 but add a limited "modification/testing" option under which certificate holders (and only certificate holders) may import eligible vehicles for which a certificate does not exist. Under this provision, vehicles would be eligible if not included on a list, published each year by EPA, of vehicles "not qualified for modification/test." The list would prohibit the availability of modification/testing for (1) all models for which certificates have been issued to date to OEMs or to independent commercial importers and (2) models for which certificates of conformity have not been issued [7] whose aggregate importation

[7] The term "model" as used here has a broad and very special meaning and should not be confused with other uses of the term in the Act. For purposes of the list, the term "model" shall refer to those vehicles which are identical with respect to the (1) designation given by the original equipment manufacturer, (2) engine displacement within a 10% range and, (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel).

volume as computed for the historical period exceeds 60 vehicles. A model whose name has been placed on the list shall not be removed in subsequent years.

2. General Requirements for Certificate Holders

A. Certified Vehicles

- Require certificate holders to submit data on prototype vehicles to obtain certificates of conformity; EPA intends to perform confirmatory tests on prototype vehicles for independent commercial importers;
- Require certificate holders to comply with requirements imposed on OEMs, including: Selective Enforcement Audit (SEA), Recall, Warranty, Emissions labeling, fuel economy labeling, maintenance instructions, Gas Guzzler Tax and Corporate Average Fuel Economy Requirements (CAFE).
- No bond requirement.

B. Mod/tested Vehicles

- Require certificate holders to keep detailed records on emission control designs (parts numbers, etc.) associated with each vehicle;
- Require certificate holders to comply with requirements listed above for certified vehicles, including Gas Guzzler Tax and CAFE requirements, if applicable.
- Require bonds until EPA approval of emission results from compliance test.

3. Specific Requirements for Certificate Holders: Production Line Vehicles

A. Certified Vehicles

- Require certificate holders to assure that vehicles will not exceed emissions standards by modifying them in accordance with the certificate within 120 days of entry and (1) providing EPA documentation, obtained through agreement with the OEM, of any running changes and their effects on emissions, or (2) providing EPA results of successful completion of FTP tests on each vehicle, or (3) providing results of successful completion of FTP tests only on every third vehicle (determined by date of import) while providing assurance on each vehicle not emissions tested that the emissions related parts numbers (i.e., those usually furnished by an OEM and appearing on a list to be issued by EPA) are identical to those in the application for certification.
- Require application of deterioration factor for all FTP tests.
- Require storage by certificate holder of each vehicle for 15 days following modification/testing and from the date of notification to EPA to provide opportunity for EPA inspection.
- Require list of purchasers to be furnished to EPA upon request.

B. Mod/Tested Vehicles

- Require certificate holders to modify and test each vehicle within 120 days of entry; require notice to EPA when modifications and testing complete; require notice to EPA.
- Require application of deterioration factor assigned by EPA for all FTP test.
- Require vehicles to be stored until release of bond obligation.
- Require list of purchasers to be furnished to EPA upon request.

4. Mitigation Policies and Exemptions

- Eliminate 5 year personal use mitigation policy;
- Eliminate general forfeiture policy;
- Eliminate nonresident policy provision;
- Eliminate bonds for certified vehicles; maintain bonds for mod/test vehicles;
- Require bonds for some exempted vehicles which would be forfeited unless certificate issued within 120 days, or vehicle exported.

5. Enforcement Sanctions

A. Certificate Holders

(1) Certified Vehicles.

- Provide for suspension and revocation of certificates.

(2) Mod/tested Vehicles.

- Provide for withdrawal of privilege for a particular certificate holder to import, modify or test mod/tested vehicles.
- Provide for suspension and revocation of certificates.
- Require bond through demonstration of durability.

B. Exempted Vehicles

- Provide for bond forfeiture for certain pre-certification and test vehicles.

Appendix IV—Proposed Regulatory Language for Options 2 and 3 [8]

For reasons discussed in the preamble, it is proposed that 40 CFR Part 85, Subpart P and 40 CFR Part 600 be amended as follows:

1. Subpart P is revised to read as follows:

[8] Provisions that would be promulgated only if EPA adopts Option 3, as discussed in the preamble, are included in brackets. All other provisions would apply under either Option 2 or 3.

PART 85—[AMENDED]

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Sec.
85.1501 Applicability.
85.1502 Definitions.
85.1503 General requirements for importation of nonconforming vehicles.
85.1504 Conditional admission.
85.1505 Final admission of certified vehicles.
85.1506 Inspection and testing of imported motor vehicles and engines.
85.1507 Maintenance of certificate holders' records.
85.1508 "In Use" inspections and recall requirements.
[85.1509 Special provisions for admission of vehicles which will not be covered by a certificate of conformity].
85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.
85.1511 Exemptions and exclusions.
85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.
85.1513 Prohibited acts; penalties.
85.1514 Laboratory recognition.
85.1515 Treatment of confidential information.
85.1516 Effective dates.

Authority: Secs. 203, 206, 207, 208(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7422, 7525, 7542(a) and 7601(a).

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

§ 85.1501 Applicability.

(a) This subpart is applicable to motor vehicles and motor vehicle engines which are offered for importation or imported into the United States and are not covered by certificates of conformity issued under Part 86 at the time of importation. Compliance with regulations under this Subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

§ 85.1502 Definitions.

As used in this subpart, all terms not defined herein have the meanings given them in § 12.73, in the Clean Air Act, as amended, and elsewhere in Parts 85 and 86 of this Chapter.

Act. The Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Administrator. The Administrator of the Environmental Protection Agency.

Certificate of conformity. The document issued by the Administrator under section 206(a) of the Act.

Certificate holder. The entity whose name appears on the certificate of conformity for a class of motor vehicles or motor vehicle engines.

FTP. The Federal Test Procedure at 40 CFR Part 86.

Independent commerical importers. Importers who do not have a contractual agreement with foreign manufacturers to act as their authorized representatives for the distribution of vehicles into the U.S. market.

[*Model.* For the purposes only of the special provisions of § 85.1509, vehicles or engines of the same model are those which have the same (1) OEM designation (irrespective of model year) (2) engine displacement (within a 10% range) and (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel.)]

Model year. The manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder modifies the vehicle or engine. This definition does not apply for the purposes of § 85.1512.

Nonconforming vehicle or engine. A vehicle or engine which has not been imported by an OEM or its authorized representative or distributor.

Original equipment manufacturer (OEM). The entity which manufactured the base motor vehicle or motor vehicle engine originally.

Running changes (imported nonconforming vehicles). Those changes in configuration, equipment or calibration of some or all of the vehicles which are made by an OEM in the course of motor vehicle or motor vehicle engine production.

United States. United States includes the Customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Working day. Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

§ 85.1503 General requirements for importation of nonconforming vehicles.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by a person or entity who is a current holder of a valid certificate of conformity unless an exemption is granted by the Administrator under § 85.1511 of this subpart or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued under 40 CFR Part 86 and the certificate holder has complied with all requirements of § 85.1505; or

[(2) The vehicle or engine is modified and emissions tested in accordance with the special provisions of § 85.1509 and the certificate holder has complied with all other requirements of § 85.1509; or]

(3) The vehicle or engine is exempted under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

§ 85.1504 Conditional admission.

(a) An eligible motor vehicle or motor vehicle engine offered for importation by a certificate holder may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) Not later than 5 days following conditional admission, the certificate holder has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, [§ 85.1509], § 85.1511, or § 85.1512 which report shall contain the following:

(i) Identification of the certificate holder importing the vehicle or engine;

(ii) Identification of the vehicle or engine owner and the vehicle owner's taxpayer identification number;

(iii) Identification of the vehicle or engine;

(iv) Information indicating whether the vehicle or engine is to be imported under the provisions of § 85.1505, [§ 85.1509,] § 85.1511 or § 85.1512;

(v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the certificate holder's application to the Administrator for final admission under § 85.1505, [§ 85.1509,] § 85.1511 or § 85.1512;

(vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505. Unless otherwise noted in § 85.1511, a bond will be required for a vehicle or engine imported under [§ 85.1509,] § 85.1511 or § 85.1512. The period of conditional admission shall not exceed a period of 120 days. During this period, certificate holders shall store the vehicle or engine, except certain vehicles or engines entering under the diplomatic exemption provisions of § 85.1511(b)(7), at locations where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1505 Final admission of certified vehicles.

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator, on forms specified by EPA. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration may be made in one of the following ways:

(i) Through modification in accordance with the provisions of the certificate holder's certificate, presentation to EPA of an enforceable (i.e., contractual agreement) with the OEM which requires the OEM to provide to the certificate holder information concerning running changes to the base vehicle or engine, and actual receipt by EPA of notification by the certificate holder of those running changes and their effect on emissions;

(ii) Through modification in accordance with the provisions of the certificate holder's certificate of conformity and successful completion of an FTP test on each vehicle or engine within 120 days of entry. In order to ensure the durability of these vehicles, emission results on each FTP tested vehicle or engine shall be adjusted by the deterioration factor used by the certificate holder during certification and such adjusted results shall comply with applicable emission standards; or

(iii) Through modification in accordance with the provisions of the certificate holder's certificate of conformity and successful completion of an FTP test on every third vehicle or engine imported under that certificate, sequencing to be determined by the date of importation of each vehicle or engine. In each case, emission results shall be adjusted by the deterioration factor used by the certificate holder during certification and such adjusted results shall comply with applicable emission standards. If this option is chosen, the certificate holder must also verify that each applicable emissions-related part number on each emission-related part of

each vehicle that is *not* FTP tested is identical to the part number of the corresponding part on the emission data test vehicle used during certification. Applicable emission-related parts shall be those appearing on a list to be issued by EPA for this specific purpose;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should more than two failures have occurred on the subject vehicle, the certificate holder's application should report the failures and all changes, including calibration changes, it made before the vehicle successfully passed the test. Such changes would be considered running changes and have to be implemented on vehicles subsequently modified under the certificate of conformity. Such reports shall be made to both the Manufacturers Operations and Certification Divisions of EPA. The cause of the failure shall be identified if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified on the certificate that potentially covers the vehicle to assure compliance with requirements imposed on all manufacturers by the Clean Air Act, the Energy Policy and Conservation Act and the Energy Tax Act of 1978;

(7) All information required under § 85.1510;

(8) An attestation that the certificate holder is a manufacturer of those vehicles and is responsible for complying with all applicable provisions of the Act, and the Energy Tax Act of 1978 and the Energy Policy and Conservation Act.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received notice from EPA to the contrary within 15 working days of the date of EPA receipt of the certificate holder's application under § 85.1505(a). The date on a certified mail receipt shall be deemed to be the official date of notification to EPA.

§ 85.1506 Inspection and testing of imported motor vehicles and engines.

(a) In order to allow the Administrator to determine whether a certificate holder's vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines under control of the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported under this Subpart was or is modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines or required to be kept by § 85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine or required by § 85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a)–(c) of this section apply whether or not the certificate holder owns or controls the facility in question. Violation of such requirements may preclude an informed judgment that vehicles or engines being imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a)–(c) of this section.

(e) Duly designated Enforcement Offices are authorized to proceed ex parte to seek warrants authorizing the inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under [§] § 85.1505 [or 85.1509].

(g) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his/her questions.

§ 85.1507 Maintenance of certificate holder's records.

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that motor vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal, state or local government agency to be submitted or retained in conjunction with the certification, importation, test, registration or titling of motor vehicles or motor vehicles engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) All shipping documents;

(5) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(6) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure, including documents ensuring correct test settings were used during the FTP;

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine for which a certificate exists; and

(9) Documents providing evidence that each vehicle or engine imported under this subpart was properly stored prior to final admission.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with requirements of this subpart are under the control of the certificate holder.

§ 85.1508 "In Use" inspections and recall requirements.

(a) Vehicles or engines which have been imported, modified and/or emissions tested by a certificate holder may be inspected and in-use emission tested by EPA throughout the useful life of the vehicles or engines.

(b) Certificate holders shall maintain for six years and provide to EPA upon request a current owners list of all vehicles imported by the certificate holder under this Subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of vehicles or engines covered by a certificate of conformity, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at 40 CFR 85.1801 *et seq.* shall govern the certificate holder's responsibilities and references to manufacturer in the Recall Regulations shall apply to the certificate holder.

§ 85.1509 Special provisions for admission of vehicles which will not be covered by a certificate of conformity.

(a) A motor vehicle or motor vehicle engine may be imported by a certificate holder under this section if:

(1) The vehicle or engine is of a model which does not appear on a currently effective EPA list of vehicles "not qualified for modification/test" as described in paragraph (c) of this section;

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (d) of this section; and

(3) A bond is posted with the U.S. Customs Service under 19 CFR 12.73 to ensure compliance with applicable provisions of the subpart.

(b) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator, on forms specified by EPA. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) Information demonstrating that the vehicle has been modified and/or emission tested in accordance with the Federal Test Procedure and that the emission test results have been adjusted by deterioration factor assigned by EPA and that such adjusted results comply with applicable emission standards;

(3) Information demonstrating that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(4) Information demonstrating that the emission controls of the vehicle or engine are durable. Such demonstration can be made in either of the following ways:

(i) Through attestation by an independent professional engineer (P.E.) having emission control experience that the certificate holder has used emission control parts that are identical to those for which the certificate holder received certification and that the emission controls have been properly installed and can be expected to be durable throughout the useful life of the vehicle or engine; or

(ii) Through submittal of a report by a P.E. having emission control experience that furnishes analytical evidence that the certificate holder's emission control parts that are *not* identical to those for which the certificate holder received certification are durable throughout the useful life of the vehicle or engine and that they have been properly installed together with the P.E.'s attestation to this effect;

(5) Information demonstrating that the certificate holder has complied with the requirements of § 85.1510, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(c) EPA list of vehicles "not qualified for modification/test".

(1) EPA will publish a list yearly, on or about September 1 of each year, of vehicles "not qualified for modification/test". Such list will be published in the **Federal Register** and will be based on historical data for the one year period ending June 30 (historical period) of the year of publication and such other information as the Administrator may deem necessary. Such list shall be effective on January 1 of the subsequent year for the entire calendar year and shall prohibit the availability of modification/testing under paragraph (b) of this section for:

(i) All models for which certificates have been issued;

(ii) All models for which no certificate exists and which have been imported during the historical period (but not necessarily modified or tested) and whose computed aggregate volume, derived without consideration of date of original manufacture of the vehicle, has exceeded 60 vehicles or engines during the historical period.

(2) A model whose name has been placed on the list shall not be removed from the list in subsequent years.

(d) EPA list of certificate holders ineligible to import vehicles for modification/test. EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles under this section. Such determinations shall be made in accordance with the criteria and procedures in §85.1513 of this subpart.

(e) Inspections. Prior to final entry, vehicles imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements upon inspection or retest, the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (d) of this section;

(2) Individual vehicles which fail an FTP retest or inspection must be

repaired so as to conform with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting, including transportation, shall be borne by the certificate holder.

(f) In-use inspection and testing. Vehicles imported under this section may be tested or inspected by EPA at any time during the vehicle's useful life in accordance with § 85.1508 (a) and (b). If in the judgment of the Administrator a substantial number of properly maintained and used vehicles fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list specified in paragraph (d) of this section of certificate holders ineligible to import vehicles under the modification/test provision.]

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

The provisions of this section are applicable to all vehicles imported under the provisions of [§ 85.1509 and] § 85.1505.

(a) *Maintenance instructions.*

(1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle imported under this section, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser or owner as may be reasonable and necessary to assure the proper functioning of the emission control system.

(2) [For vehicles imported under § 85.1509, the instructions shall be submitted to EPA with the certificate holder's application for final admission of the vehicle or engine.] For vehicles and engines imported under § 85.1505 [and § 85.1509], each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be furnished to the purchaser or owner of such vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in § 85.085–25, and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide for vehicle emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR Part 85, Subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are ensured by a mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

[(3) Certificate holders importing under § 85.1509 shall submit both warranties to EPA with the application for final admission of the vehicle or engine and shall attest that such warranties will be or have been provided.] Certificate holders importing under § 85.1505 shall attest in each application for final admission that such warranties will be or have been provided.

(c) *Emission labeling.* (1) The certificate holder who imports any vehicle under [§ 85.1509 or] § 85.1505 shall affix a permanent legible label in a readily visible position in the engine compartment. The label shall meet all the requirements of § 86.082–35 and shall contain the certificate holder's address and telephone number [except that, for vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program"];

(2) [As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall submit a copy of such label.] Certificate holders importing under § 85.1505 [or § 85.1509] shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.*

(1) The certificate holder who imports any vehicle under this section shall affix a fuel economy label that shall comply with the requirements of 40 CFR Part 600, Subpart D.

[(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.]

(3) [As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall submit a copy of such label and attest to compliance with the above labeling requirements.] In each application for final admission of a vehicle or engine under § 85.1505, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.*

(1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under §[§]85.1505 [and 85.1509].

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner IRS forms numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

[(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064].

(f) *Corporate Average Fuel Economy (CAFE).* (1) Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 *et seq.*, and 40 CFR Part 600 for vehicles imported under §[§]85.1505 [and 85.1509].

§ 85.1511 Exemptions and exclusions.

(a) Notwithstanding any other requirements of this subpart, a motor vehicle or engine may be finally admitted into the United States upon approval of the importer's application to the administrator for any exemptions or exclusions under this section, on forms specified by EPA. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) Information that indicates that the importer is entitled to one of the exemptions or exclusions listed in paragraph (b) of this section;

(3) Fuel economy data generated under the provisions of 40 CFR Part 600, Subpart D, for vehicles admitted under paragraphs (b) (2), (3), (5), (7) and (8) if the vehicle was originally manufactured in or subsequent to the 1980 base model year.

(b) *Specific exemptions and exclusions.* (1) *Export exemptions.*—(i) Vehicles intended solely for export may be imported subject to the requirements of 40 CFR 85.1704 and 85.1707.

(ii) Motor vehicles and motor vehicle engines may be imported under an export exemption only by a person

engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines. Conditional admission for such vehicles shall be under bond.

(2) *Display exemptions.* (i) Vehicles intended solely for display may be imported subject to the requirements of 40 CFR 85.1707.

(ii) Display vehicles or engines may be imported by any person. Conditional admission of such vehicles shall be under bond. Display vehicles or engines may not be sold in the United States and may not be registered for licensed use on or operated on public roads or highways in the United States.

(3) *Testing exemptions.* Testing vehicles or engines may be imported by any person who is able to satisfy the requirements of 40 CFR 85.1705 and 85.1708. Conditional admission of such vehicles shall be under bond. Test vehicles or engines may be operated on and registered for use on public roads or highways for a period not exceeding one year from the date of importation provided that the operation is an integral part of the test and prior written approval has been obtained from the Administrator. Requests for such approval shall be in writing, and shall briefly describe the proposed testing program, including the duration of such program.

(4) *Racing exclusions.* Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in 40 CFR 85.1703. Conditional admission of such vehicles shall be under bond. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(5) *National security exemptions.* (i) Vehicles may be imported under the national security exemption found at 40 CFR 85.1708. Conditional admission of such vehicles shall be under bond.

(ii) Only persons who are manufacturers may import a vehicle under a national security exemption.

(6) *Exemptions for repairs or alterations.* Owners of fleet vehicles or engines may import such vehicles or engines solely for purposes of repairs or alterations. Conditional admission of such vehicles shall be under bond. Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways. They may not be sold in the United States and must be exported upon completion of the repairs or alterations.

(7) Diplomatic and foreign military personnel may import nonconforming vehicles without bond. Such vehicles may not be sold in the United States.

(8) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. However, specific approval for importation in these cases must be obtained from the Administrator prior to a conditional admission. Conditional admission may be under bond. Examples of limited situations of severe hardship are as follows:

(i) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(iii) Individuals who have owned a vehicle for some substantial period of time (e.g., 2 years) prior to entry to the U.S. and did not purchase the vehicle with the intention of importing it into the U.S.;

(iv) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

(v) Other individuals in similar circumstances that give rise to a severe hardship, as approved by the Administrator.

(9) *Precertification exemption.* (i) Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers if approval is obtained from the EPA in advance. Application for such exemptions shall be made on such forms as EPA may designate and shall be mailed to:

Director, Manufacturers Operations Division (EN–340), Office of Mobile Sources, U.S. Environmental Protection Agency, Washington, D.C. 20460.

(ii) No more than one prototype vehicle for each model of vehicles for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(iii) Each prototype vehicle shall be bonded. Unless a certificate of conformity is issued for the vehicle, the total amount of the bond shall be forfeited, or the vehicle must be exported, within 120 days from the date of entry.

(10) Exemptions based on date of original manufacture. The following vehicles and engines are exempted from the requirements of the Act:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968;

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975;

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976;

(iv) Motorcycles originally manufactured prior to January 1, 1978;

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 2, 1970.

(c) Individuals as well as certificate holders shall be eligible for importing vehicles into the United States under the exemptions provisions of this section unless otherwise specified.

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(1) Was covered by a certificate of conformity at the time of manufacture;

(2) Was certified with a catalyst emission control system and/or O_2 sensor;

(3) Is labeled in accordance with 40 CFR Part 86, Subpart A; and

(4) Has been driven outside the United States, Canada and Mexico.

Such a vehicle may be entered under bond pursuant to 19 CFR 12.73 unless such vehicle is included in a catalyst and O_2 sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O_2 sensor programs conducted by manufacturers will be approved each model year.

(b) For the purpose of this section, "catalyst and O_2 sensor control program" means a program instituted and maintained by a manufacturer, or any other U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and O_2 sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers of new motor vehicles or engines for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. Such vehicles may be granted final admission upon application to the Administrator, on

forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1)(i)–(v) and shall contain both an attestation by a qualified mechanic that the catalyst and/or O_2 sensor have been replaced, if necessary, and are functioning properly and a copy of the invoice for parts and labor.

§ 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) During a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways,

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to §§ 85.1504, 85.1505, [85.1509], 85.1511 or 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any certificate holder who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than $10,000 for each violation. In addition to the penalty provided in the Act, where applicable, [under the special modification/test provisions of § 85.1509,] under the exception provisions of § 85.1511, or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(d) Failure to comply with §§ 85.1506, 85.1507 and [85.1509] constitutes a violation of section 203(a)(1) of the Act.

(e) (1) A certificate holder whose motor vehicles or engines fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

[(iii) The certificate holder may be deemed ineligible to import vehicles under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles for modification/testing.]

(2) Grounds for the actions described in paragraph (e)(1) shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the importer, which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's eligibility for admission to the U.S. under this subpart;

(ii) Use by the certificate holder of a laboratory facility for emissions testing which is not on or has been removed from the list of qualified laboratories under § 85.1514; or

(iii) Failure of a significant number of vehicles imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iv) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1), the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, [or intended suspension of eligibility to conduct modification/testing under § 85.1509,] and the grounds for such action.

(ii) The certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

(iii) A certificate holder may request within 15 calender days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing:

(A) As to whether the tests have been properly conducted, or

(B) as to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity [or its eligibility to perform modification/testing pursuant to this section] and prior to the commencement of a hearing, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate [or eligibility to perform modification/testing] was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearing on suspensions and revocations of certificates of conformity [or of eligibility to perform modification/testing] shall be held in accordance with the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to paragraph (e)(3)(iii).

(ii) Hearings under paragraph (e)(3)(iii) shall be held in accordance with the procedures outlined in § 86.613, where applicable, provided that where § 86.612 is referred to in § 86.613:

§ 86.612(a) is replaced by § 85.1513(e)(2); and

§ 86.612(i) is replaced by § 85.1513(e)(3)(iii).

(5) When a hearing is requested under this subsection and it clearly appears from the data or other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing and suspending or revoking the certificate of conformity [or the certificate holder's eligibility to perform modification/testing.]

(6) In lieu of requesting a hearing under paragraph(e)(3)(iii), a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent.

§ 85.1514 Laboratory recognition.

(a) Only laboratories found to be capable of conducting the Federal Test Procedure (ETP) by EPA may conduct emission tests on vehicles imported under this subpart. A list of qualified laboratories shall be maintained and made available to the public by the Agency and be periodically updated as necessary.

(b) To be considered qualified, a laboratory must submit a laboratory capability application to the Administrator which meets the following criteria:

(1) The application must show that the laboratory is equipped to properly perform the FTP;

(2) The application must show that the laboratory employs personnel with the qualifications and experience to perform the FTP properly;

(3) The application must include a sample test packet demonstrating proper performance of the FTP;

(4) The application must contain an agreement by the applicant to allow periodic and reasonable inspection, including correlation testing, of its facility and procedures by EPA representatives, and an agreement to submit test data packages upon request, and an agreement to allow EPA representatives to be present during the performance of any FTPs;

(5) The laboratory must maintain a current capability application by updating its application quarterly, in addition to meeting the requirements of section (c); and

(6) The application must include a statement of corporate or private ownership.

(c) A qualified laboratory must report to EPA any significant changes in laboratory personnel, equipment, facilities or procedures within 10 days of such changes.

(d) A laboratory may be temporarily or permanently removed from the list of qualified laboratories if any of the following occur:

(1) The laboratory ceases to meet any of the requirements in program (b) or fails to comply with paragraph (c) of this section;

(2) The laboratory or laboratory management is being criminally investigated or has been indicted and such investigation or indictment is connected to the testing operation of the laboratory;

(3) The laboratory is found to have engaged in fraud, deceit, or other wrongdoing in connection with its application or its performance or reporting of results of any FTP;

(4) A significantly high percentage of vehicles tested initially at the laboratory do not pass subsequent inspections or testing under this section; or

(5) Other good cause which demonstrates that the laboratory is not capable of conducting valid FTPs or that results from that laboratory are not reliable.

(e) If a laboratory or laboratory management is being (1) criminally investigated or indicted or (2) administratively investigated and such investigation or indictment is related to the operation of the laboratory, EPA may suspend acceptance of emission data packages from that laboratory pending the outcome of the investigation or indictment.

(f) A laboratory that commits fraud in its application shall be treated as though it had never been qualified and the determinaton of qualification shall be void *ab initio*.

(g) No laboratory shall be removed from the list until there has been notification to the laboratory of the intention to remove it. Notification shall be in writing with the reasons for the intended removal specifically stated. If a laboratory so requests, within 30 days of receipt of notice regarding removal from the list, representatives of the laboratory may meet and confer with EPA representatives and be given the opportunity to present orally or in writing, data or information relating to the proposed removal of the facility from the list. The Administrator's determination to remove a laboratory from the list shall be in writing and shall summarize the basis for his/her action. In such determination, the Administrator shall also inform the laboratory of the period of time during which the laboratory will not be permitted to apply for reinstatement on the list. Such period will not exceed five years.

(h) If a laboratory is removed from the list of qualified laboratories, or emission test data shall be accepted by EPA for the purposes of determining compliance with this Subpart that has been generated at that laboratory until such time as the laboratory is reinstated on the list.

§ 85.1515 Treatment of confidential information.

(a) Any importer or consignee, laboratory or modifier may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this Subpart is confidential, an importer, consignee, laboratory, or modified must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 85.1516 Effective dates.

The provisions of this subpart, other than § 85.1511, are effective on [6 months after date of publication of the final rule in the **Federal Register**]. Section 85.1511 is effective [2 months after date of publication of the final rule in the **Federal Register**.]

PART 600—[AMENDED]

2. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2003, 2005, 2006.

3. 40 CFR 600.007–80(b) be amended by adding a new paragraph (7) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(b) * * *

(7) For vehicles imported under [§ 85.1509 or] § 85.1511, only the following requirements must be met:

[(i) For vehicles imported under § 85.1509, the fuel economy value must be generated contemporaneously with the emission test used for purposes of demonstrating compliance with § 85.1509. No modifications or

adjustments should be made to the vehicles between the fuel economy and the emissions test.]

(ii) For vehicles imported under [§ 85.1509 or] § 85.1511(b) (2), (3), (5), (7), or (8), with over 10,000 miles, the equation in § 600.006–86(g)(1) shall be used as though only 10,000 miles had been accumulated;

(iii) Fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under [§ 85.1509 or] § 85.1511(b) (2), (3), (5), (7) or (8) shall be considered a separate fuel economy data vehicle for the purposes of determining a fuel economy value.

4. 40 CFR 600.007–80 be amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data must be covered by a certificate of conformity under Part 86 before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under Subpart F.

Except that vehicles imported under [§ 85.1509 and] § 85.1511 need not be covered by a certificate of conformity.

[FR Doc. 85–21155 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
September 9, 1985

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting; Request for Public Comment on a Petition for Rulemaking

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Request for public comment on a petition for rulemaking.

SUMMARY: OSM seeks comments and recommendations regarding the granting or denying of a petition, submitted pursuant to section 201(g) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1211(g), requesting further interpretation of OSM's definition of "reclaimed coal" contained in 30 CFR 870.5.

DATE: Comments must be received no later than 5:00 p.m. on October 9, 1985.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–R), Room 5315, 1100 L St., NW., Washington, DC 20240, or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–R), Room 5315–L, 1951 Constitution Ave., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401–L, Washington, DC 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

I. Commenting Procedures

Public Comment Period: The comment period on the petition will extend until the date listed above. All written comments must be received at the address listed above by 5:00 p.m. on that date. Comments received after that date may not necessarily be considered or included in the administrative record on the petition. OSM cannot ensure that written comments received or delivered during the comment period to any location other than that specified above will be considered and included in the administrative record on this petition.

Availability of copies: In addition to its publication here, copies of the petition and copies of 30 CFR 870.5 are available for inspection and may be obtained at the address indicated above.

Public meetings: No public hearing has been scheduled. However, the headquarters staff of OSM will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., throughout the comment period. In order to arrange such a meeting, please contact the person listed above under the "further information" section.

II. Background and Substance of Petition

Pursuant to section 201(g) of the Act, 30 U.S.C. 1211(g), any person may petition for a change in OSM's permanent program rules which appear in 30 CFR Chapter VII. The Act requires the Director to either grant or deny the petition within 90 days after it is received. See section 201(g)(4); 30 U.S.C. 1211(g)(4). Under the applicable regulations for rulemaking petitions, 30 CFR 700.12(c), if the Director determines that the petition has a reasonable basis, a notice shall be published in the **Federal Register** seeking comments from the public on the proposed change. OSM received a letter dated July 5, 1985, from the United States Fuel Company (USF), presenting to the Secretary of the Interior a petition for further interpretation of the definition of "reclaimed coal" found in 30 CFR 870.5. The Director has determined that this petition for interpretation has a sufficiently reasonable basis to seek further comments. The text of the petition appears as an Appendix to this notice.

Petitioner USF is an underground mining operation which has a continuously operating coal preparation plant within the permit area. The coal passing through the preparation plant is washed to remove non-combustible bone, rock, ash and other impurities. These by-products are separated from the coal in the wash plant and deposited as a slurry into holding ponds along with some remaining coal fines. Beginning in 1975, USF began mixing the slurry from the holding ponds with run-of-mine coal. Petitioners maintain that this use of coal slurry does not fit the intended definition of "reclaimed" coal. To the extent that the current definition of "reclaimed coal" found at 30 CFR 870.5 is ambiguous, petitioner would like OSM to publish an interpretation that would clarify that slurry dredged from ponds within an existing permit area as part of an integrated underground operation should not be included in the definition of reclaimed coal. The result would be that such slurry would be subject to a reclamation fee of 15¢ per ton as underground-mined coal rather than 35¢ per ton as surface-mined coal.

The notice seeks public comments on the suggested amendment. At the close of the comment period, the Director will review and consider all comments and make a decision to either grant or deny the petition. If the decision is made to grant the petition, rulemaking proceedings will be initiated in which public comment will again be sought. If the decision is made to deny the petition no further rulemaking action will occur.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. No regulatory flexibility analysis is needed at this stage; nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(c), is needed.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

Appendix

The text of the petition dated July 5, 1985, from the United States Fuel Company, is as follows:

Background

Petitioner, United States Fuel Company, is the State of Utah's oldest continuously-operated coal mining company with over 70 years of underground coal mining experience. United States Fuel Company operates several underground coal mines in Carbon County, Utah, located on leased federal lands (approximately 5,927 acres) and on private lands owned by the company (approximately 9,633 acres fee).

United States Fuel Company is one of the few underground mining operations in the western United States which has a coal preparation plant operated on a continual basis. In operation since 1939, the coal preparation plant has been used to "wash" the coal in order to enhance the quality and marketability of the coal resource. The purpose of the coal preparation plant is to remove non-combustible bone, rock, ash, and other impurities which degrade the quality and market ability of the coal. These by-products are separated from the valuable coal resource in the wash plant and deposited as a slurry into holding ponds. Inevitably, some coal fines or slack coal remain mixed in the slurry deposited in the holding ponds.

Until recently, this coal slurry was considered a valueless by-product of the coal preparation process. However, beginning in 1975, United States Fuel Company pioneered the development of a market for this coal slurry, successfully blending the wash fines from the slurry ponds with run-of-mine coal or washed coal where contract terms and coal quality specifications permit. This blended coal has been sold successfully on both the export and domestic market under

multiyear contracts. It is the sale of this coal slurry which creates the questions that are submitted for clarification by this Petition for interpretive rule making.

The sale and utilization of the coal slurry has enhanced the value and utility of the entire coal resources. By substituting higher-grade coal that would otherwise be committed to satisfy market demand, the blending of this coal slurry has increased the ultimate recovery and conservation of a valuable coal resource. Sale of the coal slurry also allows recovery of the underground mining costs incurred in producing the coal in the slurry, increasing the profit and resource-recovery of the entire underground mining operation.

The slurry ponds are within the permit area covered by the underground mine operation and reclamation plan filed with the Utah Division of Oil, Gas and Mining and the U.S. Office of Surface Mining pursuant to the Surface Mining Control and Reclamation Act (30 U.S.C. 1201, et seq.). The use and sale of this coal wash by-product has diminished the environmental, land use, operational, and reclamation costs associated with the construction, maintenance, and reclamation of coal slurry holding ponds.

Use and sale of the slurry coal serves the general mandate of Congress to maximize the recovery of valuable coal resources and to protect the environment. However, both of these goals are frustrated by the literal application of the Department regulation at 30 CFR 870.5 and imposition of a 35¢ per ton reclamation fee on each ton of coal slurry sold. As developed more fully below, this regulation should not apply to the integrated underground mining operations conducted by United States Fuel Company, and the only reclamation fee applicable to the sale of coal slurry from the operation is the underground rate of 15¢ per ton.

Regulation Involved

This Petition is based on the application of the "reclaimed coal" definition contained in 30 CFR 870.5 to the coal slurry sold by United States Fuel Company as an additive to its washed or run-of-mine coal. The pertinent portion of that regulation provides:

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks for retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. *Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.* (emphasis added)

As developed in the following arguments submitted in support of this Petition, the application of the emphasized language to this particular operation ignores the true facts and circumstances surrounding the underground mining conducted by United States Fuel Company and is at odds with the intent of Congress. Petitioner asserts that the "surface mining" reclamation fee should not be applied to coal slurry sales from this underground mining operation.

Argument in Support of the Petition

A. The Coal Slurry is Produced by Underground Mining Operations, so the Reclamation Fee Must be 15¢ Per Ton

Based on the foregoing regulation, the Office of Surface Mining (OSM) is attempting to exact a 35¢ reclamation fee on every ton of coal slurry sold by United States Fuel Company, the same fee required on "surface mining" operations. This attempt on the part of the OSM ignores the fact that all of the coal slurry was produced by the underground mining operations of United States Fuel Company. Congress expressly provided that the reclamation fee owing on "coal produced by underground mining" is limited to 15¢ per ton (30 U.S.C. § 1232). There is no rational basis for the OSM to ignore this unambiguous directive and apply the surface mine reclamation fee to coal which unquestionably orginates with underground mining. *Chevron U.S.A., Inc,* v. *Natural Resources Defense Council,* 104 S. Ct. 2778, 2781–82 (1984). United States Fuel Company's operation is not a "reclaimed coal operation" since all of the coal slurry in question originates by underground mining and is produced by a single, integrated mining operation which produces coal from underground.

B. A Lower Reclamation Fee Will Promote Maximum Recovery of the Coal Resource

The coal market served by United States Fuel Company's underground mine requires varying qualities of coal, according to specifications contained in each coal sale contract. Delivery of coal meeting these coal specifications is dependent on geological conditions encountered underground and other variables beyond the control of United States Fuel Company. Where coal quality exceeds the contract specifications, no edded income is derived for the added energy resource delivered to the market and, in some cases, penalties may even apply for violation of contract specifications.

United States Fuel Company has discovered that by blending the high-grade coal mined underground with the coal slurry, the quality of the coal can be adjusted to achieve contract requirements. The blending of coal slurry maximizes the economic recovery of the underground coal resource in several ways. First, the amount of coal slurry added to meet the market demand will substitute higher-grade coal which would otherwise be consumed by the market. This market will not pay extra for the delivery of higher-grade coal so, from an economic standpoint, the extra coal quality would literally be wasted. The high-grade coal substituted by the coal slurry is conserved for use in the future by U.S. Fuel's blending operation.

Blending the coal slurry also promotes the recovery of the very low-grade coal which ends up in the slurry ponds as a result of the coal washing process. If it were not for the integrated underground mining operation which produced the high-grade coal and contracts which allow blending to adjust the quality of this high-grade coal, the coal slurry would literally be lost and buried in the slurry ponds, since little or no market value exists for this coal slurry without the adjacent underground mining operation.

The higher surface reclamation fee (over double the underground fee) proposed by the OSM creates a distinct financial disincentive to recover the coal resource in the slurry and prevents the marginal low-grade coal slurry from being an economic alternative in the market. Application of the underground reclamation fee proposed by this Petition will maximize the beneficial use of the coal resource and promote the development and conservation of coal mandated by Congress in the Mineral Leasing Act (30 U.S.C. 209) and the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a).

C. Granting of the Petition Will Minimize Environmental Impacts

By blending the coal slurry with higher-grade coal, United States Fuel Company has decreased the demand for new ponds to contain the coal slurry created in the coal preparation plant. Each slurry pond requires a tremendous commitment of capital investment and land resources. The land committed to the slurry ponds cannot be used for other purposes for many years.

The arbitrary diseconomy resulting from the "reclaimed coal" definition frustrates the goal of preserving the productive capacity of mined lands contained in the Surface Mine Control and Reclamation Act (SMCRA). *Hodel* v. *Indiana,* 1981, 101 S.Ct. 2376, 452 U.S. 314, 69 L.Ed.2d 40. The higher reclamation fee proposed by the Office of Surface Mining creates a significant financial disincentive to use the coal slurry, resulting in increased commitment of land to coal slurry ponds and commitment of valuable coal resources to eventual burial as a part of the reclamation process. Even with advanced reclamation practices, burial of the coal slurry may produce a greater long-term environmental liability than the utilization of the resource in the coal market. Interpretation of the reclamation fee proposed in this Petition will remove an artificial deterrent to the sale of the coal slurry and minimize the land and environmental resources committed to coal slurry ponds, consistent with the goals of SMCRA. *Hodel* v. *Indiana,* supra.

Congress has repeatedly expressed its support of activities such as U. S. Fuel's which maximize the beneficial use of depletable resources in a manner that protects the environment. See e.g., National Environmental Protection Act (42 U.S.C. 4331), Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.). The arbitrary application of the "reclaimed coal" definition to trigger a *surface* reclamation fee on coal slurry produced *underground* creates an administratively-induced cost barrier which prevents these Congressional goals from being achieved to their fullest.

D. The Interpretation Proposed by the OSM Has No Rational Application to the Operations Conducted by U. S. Fuel Company

There is no specific requirement expressed by Congress in SMCRA that "reclaimed coal" recovery be treated as surface mining subject to the higher reclamation fee in all circumstances. A review of the history of the regulation at issue reveals that it was

developed in response to facts and circumstances entirely different than the underground mining operations conducted by United States Fuel Company.

The case law addresses fact situations entirely different than U. S. Fuel Company's operations. At U. S. Fuel Company, all of the coal finds and slurry are recovered as a part of an integrated, ongoing *underground* mine operation. The case law involves the question of whether recovery of coal slurry, without an adjacent coal mine (surface or underground), even constitutes "coal mining operations" within the jurisdiction of SMCRA. *U. S.* v. *H. G. D. & J. Mining Company, Inc.*, (D.C. WV, 1983), 461 F. Supp. 315; *U. S.* v. *Devil's Hole, Inc.*, (D.C. Pa, 1982), 548 F. Supp. 451. That is not the issue posed by U. S. Fuel Company in this Petition. U. S. Fuel Company has a coal mining operation within the meaning of SMCRA. U. S. Fuel has an approved plan of operations and mine permit covering its operations, which includes the surface effects of the slurry ponds as an adjunct operation to this *underground mine*. U. S. Fuel Company has faithfully paid the *underground* reclamation fee on every ton of coal slurry sold. There is no attempt by U. S. Fuel Company to evade its responsibility under the law for its underground mined coal.

The issue at hand is whether the OSM is correct in application of the surface mine reclamation fee to coal slurry which unquestionably originates in an integrated underground mining operation, particularly when the application of such higher reclamation fee precludes the greatest ultimate recovery of the coal resource and unnecessarily frustrates the Congressional goals for environmental protection and maximum utilization of land resources. The failure of the OSM to consider the fact that the subject coal slurry is produced and sold in a permitted, underground mining operation constitutes arbitrary and capricious government action violating the Mineral Leasing Act (30 U.S.C. 181, et seq.), SMCRA (30 U.S.C. 1201, et seq.), NEPA (42 U.S.C. 4331, et seq.), the Mining and Minerals Policy Act (30 U.S.C. 21a), RCRA (42 U.S.C. 6901, et seq.), and the Administrative Procedures Act (5 U.S.C. 501, et seq.).

Relief Requested

U. S. Fuel respectfully requests that the "reclaimed coal" definition contained in 30 CFR 870.5 and the resulting 35¢ per ton reclamation fee not be applied to operations such as U. S. Fuel's, which is a permitted, underground mining operation that incorporates the sale and use of coal slurry in an effort to maximize the use and recovery of the underground coal resource and minimize environmental impacts associated with coal slurry ponds, and that the reclamation fee of 15¢ is the only fee applicable to coal slurry produced in conjunction with active, ongoing, underground mining operations under SMCRA. Petitioner requests that this ruling be made retroactively to include all past coal slurry produced underground by U. S. Fuel and prospectively to coal slurry derived from future underground mining operations conducted by U. S. Fuel.

Petitioner requests that the ruling be made without the need for public hearing since the issues raised by this Petition are based on the specific facts and circumstances of U. S. Fuel's integrated, underground mining operation, which is factually distinct in nature from a "reclaimed coal" operation, and no other parties would be adversely affected by the relief sought herein.

Respectfully submitted this 5th day of July, 1985.

United States Fuel Company.

Robert G. Pruitt, III,

Attorney for United States Fuel Company.

[FR Doc. 85-21447 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-05-M

Reader Aids

Federal Register

Vol 50, No. 174

Monday, September 9, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6
36563-36860.....9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Administrative Orders:
Memorandums:
September 5, 1985.....36563
August 7, 1985.....35565
Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033
Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041
319.....35533
736.....35535
908.....35767
920.....36567
981.....35767
989.....35769
1135.....36043
1427.....36568
1472.....35772
Proposed Rules:
52.....36094
420.....36580
423.....36584
432.....36589
433.....36593
442.....36597
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829

9 CFR

Proposed Rules:
77.....35564
309.....36094

14 CFR

39.....35772, 36044-36046, 36570
71.....36047
108.....35535
Proposed Rules:
21.....36437
39.....35830-35839, 36095-36102, 36441, 36609
71.....35840

16 CFR

4.....36048
Proposed Rules:
13.....35585

17 CFR

1.....36049
31.....36405
190.....36405
Proposed Rules:
1.....36104
3.....36104

18 CFR

154.....36571
157.....36571
385.....36051
Proposed Rules:
357.....36601

19 CFR

Proposed Rules:
162.....36603

20 CFR

404.....36571
Proposed Rules:
295.....35568
416.....36108

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
510.....35535
558.....35535, 35536, 36419
1040.....36548
Proposed Rules:
74.....35841
82.....35841
170.....35571
606.....36441-36443

25 CFR

36.....36575

26 CFR

1.....35536, 35540, 36575
6a.....35540
602.....35536, 35540
Proposed Rules:
1.....35572

602.....35572

28 CFR

0.....36054
2.....36419–36423

29 CFR

Proposed Rules:
2642.....36603

30 CFR

Proposed Rules:
817.....35573
670.....36858
944.....36554

31 CFR

51.....36055
206.....35547

Proposed Rules:
223.....36115

32 CFR

155.....35790
706.....36424–36425
865.....36426

Proposed Rules:
230.....36610
231.....36619
231a.....36622

33 CFR

100.....35552–35554, 36576
165.....35555

Proposed Rules:
100.....36628–36629
117.....36630
207.....35573

33 CFR

100.....36576
151.....36768
158.....36768

34 CFR

Proposed Rules:
682.....35964
683.....35964

35 CFR

Proposed Rules:
133.....36444

36 CFR

327.....35555

38 CFR

3.....36577
21.....36578

Proposed Rules:
3.....36631

39 CFR

10.....36431

Proposed Rules:
111.....35843

40 CFR

15.....36188
52.....35796
60.....36830
66.....36732, 36734
67.....36732
81.....35561
180.....36579
271.....35798
466.....36540

Proposed Rules:
52.....36633–36635
65.....36637
85.....36838
147.....35574
180.....35844
430.....36444
439.....36638
600.....36838
799.....36446

42 CFR

505.....35646
512.....35646

Proposed Rules:
124.....36454

43 CFR

1820.....36055

44 CFR

59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

46 CFR

Proposed Rules:
160.....36639

47 CFR

Ch. I.....36056
0.....36061
2.....36061
18.....36061
25.....36071, 36432
73.....35562, 35799–35800
97.....36080

Proposed Rules:
73.....35574–35581, 35845

48 CFR

15.....35815
52.....35815
501.....36080
502.....36080
504.....36080
505.....36080
506.....36080
507.....36080
509.....36080
510.....36080
514.....36080
515.....36080
525.....36080
536.....36080
549.....36080
914.....35956
915.....35956
952.....35956

Proposed Rules:
549.....35582
552.....35582

49 CFR

Ch. X.....35562
571.....36084
1033.....36085
1085.....35563
1152.....36432

Proposed Rules:
192.....36116
218.....35636
221.....35636
232.....35640, 35643
571.....35583

50 CFR

17.....36085, 36089
20.....35762, 36198, 36432–36433
32.....35563, 35815
33.....35563
611.....35825
621.....36434
630.....35563
661.....35827, 36092
672.....35825
675.....35825

Proposed Rules:
17.....35584, 36118

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
300–399	8.00	Jan. 1, 1985
400–699	12.00	Jan. 1, 1985
700–899	14.00	Jan. 1, 1985
900–999	14.00	Jan. 1, 1985
1000–1059	12.00	Jan. 1, 1985
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
1–239	20.00	Apr. 1, 1985
240–End	14.00	Apr. 1, 1985
18 Parts:		
1–149	12.00	Apr. 1, 1985
150–399	19.00	Apr. 1, 1985
400–End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1–399	8.00	Apr. 1, 1985
400–499	16.00	Apr. 1, 1985
500–End	18.00	Apr. 1, 1985
21 Parts:		
1–99	9.00	Apr. 1, 1985
100–169	11.00	Apr. 1, 1985
170–199	13.00	Apr. 1, 1985
200–299	4.25	Apr. 1, 1985
300–499	20.00	Apr. 1, 1985
500–599	16.00	Apr. 1, 1985
600–799	6.50	Apr. 1, 1985
800–1299	10.00	Apr. 1, 1985
1300–End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0–199	11.00	Apr. 1, 1985
200–499	19.00	Apr. 1, 1985
500–699	6.50	Apr. 1, 1985
700–1699	13.00	Apr. 1, 1985
1700–End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0–1.169	21.00	Apr. 1, 1985
§§ 1.170–1.300	12.00	Apr. 1, 1985
§§ 1.301–1.400	7.50	Apr. 1, 1985
§§ 1.401–1.500	15.00	Apr. 1, 1985
§§ 1.501–1.640	12.00	[2] Apr. 1, 1984
§§ 1.641–1.850	11.00	Apr. 1, 1985
§§ 1.851–1.1200	22.00	Apr. 1, 1985
§§ 1.1201–End	22.00	Apr. 1, 1985
2–29	15.00	Apr. 1, 1985
30–39	9.50	Apr. 1, 1985
40–299	18.00	Apr. 1, 1985
300–499	11.00	Apr. 1, 1985
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1985
27 Parts:		
1–199	18.00	Apr. 1, 1985
200–End	13.00	Apr. 1, 1985
28	16.00	July 1, 1985
29 Parts:		
0–99	11.00	July 1, 1985
100–499	5.00	July 1, 1985
500–899	19.00	July 1, 1985
900–1899	7.00	July 1, 1985
*1900–1910	21.00	July 1, 1985
1911–1919	5.50	[2] July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	6.00	July 1, 1985
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.50	July 1, 1985
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	[3] July 1, 1984
700–799	13.00	July 1, 1984
800–999	7.50	July 1, 1985
1000–End	5.50	July 1, 1985
33 Parts:		
1–199	14.00	July 1, 1984
200–End	14.00	July 1, 1985
34 Parts:		
1–299	15.00	July 1, 1985
300–399	8.50	July 1, 1985
400–End	14.00	July 1, 1984
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	12.00	July 1, 1984
37	9.00	July 1, 1985
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
1–100	7.50	July 1, 1985
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

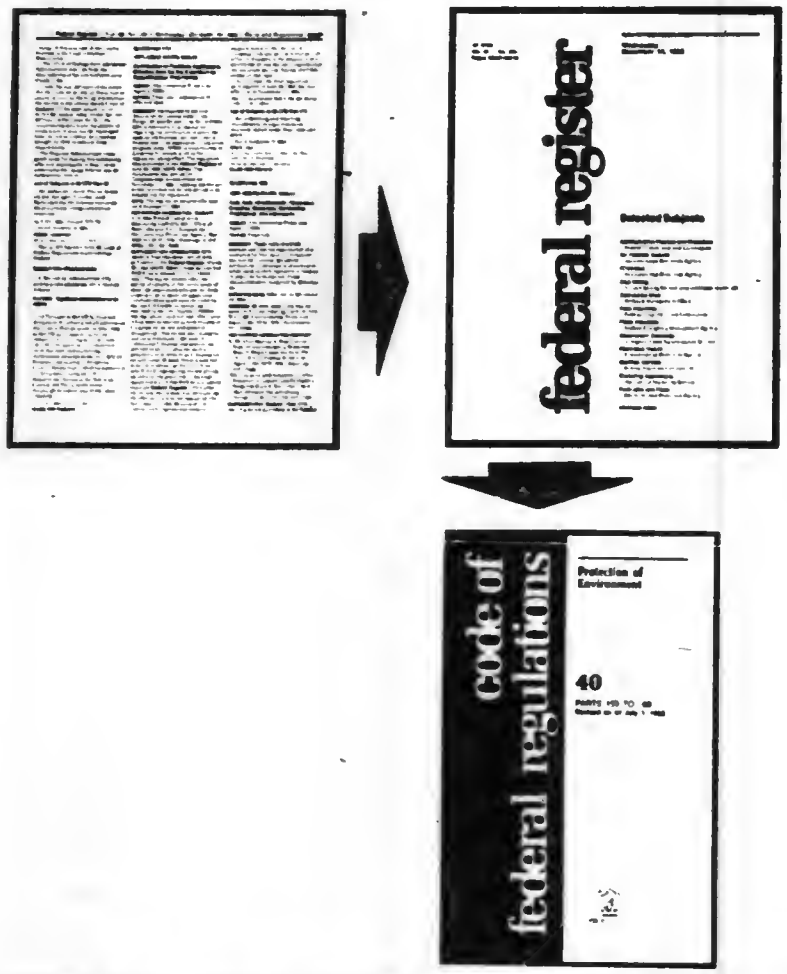
[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 185 volumes contains the annual codification of the final regulations printed in the **Federal Register.** Each of the 50 titles is updated annually.

Subscription Prices:

- **Federal Register**
  - **Paper:**
    - One year as issued: $300 domestic; $375 foreign
    - Six months: $150 domestic; $187.50 foreign
  - **24x Microfiche Format:**
    - One year as issued: $145 domestic; $181.25 foreign
    - Six months: $72.50 domestic; $90.65 foreign
- **Code of Federal Regulations**
  - **Paper:**
    - One year as issued: $550.00 domestic; $687.50 foreign
    - Single volumes: Individually priced.
  - **24x Microfiche Format:**
    - Current year (as issued): $185 domestic; $231.25 foreign
    - Previous year's full set (single shipment): $125 domestic; $156.25 foreign

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $_____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below.

Customer's Telephone No.'s (Area Code, Home, Area Code, Office)

Credit Card No.: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me

PAPER:

_____ **Federal Register:** ___ $300 per year domestic; $375 foreign
___ $150 per six-month domestic; $187.50 foreign

_____ **Code of Federal Regulations:** ___ $550 per year domestic; $687.50 foreign

24x MICROFICHE FORMAT:

_____ **Federal Register:** ___ One year as issued: $145 domestic; $181.25 foreign ___ Six months: $72.50 domestic; $90.65 foreign

_____ **Code of Federal Regulations:** ___ Current year: $185 domestic; $231.25 foreign ___ Previous year's full set (single shipment): $125 domestic; $156.25 foreign

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity	Charges
_____ Publications	
_____ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
_____ UPNS	
_____ Balance Due	
_____ Discount	
_____ Refund	

(Rev. 7-1-85)

VOL
50

ISS
174

SE
9

985

UMI

VOL
50

ISS
75

SE
10

985

UMI

9-10-85
Vol. 50 No. 175

federal register

Tuesday
September 10, 1985

**********5-DIGIT 48106

A FR SER1A300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
75

SE
10

985

UMI

9-10-85
Vol. 50 No. 175
Pages 36861-36982

federal register

Tuesday
September 10, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Farm Credit Administration

Communications Equipment
Federal Communications Commission

Food Additives
Food and Drug Administration

Government Procurement
Defense Department

Hazardous Wastes
Environmental Protection Agency

Milk Marketing Orders
Agricultural Marketing Service

Postal Service
Postal Service

Nuclear Materials
Nuclear Regulatory Commission

Railroad Unemployment Insurance
Railroad Retirement Board

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Surface Mining
Surface Mining Reclamation and Enforcement Office
Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

The President
EXECUTIVE ORDER
36861 South Africa, economic sanctions (EO 12532)

Executive Agencies

ACTION
NOTICES
Meetings:
36908 National Voluntary Service Advisory Council

Agency for International Development
NOTICES
Housing guarantee programs:
36925 Argentina et al.
36926 India

Agricultural Marketing Service
RULES
Milk marketing orders:
36865 Eastern Ohio-Western Pennsylvania

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Packers and Stockyards Administration.

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
36908 Colorado
36908 Kentucky
36908 New Jersey

Commerce Department
See International Trade Administration.

Commodity Credit Corporation
NOTICES
36953 Meetings; Sunshine Act

Commodity Futures Trading Commission
NOTICES
36953 Meetings; Sunshine Act

Conservation and Renewable Energy Office
NOTICES
Meetings:
36921 National Energy Extension Service Advisory Board

Defense Department
See also Navy Department.
PROPOSED RULES
Acquisition regulations:
36887 Technical data requirements

Employment and Training Administration
NOTICES
Adjustment assistance:
36930 Allis-Chalmers Engine Div. et al.
36931 Canadian Cedar Industries et al.
36931 Chino Mines Co. et al.
36929 U.S. Steel Corp.

Energy Department
See Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
36876 Idaho
Water pollution control:
36879 Secondary treatment regulation; technical amendments
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
36956 Portland cement plants
Hazardous waste:
36966 Identification and listing; spent pickle liquor from steel finishing operations
36866 Storage and treatment tank systems; correction
NOTICES
Meetings:
36921 Science Advisory Board

Farm Credit Administration
RULES
Funding and fiscal affairs:
36868 Cooperative bank earnings; distribution method

Federal Aviation Administration
RULES
Airworthiness directives:
36869 Grob-Werke
PROPOSED RULES
36884 Rulemaking petitions; summary and disposition; correction
36884 Transition areas
NOTICES
36944 Flight service stations; Alma, GA; closure
Meetings:
36944 Aeronautics Radio Technical Commission
36944 Organization statement

Federal Communications Commission
RULES
Radio services, special:
36880 Maritime services; VHF port operations and bridge-to-bridge channels

Federal Deposit Insurance Corporation
NOTICES
36953 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
36915 Kansas Gas & Electric Co.
Environmental statements; availability, etc.:
36918 Snowbird, Ltd. et al.

Hearings, etc.:
36918 Cabot Pipeline Corp.
36919 El Paso Natural Gas Co.
36918 El Paso Natural Gas Co. et al.
36921 Mississippi Valley Gas Co.
36917 Northwest Central Pipeline Corp.
36918 Southern California Edison Co.

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
36874 Tylosin
Food additives:
36872 Adjuvants, production aids, and sanitizers; benzotriazole, polyoxyethylated (5 moles) tallow amine, sodium petroleum sulfonate, and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene)

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration.

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
36922 Emergency medical services for children

Immigration and Naturalization Service
NOTICES
36927 Arrival departure record; form revision

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
36909 Carbon steel wire rod from Poland
36910 Heavy-walled rectangular welded carbon steel pipes and tubes from Canada
36911 Photo albums and filler pages from Hong Kong
Countervailing duties:
36912 Litharge, red lead, and lead stabilizers from Mexico
Short supply determinations; inquiry:
36913 Aluminum killed nickel electroplated cold rolled steel strip

International Trade Commission
NOTICES
Import investigations:
36926 Cast-iron pipe fittings from Brazil
36953 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
36927 Chicago & North Western Transportation Co.

Justice Department
See Immigration and Naturalization Service.

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration.
PROPOSED RULES
36885 Nondiscrimination on the basis of handicap in federally conducted programs and activities; comment period reopened
NOTICES
36929 Agency information collection activities under OMB review
Committees; establishment, renewals, terminations, etc.:
36929 Sheltered Workshops Advisory Committee

Land Management Bureau
NOTICES
Meetings:
36923 Fairbanks District Advisory Council
36923 Safford District Advisory Council
36923 Rosewell District Advisory Council tour
Sale of public lands:
36923 New Mexico

Legal Services Corporation
NOTICES
Grants and contracts; applications, etc.:
36932 Pennsylvania; transfer of State support funds

Mine Safety and Health Administration
PROPOSED RULES
Coal mine health and safety:
36885 Underground coal mines; two-entry mining systems task force report; Agency decision

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
36974 North Aleutian Basin; lease sale

National Park Service
NOTICES
36923 Dinosaur National Monument, Co.; entrance road
Historic Places National Register; pending nominations:
36924 Colorado et al.
Meetings:
36923 Indiana Dunes National Lakeshore Advisory Commission

National Science Foundation
NOTICES
Meetings:
36933 Astronomical Sciences Advisory Committee

National Transportation Safety Board
NOTICES
36954 Meetings; Sunshine Act

Navy Department
NOTICES
36914 Privacy Act; systems of records

Nuclear Regulatory Commission
RULES
Byproduct material, human uses:
36866 Physician's use of radioactive drugs; technetium-99m labeled sulfur colloid, etc.

NOTICES
Applications, etc.:
36934 Philadelphia Electric Co. (2 documents)
Environmental statements; availability, etc.:
36933 General Public Utilities Nuclear Corp.
Meetings:
36934, 36955 Reactor Safeguards Advisory Committee (4 documents)
36954 Meetings; Sunshine Act
Reports; availability, etc.:
36936 Nuclear power plants; severe accident source terms, reassessment of technical basis for estimating; correction

Occupational Safety and Health Administration
NOTICES
Meetings:
36932 Construction Safety and Health Advisory Committee

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
36954 Meetings; Sunshine Act

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
36908 Reynolds Livestock Auction, et al.; correction

Personnel Management Office
NOTICES
Excepted service:
36936 Schedules A, B, and C; positions placed or revoked, update

Postal Service
RULES
Domestic Mail Manual:
36875 E-COM (Electronic Computer Originated Mail) service; removed
PROPOSED RULES
Domestic Mail Manual:
36886 Electronic computer originated mail; designation of serving Post Offices for acceptance; withdrawn
36885 Postage meter licenses; issuance or refusal; guidance and procedures

Railroad Retirement Board
RULES
Railroad Unemployment Insurance Act:
36870 Reduction in benefits; interim

Securities and Exchange Commission
NOTICES
Applications, etc.:
36938 Citicorp Homeowners, Inc. et al.

Small Business Administration
NOTICES
Applications, etc.:
36941 GHW Capital Corp.
36941 M & I Ventures Corp.
36941 Rubber City Capital Corp.
36942 Wisconsin Community Capital, Inc.
Disaster loan areas:
36940 Louisiana
36940 South Carolina
Meetings:
36940 National Advisory Council
Meetings; regional advisory councils:
36940 District of Columbia
36941 Pennsylvania
36941 Utah
36940 Vermont

State Department
NOTICES
Meetings:
36942 International North Pacific Fisheries Commission, United States Section Advisory Committee

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
36970 Maryland

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
36914 Turkey

Transportation Department
See also Federal Aviation Administration
NOTICES
Aviation proceedings:
36943 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Aviation proceedings; hearings, etc.:
36943 Barrow Air, Inc.
36943 Cross Country Aviation Services, Inc.; correction
36942 UCC Charter Co.

Treasury Department
RULES
36875 Casinos, currency transactions; reporting and recordkeeping requirements; correction
NOTICES
Committees; establishment, renewals, terminations, etc.:
36951 Treasury Building Rehabilitation Advisory Committee

Veterans Administration
NOTICES
Environmental statements; availability, etc.:
36951 Erie, PA
36952 Privacy Act; systems of records

Separate Parts in this Issue:

Part II
36956 Environmental Protection Agency

Part III
36966 Environmental Protection Agency

Part IV
36970 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part V
36974 Department of the Interior, Minerals Management Service

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL
50
ISS
175
SE
10
985
UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12532.....36861

7 CFR
1036.....36865

10 CFR
35.....36866

12 CFR
615.....36868

14 CFR
39.....36869
Proposed Rules:
Ch. I.....36884
71.....36884

20 CFR
302.....36870
322.....36870
340.....36870

21 CFR
178.....36872
558.....36874

29 CFR
Proposed Rules:
33.....36885

30 CFR
920.....36970
Proposed Rules:
Ch. I.....36885

31 CFR
103.....36875

39 CFR
111.....36875
Proposed Rules:
111 (2 documents).....36885, 36886

40 CFR
52.....36876
133.....36879
Proposed Rules:
60.....36956
261.....36966
262.....36886

47 CFR
83.....36880

48 CFR
Proposed Rules:
227.....36887
252.....36887

VOL
50

ISS
75

SE
10

985

UMI

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

Presidential Documents

Title 3—

The President

Executive Order 12532 of September 9, 1985

Prohibiting Trade and Certain Other Transactions Involving South Africa

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*), the United Nations Participation Act (22 U.S.C. 287), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), the Export Administration Act (50 U.S.C. App. 2401 *et seq.*), the Atomic Energy Act (42 U.S.C. 2011 *et seq.*), the Foreign Service Act (22 U.S.C. 3901 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. App. I), Section 301 of Title 3 of the United States Code, and considering the measures which the United Nations Security Council has decided on or recommended in Security Council Resolutions No. 418 of November 4, 1977, No. 558 of December 13, 1984, and No. 569 of July 26, 1985, and considering that the policy and practice of apartheid are repugnant to the moral and political values of democratic and free societies and run counter to United States policies to promote democratic governments throughout the world and respect for human rights, and the policy of the United States to influence peaceful change in South Africa, as well as the threat posed to United States interests by recent events in that country,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

Section 1. Except as otherwise provided in this section, the following transactions are prohibited effective October 11, 1985:

(a) The making or approval of any loans by financial institutions in the United States to the Government of South Africa or to entities owned or controlled by that Government. This prohibition shall enter into force on November 11, 1985. It shall not apply to (i) any loan or extension of credit for any educational, housing, or health facility which is available to all persons on a nondiscriminatory basis and which is located in a geographic area accessible to all population groups without any legal or administrative restriction; or (ii) any loan or extention of credit for which an agreement is entered into before the date of this Order.

The Secretary of the Treasury is hereby authorized to promulgate such rules and regulations as may be necessary to carry out this subsection. The initial rules and regulations shall be issued within sixty days. The Secretary of the Treasury may, in consultation with the Secretary of State, permit exceptions to this prohibition only if the Secretary of the Treasury determines that the loan or extension of credit will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system, provided that no exception may be made for any apartheid enforcing entity.

(b) All exports of computers, computer software, or goods or technology intended to service computers to or for use by any of the following entities of the Government of South Africa:

(1) The military;

(2) The police;

(3) The prison system;

(4) The national security agencies;

(5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research;

(6) The administering authorities for the black passbook and similar controls;

(7) Any apartheid enforcing agency;

(8) Any local or regional government or "homeland" entity which performs any function of any entity described in paragraphs (1) through (7).

The Secretary of Commerce is hereby authorized to promulgate such rules and regulations as may be necessary to carry out this subsection and to implement a system of end use verification to ensure that any computers exported directly or indirectly to South Africa will not be used by any entity set forth in this subsection.

(c)(1) Issuance of any license for the export to South Africa of goods or technology which are to be used in a nuclear production or utilization facility, or which, in the judgment of the Secretary of State, are likely to be diverted for use in such a facility; any authorization to engage, directly or indirectly, in the production of any special nuclear material in South Africa; any license for the export to South Africa of component parts or other items or substances especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes; and any approval of retransfers to South Africa of any goods, technology, special nuclear material, components, items, or substances described in this section. The Secretaries of State, Energy, Commerce, and Treasury are hereby authorized to take such actions as may be necessary to carry out this subsection.

(2) Nothing in this section shall preclude assistance for International Atomic Energy Agency safeguards or IAEA programs generally available to its member states, or for technical programs for the purpose of reducing proliferation risks, such as for reducing the use of highly enriched uranium and activities envisaged by section 223 of the Nuclear Waste Policy Act (42 U.S.C. 10203) or for exports which the Secretary of State determines are necessary for humanitarian reasons to protect the public health and safety.

(d) The import into the United States of any arms, ammunition, or military vehicles produced in South Africa or of any manufacturing data for such articles. The Secretaries of State, Treasury, and Defense are hereby authorized to take such actions as may be necessary to carry out this subsection.

Sec. 2. (a) The majority of United States firms in South Africa have voluntarily adhered to fair labor principles which have benefitted those in South Africa who have been disadvantaged by the apartheid system. It is the policy of the United States to encourage strongly all United States firms in South Africa to follow this commendable example.

(b) Accordingly, no department or agency of the United States may intercede after December 31, 1985, with any foreign government regarding the export marketing activity in any country of any national of the United States employing more than 25 individuals in South Africa who does not adhere to the principles stated in subsection (c) with respect to that national's operations in South Africa. The Secretary of State shall promulgate regulations to further define the employers that will be subject to the requirements of this subsection and procedures to ensure that such nationals may register that they have adhered to the principles.

(c) The principles referred to in subsection (b) are as follows:

(1) Desegregating the races in each employment facility;

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(d) United States nationals referred to in subsection (b) are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace, by measures such as supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas, by influencing other companies in South Africa to follow the standards specified in subsection (c) and by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and by making provision for adequate housing for families of employees within the proximity of the employee's place of work.

Sec. 3. The Secretary of State and the head of any other department or agency of the United States carrying out activities in South Africa shall promptly take, to the extent permitted by law, the necessary steps to ensure that the labor practices described in section (2)(c) are applied to their South African employees.

Sec. 4. The Secretary of State and the head of any other department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable and to the extent permitted by law, in procuring goods or services in South Africa, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by persons in South Africa disadvantaged by the apartheid system.

Sec. 5. (a) The Secretary of State and the United States Trade Representative are directed to consult with other parties to the General Agreement on Tariffs and Trade with a view toward adopting a prohibition on the import of Krugerrands.

(b) The Secretary of the Treasury is directed to conduct a study to be completed within sixty days regarding the feasibility of minting and issuing gold coins with a view toward expeditiously seeking legislative authority to accomplish the goal of issuing such coins.

Sec. 6. In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury and the Secretary of Commerce shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons.

Sec. 7. The Secretary of State shall establish, pursuant to appropriate legal authority, an Advisory Committee on South Africa to provide recommendations on measures to encourage peaceful change in South Africa. The Advisory Committee shall provide its initial report within twelve months.

Sec. 8. The Secretary of State is directed to take the steps necessary pursuant to the Foreign Assistance Act and related legislation to (a) increase the amount of internal scholarships provided to South Africans disadvantaged by the apartheid system up to $8 million from funds made available for Fiscal

Year 1986, and (b) increase the amount allocated for South Africa from funds made available for Fiscal Year 1986 in the Human Rights Fund up to $1.5 million. At least one-third of the latter amount shall be used for legal assistance for South Africans. Appropriate increases in the amounts made available for these purposes will be considered in future fiscal years.

Sec. 9. This Order is intended to express and implement the foreign policy of the United States. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
September 9, 1985.

[FR Doc. 85-21793
Filed 9-9-85; 11:59 am]
Billing code 3195-01-M

Editorial Note: For the text of the President's message to Congress and his remarks on signing Executive Order 12532, see the *Weekly Compilation of Presidential Documents* (vol. 21, No. 37).

Rules and Regulations

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain provisions of the Eastern Ohio-Western Pennsylvania milk order. It removes the limit on the amount of milk not needed for fluid (bottling) use that may be moved directly from producer farms to nonpool manufacturing plants and still be priced under the order. It also suspends a portion of the pooling standards for a plant operated by a cooperative association.

The action is based on a cooperative association's request considered at a public hearing where a number of proposals were considered concerning diversion limitation requirements and certain standards for pooling plants operated by cooperative associations. The public hearing was held in Strongsville, Ohio, on August 7 and 8, 1985. The suspension is effective beginning for the month of September 1985 and continues until final disposition is made of the hearing proceeding. Based on available information concerning the market's current supply conditions, it is necessary to suspend the provisions in question to accommodate the efficient and orderly disposition of reserve milk supplies that are available to the market.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 19, 1985; published July 24, 1985 (50 FR 30204).

William T. Manley, Deputy Administrator, Marketing Programs, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

It is hereby found and determined that beginning for the month of September 1985 and continuing until final disposition is made of the hearing proceeding on proposals to amend the order, the following provisions of the order do not tend to effectuate the declared policy of the Act:

(1) In § 1036.7(d), the words "is not less than 65 percent in any month of September through April and not less than 50 percent in any other month";

(2) In § 1036.13(e), the words "During April through August and";

(3) Section 1036.13(f) in its entirety.

Statement of Consideration

This action is based on the record of a public hearing held on August 7 and 8, 1985, at Strongsville, Ohio, to consider certain proposed amendments to the Eastern Ohio-Western Pennsylvania order. The suspension makes inoperative the provision that a cooperative association must deliver to pool distributing plants at least 65 percent during September through April and 50 percent in any other month of its members' producer milk in order to qualify its plants as pool balancing plants under the order and (2) the provisions limiting the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The present order now limits a producer's production that may be diverted to nonpool plants during the months of September–March to a quantity not exceeding 40 percent of total producer deliveries to pool plants or, alternatively, on the number of days' production of an individual producer that is actually delivered to a pool plant. The suspension is effective beginning September 1985 and continues until the proceeding on the proposed amendments to the order is completed.

The suspension was requested by Milk Marketing, Inc. (MMI), a cooperative association, at the above-mentioned hearing. The cooperative represents a substantial number of producers supplying milk to the fluid market and operates two pool supply plants under the order. One of these plants serves as a principal outlet for the market's reserve milk supplies.

At the hearing, MMI proposed and supported amendments to relax the pooling and diversion provisions in question. The cooperative testified that such amendments are needed to accommodate the pooling and efficient handling of the expanded reserve milk supplies now on the market. However, because of the time needed to complete any amendatory action, the proponent cooperative requested that the provisions in question be immediately suspended so as to avoid uneconomic movements of milk to pool the milk of its member producers.

Testimony and statistics presented at the hearing indicate that present marketing conditions are considerably different from those existing when the provisions in question were formulated. An indication of the changed market situation is the present upsurge in the market's milk supplies due to a substantial increase in producer receipts for the market. For example, producer receipts in July 1985 were up over 8 percent from July 1984. Also, there has been an increase of over 6 percent in producer receipts during the 4 months of April–July 1985 from the comparable period in 1984. Additional testimony indicated that, although the milk of the cooperative's member producers could continue to be pooled without relaxing the pooling and diversion provisions in question, costly and inefficient changes in milk movements would have to be made in order to do so.

In view of the urgency of the marketing situation concerning the market's current supply conditions, immediate action is necessary to ensure the orderly marketing of the market's reserve milk supplies. This can be accomplished through suspending beginning September 1985 the provisions in question. Such suspension will accommodate the pooling and efficient handling of reserve milk supplies for the market pending the outcome of the hearing proceeding.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without the suspension, substantial quantities of milk of producers who have regularly supplied this market otherwise could be excluded from the market wide pool;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for the suspension were fully considered at a public hearing held on August 7 and 8, 1985, where all interested parties had an opportunity to be heard on this matter.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

PART 1036—[AMENDED]

The authority citation for Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, that the following provisions in § 1036.7(d) and in § 1036.13 (e) and (f) of the Eastern Ohio-Western Pennsylvania order are hereby suspended pending completion of proceedings on the issues.

§ 1036.7 [Amended]

(1) In § 1036.7(d), the words "is not less than 65 percent in any month of September through April and not less than 50 percent in any other month";

§ 1036.13 [Amended]

(2) In § 1036.13(e), the words "During April through August and";

(3) Section 1036.13(f) in its entirety.

Effective Date: September 10, 1985.

Signed at Washington, D.C., on September 4, 1985.

Alan T. Tracy,

Deputy Assistant Secretary Marketing and Inspection Services.

[FR Doc. 85–21554 Filed 9–9–85; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 35

Physician's Use of Radioactive Drugs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow physicians to use technetium-99m labeled sulfur colloid for gastroesophageal imaging; technetium-99m labeled sulfur colloid, pertechnetate, and macroaggregated human serum albumin for LeVeen shunt imaging; and technetium-99m labeled pertechnetate for cystography and dacryocystography. Without this amendment, each NRC licensee that wants to use these radioactive materials for these clinical procedures would have to apply to the NRC for permission to do so. This rule allows physicians or hospitals that are now licensed by NRC to use other similar materials to use these drugs without making an application to NRC.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

SUPPLEMENTARY INFORMATION:

Background

Physicians who want to use certain radioactive materials in the practice of medicine may do so only in accordance with a license issued by the Nuclear Regulatory Commission (NRC) or by States which have an agreement with the NRC to license the use of these materials instead of the NRC.

As new radiopharmaceuticals, radioactive sources, medical devices, and uses of radioisotopes are developed, the NRC considers adding them to one of the groups under which medical licenses are issued. The groups were designed to allow physicians and community hospitals wide access to nuclear medicine services. The groups in § 35.100 contain only radiopharmaceuticals that are the subject of a "New Drug Application" (NDA) that has been approved by the Food and Drug Administration (FDA), or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by FDA. A licensee authorized to use all the materials listed in a group is referred to as a "group medical licensee."

NRC regulations in § 35.14(b)(6) that apply to the group medical licensees provide that when a physician uses byproduct material for clinical procedures other than those specified in the product labeling or package insert, the physician must follow the product labeling regarding: (1) Chemical and physical form, (2) route of administration, and (3) dosage range. The NRC received requests to amend its regulations, specifically § 35.14(b)(7), to allow physicians to use certain FDA-approved drugs for certain clinical procedures that are not listed in the respective product labels. In response, NRC published a proposed rule on April 22, 1985 (50 FR 15752) that would allow certain group licensees to use these radiopharmaceuticals for these clinical procedures.

The requests that NRC received provided a description of the clinical procedure, a justification for why the regulatory action is needed, the purpose of the clinical procedure, an analysis of the radiation dose, and additional technical and scientific information. Each of the requests is available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. In conformance with its policy regarding new clinical procedures for approved drugs that was published on February 3, 1983 (48 FR 5217), NRC reviewed the requests to determine whether the requested regulatory action might result in an unreasonable risk to the health and safety of the public or might endanger life or property. The NRC specifically considered two criteria:

- No unjustified radiation dose to the patient, and
- Demonstration of adequacy of occupational radiation protection measures.

With assistance from its Advisory Committee on the Medical Uses of Isotopes (ACMUI), the NRC determined that the above criteria were met for each of the six clinical procedures.

(NRC published a proposed revision of 10 CFR Part 35, "Medical Use of Byproduct Material" on July 26, 1985; see 50 FR 30616. This minor amendment was completed after the proposed revision

was published and therefore was not included in the proposed revision. This minor amendment will be included in the revision when it is published as a final rule.)

The Clinical Procedures

The six clinical procedures that were listed in the proposed rule are described below.

Technetium-99m labeled sulfur colloid can be administered orally either as a solid or liquid test meal. Following oral administration, technetium-99m sulfur colloid goes from the esophagus to the stomach, small intestine, and the upper large intestine. This clinical procedure permits external imaging which is helpful in assessing gastric emptying, gastroesophageal reflux, and esophageal transit. The gastric emptying procedure is useful in demonstrating the presence and the severity of gastric motor disorder; the gastroesophageal reflux study may demonstrate backward flow in the digestive tract. The esophageal transit study may demonstrate obstructions or abnormal transit time.

A LeVeen shunt is an implanted tube that drains built-up fluid from the peritoneal cavity to a large central vein. Technetium-99m labeled sulfur colloid, pertechnetate, or macroaggregated human serum albumin can be injected into the peritoneal cavity to diagnose shunt malfunction, such as blockage by clot or valve failure, by taking images of the shunt.

A ventriculo-atrial shunt is a tube implanted in patients with hydrocephalus (fluid build-up in the cerebrospinal fluid space in the head). It drains the fluid from the head to the atrial cavity. Technetium-99m labeled sulfur colloid, pertechnetate, or macroaggregated human serum albumin is injected into the shunt system of the patient to localize shunt blockage before performing surgical repair.

A ventriculo-peritoneal shunt is a tube implanted in patients with hydrocephalus. It drains the fluid from the head to the peritoneal cavity. Technetium-99m labeled sulfur colloid, pertechnetate, or macroaggregated human serum albumin is injected into the shunt system of patients to localize shunt blockage before performing surgical repairs.

Cystography is a procedure for patients with bladder problems. A tube is inserted into the bladder of a patient. Technetium-99m pertechnetate is instilled through the tube into the bladder. Images are taken during filling and voiding of the bladder to measure the amount of reflux (backward flow) into the upper tracts, bladder volume at which reflux occurs, drainage time of reflux after voiding, and the remaining urine volume.

Dacryocystography is a procedure for patients whose eyes exhibit excessive teardrops (epiphora). This procedure is performed to assess tear production and drainage in patients, and for nasolacrimal system imaging. Technetium-99m labeled pertechnetate is administered as a sterile eye drop.

Analysis of Comments Received

The NRC received five comment letters that generally endorsed the proposed rule. However, FDA's Radiopharmaceutical Drugs Advisory Committee (RDAC), indicated that there was potential for a drug-induced physiologic reaction in patients undergoing ventriculo-atrial or ventriculo-peritoneal shunt imaging. FDA imposes manufacturing quality control requirements for molybdenum-99/technetium-99m generators that produce pertechnetate and for reagent kits that are used to prepared macroaggregated human serum albumin and sulfur colloid. The pyrogenicity standard that applies to these radiopharmaceuticals is suitable for drugs that are administered orally or by intravenous injection, but is not sufficiently stringent for drugs that might be introduced, either purposefully or inadvertently, into the cerebrospinal fluid space. Furthermore, two of the radiopharmaceuticals that would have been used in ventriculo-atrial and ventriculoperitoneal shunt imaging, macroaggregated human serum albumin and sulfur colloid, are comprised of tiny particles that may adhere to the shunt, rendering the images impossible to interpret. The RDAC endorsed the other four clinical procedures. The RDAC's comments were endorsed by two large medical associations whose members have special expertise in the use of radiopharmaceuticals for imaging. The NRC has not included in this rule ventriculo-atrial and ventriculo-peritoneal shunt imaging because it prefers to defer to FDA in those cases involving potential risk to patient safety stemming from pharmaceutical quality criteria. For the four clinical procedures that are allowed in this rule, no question of risk to patient safety was raised by any commenter.

One commenter did not endorse this rule, saying that it is inappropriate for the NRC to evaluate routes of administration and give the appearance of approving new clinical procedures for FDA-approved radiopharmaceuticals because the NRC is not expert in the area of drug use and safety. Furthermore, for NRC to imply that there may be clinical indication for using a radiopharmaceutical and then to approve a route of administration based only on the criteria of no unjustified dose to the patient and adequate occupational protection does not provide adequate assurance of public health and safety.

The NRC notes that FDA is responsible for assuring that drugs are honestly labeled, and safe when used in accordance with the information provided in the package insert. The FDA does not require that any drug be used in accordance with the instructions in the package insert. A physician may change the physical form of a drug, use a different route of administration, or administer a greater or lesser dosage than suggested in the package insert—all this is considered "the practice of medicine."

However, NRC has a requirement in 10 CFR 35.14(b)(6) that licensees comply with the form, dosage, and route instructions in the package insert when the licensee uses a radiopharmaceutical for a clinical procedure that is not listed on the package insert. The intent of this requirement is to ensure the radiation safety of the patient and worker while allowing some latitude for the physician who is responsible for the patient's care. But for that requirement, a licensee would be free to perform the clinical procedures at issue without any review, as is the case for non-radioactive drugs. By allowing these new uses of approved radiopharmaceuticals, the NRC is not "approving" the drugs or package inserts in the sense that an FDA approval provides assurance to the physician that there is substantial evidence that a drug, when used in accordance with the package insert, is safe and efficacious. This NRC approval only provides assurance that the clinical procedure can be done without untoward radiation dose to the patient or the radiation worker.

NRC has found that good cause exists not to delay the effective date of this rule. To delay the effective date of this rule would be contrary to the public interest because physicians would not be able to immediately provide the additional diagnostic services for patient care described in the rule.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this is not a major Federal action significantly affecting the quality of the human environment and therefore an

environmental impact statement is not required. The NRC has prepared an environmental impact assessment that shows that any detectable effect on the environment is unlikely. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment are available from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT" heading).

Paperwork Reduction Act Statement

This final rule contains no information collection requiremen's and therefore it is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The NRC has prepared a regulatory analysis for this rule. The analysis examines the costs and benefits of the alternatives that were considered by the NRC. The analysis is available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington DC. A single copy may be obtained from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT" heading).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The NRC has prepared a regulatory analysis for this rule that examines the economic impact of this action. The analysis notes that approximately 1900 medical licensees may experience some beneficial impact from the rule. The rule would spare each medical licensee who desires to use the radioactive material in the requested manner the estimated $230 cost of preparing a license amendment request, the $120 amendment fee, and the 60-day delay associated with the amendment of the license.

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 35.

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.2, 35.14 (b), (e), and (f), 35.21(a), 35.22(a), 35.24, and 35.31 (b) and (c) are issued under sec. 161(b), 68 Stat. 948, as amended 42 U.S.C. 2201(b); and §§ 35.14(b)(5) (ii), (iii) and (v) and (f)(2), 35.25, and 35.31(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 35.14, paragraph (b)(7) is revised to read as follows:

§ 35.14 Specific licenses for certain groups of medical uses of byproduct material.

* * * * *

(b) * * *

(7) The following radiopharmaceuticals, when used for the listed clinical procedures, are not subject to the restrictions in paragraph (b)(6) of this section:

(i) Technetium-99m pentetate as an aerosol for lung function studies;

(ii) Technetium-99m sulfur colloid as a solid or liquid for gastroesophageal imaging;

(iii) Technetium-99m sulfur colloid, pertechnetate, or macroaggregated human serum albumin for LeVeen shunt imaging;

(iv) Technetium-99m pertechnetate for cystography; and

(v) Technetium-99m pertechnetate for dacryocystography.

* * * * *

Dated at Bethesda, Maryland, this 28th day of August, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks.

Executive Director of Operations.

[FR Doc. 85-21585 Filed 9-9-85; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), amends its regulations concerning the method by which banks for cooperatives' (BC) earnings are to be distributed. The current regulation restricts to 10 percent the amount of net savings that BCs may use to create or maintain reasonable contingency reserves. The amended regulation will increase the amount of net savings that the BCs can use to create or maintain contingency reserves from 10 to 50 percent. The Federal Board believes the BCs need to retain adequate contingency reserves to build their risk capital in view of current economic conditions in order to ensure sound and adequate capitalization.

EFFECTIVE DATE: Thirty days from this publication date, provided either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Holland, Assistant Director, Office of Examination and Supervision, (703) 883-4452

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883-4024, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: In the May 8, 1985 Federal Register (50 FR 19379), FCA published the proposed amendment to its regulation concerning the method by which BCs' earnings can be distributed and invited comments for 60 days ending July 8, 1985. Comments were received from five Farm Credit System institutions and all were in agreement with the proposed regulation. The Federal Board believes that it is necessary to relieve the restriction imposed by the current regulation which limits the banks' abilities to meet their changing capital needs. Therefore, the Federal Board has approved the proposed amendment to 12 CFR 615.5370 to authorize the bank, with bank approval, to retain up to 50 percent of the net savings derived from business done with or for patrons, plus the total amount of any net earnings derived from nonpatronage sources for use in creating or maintaining an unallocated surplus or unallocated reserve account. Additional amounts beyond the 50-percent limit may be added with FCA approval. As required by the existing regulation, FCA will continue to monitor the banks' earnings distribution plans to ensure the banks are operating on a cooperative basis with provisions for sound and adequate capitalization as required by the Farm Credit Act of 1971, as amended.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

PART 615—FUNDING AND FISCAL AFFAIRS

As stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations, is amended as shown:

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252).

Subpart L—Distribution of Earnings

* * * * *

2. Section 615.5370 is amended by revising paragraphs (a) and (c) as follows:

§ 615.5370 Banks for cooperatives' earnings.

(a) Whenever at the end of any fiscal year a bank shall have no outstanding capital stock held by the Governor, the net savings shall first be applied to the restoration of the amount of the impairment, if any, of capital stock, as determined by the bank board. Any remaining net savings or losses shall be distributed as authorized by the bank board. Twenty-five percent of such remaining net savings, or such other percentage as determined by the bank board, derived from business done with or for patrons may be used to maintain an allocated surplus account. Upon approval of the bank board, up to 50 percent of the net savings derived from business done with or for patrons, plus the total amount of any net earnings derived from nonpatronage (including nonmember) sources, may be used to create or maintain an unallocated surplus or unallocated reserve account. Additional amounts beyond the 50-percent limit may be added with the approval of the Farm Credit Administration. The amount so determined shall first be reduced by related income taxes. For purposes of this regulation, all net savings shall be deemed to be from patronage sources unless otherwise determined by the bank. Cash patronage refunds shall not exceed 25 percent of the total amount of net savings allocated or paid to patrons except with Farm Credit Administration approval. Patronage refunds not paid in cash or allocated surplus shall be paid in capital stock and participation certificates as determined by the bank board. A net loss in any fiscal year shall be absorbed on the basis determined by the bank board. Any costs or expenses attributable to a prior year that are used in the computation of current year's net savings shall not be charged to reserves, surplus, or patronage allocations without the approval of the Farm Credit Administration.

* * * * *

(c) The phrase "service fees" as used in section 3.11(c) of the Act refers to loan service fees and not income related to "technical assistance and financially related services" referred to in section 3.7 of the Act. If net savings from "technical assistance and financially related services" become more than incidential, such net savings shall be distributed as patronage to borrowers using such services.

* * * * *

Donald E. Wilkinson,
Governor.

[FR Doc. 85–21548 Filed 9–9–85; 8:45 am]
BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ANE–16, Amdt. 39–5133]

Airworthiness Directives; Grob-Werke GmbH G109 Powered Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which revises the flight manual and requires installation of a spin warning placard on Grob G109 powered gliders. The AD is needed to prevent undesirable spinning which could result if the glider is operated in accordance with the originally approved flight manual data.

DATE: Effective September 25, 1985.

Compliance required prior to further flight unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Burkhart Grob of America Incorporated, 1070 Navajo Drive, Bluffton Airport Complex, Bluffton, Ohio 45817.

A copy of the applicable service information is contained in the Rules Docket, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE–153, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7103.

SUPPLEMENTARY INFORMATION: As a result of additional flight testing, Grob-Werke GmbH has issued Technical Information TM 817–10/2 dated May 2, 1983, which revises the Flight Manual in regard to prohibiting intentional spins, and revising aft center of gravity, loading limits, and spin recovery technique on Grob G109 powered gliders. Luftfahrt Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these powered gliders in the Federal Republic of Germany, has classified Grob-Werke Technical Information TM 817–10/2 dated May 2, 1983, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected powered gliders. LBA has issued AD 83–104 Grob dated June 6, 1983, which requires owners of Grob-Werke model G109 powered gliders in the Federal Republic of Germany to accomplish the provisions of Grob-Werke Technical Information TM 817–10/2 immediately after the effective date of AD 83–104 Grob, but not later than July 15, 1983.

The FAA has examined the available information related to the issuance of Grob-Werke Technical Information TM 817–10/2 dated May 2, 1983, and the mandatory classification of this technical information by LBA. Based on the foregoing, the FAA has determined that undesirable spinning may occur on Grob G109 powered gliders. Since this condition is likely to occur on other power gliders of the same type design, an AD is being issued which requires: (1) Revision of the Burkhart Grob Flight Manual in regard to prohibiting intentional spins, and revising aft center of gravity, loading limits, and spin recovery technique, and (2) addition of a spin warning placard. The spin warning placard "AEROBATIC INCLUSIVE SPINNING PROHIBITED" as shown on page 18e of the flight manual is to be replaced by the placard "AEROBATIC MANEUVERS INCLUDING SPINNING PROHIBITED" for clarification, since the intended meaning of the original placard is unclear.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure herein are impractible and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation involves approximately 38 aircraft, and the approximate cost per aircraft is negligible because the flight manual changes are provided at no cost by the manufacturer and the cost of a placard is minimal. Therefore, I certify

that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Burkhart Grob: Applies to model G109 powered gliders certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent undesirable spinning, accomplish the following before further flight:

(a) Replace the applicable pages of the flight manual with those contained in Grob-Werke GmbH Technical Information TM 817-10/2 dated May 2, 1983, and revised the wording of the spin warning placard on page 18e to read "AEROBATIC MANEUVERS INCLUDING SPINNING PROHIBITED" instead of "AEROBATIC INCLUSIVE SPINNING PROHIBITED".

(b) Install spin warning placard on the left hand side of the instrument panel which reads "AEROBATIC MANEUVERS INCLUDING SPINNING PROHIBITED".

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium 09667-1011, telephone 513.38.30.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, may adjust the compliance time specified in this AD.

This amendment becomes effective September 25, 1985.

Issued in Burlington, Massachusetts, on August 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-21516 Filed 9-9-85; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 302, 322, and 340

Reduction In Benefits Under the Railroad Unemployment Insurance Act

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby adds a new Part 302 to 20 CFR Chapter II and amends Parts 322 and 340 of that chapter. Part 302 provides for the temporary reduction in benefit payments due qualified employees under the Railroad Unemployment Insurance Act. The amendment to Part 322 will eliminate the payment of unemployment benefits to railroad employees who receive or are eligible to receive railroad job protective payments when deprived of employment, and the amendment to Part 340 will speed up collection of debts under the Railroad Unemployment Insurance Act.

EFFECTIVE DATE: Interim final rule effective October 1, 1985.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Walter P. Witkovich, Chief of Adjudication, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312) 751-4810 (FTS 387-4810).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) amended section 10(d) of the Railroad Unemployment Insurance Act to prohibit the transfer of funds from the Railroad Retirement Account after September 30, 1985 for the purpose of paying benefits under the Railroad Unemployment Insurance Act. In view of this termination of the authority to borrow from the Railroad Retirement Account, the Board has adopted these regulations to describe the procedures that it will adopt and follow in order to continue the payment of unemployment and sickness benefits after September 30, 1985.

These regulations are based upon sections 2(b) and 12(e) of the Railroad Unemployment Insurance Act. Section 2(b) authorizes the Board to pay the benefits due an employee at such intervals as the Board may prescribe. Section 12(e) authorizes the Board to arrange total or partial settlements at such times and in such manner as may appear to the Board to be expedient. In addition, section 8(g) of the Act authorizes the Board to collect contributions from employers at such times and in such manner as may be prescribed by the Board.

These regulations shall take effect October 1, 1985 if legislation amending the Railroad Unemployment Insurance Act is not enacted prior to that date. If legislation is enacted after September 30, 1985, the amounts of any benefits that may not have been paid pursuant to these regulations to eligible persons shall be certified for payment.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. The reporting requirements imposed by these regulations have been approved by the Office of Managment and Budget.

List of Subjects

20 CFR Part 302

Railroad employees, Railroad unemployment insurance, Railroads.

20 CFR Part 322

Railroad employees, Railroad unemployment insurance, Railroads.

20 CFR Part 340

Railroad employees, Railroad unemployment insurance, Railroads, Debt collection.

Title 20 CFR Chapter II is amended as follows:

1. A new Part 302 is added as follows:

PART 302—REDUCTION IN UNEMPLOYMENT AND SICKNESS BENEFITS

Sec.

302.1 Purpose.
302.2 Definitions.
302.3 Accelerated payment of contributions.
302.4 Benefit payments.
302.5 Sunset provision.

Authority: 52 Stat. 1097, 1108; 45 U.S.C. 352(b), 362(e), 362(l).

§ 302.1 Purpose.

These regulations describe the specific measures that the Railroad Retirement Board will take to continue the payment of benefits under the Railroad Unemployment Insurance Act after September 30, 1985, the date as of which the Board ceases to have the authority to request the Secretary of the Treasury to transfer funds from the Railroad Retirement Account to the railroad unemployment insurance account for the purpose of paying benefits under the Act. Pursuant to authority in sections 2(b), 12(e) and 12(l) of the Act, the Board hereby directs that the following actions be taken to pay all valid claims for benefits until legislation to amend the Act is enacted.

§ 302.2 Definitions.

As used in this part—

"Account" means the railroad unemployment insurance account established by section 10 of the Act.

"Act" means the Railroad Unemployment Insurance Act, 52 Stat. 1094, as amended; 45 U.S.C. 351 et seq.

"Benefits" means the money payments payable to qualified employees pursuant to section 2(a) of the Act.

"Board" means the Railroad Retirement Board.

"Contributions" means the payments due from employers and employee representatives pursuant to section 8 of the Act.

§ 302.3 Accelerated payment of contributions.

(a) Effective October 1, 1985, notwithstanding any provision of Part 345 of this chapter, the contribution required to be reported on an employer's or employee representative's contribution report shall be computed and paid to the Board, without assessment or notice, in accordance with the provisions of this section. Each employer and employee representative shall continue to file contribution reports as required in Part 345 of this chapter.

(b) Except as provided in paragraph (c) of this section, if at the close of any calendar month the aggregate amount of unpaid contributions is $500.00 or more, the employer or employee representative shall pay to the Board, in accordance with the provisions in paragraph (e) of this section, the unpaid contributions within 15 calendar days after the close of such calendar month. However, this paragraph shall not apply if the employer or employee representative was required to make a payment of contributions pursuant to paragraph (c) of this section with respect to an eighth-monthly period which occurred during the calendar month.

(c) Except as provided in paragraph (b) of this section, if at the close of any eighth-monthly period the aggregate amount of unpaid contributions is $3,000.00 or more, the employer or employee representative shall pay to the Board, in accordance with the provisions in paragraph (e) of the section, the unpaid contributions within 3 banking days after the close of the eighth-monthly period. For the purpose of determining the amount of unpaid contributions at the close of an eighth-monthly period, contributions are to be computed in accordance with the provisions of Part 345 of this chapter with respect to creditable compensation paid during the eighth-monthly period.

(1) "Unpaid contributions at the end of an eighth-monthly period" means that amount of contributions required under the Railroad Unemployment Insurance Act but not paid to the Board before the close of an eighth-monthly period.

(2) "Eighth-monthly period" means the first 3 days of a calendar month, the 4th day through the 7th day of a calendar month, the 8th day through the 11th day of a calendar month, the 12th day through the 15th day of a calendar month, the 16th day through the 19th day of a calendar month, the 20th day through the 22nd day of a calendar month, the 23rd day through the 25th day of a calendar month, or the portion of a calendar month following the 25th day of such month.

(d) If at the close of any calendar quarter the aggregate amount of unpaid contributions is less than $500.00, the unpaid contributions shall be due and payable to the Board at the time fixed for filing the contribution report.

(e)(1)(i) If for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under section 3221 of the Railroad Retirement Tax Act with respect to an employer equalled or exceeded $1,000,000, such employer shall deposit the contributions required to be paid for the current calendar year in accord with instructions issued by the Railroad Retirement Board.

(ii) At the direction of the Board, the Secretary of the Treasury shall credit such contributions to the railroad unemployment insurance account in accordance with section 10 of the Railroad Unemployment Insurance Act and to the railroad unemployment insurance administration fund in accordance with section 11 of the Railroad Unemployment Insurance Act.

(2) Exempt as provided in paragraph (e)(1)(i) of this section, certified or uncertified checks may be tendered as provisional payment of contributions and should be made payable to the Railroad Retirement Board and mailed to the Associate Executive Director for Fiscal Operations, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. No employer or employee representative who tenders a check as provisional payment may be released from the obligation to make ultimate payment thereof until such check has been duly paid. If a check is not paid by the bank on which it is drawn, the employer by whom such check has been tendered shall remain liable for the payment of the contribution and for all legal penalties and additions which may be attached thereto to the same extent as if such check had not been tendered.

(3) Any employer or employee representative may pay contributions by means of wire transfer as is required for large employers in paragraph (e)(1)(i) of this section.

§ 302.4 Benefit payments.

(a) Effective with respect to days of unemployment and days of sickness in registration periods beginning after September 30, 1985 and continuing for such time as the Board finds necessary, the maximum amount that shall be certified for payment for each day of unemployment or sickness shall be $20.00.

(b) If, at any time after September 30, 1985, the Board finds that the cash balance credited to the account will be insufficient to pay benefits at the rate prescribed in paragraph (a) of this section after that date, all benefit payments and refunds otherwise due shall be suspended. Thereafter, as contributions and refunds of benefits are received and credited to the account, benefit payments shall resume at the rate prescribed in paragraph (a) of this section and shall be made in the order in which compensable claims are received for processing in the bureau of unemployment and sickness insurance.

(c) The Board shall maintain records of the amounts of any benefits not paid to beneficiaries in accordance with this section. The amounts of any benefits not paid to eligible beneficiaries in accordance with this section shall be certified for payment to such beneficiaries at such time as the Board determines that the balance in the railroad unemployment insurance account is sufficient to make such payments, without adversely affecting the ability of the account to pay benefits prospectively at the rate provided in paragraph (a) of this section.

§ 302.5 Sunset provisions.

The regulations contained in this Part shall cease to be effective at such time, following enactment of legislation amending the Railroad Unemployment Insurance Act, as the Board determines that the balance in the railroad unemployment insurance account is sufficient to pay benefits at the full amount provided by law.

PART 322—[AMENDED]

2. The authority citation for Part 322 is revised to read as follows:

Authority: 45 U.S.C. 362l.

3. Part 322 of these regulations is amended by adding at the end of § 322.7(a) the following:

§ 322.7 Allowances resulting from abandonment or coordination of employer facilities.

(a) * * * Pursuant to instructions issued by the Associate Executive Director for Unemployment and Sickness Insurance, any Board office that is adjudicating a claim for unemployment benefits is authorized to deny such claim if that office finds that the employee is receiving or is eligible to receive a monthly dismissal or coordination allowance or any comparable payment of remuneration with respect to any of the days covered by the claim for benefits. It shall be the duty of each employer to provide such information as the Board may need to adjudicate the claim for benefits made by an employee who is receiving or is eligible to receive such allowances or other pay for time lost.

PART 340—[AMENDED]

4. The authority citation for Part 340 is revised to read as follows:

Authority: 45 U.S.C. 362l.

5. Part 340 of these regulations is amended by adding the following new section:

§340.16 Debt collection.

(a) The Associate Executive Director for Unemployment and Sickness Insurance shall take steps to collect all delinquent debts due the Board under the benefit provisions of the Act, except those that have been classed as uncollectible. Such steps shall commence not later than July 1, 1985 and shall include notice to each debtor of the time limit for paying the debt and the consequences of failure to pay on time.

(b) It shall be the duty of every employer or other person paying remuneration for time lost or any sum or damages for personal injury to remit the amount of reimbursement due the Board, if any, within 30 days of the date of the payment of remuneration or damages to an employee. Failure to remit the amount due within 30 days shall subject the employer or other person to interest and penalties, in addition to the principal amount due the Board.

Dated: August 30, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85–21574 Filed 9–9–85; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 83F–0097]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Surface Lubricants Used in the Manufacture of Metallic Articles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the following four additives as minor components of surface lubricants used in the manufacture of metallic articles that contact food: benzotriazole, polyoxyethylated (5 moles) tallow amine, sodium petroleum sulfonate, and *alpha*-alkyl-*omega*-hydroxpoly(oxyethylene). This action responds to a petition filed by the Ironsides Co.

DATES: Effective September 10, 1985; objections by October 10, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 178.3910 effective on September 10, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1983 (48 FR 17390), FDA announced that a petition (FAP 2B3600) had been filed by Ironsides Co., Columbus, OH 43216, proposing that § 178.3910 (21 CFR 178.3910) of the food additive regulations be amended to provide for the safe use of the following four additives as minor components of surface lubricants used in the manufacture of metallic articles that contact food: benzotriazole; polyoxyethylated (5 moles) tallow amine; sodium petroleum sulfonate, MW 440–450 (CAS Reg. No. 68608–24–4) derived from naphthenic oil having a Saybolt viscosity range of 500 to 600 Saybolt Universal Seconds at 37.8 ° C (100 °F); and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of C_8–C_{15} straight chain primary alcohols with an average of 3 moles of ethylene oxide.

FDA, in the evaluation of the safety of these additives, reviewed the safety of both the additives and the starting materials used to manufacture the additives. Although the four food additive substances listed in this regulation have not been found to cause cancer, two of the additives may contain minute amounts of 1,4-dioxane, a chemical shown to induce cancer in test animals. The two additives, polyoxyethylated (5 moles) tallow amine and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene), may each contain trace amounts of 1,4-dioxane as a byproduct of the production of the additive. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in all chemical products, including many food additives.

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision. "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H.R. Rept. No. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the food additives amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further than no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is not applicable unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

FDA estimates that the petitioned uses of polyoxyethylated (5 moles) tallow amine and *alpho*-alkyl-*omega*-hydroxypoly-(oxyethylene) will result in extremely low levels of exposure to these substances. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of the use of such substances (Ref. 2). FDA has not required such testing here, and no data have been submitted that show that these additives are carcinogenic. Therefore, the Delaney anticancer clause has no application to this proceeding. FDA has evaluated the safety of these additives under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive and has concluded that the additives are safe under the proposed conditions of use.

The risk assessment procedures used are similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in the additives containing carcinogenic impurities that were evaluated earlier. This risk evaluation of the carcinogenic constituent, 1,4-dioxane, has two aspects: (1) Assessment of the probable exposure to the constituent from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

FDA estimated the probable exposure to 1,4-dioxane in the U.S. population, taking into account what fraction of the daily diet might be in contact with surfaces containing polyoxyethylated (5 moles) tallow amine and *alpha*-alkly-*omego*-hydroxypoly(oxyethylene). FDA used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute to estimate the upper bound level of lifetime human risk from exposure to 1,4-dioxane stemming from the proposed use of polyoxyethylated (5 moles) tallow amine and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene). The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to 1,4-dioxane could be made from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additives. FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane at the level considered to be a conservative estimated daily intake is 3.5×10^{-12} or less than 1 in 100 billion. Because of numerous conservatisms in the exposue estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of polyoxyethylated (5 moles) tallow amine and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene).

The agency has calculated an estimated daily intake of polyoxyethylated (5 moles) tallow amine and *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene) based on considerations such as migration of the additive under the most severe intended use conditions and estimates of the probable concentration in the daily diet from food-contact articles that contain the subject additives. The estimated daily intakes for these two additives are 0.24 microgram (μg) per day (0.08 part per billion (ppb) in the diet) and 0.75 μg per day (0.25 ppb in the diet), respectively, for a 60 kilogram person.

For the extremely low level of dietary exposure to polyoxyethylated (5 moles) tallow amine (0.08 ppb) and to *alpha*-alkyl-*omega*-hydroxypoly(oxyethylene) (0.25 ppb), the agency believes that the toxicity data submitted by the petitioner satisfy the agency's toxicological testing requirements for these indirect food additives (Refs. 1 and 2). Further, the available information gives no reason to suspect either of the additives to be carcinogens.

The estimated daily intakes of the remaining two food additives, benzotriazole and sodium petroleum sulfonate, are 0.075 μg per day (0.025 ppb in the diet) and 0.24 μg per day (0.08 ppb in the diet), respectively, for a 60-kilogram person. As with the two ethoxylated compounds, these extremely low levels of dietary exposure require only submission of acute oral toxicity data, which have been submitted by the petitioner.

The agency has also considered whether a specification is necessary to control the amount of the constituent, 1,4-dioxane, that might migrate to food. The agency finds that a specification is not necessary for the following reasons: (1) 21 CFR 178.3910 limits residual levels of the total surface lubricant formulation to a very low level, i.e., not to exceed 0.015 milligram per square inch of surface area (the agency would not expect 1,4-dioxane to become a

component of food at other than vanishingly small levels because of its possible presence as a constituent of two of the many possible components utilized in the compounding of surface lubricants for metallic articles); (2) nearly all metallic articles are washed or cleaned of surface residues prior to use or further processing (e.g., application of a coating); and (3) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 1 in 100 billion.

FDA has evaluated the available toxicity data and the exposure calculation for the additives and has determined that the additives are safe for their proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (addressed above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday:

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

Any person who will be adversely affected by this regulation may at any time on or before October 10, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference, Santizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commisisoner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 178.3910(a)(2) by alphabetically inserting four new items in the list of substances to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * *	
alpha-Alkyl-*omega*-hydroxypoly-(oxyethylene) produced by the condensation of 1 mole of C_{16}-C_{18} straight chain primary alcohols with an average of 3 moles of ethylene oxide (CAS Reg. No. 68002-97-1)	
* * * * *	
Benzotriazole (CAS Reg. No. 95-14-7)	
* * * * *	
Polyoxyethylated (5 moles) tallow amine (CAS Reg. No. 61791-26-2)	
* * * * *	
Sodium petroleum sulfonate, MW 440–450 (CAS Reg. No. 68608-24-4) derived from naphthenic oil having a Saybolt viscosity range of 500–600 Saybolt Universal Seconds (SUS at 37–8 °C (100 °F) as determined by ASTM method D88–61, "Standard Test Method for Saybolt Viscosity," which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1961 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	
* * * * *	

* * * * *

Dated: August 14, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21113 Filed 9-9-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animals Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Music City Supplement Co., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Music City Supplement Co., 401 Cowan St., Nashville, TN 37202, is the sponsor of a supplement to NADA 107–958 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make

complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in chickens. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an evironmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(51) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(51) To 017519: 5, 10, 20, and 40 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

Dated: September 3, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–21513 Filed 9–9–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 103

Casino Regulations

Correction

In FR Doc. 85–2913 beginning on page 5065 in the issue of Wednesday, February 6, 1985, make the following correction:

§ 103.45 [Corrected]

1. On page 5069, second column, § 103.45 (c)(2)(iv), the second paragraph designated as "(iv)", that reads "(iv) That all but minor violations of the state requirements be reported to Treasury within 15 days of discovery; and" should be removed.

BILLING CODE 1505–01–M

POSTAL SERVICE

39 CFR Part 111

Revocation of Interim E–COM Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Pursuant to the Postal Service's decision to discontinue offering E–COM service on September 3, 1985, and the decision of the Governors of the Postal Service to delete the E–COM provisions from the Domestic Mail Classification Schedule and the Rate Schedules, the Postal Service is revoking the interim regulations in the Domestic Mail Manual which governed E–COM service.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Edward W. Senft, (202) 245–5780.

SUPPLEMENTARY INFORMATION: On June 11, 1984, the Board of Governors of the Postal Service adopted its Resolution No. 84–5, which directed the Postal Service to discontinue offering E–COM service as a postal service. As part of the discontinuation process, on July 6, 1984, the Postal Service filed, pursuant to Chapter 36, Title 39, United States Code, a request with the Postal Rate Commission for a recommended decision on changes to the Domestic Mail Classification Schedule and the Rate Schedules to delete the provisions concerning E–COM service. An explanation of the Postal Service's proposals and an invitation to participate in Commission Docket No. MC84–2 was published in the Federal Register by the Postal Rate Commission on July 17, 1984 (49 FR 28953).

On December 21, 1984, the Postal Rate Commission issued its Opinion and Recommended Decision in Docket No. MC84–2. The Commission recommended that the E–COM provisions be deleted.

On July 10, 1985, pursuant to 39 U.S.C. 3625, the Governors of the Postal Service decided to approve the Commission's recommended decision and order it into effect. The Board of Governors concurrently determined that the changes would become effective at 12:01 a.m. on September 3, 1985. 50 FR 29030 (July 17, 1985).

In accordance with these actions by the Governors and the Board of Governors, the Postal Service discontinued offering E–COM service to the public at 12:01 a.m. on September 3, 1985. The interim regulations in the Domestic Mail Manual concerning E–COM service, which were published in the Federal Register on December 23, 1981 (46 FR 62268–73) became obsolete concurrent with the cessation of service. The Postal Service has therefore decided to revoke those regulations.

Accordingly, the Postal Service makes the following amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14.

CHAPTER 1—DOMESTIC MAIL SERVICES

2. Chapter 1 is amended by removing 115.21(f) and 159.324.

115.2 Opening, Reading, and Searching of Sealed Mail Generally Prohibited.

.21 * * *

f. [Removed]

159.3 Address Correction Service, Address Change Service, and Return

* * * * *

.32 * * *

.324 [Removed].

3. Chapter 3 is amended by removing 326.

320—Classification.

* * * * *

.326 [Removed].

4. Chapter 5 is amended by removing all material in the chapter (510 through 593) and reserving the chapter.

CHAPTER 5—[REMOVED AND RESERVED]

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Office of General Law and Administration.

[FR Doc. 85-21256 Filed 9-9-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2893-7]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice EPA is granting a two-year extension of the attainment date for lead in Shoshone County, Idaho, and promulgating revised interim and final emission limits for the federal implementation plan (FIP) for attainment of the national ambient air quality standard (NAAQS) for lead in Shoshone County. This action is being taken pursuant to EPA's reopening of the comment period on February 7, 1985, to obtain further information on the availability of certain technology and to determine whether an extension of the attainment date under section 110(e) of the Clean Air Act (hereinafter the Act) is justified (see 50 FR 5235 and 50 FR 5265).

EFFECTIVE DATE: October 10, 1985.

ADDRESSES: The rulemaking docket, including the FIP and technical support documents, may be examined during normal business hours at:

Central Docket Section, Docket No. 10A-83-15, Environmental Protection Agency, West Tower Lobby, 401 U Street, S.W., Washington, D.C. 20460

Air Programs Branch (10A-83-15), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

Idaho Operations Office, Environmental Protection Agency, 422 W. Washington Street, Boise, Idaho 83702

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-4253, (FTS) 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action is in response to a Court ordered schedule resulting from a settlement agreement reached on July 26, 1983, between EPA and the Natural Resources Defense Council, Inc. (NRDC) (NRDC v. Ruckelshaus, (D.D.C.)., No. 82-2137). The schedule called for certain states to submit state implementation plans (SIPs) for lead by August 1, 1983. If a SIP was not submitted by a state, EPA was to propose a federal implementation plan by April 1, 1984. The Idaho lead SIP (approved, except for Shoshone County, on May 3, 1984) did not include a control strategy and attainment demonstration for potential emissions from the Bunker Limited Partnership (Bunker Limited) lead smelter in Shoshone County. EPA, therefore, developed a federal implementation plan (FIP) for Shoshone County, proposed it on July 6, 1984 (49 FR 27787), and promulgated it on February 7, 1985 (50 FR 5237).

In a related Federal Register notice (February 7, 1985 (50 FR 5265)), EPA reopened the record on its July 6, 1984, proposal for further comment concerning the availability of control technoloy needed to meet the final emission limits for attaining the ambient lead standard. EPA indicated that, by August 30, 1985, it would publish its final determination concerning the availability of this control technology. At the same time, EPA would state whether or not the area qualifies for an attainment date extension of up to two years. This determination would be made pursuant to section 110(e) of the Act and EPA regulation 40 CFR 51.30, based on whether the technology required to meet the final emission limits is not and will not be available.

II. Study of Available Technology

In February 1985, EPA engaged the services of a contractor to perform the evaluation of available technology for the control of the lead emissions from primary lead and zinc smelters. This contract involved a new visit to the Bunker Limited smelters to obtain an extremely detailed process inventory. The purposes of this site visit were to determine the actual location of the processes and equipment which generate lead emissions, how and where the emissions are released to the atmosphere, and the physical parameters which influence the selection and design of controls for reducing and/or capturing the emissions.

The contractor then evaluated the process and control technologies which are currently in use within the primary metals smelting industry, particularly at lead, zinc, copper and iron and steel smelters, for technologies which would be available for use at the Bunker Limited smelters. Technologies which could be applied to the Bunker Limited facility were selected for evaluation with regard to their effectiveness at reducing emissions at Bunker Limited. From these alternatives, a control strategy was designed which achieved the greatest possible emission reduction through the use of currently available technologies. This control strategy is described in detail in the contractor's report which is included in the docket on this rulemaking and is available for inspection at the locations listed in the ADDRESSES section above. The following is a brief summary of this control strategy:

Ore unloading and handling area—enclose the area to capture emissions, and install a baghouse for removal of captured emissions.

Crushing plant building—patch up leaks and natural vents, install telescopic covers on conveyors, increase roof vent flow to accommodate additional volume due to patch up of leaks, and combine with current controlled process emissions. Route captured emissions to the new ore unloading and handling baghouse for removal.

Blending building—patch up leaks, increase roof vent exhaust rate, and install telescopic covers on conveyors. Install a baghouse for removal of captured emissions.

Bedding building—patch up leaks, increase roof vent exhaust rate, and install telescopic covers on conveyors. Route captured emissions to the new blending building baghouse for removal.

Pelletizing building—patch up leaks, increase roof vent exhaust flow rate, combine the vent emissions with current controlled process emissions, and route to the new blending building baghouse for removal.

Lurgi sinter machine area—patch up and repair sinter machine to minimize leakage emissions, enclose windbox areas, and route vented emissions to a new baghouse for removal. Vaccum sweep and use water spray regularly to collect settled dust in the vicinity of the lurgi sinter machine.

Sinter sizing building—patch up leaks and openings, vent the fugitive

emissions to combine with current controlled process emissions, and route to the new lurgi sinter machine baghouse for removal.

Sinter product storage—replace the current storage and handling system with a new silo system.

Blast furnace building—install a tuyere air system in the blast furnaces to reduce the frequency of furnace upsets, enclose the furnace top area, and route the vented emissions to a new baghouse for removal.

Lead refining building—improve blast furnace bullion and slag tapping hoods to increase capture efficiency, install the currently uncovered drossing kettles with movable hoods to capture emissions, and route all captured emissions to a new baghouse for removal. Reduce emissions material transfer around drossing kettles. Install controls on reverberatory furnace charging and tapping operations and route to new lead refinery baghouse for removal. Improve casting area ventilation system.

Silver refinery building—route vented emissions to the new lead refinery baghouse for removal.

Zinc fuming plant—improve capture of charging emissions and route captured emissions to a new baghouse for removal. Route captured emissions from the slag granulator to the new baghouse for removal. Reduce emissions from waste heat boilers by proper operation and maintenance modifications.

Electric arc furnace building—close enclosure for charging operations to capture emissions, and route captured charging emissions and furnace launder emissions to main baghouse. Route captured emissions from the slag granulator to the new lead refinery baghouse for removal.

Dust handling—all hoppers—enclose hoppers and utilize screw conveyers for moving materials from baghouses. Vacuum sweep or otherwise clean up settled dust in vicinity of hoppers.

Active tailings traffic, ore storage area, tailings area, and parking lot—no change to original control strategy.

EPA received the contractor's draft report in May 1985, and on June 10, 1985 (50 FR 24316), opened a 30-day period to receive public comments on the draft report. EPA received no comments on the draft report, or in response to its February 7, 1985 notice reopening the record for further comment.

III. Extension of Attainment Date for Lead

After the close of the comment period and EPA's review of the draft contractor's report, a subcontractor performed a dispersion modeling analysis to determine the ambient lead levels which would result after the application of this control strategy. This modeling analysis revealed that the ambient lead standard would still be violated in areas of ambient air in the immediate vicinity of the smelter. In order to attain the ambient standard, the in-plant fugitive emissions would have to be reduced by approximately 98 percent, as compared to the approximately 95 percent reduction achievable through application of this control strategy.

Based on the results of the contractor's report, EPA finds that no control technology or process equipment changes are available to make up this shortfall. Also, achieving this reduction through a curtailment of plant operation would not be reasonable in light of the economics involved in reopening the facility. Therefore, EPA has determined that this additional reduction could not be achieved through the use of available technology or other reasonably available alternatives. As such, an extension of the attainment date for lead in Shoshone County is justified under the provisions of section 110(e) of the Act and EPA is hereby granting a two-year extension of the attainment date (to March 11, 1990).

IV. Interim and Final Emission Limits

As was indicated in the February 7, 1985 rulemaking, EPA is requiring the application of available technology within three (3) years of the effective date of that rule (i.e., by March 11, 1988). EPA is therefore revising the emission limits in Table A of 40 CFR 52.689 to reflect the use of available technology. Since EPA is granting a two-year extension of the attainment date, Table A has been retitled to reflect its status as the interim emission limits required by section 110(e)(2)(B) of the Act. EPA is also revising the emission limits in Table B of 40 CFR 52.689 to reflect the more accurate and detailed information on processes and emissions which were obtained from the contractor. These revised emission limits reflect the capture of approximately 98 percent of the in-plant fugitive emissions but are not based on the application of any specific technology or strategy. Table B has also been retitled to reflect its status as the final emission limits for attainment of the lead standard.

As stated in the February 7, 1985, rulemaking, EPA recognizes that if Bunker Limited should alter the operating configuration of the smelter, production levels, or other physical aspects of the plant, a different air pollution control strategy might be needed to attain the lead standard. If Bunker Limited proposes changes in smelter operations that will affect the strategy contained in the FIP, the rule provides for a process for EPA, working with the Company, to revise the control requirements that are being promulgated today. However, if at any time, Bunker Limited declares the smelter complex to be permanently closed, the requirements of this rule will not apply and any future reopening of the smelter would be governed by applicable new source requirements (See 40 CFR 51.24).

V. Summary of Action

In summary, EPA today is granting a two-year extension of the attainment date for lead in Shoshone County, Idaho. EPA is revising the interim emission limits (to be achieved by no later than March 11, 1988) for the Bunker Limited lead smelter to reflect the use of available technology. EPA is revising the final emission limits (to be achieved by no later than March 11, 1990) to be consistent with new information on the smelter's processes and emissions.

Under 5 U.S.C. 605(b), I have reviewed this action and determined that it does not have a significant economic impact on a substantial number of small entities because it affects only one large source.

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. In accordance with the definition of a major rule (E.O. 12291, section 1(b)), this regulation is not judged to be major because the annual effect on the economy, whether or not the smelter reopens or remains closed, is less then $100 million, the increase in costs or prices for various agents is not major, and the effects on competition, employment, investment, productivity, innovation, and foreign trade are not significant.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide Hydrocarbons.

Dated: August 30, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart N—Idaho

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.672 is amended by adding paragraph (f) to read as follows:

§ 52.672 Extensions.

* * * * *

(f) The Administrator hereby extends for 2 years (from March 11, 1988 to March 11, 1990) the attainment date for lead in Shoshone County, Idaho, in the Idaho portion of the Eastern Washington-Northern Idaho Interstate Air Quality Control Region.

3. Section 52.680 is revised to read as follows:

§ 52.680 Attainment dates for national standards.

The following table presents the latest dates by which the national ambient air quality standards are to be attained. These dates reflect the information in Idaho's plan, except where noted.

Air Quality Control Region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	Lead
	Primary	Secondary	Primary	Secondary				
Eastern Idaho Interstate	b	a	a	a	a	a	a	a
Eastern Washington-Northern Idaho Interstate (Idaho):								
1. Shoshone County	b	a	a	a	a	a	a	d
2. Remainder of AQCR (Idaho)	b	a	a	a	a	a	a	a
Idaho Intrastate	a	a	a	a	a	a	a	a
Metropolitan Boise Intrastate:								
1. Boise—Ada County area	a	a	a	a	a	c	a	a
2. Remainder of AQCR	a	a	a	a	a	a	a	a

a. Air quality levels presently below secondary standards.
b. December 31, 1982.
c. December 31, 1986.
d. March 11, 1990.
e. Date not established.

4. § 52.689 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 52.689 Lead Control Strategy: Shoshone County, Idaho Portion of the Eastern Washington-Northern Idaho Interstate Air Quality Control Region.

* * * * *

(b) * * *

(3) * * *

(ii) The compliance schedule dates in paragraphs (b)(3)(ii)(A) through (b)(3)(ii)(G) apply to all emission limits for point (stack) and process fugitive (building) sources as specified in Table A. The compliance schedule dates applicable to all emission limits for point (stack) and process fugitive (building) sources as specified in Table B shall be twenty-four (24) months later than those in paragraphs (b)(3)(ii)(A) through (b)(3)(ii)(G). The compliance schedule dates in paragraphs (b)(3)(ii)(A) through (b)(3)(ii)(G) shall apply to those smelter sources which are or will be operated. In the event compliance schedule dates pass before a smelter source is restarted, the owners and operators (or their successors and assigns) of the smelter must comply prior to the time the smelter source begins operation, with those requirements for which compliance schedule dates have passed.

* * * * *

2. § 52.689 is amended by revising Tables A and B to read as follows:

* * * * *

TABLE A.—INTERIM EMISSION LIMITS AND EMISSION PARAMETERS FOR LEAD SMELTER

Source	Emission limit (lb/hr)	Emission Parameters [a]				
		Emission height (mAGL)	Exit temperature (°K)	Exit velocity (m/s)	Volume flow (m^3/s)	Stack radius (m)
Point (Stack) Sources:						
Baghouse for Crushing Plant Building	0.61	24.0	306	18.30	79.00	1.17
Baghouse for Blending, Bedding, and Pelletizing Buildings	0.24	24.0	294	18.30	206.00	1.90
Baghouse for Lurgi Sinter Machine and Sinter Sizing Buildings	0.35	24.0	294	18.30	89.00	1.24
Sinter Product Storage Silos	0.09	30.0	294	1.02	0.71	0.47
Baghouse for Blast Furnace Building	0.09	24.0	300	18.30	11.00	0.44
Baghouse for Lead and Silver Refinery Buildings	0.21	24.0	300	18.30	227.54	1.99
Baghouse for Zinc Fuming Plant Building	0.04	24.0	300	18.30	160.50	1.67
Zinc Fuming Plant Main Stack	0.68	61.6	346	13.59	82.47	1.39
Main Lead Smelter Stack	13.74	61.6	327	18.84	248.80	2.05
Process Fugitive (Building) Sources:						
Ore Unloading Area	0.270					
Crushing Plant Building	0.021					
Hammermill Building	0.018					
Blending Building	0.240					
Bedding Building	0.486					
Pelletizing Building	0.003					
Sinter Machine Enclosure	0.764					
Sinter Sizing Building	0.178					
Blast Furnace Enclosure	0.295					
Lead Refinery Building	1.701					
Silver Refinery Building	0.177					
Zinc Fuming Plant Balloon Flue	0.155					
Electric Arc Furnace Building	0.190					
Non-Process Fugitive (Area) Sources:						
Dust Handling of Hoppers from Control Devices	0.590					

TABLE A.—INTERIM EMISSION LIMITS AND EMISSION PARAMETERS FOR LEAD SMELTER—Continued

Source	Emission limit (lb/hr)	Emission Parameters [1]				
		Emission height (mAGL)	Exit temperature (°K)	Exit velocity (m/s)	Volume flow (m³/s)	Stack radius (m)
Active Tailings and Traffic	0.150					
Ore Storage Area	0.375					
Tailings Area	0.060					
Unpaved Parking Lot	0.006					

[1] These emission parameters were used in EPA's dispersion model to illustrate achievement of the emission reduction necessary to demonstrate attainment of the standard. If other emission parameters are used, they must have characteristics which produce equivalent or greater effective plume height than the stack characteristics indicated in Table A.

TABLE B.—FINAL EMISSION LIMITS AND EMISSION PARAMETERS FOR LEAD SMELTER

Source	Emission Limit (lb/hr)	Emission Parameters [1]				
		Emission height (mAGL)	Exit temperature (°K)	Exit velocity (m/s)	Volume flow (M³/s)	Stack radius (m)
Point (Stack) Sources:						
Baghouse for Crushing Plant Building	0.87	24.0	306	18.30	78.00	1.17
Baghouse for Blending, Bedding, and Pelletizing Buildings	0.26	24.0	294	18.30	208.69	1.90
Baghouse for Lurgi Sinter Machine and Sinter Sizing Buildings	0.36	24.0	294	18.30	69.69	1.24
Sinter Product Storage Silos	0.09	30.0	294	1.82	6.71	0.47
Baghouse for Blast Furnace Building	0.10	24.0	300	18.30	11.00	0.44
Baghouse for Lead and Silver Refinery Buildings	0.29	24.0	306	18.30	227.54	1.99
Baghouse for Zinc Fuming Plant Building	0.04	24.0	300	18.30	369.59	1.67
Zinc Fuming Plant Main Stack	0.89	61.6	346	13.59	92.47	1.39
Main Lead Smelter Stack	13.74	61.6	327	18.84	249.69	2.05
Process Fugitive (Building) Sources:						
Ore Unloading Area	0.069					
Crushing Plant Building	0.007					
Hammermill Building	0.006					
Blending Building	0.079					
Bedding Building	0.480					
Pelletizing Building	0.001					
Sinter Machine Enclosure	0.251					
Sinter Sizing Building	0.058					
Blast Furnace Enclosure	0.097					
Lead Refinery Building	0.556					
Silver Refinery Building	0.058					
Zinc Fuming Plant Balloon Flue	0.051					
Electric Arc Furnace Building	0.062					
Non-Process Fugitive (Area) Sources:						
Dust Handling of Hoppers from Control Devices	0.194					
Active Tailings and Traffic	0.150					
Ore Storage Area	0.375					
Tailings Area	0.060					
Unpaved Parking Lot	0.006					

[1] These emission parameters were used in EPA's dispersion model to illustrate achievement of the emission reduction necessary to demonstrate attainment of the standard. However, the capture of additional process fugitives will necessarily entail greater volume flows and therefore, greater effective plume heights and lesser ambient impacts than those modeled. If other emission parameters are used, they must have characteristics which produce equivalent or greater effective plume height than the stack characteristics indicated in Table B.

[FR Doc. 85-21639 Filed 9-9-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 133

[WH-FRL-2893-1]

Water Pollution Control; Secondary Treatment Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document clarifies the effective date of certain provisions of 40 CFR Part 133, Secondary Treatment Regulation (40 FR 36986, September 20, 1984) which reflected changes required by section 23 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 and corrects amendments to 40 CFR Part 133 published June 3, 1985 (50 FR 23382). It also provides, for the convenience of the readers, in a separate section the full text of the June 3, 1985 amendments as they should have appeared.

EFFECTIVE DATE: Sections 133.102 and 133.105 which were published September 20, 1984 and which became effective November 5, 1984, should have been characterized as interim rules. These sections plus amendments to §§ 133.101 and 133.103 were adopted as final as of July 7, 1985. Other amendments set forth in today's issue are effective upon publication. The closing date for permittees to request permit modifications to the percent removal requirements (50 FR 23385) has been extended 90 days from the effective date of this notice.

FOR FURTHER INFORMATION CONTACT: James Wheeler, Municipal Facilities Division (WH-595), Environmental Protection Agency, Washington, DC 20460, (202) 382-7369.

List of Subjects in 40 CFR Part 133

Water pollution control.

Dated: August 30, 1985.

Henry L. Longest, II,

Acting Assistant Administrator for Water.

For the reasons set forth in the preamble published June 3, 1985 (50 FR 23382) the EPA amended the percent removal requirements of the secondary treatment regulations. The EPA is today correcting typographical errors to those amendments (40 CFR Part 133) to read as follows:

PART 133—SECONDARY TREATMENT REGULATION

1. The authority for Part 133 continues to read as follows:

Authority: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501, Clean Water Act (Federal Water Pollution Control Act) Amendments of 1972, as amended by the Clean Water Act of 1977, and the Municipal

Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311 (b)(1)(B); 1314(d)(1) and (4); 1318; and 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 92–217; 95 Stat. 1623, Pub. L. 97–117.

§ 133.103 [Amended]

2. Section 133.103(d) is amended by changing the reference to "133.05(e)(4)(iii)" to read "133.105(e)(1)(iii)."

For the convenience of the reader the Agency is providing in this section the full text of the June 3, 1985 amendments as they should have appeared.

PART 113—SECONDARY TREATMENT REGULATION

1. The authority section in Part 133 reads as follows:

Authority: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Admendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d) (1) and (4), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

2. Section 133.101 is amended by adding the new paragraphs (m) and (n) as follows:

§ 133.101 Definitions.

* * * * *

(m) "Significantly more stringent limitation" means BOD_5 and SS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/l in the case of the secondary treatment limits for BOD_5 and SS), or the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure.

(n) "State Director" means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director.

3. Section 133.102 is not amended by this action, but the percent removal requirements for secondary treatment are restated here for completeness:

§ 133.102 Secondary Treatment.

* * * * *

(a) * * *

(3) The 30-day average percent removal shall not be less than 85%.

(4) * * * (iii) The 30-day average percent removal shall not be less than 85%.

(b) * * *

(3) The 30-day average percent removal shall not be less than 85%.

4. Section 133.103 is amended by adding a new paragraph (d) as follows:

§ 133.103 Special Considerations.

* * * * *

(d) *Less Concentrated Influent Wastewater For Separate Sewers.* The Regional Administrator or, if appropriate, State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 102.105(a)(3), 133.105(b)(3) and 133.105(e)(1)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater, (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and (3) the less concentrated influent wastewater is not the result of excessive *i/I*. The determination of whether the less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 CFR 35.2005(b)(6) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

5. Section 133.105 is not amended by this action, but the percent removal for treatment equivalent to secondary treatment is restated here for completeness:

§ 133.105 Treatment Equivalent to Secondary Treatment.

* * * * *

(a) * * *

(3) The 30-day average percent removal shall not be less than 65%.

(b) * * *

(3) The 30-day average percent removal shall not be less than 65%.

(e) * * *

(1) * * *

(iii) The 30-day average percent removal shall not be less than 65%

[FR Doc. 85–21539 Filed 9–9–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATION COMMISSIONS

47 CFR Part 83

[PR Docket No. 84–1237; FCC 85–354]

VHF Port Operations and Bridge-to-Bridge Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document requires that all VHF marine radios manufactured 18 months after its release automatically reduce power to one watt when tuned to the bridge-to-bridge channel. This action was recommended by the National Transportation Safety Board to avoid frequent violation of the Commission's rules requiring ship radio operators to reduce power on the navigational channel. The intent of the new rule is to improve the safety of ships by making the power reduction automatic. Another proposed rule permitting Government stations to use five additional VHF port operations channels allocated to non-Government stations is not being adopted because of the existing congestion on these channels which could not accommodate additional Government users.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 83

Communications equipment, Marine safety, Radio, Ship stations, Telephone, Bridge-to-bridge.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 2 and 83 of the rules to allow Government stations to use five additional port operations channels and to require VHF radios to automatically reduce power when tuned to the bridge-to-bridge channel, PR Docket No. 84–1237.

Adopted: July 9, 1985.
Released: July 12, 1985.

By the Commission.

1. In a letter dated April 10, 1984, the U.S. Coast Guard (USCG) requested that the rules be amended to allow Government stations access to five additional port operations channels. On November 29, 1984, the Commission released a Notice of Proposed Rule Making proposing to grant the VSCG's request (49 FR 47625). The same Notice also proposed that all shipboard transmitters capable of operation on the navigational (bridge-to-bridge) channels be required to automatically reduce to one watt or less when tuned to those channels.

2. Comments were filed by: James C. Acheson; American Commercial Barge Line Co. (ACBL); The American Waterways Operators, Inc. (AWO); Crowley Maritime Corporation; John C. Farmer; Lake Carriers' Association; Paul C. Mogensen; Motorola, Inc., National Party Boat Owners Alliance, Inc., New Orleans Port Safety Council; Offshore Marine Service Association; and the U.S. Coast Guard. Reply comments were filed by AWO and Crowley Maritime Corporation.

3. *Port Operations Channels.* The Commission's rules presently allow Government stations to communicate on three of the eleven VHF marine channels which are allocated for non-Government port operations use. Port operations include the movement, handling and safety of ships in or near ports, locks and waterways. Commenter Farmer supports the Coast Guard request and the Lake Carriers' Association has no objection to it. However, ACBL, AWO, Crowley Marine Corporation and Offshore Marine Services Association vigorously oppose Government use of an additional five VHF port operations channels. While sympathetic to the Coast Guard's concerns, they argue that the port operations channels are already heavily congested in most major U.S. port areas. Added utilization of the channels for Government operations is viewed as exacerbating the existing conditions. Rather than providing relief for the Government, these commenters see the proposal resulting in more congestion, interference and delays for all maritime communications users. ACBL notes that the Coast Guard provided no data or specific justification for its request. ACBL suggests that rather than, authorize five additional port operations channels for shared non-Government/Government use, the nature of the problem at particular locations should be studied. The specific use contemplated by Government stations and the potential for reciprocal sharing of existing Government allocations in particular port areas could then be addressed.

4. In light of the strong opposition of a significant sector of the concerned maritime industry and the arguments raised in their comments, we believe it is premature to permit shared use of five non-Government port operations channels by Government stations. Additional information and an analysis of the impact on particular port areas is appropriate before we proceed. Therefore, we are not amending the rules as proposed to allow shared Government use on five additional port operations channels. However, we invite those concerned with these issues to investigate the potential for non-Government/Government sharing of additional VHF port operations channels in areas where improved communications capabilities for all maritime users might be achieved.

5. *Bridge-to-bridge Communications.* The Vessel Bridge-to-Bridge Radiotelephone Act of 1972, as amended,[1] requires certain classes of vessels to be equipped with a radio station on the bridge or main control station so that one vessel can communicate with another vessel at close range concerning pertinent navigational matters. In the southern Louisiana section of the Mississippi River, the bridge-to-bridge channel is VHF marine Channel 67 (156.375 MHz). In other U.S. navigable waters, Channel 13 (156.650 MHz) is used for this purpose. VHF shipboard radios are generally authorized to operate at a maximum power of 25 watts. Although our rules currently specify that all ship radio operators must manually reduce power to one watt when their radios are tuned to the navigational frequency, many operators fail to do so, thus impairing the use of these safety channels by others nearby. Therefore, in the Notice we proposed to require automatic power reduction on Channel 13 with the provision of a manual override and solicited comments on including Channel 67. This proposal stemmed from a National Transportation Safety Board recommendation following the collision of the Pisces and the Trademaster on the lower Mississippi River on December 27, 1980. This proposal represents no change in operating procedure; it only provides a means of automatically accomplishing the required procedure. The Notice also proposed that the effective date be 18 months after adoption of an order implementing the changes and that equipment manufactured prior to this cut-off-date be "grandfathered" for ten years.

6. The views of the commenters vary considerably although all agree that something must be done about the excessive use of power on these channels. We have carefully considered all the comments concerning the proposal to require automatic power reduction when a shipboard radio is tuned to a bridge-to-bridge channel. Farmers's suggestion that older transmitters be allowed to be modified to comply with the new rule might be of some benefit to owners of obsolete sets if such modifications could be accurately and inexpensively made. However, the efficacy of such a modification is questionable, and the cost saving is not likely to be substantial. Considering the declining cost of many marine radios and with the proposed ten-year grandfather period, we do not believe this suggestion offers a practical solution.

[1] 33 U.S.C. 1201 et seq.

7. Some commenters recommended increased education and enforcement. However, we tried through a vigorous education and enforcement campaign to increase compliance with the one watt rule. Although these programs have proved effective, such efforts cannot be sustained indefinitely on a national basis. Further, we do not agree with Acheson's suggestion that ships which operate in the Great Lakes be allowed to permanently defeat the power reduction on Channel 13. Many Great Lakes vessels will operate other waterways at some time. Additionally, the United States and Canada are currently discussing the use of Channel 13 as the bridge-to-bridge channel on the Great Lakes.

8. Motorola recommended that we exempt portables because of their decreased range. Portables are typically low power devices, 6 watts or less, and their signal is limited by the height of the antenna. Motorola points out that because of these limitations the effective radiated power from a portable unit is substantially less than that of a fixed ship station. Further Motorola states that the space required for the additional switch and circuit is often not available in a hand-held unit. We have taken these arguments into consideration and agree that because of the limitations inherent to the portable marine radio there is no need to require them to automatically reduce power. In our experience, portables are neither an enforcement problem nor the source of interference on the navigational channel. While we are not requiring portable radios to automatically reduce power on Channel 13 and 67, we encourage manufacturers to provide this feature for the convenience of users where the configuration of the radio permits.

9. As stated in the Notice, in order to provide marine radio manufacturers with enough time to make design changes, to terminate production, and to dispose of stocked equipment which does not comply with the new rule, we proposed that the rule requiring all newly manufactured VHF ship station transmitters to automatically reduce power to one watt or less when tuned to Channel 13 not become effective until 18 months after it is adopted. There was no opposition to this proposal. Therefore, for the reasons indicated in the Notice, the 18 month effective date is being adopted.

10. We also proposed a ten-year "grandfather" period to reduce the impact on pleasure boaters and infrequent radio users. The intent was to allow licensees ample time to depreciate

their radios. Because the average life of a marine radio is seven years, a ten-year "grandfather" period will minimize the impact on pleasure boaters and other vessels not required to be equipped with marine radios. It will also induce a steady decline in the incidences of high power operations on the bridge-to-bridge channel and ultimately ease the detection of violations of this important safety requirement. For the reasons stated above, we are amending the rules to require VHF marine radio transmitters when tuned to Channel 13 to automatically reduce power to one watt or less. We also are allowing 18 months prior to implementation of the new rule's effective date, and an additional ten-year "grandfather" period for the use of equipment manufactured prior to this effective date.

11. Although we did not specifically include Channel 67 in the proposed rules, we requested comments on whether the automatic power limitation should also apply to Channel 67. The lower Mississippi River is one of the busiest waterways in the nation and abuse of the one watt power limit has been common on the bridge-to-bridge frequency used in this area. Some commenters opposed including Channel 67 within the proposed rule. These commenters argue that the use of Channel 67 as the bridge-to-bridge channel in this single area is essentially a local problem, better suited to enforcement and education efforts. They argue that it would be unreasonable to derogate the use of the channel in other waters. The Coast Guard and New Orleans Port Safety Council state that the automatic power reduction feature on Channel 67 would be a step toward improving safety by eliminating a persistent hazard.

12. We believe that Channel 67 should be included in the automatic power reduction rule. This action is consistent with the National Transportation Safety Board's request [2] and is supported by both the U.S. Coast Guard and the New Orleans Port Safety Council. Inclusion of Channel 67 for the lower Mississippi River will result in the same benefits described above which will be derived from automatic power reduction on Channel 13. Recent monitoring by our field offices show relatively low levels of activity on Channel 67 in other U.S. waters. Therefore, any derogation of the use of Channel 67 does not appear to be significant. Although some commenters argued in favor of increased enforcement and education efforts, such efforts cannot be maintained indefinitely. Accordingly, we believe that safety considerations outweigh concerns regarding the use of Channel 67 in other areas.

Regulatory Flexibility Act—Final Analysis

13. *Need for and Purpose of Rules.* The current requirement that all vessels reduce power to one watt when tuned to a navigational frequency is regularly violated when not constantly enforced. The purpose of ths rule making is to maximize use of the bridge-to-bridge channel to increase the safety of vessels navigating within close proximity of each other.

14. *Issues Raised by the Public in Response to the Initial Analysis.* None.

15. *Alternatives that would lessen impact.* Specific suggestions raised by commenters in the proceeding inclued excluding vessels on the Great Lakes, eliminating the final implementation date, raising the power limitation, and not adopting the rule but increasing enforcement of current regulations. All these alternatives were carefully considered and discussed above. In order for this new rule to be effective and enforceable, it must be simple and clear. The proposed exclusions or exceptions would render such a rule nearly useless. Increased enforcement of the existing rules was the first solution attempted, but such high levels of enforcement activities cannot be maintained indefinitely without seriously depleting the agency's resources elsewhere. Although enforcement will continue, greater resources can not be dedicated in this area in upcoming years.

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the pubic.

17. Accordingly, it is ordered, that under the authority contained in Sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(c) and (r), the Commission's rules ARE AMENDED as set forth in the attached Appendix, effective January 21, 1987.

18. It is furthr ordered, that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

19. It is further ordered, that this proceeding is terminated.

20. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 83 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 83.104 is amended by revising footnote 1 to read as follows:

§ 83.104 Operating controls.

* * * * *

[1] Ship station transmitters, except hand-held portable transmitters, manufactured after January 21, 1987 must automatically reduce the carrier power to one watt or less when tuned to the frequency 156.375 or 156.650 MHz. All ship station transmitters, except portable ship station transmitters, used after January 21, 1997, must automatically reduce power as described above. A manual override device must be provided which when held by the operator will permit full carrier power operation on Channels 13 and 67. Portable ship station transmitters must be capable of reducing power to one watt, but need not do so automatically.

3. Section 83.134 is amended by adding new paragraph (e), revising paragraph (f) and footnotes 1 through 4, and removing footnote 5, to read as follows:

§ 83.134 Transmitter power.

* * * * *

(e) Marine utility ship station transmitters and portable ship station transmitters using G3E emission in the band 156–162 MHz must not exceed a carrier power of 10 watts and must be capable of reducing the carrier power to one watt or less.

(f) Ship station transmitters using G3E emission in the band 156–162 MHz must:

(1) Have a carrier power of a least 8 watts and not more than 25 watts which for type acceptance purposes shall be determined at a primary supply voltage of 13.6 volts DC, ± 1% for equipment designed to employ a conventional 12 volt lead acid storage battery as a source of primary power;

---

[2] Marine Accident Report, "Collision of the U.S. Tankship Pisces with the Greek Bulk Carrier Trademaster Mile 124, Lower Mississippi River," December 27, 1980, NTSB-MAR-82-2. (PB82-916402).

(2) Be capable of reducing the carrier power to one watt or less [1,2].

(3) Automatically redice the carrier power to one watt or less when tuned to the frequency 156.375 or 156.650 MHz [1,2,3,4]. A manual override device must be provided which when held by the operator will permit full carrier power operation on 156.375 or 156.650 MHz.

* * * * *

4. Section 83.351 is amended by adding a sentence to the end of paragraph (b)(36) to read as follows:

§ 83.351 Frequencies available.

* * * * *

(b) * * *

(36) * * * A power of not more than one watt must be used except under emergency conditions.

* * * * *

§ 83.709 [Amended]

5. Section 83.709 is amended by removing paragraph (a), and redesignating paragraphs (b) and (c) as (a) and (b).

6. Section 83.713 paragraphs (b), (d) and (e) are removed, paragraph (c) is redesignated as (b), and paragraph (a) is revised to read as follows:

§ 83.713 Bridge-to-bridge transmitter.

(a) The transmitter referred to in § 83.709 shall be capable of effective transmission of G3E emission on the navigational frequency 156.650 MHz.

* * * * *

7. Section 83.715 is amended by removing the note and its designator in paragraph (c)(7)(iv) and paragraph (d) and revising paragraph (c) introductory text to read as follows:

§ 83.715 Bridge-to-bridge receiver.

* * * * *

(c) The recommended technical standards for the bridge-to-bridge receiver are the following:

* * * * *

[FR Doc. 85-21254 Filed 9-9-85; 8:45 am]
BILLING CODE 6712-01-M

[1] Full duplex tranmitters used only on public correspondence duplex channels and only as additional equipment to a VHF ship station in the Great Lakes and equipped with a transmitter which otherwise meets existing rules, statutes, and international agreements, are not required to reduce to one watt.

[2] If a remote control unit is used with a station transmitter manufactured prior to September 1, 1979, or installed prior to March 1, 1980, the remote control unit need not have the capability of reducing its output power to one watt or less. However, this provision does not waive the requirement to limit transmissions on Channels 13 and 67 to an output power of one watt, or the requirement to use minimum output power of one watt whenever possible.

[3] Unless specifically excluded, applicable to transmitters manufactured after January 21, 1967, and to all transmitters used after January 21, 1997.

[4] Portable transmitters excluded.

Proposed Rules

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-8]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

Correction

In FR Doc. 85-20362 appearing on page 34495 in the issue of Monday, August 26, 1985, make the following correction: In the first column of the table, Docket No. "2476" should read "24676".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 85-AGL-12]

Proposed Establishment of Transition Area; Knox, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Knox, Indiana, transition area to accommodate a new VOR Runway 18 instrument approach procedure to Starke County Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before October 18, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new VOR Runway 18 instrument approach procedure requires that the FAA designate airspace to ensure that the procedure wil be contained within controlled airspace.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition airspace area near Knox, Indiana.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety/transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Knox, IN

That airspace extending upward from 700 feet above the surface, within a 6.5 mile radius of Starke County Airport (lat. 41°19'51" N., long. 86°39'44" W.) and within 4 miles each side of the Knox VORTAC 337 radial, extending from the 6.5 mile radius area to 8.5 miles northwest of the airport.

Issued in Des Plaines, Illinois, on August 27, 1985.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 85-21514 Filed 9-9-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Labor Programs

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule: Reopening of comment period.

SUMMARY: The proposed rule would implement the 1978 amendment to section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by the Department of Labor. The Department of Labor today reopens the public comment period for the proposed rule.

DATES: To be assured of consideration, comments must be in writing and must be received on or before October 25, 1985. Comments should refer to specific sections in the regulation. Commenters who responded during the initial comment period need not resubmit their comments.

ADDRESSES: Comments should be sent to William J. Harris, Director, Office of Civil Rights, 200 Constitution Avenue NW., Room N-4603, Washington, DC 20210; Telephone (202) 523-8927.

Comments received will be available for public inspection in Room N-4603, 200 Constitution Avenue NW., from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Buck Ethredge, Chief, Division of Policy, Standards and Procedures, Office of Civil Rights, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8905 (VOICE) or 523-7090 (TTY).

SUPPLEMENTARY INFORMATION: On July 2, 1985, the Department of Labor published in the **Federal Register** (50 FR 27298) a proposed rule concerning nondiscrimination on the basis of handicap in programs and activities conducted by the Department. The public comment period of 45 days expired on August 16, 1985. Several commenters requested that the public comment period be extended due to the importance of the subject, and the fact that the previous period was in the summer when many people were out of town.

Accordingly, the period for commenting on the proposed regulation is being reopened.

Signed at Washington, D.C., this 3rd day of September 1985.

William E. Brock,

Secretary of Labor

[FR Doc. 85-21600 Filed 9-9-85; 8:45 am]

BILLING CODE 4510-23-M

Mine Safety and Health Administration

30 CFR Ch. I

Task Force Report on Two-Entry Mining Systems

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Agency Decision on Task Force Report.

SUMMARY: The Mine Safety and Health Administration (MSHA) will include, as appropriate, recommendations from the Agency's Task Force Report on Two-Entry Mining Systems in the coal mine safety standards currently under review by the Agency.

ADDRESS: Any comment on the Agency decision may be sent to Patricia W. Silvey, Director, Office of Standards, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 621, Ballston Towers #3, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 28, 1985, MSHA established a task force to study two-entry mining systems in underground coal mines. On June 19, 1985, MSHA issued the Task Force Report, which contained 35 recommendations for two-entry longwall mining systems of which only three related solely to two-entry mining systems. The remainder were potentially applicable to all longwall mining systems.

On July 18, 1985, MSHA held a meeting in Denver, Colorado to brief the public on the Agency's Task Force Report. At that meeting and in subsequent response to the report, members of the mining public suggested that the Agency include the recommendations in the appropriate coal mine safety standards under review to afford opportunity for comment through the rulemaking process. The Agency agrees that this approach would allow the opportunity for full evaluation of the recommendations.

In each appropriate rulemaking action, the Agency will specifically solicit comment and data on: (1) The merits of the Task Force recommendations; (2) the applicability of the recommendations to all longwall mining systems; and (3) if relevant, whether the Task Force recommendations would be more appropriate as criteria or as mandatory standards applicable to all mines.

Dated: September 4, 1985.

David A. Zegeer,

Assistant Secretary for Mines Safety and Health.

[FR Doc. 85-21533 Filed 9-9-85; 8:45 am]

BILLING CODE 4510-43-M

POSTAL SERVICE

39 CFR Part 111

Guidance and Procedures on Issuance of or Refusal To Issue Postage Meter Licenses

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to add to its regulations specific guidance to a postmaster in the issuance of or refusal to issue a postage meter license and to establish procedures for a

customer who wishes to appeal a decision refusing to issue a meter license. Procedures similar to those proposed here already apply to the situation where an existing postage meter license is to be revoked. For the sake of consistency and fairness it seems reasonable to aply basically the same procedures when a customer applies for a postage meter licenese.

DATE: Comments must be received on or before October 10, 1985.

ADDRESS: Written comments should be mailed or delivered to the Office of Mail Classification, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West, SW, Washington, DC 20260–5371. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: F. E. Gardner (202) 245–5756.

SUPPLEMENTARY INFORMATION: Section 144.21 of the Domestic Mail Manual states that a customer may submit an application for a postage meter license and that on approval of the application, the postmaster will issue a license. There is no specific regulatory guidance for the postmaster to rely on in the issuance or the refusal to issue a license, and no appeal procedures for customers to follow in the event of refusals to which they take exception. Since similar guidance and appeal procedures exist for the revocation of an existing postage meter license, it seems reasonable to provide such guidance and rules for postmasters and customers in dealing with applications for licenses.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 144—POSTAGE METERS AND METER STAMPS

2. In 144.2 revise .21 to read as follows:

144.2 Meter License

.21 Application

.211 Procedures

A customer may obtain a license to use a postage meter by submitting Form 3601–A, *Application for a Postage Meter License* (or a form supplied by the manufacturer containing the same information and format), to the post office where the metered mail will be deposited. No fee is charged. On approval, the postmaster will issue the license.

.212 Refusing to Issue A Meter License

A postmaster may refuse to issue a meter license under any of the following circumstances:

a. The customer has submitted a falsified application for a license.

b. Within five years immediately preceding submission of the application, the customer violated a regulation relating to the care or use of a meter, resulting in revocation of a meter license.

c. There is substantial reason to believe that the meter will be used in violation of the regulations governing the use of postage meters.

.213 Notification of Refusal to Issue

When a postmaster refuses to issue a meter license pursuant to 144.212, the postmaster will notify the customer in writing, stating the reason.

.214 Appeal Procedures

To appeal the refusal to issue a meter license, a customer must file a written statement of objection within 10 days after notification. The appeal will be sent to the Office of Mail Classification, Washington, DC 20260–5360, for resolution. The Office of Mail Classification will notify the customer of the decision through the postmaster. The postmaster will note the date of the decision on the appeal on the Form 3601–A. Where the refusal to issue a license is sustained by the Office of Mail Classification, a copy of the decision will be retained for a year.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–21569 Filed 9–9–85; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 111

Withdrawal of Proposed Rule on Designating of Serving Post Offices for Acceptance of Electronic Computer Originated Mail (E-COM)

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: By a document published elsewhere in this issue the Postal Service is revoking the interim regulations in the Domestic Mail Manual which govern E-COM service. Revocation of the interim regulations necessarily requires withdrawal of any proposal to amend those regulations. Such a proposal was published in the **Federal Register** on October 21, 1983 (48 FR 48850), with the comment period extended (48 FR 54081). Accordingly, the Postal Service hereby withdraws the above proposal to amend the interim regulations.

EFFECTIVE DATE: Withdrawal effective September 10, 1985.

SUPPLEMENTARY INFORMATION: The historical background and further reasons for withdrawal of the proposed rule appear elsewhere in this issue in a document revoking the Postal Service's interim regulations governing E-COM service.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–21570 Filed 9–9–85; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[WH–FRL–2895–1]

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank System

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule: correction.

SUMMARY: This document corrects a proposed rule for hazardous waste storage and treatment tanks under the Resource Conservation and Recovery Act (RCRA) that appeared in the **Federal Register** on Wednesday, June 26, 1985, (50 FR 26444–26504). This action is necessary to correct typographical errors in citations and cross references.

DATE: Comments on this correction to the proposed rule must be submitted on or before October 10, 1985.

ADDRESSES: Comments may be mailed to the Docket Clerk [Docket No. 3004, Revised Tank System Standards], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S-212(C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC., from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-9346 (toll Free) or (202) 382-3000 in Washington, D.C., or William J. Kline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C., 20460, (202) 382-7917.

SUPPLEMENTARY INFORMATION: In the Federal Register of Wednesday, June 26, 1985, EPA proposed amending 40 CFR 262.34 to require full secondary containment for tanks at generator facilities that are used for accumulation of hazardous waste for 90 days or less. As stated in the preamble (50 FR 26456), EPA believes that there is little difference between these 90-day accumulation tanks and other hazardous waste storage tanks. As such, the Agency proposed to revise the accumulation standards by requiring full secondary containment for tanks, in order to provide better protection of human health and the environment

During the course of holding public hearings on the proposed standards, it came to EPA's attention that the proposed rule did not clearly indicate the extent to which full secondary containment was being proposed for 90-day accumulation tank facilities. The question is whether full secondary containment for 90-day accumulation tank facilities is required for the tank only, or whether secondary containment is required for the ancillary equipment as well.

Although the chart in the proposal (50 FR 26454) suggested that secondary containment was intended for the entire tank system, and the cost and economic impact analyses (50 FR 26492) include the cost of secondary containment for the tank as well as the ancillary equipment, the cross reference (50 FR 26496) did not specifically include ancillary equipment as being required to be provided with secondary containment.

As for other hazardous waste storage tank systems under interim status and requiring permitting, it was and remains EPA's intention that the requirement for secondary containment for 90-day accumulation tank facilities be applicable to the tank system, i.e., to both the tank as well as the ancillary equipment.

Accordingly, in the Federal Register of Wednesday, June 26, 1985, on page 26496, column one, first paragraph, that portion of proposed § 262.34(a)(2) that reads "§ 265.193(b)-(c)" is corrected to read "§ 265.193(b)-(d)."

Jack W. McGraw,

Acting Assistant Administrator.

[FR Doc. 85-21547 Filed 9-9-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Technical Data

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment.

SUMMARY: DoD FAR Supplement Subpart 227.4 and related clauses in DFARS Part 252 are being revised to comply with Pub. L. 98-525, the Defense Procurement Reform Act, 1984, and Pub. L. 98-577, the Small Business and Federal Procurement Competition Enhancement Act. The coverage has now been finalized by the DAR Council and is being published as a proposed rule for public comment.

DATE: Written comments on this proposed rule must be received by October 9, 1985. Please cite DAR Case 84-187 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Executive Secretary, DASD(P-DARS) c/o OUSDRE(M&RS) Room 3D139 Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council DASD(P-DARS) c/o OUSDRE(M&RS), Room 3D139 Pentagon, Washington, D.C. 20301-3062, Telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION: The proposed coverage consists of a complete rewrite of DFARS Subpart 227.4 to accommodate language in Pub. L. 98-525, the Defense Procurement Reform Act, Pub. L. 98-577, the Small Business and Federal Procurement Competition Enhancement Act. Major changes are as follows:

a. The coverage has been reorganized to group related topics closer together and to clarify the regulation.

b. The phrase "developed at private expense" has been defined. This definition establishes the legitimate proprietary interest of the contracting parties as required by Section 2320 of Pub.L. 98-525.

c. The Definition of "limited rights" has been revised to clarify the Government's right to have an independent third party review limited rights technical data for the Government.

d. New coverage has been added defining license rights and implementing guidance on the acquisition of license rights and directed licensing of technology. Related clauses have been added and revised.

e. The policy in Public Law 98-525, Section 1202(6) has been implemented.

f. New coverage has been added concerning the expiration of limited rights legends and the use of options to acquire rights in technical data.

g. The coverage on computer software has been merged into the coverage on technical data where appropriate.

h. The "predetermination of rights in technical data" procedures have been revised and renamed "prenotification of rights in technical data and computer software."

Regulatory Flexibility Act

The proposed change to DFARS Subpart 227.4 appears not to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it imposes no new requirements which would require such entities to change their business practices, incur additional costs or otherwise affect their competitive position. The rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Owen L. Green,

Acting Executive Secretary, Defense Acquisition, Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 227 and 252 be amended as follows:

PART 227—PATENTS, DATA AND COPYRIGHTS

1. The authority citation for 48 CFR Part 227 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Subpart 227.4, consisting of sections 227.470 through 227.480, is revised to read as follows:

Subpart 227.4—Rights in Data and Copyrights

Sec.
227.470 Scope of subpart.
227.471 Definitions.
227.472 Policy.
227.472–1 Rights in technical data and computer software.
227.473 Procedures for technical data and computer software.
227.473–1 Identification of limited rights in technical data and restricted rights in computer software.
227.473–2 Obtaining rights in technical data and computer software.
227.473–3 Other technical data procedures.
227.473–4 Other computer software procedures.
227.474 Delivery of technical data.
227.474–1 Data requirements.
227.474–2 Deferred delivery and deferred ordering.
227.474–3 Technical data certifications.
227.474–4 Identification of technical data.
227.474–5 Technical data—withholding of payment.
227.474–6 Warranties of technical data.
227.474–7 Delivery of technical data to foreign governments.
227.475 Contracts for acquisition of special works.
227.476 Contracts for acquisition of existing works.
227.477 Contracts limiting Government's right of publication for sale to the general public.
227.478 Architect-Engineer and construction contracts.
227.478–1 General.
227.478–2 Acquisition and use of plans, specifications, and drawings.
227.478–3 Contracts for construction supplies and research and development work.
227.478–4 Mixed contracts.
227.478–5 Approval of restricted designs.
227.479 Copyrights.
227.480 Rights in technical data and software developed under the Small Business Innovation Research Program (SBIR Program).

Subpart 227.4—Rights in Data and Copyrights

227.470 Scope of subpart.

(a) This subpart sets forth Department of Defense policies and procedures and prescribes solicitation provisions and contract clauses concerning rights in technical data, other data, computer software, and copyrights as well as requirements for the acquisition of technical data and computer software. This subpart also sets forth policies and procedures and prescribes solicitation provisions and contract clauses concerning data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) This subpart does not encompass rights in computer software acquired under GSA ADP schedule contracts. Such rights are governed by the terms of the GSA contracts.

227.471 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic process on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which: (a) Documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information regardless of the form or method of recording.

"Developed at private expense", as used in this subpart, means that completed development was accomplished without direct Government payment, at a time when no Government contract required performance of the development effort, and was not developed as a part of performing a Government contract. The word "developed", as used in the phrase "developed at private expense", means brought to the point of practical application; i.e., to be considered "developed" an item or component must have been constructed, a process practiced, or computer software used, and in each case it must have been tested so as to clearly demonstrate that it performs the objective for which it was developed. When, in applying these criteria, an item, component, process or software package does not meet the test because the entire item, component, process, or software package was not developed at private expense, separate elements thereof which do meet the criteria will be considered to have been developed at private expense. Further, in applying the foregoing criteria, when an item, component, process or computer software which has been developed at private expense is modified or revised to meet Government requirements specified in a contract, modification of the item, component, process or computer software shall not be considered to have been developed at private expense.

"License rights", (a) as used in section 227.481, i.e., SBIR program contracts, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only; and

(b) as used elsewhere in this subpart, means rights of the Government to use, duplicate, or disclose, in whole or in part and in any manner, for purposes stated in the contract or in a separate licensing agreement, technical data furnished with limited rights and computer software furnished with restricted rights, and to have or permit others to use such technical data or computer software on behalf of the Government for such purposes.

"Limited rights", (a) as used in section 227.481, i.e., SBIR program contracts, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be: (1) Released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government; and

(b) as used elsewhere in this subpart, means rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be: (1) Released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (3) used by a party other than the Government, except for:

(i) Emergency repair or overhaul work, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided*, that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure;

(ii) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of paragraph (b)(1) above; or

(iii) Release to a contractor retained by the Government to review technical data, provided that the release or disclosure thereof shall be subject to a prohibition against further use, release, or disclosure.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation into which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provisions that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in paragraphs (a) to (d) above that are listed or described in a contract or in a license agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of recording, of a scientific or technical nature. Technical data includes computer software documentation, but does not include computer software or financial, administrative, cost, pricing or management data, or other information incidental to contract administration.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that which has not been released to the public nor furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

227.472 Policy.

(a) The Department of Defense shall acquire only such technical data and computer software and rights therein as are essential to meet the Government's missions, including the interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(b) Consistent with section 1202(6) of Pub. L. 98–525, the Department of Defense shall not require an offeror, as a condition for obtaining a contract, to provide technical data pertaining to the design, development, or manufacture of existing products or processes developed at private expense and offered or to be offered for sale, license, or lease in substantial quantities to the public at established catalog or market prices; unless such data is necessary for the Government to operate or maintain the product or use the process if obtained as an element of performance under a contract. However, contracting officers may negotiate to obtain such technical data with the right to disclosure and use it if acquisition of the technical data would be advantageous to the Government. Likewise, an offeror's willingness to provide this technical data, along with appropriate rights, may be evaluated as part of a source selection.

(c) There are many purposes for acquiring technical data or computer software and the rights therein. Examples of purposes for which the rights to technical data or computer software may be used are: development of new sources for existing weapon systems, competitive reprocurement purposes, procurement to enhance industrial mobilization, modification, upgrade, non-emergency overhaul, and in-house manufacture. However, before a decision is made to obtain rights in technical data or computer software, in accordance with 227.473–2, the contracting officer shall determine that it is in the best interest of the Government.

(d) Any contract that requires technical data or computer software and rights therein shall identify these items in the contract schedule as separately priced line items, shall provide a separate delivery schedule, when applicable, and shall include the appropriate rights in technical data or computer software clauses.

227.472–1 Rights in technical data and computer software.

(a) *Unlimited Rights Technical Data.* Technical data in the following categories shall be acquired with unlimited rights:

(1) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance. This category excludes technical data pertaining to items, components or processes developed at private expense;

(3) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) Manuals of instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) Technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(b) *Limited Rights Technical Data.* (1) Except as provided in paragraph (a) above, unpublished technical data pertaining to items, components, processes, or computer software developed at private expense will be acquired with limited rights, provided that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software. A claim to limited rights will be honored only as long as the data continues to meet these requirements.

(2) Technical data pertaining to items, components, or processes developed at private expense may be called for, required, or otherwise furnished in accordance with policy in paragraphs (b)(1), (3), (4), (5), and (6) above and, as such, it will be acquired with unlimited rights.

(3) A subcontractor may furnish limited rights technical data directly to the Government rather than through the prime contractor.

(c) *Unlimited Rights Computer Software.* (1) Computer software in the following categories shall be acquired with unlimited rights:

(i) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract or subcontract, or generated as a necessary part of performing a Government contract or subcontract;

(iii) Computer data bases, prepared under a Government contract or subcontract, consisting of (A) information supplied by the Government, (B) information in which the Government has unlimited rights, or (C) information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; and

(v) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(2) When the Government has unlimited rights in computer software, (i) it has the unlimited rights in the associated computer software documentation, and (ii) no payment shall be made to a contractor for using such software in performance of a Government contract or for later delivery to the Government of such software, *Provided, however,* That the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(d) *Restricted Rights Computer Software.* (1) The Department of Defense shall acquire only such rights to use, duplicate, and disclose computer software developed at private expense as necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer software developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.471.

(2) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.473–2(g).

(3) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.471, and will not be used for preparing the same or similar computer software.

(4) Commercial computer software and related documentation developed at private expense may be leased or a license to use may be purchased by the Government subject to the restrictions in (b)(3)(i) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

(5) A subcontractor may furnish restricted rights computer software directly to the Government rather than through the prime contractor.

(e) *Solicitation Provision and Contract Clause.* The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(1) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 227.473–2(a);

(2) When existing works are to be acquired in accordance with section 227.476;

(3) When special works are to be acquired in accordance with section 227.475;

(4) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico;

(5) When performance will be limited solely to architect-engineer services or construction;

(6) When the contract is awarded under the DoD Small Business innovation Research Program (SBIR Program).

(f) *Contract Schedule Items Requiring Experimental, Developmental or Research Work.* The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227–7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227–7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

227.473 Procedures for technical data and computer software.

227.473–1 Identification of limited rights in technical data and restricted rights in computer software.

(a) *Prenotification of Rights in Technical Data and Computer Software.* (1) In order for the Government to make informed judgments concerning the competitive reprocurement potential of privately developed items, components processes or computer software that may be delivered under a resultant contract, offerors shall identify to the maximum extent practicable in their response to solicitations such privately developed items, components, processes, or computer software and the associated data which they:

(i) intend to deliver with limited or restricted rights;

(ii) intend to deliver with unlimited rights; or

(iii) have not yet determined will be delivered with unlimited, limited or restricted rights.

If delivery of technical data or computer software under the contract is anticipated, the provision at 252.227–7035, Prenotification of Rights in Technical Data and Computer Software, shall be included in the solicitation.

(2) This requirement for prenotification shall not be construed as an agreement concerning rights in technical data or computer software identified by an offeror except as specifically provided by an agreement in a resultant contract.

(b) *Notice of Certain Limited or Restricted Rights.* (1) If continuing information is desired under a contract about a contractor's intention to use in the performance of the contract any item, component, process or computer software for which technical date would be subject to limited rights or computer software would be subject to restricted rights, the contractor may be required to advise the contracting officer of this fact promptly. If possible, the schedule should indicate the specific areas to which limited or restricted rights data is of concern and the notice requirement should only address those areas.

(2) When the provision at 252.227–7035, Prenotification of Rights in Technical Data and Computer Software, is included in a solicitation, the clause at 252.227–7013 with its Alternate I shall be included in any resultant contract.

(3) Under this clause, the contractor is not required to advise the contracting officer as to items, components, processes or computer software for which notice was previously given in the same contract pursuant to the prenotification procedure (see 227.473–1(a)), or with respect to standard commercial items that are manufactured by more than one source of supply. Also, the contractor need not obtain contracting officer approval to use any item, component, process or computer software in the performance of the contract. If Government control on the contractor's use of privately developed items, components, processes or computer software is desired, special provisions must be included in the contract.

(4) Subsequent to contractor notification, if the contracting officer agrees that certain technical data is subject to limited rights or certain computer software is subject to restricted rights, the contracting officer may then determine whether to negotiate for the purchase of unlimited rights in such data or to adopt another suitable alternative. Such alternatives may include modifying the specifications so as not to require or permit use of the privately developed item, component, process or computer software; or negotiating for the acquisition of rights in technical data using any of the methods addressed in 227.473–2.

227.473–2 Obtaining rights in technical data and computer software.

Various techniques for obtaining rights in data are available. These approaches include specific acquisition of unlimited rights in technical data, licensing of rights, obtaining rights through options in the contract and negotiating a time limitation on limited or restricted rights in data. Contract clauses and the schedule establish the type and form of technical data and computer saftware to be delivered.

(a) *Specific Acquisition of Unlimited Rights in Technical Data.* (1) Notwithstanding section 227.472–1 (b) and (d) or any other provisions of this section, the Government may acquire unlimited rights in any limited rights technical data. The contracting officer shall insert the clause at 252.227–7015, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights.

(b) *Acquisition of License Rights in Technical Data and Computer Software.* (1) The acquisition of license rights is the acquisition by the Government of a license to use limited rights data or restricted rights computer software for the purpose(s) stated in the contract or in the license agreement under which the data was furnished. License rights do not grant the Government the right to have or permit others to use such data or software unless specifically provided for in the contract or agreement.

(2) Technical data and computer software acquired with license rights shall not be released outside the Government unless the recipient of the data agrees in writing to protect the data from unauthorized disclosure and to use the data only for the purpose(s) for which it was furnished. When license rights technical data or restricted rights computer software is contemplated for use in a future contract, the contracting officer shall include in the solicitation a statement that license rights data is contemplated for use in the proposed action and that recipients of such data shall be required to sign nondisclosure and non-use agreements. Contracting officers may consider for use non-disclosure and non-use agreements provided by the originators of the data. When technical data or computer software is to be acquired under a contract with license rights, the clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate IV shall be included in the contract.

(c) *Direct Licensing.* (1) Another method of enhancing competitive acquisition of items, components, processes, or computer software developed at private expense is to require contractors to directly transfer to another source data and technical assistance to enable the second source to produce the item, component, process or computer software. This method is similar to Leader Company contracting set forth at FAR 17.4 It permits contractors to retain direct control over use of their limited and restricted rights data being transferred to the second source.

(2) When direct licensing is to be used, the clause at 252.227–7036, Direct Licensing, shall be included in the solicitation and contract. This clause may be modified as appropriate to the objectives and circumstances of the specific acquisition.

(d) *Options.* Contracting officers are authorized to include options in contracts to acquire technical data and computer software and rights therein plus options to require contractors to directly license technology to other sources. For example, an option may be included in a contract to acquire unlimited rights in limited rights technical data pursuant to the clause at 252.227–7015, Rights in Technical Data—Specific Acquisition, or to acquire license rights in limited rights technical data pursuant to the clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate IV. An option may also be included in a contract to establish a time period for the expiration of limited rights or restricted rights legends pursuant to the clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate III, or for requiring a contractor to directly license technology, including technical data and computer software, to another manufacturer for the purpose of establishing an additional source of supply pursuant to the clause at 252.227–7036, Direct Licensing.

(e) *Expiration of Limited and Restricted Rights.* (1) Consistent with section 2320(c), Title 10, of the United States Code, the Department of Defense may negotiate a time limitation on limited rights in technical data. Additionally, a time limitation on restricted rights in computer software

may be negotiated. When a time limitation is to be negotiated, the negotiation objective shall not exceed 7 years.

(2) Time limits shall be negotiated on a case-by-case basis. This negotiated period shall balance contractor economic interests in the data with the Government's need for competition and an enhanced defense industrial base. Factors that should be considered in determining a reasonable time period are:

(i) the anticipated Government need for reprocuring or modifying contract items and components.

(ii) the useful life of the technology incorporated in the manufacture, operation and maintenance of these items and components,

(iii) the contractor's return on investment in these items and components, and

(iv) the Government benefits to be realized by competing future acquisitions and modifications of these items and components.

(3) The time period and the type of rights to be obtained by the Government shall be specified in the contract.

(4) If a decision is made to establish a time period for the expiration of limited or restricted rights legends, the clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate III, shall be included in solicitations and any resultant contract. The time period and the expiration date of the legends shall be specified in the contract. Each piece of data furnished under the contract with limited or restricted rights shall be marked with the special legend and expiration date set forth in Alternate III to the basic clause at 252.227–7013, Rights in Technical Data and Computer Software.

(5) If it is determined that only a portion of the limited or restricted rights data delivered under a contract will be acquired with a time period for the expiration of the special legends, the contract shall specifically identify that portion of the data, and Alternate III to the basic clause at 252.227–7013, Rights in Technical Data and Computer Software, may be appropriately modified to limit its application only to that portion.

(f) *Acquisition of Rights in Technical Data Furnished on a Restricted Basis in Support of a Proposal.* When the Government contemplates awarding a contract based upon a proposal that was submitted on a restricted basis, the contracting officer shall ascertain whether to acquire rights to use all or part of the technical data furnished with the proposal. If such rights are to be acquired, the contracting officer shall negotiate with the offeror in accordance with the procedures set forth in section 227.473.

(g) *Acquisition of Rights in Technical Data for Foreign Sources in Contracts to be Performed Outside the United States.* Normally, the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see section 227.475), contracts for existing works (see section 227.476), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding any other provisions in this Subpart, the clause may be modified to meet the requirements necessary for and peculiar to the foreign procurement, *provided* it agrees with the policies and principles in this Subpart.

227.473–3 Other technical data procedures.

(a) *Establishing the Government's Rights to use Technical Data.* All technical data shall be acquired subject to the rights established in the appropriate Rights in Technical Data clauses. Except as provided in FAR Section 48.105 and in FAR Subpart 36.6 no other clauses, directives, standards, specifications or other implementation shall be included, directly or by reference, to enlarge or diminish such rights. The Government's acceptance of technical data subject to limited rights does not impair any rights in such data to which the Government is otherwise entitled or impair the Government's right to use similar or identical data acquired from other sources.

(b) *Marking of Technical Data.* (1) Technical data delivered to the Government shall be marked in accordance with 227.474–4. Each piece of technical data submitted with limited rights shall be marked with—

(i) The authorized restrictive legend,

(ii) An indication (for example, by circling, underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable, and

(iii) An explanation of the indication used to identify limited rights data. The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to paragraphs (b)(2) or (b)(3) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on data except in accordance with the clause at 252.227–7013, Rights in Technical Data and Computer Software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402, are not considered restrictive markings. When the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the clause at 252.227–7018, Restrictive Markings on Technical Data and Computer Software, shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227–7018 the following actions are available to insure proper marking of data:

(i) The procedures of the clause at FAR 252.227–14, Validation of Restrictive Markings on Technical Data, may be invoked if the contractor or any subcontractor fails to follow the requirement and procedures of the clause at 252.227–7013, Rights in technical Data and Computer Software, or any alternate, or the clause at 252.227–7025, Rights in Technical Data and Computer Software SBIR Program.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to FAR Section 46.102 and to withholding of payments under the clause at 252.227–7030, Technical Data—Withholding of Payments.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review may include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the clause at 252.227–7018, Restrictive Markings in Technical Data and Computer Software.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data and Computer Software" clause may be reviewed when holding a postaward conference.

(c) *Unmarked or Improperly Marked Technical Data.* (1) Pursuant to the validation procedures of FAR 27.409 and the clause at FAR 52.227–14, Validation of Restrictive markings on Technical Data, the Government has the right to require a contractor or subcontractor to justify in writing the validity of

restrictive markings on technical data delivered or required to be delivered under a contract or subcontract. The contracting officer has the right to require the contractor or subcontractor to furnish clear and convincing evidence to justify the current validity of the marking.

(2) Technical data received without restrictive legends shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor or subcontractor may request permission to place restrictive markings on such data at its own expense and the Government may so permit if the contractor or subcontractor:

(i) demonstrates that the omission of the restrictive markings was inadvertent,

(ii) establishes pursuant to paragraph (c)(1) above that the use of the markings is authorized, and

(iii) relieves the Government of any liability with respect to such technical data.

(3) If technical data is delivered with restrictive markings and the contractor or the subcontractor is not authorized by the terms of the contract to furnish technical data with limited rights, license rights, or with a time period for the expiration of limited rights legends; the technical data shall be used with limited rights, license rights, or with a time period for the expiration of limited rights legends, until such markings may be cancelled or ignored in accordance with the procedures of the clause at FAR 52.227–14, Validation of Restrictive Markings on Technical Data.

227.473–4 Other computer software procedures.

(a) *General.* (1) Except as provided at 227.474–1, Data Requirements, any computer software to be purchased under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. This clause establishes the circumstances under which the Government obtains unlimited rights in both technical data and computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation. Also, see 227.473–3(b)(2).

(3) Contracts under which computer software developed at private expense is purchased or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Computer software developed at private expense may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being procured. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion which is recognizable as the original product will be deemed to be computer software developed at private expense.

(5) The scope of the restrictions placed on the Government, or conversely, the scope to which the Government may use such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(b) *Marking of Computer Software.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in the clause at 252.227–7013(b)(3)(ii) is not appropriate, contracting officers shall consult counsel when a contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to privately developed computer software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. with (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by the legend in paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause at 52.227–7013, and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the clause at 252.227–7013, Rights in Technical Data and Computer Software, in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (a) above, computer software and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition, may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material, in the case of a card deck packaged in a container

intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(c) *Unmarked or Improperly Marked Computer Software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings." The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with a restrictive marking, and there is a question whether the marking is authorized by the contract, the software shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the marking, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at his own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed in the contract, the software should be used in accordance with the restrictions provided in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings and so notify the contractor.

227.474 Delivery of technical data.

227.474-1 Data requirements.

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) any contract awarded to a contractor outside the United States, except those under Subpart 252.71, Canadian Purchases;

(3) any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(4) any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices;

(7) any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract; or

(8) any contract that has no deliverable data except manuals for training, operation, and maintenance.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423, the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 and made a part of the contract, and manuals to be utilized in training, operation, and maintenance and covered by a specific contract line item and exhibit.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, and manuals covered by specific contract line items; the requirement for delivery of any data items under the contract can be established only by listing such data items on the DD Form 1423. The clause at 252.227-7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements falling within the exceptions set forth in paragraph (a) above.

227.474-2 Deferred delivery and deferred ordering.

(a) *Policy.* (1) Technical data and computer software is expensive to prepare, maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DD for technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases, deferring the ordering of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance.

(i) When the need for, but not the time of, delivery can be determined, deferred delivery shall be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful.

(ii) When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering shall be used to avoid the cost of preparation, but allow the ordering of the technical data or software at some future point in contract performance should the need arise.

(iii) Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to coincide with specific and planned use of technical data or software.

(b) *Deferred Delivery.* Deferred delivery refers to the practice of timing the delivery or technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting but the time or place of delivery is not firm. The delivery dates should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery date to enable him to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until the actual need can be determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time or within two years after either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which he accepts the item from the subcontractor. Contracting officers may extend, but not shorten this two year period. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred in accordance with this subsection, the clause at 252.227–7028, Deferred Delivery of Technical Data or Computer Software, shall be included in the contract.

(c) *Deferred Ordering.* Deferred ordering refers to the practice of delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances, it is difficult to determine before contract award exactly what data or software is needed. The information available during that period may suggest the need for some data or software, but further information may be needed to identify the specific data or software items. In these situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, shall be included in solicitations and contracts. Under these circumstances, the deliverable technical data or computer software is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor. Contracting officers may extend, but not shorten the item period for exercise of deferred ordering of technical data or computer software pursuant to the clause at 252.227–7027, Deferred Ordering of Technical Data of Computer Software. To assist in identifying technical data and computer software for deferred ordering a contract may include a requirement to prepare and deliver a Data Accession List which lists all technical data and computer software generated under the contract. A Data Item Description suitable for this purpose is contained in the list of approved Data Item Descriptions.

227.474–3 Technical data certifications.

(a) The provision at 252.227–7028, Certification of Technical Data—Prior Delivery, shall be included in all solicitations which may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to delivery to the Government under any contract or subcontract the same or substantially the same technical data included in the offer (see 215.406 and FAR 15.406–5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror is required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(b) If technical data is required to be delivered under a contract, the clause at 252.227–7037, Certification of Technical Data Conformity, shall be included in solicitations and any resultant contract.

(1) This clause requires the contractor to certify in writing that technical data delivered under the contract is complete, accurate, and complies with all requirements of the contract. The clause states that technical data deliverable under the contract may be reviewed by the Government both before and after Government acceptance. The clause also contains some illustrative examples of such reviews.

(2) If upon delivery the technical data is determined not to be complete, accurate, and in compliance with all requirements of the contract, the contracting officer shall consult with counsel regarding possible civil remedies and criminal sanctions available to the Government.

227.474–4 Identification of technical data.

(a) Technical data that is delivered under a contract shall be marked with the name of the contractor, the contract number and the name of any subcontractor who generated any part of the data. This marking requirement provides the basis for identifying the rights of the contractor and the Government in technical data.

(b) The clause at 252.227–7029, Identification of Technical Data, shall be included in solicitations and in any resultant contract under which technical data is to be delivered. Technical data marked in the manner permitted by paragraph (b)(2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, complies with this requirement.

272.474–5 Technical data—Withholding of payment.

(a) Timely delivery of technical data, delivery without deficiencies (including having no restrictive markings unless specifically authorized by the contract), and delivery with the required certification are particularly important to the operation and maintenance of equipment, as well as to the competitive procurement of follow-on quantities of contract items and components. The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery and proper marking of technical data, delivery without deficiencies, and delivery with the required certification. This clause shall be included in all solicitations and

any resulting contract when it is anticipated that technical data will be delivered under the contract. The clause permits a contracting officer, at any time before technical data is accepted by the Government, to withhold payment not exceeding 10 percent of the total contract price or amount, but also permits the contracting officer to specify a lesser amount if circumstances warrant. A case-by-case determination of the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery, affix proper markings, deliver without deficiencies, or deliver without the required certification arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding of payment under paragraph (b) of the clause should be accomplished only when the contractor has failed to make timely delivery of technical data, to deliver technical data without deficiencies, or to deliver technical data without the required certification, or when the contracting officer reasonably believes that late delivery, delivery with deficiencies, or delivery without required certification under this contract will occur. The amount of withholding should be based on the estimated value of the technical data to the Government.

227.474-7 Warranties of technical data.

The factors contained in section 246.708, Warranties of Technical Data, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data relating to spare parts is to be delivered. When a warranty of technical data is to be used, the clause at 252.246-7001 shall be included in the solicitation and contract.

227.474-7 Delivery of technical data to foreign governments.

Limited rights include the right of the Government to deliver technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor whose name appears on the data.

227.475 Contracts for acquisition of special works.

(a) The clause at 252.227-7020, Rights in Data—Special Works, shall be included in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired. Examples include contracts—(1) primarily for the production of audiovisual works, including motion pictures or television recordings, with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptions, and the like; (2) for histories of the respective Departments or services or units thereof; (3) for the respective Departments or services or units thereof; (4) for works pertaining to recruiting, morale, training, or career guidance; (5) for surveys of Government establishments; (6) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (7) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.476 Contracts of acquisition of existing works.

(a) *Off-the-Shelf Purchase of Books and Similar Items.* Notwithstanding any other instructions contained in this part, no contract clause contained in this part need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products), unless the right to reproduce such technical data is an objective of the contract.

(b) *Purchase of Existing Audiovisual Works.* (1) The clause at 252.227-7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the procurement of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material required by the contract is being procured. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographic location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227-7020, Rights in Data—Special Works, appropriately modified, shall be used.

227.477 Contracts limiting Government's right of publication for sale to the general public.

Alternate II may be added to the clause at 252.227-7013, Rights in Technical Data and Computer Software, for use in research contracts when the contracting officer determines, after consultation with counsel, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract, is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. Alternate II shall not be used otherwise.

227.478 Architect-engineer and construction contracts.

227.478-1 General.

This section sets forth policies and procedures, and also prescribes solicitation provisions and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.478-2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in paragraph (a)(1)(ii) below, insert the clause at 252.227-7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services and in contracts for construction which also contains requirements for architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services, or, a contract for construction which also contains requirements for architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. When the

contracting officer determines that it is desirable to maintain exclusive control over the design and data, the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be included in solicitations and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252.227–7023 substituted. If the contract is for construction which also contains requirements for architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop Drawings for Construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

227.478–3 Contracts for construction supplies and research and development work.

The solicitation provisions and contract clauses prescribed in this Subpart for the acquisition of other than construction or architect-engineer services, are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by "Rights in Technical Data and Computer Software" clause.

227.478–4 Mixed contracts.

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both; in addition to calling for construction or architect-engineer work, a contracting officer shall include in the solicitation and resultant contract both the provisions and clauses prescribed in this Subpart for the acquisition of other than construction or architect-engineer services as well as the appropriate provisions and clauses prescribed for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, developmental, or research work, or to both, and which of the solicitation provisions and contracts clauses apply only to the construction or architect-engineer work.

227.478–5 Approval of restricted designs.

(a) Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment, or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment, or processes which are available only from a sole source. In such event, the architect-engineer should report to the contracting officer the items known to be sole source, and the reasons therefor, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will facilitate timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items.

(b) This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, are unnecessarily restricted to a single item. The procedure is primarly for use in instances where the proposed design is expected to be conventional or standard or where the design may be used in subsequent acquisitions. For this purpose, the clause at 252.227–7024, Notice of Approval of Restricted Designs, may be inserted in architect-engineer contracts.

227.479 Copyrights.

(a) In general, the copyright law gives an owner of a copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies of phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in paragraphs (a)(1)–(5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows a contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work", in which case ownership and control of the work is retained by the Government and the contractor is precluded from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated in performance of a contract. Additionally, for works in which a contractor already owns a copyright (not first prepared during performance of a contract), Department of Defense policy requires that the contractor grant to the Government and authorize the Government to grant to others the same license acquired by the Government under the contract.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similarly grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract, but in which copyright is owned by the contractor and incorporated in the work furnished under the contract.

(e) Under both of the clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, generated, or acquired under the contract, any work of authorship in

which copyright is not owned by the contractor, without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyright work.

272.480 Rights in technical data and software developed under the Small Business Innovation Research Program (SBIR Program).

(a) Pub. L. 97-219, the "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65-01 provides guidance for conducting the SBIR program.

(b) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(1) when necessary for program evaluation, or

(2) when the contractor consents in writing to additional disclosure. The contracting officer may agree to a different time period than two years in appropriate cases. Upon expiration of the period of non-disclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract ahall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgement and disclaimer statement.

(d) The clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), shall be included in all contracts awarded under the SBIR Program in which technical data or computer software are required to be prepared, originated, developed, generated or delivered. The clause permits technical data to be acquired with license rights, unlimited rights or limited rights; and computer software to be acquired with license rights, unlimited rights or restricted rights. The clause shall only be used in contracts awarded under the SBIR Program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

4. Sections 252.227-7013, 252-227-7015, 252-227-7016, and 252-227-7018 through 252.227-7034 are revised, sections 252.227-7014 and 252-227-7017 are removed, and sections 252-227-7035 through 252-227-7037 are added as follows:

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.472-1(e), insert the following clause.

Rights in Technical Data and Computer Software (Aug. 1985)

(a) *Definitions.* "Commercial Computer Software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public as established market or catalog prices.

"Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"Developed at private expense", as used in this subpart, means that completed development was accomplished without direct Government payment, at a time when no Government contract required performance of the development effort, and was not developed as a part of performing a Government contract. The word "developed", as used in the phrase "developed at private expense" means brought to the point of practical application; i.e., to be considered "developed" an item or component must have been constructed, a process practiced, or computer softward used, and in each case it must have been tested so as to clearly demonstrate that it performs the objective for which it was developed. When, in applying these criteria, an item, component, process or software package does not meet the test because the entire item, component, process, or software package is not developed at private expense, separate elements thereof which do meet the criteria will be considered to have been developed at private expense. Further, in applying the foregoing criteria, when an item, component, process or computer software which has been developed at private expense is modified or revised to meet Government requirements specified in a contract, modification of the item, component, process or computer software shall not be considered to have been developed at private expense.

"License Rights," as used in this clause, means rights of the Government to use, duplicate, or disclose, in whole or in part and in any manner, for purposes stated in this contract or in a separate licensing agreement, technical data furnished with limited rights and computer software furnished with restricted rights, and to have or permit others to use such technical data or computer software on behalf of the Government for such purposes.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government, except for:

(i) Emergency repair or overhaul work, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure;

(ii) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government under the conditions of (i) above; or

(iii) Release to a contractor retained by the Government to review technical data, provided that the release or disclosure thereof shall be subject to a prohibition against further use, release, or disclosure.

"Restricted Rights", as used in this clause, means rights that epply only to computer software, and include, as a minimum, the right to—

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provisions that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information, regardless of the form or method of recording, of a scientific or technical nature. Technical data includes computer software documentation, but does not include computer software or financial, administrative, cost, pricing, or management data, or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this clause means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited data to or for the Government under a contract does not, in itself, constitute release to the public.

(b) *Government Rights.*—(1) *Unlimited Rights* The Government shall have unlimited rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Technical data necessary to enable manufacture of end-items, components, modifications or processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance; except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (b)(2)(ii) below);

(v) Technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government furnished data or computer software;

(vi) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g. specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) Technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) Technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of paragraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data may be included in the data referred to in (b)(1)(i), (vi), (vii), and (viii) above.

Limited rights shall be effective only so long as the technical data remains unpublished and provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

(i) The number of the prime contract under which the technical data is to be delivered,

(ii) The name of the Contractor and any subcontractor by whom the technical data was generated, and

(iii) An explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. ———.
Contractor: ———.

Explanation of Limited Rights Data Identification Method Used

———————————————

———————————————

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (1) Emergency repair or overhaul work, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; (2) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above; or (3) release or disclosure thereof to the contactor retained by the Government to review data, with such release being subject to a prohibition against further use, release or disclosure. The legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, developed at private expense and listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided,* however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ——— with ——— (Name of Contractor) ———.

and unless the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (i) above, commercial computer software and related documentation developed at private expense and not in the public domain may, if the Contractor so elects, be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation containing this legend shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) Use of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *provided*, that the unmodified portions shall remain subject to these restrictions.

(E) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with this legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence presented by the Government that the software is in the public domain, the Government may cancel or ignore the restrictive legend and use the software with unlimited rights. Such written requests shall be addressed to the Contractor identified in the legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on right of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restrictions. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.* (1) In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definitions of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with paragraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor, without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in paragraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7013 (date).

(d) *Removal of Unauthorized Markings from Computer Software.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder if:

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(2) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by clear and convincing evidence.

(e) *Relotion to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has to right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproductions, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in tha subcontract, without alteration and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor date or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

Alternate I (Aug 1985)

As prescribed at 227.473-1(b), add the following paragraph to the basic clause:

Notice of Certain Limited or Restricted Rights

(h)(1) Except as otherwise provided herein, the Contractor will promptly notify the Contracting Officer in writing if the Contractor or a subcontractor intends to use in the performance of this contract any item, component, process, or computer software developed at private expense. The notification shall include an identification of

the items, components, processes or computer software and the associated data pertaining thereto.

(2) Notification is not required with respect to:

(i) Items, components, processes and computer software for which notification was previously given in his contract pursuant to the clause at DFARS 252.227–7035, Prenotification of Rights in Technical Data and Computer Software, or

(ii) Standard commercial items which are manufacturerd by more than one source of supply.

(3) Except as otherwise provided herein, Contracting Officer approval is not necessary for the Contractor to use the subject item, component, process, or computer software in the performance of the contract.

Alternate II (May 1981)

As prescribed at 227.477, add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data: (1) Designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under paragraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate III (Aug 1985)

As prescribed at 227.473–2(e), add the following paragraph to the basic clause:

( ) (i) Notwithstanding any other provision of this contract the Government shall have (specify type of rights here, i.e., unlimited, license) rights in limited rights technical data and restricted rights computer sofware furnished under this contract effective on the day immediately following the date apecified in the contract for the expiration of the limited and restricted rights legends. Such expiration date shall be marked on each piece of limited and restricted rights data furnished under the contract.

(ii) Technical data subject to the expiration of limited rights shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

Limited Rights Legend (Subject to Expiration)

Contract No.————————.
Contractor:————————.

The following statement shall also be added to the legend:

Limited rights shall become (*specify type of rights here*, i.e., unlimited, license) rights on (*insert expiration date*).

The modified legend shall be included on any reproduction of the limited rights data, in whole or in part.

(iii) Computer software subject to the expiration or restricted rights shall be marked with the restricted rights legend set forth in paragraph (b)(3)(i) above with the title of the legend modified to read:

Restricted Rights Legend (Subject to Expiration)

Use, duplication or disclosure is subject to restrictions stated in Contract No. ————with (Name of Contractor)————————.

The following statement shall also be added to the legend:

Restricted rights shall become (*specify type or rights here*, i.e., unlimited, license) rights on *(insert expiration date)*.

The modified legend shall be included on any reproduction of the restricted rights data, in whole or in part.

Alternate IV (Aug 1985)

As prescribed at 227.473–2(b), add the following subparagraph to the basic clause as subparagraph (b)(5):

(5) *License Rights.* (i) Technical data delivered under this contract shall be acquired with license rights.

(ii) The Government may use, duplicate, or disclose the technical data for purposes stated in this contract, and may have or permit others to use such data on behalf of the Government for such purposes. License rights do not grant to the Government the rights to use such data for commercial purposes or the rights to have or permit others to use such data for commercial purposes. The Government assumes no liability for use, duplication, or disclosure of such data by others for commercial purposes. Disclosure of such data to others and use of such data by others on behalf of the Government for the purposes stated in this contract shall be subject to a prohibition against further use, release or disclosure.

(iii) Technical data acquired by the Government with license rights pursuant to this paragraph shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

License Rights Legend

The legend shall be revised by deleting the words "Limited Rights" wherever they appear and by including in their place the words "License Rights".

The modified legend shall be included on any reproduction of the license rights data, in whole or in part.

252.227–7014 [Reserved]

252.227–7015 Rights in technical data—Specific acquisition.

As prescribed at 227.473–2(a), insert the following clause:

Rights in Techincal Data—Specific Acquisition (Aug 1985)

(a) *Definition.* "Technical Data", as used in this clause, means recorded information, regardless of the form or method of recording, of a scientific or technical nature. Technical data includes computer software documentation, but does not include computer software or financial, administrative, cost, pricing, or management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227–7015 (date).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived throughout the Military Assistance Program or otherwise through the United

States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

252.227-7016 Contract schedule items requiring experimental, developmental, or research work.

As prescribed at 227.472-1(f), insert the following clause:

Contract Schedule Items Requiring Experimental, Developmental, or Research Work (Aug. 1985)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work or require computer software to be originated or developed under a Government contract or generated as a part of performing a Government contract.

(End of clause)

252.227-7017 [Reserved]

252.227-7018 Restrictive markings on technical data and computer software.

As prescribed at 227.473-3(b)(2), insert the following clause:

Restrictive Markings on Technical Data and Computer Software (Aug. 1985)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data and computer software required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. The Contractor shall assure that subcontractors have sufficient procedures to assure that only authorized markings are used. Contractor and subcontractor procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with the clause.

(b) The Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (1) such records as are reasonably necessary to show pursuant to subparagraph (d)(2) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data or computer software delivered under this contract are authorized, and that the data continues to meet the definition of limited rights or restricted rights.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within the Contractor's organization for determining whether restrictive markings are to be placed on technical data and computer software to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving technical data and computer software compliance and restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of the written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of paragraphs (a) and (b) above, any limited rights markings on technical data and restricted right markings on computer software delivered under this contract may be cancelled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data or software on which markings have been cancelled or ignored, and thereafter may use such data or software with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action with respect to restrictive markings in not completed within the specified time, restrictive markings on any technical data and computer software being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the clause at 252.227-7013, Rights in Technical Data and Computer Software, or with respect to technical data and procedures in the clause at FAR 52.227-14.

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data or computer software with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered or computer software may be originated, developed or generated. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.473-4(a)(3), insert the following provision:

Identification of Restricted Rights Computer Software (Apr. 1977)

The Offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software that was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the Offeror is requested to identify in his proposal any computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restriction. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of Provision)

252.227-7020 Rights in data—Special works.

As prescribed at 227.475, insert the following clause:

Rights in Data—Special Works (Mar. 1979)

(a) the term "works" as used herein, includes literary, musical, and dramatic works; pantomines and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, costs analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared", for the purpose of authorship in any copyrightable work under section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

c (*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the c will be repaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world: (1) To reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract, but in

which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government and its officers, agents and employees acting for the Government, against any liability, including costs and expenses (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract; or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—Existing works.

As prescribed at 227.476, insert the following clause:

Rights in Data—Existing Works (Mar. 1979)

(a) The term "works", as used herein, includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural work; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract; and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicly arising out of the creation, delivery, or use of any works furnished under this contract; or (2) based upon any libelous or other unlawful matter contained in those works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.476-2(a)(1), insert the following clause:

Government Rights (Unlimited) (Mar. 1979)

(a) The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of Government.

As prescribed at 227.476-2(a)(1)(ii), insert the following clause:

Drawings and Other Data To Become Property of Government (Mar. 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.476-5, insert the following clause:

Notice and Approval of Restricted Designs (Apr. 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and given the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 Rights in technical data and computer software (SBIR Program).

As prescribed at 227.480, insert the following clause:

Rights in Technical Data and Computer Software (SBIR Program) (Aug. 1985)

(a) *Definitions.* "Computer data base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer designed to cause the computer to execute an operation or operations. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

"Computer software", as used in this clause, means computer programs and computer data bases.

"Computer software documentation", as used in this clause, means technical data, including computer listings and printouts, in human readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"License rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited rights", as used in this clause, means right to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (1) Released or disclosed in whole or in part outside the Government, (2) used in whole or part by the Government for manufacture, or in the case of computer software documentation for preparing the same or similar computer software, or (3) used by a party other than the Government.

"Restricted rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to:

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government

installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeing (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license agreement made a part of this contract.

"Technical data", as used in this clause, means recorded information, regardless of the form or method of recording, of a scientific or technical nature. Technical data includes computer software documentation, but does not include computer software or financial, administrative, cost, pricing, or management data, or other information incidental to contract administration.

"Unlimited rights", as used in this clause, means right to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government Rights*—(1) *License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this contract or any subcontract hereunder;

(ii) Computer software required to be originated or developed under this contract or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder;

(iii) Technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance; except technical data pertaining to items, components, processes or computer software developed at private expense (but see subparagraph (b)(2)(i) below);

(iv) Technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting correction or changes to Government-furnished data or computer software;

(v) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vi) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes; and

(vii) Any other technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder, other than technical data furnished with limited or unlimited rights pursuant to subparagraphs (b) (2) and (4) below or computer software furnished with restricted or unlimited rights pursuant to subparagraphs (b) (3) and (4) below.

License rights shall be effective with respect to the technical data identified in subparagraphs (b)(1) (i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the Contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights, and shall be effective with respect to the computer software identified in subparagraphs (b)(1) (i), (ii), (iv) and (vii) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restriction included in the same contract (identified by number) with the same Contractor (identified by name):

License Rights Legend

Contract No. ———

Contractor or Subcontractor: ————————

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subparagraphs (b)(1) (i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in subparagraph (b)(2)(i) above only so long as the technical data remains unpublished and only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

Limited Rights Legend

Contract No. ———

Contractor or subcontractor: ————————

This technical data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. This legend shall be included on any reproduction of this data, in whole or in part.

(3) *Restricted Rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights; *Provided,* however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ——— with ——— (Name of Contractor), and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Technical data or computer software required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Technical data or computer software that is in the public domain or has been or is normally released or disclosed by the Contractor or any subcontractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(5) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to any technical data or computer software which the Contractor or any subcontractor has previously delivered to the Government without restriction. The license, limited or restricted rights provided for by this paragraph (b) shall not impair the right of the Government to use similar or identical technical data or computer software acquired from other sources.

(c) *Copyright.* (1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted in paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights or computer software in which the Government has license rights or unlimited rights, the license shall be of the same scope as the rights set forth in the definitions of "license rights" and "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in paragraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

The material may be reproduced by or for the U.S. Government pursuant to copyright license.

(d) *Removal of Unauthorized Markings from Computer Software.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder if:

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the marking, or

(2) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by clear and convincing evidence.

(e) *Omitted Markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication or disclosure of such data and software. However, to the extent the data and software have been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(1) Demonstrates that the omission of the restrictive legends was inadvertent;

(2) Establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(3) Acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of Data and Computer Software from Subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's right in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights purusant to paragraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.474-2(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (Nov 1974)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all times (other than technical data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date the Contractor accepts the last delivery of that item from that subcontractor for use in performing the contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.474-2(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (Nov 1974)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technial data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that from that subcontractor under this contract. The Government's rights to use said data or

computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Certification of technical data—prior delivery.

As prescribed at 227.474-3(a), insert the following provision:

Certification of Technical Data—Prior Delivery (Aug 1985)

The Offeror shall submit with this offer a certification as to whether the same or substantially the same technical data included in this offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the Offeror shall identify in this offer one such contract or subcontract under which such technical data was delivered or is obligated to be delivered and the place of delivery.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.474-4, insert the following clause:

Identification of Technical Data (Mar 1975)

Technical data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.474-5, insert the following clause:

Technical Data—Withholding of Payment (Aug 1985)

(a) If "technical data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software") or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), or is not delivered with required certification, the Contracting Officer may, at any time during contract performance before such data is accepted by the Government, withhold payment to the Contractor ten percent (10%) of the total contract price, unless a lesser withholding is specified in the contract. Payment shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arise out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as he considers appropriate not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.474-1, insert the following clause:

Data Requirements (Aug 1985)

(a) "Data", as used in this clause, means recorded information, regardless of the form or method of the recording.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List), data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract, and manuals to be utilized in training, operations, and maintenance and covered by a specific contract line item.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.473-2(g), insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (Jun 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.478-2(a)(2), insert the following clause:

Rights in Shop Drawings (Apr 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor, or any lower-tier subcontractor pursuant to a construction contract, showing in detail: (1) The proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose, in any manner and for any purpose, shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—subcontracts.

As prescribed at 227.304-4, insert the following clause:

Patents—Subcontracts (Apr 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 Prenotification of rights in technical data and computer software.

As prescribed at 227.473-1(a), insert the following provision:

Prenotification of Rights in Technical Data and Computer Software (Aug 1985)

(a) In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processes, or computer software developed at private expense that may be required to be delivered under a resultant contract, Offerors shall identify to the maximum extent practicable in their response to this solicitation such privately developed items, components, processes, or computer software and the associated data pertaining thereto which they:

(1) Intend to deliver with limited or restricted rights;

(2) Intend to deliver with unlimited rights; or

(3) Have not yet determined will be delivered with unlimited, limited or restricted rights.

This requirement for identification or prenotification shall include that technical data pertaining to the design, development, or production of privately developed items, components, processes or computer software that are offered or to be offered for sale in substantial quantities to the public based upon established catalog or market prices. This identification need not be made as to technical data which relates to standard commercial items which are manufactured by more than one source of supply. At the request of the Contracting Officer, the Offeror agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights technical data or restricted rights computer software.

(b) This requirement for prenotification shall not be construed as an agreement concerning rights in technical data or computer software identified by an Offeror except as specifically provided in an agreement made a part of the resultant contract. The Government expressly reserves its right to challenge the validity of the technical data under FAR 52.227-14 and computer software under DFARS 252.227-7013, notwithstanding such an agreement.

(End of provision)

252.227-7036 Direct licensing

As prescribed at 227.473-2(c), insert the following clause:

Direct Licensing (Aug 1985)

(a) *Government Rights.* The Government shall have the right to direct the Contractor to license technology to other manufacturers for the purpose of establishing additional sources of supply. This technology may encompass technical data, computer software, technical assistance, special tooling, special manufacturing equipment, training, analysis of problems, or anything else needed to establish an additional source of supply.

(b) *Time Limit for Exercise of Direct License Right.* Exercise of this right will be by modification to this contract any time up to ——— years after the last scheduled delivery under the contract. The not-to-exceed prices and delivery schedule in the contract shall apply.

(c) *Exclusions.* The following are excluded from the operation of this clause:

(1) Items, components, or computer software sold in substantial quantities to the public based upon established catalog or market prices, or interchangeable items manufactured by two or more competing suppliers;

(2) Items, components, processes, or computer software already under license to third parties: *Provided,* the Government agrees that the third parties are viable competitive sources for such items, components, processes, or computer software;

(3) Technical data which the Contractor is legally precluded from licensing; and

(4) Other excluded items, components, or processes and the technical data pertaining thereto, and excluded computer software as described or listed below:

(*Description or list*)

(d) *Adjustments to Prices.* The prices referred to on paragraph (b) shall be reduced if the Contractor is unable to substantiate that certain items, components, processes or computer software is subject to limited or restricted rights.

(e) *Exercise of Direct License Right.* (1) When the Government desires to exercise its rights under this clause, it will direct the Contractor in writing to license the technology in question to another source, including the exent of and the desired terms and conditions of any license.

(2) When technology is to be licensed, any license agreement between the Contractor and another source will be subject to Government review and approval.

(3) Within thirty (30) days after exercise of the direct license right, the Contractor will furnish a pricing proposal to establish the final price for the license. Technical assistance concerning particular items, components, processes and computer software should normally be separately priced. Normally, a price for a directed license should include a flat sum, a royalty rate, and a maximum royalty amount. The flat sum will include the cost of transferring the technology. After the flat sum and royalties total the maximum royalty amount, the Government shall have an irrevocable, paid-up license.

(f) *Timely Transfer of Technology.* The Contractor will promptly license and transfer the technology according to the terms of the modificaiton exercising this direct license right.

(g) *Disputes.* Failure to agree to any price adjustment shall be a dispute under the Dispute clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as modified.

(h) *Subcontracts.* (1) This clause in its entirety shall be included in all subcontracts at any tier, unless excused in writing by the Contracting Officer. This clause does not apply to any items, components, processes, or computer software excluded in paragraph (c).

(2) The word "Contractor" appearing in this clause includes "subcontractors" unless otherwise indicated.

(3) The Government may direct any subcontractor to license technology to another source. The prime Contractor consents to the processing of an appeal by any subcontractor in the name of the prime Contractor under the Disputes clause from any decision of the Contracting Officer concerning this clause. The Contractor shall use its best effort to resolve any and all problems relating to identification, pricing and submission of technical data and computer software.

(i) *Follow-on Contracts.* In any follow-up contract awarded to the Contractor for further production of the items, components, processes, or computer software delivered under this contract, the Contractor agrees:.

(1) to accept contractual provisions that grant the Government the same rights and options as are granted in this clause; and

(2) not to assert any right adverse to the Government that could not have been asserted under this clause.

(End of clause)

252.227-7037 Certification of technical data conformity.

As prescribed at 227.474-3(b), insert the following clause:

Certification of Technical Data Conformity (Aug 1985)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, ———, hereby certifies that the technical data delivered herewith under Contract No. ——— is complete, accurate, and complies with all requirements of the contract. The Contractor expects the Government to rely on this certification in accepting the technical data.

———

Date

———

Name and Title of Certifying Official

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all rquirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit review.

(End of clause)

[FR Doc. 85-21686 Filed 9-9-1985; 8:45 am]
BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

National Voluntary Service Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) (the Act), notice is hereby given that a meeting of the National Voluntary Service Advisory Council will be held on October 10, 1985 (from 8:30 a.m.–5:00 p.m.), and October 11, 1985 (from 8:30 a.m.–12:00 noon) in Atlanta, Georgia. For further details concerning the meeting location, please contact James Whitehead, Special Assistant to the Director, at (202) 634–9380.

The purpose of this meeting is to provide briefing and an opportunity for discussion relative to ACTION program operations for 1986. In accordance with the provisions of section 10(a)(1) of the Act, the meeting shall be open to the public.

Signed this 4th day of September, 1985, in Washington, D.C.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 85–21557 Filed 9–9–85; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Depositing of Stockyards Reynolds Livestock Auction et al.; Correction

On August 14, 1985, a notice was published in the **Federal Register** giving notice of the depositing for certain stockyards listing their facility number, name, and location of stockyards.

This notice is to correct the date of posting assigned to the following market in that publication.

The notice should have read:

Location	Date of posting
KY–139 New Farmers Stockyards of Mt. Sterling, Inc., Mt. Sterling, Kentucky.	Sept. 20, 1985.

Done at Washington, D.C., this 3rd day of September 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85–21584 Filed 9–9–85; 8:45 am]

BILLING CODE 3410–02–M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m. on October 7, 1985, at the Executive Tower Building, 1405 Curtis Street, Sebastian Bach Room, Denver, Colorado. The purpose of the meeting is to review information received from major civil rights organizations concerning critical civil rights issuea and discuss future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21534 Filed 9–9–85; 8:45 am]

BILLING CODE 6335–01–M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 7:30 p.m. and adjourn at 9:30 p.m. on September 18, 1985, at the University of Kentucky/College of Law, South Limestone Street, Lexington, Kentucky. The purpose of the meeting is to hold the briefing session in preparation for the community forum on public housing desegregation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter Peeples or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391, (TDD 404/221–4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21535 Filed 9–9–85; 8:45 am]

BILLING CODE 6335–01–M

New Jersey Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 11:00 p.m. on October 15, 1985, at the Nassau Inn, Palmer Square, Princeton, New Jersey. The purpose of the meeting is to hear briefing on public accommodation discrimination on Princeton University Campus.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264–0400, (TDD 212/264–0400).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21536 Filed 9–9–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-501]

Termination of Antidumping Duty Investigation; Carbon Steel Wire Rod From Poland

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 29, 1985, petitioners withdrew their antidumping duty petition, filed on April 8, 1985, on carbon steel wire rod (wire rod) from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Case History

On April 8, 1985, we received a petition from Atlantic Steel Company, Continental Steep Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, on behalf of the U.S. industry producing wire rod. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on April 29, 1985 (50 FR 18905). On May 30, 1985 (50 FR 23084), the ITC found that there was a reasonable indication that imports of wire rod from Poland materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The product under investigation is carbon steel wire rod, currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Withdrawl of Petition

In a letter dated July 29, 1985, from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, petitioners, notified us that they were withdrawing their April 8, 1985, antidumping duty petition, and requested that the investigation be terminated. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

july 29, 1985.

Mr. Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Washington, DC 20230

Attention: Central Records Unit Room B-099

Re: *Carbon Steel Wire Rod from Poland*

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that the United States has entered into an Arrangement with Poland which establishes import ceilings for various steel products, including carbon steel wire rod. The Arrangement provides that certain pending petitions concerning Arrangement products from Poland are to be withdrawn as a condition precedent to its entry in force. Included among these pending matters is the ongoing investigation involving carbon steel wire rod initiated by Petition filed on April 8, 1985.

Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company are the Petitioners in the Polish proceeding, in which the Department is currently investigating whether wire rod imported from the respondent during the period of investigation was sold at less than fair value. Petitioners' expectation is that should this investigation proceed to an order, antidumping duties would be imposed to deal specifically with this "unfairly traded" steel wire rod. In these circumstances, the Petitioners are entitled to construe the Arrangement as the functional equivalent of a suspension of an investigation even though there has not been a preliminary determination. As you know, a suspension agreement pursuant to Section 734(c)(1)(A) of the 1979 Trade Agreements Act requires a commitment from the exporters (and agents) that "The suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented."

Petitioners recognize that there are no procedures to ensure that there will be no "suppression or undercutting of price levels of domestic products by imports . . ." of the wire rod that will be licensed for importation. Accordingly, Petitioners advise the Department that should there be price undercutting or suppression, as defined in section 734(c), by Polish producers of wire rod, or by importers thereof, they will consider it their perogative at any time to initiate prodceedings under the antidumping law without regard to whether or not the Arrangement is in effect. In any event, Petitioners do not waive or affect any rights to take or continue action pursuant to U.S. law or otherwise.

In sum, the Petitioners, in reliance upon the wire rod import ceiling set forth in the Arrangement with Poland and its other terms and conditions and upon the further provisions and understandings of this letter, withdraw the Petition conditioned upon the following:

1. That the Department will provide assurance, by the notice published in the **Federal Register**, that the Arrangement with Poland is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay, or impair the implementation of the specific restraints concerning wire rod.

2. That the United States does not plan to agree to any modifications of the Arrangement that would affect the obligations of Poland concerning wire rod to the detriment of the domestic industry during the Arrangement term.

3. That Petitioners do not waive any statutory rights or otherwise restrict their rights concerning action under the trade laws.

4. That the Arrangement with Poland is a "bilateral arrangement" within the meaning of section 604 of the Steel Import Stabilization Act of 1984 and the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. As a consequence of those provisions and the requirements and terms of the Arrangement, the United States will prohibit entry into the Customs territory of the United States of wire rod from Poland that (i) is not accompanied by an export certificate, and (ii) is not issued consistent with the quantitative limitations specifically applicable to Poland as defined by the Arrangement.

5. That the Department will publish this letter in the **Federal Register**, together with the notice that the Petitioners have withdrawn the Petition conditioned upon satisfaction of the terms set forth herein.

Petitioners reiterate that the withdrawal of the Petition contemplated by this letter does not have any force or effect, and provides the Department with no authority to terminate the investigation, until the foregoing provisions are met.

Respectfully submitted,
Charles Owen Verrill, Jr.,
WILEY & REIN,
1776 K Street, NW., Washington, D.C. 20006, (202) 429-7000.

Counsel for Petitioners. Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc. Raritan River Steel Co.

David E. Birenbaum,
Fried, Frank, Harris,
Shriver & Jacobson, (A Partnership Including Professional Corporations), 600 New Hampshire Ave., NW., Washington, D.C. 20037, (202) 342-3500.

Counsel for Petitioner. Atlantic Steel Co.

[FR Doc. 85-21578 Filed 9-9-85; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-502]

Certain Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada; Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: International Traded Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make our final determination by November 18, 1985.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766.

Preliminary Determination

We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b (b) (the Act). We made fair value comparisons on two companies representing approximately 87 percent of sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the United States price, home market price, and constructed value. We have preliminarily found that the margins for both companies investigated are *de minimis.*

Case History

On March 25, 1985, we received a petition from the Committee on Pipe and Tube Imports on behalf of the domestic industry producing certain heavy-walled rectangular welded carbon steel pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on April 15, 1985 (50 FR 15771). On May 9, 1985, the ITC determined that there is a reasonable indication that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are materially injuring a U.S. industry (50 FR 20302).

We presented an antidumping duty questionnaire to Titan Industrial Corporation (Titan), whose exports account for approximately 80 percent of the products under investigation, on May 10, 1985. Their response to our questionnaire was receive on June 25, 1985. Additionally voluntary responses were received from Welded Tube of Canada (Welded Tube), on June 25, 1985, July 10, 1985, and July 30, 1985, from Acier Royalcor Steel, Inc. (Royalcor), on July 2, 1985, and from Capco Tubular Products Co. (Capco), on July 27, 1985. The response of Royalcor was included in our analysis. The response of Welded Tube were found to be untimely and inadequate for consideration. The response of Capco represented only one sale of the subject merchandise, which we considered to be too insignificant to warrant inclusion in our analysis.

Products Under Investigation

The products covered by this investigation are certain welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inches, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute specifications for oil well casing, currently provided for in item 610.3955 of the *Tariff Schedules of the United States, Annotated.*.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchanise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the ex-factory, packed, or C.I.F., duty paid, delivered, packed price. We made deductions, where appropriate, for U.S. inland freight, foreign inland freight, U.S. brokerage charges, foreign brokerage charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Titan based on constructed value, as there were insufficient sales in the home market or to third countries to provide viable comparisons. For Royalcor we calculated foreign market value based on home market ex-factory packed prices to unrelated purchasers.

Royalcor's packing costs are incorporated in their acquisition cost of the subject merchandise, and appear to be identical for both markets. No claims were made for circumstances of sale.

We made comparisons of "such or similar" merchandise based on grade, dimension, wall thickness, and whether or not cut to length, as selected by Commerce Department industry experts.

To determine foreign market value for Titan, we calculated constructed value by totaling the costs of materials used in producing such or similar merchandise, fabrication, general expenses, profit and the cost of packing on U.S. shipments. Since the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. The amount added for profit was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses, since the actual level of profit was less than eight percent. We made adjustments, where appropriate, for after-sale warehousing expenses incurred on United States sales in accordance with section 353.15 of the Commerce regulations.

In a letter dated August 2, 1985, counsel for petitioner noted that the ratio of cost of materials and fabrication to sales price for the sales in the response is below the figure which would be indicated in the financial statements. For purposes of this preliminary investigation, an analysis of this ratio and of the cost response was conducted using the information available at this time. Specifically, the cost of coil, a major component of both the cost of manufacture contained in the response, and cost of goods sold was reviewed by a Department product expert. It was found that coil cost, although low, was within the range of prices available in the market during the period of investigation.

In our analysis, two expenses were noted which were not included by respondent in the cost of fabrication. For purposes of this preliminary determination, we considered warehousing expenses incurred by the Canadian subsidiary of Titan for the storage of finished goods prior to sale to be costs of fabrication rather than general expenses as claimed in Titan's response. We also included in the cost of fabrication a penalty payment made by Titan for failing to meet the minimum purchase requirements in a contract for the conversion of skelp into pipe.

Even with these adjustments there remains a discrepancy between the cost of production data in the response and the audited financial statements, but the discrepancy is not greater than would appear reasonable given the different purposes of the two sets of data. The financial statements include a significant proportion of products which are not under investigation and the time periods covered by those statements are not concurrent with our review period. A detailed reconciliation to the audited financial statements will be conducted at verification.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by the respondents by using standard verification procedures, including examination of relevant sales, financial and cost records of the company.

Preliminary Results

The preliminary results of our investigation are as followa:

Manufacturer/seller exporter	Weighted-average Margin percentage.
Titan Industrial Corp. (Dominon)	0.47 (*de minimis*).
Acier Royalcor Steel, Inc.	0.10 (*de minimis*).

ITC Determination

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 11, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 4, 1985. Oral presentations will be limited to issues raised in the briefs. all written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85-21579 Filed 9-9-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-501]

Postponement of Final Antidumping Duty Determination; Photo Albums and Filler Pages From Hong Kong

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 99 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of photo albums and filler pages from Hong Kong have occurred at less than fair value until not later than October 23, 1985.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1777.

SUPPLEMENTARY INFORMATION: On February 19, 1985, we published a notice in the **Federal Register** (50 FR 7624) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of photo albums and filler pages from Hong Kong were being, or were likely to be, sold at less than fair value. On March 18, 1985, the International Trade Commission determined that there is a reasonable indication that imports of photo albums and filler pages from Hong Kong are materially injuring a U.S. industry. On July 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 28829). The notice stated that if the investigation proceeded normally, we would make our final determination by September 23, 1985.

On August 13, 1985, counsel for Climax Paper Converters, the respondent in this case, requested that we extend the period for the final determination until not later than 99 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Climax Paper Converters is qualified to make such a request since it accounts for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final

determination in this case not later than October 23, 1985.

The public hearing is also being postponed until 9:30 a.m. on September 26, 1985, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 23, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration

September 3, 1985.

[FR Doc. 85-21580 Filed 9-9-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-005]

Litharge, Red Lead, and Lead Stabilizers From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on litharge, red lead and lead stabilizers from Mexico. The review covers the period January 1, 1983, through December 31, 1983, and 11 programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 5.16 percent *ad volorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: Septamber 10, 1985.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 30002) the final results of its last administrative review of the countervailing duty order on litharge, red lead, and lead stabilizers from Mexico (47 FR 54847; December 6, 1982) and announced its intent to conduct the next administrative review of the order. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican litharge, red lead, and lead stabilizers, which include lead compounds "not specifically provided for" ("NSPF") and pigments containing lead NSPF. Such merchandise is currently classifiable under the following items of the Tariff Schedules of the United States Annotated: litharge, 473.5200; red lead, 473.5600; lead compounds NSPF, 419.0400; and pigments containing lead NSPF, 473.9000.

The review covers the period January 1, 1983, through December 31, 1983, and 11 programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CEPROFI; (4) state tax incentives; (5) FONEI; (6) FOGAIN; (7) import duty reductions and exemptions; (8) CEDI; (9) discounts on lead purchases through the Boletin price mechanism; (10) accelerated and immediate depreciation allowances; and (11) FOMIN.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for FOMEX pre-export financing, denominated in Mexican pesos, was either 7 or 8 percent during the period of review. The annual interest rate for FOMEX export financing, denominated in the currency of the importing country, was either 5 or 6 percent during the period of review.

Since we lacked information of effective FOMEX interest rates in this case, we chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans, we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board. Based on this information, we preliminarily determine that, during the period of review, comparable peso-denominated loans were available commercially at 63.03 percent and comparable dollar-denominated loans were available at 12.73 percent. Using the weighted-avarage FOMEX per-export and export rates, 7.73 percent and 5.08 percent, we found the resulting interest differentials during the review period to be 55.30 percent for peso-denominated loans and 7.65 percent for dollar-denominated loans.

The two known exporters of this merchandise used these programs during the period of review. Because both exporters were able to tie all FOMEX loans to exports to specific countries, we used only the FOMEX loans on U.S. shipments and allocated the benefit over only the value of U.S. shipments during the period of review. We then weight-averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise. On this basis, we preliminarily determine the benefit from FOMEX pre-export loans to be 2.46 percent, and from FOMEX export loans to be 2.69 percent, for a total benefit during the review period of 5.15 percent *ad valorem*.

On April 1, 1984, the Banco de Mexicao raised the interest rates for FOMEX pre-export and export financing to 19.30 percent and 7.10 percent, respectively. To calculate the estimated duty deposit rate, we compared the new FOMEX interest rates to our most recent commercial benchmarks. The interest differential for peso-denominated loans, is 42.40 percent, and for dollar-denominated loans, 7.02 percent. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 4.35 percent *ad valorem*.

(2) Article 94 of the Banking Law

The Banco de Mexico determines the percentages of deposits at credit institutions that those institutions must deposit at the Banco de Mexico and must invest in other types of assets. Section 2 of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations ("the Banking Law") establishes that up to 25 percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. Loans granted under section 2 are obtained at below-market interest rates.

In Circular 1842/79, the Banco de Mexico established 12 categories of industries that are eligible to obtain financing under section 2 of Article 94. Most categories carry their own maximum interest rates, set by the Banco de Mexico. Category 12 consists only of exports of manufactured products and during the period of review carried a maximum interest rate equal to the Costo Porcentual Promedio minus 5 points, which is below the comparable commercial rate.

We consider financing obtained at the preferential interest rate under category 12 to constitute an export bounty or grant because it is given only on merchandise destined for export. One exporter of lead oxides, Productos Industriales de Plomo, S.A. ("PIPSA"), received financing under category 12 on U.S. shipments during the period of review. To calculate the benefit from these peso-denominated loans, we used as a benchmark the same average commercial interest rate as for the FOMEX pre-export loans. The resulting interest differential for these Article 94 loans during the review period is 11.03 percent.

Since these Article 94 loans are based on shipments to specific countries, we allocated the benefit that PIPSA received on its exports to the U.S. over the value of the company's total exports of the merchandise to the U.S. during the period of review. We then weight-averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise. On this basis, we preliminarily determine the benefit from Article 94 loans to be 0.01 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily find that exporters of litharge, red lead, and lead stabilizers did not use them during the review period:

(A) Certificates of Fiscal Promotion ("CEPROFI");

(B) State tax incentives;

(C) Fund for Industrial Development ("FONEI");

(D) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");

(E) Import duty reductions and exemptions;

(F) Tax Rebate Certificates ("CEDI");

(G) Discounts on lead purchases through the Boletin price mechanism;

(H) Accelerated and immediate depreciation allowances; and

(I) National Industrial Development Fund ("FOMIN").

Preliminary Results of the Review

As a result of our review, we preliminarily determine the bounty or grant to be 5.16 percent *ad valorem*. The Department intends to instruct the Customs Service to assess countervailing duties of 5.16 of the f.o.b. invoice price on all shipments exported on or after January 1, 1983, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, of 4.36 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: September 3, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-21581 Filed 9-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Aluminum Killed Nickel Electroplated Cold Rolled Steel Strip: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.–EC Arrangement on Complementary Products with respect to aluminum killed nickel electroplated cold rolled steel strip.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Adminstration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.–EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . ."

We have received a short supply request for aluminum killed nickel electroplated cold rolled steel strip in two thicknesses, .012 inches and .016 inches, with widths ranging from 1⅝ inches to 5 inches. These products are to be used in the manufacture of battery cell casings.

Parties interested in commenting on these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submittng business proprietary information should clearly so label the business proprietary protion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21575 Filed 9-9-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Turkey

September 5, 1985.

On July 16, 1985 a notice was published in the **Federal Register** (50 FR 28833) announcing that, on June 27, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), had requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls', and infants' cotton knit shirts in Category 339, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that no agreement has been reached in consultations on a mutually satisfactory solution concerning this category. The United States Government has decided, therefore, to control imports in Category 339, produced or manufactured in Turkey and exported during the twelve-month period which began on June 27, 1985 and extends through June 26, 1986 at a level of 320,972 dozen. Should future consultations result in agreement on a different level, further notice will be published in the **Federal Register**.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States of consumption, or withdrawal from warehoue for consumption, of cotton textile products in Category 339, exported during the period which began on June 27, 1985 and extends through June 26, 1986, in excess of the designated level.

FOR FURTHER INFORMATION CONTACT: Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 5, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 11, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 339, produced or manufactured in Turkey and exported during the twelve-month period which began on June 27, 1985 and extends through June 26, 1986, in excess of 320,972 dozen.[1]

Textile products in Category 339 which have been exported to the United States prior to June 27, 1985 shall not be subject to this directive.

Textile products in Category 339 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–21582 Filed 9–9–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after June 26, 1985.

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amendment to systems of records.

SUMMARY: The Department of the Navy proposes to amend three systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice October 10, 1985, unless comments are received which would result in a contrary deterimination.

ADDRESS: Send any comments to the systems manager identified in the systems notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000, telephone: (202) 694–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc 85–10237 (50 FR 22735) May 29, 1985

FR Doc 85–16564 (50 FR 28442) July 12, 1985

FR Doc 85–20719 (50 FR 35290) August 30, 1985

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 5, 1985.

NO5350–1

System name: Navy Personnel Rehabilitation Support System (50 FR 22794) May 29, 1985.

Changes:

Categories of individuals covered by the system: In line 6, after the words: ". . . rehabilitation facilities,. . ." add the phrase: ". . . counselors and counselor candidates, . . ."

Purpose(s): At the end of the entry, add a new paragraph: "For counselors and counselor candidates to use in the screening and evaluation of candidates for counselor school and the continuing

evaluation of counselors during the course of their duties."

NO5350–1

SYSTEM NAME:

Navy Personnel Rehabilitation Support System

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers, or who have undergone counseling and rehabilitation for drug or alcohol abuse in Navy Drug or Alcohol rehabilitation facilities; counselors and counselor candidates; personnel who work part-time helping alcoholics; active duty Navy recovered alcoholics who voluntarily help their commands develop alcoholism prevention programs; Navy personnel convicted by courts-martial and sentenced to confinement; or who were in pretrial confinement; spouses and significant others (this includes parents, live-togethers, and other non-spouses who play an important part in the alcoholic's/drug abuser's life) who have undergone counseling and rehabilitation in Navy drug or alcohol rehabilitation centers, who themselves participate in counseling or treatment programs at such facilities and civilians authorized by the Secretary of the Navy for treatment at a military facility for rehabilitation purposes.

* * * * *

PURPOSE(S):

To assist in the identification, diagnosis, prognosis, or treatment of personnel requiring same for drug or alcohol abuse; to assist them in the prevention of such abuse and to do same for dependents and civilian employees. For counselors and counselor candidates to use in the screening and evaluation of candidates for counselor school and the continuing evaluation of counselors during the course of their duties.

* * * * *

NO6150–1

System name: Medical Department Professional/Technical Personnel Development (50 FR 22829) May 29, 1985.

Changes:

Purpose(s): In line 15, beginning with the phrase: ". . . and to maintain . . ." delete the remaining lines in their entirety.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Insert the following at the beginning of the entry: "Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities."

NO6150–1

SYSTEM NAME:

Medical Department Professional/ Technical Personnel Development

* * * * *

PURPOSE(S):

To manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/ technical training, credentialing, promotion, and all other aspects of health care personnel management; career development; evaluation of candidates for position of lecturer/ consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; and maintenance of safe occupational/environmental protection standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system."

* * * * *

NO6320–3

System name: COMNAVMEDCOM Quality Assurance/Risk Management (50 FR 22835) May 29, 1985.

Changes:

Purpose(s): In line 9, beginning with the phrase: ". . . and to maintain . . ." delete the remaining lines in their entirety.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Insert the following at the beginning of the entry: "Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities."

NO6320–3

SYSTEM NAME:

COMNAVMEDCOM Quality Assurance/Risk Managemet

* * * * *

PURPOSE(S):

This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; to investigate, analyze, and report accidents, injuries, and other incidents; and to identify health care providers with known or suspected problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information of adverse actions or revocations of health care providers' clinical credentials may be disseminated to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system."

* * * * *

[FR Doc. 85–21577 Filed 9–9–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER80–259–008, ER83–628–008, ER84–131–005, ER84–136–004, and ER85–432–001]

Kansas Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver, Establishing Hearing Procedures, and Terminating Dockets

Issued: August 30, 1985.

On February 6, 1985, as completed on June 17, 1985, Kansas Gas and Electric Company (KG&E) filed a refund report in Docket No. ER80–259–008, in compliance with the Commission's Opinion No. 188, 25 FERC ¶ 61,006 (1983). On June 4, 1985, KG&E filed a refund report in Docket Nos. ER83–628–008 and ER84–131–005, in compliance with the Commission's letter order dated March 19, 1985, approving an offer of settlement filed in those dockets, 30 FERC ¶ 61,337 (1985). On July 5, 1985, the company filed a refund report in Docket No. ER84–136–004, in compliance with the Commission's letter order dated June

5, 1985, approving an offer of settlement in that proceeding.

Additionally, on April 12, 1985, as completed on July 2, 1985, KG&E filed, in Docket No. ER85-432-001, revised rates for firm power and transmission schedules for outside power to three partial requirements municipal customers.[1] The proposed rates are identical to settlement rates that were accepted for filing without a hearing for five other partial requirements customers in Docket No. ER83-628-006.[2] The company requests waiver of the notice requirements to permit an effective date of March 12, 1985, as agreed by the parties.

Notices of the company's various filings were published in the Federal Register.[3]

On March 1, 1985, in Docket No. ER80-259-008, the Kansas Municipals[4] filed a protest, stating that KG&E's refunds submitted in compliance with Opinion No. 188 are calculated improperly. The Kansas Municipals contend that, in eliminating the minimum billing demand pursuant to Opinion No. 188, KG&E has unilaterally and retroactively reclassified portions of energy previously delivered under firm power service schedules as energy delivered under emergency and economy service schedules, thus reducing the refunds. According to the Kansas Municipals, KG&E's alleged shifting of energy among service schedules is inconsistent with the Commission's decision in Opinion No. 80-B, 17 FERC ¶ 61,179 (1981), and contrary to their contracts with KG&E, which require prior scheduling agreement. In addition, the Kansas Municipals protest the company's application of the increased rate as of November 1, 1983,[5] to those customers whose contracts permit only prospective changes.[6] The Kansas Municipals contend that the effective date for those customers should be December 20, 1984, the date on which the Commission accepted for filing the final compliance rates. On July 5, 1985, the Kansas Cities filed a supplemental protest elaborating on issues raised previously.

On May 6, 1985, the Cities of Chanute, Fredonia and Iola, Kansas (Cities) filed a motion to intervene in Docket No. ER85-432-001. The Cities do not dispute the proposed rates, but protest the billing determinants submitted by the company for the City of Chanute. The Cities contend that KG&E shifted large portions of energy from firm power to emergency or supplemental power schedules. According to the Cities, the effect of this change is to reduce Chanute's refunds in Docket No. ER84-136 and cause higher bills in the future. The Cities state that this issue is also present in Docket Nos. ER80-259 and ER85-628 and therefore request consolidation of Docket Nos. ER80-259-008, ER83-628-008, ER84-136-004, and ER85-432-001 for the purpose of deciding this issue. On July 30, 1985, the Cities filed a motion to file comments on KG&E's compliance filing one day out of time. The Cities contest the company's claim that it cannot deliver energy without billing a demand charge.

On June 24, 1985, the Kansas Municipals filed a protest in Docket Nos. ER83-628-008 and ER84-131-005. They request a hearing. The Kansas Municipals restate the energy shifting issue which was raised previously in their protest filed in Docket No. ER80-259-008. They further state that the settlement approved by the Commission on March 19, 1985, 30 FERC ¶ 61,337 (1985), provides that the parties reserved for hearing the manner in which refunds for firm power purchased by the generating municipals will be calculated in the absence of the minimum billing demand charge.

On August 2, 1985, the Cities filed a protest to the refund report filed by KG&E in Docket No. ER84-136-004. The Cities contend that KG&E improperly failed to refund excess revenues to the City of Chanute resulting from the company's application of the rate increase eight months prior to the effective date established by the Commission. The Cities also protest the company's charging the City of Chanute interest on its June 1984 bill.[7] Finally, the Cities raise the same issue regarding KG&E's shifting of energy among service schedules which was raised in the other dockets. The Cities again request consolidation of the dockets to resolve the issue of the company's shifting of energy and a hearing on the issue.

Discussion

We find that good cause exists to grant the Cities' motion to file comments one day out of time in Docket No. ER85-432-001, given the early stage of the proceeding, and the apparent absence of any undue prejudice.

With respect to the issue of whether KG&E has improperly shifted energy purchased under firm power to emergency and economy service schedules, we find that the Kansas Municipals have raised matters better resolved after an evidentiary hearing. Further, the settlement in Docket No. ER83-628-006, approved by the Commission on March 19, 1985, 30 FERC ¶ 61,337 (1985), specifically reserved for hearing the manner in which refunds for firm power purchased by the generating municipals will be calculated in the absence of the minimum billing demand charge. Accordingly, we shall set the reserved issue for hearing. Furthermore, because the same issue is present in Docket Nos. ER80-259-008, ER83-628-008, ER84-131-005, and ER84-136-004, the refund reports in those dockets shall be made subject to the outcome of the hearing in Docket No. ER83-628-000.

In Docket No. ER85-432-001, the Cities do not dispute the rates filed by KG&E, but object only to the company's determination of firm energy entitlements in the sample billing data provided by KG&E.[8] The Cities request that this issue be consolidated along with the refund dockets.

Our review of KG&E's filing in Docket No. ER85-432-001 and the pleadings indicates that the rates, as applied to the Cities, have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in

---

[1] The Cities of Chanute, Fredonia, and Iola, Kansas.

[2] *See* Attachment for rate schedule designations.

[3] 50 FR 28,623 (1985) (ER80-259-008); 50 FR 27,337 (1985) (ER83-628-008 and ER84-131-005); 50 FR 30,504 (1985) (ER84-136-004); 50 FR 16,129 (1985) (ER85-432-001).

[4] The Cities of Arcadia, Arma, Augusta, Blue Mound, Bronson, Burlington, Chanute, Coffeyville, Elsmore, Erie, Fredonia, Girard, Haven, Iola, La Harpe, Moran, Mount Hope, Mulberry, Mulvane, Neodesha, Oxford, Savonburg, Wellington and Winfield.

[5] November 1, 1983, is the beginning of the first billing period following the issuance of Opinion No. 188 on October 4, 1983.

[6] The Cities of Arcadia, Arma, Blue Mound, Bronson, Elsmore, Erie, Haven, La Harpe, Moran, Mount Hope, Mulberry and Savonburg.

[7] The disputed bill was paid by Chanute in two installments. Although the second payment was made within the time allotted by the contract, the first payment was less than the amount due and interest was charged to Chanute for the difference.

[8] The Cities agreed to be placed on the same firm power rates as other generating municipalities in order to obtain wheeling service by KG&E for outside power and to resolve an antitrust suit against KG&E. The increase to the Cities amounts to $141,194 (8.1%) annually.

West Texas, we would generally impose a nominal suspension. We also recognized, in *West Texas*, that the length of suspension may be affected by agreements between a utility and its customers. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. Further, the affected customers have consented to the company's rates, although they do object to the billing determinants used to calculate revenues. In light of these circumstances, we believe that a nominal suspension is appropriate. For the same reasons, we find that good cause exists to grant KG&E's request for waiver of the notice requirements. Accordingly, we shall accept KG&E's rates in Docket No. ER85-432-001 for filing and suspend them, to become effective March 12, 1985, subject to refund and subject to the outcome of our decision in Docket No. ER83-628-000.

In Docket No. ER80-259-008, the Kansas Municipals argue that the effective date of the increased rate for those cities whose contracts permit only prospective changes should be the date on which the compliance rates were accepted for filing. We disagree. We have previously held that the effective date for a customer show contract permits only prospective rate changes is the date of the opinion on the rates. *See, e.g., Illinois Power Co.*, 17 FERC ¶ 61,064 (1982). Here, we find that the rates were properly applied as of the first billing period following the issuance of Opinion No. 188. Accordingly, we shall deny the Kansas Municipals' protest on this issue.

The Cities protest the interest charged the City of Chanute on the first installment of its June 1984 bill. While we agree that interest was improperly charged on the first installment, such interest was offset by KG&E on the the second installment. Accordingly, we shall dismiss the Cities' protest as to this issue.

Finally, we agree with the Cities' contention that the company improperly increased rates for the City of Chanute beginning in November 1983, when an arbitration panel issued a decision on the rates.[9] By order dated June 1, 1984, 27 FERC ¶61,335 (1985), in Docket No. ER84-136-000, we found that KG&E had not shown good cause for waiver of the notice requirements to permit an effective date of November 9, 1983, and we ordered an effective date of June 4, 1984. Therefore, we shall order KG&E to refund for the period from November 9, 1983, to June 4, 1984, the difference between the amounts collected from Chanute and the amount which would have been collected under the prior effective rate, together with interest.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 and 206 thereof, and pursuant to the Commission's rules of practices and procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the reserved issue of computation of refunds in light of the elimination of minimum billing demands in Docket No. ER83-628-000.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in Docket No. ER83-628-000 to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426., The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(C) Refunds in Docket Nos. ER80-259-008, ER83-628-008, ER84-131-005, and ER84-136-004 are hereby made subject to the outcome of the hearing in Docket No. ER83-628-000.

(F) KG&E's request for waiver of the notice requirements in Docket No. ER85-432-001 is hereby granted.

(E) KG&E's proposed rates in Docket No. ER85-432-001 are hereby accepted for filing and suspended, to become effective on March 12, 1985, subject to refund and to the outcome of the hearing in Docket No. ER83-628-000.

(F) The Kansas Municipals' request as to the effective date of the rates filed pursuant to Opinion No. 188 is hereby denied.

(G) The Cities' protest of the interest charged Chanute in June 1984 is hereby dismissed.

(H) KG&E is hereby ordered to refund to Chanute, within thirty (30) days, any amounts collected in Docket No. ER84-136-000 from November 9, 1983, to June 4, 1984, in excess of amounts that would have been collected under the previously effective rates.

(I) KG&E is hereby ordered to file revised refund reports in Docket Nos. ER80-259-008, ER83-628-008, ER84-131-005, ER84-136-004 and ER85-432-001 upon the conclusion of the hearing on the reserved issue in Docket No. ER83-628-000.

(J) Docket Nos. ER80-259-008 ER83-628-008, ER84-131-005, ER84-136-004 and ER85-432-001 are hereby terminated.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb

Secretary.

KANSAS GAS ELECTRIC CO., DOCKET NO. ER85-432-001, RATE SCHEDULE DESIGNATINGS

Designation	Description
(1) Supplement No. 12 to rate schedule FPC No. 87 (Supersedes Supplement No. 11).	Firm power rates for Fredonia.
(2) Supplement No. 13 to rate schedule FPC No. 87 (Supersedes Supplement No. 4).	Fuel adjustment clause for Fredonia.
(3) Supplement No. 14 to rate schedule FPC No. 87.	Service schedule E-transmission service for Fredonia.
(4) Supplement No. 11 to rate schedule FPC No. 89 (Supersedes Supplement No. 10.	Firm power rates for Iola.
(5) Supplement No. 12 to rate schedule FPC No. 89 (Supersedes Supplement No. 4).	Fuel adjustments clause for Iola
(6) Supplement No. 13 to rate schedule FPC No. 89.	Service schedule E-transmission service for Iola.
(7) Supplement No. 16 to rate schedule FPC No. 128 (Supersedes Supplement No. 17.	Firm power rate for Chanute.
(8) Supplement No. 19 to rate schedule FPC No. 128 (Supersedes Supplement No. 8).	Fuel adjustment clause for Chanute.
(9) Supplement No. 20 to rate schedule FPC No. 128 (Supersedes Supplement Nos. 15 and 5 as supplemented).	Service schedule E-transmission service for Chanute.

[FR Doc. 85-21561 Filed 9-9-85; 8:45 am]
BILLING CODE 6717-01-M

[9] The contract between KG&E and Chanute provides for arbitration prior to filing with the Commission.

[Docket No. CP85-813-000]

Northwest Central Pipeline Corp. Request Under Blanket Authorization

Issued: August 30, 1985.

Take notice that on August 22, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-813-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon in place approximately 1.2 miles of 2-inch lateral line and reclaim measuring and appurtenant facilities serving Phillips Pipeline Company Edgerton Pump Station (Phillips) in Johnson County, Kansas, and to abandon the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which

is on file with the Commission and open to public inspection.

Northwest Central states that Phillips has requested that the facilities be reclaimed as Phillips sold the Edgerton Pump Station to Kansas Pipeline Corporation (KPC) in 1984, and KPC has requested Northwest Central reclaim its facilities. The estimated cost to reclaim these facilities is $1,500 with an estimated salvage value of $2,090.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21567 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6802-002 etc.]

Snowbird Ltd. et al.; Availability of Environmental Assessment and Finding of No Significant Impact

September 5, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for and exemptions from licensing listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
6802-002	Little Cottonwood Creek/Tannersville	UT	Little Cottonwood Creek	Alto, Utah	Snowbird, Ltd.
7878-000	Hidden Springs	ID	Hidden Springs	Hagerman	William A. Curtis.
8864-000	George Creeks	MT	George Creek and N. McDonald Creek	Livingston	Cleto McPherson.
8969-000	Crocker Pond	ME	Denniston Plantation		
			Licenses		
4204-002	White River Lock	AR	White River	Batesville	City of Batesville.
8552-001	North Fork Sprague River	OR	North Fork of the Sprague River	Bly	Frederick O. Ehlers.

Environmental assessment (EA's) were prepared for the above proposed projects. Based on an independent analysis of the above action as set forth in the EA's, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plum,

Secretary.

[FR Doc. 85-21562 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7801-003]

Southern California Edison Co.; Surrender of Preliminary Permit

September 5, 1985.

Take notice that Southern California Edison Company, Permittee for the proposed Warren Fork Project No. 7801, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 19, 1984, and would have expired on December 31, 1985. The project would have been located on Warren Fork, a tributary to Lee Vining Creek, near Lee Vining, in Mono County, California.

The Permittee filed the request on July 19, 1985, and the preliminary permit for Project No. 7803 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21568 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST85-392-000, ST85-450-000, and ST81-307-001]

Cabot Pipeline Corp.; Change in Procedural Schedule

Issued September 3, 1985.

Take notice that the procedural schedule established by the Commission's June 3, 1985 order in this proceeding [1] has been changed. The Staff Panel will certify the transcript of the proceeding, any timely filed written comments and its recommendation to the Commission by October 3, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21563 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST80-77-003, et al.]

El Paso Natural Gas Co. et al.; Extension Reports

Issued: September 4, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding

[1] 31 FERC ¶61,261 (1985).

the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 27, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 Subpart	Effective date	Expiration date [2]
ST80-77-003	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	Pacific Gas and Electric Co	08-01-85	B	11-01-85	
ST82-8-002 [1]	PGC Pipeline, 4925 Greenville Ave., Dallas, TX 75206	United Gas Pipe Line Co	08-02-85	C	10-19-85	10-31-85
ST82-44-002	Dow Pipeline Co., P.O. Box 4286, Houston, TX 77210	Public Service Electric and Gas Co	08-01-85	C	11-01-85	
ST82-54-002	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Louisiana Intrastate Gas Corp	08-02-85	B	11-02-85	
ST82-66-002	Arkansas Oklahoma Gas Corp., P.O. Box 2406, Fort Smith, AR 72902.	Columbia Gas Transmission Corp	08-09-85	G	11-10-85	
ST82-77-002	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001.	New Jersey Natural Gas Co	08-02-85	B	11-01-85	
ST82-101-002	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Northern Natural Gas Co	08-06-85	G	11-06-85	
ST82-220-002	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	South Jersey Exploration Co., et al	08-02-85	B	11-01-85	
ST84-26-001 [1]	Sabine Pipe Line Co., P.O. Box 52332, Houston, TX 770052.	Neches Gas Distribution Co	07-17-85	B	09-16-85	10-15-85
ST84-77-001 [1]	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	Delhi Gas Pipeline Corp	08-09-85	B	11-01-85	11-08-85
ST84-87-001	Westar Transmission Co., P.O. Box 90, Amarillo, TX 79189.	Transwestern Pipeline Co	08-01-85	D	11-05-85	
ST84-163-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Intrastate Gathering Corp	08-02-85	B	11-01-85	
ST84-205-001	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001.	Western Gas Supply Co	08-08-85	B	11-10-85	
ST84-222-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Natural Gas Pipeline Co. of America	08-05-85	C	11-23-85	
ST84-275-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Monterey Pipeline Co	08-13-85	B	11-28-85	
ST85-256-001	Columbia Gas Transmission Co., P.O. Box 683, Houston, TX 77001.	Washington Gas Light Co., et al	08-02-85	B, G	11-01-85	
ST85-265-001	Columbia Gulf Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Washington Gas Light Co., et al	08-02-85	B, G	11-01-85	
ST85-791-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	National Fuel Gas Supply Corp	08-02-85	G	11-01-85	
ST85-796-001	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	National Fuel Gas Supply Corp	08-02-85	G	11-01-85	

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-21565 Filed 9-9-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TC85-19-000]

El Paso Natural Gas Co.; Petition

Issued: September 4, 1985.

Take notice that on August 14, 1985, Southwest Gas Corporation, P.O. Box 15015, Las Vegas, Nevada 89114, Arizona Public Service Company, P.O. Box 21666, Station 4142, Phoenix, Arizona 85056, Gas Company of New Mexico, a Division of Public Service Company of New Mexico, 2444 Louisiana, NE., Albuquerque, New Mexico 87103, and Southern Union Gas Company, a Division of Southern Union Company, 400 South 15th Street, Austin, Texas 78071, the east-of-California (EOC) companies, filed in Docket No. TC85-19-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) which requests that the Commission convene a public conference in the nature of a Commission investigation concerning the curtailment plan [1] and related practices of El Paso Natural Gas Company (El Paso), all as more fully described in the petition which is on file with the Commission and open to public inspection.

The EOC companies claim that significant and unforseen changes in

[1] The curtailment plan is contained in section 11 of the General Terms and Conditions of Volume 1 of El Paso's FERC Gas Tariff. The curtailment plan was approved by the Commission in Docket Nos. RP72-6, *et al.*, on March 28, 1981 (14 FERC ¶ 61,349), as part of a settlement of numerous proceedings before the Commission and the courts.

circumstance, including dramatic changes in the Commission's rules, regulations and policies governing the sale and transportation of natural gas by interstate pipelines, warrant an investigation by the Commission to determine whether such changes have rendered El Paso's curtailment plan unjust, unreasonable, and unduly discriminatory, contrary to the requirements of Sections 4 and 5 of the Natural Gas Act.

In support of their claims the EOC companies develop several arguments. The EOC companies begin by stating that El Paso's curtailment plan, which allocates gas supplies based on fixed end-use profiles instead of existing contract demands, results in the situations where the EOC companies' firm requirments receive lower priority treatment than some of the best-efforts requirements of El Paso's California customers, Southern California Gas Company (SoCal) and Pacific Gas and Electric Company (PG&E). These customers are said to be allocated gas supplies based on daily requirements profiles totaling 2,890,000 Mcf while their present combined maximum contract daily demands (MCDD) are 595,000 Mcf and would drop to zero in 1986. The EOC companies claim that El Paso has purchased natural gas supplies in sufficient quantities to meet the full curtailment plan profiles but that the California customers deem their purchase obligations to be their MCDD.

The EOC companies state that the incongruity between El Paso's service obligations and California purchase commitments have saddled the EOC customers with execssive costs. To begin, it is stated, they have borne a share of the high-cost gas supplies that El Paso had to acquire to stand ready to meet the curtailment plan profiles for SoCal and PG&E. Under traditional Commission practice, it is maintained, the cost of these expensive supplies is rolled in and becomes part of El Paso's weighted average cost of purchased gas, which is paid uniformly by all customers, even though the high-priced supplies may have been acquired to serve a "now you see it, now you don't" imaginary market in California.

The EOC companies state that there is a tremendous difference between the total gas supply required to serve the California profiles of 2,890,000 Mcf per day and the gas supply needed to satisfy the 1985 stepped-down MCDDs of only 595,000 Mcf per day (only 20 percent of the plan profile) or the 1986 reduced MCDDs of zero. The EOC companies claim that El Paso certainly could have avoided attaching large quantities of expensive new reserves, the cost of which is rolled in and shared by all customers, had it been able to tailor its gas acquisition program to serve only the stepped-down California MCCDs, but that its obligations under the curtailment plan foreclosed this course of action.

The EOC companies also claim that the Commission's actions regarding minimum bill in interstate pipeline companies' rates have further aggravated the problems on the El Paso system. They claim that Order No. 380, issued by the Commission on July 30, 1984, coupled with the elimination of the fixed cost component from El Paso's minimum bill with its California customers has permitted those customers to "swing" on El Paso while maintaining or increasing their takes from their other pipeline suppliers.[2] The EOC companies claim that the elimination of El Paso's 91 percent minimum bill with its California customers has also nullified its ability to deter those customers from swinging. They allege that this inability to deter swinging by the California customers is incongruous with El Paso's obligation to supply gas to the California customers under the curtailment plan. They state that this could lead to excessive and undue curtailment exposure for all EOC customers, including the petitioning EOC companies, as they subsidize the cost of gas acquired by El Paso for what has now become a phantom market in California. It is stated that if El Paso acquires enough gas supplies to serve a market that includes California's full allocation of 2,890,000 Mcf per day under the curtailment plan and SoCal and/or PG&E then swing to other suppliers, El Paso could be burdened with exhorbitant take-or-pay costs under the contracts with its suppliers. It is asserted that these take-or-pay costs could be borne in part by the EOC companies, who have no alternative firm supplies, even though the California customers in large measure caused El Paso to incur these expenses. Paradoxically, it is maintained, because these take-or-pay costs are includable in El Paso's commodity rates in accord with recently reaffirmed historical Commission policy, the California customers would avoid a significant part of these costs, for which they are largely responsible, as they cut back on their purchases from El Paso.

The EOC companies further claim that other new Commission rate design policies have also created increased risks for EOC customers under the curtailment plan. It is asserted that circumstances in El Paso's California market worsened when the Commission summarily authorized a demand/commodity rate design for the sale and transportation of gas from Canada into the California market.[3] The EOC companies further assert that under this rate design, all fixed costs and even some variable costs were loaded into the demand charge in order to make the Canadian commodity charge competitive against other gas supplies in the California market. EOC companies state that they strenously opposed this rate design because it afforded Canadian suppliers a competitive advantage over El Paso. They claim that the Commission never would have approved that type of rate design for any domestic pipeline, including El Paso.

The EOC companies state that the Commission should evaluate whether these recent changes in its minimum bill, rate design, and transportation policies require a revamping of the curtailment plan to bring SoCal and PG&E's entitlements more in line with their requirements and commitments to purchase from El Paso and to prevent the adverse impacts on east-of-California customers discussed above.

For the foregoing reasons, the EOC companies have requested the Commission to convene a public conference in the nature of an investigation concerning El Paso's curtailment plan and its practices thereunder and to determine whether the curtailment plan is still just and reasonable and not discriminatory, as required by Sections 4 and 5 of the Natural Gas Act, in light of current regulatory policies and market conditions.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to

[2] It is claimed that unlike the EOC companies, which are full firm requirements customers of El Paso, the California customers are partial requirements customers who can take advantage of alternative firm supplies including gas produced in California by both affiliates and non-affiliates, Canadian gas delivered by affiliated pipelines, and gas delivered by El Paso's competitor, Transwestern Pipeline Company, and then "swing" their purchases from one supplier to another.

[3] Northwest Alaskan Pipeline Co., 29 FERC ¶ 61,199 (1984) *reh'g dismissed*, 30 FERC ¶ 61,126 (1985).

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21564 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-50-000]

Mississippi Valley Gas Co.; Petition for Exemption From Incremental Pricing and for Interim Relief

Issued September 4, 1985.

On August 14, 1985, Mississippi Valley Gas Company (Mississippi Valley), P.O. Box 3348, Jackson, Mississippi 39207, filed a petition with the Federal Energy Regulatory Commission (Commission), pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3346(d) (1982), and § 282.206(b) of the Commission's regulations, 18 CFR 282.206(b) (1985). Mississippi Valley seeks an order from the Director of the Office of Pipeline and Producer Regulation (Director), exempting from incremental pricing certain industrial customers currently served by Mississippi Valley. Additionally, Mississippi Valley seeks interim relief pursuant to Rule 1113 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1113 (1985), in order to prevent irreparable injury.

Mississippi Valley's incremental pricing exemption petition involves two industrial boiler fuel customer groups. The first customers group contains eight industrial boiler fuel customers. The second customers group has one non-exempt industrial boiler fuel customer which voluntarily takes less than 300 Mcf per day in order to keep itself exempt from incremental pricing.

Mississippi Valley's petition asserts an incremental pricing exemption for all of the above industrial boiler fuel customers is necessary to prevent the possible loss of load to suppliers of non-incrementally priced gas or alternative fuels. Absent such an exemption, Mississippi Valley believes its remaining customers will suffer increasing special hardships, inequities and unfair distributions of burdens within the meaning of NGPA section 502(c).

The procedures applicable to the conduct of this proceeding are set forth in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene in accordance with Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21566 Filed 9-9-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Monday, September 30, 1985, 8:30 a.m.-5:05 p.m.; Tuesday, October 1, 1985, 8:30 a.m.-12:00 noon

Place: The Henley Park Hotel, Massachusetts Avenue and 10th Street, NW., Washington, D.C. 20001.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A061, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202-252-8292.

Purpose of the board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative agenda: Monday, September 30, 1985:

- Program Update.
- EES Strategic Planning.
- Presentations of Energy Extension Service Projects.
- Public Comment (10 minute rule).

Tuesday, October 1, 1985.

- Presentations of Energy Extension Service Projects.
- Remarks from Joseph F. Salgado, DOE Under Secretary.
- Plan for Seventh Annual Report.
- Public Comment (10 minute rule).

Public participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202/252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on September 4, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-21556 Filed 9-9-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2894-8]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting—September 26-27, 1985

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee of the Science Advisory Board. The meeting will be held on September 26-27, 1985 at the U.S. Consumer Product Safety Commission, Room 456, 5401 Westbard Avenue, Bethesda, Maryland. The meeting will begin at 9:00 a.m and adjourn at approximately 5:00 p.m. each day.

Under the provisions of an interagency agreement between the U.S. Environmental Protection Agency (EPA) and the U.S. Consumer Product Safety Commission (CPSC), EPA's Clean Air Scientific Advisory Committee (CASAC) will review CPSC documents that discuss health effects associated with exposure to 0.1 to 1.0 plus ppm of nitrogen dioxide generated by unvented combustion sources used in the home. The purpose of the meeting is to enable the CASAC to review CPSC documents and to provide its advice to the CPSC on the following issues: (1) The levels of nitrogen dioxide for which there are data indicating adverse health effects; (2) the identity of subsets of the population more sensitive to nitrogen dioxide than others; and (3) whether exposure to nitrogen dioxide leads to irreversible lung damage.

For further information and copies of the CPSC Documents, please contact: Ms. Sayde Dunn, Office of the Secretary, U.S. CPSC, 5401 Westbard Avenue, Washington, DC, 20207 (301) 492-6800.

The meeting is open to the public. Any member of the public wishing to attend or obtain information about the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington,

DC 20460 or call (202) 382–2552, prior to the meeting. Persons wishing to make statements at the meeting must contact Mr. Flaak no later than close of business on September 18, 1985.

Dated: August 30, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85–21545 Filed 9–9–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Demonstration Grants to States for Projects of Emergency Medical Service for Children

SUMMARY: The Health Resources and Services Administration (HRSA) announces that $2 million are not available for funding grants under section 1910 of the Public Health Service (PHS) Act, 42 U.S.C. 300w–9, which authorizes the Department to make grants to not more than four States in each of three fiscal years to support a program of demonstration projects in such States for the expansion and improvement of Emergency Medical Service (EMS) for Children. HRSA, through this notice, invites eligible applicants to apply for these grants.

DATE: To receive consideration, applications for the new EMS for Children grants must be received by close of business November 25, 1985, by the Chief, Grants Management Branch, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A08, 5600 Fishers Lane, Rockville, Maryland 20857. Application materials have been sent on the date of this notice to all State Health Officers, State Officers for EMS, and State Maternal and Child Health Directors, together with all organizations that have made written inquiry prior to the date of this notice.

FOR FURTHER INFORMATION CONTACT: States wishing to inquire about possible grant support should address their inquiries in writing to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2170.

SUPPLEMENTARY INFORMATION: About 25,000 children die each year from accidental injury and more die from acute illnesses and related conditions. An improved system of care can indentify these children at the earliest phase, provide correct prompt prehospital care, access to an emergency department and admission to and consultation with a pediatric intensive care program.

Section 1910 of the PHS Act, the new EMS for Children legislation (enacted on October 19, 1984, by section 7 of Pub. L. 98–555, "The Preventive Health Amendments of 1984"), establishes a new and separate authorization within the Preventive Health and Health Services Block Grant legislation; title XIX, Part A, of the PHS Act, 42 U.S.C. 300w *et seq.* for grants to States for demonstration projects for the expansion and improvement of EMS for Children who need treatment for critical illnesses and injuries. The term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. The legislation limits the number of grants to not more than four in any fiscal year. By statute the grant period is for one year; however, the grant may be renewed for a second year if it is detemined that renewal will provide significant benefits through the collection, analysis and dissemination of information and data which will be useful to other States.

The legislative history indicates that Congress intends the Department to establish the projects in a manner that will insure maximal geographical distribution of projects. Also, an effort is to be made to give priority to projects targeted toward populations with truly special needs, such as minorities and the handicapped. The Department does not intent to award demonstration grants which would duplicate the former categorical EMS grant program funded by this Agency, or which would be used simply to increase the availability of EMS funds allotted to the States under the Preventive Health and Health Service Block grants.

Eligible Applicants

Applications for funding under section 1910 will be accepted from the 50 States and the District of Columbia, Guam, the Commonwealth of Puerto Rico, The Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands. Applicants are encouraged to seek the partcipation and support of other entities within the State, such as local governments and health and medical organizations in the private sector, in developing the State's proposed demonstration projects.

Application

An application for an EMS for Children grant must be submitted to the address, and by the date and time set forth in the DATE section above. The application should include:

(1) A description of the proposed task(s) related to pediatric EMS which the applicant proposes to address.

(2) A statement of the overall goal or goals of the proposed project.

(3) A statement of specific project objectives which will result in movement toward or achievement of project goals.

(4) A description of the methodology to be used to achieve the objectives.

(5) A plan or schedule for implementation of the methodological approach during the project period, including a description of project personnel and resources to be employed.

(6) A description of anticipated outcomes of the project in terms of changes in pediatric EMS capability in general and improvement of the stated project issue or problem, in particular.

(7) Evidence of the participation in and support of the proposed project by the public, private and volunteer organizations and entities which are associated with and involved in the project activities.

Application Evaluation Criteria

An application will be evaluated by consideration of the following factors:

(1) The extent of the need for improved and expanded EMS for Children in the project's target population and geographic area and the relative need for the project compared to other applicants' proposed projects.

(2) The extent of collaboration and coordination with other appropriate organizations involved in health care provision and public health (e.g., injury prevention activities, community support services, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

(3) The soundness of the proposals, as set forth in the application, in terms of fiscal management, effective use of personnel, ability to complete the proposal within the one year grant period, usefulness of project's work to other States and the linkages to current EMS resources and specialized resources for care of the critically ill or injured child.

(4) The extent to which the proposed project will serve populations with truly special needs, such as minorities

(including Native Americans) and handicapped children.

In considering to which four States to award grants, the Department will strive to assure that there is an appropriate geographic distribution of awards across the country.

This program is not subject to Executive Order 12372.

OMB Catalog of Federal Domestic Assistance

The EMS for Children program is listed as No. 13.127.

Dated: September 5, 1985.

Edward D. Martin, M.D.,

Acting Deputy Administrator.

[FR Doc. 85-21555 Filed 9-9-85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fairbanks District Advisory Council; Meeting

The Advisory Council for the Fairbanks District of the Bureau of Land Management will have a general meeting on Wednesday, October 2, 1985. The location of the meeting will be the second-floor training room at the BLM office on Fort Wainwright, 1541 Gaffney Road. The meeting will convene at 8:30 a.m. and conclude at 5 p.m. Public comments will be received by the Council from 3 to 4 p.m.

The following topics will be discussed at the meeting:

1. Futuring in BLM/Alaska.
2. Colville River Special Area Study.
3. Utility Corridor.
4. Teshekpuk Lake Special Area Study.
5. Safety Signs on the Fortymile National Wild and Scenic River.
6. Central Yukon Plan.

All meetings of the Council are open to the public.

Carl D. Johnson,

District Manager.

[FR Doc. 85-21512 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-JA-M

Arizona, Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Safford District Advisory Council.

DATE: Friday, October 11, 1985, 10:00 a.m.

ADDRESS: Cochise County Service Center, Highway 80 and 7th Street, Benson, Arizona.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held Friday, October 11, 1985 at 10:00 a.m. The meeting will be in conjunction with a field tour of the Muleshoe Ranch and will start at Cochise County Service Center, Highway 80 and 7th Street, Benson, Arizona.

Agenda for the Meeting

1. Field trip of BLM-State Land Exchange on Muleshoe Ranch.
2. Management Update.
3. Business from the floor.

The meeting is open to the public. Council members will meet at the Cochise County Service Center, Highway 80 and 7th Street, Benson, Arizona at 10:00 a.m. From here we will depart via BLM-provided vehicles for a tour of the Muleshoe Ranch. Members of the public may accompany the tour but must provide their own transportation. Written statements may be filed for the Council's consideration. A management update and business from the floor will take place during the lunch stop. The tour is expected to return to Benson, Arizona by 5:00 p.m.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (within regular business hours) within 30 days following the meeting.

Date: August 30, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-21540 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-32-M

Roswell District Advisory Council Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Advisory Council Tour.

SUMMARY: Notice is hereby given that the Rosewell District of the Bureau of Land Management will conduct a tour of the Fort Stanton area for the Roswell District Advisory Council on October 2, 1985. The Council will depart from the BLM District Office at 1717 West Second Street, Roswell, NM at 9:00 a.m. The public is invited to participate at their own expense; transportation will *not* be provided by BLM. Persons interested in participating should call Mr. David L. Mari or Ms. Guadalupe Martinez at (505) 622-9042 by September 20 for schedule information.

David L. Mari,

Associate District Manager.

[FR Doc. 85-21541 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-FB-M

Modified Notice of Realty Action; Sale of Public Lands; Socorro County, NM

The Notice of Realty Action on the sale of public lands in Socorro County, New Mexico, published in the **Federal Register** on July 11, 1985, Vol. 50, No. 133, pages 28274 and 28275, and modified on August 1, 1985 in Vol. 50, No. 148, page 31257 is further amended as follows:

The date for opening of sealed bids for Parcels 2 through 8 is postponed from September 13, 1985 until a date to be later published. This change is due to the unavailability of finalized surveys for these parcels by the expected date.

The September 13, 1985 date for opening of bids for Parcel 1 and Parcels 9 through 12 remains unchanged. All other terms and conditions of the sale also remain unchanged.

H. James Fox,

District Manager.

[FR Doc. 85-21519 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Dinosaur National Monument Colorado; Selection of Entrance Road

Notice is hereby given that the location for an entrance road, including the roadway and adjacent scenic easement areas to the Dinosaur National Monument, serving the east entrance to the Monument at Deerlodge Part—including Ranger Station, and related campground and boat launch facilities—has been selected pursuant to the provisions of section 2 of the Act of September 8, 1960 (74 Stat. 857-861).

The road and scenic easement is 12.587 miles in length, extending northerly and westerly from U.S. Highway 40 to the Dinosaur National Monument boundary near Deerlodge Park.

The road location selected embraces approximately 296.12 acres in a strip 200 feet wide that is to be acquired by the United States in fee or is already owned by the United States, and also approximately 1,175.84 acres of adjoining lands in a strip 400 feet wide on each side of the aforesaid 200 foot

wide strip that will be subject to acquisition of scenic easements on nonfederal lands. The latter lies generally within 500 feet of the centerline and within 400 feet on each side of the 200 foot strip for the subject road. Approximately 622 acres in the area for scenic easement control are already owned by the United States. The lands and ownerships involved are depicted on Drawing No. 122/92,003 entitled "Dinosaur National Monument Land Status Map 09" and this drawing and the scenic easement estate and restrictions are on file in the office of the Superintendent at Dinosaur National Monument, Dinosaur, Colorado; the National Park Service Rocky Mountain Regional Office, Division of Land Resources in Lakewood, Colorado; and the National Park Service, Land Resources Division, Branch of Coordination and Control, Washington, D.C.

As provided in section 2(a) of the Act of September 8, 1960, the lands included in this notice constitute a part of the Dinosaur National Monument and therefore are subject to the laws and regulations applicable thereto. Such lands shall also be subject to any special regulations published by the Secretary of the Interior in furthermore of the purposes of said section. Consequently, the Federal lands within the Monument boundaries are closed to all forms of entry and appropriation under the public land laws, including the Mining Law of 1872 (30 U.S.C 22), and to mineral leasing under the Mineral Leasing Act of 1920 (30 U.S.C. 181), or the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C 351). Valid existing rights in and to the Federal lands set forth in this Notice, existing on the date of this Notice, are not affected hereby.

Notwithstanding the inclusion of these lands in the Monument, the Bureau of Land Management is authorized to administer the former public lands within the location hereby selected for scenic easement control, for the purpose of grazing, insofar as grazing is consistent with section 3 of the Act of September 8, 1960.

Dated: August 27, 1985.

William Penn Mott, Jr.,

Director.

[FR Doc. 85-21505 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 1 p.m. CDT, on Friday, September 27, 1985, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u–7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Bensz
Ms. Anna R. Carlson
Mr. Harry W. Frey
Mr. R. M. Gacki
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Kay M. Rhame
Dr. John Tucker
Mr. Norman E. Tufford

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report.
2. Reminiscences of the Indiana Dunes National Lakeshore Advisory Commission.

The meeting will be open to the public. Any member of the public may file with the commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219–926–7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dunes National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: August 27, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85-21504 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 31, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comment concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 25, 1985.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Arapahoe, County

Aurora, *Smith, William, House*, 412 Oswego Ct.

Denver County

Denver, *Smith House*, 1801 York St.
Denver, *South Side—Baker Historic District*, Roughly bounded by W. Fifth Ave., Broadway, W. Alameda, & W. Fox Sts.

Larimer County

Virginia Dale, *Virginia Dale State Station*, Off U.S. 287.

Pueblo County

Pueblo, *Colorado State Hospital Superintendent's House*, Thirteenth & Francisco Sts.

MICHIGAN

Ionia County

Belding, *Richardson Silk Mill*, 101 Front St.

Lapeer County

Imlay City, *Fairweather, James F.—Lamb, Jocob C., House*, 540 S. Almont Ave.

Manistee County

Onekama vicinity, *Portage Point Inn Complex*, 8513 S. Portage Point Dr.

Oakland County

Bloomfield Hills, *Affleck, Gregor S. and Elizabeth B., House*, 1925 N. Woodward Ave.

Washtenaw County

Saline, *Annin, Joseph, House (Saline MRA)*, 218 Monroe St.
Saline, *East Michigan Avenue Historic District (Saline MRA)*, 300, 301–321 E. Michigan, 99–103 Maple and 217, 300 & 302 E. Henry
Saline, *Forbes, Jortin, house (Saline MRA)*, 211 N. Ann Arbor St.
Saline, *Gothard, Charles, House (Saline MRA)*, 211 E., Michigan Ave.
Saline, *Lutz, George R., House (Saline MRA)*, 103 W. Henry St.
Saline, *Miller—Walker House (Saline MRA)*, 117 McKay St.

Saline, *North Ann Arbor Street Historic District (Saline MRA)*, 301–327 N . Ann Arbor & 308–324 N . Ann Arbor between Russel & Bennett
Saline, *Oakwood Cemetery Mausoleum (Saline MRA)*, Off Monroe St.
Saline, *Saline First Presbyterian Church (Saline MRA)*, 143 E. Michigan Ave.
Saline, *Sturim, Louis House (Saline MRA)*, 100 Russell
Saline, *Union Block (Saline MRA)*, *100–110 E Michigan Ave.*
Saline, *Van Duzer, Samuel D., House (Saline MRA)*, 205 S. Ann Arbor St.
Saline, *Wallace Block—Old Saline Village Hall (Saline MRA)*, 105–113, S. An Arbor St.
Saline, *Watson, Henry R., House (Saline MRA)*, 7215 N . Ann Arbor—Saline Rd.
Saline, *Zalmon Church House (Saline MRA)*, 113 N. Ann Arbor

Wayne County

Detroit, *Alden Park Towers (East Jefferson Avenue Residential TR)*, 8100 E. Jefferson Ave.
Detroit, *Bagley, John N., House (East Jefferson Avenue Residential TR)*, 2921 E. Jefferson Ave.
Detroit, *Campau, Joseph, House (East Jefferson Avenue Residential TR)*, 2910 E. Jefferson Ave.
Detroit, *Chene, Alexander, House (East Jefferson Avenue Residential TR)*, 2881 E. Jefferson Ave.
Detroit, *Garden Court Apartments (East Jefferson Avenue Residential TR)*, 2900 E. Jefferson Ave.
Detroit, *Hibbard Apartment Building (East Jefferson Avenue Residential TR)*, 8905 E. Jefferson Ave.
Detroit, *Jefferson Hall (East Jefferson Avenue Residential TR)*, 1405 E. Jefferson Ave.
Detroit, *Keane, The (East Jefferson Avenue Residential TR)*, 8925 E. Jefferson Ave.
Detroit, *Manchester Apartments (East Jefferson Avenue Residential TR)*, 2016 E. Jefferson Ave.
Detroit, *Polms, The (East Jefferson Avenue Residential TR)*, 1001 E. Jefferson Ave.
Detroit, *Parker, Arthur M., House (East Jefferson Avenue Residential TR)*, 8115 E. Jefferson Ave.
Detroit, *Pasadena Apartments (East Jefferson Avenue Residential TR)*, 2170 E. Jefferson Ave.
Detroit, *Ponchartrain Apartments (East Jefferson Avenue Residential TR)*, 1350 E. Jefferson Ave.
Detroit, *Somerset Apartments (East Jefferson Avenue Residential TR)*, 1523 E. Jefferson Ave.
Detroit, *Stearns, Frederick K., House (East Jefferson Avenue Residential TR)*, 8109 E. Jefferson Ave.
Detroit, *Walker, Franklin H., House (East Jefferson Avenue Residential TR)*, 2730 E. Jefferson Ave.
Detroit, *Wells, William H., House (East Jefferson Avenue Residential TR)*, 2931 E. Jefferson Ave.
Detroit, *Whittier Hotel (East Jefferson Avenue Residential TR)*, 415 Burns Dr.

MINNESOTA

Hennepin County

Minneapolis, *Minneapolis Armory*, 500–530 Sixth St. S

MISSOURI

St. Louis (Independent City),
Foshion Square Building, 1307 Washington Ave.
Marquette Hotel, 1734 Washington Ave.
Union Station Post Office Annex, 329 S. Eighteen St.

St. Louis County

University (Also in St. Louis city), *Parkview Historic District*, Roughly bounded by Delmar, Skinker, & Millbrook Blvds. and Mellville Ave.

NEBRASKA

Cass County

Avoca vicinity, *Kehlbeck Farmstead*, Off NE 50 & US 34
Plattsmouth, *Plattsmouth Main Street Historic District*, Main St. bounded by Avenue A, S. & N. Third St., First Ave. and S. & N. Seventh St.

Clay County

DeWeese vicinity, *Saint Martin's Catholic Church*, NW of DeWeese

Franklin County

Franklin, *Dupee Music Hall*, 1402 P St.

[FR Doc. 85–21596 Filed 9–9–85; 8:45am]
BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Proposed AID Housing Guaranty Refinancing Program

The Agency for International Development ("A.I.D.") is considering a refinancing program to provide short-term debt relief to certain countries ("Borrowers") which have borrowed under the AID Housing Guaranty ("HG") Program and which are involved in international debt rescheduling procedures.

Under this program, the HG debt service obligation of Borrowers over a period of at least one year would be refinanced by a new AID guaranteed loan. It is expected that Borrowers will repay this deferred principal amount over a term of up to 15 years with a grace period in some cases of a few years. The exact repayment terms may vary from case-to-case.

To help structure and implement this program, AID is inviting expressions of interest from Eligible Investors who may want to participate in such refinancings. Responses should indicate as specifically as possible (i) the capability of the firm to respond to the guidelines set forth and (ii) the interest rates and other charges that would be applicable. Any final decision to proceed or not will be made by AID in the near future and will among other considerations, be subject to the agreement of the Borrowers. The guidelines at present are as follows:

In responding to this invitation, the following guidelines should be kept in mind:

1. The maximum amount to be refinanced would be $26 million.

2. The countries involved and the amounts needed are expected to be among the following, although countries and amounts may change:

Argentina	$7,572,000
Chile	806,000
Costa Rica	1,584,000
Dominican Republic	3,500,200
Ecuador	535,500
Ivory Coast	5,723,900
Jamaica	4,342,500
Peru	11,796,000

3. Funds will be disbursed over a period ending on or about December 1986.

4. There should be as much flexibility as possible with respect to the timing, frequency and amounts of disbursements. Similarly there should be as much flexibility as possible regarding repayment schedules and prepayment options. Limitations on flexibility with regard to these factors should be identified.

5. Minimum paperwork (e.g. a promissory note with a guaranty legend) should be required and fees and costs held to a minimum. Commitment fees in lieu of other fees and charges will be considered.

6. AID's preference is for terms offering variable interest rates based upon six-month Treasury Bills, interest rates expressed on a bond equivalent basis. Alternative proposals, however, are also invited.

The full repayment of the loans made under this program will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (b) domestic U.S. corporation, partnerships, or associations substantially beneficially owned by U.S. citizens; (c) foreign corporations whose share capital is at least 95 percent

owned by U.S. citizens; and, (d) foreign partnerships as associations wholly owned by U.S. citizens.

Responses to this invitation should be sent no later than September 20, 1985 to: Director, Office of Housing and Urban Programs, Agency for International Development, PRE/H, Room 625, SA–12, Washington, D.C. 20523.

Any questions may be directed to Michael G. Kitay (202/632–3544) or Barton Veret (202/632–3074).

Dated: September 4, 1985.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 85–21511 Filed 9–9–85; 8:45 am]

BILLING CODE 6116–01–M

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Housing Development Finance Corporation Limited, of Bombay, India (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to develop a fully functioning private housing finance system in India which will make long-term shelter financing available for low income families residing in the country of the Borrower. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers:

INDIA, Project: 386–HG–002—$20,000,000, Deepak Parekh, Managing Director, Housing Development Finance Corporation, Limited, Ramon House, 169, Backbay Reclamation, Bombay, India 400020. Telephone: Cable Address: HouseCorp.—Bombay, Telex: 11–67–62

By this notice of investment opportunity, the Borrower is soliciting expressions of interest from U.S. lenders or investment bankers and counsel on market conditions, loan timing and structure and other features appropriate for the loan. Interested investment bankers or lenders should immediately contact the Borrower indicated above. The Borrower intends to conduct an auction on or about September 18, 1985. Prior to the auction, the Borrower will give notice to lenders who have expressed their interest in responses to this notice. The new notice will specify the details of the proposed auction. Floating rate bids will be requested. Persons interested in receiving notice of the proposed auction are requested to advise promptly the Borrower by cable or telex with a copy of their expression of interest to be provided to A.I.D., addressed to Mr. Michael G. Kitay, Agency for International Development, PRE/H, Room 625, SA–12, Washington, D.C. 20523, Telex No. 692703.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Closing of the loan and disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, PRE/H, Room 625, SA–12, Washington, D.C. 20523, Telephone: (202) 632–3544.

Dated: August 4, 1985.

Mario Pita,

Deputy Director Office of Housing and Urban Programs.

[FR Doc. 85–21510 Filed 9–9–85; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–278 (Preliminary)]

Certain Cast-Iron Pipe Fittings From Brazil; Resumption of Investigative Activity

AGENCY: International Trade Commission.

ACTION: Resumption of investigative activity in Inv. No. 731–TA–278 (Preliminary).

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Office of the General Counsel, 202–523–0148.

SUPPLEMENTARY INFORMATION: This U.S. Court of International Trade issued an *ex parte* temporary restraining order on August 21, 1985 restraining the Commission, its officers, agents, and employees, from continuing its investigation of Certain Cast-Iron Pipe Fittings from Brazil, Inv. No. 731–TA–278 (Preliminary). Accordingly, the Commission suspended investigative activity in this investigation pending further action by the Court. The order was issued as a result of a complaint and motion for a temporary restraining order and preliminary injunction in *Fundicao Tupy, S.A. v. United States*, Court No. 85–06–01062.

On September 4, 1985, the Court dismissed the action that had sought the temporary restraining order and preliminary injunction. Slip Op. 85–90 (September 4, 1985). Accordingly, the Commission immediately resumed its investigative activity, and will make its determination by September 16, 1985, the original 45-day deadline for completing its preliminary investigation. No preliminary conference will be held with respect to this investigation. Briefs or written comments may be submitted until 12 o'clock noon on September 9, 1985.

Copies of all non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: September 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21701 Filed 9–9–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 184X)]

Chicago and North Western Transportation Co.; Abandonment Exemption in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Chicago and North Western Transportation Company of 2.6 miles of line between milepost 10.3 at Skokie and milepost 12.9 at Evanston, in Cook County, IL, subject to standard labor protective conditions.

DATES: This exemption will be effective on October 10, 1985. Petitions to stay must be filed by September 20, 1985, and petitions for reconsideration must be filed by September 30, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-no. 184X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Robert T. Opal, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor and Commissioner Simmons were absent and did not participate in the disposition of this proceeding.

James H. Bayne,
Secretary.

[FR Doc. 85-21544 Filed 9-9-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Arrival/Departure Record, Form I-94; Revised Edition

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of form revision.

FOR FURTHER INFORMATION CONTACT: Dennis M. McCloskey, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-2680.

SUPPLEMENTARY INFORMATION: Beginning December 1, 1985, all carriers of passengers seeking admission into the United States and presently using the I-94 manifest procedure will be required to use only the revised edition of the Arrival/Departure Record, Form I-94 (Rev. 10/01/85)N. Prior editions of Form I-94 in English or Spanish will not be accepted at any U.S. entry inspection facility after November 30, 1985. Either the 01/01/83 edition of the 10/01/85 edition may be used from October 1, 1985 to November 30, 1985. Prior editions of Form I-94 in languages other than Spanish may continue to be used through January 31, 1986.

Carriers may purchase the Form I-94 (Rev. 10/01/85)N in English or Spanish after October 1, 1985 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Carriers may also elect to print their own forms in English or Spanish. Those carriers desiring to print their own forms *must* use the print package, which consists of four sheets of camera-ready copy and the printing specifications. The print packages will be available from Mr. James Gorson, Director of Facilitation, Air Transport Association of America, 1709 New York Avenue, NW., Washington, DC 10006.

Foreign languages, other than Spanish, will not be available from the Government Printing Office. The print packages will be available from the ATA by December 1, 1985, in the following languages: Arabic, Chinese, Dutch, French, German, Greek, Hebrew, Italian, Japanese, Korean, Polish, and Portugese. The packages will contain camera-ready copy of the form, and the printing specifications in English. Should any carrier desire a translation in a language other than those listed, requests may be made to the Immigration and Naturalization Service, Policy Directives and Instructions, 425 I Street, NW., Room 2011, Washington, D.C. 20536.

Each form I-94 must bear a unique number. The Immigration and Naturalization Service will assign an eight digit series of numbers with a Mod 11 DSR check digit as the 9th digit. There will be one blank space, followed by digits 10 and 11, which will be printed zeroes. All airlines and carriers must obtain blocks of admission numbers from the Immigration and Naturalization Service, NIIS/I-94, Form Support, Box 150, London, KY 40741, telephone (606) 878-7900, prior to printing.

Carriers that are not members of ATA may obtain print packages from I&NS, NIIS/I-94, Form Support, Box 150, London, KY 40741. All forms printed must use the print package. The redesign of the Form I-94 is depicted on the following page as it will be printed in English. It is an index weight, three section form printed in two colors. All three sections of the form must bear a unique 11-digit admission number that must not be duplicated regardless of which language is being printed. The number must be 16 point type, printed in black ink and capable of being read by Scan Optics model number 533.

Dated: September 4, 1985.

John W. Murray,
Associate Commissioner, Information Systems Immigration and Naturalization Service.

BILLING CODE 4410-01-M

U.S. Department of Justice
Immigration and Naturalization Service

OMB 1115-0077
Expires 10-31-88

Admission Number

123456789 00

Welcome to the United States

I-94 Arrival/Departure Record - Instructions

This form must be completed by all persons except U.S. citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

Item 7 - If you are entering the United States by land, enter LAND in this space. If you are entering the United States by ship, enter SEA in this space.

Form I-94 (10-01-85)N

Admission Number

123456789 00

Immigration and
Naturalization Service

I-94
Arrival Record

1. Family Name

2. First (Given) Name

3. Birth Date (Day Mo Yr)

4. Country of Citizenship

5. Sex (Male or Female)

6. Passport Number

7. Airline and Flight Number

8. Country Where you Live

9. City Where You Boarded

10. City Where Visa Was Issued

11. Date Issued (Day Mo Yr)

12. Address While in the United States (Number and Street)

13. City and State

Departure Number

123456789 00

Immigration and
Naturalization Service

I-94
Departure Record

14. Family Name

15. First (Given) Name

16. Birth Date (Day Mo Yr)

17. Country of Citizenship

See other Side

STAPLE HERE

[FR Doc. 85-21553 Filed 9-9-85; 8:45 am]
BILLING CODE 4410-01-C

This Side For Government Use Only

Primary Inspection

Applicant's Name

Date Referred ____ Time ____ Insp. # ____

Reason Referred

☐ 212A ☐ ☐ ☐ PP ☐ Visa ☐ Parole ☐ SLB ☐ TWOV

☐ Other

Secondary Inspection

End Secondary Time ____ Insp. # ____

Disposition

18. Occupation	19. Waivers
20. INS File A -	21. INS FCO
22. Petition Number	23. Program Number
24. ☐ Bond	25. ☐ Prospective Student

26. Itinerary Comments

27. TWOV Ticket Number

Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; ***you must surrender it when you leave the U.S.*** Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permmission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:
- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 prior to surrendering this permit.

Record of Changes

Port: **Departure Record**

Date:

Carrier:

Flight #/Ship Name:

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Committee on Sheltered Workshops; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration (GSA), I have determined that renewal of the Advisory Committee on Sheltered Workshops is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Committee will advise the Secretary on issues concerning the application of the Fair Labor Standards Act, the Service Contract Act, and the Public Contracts Act to handicapped workers with impaired productive capacity.

Committee membership is designed to insure that all major groups affected by the Acts and the regulations issued thereunder are represented. The Committee will consist of 23 members: 9 consumer members (handicapped workers or representatives of organizations representing handicapped workers or the parents or guardians of handicapped workers); 9 officials from workshops, hospitals, or institutions or from organizations of workshops, hospitals, or institutions; 1 member representing organized labor; 1 member representing industry (other than the sheltered workshop industry); 1 member representing a State vocational rehabilitation agency; 1 member representing a State labor department; and 1 member representing the public. The members are selected on the basis of their expertise and serve in their individual capacities, not as representatives of their organizations.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The charter will be filed with GSA and the appropriate Congressional Committees.

Further information may be obtained from: Arthur H. Korn, Committee Secretariat, Wage and Hour Division, Department of Labor, Room C4316, 200 Constitution Avenue, NW, Washington, DC 20210, Phone 202–523–8727.

Signed at Washington, DC, this 30th day of August, 1985.

Dated: August 30, 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–21599 Filed 9–9–85; 8:45 am]

BILLING CODE 4510-23-M

Agency Proposed Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed reporting and recordkeeping requirements that will affect the public.

List of Proposed Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency proposed recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of and particular revision they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this proposed recordkeeping/reporting requirement.

The title of the proposed recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the proposed recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a proposed recordkeeping/reporting requirements which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

UIPL State Survey Form

One-time only

State or local governments

53 respondents; 318 hours

Information is required from State Employment Security Agencies in order to determine the financial impact of the increase (as of 1/85) in the Federal Unemployment Tax Act tax rate. A comprehensive analysis will be undertaken and used in testimony before the Congress and as a basis for determining the impact of any future changes in the tax rate.

Signed at Washington, DC this 5th day of September, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–21604 Filed 9–9–85; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA–W–15,986]

U.S. Steel Corp. Traffic and Transportation, Merrillville, IN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1984, an investigation was initiated on May 6, 1985 in response to a worker petition which was filed on behalf of workers at the Traffic and Transportation Department of U.S. Steel Corporation, Merrillville, Indiana.

An active certification covering the petitioning group of workers remains in effect (TA–13,268). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–21605 Filed 9–9–85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; Allis-Chalmers et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, DC 20213.

Signed at Washington, D.C. this 12th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of:)	Location	Date received	Date of petition	Petition No.	Articles produced
Allis-Chalmers Engine Div. (company)	Harvey, IL	8/5/85	8/1/85	TA-W-16,219	Diesel engines used in agricultural equipment.
Anthony Roberts, Inc. (company)	Milford, MA	8/5/85	8/1/85	TA-W-16,220	Men's and women's rainwear and outerwear.
Ball Electronic Systems Div. Ball Corp. (workers)	Circle Pines, MN	7/19/85	7/16/85	TA-W-16,221	TV monitors and data display units for computer terminal industry.
Figgie International Summit Hill Distribution (workers)	Summit Hill, PA	8/2/85	7/29/85	TA-W-16,222	Blousea, gogging suits, sweaters.
Fred Rueping Leather Co. (United Food and Commercial Workers).	Fond du Lac, WI	8/1/85	7/25/85	TA-W-16,223	Retanning, coloring and finishing leather.
ITT Telecom (workers)	Milan, TN	7/29/85	7/24/85	TA-W-16,224	Telephone equipment.
Kentucky Electric Steel (workers)	Ashland, KY	8/5/85	7/29/85	TA-W-16,225	Rounds and flat Bar products.
Stromberg-Carlson (workers)	Lake Mary, FL	8/5/85	7/31/85	TA-W-16,226	T1011 hybrid microelectric circuits.
Rutledge Sportswear (workers)	Rutledge, GA	7/26/85	7/11/85	TA-W-16,227	Skimobile suits.
(The) Stackpole Corp. (IUE)	St. Marys, PA	7/29/85	7/10/85	TA-W-16,228	Ferrites, carbon brushes, resistors.
Thru Blu (United Food and Commercial)	So. St. Paul, MN	8/1/85	7/25/85	TA-W-16,229	Blueing tanning leather.
Fries Textile Co. (company)	Fries, VA	8/5/85	8/2/85	TA-W-16,230	Yarn, wooven fabrics.
J. P. Stevens and Co., Inc. (company)	Goldsboro, NC	8/5/85	8/2/85	TA-W-16,231	Greige apparel blouse material and greige batiste drapery material.
Leventhal Manufacturing Co. (ACTWU)	Elizabeth, NJ	7/29/85	7/16/85	TA-W-16,232	Mens shirts.
Martin-Marietta Energy Systems, Inc. (OCAW)	Oak Ridge, TN	8/8/85	7/9/85	TA-W-16,233	Enriched uranium.
Milton Shoe Manufacturing, Inc. (workers)	Milton, PA	8/5/85	7/31/85	TA-W-16,234	Ladies and girls dress shoes and boots.
Princeton Lumber Co. (workers)	Princeton, KY	8/6/85	7/25/85	TA-W-16,235	Speaker accessories, speaker cabinets.
Salem Sportswear, Inc. (ILGWU)	Salem, NJ	7/29/85	7/12/85	TA-W-16,236	Bridesmaid gowns.
Salem Sportswear, Inc. (ILGWU)	Bridgeton, NJ	7/29/85	7/12/85	TA-W-16,237	Bridesmaid gowns.
Thompson Manufacturing Co. (ILGWU)	Bennington, VT	7/29/85	7/23/85	TA-W-16,238	Ladies knitted shirts.
Wilson Jones Co. (workers)	Elizabeth, NJ	8/2/85	7/30/85	TA-W-16,239	Envelopes, notebooks, folders, etc.
Zenith Elecronics Corp. of Indiana (IUE)	Evansville, IN	7/29/85	7/22/85	TA-W-16,240	Cabinets for Zenith T.V.'s.
Independent Leather Mfg. Cdrp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,241	Leather tanning and finishing.
Johnstown Leather Corp. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,242	Leather tanning and finishing.
Karg Brothers, Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,243	Leather tanning, coloring, finishing.
Karg Brothers Finishing Corp. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,244	Leather finishing.
Liberty Leather Corp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,245	Leather tanning and finishing.
Androme Leather Co., Inc. (ACTWU)	Gloversville, NY	7/29/85	7/22/85	TA-W-16,248	Leather finishing.
Carville Leather Co., Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,247	Leather finishing.
Cayadutta Tanning Co., Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,248	Leather tanning.
Colonial Tanning Corp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,249	Leather tanning.
Fashion Tanning Co., Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,250	Leather tanning and finishing.
Pan American Tanning Corp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,251	Leather finishing.
Peerless Tanning Co., Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,252	Leather tanning.
Risendorf Tanners (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,253	Leather tanning.
Simco Leather Corp. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,254	Leather tanning and finishing.
Twin City Leather Co., Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,255	Leather tanning.
Wood & Hyde Corp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,256	Leather finishing, coating, tanning.
Hagaman Mfg. Corp. (ACTWU)	Hagaman, NY	7/29/85	7/23/85	TA-W-16,257	Lustering finishing leather.
Troytown Shirt Corp. (ACTWU)	Cohoes, NY	7/29/85	7/23/85	TA-W-16,258	Blouses and shirts.
Moderne Gloves, Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,259	Leather dresswear, dress gloves.
Gates Mills, Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,260	Gloves.
Elmer Little & Sons (ACTWU)	Perry, NY	7/29/85	7/23/85	TA-W-16,261	Leather dress and sport gloves.
Glove City Abrading Co., Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,262	Supply service of shaving leather for glove factories.
R. L. Kilmer & Sons, Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,263	Shaving leather for glove factories.
Pagano Gloves, Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,264	Mens and womens leather dress and sport gloves.
Ambroson Gloves, Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,265	Sport, dress, driving gloves, leather leather/fabric.
(The) Grandoe Corp. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,266	Dress and sport gloves.
Parrella Gloves, Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,267	Leather dress and sport gloves.
Mario Papa & Sons, Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,268	Leather dress gloves—civilian and military.
Joseph P. Conroy, Inc. (ACTWU)	Johnstown, NY	7/29/85	7/23/85	TA-W-16,269	Dress, sport work leather gloves.
Rubin Gloves, Inc. (ACTWU)	Gloversville, NY	7/29/85	7/23/85	TA-W-16,270	Leather sport gloves.
Koppers Co., Organic Materials Div. (USWA)	Fontana, CA	8/5/85	8/1/85	TA-W-16,271	Refined tar, bitumen, hard carbon pitch.
Rola Division International Jensen (USWA)	Punxsutawney, PA	8/5/85	8/1/85	TA-W-16,272	Audio-stereo speakers.
William Powell Co. Plants 1 and 2 (USWA)	Cincinnati, OH	8/5/85	8/1/85	TA-W-16,273	Industrial valves, high precision valves used in power plants, nuclear valves and commercial valves.
Norton Olgiby Taconite Co. (USWA)	Eveleth, MN	8/5/85	8/1/85	TA-W-16,274	Taconite.
Prometech (IUE)	St. Marys, PA	8/5/85	8/1/85	TA-W-16,275	Powder metal parts.
International Carriers Inc. (Gen. Frivers and Helpers)	Flint, MI	8/5/85	8/1/85	TA-W-16,276	Driver—truck transportation auto parts.
Abex Corp. (workers)	Anderson, IN	8/8/85	7/25/85	TA-W-16,277	Trackwork castings.

[FR Doc. 85-21601 Filed 9-9-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Chino Mines Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C-2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 26, 1985—August 30, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,915 and TA-W-16,071; Chino Mines Co., A Kennecott-Mitsubishi Partnership, Hurley, NM

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-16,195; Inteleplex Corp., Pleasantville, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-15,965; Luzerne Coal Corp., East Millsboro, PA

Aggregate U.S. imports of coal are negligible.

TA-W-15,910; Halliburton Co., Imco Services Div., Exploration Dept., Battle Mountain, NE

The worker's firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,140; Consolidation Coal Co., Four States Mine, Marion County, WV

Aggregate U.S. imports of coal are negligible.

TA-W-16,141; Consolidation Coal Co., Nailer Mine, Marion County, WV

Aggregate U.S. imports of coal are negligible.

Affirmative Determinations

TA-W-15,996; Robert Shaw Controls Co., New Stanton Div., Hillsboro, OH

A certification was issued covering all workers of the firm separated on or after April 29, 1984.

TA-W-15,992; Diamond International Corp., (Diamond Land Corp.), Maryland, CA

A certification was issued covering all workers of the firm separated on or after May 2, 1984 and before December 31, 1984.

TA-W-16,054; Foundry Div., Ingersoll-Rand Co., Painted Post, NY

A certification was issued covering all workers of the firm separated on or after March 1, 1985.

TA-W-15,921; South Branch Lumber Co., Howland, ME

A certification was issued covering all workers of the firm separated on or after February 1, 1985 and before June 30, 1985.

TA-W-15,972; West Point Pepperell, Inc, Grantville, GA

A certification was issued covering all workers of the firm separated on or after 18, 1984.

TA-W-16,046; Zenith Electronics Corp., Computer Subassembly Department, Cable Subassembly Department, Kostner Ave., Plant #2, Chicago, IL

A certification was issued covering all workers of the firm separated on or after January 27, 1985 and before July 31, 1985.

TA-W-15,999; Sylco Corp., Sylva, NC

A certification was issued covering all workers of the firm separated on or after May 2, 1984 and before February 1, 1985.

TA-W-15,956; Bethenergy Mines, Inc., Mine #84, Cokesburg, PA

A certification was issued covering all workers of the firm separated on or after May 1, 1984.

TA-W-16,112; West Point-Pepperell, Inc., Dixie Mill, LaGrange, GA

A certification was issued covering all workers of the firm separated on or after June 12, 1984.

I hereby certify that the aforementioned determinations were issued during the period August 26, 1985—August 30, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW, Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: September 3, 1985.

Mavin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-21602 Filed 9-9-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Canadian Cedar Industries et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, D.C. this 30th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Canadian Cedar Industries (wkrs)	Shelton, WA	8/20/85	8/16/85	TA-W-16,351	Shakes and shingles.
Cummins Engine Co. (Diesel Workers Independent Union)	Madison, IN	8/21/85	8/19/85	TA-W-16,352	Diesel engines and parts.
Cummins Engine Co. (Diesel Workers Independent Union)	Seymour, IN	8/21/85	8/19/85	TA-W-16,353	Diesel engines and parts.
Cummins Engine Co. (Diesel Workers Independent Union)	Indianapolis, IN	8/21/85	8/19/85	TA-W-16,354	Diesel engines and parts.
Cummins Engine Co. (Diesel Workers Independent Union)	Walesboro, IN	8/21/85	8/19/85	TA-W-16,355	Diesel engines and parts.
Cummins Engine Co. Plants #1, #2, #10, #8 (Diesel Workers Independent Union).	Columbus, IN	8/21/85	8/19/85	TA-W-16,356	Diesel engines and parts.
Doe Spun, Inc. (workers)	Cumberland, MD	8/26/85	8/23/85	TA-W-16,357	Children wear.
Dover Handbag Co., Inc. (company)	Netcong, NJ	8/27/85	8/1/85	TA-W-16,358	Handbags.
Georgia Pacific Corp. (UPIU)	Zachary, LA	8/26/85	8/23/85	TA-W-16,359	Bleached kraft pulp.
Hedstrom Corp. (workers)	Dotham, AL	8/26/85	8/19/85	TA-W-16,360	Strollers, trycycles, bycycles, toy products.
Tucson Cornelia & Gila Bend Railroad Co. (company)	Ajo, AZ	8/26/85	8/21/85	TA-W-16,361	Transporting copper anodes.
B.F. Goodrich Co. (URW)	Akron, OH	8/26/85	8/21/85	TA-W-16,362	Rubber band, tank liners, sheet rubber, conveyor belts
Carrier Corp. (Sheet Metal Wkrs)	Syracuse, NY	8/26/85	8/16/85	TA-W-16,363	Air conditioners, furnances, boilers, heaters.
Empire Detroit Steel Div., Cyclops Corp. (workers)	Dover, OH	8/26/85	8/16/85	TA-W-16,364	Galvanized sheet steel.
Fisher Corp., (IBEW)	Milroy, PA	8/24/85	8/20/85	TA-W-16,365	Stereo speakers.
Forest Hill Sportswear Co., Inc. (ILGWU)	Boston, MA	8/26/85	8/22/85	TA-W-16,366	Women's jackets.
Harris Digital Telephone Systems (company)	Novato, CA	8/26/85	8/20/85	TA-W-16,367	Pbx—exchanges.
Novelty Textile Mills, Inc. (wkrs)	Wauregan, CT	8/26/85	8/23/85	TA-W-16,368	Jackets, sweaters, coats.
Prestige Sportswear, Inc. (ILGWU)	Boston, MA	8/26/85	8/22/85	TA-W-16,369	Jackets, slacks, skirts.
RCA Boringuen (workers)	Juncos, PR	8/22/85	8/19/85	TA-W-16,370	Pistol—televisions—color.
S. Greenberg Co. (ILGWU)	Boston, MA	8/26/85	8/22/85	TA-W-16,371	Womens dresses and skirts.
Suttle Apparatus Corp. (workers)	Lawrenceville, IL	8/24/85	8/21/85	TA-W-16,372	Modular telephone products.
Technographics Fitchburg Paper, Inc. (teamsters)	Fitchburg, MA	8/24/85	8/21/85	TA-W-16,373	Speciality papers (wallpapers).

[FR Doc. 85-21603 Filed 9-9-85; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on September 26 and 27, 1985 in Room C5515, Seminar Room #4, Frances Perkins Department of Labor Building, Washington, D.C. 20210. The meeting is open to the public and will begin at 11:00 a.m. on September 26 and 9:30 a.m. on September 27.

The agenda for this meeting will include a review of a draft standard for the regulation of asbestos in the construction industry, a review of a proposed standard for formaldehyde as it relates to construction, and a general discussion of construction safety and health matters.

Written data, views or comments may be submitted preferably with 20 copies to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman depending on the extent to which time permits. Communications may be mailed to Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3662, Washington, DC 20210: Telephone: (202) 523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, DC the 5th day of September 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 85-21598 Filed 9-9-85; 8:45 am]
BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Grants and Contracts; Announcement of Transfer of State Support Funds in the State of Pennsylvania

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project the Corporation shall announce publicly . . . such grant, contract or project . . . ."

The Legal Services Corporation (LSC) hereby publicly announces the transfer of responsibility of the LSC grant for state support activities for legal services programs within the state of Pennsylvania from Delaware County Legal Assistance Association located in Chester to the Law Coordination Center located in Lancaster.

DATE: All comments related to this action must be received by the Office of Field Services on or before September 29, 1985.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, DC 20005, (202) 272-4080.

SUPPLEMENTARY INFORMATION: Historically, Delaware County Legal Assistance Association has subcontracted the provision of providing

state support activities within the state of Pennsylvania to the Law Coordination Center. All parties mutually agree that beginning in grant year 1985 the LSC grant will be made directly to the Law Coordination Center. The annualized level of Legal Services Corporations funding for state support activities is $176,633 for calendar year 1985.

All groups and persons interested in submitting comments related to this transfer should submit such to the Legal Services Corporation, Grants Assistant, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street, NW., Washington, DC 20005, within thirty (30) calendar days of publication of this notice.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-21543 Filed 9-9-85; 8:45 am]

BILLING CODE 6820-55

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Large Optical/Infrared Telescopes.

Date and time: September 23, 1985, 1 p.m.-5 p.m., September 24-25, 9 a.m.-5 p.m.

Place: Main Conference Room, National Optical Astronomy Observatories, Tucson, Arizona.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202-357-9488).

Summary minutes: May be obtained from the contact person at the above address.

Purpose of subcommittee: To advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda

Monday, September 23

1 p.m.-5 p.m.—Status of technology development efforts and planning of National Optical Astronomy Observatory and of other groups involved in large optical/infrared telescope projects.

Tuesday, September 24

9 a.m.-5 p.m.—Continuation of presentations and discussions from previous day.

Wednesday, September 25

9 a.m.-5 p.m.—Continuation of presentations and discussions from previous days.

M. Rebecca Winkler,

Committee Management Officer.

September 5, 1985.

[FR Doc. 85-21572 Filed 9-9-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Notice of Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue an Exemption relative to the Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is an exemption from certain requirements of 10 CFR 20.311(b) and 20.311(d)(1), (2) and (3) for classifying TMI-2 EPICOR II solid waste liners. Specifically these requirements are: (1) 10 CFR 20.311(b), "Wastes classified as Class A, Class B, or Class C in Section 61.55 of this chapter must be clearly identified as such in the manifest;" (2) 10 CFR 20.311(d)(1), "Prepare all wastes so that the waste is classified according to Section 61.55 and meets the waste characteristics requirements in Section 61.56 of this chapter;" (3) 10 CFR 20.311(d)(2), "Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste in accordance with § 61.55 of this chapter;" and (4) 10 CFR 20.31(d)(3), "Conduct a quality control program to assure compliance with §§ 61.55 and 61.56 of this chapter; the program must include management evaluation of audits." For the requirements of 10 CFR 20.311(d)(3), the exemptions apply only to the quality control program to assure compliance with 10 CFR 61.55. The requirement for 10 CFR 61.56 is not being exempted.

The Need for the Action

The licensee has requested from the State of Washington a variance to the Class "A" waste criteria of 10 CFR 61.55 regarding the TMI-2 EPICOR II solid waste liners to increase the upper Class "A" limit for SR-90 from 0.04 uCi/cc to 1.0 uCi/cc. In order to implement this variance request, the licensee would require exemptions from 10 CFR 20.311(b) and 20.311(d)(1), (2) and (3) as identified above. Without the variance, the waste volume for disposal would significantly increase and there would be corresponding increases in occupational exposure resulting from additional waste handling without any benefit to public health and safety at the burial site.

Environmental Impacts of the Proposed Actions

The staff has evaluated the subject exemption and concluded that it will not result in significant increases in airborne radioactivity inside facility buildings or in corresponding releases to the environment. There are also no nonradiological impacts to the environment as a result of this action.

Alternative to this Action

Since we have concluded that the environmental effects of the proposed action and exemption are negligible, any alternatives with equal or greater environmental impacts need not be evaluated. Denial of this exemption would not reduce environmental impacts of plant operaions and would result in the application of overly restrictive regulatory requirements when considering the unique conditions of TMI-2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the Department of Social and Health Services, State of Washington.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Impact Statement for TMI-2 dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see; (1) Letter to J. J. Barton, Metropolitan Edison Co., from B. J. Snyder, USNRC, Evaluation of EPICOR II liner disposal conditions, dated October 22, 1981; (2) Letter to L.

Gronemyer, State of Washington, from B. K. Kanga, GPUNC, 10 CFR 61 Exemption, dated October 26, 1983; (3) Letter to B. J. Snyder, USNRC, from F. R. Standerfer, GPUNC, 10 CFR 20.311 Exemption Request, dated June 25, 1985; and (4) Letter to B. K. Kanga, GPUNC, from J. Stohv and M. J. Elsen, State of Washington, dated July 17, 1985.

The above documents are available for inspection at the Commission's Public Local Document Room, 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17128.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21589 Filed 9-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that the Director of Nuclear Reactor Regulation is considering as requests for action under 10 CFR 2.206 a letter dated July 26, 1985, from Robert L. Anthony on behalf of himself and the Friends of the Earth and a letter dated August 8, 1985 from Frank R. Romano on behalf of the Air and Water Pollution Patrol. Mr. Anthony's letter was referred to the Director by the Commission's Order of August 8, 1985, and the Atomic Safety and Licensing Appeal Board referred Mr. Romano's letter to the Director by its August 12, 1985 Order. Mr. Anthony and Mr. Romano both contend that the NRC staff not have issued certain exemptions from requirements in 10 CFR Part 50 for Limerick Unit 1 and that issuance of such exemptions did not adequately consider environmental impacts. It should be noted that a recent Director's Decision (DD-85-11, July 29, 1985) analyzed similar issues raised by Mr. Anthony concerning the exemptions. That decision is currently before the Commission for its review under 10 CFR 2.206)c).

A decision will be made on Mr. Anthony's and Mr. Romano's most recent requests within a reasonable time. Copies of the letters are available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555, and in the local public document room at the Pottstown Public Library, 500 Hight Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 30 day of August 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director Office of Nuclear Reactor Regulation.

[FR Doc. 85-21588 Filed 9-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353]

Philadelphia Electric Co., Limerick Generating Station, Unit 2; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that the Director of Nuclear Reactor Regulation is considering as requests for action under 10 CFR 2.206 a letter dated July 28, 1985, from Marvin I. Lewis. Mr. Lewis contends, on the basis of the recent recommendation of Administrative Law Judge Allison K. Turner to the Pennsylvania Public Utility Commission, that Unit 2 of the Limerick Generating is "unneeded and uneconomical." Mr. Lewis further contends that on this basis the construction permit for Unit 2 should be "lifted or retracted."

A decision will be made on Mr. Lewis' request within a reasonable time. A copy of the letter is available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555, and in the local public document room at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, 30th day of August 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21587 Filed 9-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on September 25, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 25, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the proposed policy for regulation of advanced nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangments can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding mattters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date September 4, 1985

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-21593 Filed 9-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on September 27, 1985, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, September 27, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its discussion of draft NUREG–0956, "Source Term Reassessment," with the NRC Staff.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 4, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–21592 Filed 9–9–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Revised Notice of Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Adviaory Committee on Reactor Safeguards will hold a meeting on September 12–14, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on August 28, 1985. Portions of this meeting have been rescheduled as noted below to accommodate the availability of participants in the meeting.

Friday, September 13, 1985

8:30 A.M.–10:15 A.M.: ACRS Effectiveness (Open)—The Committee will hear and discuss the report of its Panel on ACRS Effectiveness regarding the conduct and scope of ACRS activities.

10:15 A.M.–11:15 A.M.: Reorganization of the NRC Office of Nuclear Reactor Regulotion (Open)—The members will hear a briefing from the Director, NRR regarding the recent reorganization of the Office of Nuclear Reactor Regulation.

11:15 A.M.–12:15 P.M. and 1:15 P.M.–2:15 P.M.: Selection of Nuclear Power Plant Personnel (Open)—The members will hear and discuss reports from invited experts regarding the use of natural aptitude testing in selection of nuclear power plant personnel.

2:15 P.M.–3:45 P.M.: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss topics regarding: ACRS participation in NRC regulation of the DOE program for management and disposal of high level radioactive wastes; the proposed NRC Severe Accident Policy Statement; and human factors research needs.

3:45 P.M.–5:45 P.M.: River Bend Nuclear Plant (Open)—The members will continue their review of the River Bend operating license application. Representatives of the NRC Staff and the licensee will also make presentations and participate in the discussion to the degree considered appropriate.

Saturday, September 14, 1985

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting. In addition, the members will consider a proposed report regarding the application of PRAs to nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed, and detailed security provisions for the GESSAR II plant design.

1:30 P.M.–2:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the activities of designated ACRS subcommitteea with respect to safety related issues and the regulatory process including physical protection of fuel containing HEU at nonpower reactors; and Regulatory Guide 1.99, Rev. 2, Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Materials; and ACRS Procedures and Practices including the recommendations of the Panel on ACRS Effectiveness.

2:30 P.M.–3:00 P.M.: Activities of ACRS Members (Open/Closed)—The members will discuss anticipated non-ACRS activities and assignments which impact on their activities as ACRS members.

Portions of this session will be closed as necessary to discuss information the release of which would represent an unwarranted invasion of personal privacy.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], detailed security information [5 U.S.C. 552b(c)(3)], and information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Dated: September 5, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–21590 Filed 9–9–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 17 and 18, 1985, at the Arkansas Nuclear One (ANO) Training Facility, Russellville, Arkansas.

The meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, September 17, 1985—8:30 a.m. until the conclusion of business.

Wednesday, September 18, 1985—11:30 a.m. until 3:45 p.m.

The Subcommittee will examine the ANO–1's emergency procedures (symptom based) and facilities.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify

the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 5, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–21591 Filed 9–9–85; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Power Plants; Issuance of NUREG–0956 "Reassessment of the Technical Basis for Estimating Source Terms"; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects the date that public comments may be received on NUREG–0956.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–18727 appearing on page 31937 in the issue of Wednesday, August 7, 1985, make the following correction:

Page 31937, third column, third full paragraph, change the comment expiration date to November 7, 1985.

Approved: September 9, 1985.

Thomas Combs,

Chief, Correspondence and Records Branch, Office of the Secretary.

[FR Doc. 85–21586 Filed 9–9–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B, and C; Positions Placed or Revoked; Update

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 8, 1985 (50 FR 32129). Individual authorities established or revoked under Schedules A, B, or C between July 1, 1985 and July 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception is established:

Department of the Air Force

One Training Instructor (Parachuting) and one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists/Athletic Trainers at the Air Force Academy. Effective July 11, 1985.

Schedule B

The following exception is revoked:

Department of the Interior

Excepted appointing authority for positions at Indian Schools in isolated locations filled by spouses of competitive employees was revoked, effective July 1, 1985, because positions at Indian Schools are now filled by contract.

Schedule C

The following exceptions are established:

Department of Agriculture

Three Confidential Assistants to the Assistant Secretary for Governmental and Public Affairs. Effective July 3, 1985.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective July 3, 1985.

One Executive Assistant to the General Counsel. Effective July 3, 1985.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective July 3, 1985.

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective July 3, 1985.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective July 8, 1985.

One Confidential Assistant to the Assistant Secretary for Economics. Effective July 19, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective July 26, 1985.

Department of Commerce

One Confidential Assistant to the Director, Office of Export Trading Company Affairs, International Trade Administration. Effective July 3, 1985.

One Private Secretary to the Deputy Under Secretary for Travel and Tourism. Effective July 8, 1985.

One Special Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective July 8, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service, International Trade Administration. Effective July 11, 1985.

One Confidential Assistant to the General Counsel. Effective July 11, 1985.

One Special Assistant to the Director, Office of Minority Business Development Agency. Effective July 15, 1985.

One Confidential Assistant to the Special Assistant to the Secretary. Effective July 17, 1985.

One Confidential Assistant to the General Counsel. Effective July 22, 1985.

Department of Defense

One Private Secretary to the Assistant Secretary of Defense (Command, Control, Communications and Intelligence). Effective July 3, 1985.

One Administrative Assistant to the Associate Director, Presidential Personnel Office. Effective July 5, 1985.

One Assistant to the Director for External Affairs. Effective July 11, 1985.

One Special Assistant to the Under Secretary of Defense for Research and Engineering. Effective July 11, 1985.

One Personal and Confidential Assistant to the Director, Operational Test and Evaluation. Effective July 15, 1985.

One Plans Coordinator to the Chief of Public Affairs, Office of the Secretary of the Army. Effective July 15, 1985.

One Counselor to the Assistant Secretary of Defense (Health Affairs). Effective July 23, 1985.

One Secretary (Stenography) to the Assistant Secretary of the Army (Civil Works). Effective July 26, 1985.

Department of Education

One Confidential Assistant to the Executive Assistant to the Secretary for Private Education. Effective July 8, 1985.

One Director of Policy, Planning and Executive Operations to the Assistant Secretary for Elementary and Secondary Education. Effective July 19, 1985.

One Special Assistant to the Comptroller. Effective July 19, 1985.

One Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective July 19, 1985.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective July 26, 1985.

One Confidential Assistant to the Executive Assistant to the Under Secretary. Effective July 30, 1985.

Department of Energy

One Senate Liaison Specialist to the Deputy Assistant Secretary for Senate Liaison. Effective July 3, 1985.

One Special Projects Liaison Specialist to the Director, Division of Public Liaison, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective July 3, 1985.

One Staff Assistant to the General Counsel. Effective July 15, 1985.

One Staff Assistant to the General Counsel. Effective July 17, 1985.

One Special Assistant to the Assistant General Counsel for General Law. Effective July 19, 1985.

One Staff Assistant to the Deputy Secretary. Effective July 19, 1985.

One Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy. Effective July 22, 1985.

One Staff Assistant to the Assistant Secretary for Defense Programs. Effective July 24, 1985.

Department of Health and Human Services

One Confidential Assistant to the Director, Office of Intergovernmental Affairs. Effective July 8, 1985.

One Director, Office of Family Planning, to the Deputy Assistant Secretary for Population Affairs. Effective July 11, 1985.

One Special Assistant to the Surgeon General, Public Health Service. Effective July 11, 1985.

One Director, Division of Legislative Services and Congressional Affairs to the Director, Office of Legislation and Policy. Effective July 15, 1985.

One Confidential Assistant to the Under Secretary. Effective July 17, 1985.

One Director, Public Affairs, to the Regional Director, Philadelphia, Pennsylvania. Effective July 17, 1985.

One Special Assistant to the Chief of Staff. Effective July 17, 1985.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs. Effective July 17, 1985.

One Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration. Effective July 19, 1985.

One Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Human Development Services. Effective July 19, 1985.

One Special Assistant to the Director, Office of Policy and Legislation, Office of Human Development Services. Effective July 19, 1985.

Department of Housing and Urban Development

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 15, 1985.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation. Effective July 22, 1985.

One Confidential Assistant to the General Counsel. Effective July 26, 1985.

One Special Assistant to the Assistant Secretary for Legislation and Congressional Relations. Effective July 30, 1985.

Department of Interior

One Special Assistant to the Assistant Secretary for Territorial and International Affairs. Effective July 3, 1985.

One Public Affairs Specialist to the Assistant to the Secretary and Director, Office of Public Affairs. Effective July 22, 1985.

One Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs. Effective July 22, 1985.

Department of Justice

One Confidential Assistant to the Associate Deputy Attorney General. Effective July 3, 1985.

One Special Assistant to the Director, National Institute of Justice. Effective July 3, 1985.

One Confidential Assistant to the Deputy Attorney General. Effective July 8, 1985.

One Special Assistant to the Director, Office of Public Affairs, Offices, Boards and Divisions. Effective July 9, 1985.

One Secretary (Stenography) to the Counselor to the Attorney General. Effective July 15, 1985.

One Confidential Assistant to the Assitant Attorney General, Civil Rights Division. Effective July 19, 1985.

One Counselor to the Assistant Attorney General, Land and Natural Resources Division. Effective July 19, 1985.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective July 22, 1985.

One Executive Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention. Effective July 25, 1985.

Department of Labor

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective July 11, 1985.

One Secretary (Typing) to the Regional Representative, Philadelphia, Pennsylvania. Effective July 29, 1985.

One Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective July 30, 1985.

Department of State

One Special Assistant to the Under Secretary for Management. Effective July 8, 1985.

One Special Assistant to the Assistant Secretary for the Bureau of Inter-American Affairs. Effective July 25, 1985.

Department of Transportation

One Special Assistant to the Secretary. Effective July 3, 1985.

One Staff Assistant to the Deputy Secretary. Effective July 5, 1985.

One Staff Assistant to the Coordinator for Minority Affairs. Effective July 9, 1985.

One Congressional Liaison Officer to the Director of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective July 19, 1985.

Department of Treasury

One Special Assistant to the Assistant Secretary for Management. Effective July 22, 1985.

ACTION

One Staff Assistant to the Assistant Director for Legislation, Public and

Intergovernmental Affairs. Effective July 17, 1985.

One Special Assistant to the Director. Effective July 17, 1985.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator for External Affairs. Effective July 11, 1985.

Federal Communications Commission

One Confidential Assistant to the Chief of Staff, Effective July 3, 1985.

Federal Labor Relations Authority

One Executive Assistant to a Member. Effective July 15, 1985.

General Services Administration

One Director, Office of the Executive Secretariat to the Administrator. Effective July 8, 1985.

One Confidential Assistant to the Commissioner, Public Buildings Service. Effective July 30, 1985.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective July 15, 1985.

Office of Management and Budget

One Confidential Secretary to the Associate Director for Natural Resources, Energy and Science. Effective July 3, 1985.

One Secretary to the Director, Office of Management and Budget. Effective July 3, 1985.

Small Business Administration

One Special Assistant to the Regional Administrator, Denver, Colorado. Effective July 17, 1985.

One Staff Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective July 17, 1985.

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective July 19, 1985.

U.S. Arms Control and Disarmament Agency

One Private Secretary to the Special Advisor to the President and Secretary of State on Arms Control Matters. Effective July 3, 1985.

One Special Assistant to the Director. Effective July 30, 1985.

U.S. Commission on Civil Rights

One Special Assistant to the Assistant Staff Director for Programs and Policy. Effective July 26, 1985.

U.S. Information Agency

One Staff Assistant to the Special Assistant to the Director. Effective July 3, 1985.

One Staff Assistant to the Special Assistant to the Director. Effective July 8, 1985.

One Special Assistant to the Deputy Director. Effective July 17, 1985.

U.S. Trade Representative

One Confidential Assistant to the U.S. Trade Representative. Effective July 8, 1985.

One Confidential Assistant to the General Counsel. Effective July 19, 1985.

U.S. International Trade Commission

One Confidential Assistant to a Commissioner. Effective July 3, 1985.

Veterans Administration

One Confidential Assistant to the Administrator. Effective July 11, 1985.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85-21493 Filed 9-9-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14207]

Application and Opportunity for Hearing; Citicorp Homeowners, Inc. and Citicorp

September 4, 1985.

Notice Is Hereby Given that Citicorp Homeowners, Inc. (the "Company") and Citicorp ("Citicorp"), pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act"), as incorporated by reference in § 6.08 of an indenture qualified under the Act dated September 1, 1984 (the "Indenture") between Citicorp Homeowners Mortgage Acceptance Corporation 1, Inc. ("CHMAC 1"), a wholly owned, limited purpose subsidiary of the Company, and Mercantile Trust Company, N.A. ("Mercantile"), as trustee (the "Trustee"), has filed an application with the Securities and Exchange Commission for a determination that Mercantile's trusteeship under such indenture and under certain agreements to be described below is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mercantile from acting as Trustee under the Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

In support of its application the Company alleges that:

1. In October 1984, CHMAC 1 issued the following series of Collateralized Mortgage Obligations ("CMOs") under the Indenture:

(a) $100,000,000 11½% Class A-1 CMOs with a stated maturity of October 1, 1986;

(b) $115,000,000 12⅜% Class A-2 CMOs with a stated maturity of October 1, 1988;

(c) $135,000,000 12½% Class A-3 CMOs with a stated maturity of April 1, 1991;

(d) $150,000,000 12½% Class A-4 CMOs with a stated maturity of April 1, 2006.

2. These CMOs are secured principally by assignments to the Trustee of fixed-rate conventional residential mortgage loans originated or acquired by the Company and serviced by Citicorp Homeowners Services, Inc. ("CHSI"), and by certain obligations of Citicorp, the ultimate parent of both the Company and CHMAC 1, pursuant to a Minimum Principal Payment Guarantee and a Limited Credit Guarantee (the "CMO Guarantees").

3. Under its Minimum Principal Payment Guarantee Citicorp is obligated to advance funds to CHMAC 1 to be used to make and maintain principal payments on the CMOs at a guaranteed level if principal payments on the loans that collateralize the CMOs are received at a slower rate than anticipated. Citicorp's Limited Credit Guarantee covers to a limited extent delinquencies or losses with respect to the underlying mortgages. Citicorp's obligations under the CMO Guarantees rank equally with

all of its unsecured and unsubordinated indebtedness.

4. The Company on June 27, 1985 and July 3, 1985 sold mortgage pass-through certificates with outstanding principal balances aggregating approximately $100,000,000 (the "Unregistered Certificates") in transactions which were exempt from the registration requirements of the Securities Act on 1933, as amended, pursuant to section 4(2) thereof. Both of these sales were of certificates issued pursuant to separate pooling and servicing agreements between the Company as issuer, CHSI as servicer, and Mercantile as trustee. The certificates sold on each occasion represent fractional undivided interests in a trust fund, the property of which consists of a distinct pool of mortgage loans originated or acquired by the Company and serviced by CHSI. In connection with each sale Citicorp issued a limited guarantee having terms substantially similar to the terms of the limited guarantees, described more fully below, it intends to issue in connection with the public offering of certain mortgage pass-through certificates.

5. On July 19, 1985, the Securities and Exchange Commission declared effective a shelf registration statement, File No. 2-98882, filed by the Company and Citicorp on Forms S-11 and S-3, respectively (the "Registration Statement"). The Registration Statement provides for the issuance by the Company, in series, of up to $400,000,000 aggregate principal amount of mortgage pass-through certificates (together with the certificates referred to in the succeeding sentence, the "Registered Certificates") and the issuance by Citicorp of its related limited guarantees, described more fully below. (The Registration Statement also relates to $200,000,000 aggregate principal amount of mortgage pass-through certificates that were previously registered.) Each Registered Certificate will evidence an undivided fractional interest in one of a number of trusts to be created by the Company from time to time. The trust property of each trust will consist of a separate and distinct pool of conventional single-family mortgage loans (the "Mortgage Loans") acquired by the Company and serviced by CHSI and related property conveyed to the trust by the Company. Each pool (the "Mortgage Pool") will be evidenced by a separate series of Registered Certificates issued pursuant to a separate pooling and servicing agreement to be entered into among the Company as seller, CHSI as servicer, and the trustee of the trust fund (the "Certificate Trustee") as named in the applicable prospectus supplement.

6. Citicorp will deliver a guarantee (the "Guarantee") to the Certificate Trustee for each Mortgage Pool. Under the Guarantee, Citicorp will to a limited extent honor demands for payment to cover delinquencies or losses with respect to the Mortgage Loans. The extent of Citicorp's liability under each Guarantee is expected to be initially between 5% and 10% of the aggregate principal balance of the related Mortgage Pool. Citicorp's obligations under each Guarantee will rank equally with all unsecured and unsubordinated idebtedness of Citicorp.

7. While no Registered Certificates have yet been issued pursuant to the Registration Statement, the Company intends to offer such Certificates in the near future, and wishes to name Mercantile as Certificate Trustee under the pooling and servicing agreements providing for the issuance of one or more series of Registered Certificates. Therefore, the Company requests that the Commission issue its order with respect to Mercantile's continued trusteeship under the Indenture recognizing that Mercantile may, in the future, be designated to serve as Certificate Trustee under several pooling and servicing agreements.

8. Section 6.08 of the Indenture states: "The Trustee is subject to [Trust Indenture Act] section 310(b) . . . ."

9. If the pooling and servicing agreements under which the Unregistered Certificates and the Registered Certificates are to be or have been issued by the Company are "indentures" for purposes of the Act and if Citicorp, by virtue of its limited current or future liability with respect to the Unregistered Certificates, the Registered Certificates and the CMDs pursuant to the various guaranty obligations described above, is an "obligor" under the Act with respect to such certificates, than under section 310(b)(1) Mercantile may be deemed to have a conflicting interest.

10. Citicorp's obligations under the Guarantees relating to the Registered Certificates, under its guarantees relating to the Unregistered Certificates, and under the Principal Payment Guarantee and Limited Credit Guarantee relating to the CMDs are all unsecured and unsubordinated and are equal in rank to Citicorp's other unsecured and unsubordinated indebtedness. Therefore, if Mercantile were required to call on these guarantees or to otherwise demand payment or performance by Citicorp of its obligations, either separately or concurrently under the Indenture or one or more pooling and servicing agreements, all or each of the claims on Citicorp would be on equal footing. Mercantile will not be faced with any conflicting interest which would create an incentive not to treat all investors equally.

11. The individual pools or mortgage loans underlying each series of Registered Certificates and Unregistered Certificates are (or will be when formed) separate and distinct from one another and from the pool of mortgage loans pledged to secure the CMDs. Citicorp's obligations under the CMD Guarantees, the Guarantees relating to the Registered Certificates and the guarantees relating to the sales of the Unregistered Certificates are similarly distinct because they are each triggered only by delinquency, default or loss in regard to a particular pool of mortgage loans. Therefore, if Citicorp were called upon to meet its obligations under any one of these guarantees, it would not necessarily mean that payment would be required under any other guarantee. And, in the unlikely event that Citicorp should be called upon to meet its obligations upon more than one guarantee at the same time, it is anticipated that, in light of the limited nature of the guarantees and Citicorp's current financial condition, Citicorp would be more than able to satisfy its obligations.

12. Should Mercantile have occasion to cause Citicorp to meet its obligations in respect to the CMDs or a series of Registered Certificates or Unregistered Certificates such action would inure to the benefit of all the holders of the CMDs or such Certificates ratably and would provide adequate protection to investors.

13. For the foregoing reasons, the Company believes that neither the naming of Mercantile as Certificate Trustee under one or more pooling and servicing agreements providing for the issuance of Registered Certificates nor the continued trusteeship of Mercantile under the two pooling and servicing agreements pertaining to the sale of the Unregistered Certificates is so likely to involve a material conflicting interest as to make it necessary in the public interest or for the protection of investors that Mercantile be disqualified from acting as trustee under the Indenture.

The Company has waived notice of hearing, and waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all

persons are referred to said application, File No. 22–14207, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth Steeet NW., Washington, D.C.

Notice Is Further Given that any interested person may, not later than September 24, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–21583 Filed 9–9–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2198]

Louisiana; Declaration of Disaster Loan Area

The Parish of St. Mary and the adjacent Parishes of Assumption, Iberia, St. Martin and Terrebonne in the State of Louisiana constitute a disaster area because of Hurricane Danny which occurred on August 14 and 15, 1985. Applications for loans for physical damage may be filed until the close of business on October 24, 1985, and for economic injury until the close of business on May 23, 1986, at the address listed below.

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations.

Interest rates are:

	Percentage
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219808 for physical damage and for economic injury the number is 632700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 23, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–21521 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01

[Declaration of Disaster Loan Area #2197]

South Carolina; Declaration of Disaster Loan Area

Spartanburg County in the State of South Carolina constitutes a disaster area because of a tornado which occurred on August 17, 1985. Applications for loans for physical damage may be filed until the close of business on October 24, 1985, and for economic injury until the close of business on May 23, 1986, at the address listed below.

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, GA 30303

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219712 for physical damage and for economic injury the number is 632600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 23, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–21522 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

National Advisory Council Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC., will hold its semiannual National Advisory Council meeting from 12:00 noon, Monday, September 23, to 11:45 a.m., Wednesday, September 25, 1985, at the Mills House Hotel, Meeting & Queen Streets, Charleston, South Carolina 29402 to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416 (202) 653–6748.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 3, 1985.

[FR Doc. 85–21531 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting; Public Meeting

The Small Business Administration Region I Advisory Councils, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., Thursday, September 19, 1985, at Ernie's Royal Hearthside Restaurant, Rutland, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 229–0538.

Jaan M. Nowak,

Director, Office of Advisory Councils.

September 3, 1985

[FR Doc. 85–21529 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area

of Washington, DC, will hold a public meeting at 2:00 p.m. on Tuesday, September 17, 1985, at the SBA Washington District Office, 1111–18th Street, NW., Room 404, Washington, DC, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Janice E. Wolfe, District Director, U.S. Small Business Administration, 1111–18th Street, NW., P.O. Box 19993, Washington, DC 20036, (202) 634–1805.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 3, 1985.

[FR Doc. 85–21530 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

Region III—Joint Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Councils, located in the geographical areas of Philadelphia and Pittsburgh, Pennsylvania, will hold a public meeting at 1:00 p.m. on Monday, October 7, 1985 and 8:30 a.m. on Tuesday, October 8, 1985, at the Penn Harris Inn, Routes 11 & 15, Camp Hill Bypass, Camp Hill, Pennsylvania 17011, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, Bala Cynwyd, Pennsylvania 19004, (215) 596–5801 and Joseph M. Kopp, District Director, Pittsburgh District Office, 960 Penn Avenue—5th Floor, Pittsburgh, Pennsylvania 15222, (412) 644–4306.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 28, 1985.

[FR Doc. 85–21527 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 9:00 a.m. on Wednesday, September 18, 1985, at the University Club Building, 24th floor, 136 East South Temple, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138 or phone (801) 524–5804.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 3, 1985.

[FR Doc. 85–21528 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

[License Application No. 02/02–0491]

GHW Capital Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by GHW Capital Corporation, 489 Fifth Avenue, New York, New York 10017, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1985).

The officers, directors and sole shareholder of the applicant are as follows:

Name and address	Title and relationship
Jack Graff, 1048 East 10th Street, Brooklyn, New York 11230.	President, Director.
Nesta G. Stewart, 229 S. Harrison Street, Apt. 3E West, East Orange, NJ 07018.	Vice President, Administrator.
Anthony Carter, 38 Linwood Avenue, Farmingdale, NY 11735.	Secretary, Director.
Albert E. Johnson, 191 Willoughby St., Brooklyn, NY 11201.	Treasurer, Director.
Philip Wolitzer, 2348 East 21st St., Brooklyn, NY 11229.	Director.
Tiberiu J. Horvitz, 11 Tallman Street, Staten Island, NY 10312.	Do.
Marvin Meyer, 425 E. 58th Street, New York, NY 10022.	Do.
GHW Associates, 489 Fifth Avenue, New York, NY 10017.	Sole Shareholder.

GHW Associates is a one-bank holding company whose subsidiary commercial bank is First Inter-County Bank of New York.

The applicant, a Delaware corporation, will begin operations with a capitalization of $1,000,000, and will conduct its operations principally in the states of New York, New Jersey and Connecticut.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies).

Dated: August 27, 1985.

John Werner,

Deputy Associate Administrator for Investment.

[FR Doc. 85–21523 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/05/0202]

M & I Ventures Corp.; Issuance of a Small Business Investment Company License

On July 1, 1985, a notice was published in the **Federal Register** (49 FR 33191) stating that an application has been filed by M & I Ventures Corporation, 770 North Water Street, Milwaukee, Wisconsin 53202 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investmant companies (13 CFR 107.102(1985)) for a license as a small business investment company.

Interested parties were given until close of business July 30, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05/0202 on August 19, 1985, to M & I Ventures Corporation to operate as a small business investment company.

Dated: August 28, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

John Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 85–21524 Filed 9–9–85; 8:45 am]

BILLING CODE 8025–01–M

Rubber City Capital Corp.; (License No. 05/05–5201) Issuance of a Small Business Investment Company License

On March 13, 1985, a notice was published in the **Federal Register** (49 FR

10136) stating that an application has been filed by Rubber City Capital Corporation with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1985)) for a license as a small business investment company.

Interested parties were given until close of business May 18, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent, information, SBA issued License No. 05/05-5201 on August 14, 1985, to Rubber City Capital Corporation to operate as a small business investment company.

Dated: August 28, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

John Werner,

Deputy Associate Administrator for Investment.

[FR Doc. 85-21525 Filed 9-9-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0204]

Wisconsin Community Capital, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing Small Business Investment Companies [13 CFR 107.102 (1985)] under the name of Wisconsin Community Capital, Inc., 14 West Mifflin Street, Suite 314, Madison, Wisconsin 53703 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The Applicant will begin operations with private capital of $1,005,000.

The officers, directors and shareholders of the Applicant are as follows:

Rowland J. McClellan, BANCWIS Corporation, 100 North Main Street, Jamesville, Wisconsin 53547—Board Chairman, Director

James C. Liebig, Schneider National, Inc., P.O. Box 2545, Green Bay, Wisconsin 54306-2545—Board Vice Chairman, Director

Louis G. Fortis, 14 West Mifflin Street, Suite 314, Madison, Wisconsin 53703—President

Nancy Bornsetein, 14 West Mifflin Street, Suite 314, Madison, Wisconsin 53703—Vice President, Secretary

Mary Avery, 201 Melby Street, Westby, Wisconsin 54667—Treasurer, Director

Francis J. Daved, 1410 East Dean Road, Fox Point, Wisconsin 53217—General Manager

Dismas Becker, 1533 North 23rd Street, Milwaukee, Wisconsin 53205—Director

Charles P. Hoke, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202—Director

Wisconsin Community Development Finance Authority, Inc., 14 West Mifflin Street, Suite 314, Madison, Wisconsin 53703—Shareholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundess, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Madison, Wisconsin.

Dated: August 23, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-21526 Filed 9-9-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/883]

Advisory Committee to United States Section, International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 27, 1985 at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 9:00 a.m. This session will discuss the 1978 Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research particularly that for Dall porpoise, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 1:30 p.m. to 5:30 p.m. on September 27. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the 32nd Annual Meeting of the International North Pacific Fisheries Commission to be held in Tokyo, Japan during November 5-6, 1985. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted an opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section," the members of the Advisory Committee will examine various options for the negotiating position at the Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Charles K. Walters, Pacific Fisheries Officer, Room 5806, U.S. Department of State, Washington, D.C. 20520. Mr. Walters can be reached by telephone on (202) 632-2009.

Dated: August 26, 1985.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 85-21573 Filed 9-9-85; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Application of UCC Charter Company for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 85-9-6), Dockets 43129 and 43130.

SUMMARY: The Department of Transportation is directing all interested

persons to show cause why it should not issue an order granting UCC Charter Company a certificate to engage in interstate, overseas and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than September 24, 1985.

ADDRESS: Responses should be filed in Dockets 43129 and 43130 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–9–6 is available for inspection at our Documentary Services Division at the above address.

Dated: September 4, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–21551 Filed 9–9–85; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended August 30, 1985

Subpart Q Applications

The due date for answers conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Aug. 30, 1985	43376	Delta Air Lines, Inc., Hartsfield Atlanta Int'l Airport, Atlanta, Georgia 30320. Application of Delta Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests an amended or renewed certificate of public convenience and necessity for Route 178 to permit Delta to continue providing air transportation services between Atlanta, Georgia and London, England. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 27, 1985.
Aug. 30, 1985	43377	American Airlines Inc., c/o Wesley G. Kaldahl, P.O. Box 619616–3B55, DFW Airport, Texas 75261. Conforming Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to engage in foreign air transportation of persons, property and mail between the terminal point Dallas/Ft. Worth, Texas, and the coterminal points Madrid, Barcelona, Malaga and Palma de Mallorca, Spain. Answers may be filed by September 13, 1985. (Application conforms to Pan American World Airways, Inc.'s Docket 43301.)

Phyllis T. Kaylor,

Chief, Documentary Services Division.

Linda W. Senese

Certifying Officer.

[FR Doc. 85–21549 Filed 9–9–85; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Fitness Determination; Cross Country Aviation Services, Inc.; Correction

AGENCY: Department of Transportation.

ACTION: Correction to Notice of Commuter Air Carrier Fitness, Determination, Order 85–8–81, Order to Show Cause.

SUMMARY: The Notice, published at 50 FR 35631, September 3, 1985, has an incorrect date for responses being filed to the Show Cause Order. The corrected Response paragraph is as follows:

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 24, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590 (202) 755–3812.

DATED: September 4, 1985.

Jeffrey N. Shane

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–21552 Filed 9–9–85; 8:45 am]

BILLING CODE 4910–62–M

[Order 85–9–7; Docket No. 42614]

Application of Barrow Air, Inc.; Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Barrow Air, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Pesons wishing to file objections should do so no later than September 25, 1985.

ADDRESS: Objections and answers to objections should be filed in Docket 42614 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–9–7 is available from our Documentary Services Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85–9–7 to that address.

Dated: September 4, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21550 Filed 9-9-85; 8:45 am]

BILLING CODE 4910-62-M-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on October 1-2, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Seventh Meeting Held on June 27-28, 1985; (3) Consideration of Proposed Changes to the Seventh Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Working Groups WG-5 and WG-7A Activities; (5) Review the Second Draft of the Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review the Initial Draft Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on September 3, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-21515 Filed 9-9-85; 8:45 am]

BILLING CODE 4910-14-M

Organization Statement

This Statement describes the organization of the Federal Aviation Administration, an operating administration of the Department of Transportation. The description of the structure of the Department and its other operating administrations is published separately. Regulations of the Secretary of Transportation that apply to all operating administrations of the Department or contain delegations to them by the Secretary are published in the Code of Federal Regulations, Title 49, Subtitle A.

This Statement replaces the Organization Statement of the Federal Aviation Administration issued on July 28, 1983. It is issued under 5 U.S.C. 552(a)(1)(A). It reflects the status as of the date of issue. Changes after this cut off will be published as amendments.

Issued in Washington, DC, on August 29, 1985.

Leonard B. Bell,

Acting Director, Office of Management Systems.

Federal Aviation Administration; Basic Organization Structure; Organization of the Federal Aviation Administration

Part I—General Description

1. Authority
2. Mission
3. Functions and Activities
   - (a) Safety Regulation
   - (b) Airspace and Air Traffic Management
   - (c) Air Navigation Facilities
   - (d) Research, Engineering, and Development
   - (e) Test and Evaluation
   - (f) Airport Programs
   - (g) Metropolitan Washington Airports
   - (h) Registration and Recordation
   - (i) Civil Aviation Abroad
   - (j) Other Programs
4. Organization Pattern
   - (a) Washington Headquarters
   - (b) Regions
   - (c) Special Organizational Complexes
5. Requests for Information; Submittals

Part II—The FAA Organization

1. Organization of FAA Headquarters
2. Office of the Administrator
   - (a) The Administrator
   - (b) The Deputy Administrator
3. The Associate Administrators
   - (a) The Associate Administrator for Airports
   - (b) The Associate Administrator for Administration
   - (c) The Associate Administrator for Air Traffic
   - (d) The Associate Administrator for Aviation Standards
   - (e) The Associate Administrator for Development and Logistics
   - (f) The Associate Administrator for Human Resource Management
   - (g) The Associate Administrator for Policy and International Aviation
4. Offices Reporting Directly to the Administrator
   - (a) Office of Aviation Safety
   - (b) Office of the Chief Counsel
   - (c) Office of Civil Rights
   - (d) Office of Public Affairs
5. Offices Under Executive Direction of the Associate Administrators
   - (a) Offices Under Executive Direction of the Associate Administrator for Airports
     - (1) Office of Airport Planning and Programming
     - (2) Office of Airport Standards
     - (3) Airport Capacity Program Office
     - (4) Metropolitan Washington Airports
   - (b) Offices and Services Under Executive Direction of the Associate Administrator for Administration
     - (1) Office of Accounting
     - (2) Acquisition and Materiel Service
     - (3) Office of Budget
     - (4) Office of Management Systems
   - (c) Offices Under Executive Direction of the Associate Administrator for Air Traffic
     - (1) Air Traffic Operations Service
     - (2) Air Traffic Plans and Requirements Service
   - (d) Offices Under Executive Direction of the Associate Administrator for Aviation Standards
     - (1) Office of Airworthiness
     - (2) Office of Aviation Medicine
     - (3) Office of Civil Aviation Security
     - (4) Office of Flight Operations
     - (5) Office of Program and Regulations Management
     - (6) Rotorcraft Program Office
     - (7) Aviation Standards National Field Office
   - (e) Offices and Services Under Executive Direction of the Associate Administrator for Development and Logistics
     - (1) Program Engineering and Maintenance Service
     - (2) Systems Engineering Service
     - (3) Advanced Automation Program Office
     - (4) FAA Technical Center
   - (f) Offices Under Executive Direction of the Associate Administrator for Human Resource Management
     - (1) Office of Human Resource Planning and Evaluation
     - (2) Office of Labor and Employee Relations
     - (3) Office of Organization Effectiveness
     - (4) Office of Personnel and Technical Training
   - (g) Offices Under Executive Direction of the Associate Administrator for Policy and International Aviation
     - (1) Office of Aviation Policy and Plans
     - (2) Office of Environment and Energy
     - (3) Office of International Aviation
     - (4) Europe, Africa, and Middle East Office
6. The Mike Monroney Aeronautical Center
7. The Regions
   - (a) Office of the Regional Director
   - (b) Staff

Part III—Location and Geographic Scope of Authority of Principal Offices

1. FAA Headquarters
2. The Mike Monroney Aeronautical Center
3. FAA Technical Center
4. Aviation Standards National Field Office

5. Regional Headquarters
6. Metropolitan Washington Airports
7. Europe, Africa, and Middle East Office

Part I—General Description

1. *Authority.* The Federal Aviation Administration (formerly the Federal Aviation Agency) was established as an independent agency by the Federal Aviation Act of 1958. It became a component of the Department of Transportation in 1967 pursuant to the Department of Transportation Act of 1966 (Pub. L. 89–670).

2. *Mission.* The Federal Aviation Administration is charged with regulating air commerce in such a manner as to best promote its development and safety and fulfill the requirements of national defense; controlling the use of navigable airspace of the U.S. and regulating both civil and military operations in such airspace in the interest of safety and efficiency of both; promoting, encouraging, and developing civil aeronautics; consolidating research and development with respect to air navigation facilities; installing and operating air navigation facilities; developing and operating a common system of air traffic control and navigation for both civil and military aircraft; and developing and implementing programs and regulations to control aircraft noise, sonic boom, and other environmental effects of civil aviation.

3. *Functions and Activities.*

(a) *Safety Regulation.* The Administrator issues and enforces rules, regulations, and minimum standards relating to the manufacture, operation, and maintenance of aircraft as well as the rating and certification (including medical) of airmen and the certification of airports serving air carriers certified by the Office of Aviation Operations in the Office of the Secretary of Transportation. The agency performs flight inspection of air navigation facilities in the U.S. and, as required, abroad. It also enforces regulations under the Hazardous Materials Transportation Act applicable to shipments by air.

(b) *Airspace and Air Traffic Management.* The safe and efficient utilization of the navigable airspace is a primary objective of the agency. To meet this objective, it operates a network of airport traffic control towers, air route traffic control centers, and flight service stations. It develops air traffic rules and regulations and allocates the use of the airspace. It also provides for the security control of air traffic to meet national defense requirements.

(c) *Air Navigation Facilities.* The agency is responsible for the location, construction or installation, maintenance, operation, and quality assurance of Federal visual and electronic aids to air navigation. The agency operates and maintains communications equipment, radio facilities, computer systems, and visual display equipment at flight service stations, airport traffic control towers, and air route traffic control centers.

(d) *Research, Engineering, and Development.* The research, engineering, and development activities of the agency are directed toward providing the systems, procedures, facilities, and devices needed for a safe and efficient system of air navigation and air traffic control to meet the needs of civil aviation and the air defense system. The agency also performs an aeromedical research function to apply knowledge gained from its research program and the work of others to the safety and promotion of civil aviation, and the health, safety, and efficiency of agency employees. The agency also supports development and testing of improved aircraft, engines, propellers, and appliances.

(e) *Test and Evaluation.* The agency conducts tests and evaluations of specified items (aviation systems, subsystems, equipment, devices, materiels, concepts, or procedures), at any phase in the cycle of their development (from conception to acceptance and implementation), as well as assigned independent testing at key decision points.

(f) *Airport Programs.* The agency maintains a national plan of airport requirements, administers a grant program for development of public use airports to assure and improve safety and to meet current and future airport capacity needs, evaluates the environmental impacts of airport development, and administers an airport noise compatibility program with the goal of reducing noncompatible uses around airports. It also develops standards and technical guidance on airport planning, design, safety, and operations, and provides grants of funds to assist public agencies in airport system and master planning, and airport development and improvement.

(g) *Metropolitan Washington Airports.* The agency is responsible for the care, operation, maintenance, improvement, and protection of Washington National and Washington Dulles International Airports. It serves as the airport proprietor for the Washington metropolitan area.

(h) *Registration and Recordation.* The agency provides a system for the registration of an aircraft and recordation of documents affecting title or an interest in the aircraft, and aircraft engines, propellers, appliances, and spare parts.

(i) *Civil Aviation Abroad.* Under the Federal Aviation Act of 1958 and the International Aviation Facilities Act of 1948, the agency promotes aviation safety and civil aviation abroad by the exchange of aeronautical information with foreign aviation authorities, certifying foreign entities such as repair stations, foreign airmen and mechanics, negotiating bilateral airworthiness agreements to facilitate the import and export of aircraft and components, and providing technical assistance and training in all areas of FAA expertise. It provides technical representation at international conferences, including participation in the International Civil Aviation Organization and other international organizations.

(j) *Other Programs.* The agency administers the aviation insurance and aircraft loan guarantee programs. It is an allotting agency under the Defense Materials System with respect to priorities and allocation for civil aircraft and civil aviation operations. The agency develops specifications for the preparation of aeronautical charts. It publishes current information on airways and airport service and issues technical publications for the improvement of safety in flight, airport planning and design, and other aeronautical activities. It serves as the executive administration for the operation and maintenance of the Department of Transportation automated payroll and personnel systems.

4. *Organization Pattern.* The Federal Aviation Act of 1958 provides for an Administrator and a Deputy Administrator who must be citizens of the United States and have experience in a field directly related to aviation. The Act provides that the Administrator may organize the agency, appoint officers and employees, define their authority and duties, and delegate authority to them. The agency consists of two basic administrative levels of organization and five special organizational complexes:

(a) The Washington headquarters, which is responsible for agencywide program planning, direction, control, and evaluation, and for conducting certain operational activities that can best be performed centrally.

(b) Regions, each under a director who is responsible for directing the agency's field operations within assigned geographic boundaries.

(c) The Mike Monroney Aeronautical Center in Oklahoma City, and the FAA Technical Center, near Atlantic City, where certain centralized activities are conducted; the Aviation Standards National Field Office, a major field element in Oklahoma City, responsible for flight inspection and procedures as well as aircraft fleet maintenance; the Metropolitan Washington Airports located near Washington, D.C., which directs the operation of Federally owned civil airports serving the District of Columbia and vicinity; and a Europe, Africa, and Middle East Office headquartered in Brussels, Belgium, which has responsibility for agency programs and policy in its assigned area.

5. *Requests for Information; Submittals.* Requests for further information on the organization or activities of the agency may be addressed, in writing or by telephone, to the Office of Public Affairs (Public Inquiry Center, APA–430), Federal Aviation Administration, Department of Transportation, 800 Independence Avenue, SW, Washington, D.C., 20591. Telephone: (202) 426–8058. Submittals and requests that are not required to be made at a place established in a regulation, or by a communication to the interested person, may be addressed in writing to the nearest regional office of the agency. The addresses of these offices are listed in Part III of this Statement.

Part II—The FAA Organization

1. *Organization of FAA Headquarters:* The FAA heatquarters consists of:

(a) The Office of the Administrator, which includes the Administrator and the Deputy Administrator.

(b) Associate administrators who:

(1) Advise and assist the Administrator and the Deputy Administrator in directing, coordinating, controlling, and ensuring the adequacy of agency plans and programs within their spheres of responsibility.

(2) Exercise executive direction over offices or services assigned to them.

(3) Take action and issue orders in the name of the Administrator.

(c) Offices reporting directly to the Administrator.

(d) Offices and services under the executive direction of the individual Associate administrators.

2. *Office of the Administrator:* The Office of the Administrator is responsible for overall planning, direction, and control of agency activities, and for executive relationships with the Secretary and the Deputy Secretary of Transportation, the assistant secretaries, the heads of other operating elements, the Congress, other agencies, the aviation community, and the public.

(a) The Administrator:

(1) Determines and establishes agency objectives and priorities.

(2) Guides the development of and approves long-range plans for achieving agency objectives.

(3) Establishes the policies and broad technological, operational, and managerial concepts to govern the development and accomplishment of agency programs based on approved plans.

(4) Issues agency rules and regulations, or authorizes their issuance pursuant to delegations of authority.

(5) Approves broad legislative, budgetary, and fiscal proposals.

(6) Represents the agency in its relations with the Secretary of Transportation, and as an entity of the Department of Transportation, in its relations with the President, the Congress, other agencies, the aviation comunity, and the general public.

(7) Takes individual actions of major significance, such as changes in the basic pattern of agency organization, the selection and appointment of key personnel, the broad allocation of agency resources, and individual matters of particular political or public sensitivity.

(8) Exercises control over, evaluates, and takes steps to ensure the adequacy and continued improvement of overall agency performance.

(b) The Deputy Administrator participates with and assists the Administrator in the overall planning, direction, coordination, and control of agency programs. Subject to policies, standards, and instructions issued by the Administrator, the Deputy Administrator is authorized to represent the Administrator and exercise the Administrator's full authority. All authority delegated by the Administrator to any element in the agency is also delegated to the Deputy Administrator, unless otherwise specifically provided. The Deputy Administrator acts for and exercises all of the powers of the Administrator during the Administrator's absence or disability.

(3) *The Associate Administrators:*

(a) *The Associate Administrator for Airports.* Advises and assists the Administrator in directing, coordinating, Controlling, and ensuring: the adequacy of the substantive aspects of agency rulemaking actions relating to the certification of airports and the administration of Airport Improvement Program grants; the adequacy of the technical standards, plans, and programs for the development of a national integrated system of airports and for the improvement of safety in airport operations; and the adequcy of plans and programs to improve airport capacity; and the adequacy of programs and operating policies for the planning, construction, operation, maintenance, and development of Federally owned civil airports serving the District of Columbia and vicinity. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Office of Airport Planning and Programming, the Office of Airport Standards, the Airport Capacity Office, and Metropolitan Washington Airports.

(b) *The Associate Administrator for Administration* advises and assists the Administrator in directing, coordinating, controlling, and ensuring the adequacy of agency plans and programs for administrative management, budget and financial management, program performance appraisal, procurement, and property management. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Office of Accounting, the Acquisition and Material Service, the Office of Budget, and the Office of Management Systems.

(c) *The Associate Administrator for Air Traffic* advises and assists the Administrator in directing, coordinating, controlling, and ensuring the safe and efficient utilization of the national airspace; provides for the management of civil and military air traffic in the navigable airspace by developing and recommending national policies and establishing national programs, regulations, standards, and procedures for management of the airspace, operation of air navigation and communications systems and facilities, separation and control of, and flight assistance to, air traffic; provides for the security control of air traffic to meet the national defense requirements; operates the agency national and international flight information and cartographic programs; develops and coordinates U.S. policies, standards, and procedures related to international air traffic; and develops and implements procedures related to operational telecommunications services based on agency policy, standards, and guidelines. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Air Traffic Operations Service and the Air Traffic Plans and Requirements Service.

(d) *The Associate Administrator for Aviation Standards* advises and assists

the Administrator in directing, coordinating, controlling, and ensuring the adequacy of the substantive aspects of agency rulemaking actions relating to the safety of flight, the nonmedical certification of airmen, the certification of air carriers, air agencies, and aircraft and the aircraft registry; plans and programs covering all agency rotorcraft activities, the airworthiness of aircraft, competence of airmen, air agencies, air carriers; flight procedures and the operation and maitenance of agency aircraft; investigations in support of the agency mission, internal security, prevention of aircraft hijacking, aviation sabotage, and related criminal acts against air transportation and intrastate air transportation; and the policy execution and administrative management aspects of the airman medical certification, medical research, aeromedical education, medical accident investigation, airman medical standards, and occupational health programs. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Office of Airworthiness, the Office of Civil Aviation Security, the Office of Flight Operations, the Office of Program and Regulations Management, the Rotorcraft Program Office, and the Aviation Standards National Field Office, as well as policy execution and administrative management authority over the Office of Aviation Medicine.

(e) *The Associate Administrator for Development and Logistics* advises and assists the Administrator in directing, coordinating, controlling, and ensuring the adequacy of agency plans and programs for all research and advanced development, applied development, system engineering, production, implementation, maintenance, and field support of all systems that comprise the National Airspace System (NAS); ensures engineering adequacy of research and development efforts related to airport design and construction, aviation security, and aircraft safety; develops technical and maintenance standards, policies, plans, and programs for engineering associated with NAS modernization, development, installation, and maintenance; ensuring the adequancy of the test and evaluation and configuration management of all development, installation, and maintenance programs; the adequacy of human factors research and development programs, and agency telecommunications policies, planning standards, and technical standards; ensures continuous and effective liaison and coordination of agency long-range planning with Department of Defense; and provides technical coordination and liaison of agency engineering and development programs with those of industry and other Government agencies. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Program Engineering and Maintenance Service, the Systems Engineering Service, the Advanced Automation Program Office, and the FAA Technical Center.

(f) *The Associate Administrator for Human Resource Management* advises and assists the Administrator in directing, coordinating, controlling, and ensuring the adequacy of agency plans and programs for personnel and technical training, human resource planning, evaluation, and organizational effectiveness, and labor and employee relations. The Associate Administrator for Human Resource Management provides operating personnel, training, and labor relations services to designated organizational elements and exercises executive direction over the Office of Human Resource Planning and Evaluation, the Office of Labor and Employee Relations, the Office of Organizational Effectiveness, and the Office of Personnel and Technical Training.

(g) *The Associate Administrator for Policy and International Aviation* advises and assists the Administrator in directing, coordinating, controlling, and ensuring the adequacy of national and international aviation system policies, goals, and priorities; develops and recommends national aviation policy relating to environmental and energy programs and regulatory matters; develops and recommends long-range systemwide master plans and aviation system concepts; coordinates and integrates the agency planning efforts; develops, coordinates, recommends, and promulgates statements of agency policy, goals, and priorities (both short- and long-range) and related achievement indicators; ensures the continuous coordination of such policies, goals, and overall plans with the Office of the Secretary of Transportation; provides the focal point for aviation public/government participation in policy development and planning processes; identifies future demands for aviation services, forecasting aviation technology, and future operational environments; reviews and analyzes proposed agency actions which significantly impact upon the national aviation system to identify the social, economic, or other consequences which are associated with agency actions and to ensure consideration of all feasible alternative agency policies and plans; conducts technical reviews of major programs to provide a continuous intensive appraisal of technical accomplishments, program costs, and schedule compliance; ensures continuous and effective liaison with foreign governments and the adequacy of programs and operating policies of the Europe, Africa, and Middle East Office within its assigned geographic jurisdiction. In the discharge of these responsibilities, the Associate Administrator exercises executive direction over the Office of Aviation Policy and Plans, the Office of Environment and Energy, the Office of International Aviation, and the Europe, Africa and Middle East Office.

4. *Offices Reporting Directly to the Administrator.*

(a) *Office of Aviation Safety.* The Office of Aviation Safety promotes safety and safety consciousness in air commerce, while conducting investigations of accidents and incidents, evaluates the efficacy of selected programs on safety matters, analyzes trends, and conducts special analyzes on safety issues.

(b) *Office of the Chief Counsel.* The Office of the Chief Counsel provides legal counsel and advice for the handling of all legal matters with which the agency is concerned, in order to ensure conformance with all legal requirements of all applicable laws, rules, regulations, and orders.

(c) *Office of Civil Rights.* The Office of Civil Rights assists, represents, and acts as principal advisor to the Administrator on civil rights and equal opportunity matters so as to assure full and affirmative implementation of civil rights and equal opportunity precepts within the agency in all official actions. This includes: agency employment practices; services rendered to the public; employment practices of contractors and subcontractors under direct or Federaly assisted contracts; operation of Federally assisted activities; and other programs or efforts involving agency assistance, participation, or endorsement.

(d) *Office of Public Affairs.* The Office of Public Affairs is the principal spokesperson for the agency. The office initiates and participates in the execution of coordinated information plans and programs, and ensures that programs, policies, objectives, and all relevant information concerning the agency are consistently presented to the public, aviation community, and agency employees in a factual, dignified, and timely manner.

5. *Offices Under Executive Direction of the Associate Administrators.*

(a) *Offices Under Executive Direction of the Associate Administrator for Airports.*

(1) *Office of Airport Planning and Programming.* The Office of Airport Planning and Programming serves as the principal organization of the agency responsible for all airports program matters pertaining to national airport planning, environmental and social requirements, airport improvement grants, property transfers, and ensures the adequacy of the substantive aspects of agency rulemaking actions relating to these programs.

(2) *Office of Airport Standards.* The Office of Airport Standards serves as the principal organization of the agency responsible for all airport program matters pertaining to standards for airport design, construction, maintenance, operation, safety, and data, including ensuring adequacy of the substantive aspects of agency rulemaking actions relating to the certification of airports.

(3) *Airport Capacity Program Office.* The Airport Capacity Program Office provides policy development, direction, management support, and guidance required to develop, test, demonstrate, and implement plans and programs to improve airport capacity.
The office formulates and maintains the Airport Capacity Enhancement Plan which encompasses short, medium, and long-term objectives, and guides all of the agency's efforts to enhance airport capacity.

(4) *Metropolitan Washington Airports.* The Metropolitan Washington Airports plans, constructs, operates, and maintains Federally owned civil airports serving the District of Columbia and vicinity.

(b) *Offices and Services Under Executive Direction of the Associate Administrator for Administration.*

(1) *Office of Accounting.* The Office of Accounting provides accounting, financial advisory, and audit liaison services to the Administrator and other top management and operating officials; develops, recommends policy for, and evaluates agency-wide accounting systems; administers an audit liaison program and a financial advisory services program; and conducts the accounting operations program for the agency headquarters and Metropolitan Washington Airports.

(2) *Acquisition and Materiel Service.* The Acquisition and Materiel Service plans, monitors, controls, and implements the scheduling and acquisition of materiel and equipment for the National Airspace System and for international programs; provides for the procurement and management of real and personal property and transportation and supply support for agency programs; and provides office services to Washington headquarters.

(3) *Office of Budget.* The Office of Budget ensures that agency budgetary needs are accurately identified and defined, that they are effectively presented to the Office of Management and Budget and Congressional committees, and that funds and other resources available to the agency are effectively utilized.

(4) *Office of Management Systems.* The Office of Management Systems develops and administers the implementation and operation of agency organizational plans, management systems and controls, information resources management, the National Airspace Review Enhancement Plan, and administrative standards and procedures; evaluates their adequacy and promotes their improvement in terms of the effectiveness and economy of agency program performance; and provides data processing, graphics, and publishing services to the Washington headquarters.

(c) *Offices Under Executive Direction of the Associate Administrator for Air Traffic.*

(1) *Air Traffic Operations Service.* The Air Traffic Operations Service advises and assists the Associate Administrator for Air Traffic in directing, coordinating, controlling and ensuring the safe and efficient utilization of the national airspace; provides for the management of civil and military air traffic in the navigable airspace by developing and recommending national policies and establishing national programs, regulations, standards, and procedures for management of the airspace, operation of air navigation, separation and control of, and flight assistance to, air traffic; provides for the security control of air traffic to meet the national defense requirements; operates the agency national and international flight information and cartographic, traffic management programs; develops and coordinates U.S. policies, standards, and procedures related to international air traffic.

(2) *Air Traffic Plans and Requirements Service.* The Air Traffic Plans and Requirements Service manages, directs, and advises the Associate Administrator for Air Traffic in the planning and requirements of the air traffic system including operations, facilities and equipment, and leased services programs, telecommunications systems and aviation weather services; develops and manages national airspace programs, policies, and standards, and air traffic control technical resource management programs as they relate to human factors considerations, technical training, and air traffic controllers' certification requirements; and develops national software for the use of air traffic control automation throughout the agency.

(d) *Offices Under Executive Direction of the Associate Administrator for Aviation Standards.*

(1) *Office of Airworthiness.* The Office of Airworthiness promotes safety in air commerce by assuring the airworthiness of civil aircraft, including aircraft design type certification; production certification; airworthiness certification; approval of operators' aircraft maintenance programs; airmen certification; air agency certification; and continued airworthiness programs.

(2) *Office of Aviation Medicine.* The Office of Aviation Medicine applies aviation medicine knowledge to the safety and promotion of civil aviation.

(3) *Office of Civil Aviation Security.* The Office of Civil Aviation Security promotes the security of civil aviation, including the prevention of acts of air piracy, aviation sabotage, and related criminal acts; assists law enforcement in their programs for interdiction of dangerous drugs and narcotics into the United States; responds to atmospheric/radiological contamination incidents; promotes the security of agency operations, personnel, facilities, property, and communications by developing and assuring effective implementation of policies, regulations, programs, and procedures; and conducts investigations supporting the agency mission.

(4) *Office of Flight Operations.* The Office of Flight Operations promotes safety of flight of civil aircraft in air commerce by assuring the adequacy of flight procedures and operating methods of air carriers and general aviation operators, and the proficiency of pilots, flight engineers, navigators, dispatchers, and related air agencies.

(5) *Office of Program and Regulations Management.* The Office of Program and Regulations Management promotes efficiency and safety in aviation safety regulatory programs by providing policy guidance, leadership, and direction to programs of national aviation safety data systems development, rulemaking activities, evaluation, resource management, and administrative and fiscal management for those offices under the executive direction of the Associate Administrator for Aviation Standards.

(6) *Rotorcraft Program Office.* The Rotorcraft Program Office provides management, guidance, oversight, and coordination for all agency rotorcraft programs and activities; and formulates a Rotorcraft Program Plan to guide all agency rotorcraft efforts.

(7) *Aviation Standards National Field Office.* The Aviation Standards National Field Office promotes safety of flight by assuring the adequacy and accuracy of air navigation facilities; development and standardization of flight procedures; maintenance and engineering of the agency aircraft fleet; and provision of regulatory and standards development.

(e) *Offices and Services under Executive Direction of the Associate Administrator for Development and Logistics.*

(1) *Program Engineering and Maintenance Service.* The Program Engineering and Maintenance Service manages, directs, and executes the agency's airway engineering activities and research and development efforts related to airport design and construction, aircraft safety, and aviation security to ensure that the National Airspace System is efficient, economical, and responsive to operational needs. The scope of this responsibility encompasses: conducting research, development, production, construction, installation, maintenance, and logistics support of all air/ground, air traffic control, interfacility, and auxiliary facilities; managing research, development, in support of airport design and construction, aircraft safety, and aviation security activities; and support to the Advanced Automation Program Office.

(2) *Systems Engineering Service.* The Systems Engineering Service identifies and translates user and system requirements; conducts system studies and advanced technology and development activities, designs and plans implementation of system improvements and interfaces, prepares system plans, and provides the system engineering policies and standards to develop and control the configuration, architecture, and plan for the National Airspace System.

(3) *Advanced Automation Program Office.* The Advanced Automation Program Office provides the leadership, management, direction, and coordination within the agency required to specify, develop, acquire, test, and implement a replacement system for the air traffic control automation systems currently located at the domestic en route centers, off-shore centers, terminal facilities, and related support facilities.

(4) *FAA Technical Center.* The FAA Technical Center operates and administers a national test center providing laboratories, facilities, skills, and services responsive to the research, development, implementation, and maintenance programs of the agency; develops, tests, and evaluates new or substantially improved equipment, systems, materials, processes, techniques, and procedures; and performs or participates in research, engineering, and development to provide new or improved techniques or methodologies related to airport designs, layouts, construction and operations, aviation security systems, and for improved or new aircraft safety systems and devices, improved crashworthiness designs and techniques, and improved or new aircraft control systems.

(f) *Offices Under Executive Direction of the Associate Administrator for Human Resource Management.*

(1) *Office of Human Resource Planning and Evaluation.* The Office of Human Resource Planning and Evaluation serves as the principal agency organization for assuring optimal decisionmaking in the management of human resources through developing, recommending, guiding, evaluating, and administering policies, standards, procedures, systems and/or activities in the following human resource management areas: strategic planning, policy planning and integration, and research, evaluation, and information systems (including the Consolidated Personnel Management Information System).

(2) *Office of Labor and Employee Relations.* The Office of Labor and Employee Relations serves as the principal agency organization for achieving optimal relationships with employees, employee groups, and labor organizations through developing, recommending, guiding, evaluating, and administering policies, standards, procedures, and systems with respect to employee benefits, adverse actions, grievances and appeals, and conduct and discipline; and those with respect to FAA's relationship with labor organizations, professional societies, and groups representing employees' interests.

(3) *Office of Organizational Effectiveness.* The Office of Organizational Effectiveness serves as the principal agency organization for simultaneously achieving organizational effectiveness, efficiency, and employee satisfaction through developing, recommending, guiding, evaluating, and administering policies, standards, procedures, and systems for the development of organizational systems, management practices, managers, and employees.

(4) *Office of Personnel and Technical Training.* The Office of Personnel and Technical Training serves as the principal organization of the agency for achieving optimal and equal opportunity use of position and human resources through developing, recommending, guiding, evaluating, and administering policies, standards, procedures, and systems for managing positions, acquiring human resources, and training employees in technical responsibilities.

(g) *Offices Under Executive Direction of the Associate Administrator for Policy and International Aviation.*

(1) *Office of Aviation Policy and Plans.* The Office of Aviation Policy and Plans performs and monitors demand forecasts of aviation; integrates technological aviation forecasts; assesses the impact of future social, economic, transportation, and technological events on aviation industry characteristics, trends, and demands; performs a continuous assessment of the current Federal aviation system and identifies needed future system changes; and performs economic analysis of proposed regulations. Formulates, recommends, and promulgates FAA policy, system plans, goals, and priorities in conjunction with other agency elements; develops agency costing policy; develops and coordinates agency plans and integrates agency-wide planning actions to assure consistency with agency policy, goals, and priorities; assesses policy implications of proposed major modifications to the system; and provides legislative advice and assistance. Performs systems requirements analyses; conducts cost evaluations of system acquisition management programs; conducts transition planning efforts; develops and provides planning standards and facility establishment criteria; and develops and provides planning guidelines governing regional inputs. Conducts studies and analyses of policy and program issues to determine the impact and consequences of alternative planning standards and facility established criteria; and prepares documentation of policies to guide FAA system and engineering and development planning and to inform users and the general public of agency policies and programs. Administers the Aircraft Loan Guarantee Program, including preparation of economic and financial analysis. Administers the Aviation Insurance Program. Fosters the development of an effective air transportation system; provides leadership, direction, and coordination of agency activities related to air transportation system development; and

maintains liaison with the Office of the Secretary of Transportation, other operating administrations, government and public agencies, and industry. Provides for aviation public/user/government participation in formulation of aviation policies, plans, goals, and priorities.

(2) *Office of Environment and Energy.* The Office of Environment and Energy develops and recommends national aviation policy relating to environmental and energy matters. Provides instructions, guidance, and technical assistance for agency compliance with applicable environmental and energy statutes and regulations, prescribing Federal environmental protection and energy conservation policies. Develops and coordinates overall agency energy conservation initiatives. Formulates and implements technical programs leading to reduced noise and exhaust emissions and more efficient energy utilization by aircraft and aircraft support systems. Develops and recommends noise and engine emission standards, and promulgates regulations prescribing their application. Conducts analyses and studies of aircraft and airport operations and development programs, which could lead to the reduction of any adverse impact on the environment, or to the improvement in the efficiency of energy utilization; coordinates with other Federal agencies in developing aviation-related environmental and energy policies, goals, and priorities; provides the agency focal point for coordinating and fostering community, State, local, and general public participation in the resolution of aviation-related environmental and energy matters.

(3) *Office of International Aviation.* The Office of International Aviation achieves U.S. and agency objectives in international aviation through formulation and coordination of policy, plans, programs, and related matters affecting the international activities of the agency. Provides guidance and support to all agency elements having international responsibilities; overall evaluation of agency programs and activities in meeting such objectives; and administration of aviation assistance programs conducted by the agency. Formulates and coordinates cooperative efforts with other U.S. Government departments and agencies and the U.S. aviation industry on international aviation efforts.

(4) *Europe, Africa, and Middle East Office.* The Europe, Africa, and Middle East Office discharges the responsibilities of the Federal Aviation Administration within the assigned areas of Europe, Africa and the Middle East, including the Azores, Iceland, the Soviet Union, and all countries that are both south of the People's Republic of China and west of Burma; working in coordination and in conjunction with elements of U.S. diplomatic missions with a view to encourage and foster the development of civil aeronautics and air commerce, and provide for the safety and efficiency of U.S. aviation.

6. *The Mike Monroney Aeronautical Center.* The Aeronautical Center conducts centralized training, central warehousing and supply, and aeromedical research; maintains the Registry of Civil Aircraft and recordation of conveyances and encumbrances thereon and all official airmen records; and provides certain automatic data processing services for national and local programs.

7. *The Regions.* The regional directors report directly to the Administrator and execute the major operating programs of the agency, including assigned international operations, as they apply within the regions. Each region consists of a regional headquarters and field offices and facilities. Each region, within its assigned geographic areas of responsibility, provides: air traffic operational services, flight standards inspection, certification and surveillance services, facilities and equipment installation and maintenance services; airport development and certification services; airmen medical certification and education, aircraft accident investigation, employee health services, civil aviation security services, and ancillary supporting services. The regional headquarters consists of:

(a) *Office of the Regional Director.* The Office of the Regional Director is responsible for overall planning, direction, organization, management of resources, administration of assigned programs, and evaluation of program performance throughout the region.

(b) *Staff.* Staffs, staff support divisions, and program divisions advise and assist the regional director in the elaboration of national policies, standards, and guidelines within the region; and in the evaluation of operations. The program divisions direct operational activities of subordinate field offices and facilities. The field activities or operating offices provide service to the public within their functional areas of responsibility (e.g., airport traffic control, flight service, airmen certification, etc.). The geographic jurisdictions and addresses of the regional offices are stated in Part III of this Statement.

Part III—Location and Geographic Scope of Authority of Principal Office

1. *FAA Headquarters.* Address: 800 Independence Avenue, SW, Washington, D.C., 20591

2. *Mike Monroney Aeronautical Center.* Mailing Address; P.O. Box 25082, Oklahoma City, OK, 73125. Street Address: 6500 South MacArthur, Oklahoma City, OK, 73125.

3. *FAA Technical Center.* Mailing Address: Atlantic City, NJ, 08405. Street Address: Atlantic City Airport, Atlantic City, NJ, 08405.

4. *Aviation Standards National Field Office.* Mailing Address: P.O. Box 25082, Oklahoma City, OK, 73125.

5. *Regional Headquarters.* The locations, addresses, and geographic areas of authority of the regional headquarters are as follows:

(a) *New England Region.* Regional Office at Burlington, MA, Address: 12 New England Executive Park, Burlington, MA 01803. Goegraphic Area: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, and that portion of the Atlantic Ocean in which domestic offshore control is exercised by air traffic control facilities of the New England Region.

(b) *Eastern Region.* Regional Office at Jamaica, Long Island, NY. Address: John F. Kennedy International Airport, Federal Building, Jamaica, Long Island, NY, 11430. Geographic Area: Delaware, New York, New Jersey, Pennsylvainia, Maryland, Virginia, West Virginia, and the District of Columbia; Canada east of 100 west longitude; and Greenland and Bermuda; and that portion of the Atlantic Ocean in which domestic offshore control is exercised by air traffic control facilities of the Eastern Region.

(c) *Great Lakes Region.* Regional Office at Des Plaines, IL. Address: O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL, 60018. Geographic Area: Illinois, Indiana, Michigan, Minnesota, North Dakota, South Dakota, Ohio, and Wisconsin.

(d) *Southern Region.* Regional Office at East Point, GA Mailing Address: Atlanta Airport, P.O. Box 20636, Atlanta, GA. 30320. Street Address; 3400 Norman Berry Drive, East Point, GA, 30320. Geographic Area: Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi; the Caribbean area, South America, Central America (excluding Mexico), Panama, and that portion of the Gulf of Mexico and Atlantic Ocean in which domestic offshore control is exercised by air

traffic control facilities of the Southern Region.

(e) *Southwest Region.* Regional Office at Fort Worth, TX. Mailing Address: P.O. Box 1689, Fort Worth, TX, 76101. Street address: 4400 Blue Mound Road, Fort Worth, TX 76101. Geographic Area: Arkansas, Louisiana, Texas, Oklahoma, and New Mexico; Mexico and that portion of the Gulf of Mexico covering the Oceanic Control Area and the domestic offshore control area under control of air traffic facilities located in the Southwest Region.

(f) *Central Region.* Regional Office at Kansas City, MO. Address: 601 East 12th Street, Kansas City, MO, 64106, Geographic Area: Iowa, Kansas Missouri, and Nebraska.

(g) *Northwest Mountain Region.* Regional Office at Seattle, WA. Address: 17900 Pacific Highway South, C–68966, Seattle, WA, 98168. Geographic Area: Colorado, Idaho, Montana; Oregon, Utah, Washington, and Wyoming; the designated oceanic area within the Oakland Flight Information Region that is north of a line drawn from the intersection of the southern boundary of Oregon and the coastline to the northeast corner of the Honolulu Flight Information Region; and Canada west of 100 west longitude.

(h) *Western-Pacific Region.* Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. Street Address: 15000 Aviation Boulevard, Hawthorne, CA, 90009. Geographic Area: Arizona, California, Hawaii, and Nevada; the Pacific Ocean area west of the continental United States, including the designated area within the Oakland Flight Information Region except for the area north of a line drawn from the intersection of the southern boundary of Oregon and the coastline to the northeast corner of the Honolulu Flight Information Region; and east of Bangladesh and India, including Wake Island, Guam, the Trust Territory of the Pacific, the area of Micronesia, Japan, North Korea, South Korea, The People's Republic of China, Hong Kong, Taiwan, Republic of the Philippines, Vietnam, Laos, Cambodia, Thailand, Burma, Malaysia, Singapore, Indonesia, the area of Melanesia, Australia, Antarctica, New Zealand, and the dependent territories and independent nations of Polynesia including Tonga, Fiji, Tahiti, and Samoa.

(i) *Alaskan Region.* Regional Office at Anchorage, AL. Address: 701 C Street, Box 14, Anchorage, AL; 99513. Geographic Area: Alaska, the oceanic area within the Anchorage Flight Information Region, including the Arctic offshore area (control 1485) and the Arctic Control Area/Flight Information Region.

6. *Metropoliton Washington Airports.* Address: Federal Aviation Administration, Washington National Airport, Metropolitan Washington Airports, Hangar 9, Washington, D.C. 20001.

7. *Europe, Africa, and Middle East Office.* Office located at Brussels, Belgium. APO mail address: Federal Aviation Administration, c/o American Embassy, APO New York, NY, 09667. Street Address: 15, Rue de la Loi, (3rd Floor), B–1040, Brussels, Belgium. Geographic Area: Europe, Africa, and Middle East, including the Azores, Iceland, the Soviet Union, and all countries that are both south of the People's Republic of China and west of Burma.

[FR Doc. 85–21495 Filed 9–9–85; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Alma, Georgia; Closing

Notice is hereby given that on or about September 9, 1985, the Flight Service Station at Alma, Georgia, will be closed. Services to the general aviation public at Alma, formerly provided by this office, will be provided by the Automated Flight Service Station in Macon, Georgia. This information will be reflected in the FAA Organization Statement the next time it is requested.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Atlanta, Georgia, on August 26, 1985.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 85–21676 Filed 9–9–85; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

The Advisory Committee on the Rehabilitation of the Treasury Building; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 2), the Department of the Treasury announces the establishment of the following advisory committee.

Title: The Advisory Committee on the Rehabilitation of the Treasury Building.

Purpose: The Committee, composed of former Secretaries of the Treasury and individuals interested in the preservation of historic buildings in the Nation's Capital, will discuss and recommend projects to rehabilitate portions of the Main Treasury building. A subcommittee will engage in active solicitation of gifts and donations to aid in this work.

Statement of Public Interest: The public has a continuing interest in maintaining and preserving historic buildings which link us to our past. The Treasury Building located adjacent to the White House is a particularly appropriate focus for preservatin. It is the third oldest continually occupied Government building after the White House and the Capitol.

The members of the Committee share a personal commitment to the Treasury Building.

Authority for this committee will expire on September 4, 1987, unless formally extended by the Secretary of the Treasury.

Dated: September 4, 1985.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 85–21518 Filed 9–9–85; 8:45 am]
BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Erie, PA; Facility Expansion and Modernization; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed project "Facility Expansion and Modernization" and has determined that the potential environmental impacts will be minimal from the development of this project.

This project comprises the construction of a three-level clinic addition to the existing north wing of the main hospital building, Bldg. #1 and a single-level 60 Bed Nursing Home to the south and west of the same building attached with a connecting corridor. Total new building construction is 114,000 square feet. To accommodate construction and improve pedestrian and vehiclar circulation, the entire medical center parking, roads, and walks will be reworked. Total parking for 390 cars is planned. In addition to new contruction, the existing facilities in Bldg. #1 are to receive upgraded heating, ventilating, and air conditioning, and new fire sprinkler and medical gas systems.

Short-term impacts will result from construction and are temporary. They include impacts to air quality from construction equipment exhaust and particulates from demolition and excavation, and to the patients, staff

and local community from construction noise, equipment and traffic.

Short-term impacts will be mitigated by inclusion in the construction contract of the VA Standard Specifications, Environmental Protection Section, and by monitoring and enforcement during construction. Short-term impacts to the local community will be controlled and mitigated by regulation of hours of construction and travel routes for construction equipment.

There are no long-term impacts.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality. (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Susan Livingstone, Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: September 3, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85–21559 Filed 9–9–85; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of Systems Notice; New Routine Use Statements

Notice is hereby given that the VA (Veterans Administration) is considering adding two new routine use statements for the system of records entitled "Repatriated American Prisoners Of War-VA" (60VA23) as set forth on page 38709 of the **Federal Register** of August 25, 1983. The Medical Follow-Up Agency of the National Academy of Sciences-National Research Council has begun conducting medical research studies concerning the health of World War II and Korean Conflict Prisoners of War. In order to assist them in their research, the Medical Follow-Up Agency has requested access to the information contained in the VA's Repatriated American Prisoners of War system of records. In addition to the study currently being conducted by the Medical Follow-Up Agency, other studies concerning POW's have been initiated and are being planned for the future. It is the VA's belief that release of information from 60VA23 in order to assist in medical research studies will prove beneficial to veterans who were held as prisoners of war.

To provide the information required by research facilities, the VA is proposing to add two new routine use statements. Proposed new routine use number 5 will permit the disclosure of any information, excluding the name of a veteran unless the name is furnished by the requestor, to epidemiological and other research facilities approved by the Chief Medical Director in order to obtain data from those facilities necessary to assist in medical studies on veterans for the Veterans Administration or for any research purposes determined to be necessary and proper by the Chief Medical Director. Proposed new routine use number 6 will permit disclosure of the name(s) of a veteran to another Federal agency or to a contractor of that agency at the written request of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

The VA has determined that release of information for this purpose is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Intersted persons are invited to submit written comments, suggestions, or objections regarding the proposed new routine use to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received before October 7, 1985 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m.and 4:30 p.m., Monday through Friday (except holidays) until October 22, 1985. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 12. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective October 7, 1985.

Approved: August 30, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 60VA23, "Repatriated American Prisoners of War-VA" as set forth on page 38709 of the **Federal Register** of August 25, 1983, the following routine use statements are added to read as follows:

60VA23

SYSTEM NAME:

Repatriated American Prisoners of War-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

5. Any information in this system (excluding the name of a veteran unless the name is furnished by the requestor) may be disclosed to epidemiological and other research facilities approved by the Chief Medical Director to obtain data from those facilities necessary to assist in medical studies on veterans for the Veterans Administration or for any research purposes determined to be necessary and proper by the Chief Medical Director.

6. The name(s) of a veteran may be disclosed to another Federal agency or to a contractor of that agency at the written request of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

* * * * *

[FR Doc. 85–21606 Filed 9–9–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 175
Tuesday, September 10, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Credit Corporation	1
Commodity Futures Trading Commission	2
Federal Deposit Insurance Corporation	3
International Trade Commission	4
National Transportation Safety Board	5
Nuclear Regulatory Commission	6
Pacific Northwest Electric Power and Conservation Planning Council	7

1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 35176, August 29, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., September 6, 1985.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Open Minutes of Meeting Held on January 9, 1985
2. Tobacco Price Support Program for the 1982 and Subsequent Crops, XCP–40a, Amendment 2
3. Update of Commodity Credit Corporation (CCC)-Owned Inventory
4. Resolution re Ratification of Secretary's Approval to Sell CCC-Owned Dairy Products for Export
5. Resolution re Ratification of Secretary's Approval for Sales of CCC-Owned Dairy Products for Export (Jamaica)
6. Resolution re Ratification of Secretary's Approval for Sale of Dairy Products to Mexico
7. Resolution re Ratification of Sales of CCC-Owned Nonfat Dry Milk to Iraq
8. Resolution re Ratification of Secretary's Approval for Sale of CCC-Owned Nonfat Dry Milk to Selected Countries for Use as Animal Feed
9. Resolution re Ratification of Authorization for Sales of Surplus Commodities to International and Private Voluntary Organizations
10. Resolution re Ratification of Repurchase Offers on Export Credit Guarantees for the Philippines and the Dominican Republic
11. Resolution re Ratification of Docket CZ–266, Resolution No. 22, Amendment 1—Commodities Available for Public Law 480 During Fiscal Year 1985
12. Resolution re Ratification of Docket CZ–266, Resolution No. 22, Amendment 2—Availability of Nonfat Dry Milk and Tallow for Export Under Public Law 480 for Fiscal Year 1985

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Room 3086, South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 447–8165.

Dated: September 6, 1985.

Richard Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 85–21728 Filed 9–6–85; 3:45 pm]

BILLING CODE 3410–05–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., September 18, 1985.

PLACE: 2033 K Street, NW., Washington, DC; 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Commission Hearing concerning the applications of Monex International Ltd. and of First Asset Corporation seeking registration as a leverage transaction merchant as well as applications from these firms for registration of certain leverage commodities.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–21688 Filed 9–6–85; 2:46 pm]

BILLING CODE 6351–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:37 a.m. on Thursday, September 5, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Bank of Loretto, Loretto, Tennesaee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Wednesday, September 4, 1985; (2) accept the bid for the transaction submitted by First Farmers and Merchants National Bank of Columbia, Columbia, Tennessee; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–21668 Filed 9–6–85; 11:26 am]

BILLING CODE 6714–01–M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–38]

TIME AND DATE: Wednesday, September 18, 1985 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigations Nos. 701–TA–225/231 and 731–TA–219/234 (Final) (Certain carbon steel products from Austria, Norway and Sweden)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21698 Filed 9–6–85; 3:11 p.m.]

BILLING CODE 7020–02–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., Tuesday, September 17, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aviation Safety Study:* "Airline Passenger Safety Education: A Review of Methods Used to Present Safety Information".
2. *Special Investigation Report:* New York City Transit Authority Subway System Fires.
3. *Pipeline Accident Report:* National Fuel Gas Corporation, Explosion and Fire, Sharpsville, Pennsylvania, February 22, 1985.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

September 6, 1985.

[FR Doc. 85–21687 Filed 9–6–85; 2:25 p.m.]

BILLING CODE 7533–01–M

6

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 9, 16, 23, and 30, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 9

Monday, September 9

2:00 p.m.
Discussion on Earthquakes and Emergency Planning (Public Meeting)

Tuesday September 10

10:00 a.m.
Discussion and Oral Presentations on Uranium Mill Tailings Regulations (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, September 11

1:30 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

3:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, September 12

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Policy Statement on Engineering Expertise on Shift (postponed from 9/5)
b. "Exceptions" to Commission Order Establishing Informal Hearing on Babcock and Wilcox Parks Township Facility
c. Review of ALAB–809

4:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Friday, September 13

2:15 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of September 16—Tentative

Tuesday, September 17

10:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Wednesday, September 18

9:00 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)

Week of September 23—Tentative

Thursday, September 26

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 30—Tentative

Tuesday, October 1

2:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, October 3

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85–21735 Filed 9–6–85; 3:55 am]

BILLING CODE 7590–01–M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open. The Council also will hold an executive session to discussion personnel matters.

TIME AND DATE: 9:00 a.m., September 18–19, 1985.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED: .

- Staff Presentation on Losses Information.
- Council Action on Issue Paper on Salmon and Steelhead Productivity Analysis.
- Council Action on Issue Paper on Strategies for Investments in Salmon and Steelhead Production.
- Council Action on Issue Paper on Resident Fish Substitutions for Salmon and Steelhead Losses.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222–5161, or toll-fee 1–800–222–3355 (Montana, Idaho or Washington) or 1–800–452–2334.

Edward Sheets,

Executive Director.

[FR Doc. 85–21678 Filed 9–6–85; 1:10 pm]

BILLING CODE 0000–00–M

Tuesday
September 10, 1985

Part II

Environmental Protection Agency

40 CFR Part 60

Air Pollution Control; Standards for New Stationary Sources; Portland Cement Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2789-2]

Air Pollution Control; Standards of Performance for New Stationary Sources; Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of review and proposed amendments.

SUMMARY: The EPA has reviewed the standards of performance for portland cement plants (40 CFR Part 60, Subpart F). The review is required under section 111 of the Clean Air Act. The intended effect of this action is to present the results of this review and to propose amendments to the existing standard.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentations of data, views, or arguments concerning the findings of this review and the proposed amendments.

DATES: *Comments.* Comments must be received on or before November 25, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 1, 1985, a public hearing will be held on October 25, 1985, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by October 1, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–84–08, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Shelby Journigan, Emission Standards and Engineering Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Document. The document summarizing information gathered during the review may be obtained by written request from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, or by phone at (919) 541–2777. Please refer to "Portland Cement Plants—Background Information for Proposed Revisions to Standards, EPA–450/3–85–003a."

Docket. Docket No. A–84–08, containing information gathered during the review, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Shirley Tabler, (919) 541–5624, Standards Development Branch, concerning regulatory decisions and the standard, or Mr. Kenneth R. Durkee, (919) 541–5595, Industrial Studies Branch, concerning technical aspects of the industry and control technologies. The address for both parties is Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

1. Conclusions and Proposed Amendments

As required by section 111(a)(1) of the Clean Air Act, at promulgation, the new source performance standards (NSPS) for the portland cement industry reflected application of best demonstrated control technology (BDT). The second 4-year review of the NSPS has been completed. The scope of the review included assessing the regulatory implications (under the Clean Air Act) of (1) operating experience and advances in production and control technology, (2) the experience of industry and enforcement agencies with the existing particulate mass and visible emissions standards, (3) the costs of complying with the existing standards, and (4) data on nitrogen oxides (NO_x) and sulfur dioxide (SO_2) emissions.

The proposed amendments would require that a continuous opacity monitor be installed to monitor the opacity of visible emissions from control devices used on all kilns and clinker coolers subject to the standard, i.e., constructed or modified after August 17, 1971. When the affected kiln or clinker cooler has a separate bypass stack installed through which emissions are sometimes vented directly to the atmosphere, a continuous opacity monitor would be required on each bypass stack in addition to the main control device stack. As required by the General Provisions, excess emissions recorded by the continuous opacity monitor must be reported quarterly. However, a single transmissometer may not measure accurately the opacity of visible emissions from the multiple stacks or monovents associated with positive-pressure fabric filters or from negative-pressure fabric filters with multiple stacks. Therefore, where control on affected facilities (kilns and clinker coolers) is accomplished by a positive-pressure fabric filter with multiple stacks or a monovent, the requirement to install a transmissometer is waived. Instead a certified observer may record the opacity of any visible emissions for at least three 6-minute periods once per day of operation according to EPA Reference Method 9. This alternative also applies to any kiln or clinker cooler controlled by a negative-pressure fabric filter with multiple stacks that becomes subject to the standard prior to the date of this proposal. The excess emissions recorded using EPA Reference Method 9 must be reported semiannually.

Continuous monitoring of visible emissions from control devices installed on kilns and clinker coolers is not currently required by the NSPS. However, continuous opacity monitoring (using a transmissometer) is an effective means of ensuring the proper operation and maintenance of particulate matter control equipment. Transmissometers have been demonstrated to work well for control devices where the emissions are exhausted to the atmosphere through a single stack. Therefore, an amendment is proposed to require that the opacity of the emissions from control equipment used on affected kilns and clinker coolers be monitored continuously by a transmissometer.

The proposed amendments also would require owners or operators of facilities subject to the NSPS, i.e., constructed or modified since August 17, 1971, to submit semiannual reports of the frequency, duration, and cause of any malfunction resulting in bypass or de-energization of any device controlling kiln emissions.

The de-energization of electrostatic precipitators during periods of increased combustibles in the kiln exhaust gases was examined during the review. Annual uncontrolled particulate emissions are significant if the electrostatic precipitator is de-energized frequently or for long periods. However, electrostatic precipitator vendors and plant personnel state that, if a kiln is properly designed, operated, and maintained, de-energization of the electrostatic precipitator will be infrequent. Therefore, to provide a means for evaluating proper operation

and maintenance, an amendment is proposed that requires semiannual reports of the frequency, duration, and cause of any malfunction resulting in bypass or de-energization of any device controlling kiln emissions. The General Provisions (§ 60.7) already require that all malfunctions of process or control equipment be recorded. Because the responsibility for determining if a malfunction has occurred lies with the Administrator, the net effect of this requirement in this regulation is to require all source owners or operators to report any malfunction or incident resulting in bypass or de-energization of any device controlling kiln emissions that in the owner's or operator's opinion is considered to be a malfunction. The Administrator then determines if the incident was unavoidable and, thus, a malfunction. For a source to report an incident as a malfunction does not mean the Administrator will necessarily agree that it is a malfunction. These malfunction or incident reports will be required for all such facilities that commenced construction, reconstruction, or modification after August 17, 1971. The associated reporting costs of the reports for a respondent are minimal (64 hours per year) (Docket No. A–84–08, II–F–2). This information will enable enforcement agency personnel to evaluate the need to take action on a case-by-case basis and provide a data base to evaluate the issue in the next 4-year review. In addition, technical guidance to assist enforcement staff in this area has been provided in the background information document.

Advances in process technology to conserve energy have led to the increased use of the dry process of cement production with preheater and preheater/precalciner systems and of varied exhaust gas ducting configurations as a means of conserving energy. In addition, as a result of the continued trend towards coal-firing, coal now provides the primary fuel for 98 percent of all cement kilns. Average test results from kilns subject to the standards since 1979 ranged from 0.011 to 0.147 kg/Mg (0.022 to 0.294 lb/ton). Average emission test results from clinker coolers subject to the standard since 1979 ranged from 0.002 to 0.05 kg/Mg (0.004 to 0.10 lb/ton). The existing standards limit particulate emissions to 0.15 kg/Mg (0.30 lb/ton) and 0.05 kg/Mg (0.10 lb/ton) from kilns and clinker coolers, respectively. Based on data and information gathered from State and local air pollution control agencies and from the industry, it was concluded that these process changes and advances have not affected the achievability of the particulate mass and visible emissions standards.

The cost effectiveness of the standards was evaluated in order to ensure that the controls required by the NSPS for portland cement plant facilities are reasonable. In this case, the cost effectiveness of the standards to reduce particulate matter from kilns was estimated to range from $42 to $50 per Mg ($38 to $45 per ton) of particulate matter removed for fabric filter control and $34 to $43 per Mg ($31 to $39 per ton) for electrostatic precipitator control (ESP) of typical facilities. The cost effectiveness of the standard for clinker coolers was determined to range from $27 to $44 per Mg ($25 to $40 per ton) for fabric filter control of typical facilities. The cost effectiveness of the standards for other facilities (e.g., mills, and storage and transfer facilities) controlled by fabric filters ranges from $30 to $90 per Mg ($27 to $82 per ton). The cost effectiveness of electrostatic precipitator control of finish mills is about $167 per Mg ($151 per ton). Additional details on costs can be found in the background information document.

Because the existing particulate mass and visible emissions standards continue to be achievable at a reasonable cost and best demonstrated technology remains the same, no changes to these limits are being proposed.

2. Background

Under Section 111 of the Clean Air Act, NSPS for portland cement plants were promulgated by EPA on December 23, 1971 [36 FR 24876], and revised on November 12, 1974 [39 FR 39872]. The standards apply to any facility that manufactures portland cement by either the wet or dry process and that commenced construction, modification, or reconstruction after proposal on August 17, 1971 [36 FR 15704]. The standards limit emissions of particulate matter from new, modified, or reconstructed kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage areas, clinker storage areas, finished product storage areas, conveyor transfer points, bagging, and bulk loading and unloading systems.

The existing standards limit particulate mass emissions from the kiln to 0.15 kg/Mg (0.30 lb/ton) of feed (dry basis) to the kiln; visible emissions are limited to less than or equal to 20 percent opacity. The existing standards limit particulate mass emissions from the clinker cooler to 0.05 kg/Mg (0.10 lb/ton) of feed to the kiln; visible emissions are limited to less than 10 percent opacity. Visible emissions from any affected facility other than the kiln and clinker cooler are limited to less than 10 percent opacity.

The test methods specified by the existing NSPS are EPA Reference Method 5 for determining the mass of particulate matter emissions, EPA Reference Method 1 for sample and velocity traverses, EPA Reference Method 2 for velocity and volumetric flow rates, and EPA Reference Method 3 for gas analysis.

The largest sources of particulate emissions at a cement plant are the kiln and the clinker cooler. Kilns controlled only by a cyclone dust collector for product recovery are estimated to emit as much as 22.5 kilograms of particulate matter per megagram (kg/Mg) of raw material (45 pounds per ton [lb/ton]). Clinker coolers controlled only by a cyclone dust collector are estimated to emit 15 kg/Mg (30 lb/ton). Thus, a plant that is controlled only by cyclones and that produces 544,000 Mg/yr (600,000 tons/yr) of clinker may emit about 21,900 Mg/yr (24,100 tons/yr) of particulate matter from the kiln and about 14,600 Mg/yr (16,000 tons/yr) from the clinker cooler.

Section 111(b)(1)(B) of the Act requires review of the NSPS at least every 4 years, and, if appropriate, revision of the standards. The principal purpose of such review and appropriate revisions is to ensure that the standards reflect a current assessment of BDT. The first review of the standards was completed in 1979. No revisions to the standard were made as a result of that review [44 FR 60761]. Because of recommendations arising from the 1979 review, a research and development effort was funded to investigate methods to reduce NO_x emissions from combustion sources such as cement kilns.

In 1983, EPA undertook a second review of the standards of performance for portland cement plants. This review of the standards included contacting EPA regional offices, State and local air pollution control agencies, the Portland Cement Association, industry representatives, and control device vendors. These sources provided information on the number and location of facilities subject to the NSPS, compliance test data, and comments on all facets of experience with the current NSPS. The review team visited seven plants to obtain information on cement production processes, emission control devices, trends in the portland cement industry, and problems with any aspect of the NSPS. Based on all the data and

information obtained, a background information document was prepared summarizing the current status of the portland cement industry and its compliance with the NSPS. A summary of the findings of this review follows.

3. Findings.

A. Industry Status

As of December 1983, 45 companies operated 145 portland cement plants in the U.S. and Puerto Rico. Since the 1979 review of the NSPS, a total of 30 kilns and 23 clinker coolers have become subject to the NSPS; 31 plants have facilities other than the kiln and clinker cooler that have become subject to the NSPS.

Growth of the portland cement industry is closely tied with growth of the construction industry. Permits have been issued for four entirely new plants in the U.S., two additional plants have submitted permit applications, at least three existing plants plan reconstruction or modification activities that would bring them under the standard, and four plants currently subject to the standard plan to add new facilities to the existing plant. Construction could begin on these projects in the next 3 years.

Several trends in production technology have occurred in the cement industry since the last review. Ninety-two percent of the kiln built since the last review use the dry process of cement production instead of the wet process because the dry process is more fuel efficient. Preheater or preheater/precalciner systems further improve the fuel efficiency of the dry cement production process. Seventeen percent of dry process kilns built since 1979 use preheater systems, and 79 percent use a preheater/precalciner system. Future kiln installations are expected to be dry process and to use a preheater/precalciner system. Fuel efficiency is often further improved on dry process kilns by directing all or a portion of the exhaust gases from the kiln, preheater, or clinker cooler through the raw mill prior to a control device. This configuration allows further heat exchange between the exhaust gases and the raw feed material. Twenty percent less energy was needed to produce 1 Mg of clinker in 1982 than was needed in 1972.

Clinker production capacities of the 30 kilns range from 136,000 megagrams per year (Mg/yr) (150,000 tons/yr) to 1,379,000 Mg/yr (1,520,000 tons/yr). Because new large cement plants using the dry production process have lower costs per ton of cement, many smaller wet process facilities have closed. These closings have decreased the total number of operational cement plants while increasing average kiln capacity. Clinker capacity of the kilns built since 1971 averages 507,000 Mg/yr (559,000 tons/yr) per kiln, which is more than twice the clinker capacity potential of their pre-1971 counterparts.

All of the kilns that have become subject to the NSPS since 1979 use coal as the primary fuel, although many plants continue to have the capability to use oil or gas as a backup fuel. This increased use of coal may affect emissions of SO_2 from cement kilns. Waste fuels such as solvents, waste oil, and wood chips are sometimes used as alternative kiln fuels because they are less expensive than oil or gas. In 1982, 525×10^6 megajoules (498×10^9 British thermal units) were generated in cement kilns from waste fuel.

Compliance test data show that with these changes in production technology, plants still meet the existing emission limits. Therefore, no changes in particulate mass and visible emission limits are required because of technological change.

B. Emission Control Technology

Of the 30 kilns that have become subject to the NSPS since the last review, 17 are controlled by fabric filters, and 13 are controlled by electrostatic precipitators. Three of the thirty kilns are not yet operational. All 27 operational kilns are in compliance with the 0.15 kg/Mg (0.30 lb/ton) particulate mass emission limit. Average emission test results for kilns ranged from 0.011 kg/Mg (0.022 lb/ton) to 0.147 kg/Mg (0.294) lb/ton), and all of the kilns were reported to be in compliance with the 20 percent visible emission limit. These data indicate that the current mass emission limit of 0.15 kg/Mg (0.30 lb/ton) is achievable using BDT, considering costs.

It was also found, however, that kilns controlled by electrostatic precipitators bypass the precipitator during periods called carbon monoxide (CO) trips. To prevent explosions, electrostatic precipitators used to control kiln particulate mass emissions are equipped with monitors that shut down the precipitator if CO concentrations (or other combustibles concentrations) in the exhaust gas stream reach explosive levels. Uncontrolled particulate emissions are exhausted directly to the atmosphere during these CO trips. CO trips last from less than a minute to more than 20 minutes, and may occur from a few times per year to over 600 times per year. Assuming 45 lb/ton emissions (control by a cyclone dust collector), and assuming 7,200 h/yr of operation, annual particulate emissions during CO trips of an electrostatic precipitator vary from 0.21 Mg/yr (0.23 ton/yr) to 390 Mg/yr (430 tons/yr) depending on the frequency and duration of CO trips.

Combustibles increases, which occur in the kiln and, subsequently, in the electrostatic precipitator, can be short-term increases lasting 30 seconds or less, termed CO spikes, or can be extended increases where combustibles levels increase over a period of several hours. Electrostatic precipitator vendors and plant personnel contacted during this review state that, if a kiln is properly designed and operated, CO trips of the precipitator should be infrequent. Several equipment vendors stated that one or two CO trips per month of 3 minutes duration is an average frequency for a properly designed, operated, and maintained kiln. Equipment vendors and plant personnel state that CO spikes do not present an explosion hazard and can be eliminated through proper kiln operation, or can be disregarded. Occasionally, the longer-term combustibles increases may warrant de-energization of the precipitator. The number of trips of the control device can be minimized, however, by design and operation features including: (1) The use of a time delay to trip the electrostatic precipitator only when extended (over 4 minutes) combustibles increases occur, (2) good design and operation of the coal metering system, and (3) careful process control and monitoring of CO or combustibles levels by a trained kiln operator.

State air pollution control agency personnel surveyed during this 4-year review typically treated CO trips as malfunctions of the control devices without investigating whether the CO trips were avoidable. Therefore, the emissions during the CO-trip-related malfunction were not considered representative for the purpose of demonstrating compliance. However, § 60.2 of the General Provisions defines a malfunction as ". . . unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner." It specifically excludes ". . . poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown . . ." as reasons for a failure to be designated a malfunction.

This review of the NSPS for portland cement plants has found that the duration and number of CO trips can be minimized by proper design, operation, and maintenance of cement kilns, although there are instances where the

CO trip may be unavoidable. Where the CO trips are unavoidable but of short duration, de-energization of the ESP is not warranted. However, there are rare instances where ESP de-energization is necessary; therefore, it was concluded that CO trips should be dealt with on a case-by-case basis and that no change to the existing standard should be proposed specifically to exclude CO trips as malfunctions. However, the review provides technical guidance to assist enforcement staff in malfunction determination and avoidance and, also, specifically proposes an amendment that requires semiannual reports of the frequency, duration, and cause of any malfunction that results in bypass or de-energization of any device controlling kiln emissions. These reports will be required for all facilities subject to the NSPS, i.e., constructed or modified after August 17, 1971. This amendment will provide a data base for enforcement personnel to examine control device bypasses and to determine if the bypass was unavoidable or if it was a result of improper operation and maintenance. This data will also be available to the Agency to evaluate the issue in the next 4-year review.

Twenty-three clinker coolers have become subject to the NSPS since 1979. Seventeen are controlled by fabric filters, two are controlled by electrostatic precipitators, and four are controlled by gravel bed filters. Two of the clinker coolers are not yet operational. Nineteen of the twenty-one operational clinker coolers are in compliance with the 0.05 kg/Mg (0.10 lb/ton) particulate mass emission limit. The other two clinker coolers, which were tested under conditions not representative of those during normal operation, exceeded the mass emission limit and will be retested during normal operation. Emission test results for the 21 clinker coolers meeting the standards averaged from 0.002 kg/Mg (0.004 lb/ton) to 0.05 kg/Mg (0.10 lb/ton). These data indicate that the existing particulate mass emission limit of 0.05 kg/Mg (0.10 lb/ton) should not be revised. Twenty of these clinker coolers are in compliance with the 10 percent visible emission limit. One clinker cooler that is in compliance with the particulate mass emission limit exceeds the visible emission limit; plant modifications are underway to bring the visible emission within the standard.

Facilities other than the kiln and the clinker cooler that are subject to the NSPS (i.e., mills, storage and transfer facilities) are typically controlled by fabric filters. Two finish mills are controlled, however, by electrostatic precipitators. All of these facilities are in compliance with the 10 percent visible emission limit. The existing visible emissions limit should, therefore, be retained.

C. Gaseous Pollutants

The existing NSPS do not limit emissions of nitrogen oxides (NO_x or sulfur dioxide (SO_2) from portland cement kilns. Cement kilns are, however, major sources (i.e., producing greater than 91 Mg/yr [100 tons/yr]) of both pollutants. Therefore, emission limits for both pollutants were examined during this review.

The results of this 4-year review show that 11 of 12 kilns for which NO_x emissions data are available produce more than 91 Mg/yr (100 tons/yr) of NO_x emissions. Since the 1979 review, EPA has funded studies of NO_x emission reduction technologies on cement kilns. These studies indicate that, although there are several process modifications that appear to affect NO_x emissions, the effects of these modifications could not be distinguished from the effects of variations in process parameters. Additional research is required to document a demonstrated control technology for NO_x emissions. Therefore, no emission limit for NO_x is proposed at this time. The next 4-year review should evaluate the progress in the development of NO_x emission control devices to determine if a best demonstrated technology is available to reduce NO_x emissions and should consider an NO_x emission limit based on an improved data base of NO_x emissions and on the completed findings of the EPA study.

The results of this 4-year review show that approximately half of the kilns for which SO_2 emissions data are available produce significant amounts of SO_2 emissions (i.e., greater than 91 Mg/yr [100 ton/yr of SO_2 emissions).

The total potential SO_2 emissions from a kiln are equal to sulfur from the coal combustion plus sulfur from the raw feed calcination. Between 4.6 and 6.5×10^9 Joules (4 and 5.6×10^6 Btu's) are needed to produce 1 Mg (1 ton) of clinker. Assuming an average of 26.7×10^6 Joules (11.5×10^3 Btu's per pound) of coal, 158 to 221 kg (348 to 487 lb) of coal are needed to produce 1 Mg (1 ton) of clinker. A typical plant produces approximately 544,000 Mg (600,000 tons) of clinker in a year. With the use of coal that is 1 percent sulfur by weight, potential SO_2 emissions from fuel combustion would range between 1,894 and 2,650 Mg (2,088 and 2,922 tons) per year. The potential for SO_2 emissions is much higher when the sulfur content of the raw materials used to produce portland cement is considered. As an example, sulfur content in the raw feed was reported to be 0.02 percent by weight at one plant and 0.6 percent at another plant. At a typical plant (544,000 Mg [600,000 tons] of clinker a year), use of raw feeds containing these percentages of sulfur would increase the potential SO_2 emissions mentioned above that are attributable to the coal, between 388 and 11,657 Mg (428 and 12,852 tons) per year. Thus, the potential SO_2 emissions from both the coal and raw feed would range between 2,282 and 14,307 Mg (2,516 and 15,774 tons) per year.

The actual SO_2 emissions from portland cement plants are significantly less than potential SO_2 emissions because sulfur is retained in the product during production. It was reported in the 1979 portland cement NSPS review that 75 percent of the SO_2 emission potential is absorbed in the clinker as potassium or sodium sulfates. Assuming this 75 percent reduction does occur, SO_2 emission potential from coal combustion in the kilns and from raw feed calcination would decrease to between 570 and 3,577 Mg (629 and 3,944 tons) per year.

Data were obtained to determine those control devices and process modifications that might reduce sulfur dioxide (SO_2) emissions from portland cement plants. This 4-year review looked at add-on SO_2 controls such as lime spray drying and alkali slurry scrubbing and at process modifications such as the use of low sulfur coal and raw feed materials and the use of the dry rather than wet production process. In addition, the effect of particulate control devices on SO_2 emission reduction was examined.

Lime spray drying is being successfully introduced into utility and industrial boiler systems to reduce SO_2 emissions. Sulfur dioxide reduction efficiencies of 60 to 87 percent are guaranteed by the vendors for those plants that will be using this control process. In lime spray drying, atomized lime slurry reacts with SO_2-laden flue gas in a spray dryer. Either an ESP or a fabric filter then collects the dried particulate matter existing the spray dryer.

There is no known application of a full-scale lime spray-drying SO_2 control system in the portland cement industry. However, to meet California regulations, one portland cement plant, Lone Star Industries, is experimenting with a retrofitted pilot scale lime spray-drying system to reduce SO_2 emission levels. Lone Star has had mixed results with this system; nevertheless, the company

is planning to install a full-scale system. Lone Star has found that the efficiency of their system in reducing SO_2 emissions is approximately 60 percent.

In installing the pilot scale system, the plant's main conditioning tower, which is upstream of the ESP, was retrofitted to be used as a form of a lime spray-dryer ("dry scrubber"). In this spray-dryer tower, slurry containing 90 percent available lime is atomized and mixed with the kiln exhaust gases. Slurry droplets react with the SO_2 and are then dried by the hot exhaust gases. The resulting dry particulate matter is usually exhausted from the tower to the raw mill. When the raw mill is not operating, particulate matter passes directly to the main ESP.

The operating permit for the plant allows emissions of no more than 37 kg (82 lb) of SO_2 per hour (about 54 ppm). The lime spray-dryer has not enabled the plant to meet this standard. Lone Star believes this is because the calculations on which the permit was based assumed that all the SO_2 was generated from fuel combustion. Lone Star has found, however, that sulfur from the fuel tends to be absorbed into the clinker and that only sulfur from the raw materials tends to be emitted. The SO_2 from the raw materials is generated in the preheater and ducted directly to the raw mill and, therefore, does not have the opportunity to be absorbed in the clinker. The company has calculated a 95 percent correlation between SO_2 emissions and sulfur in the raw feed material. This generation of SO_2 in the preheater from pyrites in the raw feed was not forecast by the company or the vendor. Although lime spray drying is demonstrated in other industries, there are unavoidable differences in the process and exhaust characteristics that lessen the performance of this technology in the portland cement industry as demonstrated in this pilot study.

Another control technology is the wet limestone desulfurization systems. Limestone scrubbing involves mixing the kiln exhaust gas stream with an alkali slurry in a wet scrubber located downstream of the particulate matter control device. The SO_2 in the gas stream is reacted with the alkali slurry. This technology has been demonstrated on sources such as utility and industrial boilers. Sulfur dioxide removal efficiencies of greater than 90 percent are possible with this control device. However, there are no wet flue gas desulfurization systems in operation in the portland cement industry; and, therefore, no long-term data on performance, reliability, or cost effectiveness exist. For this reason, the system cannot be considered to be best demonstrated technology for the portland cement industry.

Process modifications that are practical to consider for the reduction of potential SO_2 include using the dry rather than the wet production process, reducing the percent sulfur in the coal, and switching to raw feed materials that are low in sulfur. These modifications are discussed in the following paragraphs.

Approximately 6.5×10^5 Joules (5.6×10^6 Btu's) are required to manufacture 1 Mg (1 ton) of clinker in a wet process portland cement plant. In a dry process plant, only 4.6×10^5 Joules (4×10^6 Btu's) are needed. The added coal required in wet process kilns increases the SO_2 emission potential. A nationwide 50-plant survey, sponsored by the Portland Cement Association (PCA), reported that dry process kilns emitted half as much SO_2 as wet process kilns. The typical SO_2 emission level from the dry process ESP-controlled plants is 23 kg/h (50 lb/h) less than that from the wet process ESP-controlled plants. The increased energy efficiency of the dry process results in substantially decreased production costs. Because of this energy cost savings, the dry production process has become the predominant process in the portland cement industry for new plants. Of the 30 kilns subject to the NSPS since 1979, only 5 have used the wet production process, and 3 of the 5 are older kilns that were converted to coal-firing.

Unfortunately, the PCA survey did not take into account what control device the plant used or the level of sulfur in the fuel or raw materials. Further study is needed to determine the exact relationship between SO_2 emissions and the type of production process.

Use of low sulfur fuel and raw feed materials can also reduce potential emissions from portland cement plants. Because coal is usually the main source of the SO_2 emissions from portland cement kilns, burning coal with a low sulfur content will reduce potential SO_2 emissions. Most plants in this industry use coal with less than 2 percent sulfur by weight. In addition, switching from raw feed materials with high sulfur contents to those with low sulfur contents can also reduce potential SO_2 emissions.

Furthermore, because excessive sulfur in the clinker can cause cracking of the final cement product, ASTM has set recommended standards for the amount of sulfur allowed in the clinker. Plant operators meet clinker specifications and, as a side benefit, reduce potential SO_2 air emissions by limiting the sulfur content of raw materials and fuels.

EPA and industry personnel have examined the possibility that fabric filters used for particulate control can reduce SO_2 emissions in industries such as the portland cement industry where the particulate filter cake is alkaline in nature. Studies in the industrial boiler industry have shown that fabric filters located downstream of lime spray-dryers effect from 5 to 30 percent of the overall SO_2 removal, depending on the ratio of lime to SO_2, the approach temperature, and the fabric filter pressure drop. These same studies report that, in contrast, electrostatic precipitators located downstream of a lime spray-dryer remove as much as 6 percent of the overall SO_2 removal.

Typical raw kiln feed contains about 75 percent calcium carbonate. Typical kiln dust contains from 40 to 65 percent free and combined calcium oxide depending on the process, degree of calcination, and degree of reaction. Studies indicate that a fabric filter that controls a kiln, or kiln and raw mill, and that collects the above compounds may have some potential for SO_2 reduction through reaction of SO_2 to calcium sulfate.

However, industry personnel state that, depending on the chemistry of the filter cake, no significant SO_2 reduction may occur in the fabric filter. A fabric filter may have insufficient moisture present to allow formation of calcium sulfate on the filter cake. If kiln exhaust gases do not pass through a raw material mill prior to the fabric filter, the filter would probably contain substantial amounts of calcium oxide, which might absorb significant quantities of SO_2. If, however, kiln exhaust gases do pass through a raw material mill prior to the fabric filter, the filter cake may be primarily calcium carbonate, which may not react appreciably with SO_2 at the high temperature and low humidity found in a fabric filter.

Recent studies are inconclusive regarding whether a significant reduction in SO_2 emissions occurs on a fabric filter. One study states that, although SO_2 molecules would have substantially more contact with the dust surface in a fabric filter than in an electrostatic precipitator, particle reactivity seems to have a greater influence on SO_2 reduction than does particulate/gas contact. Particle reactivity would not be significantly affected by the control device used. The study concluded that a fabric filter probably would not absorb significant

amounts of SO_2 because the system studied currently provides poor SO_2 emissions absorption. However, another study, performed by Price Waterhouse for the Portland Cement Association (PCA), used sulfur material balance data to show an average reduction in potential SO_2 emissions of 66 percent from plants using electrostatic precipitators and 70 percent from plants using fabric filters. These reductions include sulfur absorbed by the product and sulfur retained in the dust collected by the control device.

Currently, no long term data on performance, reliability, or cost effectiveness of add-on control systems for SO_2 exist from any portland cement plant on which to base a standard. Transfer of SO_2 emission control technology to the cement industry is not appropriate without at least limited actual usage by the cement industry due to the unique characteristics of portland cement processes and emissions. The Agency will continue to evaluate installation and performance of these control systems.

In conclusion, data on the amount by which the cement production process, particulate control devices, or add-on SO_2 control technology reduce SO_2 emissions from cement kilns are incomplete and inconclusive. This is because many factors affect emissions, including the sulfur content of the fuel and raw feed, the point in the process at which SO_2 removal occurs (e.g., clinker, raw mill, control device, exhaust gases), and the relative importance of process variables (e.g., temperature, moisture, feed chemical composition).

Therefore, development of NO_x or SO_2 emission limits at this time is not possible because control technology has not yet been demonstrated in the industry, and transfer of technology from other industries is not currently appropriate because of significant cost differences. Emission limits for both pollutants should be considered in the next 4-year review.

D. Monitoring and Testing

Control equipment downtime, malfunction, and deterioration over time because of inadequate design or operating and maintenance practices have been identified as a major cause of substantial excess emissions over those expected following initial installation of complying equipment at major emission sources, particularly at cement plants. An EPA-sponsored study conducted in 1981 investigated the quality and causes of excess visible emissions in sixteen source categories, including portland cement plants. This study concluded that annual excess emissions from cement plants, specifically rotary kilns, were high relative to other sources and were caused primarily by operation and maintenance problems (Docket No. A–84–08, II–A–4). The study population included nine rotary kilns at seven cement plants. These kilns had uncontrolled particulate matter emission rates of 721 to 182,000 Mg (792 to 200,000 tons) per year. Five of the kilns were controlled by ESP's and four by fabric filters. Seven of these nine kilns reported excess visible emission incidents, and four of the seven had incidents resulting from more than one causal factor. None of the kilns had design problems; 55 percent had process related incidents; 55 percent had operation and maintenance problems; and 33 percent had incidents related to unforeseen events. Compared with the average of these four causal factors for all sources investigated, rotary kilns at cement plants tend to have more excess emission incidents and more incidents resulting from operation and maintenance problems. The total annual excess emissions (35 Mg [38 tons]) from rotary kilns were also found to be greater than those of the sample population of all sources. Operation and maintenance accounted for 29 Mg (32 tons) of the annual excess emissions from the kilns compared to an average of 10 Mg (11 tons) for the sample population.

The Agency has determined that continuous opacity monitoring represents an effective means for ensuring proper operation and maintenance of particulate matter control equipment. The Agency is not currently aware of other means that are available to accomplish this effectively. However, the General Provisions do provide for alternative methods if they achieve equivalent results. Continuous opacity monitors can automatically alert facility personnel to a control device problem that is resulting in excess emissions. Continuous opacity monitors can be used in all weather conditions and at night. In addition, continuous opacity monitors help to ensure effective enforcement of the standards because data from a continuous opacity monitor can indicate that a compliance test is needed at a plant.

Because continuous opacity monitors ensure proper operation and maintenance of control equipment and the added cost of compliance is reasonable, the amendments require that continuous opacity monitors be installed on equipment controlling emissions from kilns and clinker coolers at facilities subject to the NSPS, i.e., constructed or modified after August 17, 1971. The NSPS General Provisions require quarterly reporting of excess emissions recorded by continuous opacity monitors.

Dry process plants using preheater or preheater/precalciner systems typically install kiln bypass systems to reduce the buildup of alkalies and sulfates in the product and, thus, minimize buildup and plugging of the preheater by the product. Emissions from the bypass may be (1) recombined with the main kiln exhaust gas stream after the control device (2) directed to a separate facility (e.g., directed to the clinker cooler and vented to the clinker cooler's control device stack), or (3) controlled and vented to a separate stack. Between 1971 and 1979, 27 kilns with preheater systems were installed, and no kilns with preheater/precalciner systems were installed. Since 1979, 4 kilns with preheater systems and 20 kilns with preheater/precalciners have been installed. Of the 13 post-1979 plants for which data are available, 7 duct the bypass emissions to the main control device stack, and 6 duct the bypass emissions to a separate stack. Therefore, to ensure that emissions in excess of the standard are not vented to the atmosphere if a plant has a separate bypass stack installed through which emissions are sometimes vented to the atmosphere, a continuous opactiy monitor shall be installed on the bypass stack in addition to the main control device stack.

Continuous opacity monitors work well on all types of control equipment where flue gases are exhausted to the atmosphere through a single stack. A single transmissometer, however, may not measure accurately the opacity of visible emissions from the multiple stacks or monovents associated with some positive-pressure fabric filters or the multiple stacks associated with some negative-pressure fabric filters. Therefore, daily visual observations of positive-pressure fabric filter control systems with multiple stacks or monovents would be allowed under the proposed amendments in lieu of a continuous opacity monitor on all kilns and clinker coolers subject to the standards. If an existing affected facility (kiln or clinker coolers) is controlled with a negative-pressure fabric filter with multiple stacks, daily visual observations would also be allowed under the proposed amendments in lieu of a continuous opacity monitor. However, this alternative does not apply to negative-pressure fabric filters with multiple stacks installed on kilns or clinker coolers that become subject to the standard after the date of proposal of these amendments because EPA does not want to encourage multiple-stack

negative-pressure fabric filter installations. The use of multiple stacks without monitors would not be desirable because continuous opacity monitors provide additional data on proper operation and maintenance that are not available with Method 9 readings and the Agency does not have costs or other information to indicate that multiple stacks on negative-pressure fabric filters warrant exemption from the monitoring provisions. The Agency requests comments on this issue. Any comments submitted should contain specific information and data to support any alternative course of action. Where EPA Reference Method 9 is used, semiannual reports of excess emissions would be required. However, most portland cement plants are expected to install negative-pressure fabric filters with single stacks. It is reported that less than 20 percent of the fabric filters installed in this industry since 1971 are the positive-pressure type. One kiln and one clinker cooler that have become subject to the NSPS since 1979 are controlled by positive-pressure fabric filters. In both cases, however, the fabric filters are vented to a single stack. One company in this industry is known to use negative-pressure fabric filters with multiple stacks at two of its plants that have become subject to the NSPS since 1979. Thus, for this industry, the use of the EPA Reference Method 9 alternative for new sources is expected to occur infrequently, if at all.

The capital cost for a continuous opacity monitor in 1984 dollars is estimated to be $31,500, and the annualized cost is $10,700. Continuous opacity monitors would increase total annualized control costs by about 3 percent.

No capital costs are incurred with visible emissions observation. The annualized cost of daily visible emissions observations using EPA Reference Method 9 is $8,700 for one stack and would be less for any additional stacks at the same facility in part because only one certified visible emission observer would be necessary for the plant. Daily visible emissions observations would increase total annualized control costs by 3 percent or less.

Section 60.8(a) of the General Provisions for new source performance standards requires that within 60 days after achieving the maximum production rate of an affected facility, but no later than 180 days after initial startup of the facility, the owner is to conduct a performance test and furnish the Administrator a report of the test results. During this review, the Portland Cement Association, plant personnel, and personnel at one State air pollution control agency believe that the 180-day requirement may be unreasonable. Plant personnel stated that they could not correct all mechanical, electrical, and physical problems, and stabilize process systems and control equipment within the required 180 days. The Agency believes that 180 days is enough time in which to conduct a performance test, and these commentators have not shown that the 180-day limit is unreasonable.

E. Recordkeeping and Reporting

Quarterly excess emissions reports would be required to document exceedances of the opacity standards for control devices on kilns and clinker coolers that are subject to the NSPS, i.e., constructed or modified after August 17, 1971. In addition, semiannual reports would be required of the frequency, duration, and cause of any malfunction resulting in bypass or de-energization of any device controlling kiln emissions. These reports would be required for all facilities subject to the NSPS, i.e., constructed or modified after August 17, 1971. Enforcement personnel will be able to use the information in these reports and in the background information document to assess design, operation, and maintenance practices that minimize CO trips. The reports will also provide a data base by which to evaluate the issue in the next 4-year review.

As required in § 60.7(d) of the General Provisions, all records must be maintained for a period of 2 years.

4. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the findings of this review in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–84–08.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this review. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

C. Clean Air Act Procedural Requirements

1. *Administrator Listing—Section 111.* As prescribed by Section 111 of the Clean Air Act, as amended, establishment of standards of performance for portland cement plants was preceded by the Administrator's determination that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. *Periodic Review—Section 111.* This regulation will be reviewed again 4 years from the date of promulgation of any subsequent revisions to the standard as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. *External Participation—Section 117.* In accordance with section 117 of the Act, publication of this review was preceded by consultation with independent experts and Federal departments and agencies. The Administrator will welcome comments on all aspects of the review, including economic and technological issues.

4. *Economic Impact Assessment—Section 317.* Section 317(a) of the Clean Air Act states that economic impact assessments are not required for revisions to new source standards of performance unless the Administrator determines such revisions to be substantial. The revisions to the portland cement NSPS do not change the mass or visible emission limits for any of the affected facilities. The revisions add requirements for continuous opacity monitoring and for reporting of malfunctions during which the control device for the kiln is de-energized or bypassed. An abbreviated economic analysis was performed that indicated the increase in compliance costs as a result of these revisions would range from 0.9 to 3.3 percent,

depending on the size of the kiln and clinker cooler and on the type of control devices used. Because the emission limits are unchanged and the cost of complying with the revisions is small, the revisions to the portland cement NSPS have been determined to be unsubstantial. Furthermore, these revisions simply make the portland cement NSPS conform to the EPA policy of ensuring proper operation and maintenance of control devices. Because these revisions are not substantial, no detailed economic impact assessment of the proposed revisions has been prepared. An economic analysis of the standards was prepared during development of the original rulemaking. The relative economic impacts are essentially the same as described in that original economic analysis.

D. Office of Management and Budget Reviews

Paperwork Reduction Act.

The information collection requirements in this proposed rule have been submitted for approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Based on the information collection requirements analysis, the resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 3 years would be about 41.6 person-years per year. The resources required by government agencies to process and maintain records for the first 3 years would be about 2.8 person-years per year. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

Executive Order 12291.

Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This proposed rulemaking is not major because the revisions being proposed are not substantial and, therefore, result in none of the significant adverse economic effects described in the Order. This rulemaking was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments will be included in the docket.

E. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 605(b)), the impacts of the existing NSPS and recommended amendments on small businesses were considered. The Small Business Administration (SBA) has determined that any firm classified in the SIC Code 3241 (which includes portland cement plants) that employs 750 persons or less will be considered small in regard to the Small Business Act. An RFA analysis is mandatory if the regulation has a significant adverse economic impact on a substantial number of small entities in the regulated industry. The review showed that at lease 30 percent of the portland cement firms employ 750 or fewer persons and, thus, are small businesses under the SBA definition.

A preliminary estimate of the economic impacts in the portland cement industry indicated that the impacts are essentially the same for both small and large firms. The small firms have built plants that are similar in size to those built by large firms, and the annualized costs are expected to follow the same pattern. Thus, the percent increase in annual costs because of the NSPS is expected to be the same for both small and large companies. Because the average production level of plants does not vary significantly with the size of the company, costs of production and of pollution control should be directly proportional regardless of company size. Although 23 cement plants have closed in the last 4 years, the review found that no closures of small (or large) entities were reported to be related to the requirements of the NSPS. Rather, these closures typically reflected the changing regional market and the fact that large dry process kilns are more cost effective than small wet process kilns.

The only costs related to the recommended amendments are monitoring and reporting costs for existing and new plants. These costs are expected to increase annual costs of compliance by a maximum of about 3 percent. Monitoring costs have already been incurred by some companies, and no closures related to these costs were reported. Based upon these findings, it has been determined that there would be no significant adverse impacts on small firms in this industry, and no RFA is required. I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, Intergovernmental relations, Portland cement.

Lee M. Thomas,

Administrator.

Dated: August 21, 1985.

For the reasons set out in the preamble, 40 CFR Part 60 is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 111 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411 and 7601(a)), and additional authority as noted below.

2. In § 60.63, paragraphs (b), (c), (d), and (e) are proposed to be added to read as follows:

§ 60.63 Monitoring of operations and emissions.

(a) * * *

(b) Each owner or operator of a kiln or clinker cooler that is subject to the provisions of this subpart shall install, calibrate, maintain, and operate a continuous monitoring system as required in § 60.13, except as provided in paragraph (c) of this section, to measure the opacity of emissions discharged into the atmosphere from any kiln or clinker cooler. If there is a separate bypass installed through which emissions are sometimes vented to the atmosphere, then each owner or operator of a kiln or clinker cooler shall also install, calibrate, maintain, and operate a continuous monitoring system on each bypass stack in addition to the main control device stack.

(c) Each owner or operator of a kiln or clinker cooler using a positive-pressure fabric filter with multiple-stacks or a monovent subject to the provisions of this subpart may, in lieu of the continous monitoring requirement of § 60.63(b), monitor visible emissions at least once per day by using a certified visible emissions observer. These observations shall be taken in accordance with Method 9. Visible emissions shall be observed during operations representative of normal operating conditions. The opacity shall be recorded for at least three 6-minute periods for any point(s) where visible emissions are observed from the positive-pressure fabric filter with multiple stacks or a monovent installed on each kiln or clinker cooler. Where it is possible to determine that a number

of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In this case, Reference Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records of all visible emissions shall be maintained for a period of 2 years.

(d) Each owner or operator of a kiln or clinker cooler that becomes subject to the standard on or prior to the date of this proposal and using a negative-pressure fabric filter with multiple stacks may, in lieu of the continuous monitoring required in paragraph (b) of this section, monitor visible emissions at least once per day by using a certified visible emissions observer. Visible emissions shall be observed during operations representative of normal operating conditions. These observations shall be taken in accordance with Method 9, and the opacity shall be recorded for any point(s) where visible emissions are observed from the negative-pressure fabric filter with multiple stacks installed on each kiln or clinker cooler. Records of all visible emissions shall be maintained for a period of 2 years.

(e) For the purpose of reports under § 60.7(c) or under paragraphs (c) or (d) of this section, periods of excess emissions that shall be reported are defined as all 6-minute periods during which the average opacity exceeds that allowed in § 60.62(a)(2) or § 60.62(b)(2).

(f) The provisions of paragraphs (b) and (c) of this section apply to affected kilns and clinker coolers that commenced construction, modification, or reconstruction after August 17, 1971.

(Sec. 114, Clean Air Act, as amended (42 U.S.C. 7414))

3. In § 60.64, subparagraph (a)(5) is proposed to be added to read as follows:

§ 60.64 Test methods and procedures.

(a) * * *

(5) Method 9 for measuring the opacity of visible emissions.

(Sec. 114, Clean Air Act, as amended (42 U.S.C. 7414))

4. Section 60.65 is proposed to be added to read as follows:

§ 60.65 Recordkeeping and reporting requirements.

(a) Each owner or operator required to install a continuous monitoring system under § 60.63(b) shall submit quarterly reports of excess emissions as required under § 60.7(c) and as defined in § 60.63(e).

(b) Reports of excess emissions recorded during observations made as required by § 60.63(c) or § 60.63(d) shall be submitted semiannually.

(c) Each owner or operator of facilities subject to the provisions of this subpart that commenced construction, reconstruction, or modification after August 17, 1971, shall submit semiannual reports of the malfunction information required to be recorded by § 60.7(b). These reports shall contain the frequency, duration, and cause of any malfunction resulting in bypass or de-energization of any device controlling kiln emissions.

(d) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this section, provided that they comply with the requirements established by the State.

[FR Doc. 85-21290 Filed 9-9-85; 8:45 am]
BILLING CODE 6560-50

federal register

Tuesday
September 10, 1985

Part III

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule and Request for Comments and Data

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2857-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking and Request for Comments and Data.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today requesting comments and data on issues pertaining to the scope of the listing for spent pickle liquor from steel finishing operations contained in the Hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). EPA is taking this action in response to a rulemaking petition challenging the Agency's interpretation of the listing.

Today's notice outlines the history of regulatory actions concerning spent pickle liquor, raises issues arising from the manner in which the listing is written, and seeks comment on possible resolutions of these issue.

DATE: EPA will accept comments on this notice until November 12, 1985.

ADDRESSES: Comments on this notice should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should identify the regulatory docket number "Section 3001—Spent pickle liquor notice."

The docket for this notice is located in Rooms S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION: A number of porcelain enamel companies—the Hobart Corporation, Maytag Co., Magic Chef Inc., and State Industries—have filed a rulemaking petition with the Agency requesting that EPA clarify the listing description for "spent pickle liquor from steel finishing operations"[1] (40 CFR 261.32—EPA Hazardous Waste No. K062) to indicate that the listing applies only to wastes generated by the iron and steel industry. The petitioners have argued that EPA's supporting documents for this listing, as well as the listing description itself, support such a narrow interpretation. The Agency, on the other hand, has interpreted the listing more broadly to apply to all persons who generate spent acid from the pickling of steel. This notice requests comment on this matter and seeks comment on possible resolution of these issues.

I. Background

A. Agency Actions Regarding Spent Pickle Liquor from Steel Finishing Operations

On December 18, 1978, EPA proposed to list as hazardous wastes certain industrial process wastes, including "spent pickle liquor from steel finishing operations generated by establishments in Standard Industrial Classification (SIC) code 3312" (see FR 43, 58946).[2] EPA proposed to list spent pickle liquor because it is corrosive and because it typically contains high levels of chromium and lead.

On May 19, 1980, when EPA promulgated the first phase of the hazardous waste regulations under Subtitle C of RCRA, we included in the interim final list of hazardous waste both spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) and sludge from lime treatment of spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K063).[3] The Agency again listed these waste as hazardous because of their chromium and lead content; corrosivity also was included as a basis for listing the spent pickle liquor. However, we no longer referred to the listings as applying solely to SIC code 3312.

On November 12, 1980, the Agency finalized its list of hazardous waste, including spent pickle liquor from steel finishing operations; however, we deleted lime stabilized waste pickle liquor sludge (LSWPLS) from steel finishing operations from the list of hazardous waste and instead relied on the provisions in 40 CFR 261.3(c)(2) to retain regulatory control of these treatment sludges.[4] The Agency, however, indicated that it would consider an industry-wide rulemaking petition to exclude these sludges from RCRA control if representative data were submitted which demonstrated that these wastes are non-hazardous.[5] See 45 FR 74888.

On March 16, 1981, the American Iron and Steel Institute (AISI) submitted a rulemaking petition requesting an industry-wide exclusion of LSWPLS generated by the iron and steel industry. In response to this petition, the Agency considered data submitted by AISI and additional data from site-specific delisting petitions from the iron and steel industry. Site-specific delisting petitions for LSWPLS generated by industries other than iron and steel have also been submitted to the Agency. We decided, however, to limit our evaluation of the request for an industry-wide exclusion to iron and steel because of the petition dealt only with iron and steel wastes. In addition, EPA was concerned that agents such as organics which interfere with effective treatment could be present in LSWPLS from non-iron and steel facilities as a result of commingling spent pickle liquor with other process waste. (See Notice of Availability of Data, 49 FR 427, January 4, 1984, for further details.)

Thus, on January 4, 1984, the Agency published in the **Federal Register** a list of the available data contained in the administrative record for Agency action on the AISI rulemaking petition. EPA noted specifically that the existing listing applied to industries other than iron and steel, and that the Agency was contemplating action only with regard to LSWPLS generated by the iron and steel industry. See 49 FR at 429. This was because steel finishing is practiced by a diverse group of industry categories, as evidenced by data from the RCRA notification data base,[6] and that adequate treatment of the spent pickle liquor could not be assured in these other industry categories. In particular, we stated that in making a decision whether to exclude LSWPLS we would

---

[1] Spent pickle liquor is a strongly acidic solution generated from an industrial process which removes oxide scale from steel surfaces.

[2] SIC code 3312 includes facilities engaged in the manufacture of steel and steel parts from pig iron, iron ore, or scrap iron.

[3] The sludge is generated by a well known technique involving lime neutralization, flocculation, clarification, and dewatering of the resultant sluge.

[4] The provisions in 40 CFR 261.3(c)(2)(i) indicate that wastes derived from the treatment of a listed hazardous waste are considered hazardous unless and until delisted pursuant to 40 CFR 260.20 and 260.22.

[5] Data from delisting petitions indicate that organic-containing waste may interfere with the lime treatment process and result in ineffective lime stabilization.

[6] Date from the RCRA Hazardous Waste Data Management System indicate that facilities from industrial classes such as Industrial Organic Chemicals (SIC 286), Paints, Varnishes, Lacquers, Enamels (SIC 285), Adhesives, Sealants, Printing Ink; Other (SIC 289) generate LSWPLS.

only consider those industries where data demonstrate that the treatment process is controlled so that lime treatment is effective, and where the Agency has assurances that other toxic constitutents were not present in LSWPLS at levels of regulatory concern as a result of commingling of spent pickle liquor with other waste before treatment. See 49 FR at 429.

After careful review of the available data, the Agency concluded that lime treatment of spent pickle liquor generated by plants within the iron and steel industry is effective, and that LSWPLS generated by this process is frequently and typically non-hazardous. Therefore, on June 5, 1984, the Agency promulgated a final rule to exclude "LSWPLS generated by the iron and steel industry (SIC Codes 331 and 332)" from the presumption of hazardousness contained in the regulations. At the same time, the Agency stated that it will continue to process site-specific delisting petitions from industries other than iron and steel. (See Final Rule, 49 FR 23284, June 5, 1984.) EPA did not receive any public comments to the Notice of Data Availability questioning the Agency's statement that the listing applies to wastes other than those generated by the iron and steel industry.

On July 27, 1984, in an interpretive memorandum from John Skinner, Director of the Office of Solid Waste, to EPA Regional Waste Management Division Directors, EPA headquarters provided clarification on several questions and issues pertaining to the K062 listing. The Agency again stated that the spent pickle liquor listing applies to all persons engaged in steel finishing who generate spent pickle liquor, and is not limited to the iron and steel industry.

B. Industry Concerns With the Agency's Interpretation of the Spent Pickle Liquor Listing

On February 6, 1985, a rulemaking petition was submitted to EPA on behalf of the Hobart Corporation, Magic Chef, Inc., the Maytag Co., and State Industries pursuant to the provisions of 40 CFR 260.20. The four companies requested that EPA amend its existing regulations and limit the scope of the spent pickle liquor listing to those companies within the iron and steel industry, specifically, SIC code 3312. The petitioners argue that the plain language of the listing indicates that it applies only to the iron and steel industry. The basis for their claim is that spent pickle liquor is listed as a process-specific waste in 40 CFR 261.32—Waste From Specific Sources under the sub-heading "Iron and Steel"; therefore they interpreted the listing to cover only facilities within the iron and steel industry. If the Agency intended the listing to cover a cross-section of industries, the petitioners believe the Agency should have listed these wastes under the generic category in 40 CFR 261.31—Waste From *Non-Specific* Sources. They view EPA's original 1978 proposal where the Agency proposed to list spent pickle liquor generated specifically from the iron and steel industry (SIC code 3312) as corroborating this reading. The petitioners also pointed out that EPA's background document to the listing supports the narrower interpretation since it also addresses only spent acid and LSWPLS generated from the iron and steel industry.

Furthermore, various program offices of EPA itself have interpreted the listing to apply only to iron and steel industry waste. Thus, in promulgating effluent limitation guidelines for the porcelain enameling industry, the Agency concluded that wastewater treatment sludges from this industry subcategory are expected to be non-hazardous under RCRA, and thus were not considered to be listed hazardous wastes (see EPA, Development Document for Effluent Guidelines and Standards for Porcelain Enameling Point Source Category, EPA 440/1–82/072, November 1982).

In addition, several States and EPA Regional Offices have interpreted the listing as covering only the iron and steel industry (see discussion in Section II. of today's notice). The petitioners state that they have acted in reliance on their understanding that spent pickle liquor from their facilities was not covered by the K062 listing, so that substantial amounts of lime treated sludge from the treatment of the spent acid have been disposed of as non-hazardous waste (since these treated sludges do not exhibit any of the characteristics of hazardous waste).

The Porcelain Enamel Institute (PEI), the trade association for the porcelain enamel industry, also opposed EPA's interpretation of the listing. Many of the points outlined by the petitioners were also made by PEI in several meetings and correspondence with EPA (see references 1 and 2).[7]

II. Reason for Today's Notice

The Agency acknowledges that although EPA headquarters has consistently interpreted the K062 listing as applying to all industry categories that engage in steel finishing and generate spent pickle liquor or LSWPLS, one EPA Regional office and some States have implemented the narrower interpretation of the listing.[8] Thus, the Agency is today making available to the public both the EPA and industry positions on the scope of the listing. The industry position has already been summarized in Section I.B. of today's notice. Also see rulemaking petition dated February 6, 1985, and letters from PEI dated March 27, 1984, and August 13, 1984, in the RCRA docket.

The Agency's position is as follows: EPA believes the rule can be understood to apply to more than iron and steel plants because it applies to spent pickle liquor "from steel finishing operations." Thus, persons engaging in steel finishing operations are within the scope of the rule if they generate this waste. In corroboration, many persons who generate spend pickle liquor apparently read the scope of the listing to include industries other than iron and steel. EPA received large numbers of Section 3010 notifications from a diverse group of industry categories who notified EPA that they generate or manage K062 or LSWPLS. For example, approximately one half of the facilities within the porcelain industry have notified that they generate either K062 or LSWPLS.

The Agency also has received and evaluated numerous site-specific petitions to delist K062 or LSWPLS from facilities other than iron and steel. Approximately 35 percent of petitions to delist K062 and LSWPLS were submitted by industries other than iron and steel. For example, petitions have been submitted by facilities engaged in laminating; aircraft parts, fence, and hanger manufacturing; and production of alloys. (These petitions are available in the Administrative Record for the AISI rulemaking. The record is available for public inspection in the RCRA docket.) To date, the Agency has granted temporary exclusions for these wastes to two facilities engaged in porcelain enameling [9] and at least 10 facilities from other non-iron and steel industries.

In the January 4, 1984 notice regarding the AISI rulemaking petition, the Agency clearly stated that a diverse group of industries are engaged in the pickling of steel and generate spent pickle liquor.

[7] PEI has filed a lawsuit challenging the Agency's regulation insofar as it pertains to the porcelain enameling industry. *Porcelain Enomel Institute* v. *EPA*, No. 84–1452 (D.C. Cir. 1984). This case is in abeyance pending EPA's action on the rulemaking petition.

[8] At least one EPA Regional office has interpreted the listing as including only facilities within the iron and steel industry category.

[9] One of the facilities granted a temporary exclusion was the Maytag Corp., Newton, Iowa, one of the rulemaking petitioners.

The Agency indicated that the AISI petition applied only to the iron and steel industry; hence, LSWPLS generated by other industries were still considered hazardous. The Agency outlined its concerns with spent pickle liquor generated from facilities other than iron and steel and requested comments. No comments were received on the Agency's position.

In light of the significant numbers of notifications and site-specific delisting petitions for K062 and LSWPLS, and consistent lack of industry response to Agency requests for comments on actions pertaining to the listing, the Agency believes that industry generally understood the listing to apply to non-iron and steel facilities.

III. Agency Alternatives and Options

The Agency recognizes several possible approaches to resolve the issues raised in today's notice. First, the Agency could maintain its position that the listing applies to all companies engaged in steel finishing operations. We have set out in this preamble the basis for this belief, and the Agency specifically solicits comment on these points.

Second, the Agency could modify the listing so that it applies only to K062 wastes generated by the iron and steel industry. The Agency may consider this option if it receives data indicating that LSWPLS from these other industries are not, in fact, hazardous.

Third, the Agency could grant the relief requested in this petition and agree that the original listing only applied to K062 wastes generated by the iron and steel industry. Commenters who favor this approach should explain why they would interpret the original rules in this manner, and why so many non-iron and steel companies appear to have interpreted the listing as applying to them.

Finally, the Agency could determine that the K062 listing as written does not cover industries other than iron and steel production, but that LSWPLS from these other industries should be considered to be hazardous. We are soliciting data as to presence of hazardous constituents in these wastes (see Section IV below). Should these and other pertinent data appear to indicate that the wastes are hazardous, and if EPA determines that the listing as written does not cover these sludges, EPA could list the wastes as hazardous. The Agency would notice any relevant data for comment before taking final action.

The Agency is requesting comments on the issues raised in today's notice (see Request for Comments and Data). Once the Agency has reviewed all data and comments, the Agency will determine what specific action will be taken.

IV. Request for Comments and Data

The Agency is today requesting comments on how the listing is interpreted by the public and the regulated community. In addition, we solicit comments from States on how they have interpreted the listing. We are particularly interested in comments from persons who have notified that they either generate or manage K062 or LSWPLS. If any of these notifications were filed for protective reasons, we are requesting comments on whether they have changed the hazardous waste code for these wastes since the original notification.

We are also requesting comments from persons who have interpreted the rules as not covering spent pickle liquor and LSWPLS from non-iron and steel industries and data supporting industry claims that spent pickle liquor and LSWPLS generated from facilities other than iron and steel are non-hazardous, or indicating whether or not the wastes are hazardous. These data should address the constituents hexavalent chromium, lead, and any toxicants in Appendix VIII to Part 261 of the hazardous waste regulations, including organics, that may reasonably be expected to be present in the waste at concentrations that could make the waste hazardous.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a proposed or final rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule requests comments and data only, therefore, it is not a major rule.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: August 27, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21546 Filed 9-9-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
September 10, 1985

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Approval of Permanent Program Amendment From the State of Maryland Under the Surface Mining Control and Reclamation Act of 1977; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Approval of Permanent Program Amendment from the State of Maryland Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Maryland as an amendment to the State's permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises certain portions of the State's requirements for the use of explosives.

Maryland submitted the proposed program amendment on January 30, 1985. OSM published a notice in the **Federal Register** on March 11, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 9679–9680). The public comment period ended April 11, 1985. On May 9, 1985, OSM notified Maryland of a required revision to the proposed regulations. On July 10, 1985, Maryland submitted revisions to the amendment to OSM. On July 29, 1985, OSM reopened the public comment period for 15 days to provide the public an opportunity to comment on the proposed amendment and additional information [50 FR 30720–30721]. The public comment period ended on August 13, 1985. No comments were received during the comment period.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations. The Federal rules at 30 CFR Part 920 codifying decisions concerning the Maryland program are being amended to implement this action.

This rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform with the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301; Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

The Maryland program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430–79451). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the December 1, 1980 **Federal Register**. On February 18, 1982, following submission of program amendments to satisfy the conditions of program approval, the Maryland program was fully approved by the Secretary (47 FR 7214–7217).

II. Submission of Maryland Proposed Program Amendments

On May 28, 1984, Maryland submitted proposed regulations amendments and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations and revise the State's performance standards for the use of explosives. Additional information was submitted on June 13, 1984. These materials were later supplemented by additional information submitted by the State on October 5, 1984. These proposed amendments and subsequent modifications were approved by the Director on January 22, 1985 (50 FR 2782–2785). However, the Director's approval required that one provision of the proposed requirements for the use of explosives be revised and submitted as a program amendment by March 25, 1985. The required amendment related to the provisions of 30 CFR 816.62(a) which require information on how to request a preblasting survey to be provided to residents or owners of dwellings or other structures within ½ mile of the permit area at least 30 days prior to blasting. On January 30, 1985, the State submitted regulations intended to address this required amendment and make other revisions desired by the State. Most of the other revisions are editorial in nature and have no effect on the requirements approved by the Director on January 22, 1985. All of the changes are identified in the January 30 submission (Administrative Record No. MD 299 and MD 300). The Director announced a public comment period and an opportunity for a hearing for these revisions on March 11, 1985 (50 FR 9679–9680). The public comment period ended on April 11, 1985. No requests for a public hearing were received.

These proposed regulations were reviewed by OSM and comments were provided to the State on May 9, 1985 (Administrative Record No. MD 315). During its review of Maryland's proposed amendment, OSM identified the following concern:

Maryland's proposed rules at COMAR 08.13.09.25C(2) require that copies of the blasting schedule be distributed to local governments, public utilities, and residents or owners of dwellings or other structures within ½ mile of the permit area. Certain portions of the permit area-haul roads, coal preparation and loading facilities, and transportation facilities—were excluded. This would be inconsistent with current Federal regulations at 30 CFR 816.64(b)(2).

Maryland responded in a letter dated July 10, 1985, informing OSM that it would revise its regulations by deleting the sentence at its regulation .25C(2) which had excluded haul or access roads, coal preparation and loading facilities, and other transportation facilities from the meaning of permit area (Administrative Record No. MD–317).

On July 29, 1985, OSM reopened the public comment period for 15 days to allow for public comment on the modification to Maryland's proposed amendment (50 FR 30720–30721). The public comment period ended on August 13, 1985. No comments were received during the comment period.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment requiring information on how to request a preblasting survey to be provided to residents or owners of dwellings or other structures within ½ mile of the permit area at least 30 days prior to blasting and other revisions made by the State and identified in the January 30, 1985 submission, as supplemented by the State's letter of July 10, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII and satisfies the required amendment imposed by the Director on January 22, 1985.

IV. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(j), of those Federal agencies invited to comment, acknowledgments were received from

the Department of Agriculture, Forest Service; the Department of the Army, Office of the Chief of Engineers; the Department of the Interior, Bureau of Land Management, Bureau of Mines and National Park Service; and; the Department of Labor, Mine Safety and Health Administration. Most of the comments were limited and did not identify any deficiencies in the proposed program amendment. Bureau of Mines made several comments relating to the State performance standards and their requirements for blaster training, examination and certification. Most of the comments related to provisions which were identical to the corresponding Federal provisions. Two of the comments related to typographical errors and these have been provided to the State. No additional public comments were received.

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(b)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the modifications to the Maryland regulatory program as submitted January 30, 1985, and revised on July 10, 1985, and is removing the required amendment found at 30 CFR 920.16(a), under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 920 are being amended to implement this decision.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 1985.

Jed D. Christensen,
Acting Director, Office of Surfoce Mining.

PART 920—MARYLAND

30 CFR Part 920 is amended as follows:

1. The authority citation for Part 920 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 920.15 is amended by adding a new paragraph (c) as follows:

§ 920.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendment submitted to OSM on January 30, 1985, as revised July 10, 1985, is approved effective September 10, 1985. Revisions to Maryland regulations governing the use of explosives, as contained in the proposed Code of Maryland Administrative Regulations, Title 08, Subtitle 13, Chapter 09 Sections 02 and 25 submitted to OSM on January 30, 1985, and revised July 10, 1985. This approval is contingent on promulgation of the above referenced proposed regulations in a form identical to that submitted to the Director.

§ 920.16 [Removed]

3. 30 CFR Part 920.16 is removed.

[FR Doc. 85–21448 Filed 9–9–85; 8:45 am]
BILLING CODE 4310–05–M

VOL
50

ISS
75

SE
10

985

UMI

federal register

Tuesday
September 10, 1985

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Proposed Notice of Sale; North Aleutian Basin; Oil and Gas Lease Sale 92

Billing Code: 4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Proposed Notice of Sale
North Aleutian Basin
Oil and Gas Lease Sale 92

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The following is a proposed Notice of Sale for Sale 92 in the North Aleutian Basin. This Notice is hereby published as a matter of information to the public.

Director, Minerals Management Service
Wm. D. Bettenberg

Approved:

Deputy Assistant Secretary - Land and Minerals Management
J. Steven Griles

SEP 5 1985

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Proposed Notice of Sale
North Aleutian Basin
Oil and Gas Lease Sale 92

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1331-1356) and the regulations issued thereunder (30 CFR 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service (MMS), room 544, 949 East 36th Avenue, Anchorage, Alaska 99508. Bids may be delivered in person to the above address between 8:00 a.m. and 4:00 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at 10:00 a.m., a.s.t., January ___, 1986. Bids will not be accepted on January ___, 1986, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 101159, Anchorage, Alaska 99510, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10:00 a.m., a.s.t., January ___, 1986. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., a.s.t., January __, 1986. Bid Opening Time will be 9:00 a.m., a.s.t., January __, 1986, at the _____ Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at _____ on _____.

3. Method of Bidding.

(a) A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 92--North Aleutian Basin, (insert Official Protraction Diagram number and name, if applicable, and block number, not to be opened until 9:00 a.m., a.s.t., January ___, 1986," must be submitted for each block bid on. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 92--North Aleutian Basin, NO 3-8, Block 485, not to be opened until 9:00 a.m., a.s.t., January ___, 1986." (There will be no multiple blocks comprising a bidding unit for Sale 92.) A suggested bid form appears in 30 CFR 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the percentage of the proportionate interest of each participating bidder. The percentage shown on the bid form may not exceed five decimal places; e.g., 50.12345 percent. All documents

must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Other documents may be required of bidders under 30 CFR 256.46.

(b) At the time of bid submission bidders are required to provide a statement when they have filed, either alone or jointly, more than one bid on the same block, as to all persons, partnerships, and corporations which have a controlling interest in the entity submitting the bid.

A controlling interest means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person. (See paragraph 16 of this notice on information concerning Unusual Bidding Patterns.)

Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $371 or more per hectare or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of $8 per hectare, or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare, or fraction thereof. The bidding system to be utilized for this sale is cash bonus bidding with a 12 1/2 percent royalty. All bids submitted on all blocks shown in paragraph 12 must be submitted on a cash bonus basis with a fixed royalty of 12 1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to the issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $371 or more per hectare, or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease as specified below, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer (EFT) utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to 30 CFR 218.155.

11. Official Protraction Diagrams (OPD). Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2 each from the Records Manager, Alaska OCS Region, room 502, at the first address stated in paragraph 2 of this Notice.

Outer Continental Shelf Official Protraction Diagrams:

NO 3-8	. -	(Approved March 20, 1975)
NO 4-7	Chignik	(Approved September 30, 1976)
NN 3-2	Cold Bay	(Approved September 30, 1976)

12. Description of the Areas Offered for Bids.

(a) The lease sale area offered for bids is listed by OPD. Only one category of blocks appears under each OPD listed: Whole or Partial blocks.

Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole or partial blocks listed in paragraph 12(b) may be found on the appropriate OPD.

(b) The following blocks or portions of blocks are offered for bid:

Official Protraction Diagram NO 3-8, (approved March 20, 1975):

WHOLE or PARTIAL BLOCKS:

485-523	749-787
529-567	793-831
573-611	837-875
617-655	881-918
661-699	925-962
705-743	969-1006

Official Protraction Diagram NO 4-7, Chignik (approved September 30, 1976):

WHOLE or PARTIAL BLOCKS:

490-506	710-725
534-550	754-760
578-594	798-804
622-638	842-845
666-681	

Official Protraction Diagram NN 3-2, Cold Bay (approved September 30, 1976):

WHOLE BLOCKS:

1-37	397-415
45-78	441-458
89-121	485-502
133-164	529-545
177-207	573-589
221-251	617-633
265-294	661-675
309-330	705-714
353-372	749-754

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (August 1982). Copies of the lease form are available from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) The following stipulations will be included in each lease resulting from this sale.

Stipulation No.1--Protection of Archeological Resources

(a) "Archeological resource" means any site, structure, or object of historic or prehistoric significance, including artifacts, records, and remains which are related to such a site, structure, or object, (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes an archeological resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any archeological resource that may be affected by operations. The report, prepared by an archeologist, and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and other pertinent archeological and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that an archeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archeological resource may be; or

(ii) Establish to the satisfaction of the RSFO that an archeological resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist, and a geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that an archeological resource is likely to be present in the lease area and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archeological resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any archeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the archeological resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2--Orientation Program

The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the sale and adjacent areas. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archeological, geological, and biological resources and habitats including endangered species, fisheries, bird colonies, and marine mammals, and to ensure that personnel understand the importance of avoidance and nonharassment of wildlife resources, and legal authorities and penalties pertinent to the harassment of wildlife. The program shall also be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating and shall include information concerning avoidance of conflicts with commercial fishing operations and with commercial fishing gear. The program also shall include presentations and information about all pertinent lease sale stipulations and Information to Lessees provisions, and about stipulations applied to subsequent exploration plans and development and production plans.

The program shall be attended at least once a year by all personnel involved in on-site exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3--Protection of Biological Resources

If biological populations or habitats which may require additional protection are identified by the Regional Supervisor, Field Operations (RSFO), on any lease, the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RSFO shall give written notification to the lessee of the RSFO's decision to require such surveys.

Based on any surveys which the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to: (1) relocate the site of operations; (2) establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist;

(3) operate during those periods of time, as established by the RSFO, that do not adversely affect the biological resources; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RSFO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 4--Wellhead and Pipeline Requirements

Subsea wellheads on temporary abandonments, or suspended operations that leave protrusions above the seafloor, are potential hazards to fisheries trawling gear. They shall be constructed or protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structures without snagging or otherwise damaging the structures or the fishing gear. The lessee shall submit latitude and longitude coordinates of these structures and their water depths to the Regional Supervisor, Field Operations. The lessee shall also forward this information to the U.S. Coast Guard in accordance with Alaska OCS Order No. 1, Part 4. To determine the coordinates of such structures, the lessee shall use navigation systems with accuracy of at least ±50 feet at 200 miles.

All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. If an irregular pipe surface is unavoidable because of the need for valves, anodes, or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 5--Transportation of Hydrocarbons

Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require

that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group, or other similar advisory groups with participation of Federal, State, and local governments and industry.

All pipelines, including both flow lines and gathering lines for oil and gas, shall be designed and constructed to provide for adequate protection from water currents, storms and ice scouring, permafrost, subfreezing conditions, and other hazards as determined on a case-by-case basis. Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations, subject to economic feasibility.

14. Information to Lessees:

(a) Affirmative Action Requirements. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulation requirements will be deemed to be part of the affirmative action forms.

(b) U.S. Army Corps of Engineers Permits. The U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Discharges of Drilling Wastes. Lessees are advised that the U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System permits are required for discharge of drilling fluids, produced waters, and other drilling wastes generated during exploration and development/production phases.

(d) Oil Spill Cleanup Capability. Approval of oil spill contingency plans will require information on the capability to detect, contain, clean up, and dispose of spilled oil in accordance with Best Available and Safest Technologies requirements as determined by the Regional Supervisor, Field Operations (RSFO).

(e) Offshore Pipelines. Lessees are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Lessees should consult both departments for regulations applicable to offshore pipelines.

(f) Unitization Agreements. Lessees are advised that in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases.

(g) Exploration Plan Submittals For 10-Year Lease Terms. Lessees are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(h) Coastal Zone Management and Bristol Bay Area Plan.

Lessees are advised that the Alaska Coastal Management Program (ACMP) contains policies and standards which are relevant to exploration, development, and production activities associated with leases resulting from this sale. In addition, approved local coastal management programs (CMP) which are part of the ACMP may contain more specific policies related to energy facility siting; areas with particular geologic hazards, subsistence uses, habitats, and transportation uses; and areas which have historic or prehistoric resources. Lessees are advised that the draft Aleutians East Coastal Resource Service Area (CRSA) CMP delineates archeological and historical sites.

Coastal districts with approved CMP's may have policies applicable to ACMP consistency reviews of postlease activities. Coastal districts near the lease area engaged in policy development or implementation include: the Yukon/Kuskokwim CRSA, the Bristol Bay CRSA, the Aleutians East CRSA, the Bristol Bay Borough, and the Cities of Bethel, Akutan, and St. Paul. Early consultation and coordination with the State and coastal districts involved in coastal management review is encouraged.

The MMS anticipates that the State will review exploration plans, development and production plans, and pipeline right-of-way applications for consistency with the ACMP pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA). As specified in section 307(c)(3)(B), the State may disagree with the lessee's certification of consistency for the lessee's plans for exploration, development, and production, or pipeline right-of-way applications. The State has indicated that it may recommend additional measures be taken by the lessee, as a condition of certification, that will ensure that the transportation, storage, and loading of produced oil is consistent with applicable mandatory enforceable policies listed in the ACMP.

The State of Alaska has advised the MMS that it will review the lessee's consistency certification accompanying oil spill contingency plans specifically for consistency with the State's CMP. The State may not concur with the lessee's plans for exploration, development, and production under section 307(c)(3) of the CZMA unless they are adequate to ensure consistency with applicable policies in the State's program. The State's review will consider the use of best available and safest technologies for operating in the North Aleutian environment. Also considered in this are the lessee's contingency plans in the event of an oil-well blowout (including relief well plans), and the lessee's ability to initiate timely oil spill recovery operations, as required by Federal or State regulations to protect areas of special biological sensitivity.

Lessees are also advised that the State of Alaska adopted a land use management plan in September 1984. That plan, the Bristol Bay Area Plan, contains policies adopted by the State that indicate priorities for different land uses in portions of the Alaska Peninsula and the rest of the Bristol Bay region. Policies include pipeline transportation across State tidelands and the Alaska Peninsula.

(i) Areas of Special Biological Sensitivity.

Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, and/or fishes. Lessees are advised that seasonal concentrations of fishes, including major salmon streams, and birds and/or marine mammals in the Izembek and Togiak National Wildlife Refuges, Izembek State Game Refuge, Walrus Islands and Cape Newenham State Game Sanctuaries, State Critical Habitat Areas (Egegik, Pilot Point, Cinder River, Port Heiden, and Port Moller), Port Moller/Herendeen Bay/Bear River area, Nelson Lagoon, Bechevin Bay, Unimak Pass, Amak Island, Sea Lion Rocks, and the Shumagin Islands, are identified as areas of special biological sensitivity. Other areas of special biological sensitivity include Moffett Lagoon, Big Lagoon, Hook Bay, St. Catherines Cove, and Swanson Lagoon. These areas are among areas of special biological sensitivity to be considered in the oil spill contingency plan section of Alaska OCS Order No. 7 and environmental report requirements of 30 CFR 250.34-3. Lessees are advised that, subject to approval by the State and the Secretary of Commerce, areas of special biological sensitivity also may be defined by local coastal management programs. Areas of special biological sensitivity may also be identified by local and regional organizations, planning offices, village councils, and regional nonprofit corporations.

Due to the sensitivity and vulnerability of these areas to spilled oil, special attention will be given to deployment plans and time requirements on the review of oil spill contingency plans. Such protection should not include dispersant usage unless such usage has been approved in advance.

(j) Bering Sea Biological Task Force.

In the enforcement of the Protection of Biological Resources stipulation, the RSFO will receive recommendations from a Bering Sea Biological Task Force (BTF) composed of designated representatives of the MMS, the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the EPA. (Before making recommendations to the RSFO, the Bering Sea BTF should consult with representatives of the State of Alaska and local communities that can contribute to biological evaluations.) The RSFO will consult with the Bering Sea BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(k) Bird and Marine Mammal Protection.

Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to, among others, the provisions of the Marine Mammal Protection Act of 1972, as amended; the Endangered Species Act of 1973, as amended; the Migratory Bird Treaty Act; and International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws. With respect to endangered species, disturbance could be determined to constitute a "taking" situation and be in violation of the Endangered Species Act. Under the Endangered Species Act, the term "take" has been defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Violations under these acts and treaties should be reported to the NMFS or the FWS, as appropriate.

Of particular concern is disturbance at major wildlife concentration areas including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration sites in the vicinity of the lease area are available from the RSFO. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintained at least a 1-mile horizontal distance and aircraft maintain a 1,500-foot vertical distance from known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas. It is recommended that aircraft and vessels operated by lessees or their contractors maintain at least a 1-mile horizontal distance and that aircraft maintain a 1,500-foot vertical distance from known or observed wildlife concentrations.

For the protection of endangered whales and marine mammals throughout the lease area, operators of fixed-wing aircraft or helicopters should maintain a 1,500-foot altitude when in transit between support bases and exploration sites; and lessees and their contractors are encouraged to reduce, minimize, or reroute trips to and from the leasehold by aircraft, tugs, barges, supply ships, hovercraft, or other self-propelled surface vessels when endangered whales are likely to be in the area. Information on general locations of endangered whales is available from the RSFO.

The distance and altitude herein recommended to avoid disturbance to wildlife is advisory. Rules of other agencies concerning air traffic must be observed. Human safety will take precedence at all times over these provisions.

(l) Endangered Whales (Noise Disturbance).

Lessees are advised that the RSFO has the authority and intends to limit or suspend any noise producing operations, including geophysical surveys on a lease, whenever endangered whales are near enough to be subject to noise disturbance from offshore oil and gas activities which would be likely to result in a "take" situation. Under the Endangered Species Act, the term "take" has been defined to mean "harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." A Notice to Lessees (NTL 85-2) has been issued to specify performance standards before any preliminary activities may be conducted on a lease.

(m) Endangered Whales (Oil Spills).

Lessees are advised that the RSFO has the authority and may limit or suspend oil and gas drilling activities on any lease whenever endangered (especially gray or right) whales are present and near enough to be subject to probable oil spill risks. Exploratory drilling, testing, and other downhole activities below a predetermined threshold depth, with the exception of testing through casing, may be prohibited whenever these whales are in the vicinity of the drilling operation. Such prohibition would continue until it is determined that the whales are outside of the zone of probable influence or are no longer subject to likely risk of oil spills, unless the RSFO determines that continued operations are necessary to prevent a loss of well control or to ensure human safety.

(n) Aleutian Canada Goose.

Lessees are advised that the Aleutian Canada goose (Branta canadensis leucopareia) is listed as an endangered species by the U.S. Department of the Interior (16 U.S.C. 1531 et seq.). A potential for conflict may exist in this region between the onshore support facilities of OCS exploration or development and production activities and the Aleutian Canada goose. Such

conflicts can be avoided if onshore-support facilities are not located near Chagulak or Kiliktagik Island and aerial-support flight paths maintain a 1,500-foot altitude and vessel traffic a 1-mile distance from Aleutian Canada goose populations.

Lessees are advised that the FWS will review all exploration or development and production plans submitted by the lessee to the MMS. The FWS may apply certain restrictions to further protect the Aleutian Canada goose habitats as a result of this review. Lessees and affected operators should establish regular communication with the MMS and the FWS. Human safety will take precedence at all times.

(o) Fairway Designations.

Blocks offered for lease may fall in or be adjacent to areas which may be included in fairways, precautionary zones, or traffic-separation schemes which may be established, among other reasons, for the purpose of protecting maritime commerce. Lessees are advised that the United States may designate necessary fairways through leased areas pursuant to the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 et seq.).

(p) Potential Gear Conflict with Commercial Fishing Industry.

To reduce potential fishing gear conflicts, the lessees should keep commercial fishermen in the area advised of plans for seismic surveys, drill rig transport, or other vessel traffic, and discuss mutually satisfactory ways to avoid fishing-gear conflicts. Additionally, designations of open-ocean-storage areas for crab pots are subject to change. Vessels transiting these areas should operate in such a manner as to prevent loss of these stored crab pots. Locations of storage areas can be provided by the Alaska Department of Fish and Game and the North Pacific Fishery Management Council. The MMS encourages the lessees to use the Oil/Fisheries Group of Alaska to reduce potential conflicts between the oil and commercial fishing industries.

(q) Oil Spill Contingency Plans.

Lessees are notified that oil spill contingency plans are required under Alaska OCS Order No. 7, pursuant to the authority prescribed in 30 CFR 250.11, 250.34, and 250.43, prior to approval of exploration plans and development and production plans. Furthermore, lessees are required under 30 CFR 250.34-2 to include in development and production plans descriptions of all vessels, pipelines, and other facilities, and descriptions of all environmental safeguards. Prior to approval of development and production plans, the RSFO will review these items to determine whether those oil transportation facilities described, which are regulated by the MMS can safely transport oil under expected conditions in the leased area.

(r) Minimum Altitude Over Izembek Lagoon.

The FWS and the Alaska Department of Fish and Game are developing guidelines regarding minimum altitudes and flight patterns in the area of Cold Bay and Izembek Lagoon. Once complete, these guidelines may be included as recommendations on aeronautical charts. The MMS will also provide a copy of these guidelines as an attachment to the action letter on each exploration plan submitted for the lease area which proposes to use Cold Bay for aircraft support.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Alaska OCS Orders, and any other applicable OCS Order. Final Alaska OCS Orders were published in the Federal Register at 47 FR 47180, on October 22, 1982.

16. Unusual Bidding Patterns. The bid adequacy procedures provide for the application of criteria in a two-phased process for bid adequacy determination. Prospective bidders should be aware that the RD may determine that an unusual bidding pattern exists when a company and its parent and/or subsidiary (a company in which the controlling interest is owned by another company), participate alone or jointly in more than one bid on the same block. In such case only the highest of such bids by that entity will be considered for computing the number of bids on the block for acceptance in the Phase I criteria of the bid adequacy process. If as a result of an unusual bidding pattern there is an insufficient number of bids for acceptance in the Phase I criteria, the RD will pass those bids on the block to Phase II of the bid adequacy process for further analysis. As a result, special requirements on this subject have been outlined in paragraph 3(b), Method of Bidding in this Notice.

14

[FR Doc. 85-21560 Filed 9-9-85; 8:45 am]
BILLING CODE 4310-MR-C

VOL
50

ISS
75

SE
10

985

UMI

Reader Aids

Federal Register

Vol 50, No. 175

Tuesday, September 10, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6
36563-36860.....9
36861-36982.....10

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Administrative Orders:
Memorandums:
September 5, 1985.....36563
August 7, 1985.....36565
Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033
12532.....36861
Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041
319.....35533
736.....35535
908.....35767
920.....36567
981.....35767
989.....35769
1038.....36865
1135.....36043
1427.....36568
1472.....35772
Proposed Rules:
52.....36094
420.....36580
423.....36584
432.....36589
433.....36593
442.....36597
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829

9 CFR

Proposed Rules:
77.....35564
309.....36094

10 CFR

35.....36866

12 CFR

615.....36868

14 CFR

39.....35772, 36044-36046, 36570, 36869
71.....36047
108.....35535
Proposed Rules:
Ch. I.....36884
21.....36437
39.....35830-35839, 36095-36102, 36441, 36600
71.....35840, 36884

16 CFR

4.....36048
Proposed Rules:
13.....35565

17 CFR

1.....36049
31.....36405
190.....36405
Proposed Rules:
1.....36104
3.....36104

18 CFR

154.....36571
157.....36571
385.....36051
Proposed Rules:
357.....36601

19 CFR

Proposed Rules:
162.....36603

20 CFR

302.....36870
322.....36870
340.....36870
404.....36571
Proposed Rules:
295.....35568
416.....36106

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
178.....36872
510.....35535
558.....35535, 35536, 36419, 36874
1040.....36548

Proposed Rules:
74.....35841
82.....35841
170.....35571
808.....36441-36443

25 CFR
36.....36575

26 CFR
1.....35536, 35540, 36575
6a.....35540
602.....35536, 35540
Proposed Rules:
1.....35572
602.....35572

28 CFR
0.....36054
2.....36419-36423

29 CFR
Proposed Rules:
33.....36885
2642.....36603

30 CFR
920.....36970
Proposed Rules:
Ch. I.....36885
617.....35573
870.....36858
944.....36554

31 CFR
51.....36055
103.....36875
206.....35547
Proposed Rules:
223.....36115

32 CFR
155.....35790
706.....36424-36425
865.....36426
Proposed Rules:
230.....36610
231.....36619
231a.....36622

33 CFR
100.....35552-35554, 36576
165.....35555
Proposed Rules:
100.....36628-36629
117.....36630
207.....35573

33 CFR
100.....36576
151.....36768
158.....36768

34 CFR
Proposed Rules:
682.....35964
683.....35964

35 CFR
Proposed Rules:
133.....36444

36 CFR
327.....35555

38 CFR
3.....36577
21.....36578
Proposed Rules:
3.....36631

39 CFR
10.....36431
111.....36875
Proposed Rules:
111.....35843, 36885, 36886

40 CFR
15.....36188
52.....35796, 36876
60.....36630
66.....36732, 36734
67.....36732
81.....35561
133.....36879
180.....36579
271.....35798
466.....36540
Proposed Rules:
52.....36633-36635
60.....36956
65.....36637
85.....36838
147.....35574
180.....35844
261.....36966
262.....36886
430.....36444
439.....36638
600.....36838
799.....36446

42 CFR
505.....35646
512.....35646
Proposed Rules:
124.....36454

43 CFR
1820.....36055

44 CFR
59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

46 CFR
Proposed Rules:
160.....36639

47 CFR
Ch. I.....36056
0.....36061
2.....36061
18.....36061
25.....36071, 36432
73.....35562, 35799-35800
83.....36880
97.....36080
Proposed Rules:
73.....35574-35581, 35845

48 CFR
15.....35815
52.....35815

501.....36080
502.....36080
504.....36080
505.....36080
506.....36080
507.....36080
509.....36080
510.....36080
514.....36080
515.....36080
525.....36080
536.....36080
549.....36080
914.....35956
915.....35956
952.....35956
Proposed Rules:
227.....36887
252.....36887
549.....35582
552.....35582

49 CFR
Ch. X.....35562
571.....36084
1033.....36085
1085.....35563
1152.....36432
Proposed Rules:
192.....36116
218.....35636
221.....35636
232.....35640, 35643
571.....35583

50 CFR
17.....36085, 36089
20.....35762, 36198, 36432-36433
32.....35563, 35815
33.....35563
611.....35825
621.....36434
630.....35563
661.....35827, 36092
672.....35825
675.....35825
Proposed Rules:
17.....35584, 36118

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1985

VOL
50

ISS
75

SE
10

985

UMI



Order Now!

The United States Government Manual 1984/85

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$12.00 per copy

Order Form Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

★ 6049

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only
Total charges $_____
Fill in the boxes below.

Customer's Telephone No.'s
Area Code | Home | Area Code | Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1984/85 at $12.00 per copy. Stock No. 022-003-01109-9

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City | State | ZIP Code

(or Country)

(Rev. 4-1-85)

For Office Use Only

Quantity	Charges
_____ Publications	
_____ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
_____ UPNS	
_____ Balance Due	
_____ Discount	
_____ Refund	

882

VOL
50

ISS
75

SE
10

985

UMI

VOL
50

ISS
76

SE
11

985

UMI

9-11-85
Vol. 50 No. 176

federal register

Wednesday
September 11, 1985

**********5-DIGIT 48106

A FR SER1A300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
176

SE
11

985

UMI

9-11-85
Vol. 50 No. 176
Pages 36983-37162

Federal Register

Wednesday
September 11, 1985

Selected Subjects

Administrative Practice and Procedure
Veterans Administration

Antibiotics
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Farm Credit Administration

Equal Employment Opportunity
Interior Department

Exports
International Trade Administration

Fisheries
National Oceanic and Atmospheric Administration

Government Procurement
General Services Administration

Motor Vehicle Safety
National Highway Traffic Safety Administration

Pesticides and Pests
Environmental Protection Agency

Security Measures
Nuclear Regulatory Commission

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Contents

Federal Register
Vol. 50, No. 176
Wednesday, September 11, 1985

Agriculture Department
37016 *See also* Food Safety and Inspection Service; Forest Service; Statistical Reporting Service.
NOTICES
Agency information collection activities under OMB review
Program payments; income tax exclusion; primary purpose determination:
37017 Minnesota Soil and Water Conservation Board cost-share program

Air Force Department
NOTICES
Meetings:
37022 Community College of Air Force Board of Visitors

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Customs Service
PROPOSED RULES
Organization and functions; field organization, ports of entry, etc.:
37004 Chicago, IL

Defense Department
See Air Force Department; Defense Logistics Agency.

Defense Logistics Agency
NOTICES
37022 Product inspection and quality audit of DLA managed items; receiving adjustment

Drug Enforcement Administration
NOTICES
Environmental statements; availability, etc.:
37069 Cannabis eradication program; Federal lands
Registration applications:
37070 Games Chemical Inc.
37070 Mallinckrodt, Inc.

Education Department
NOTICES
37110 Meetings; Sunshine Act; correction

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission.
NOTICES
37023 Inventions available for license

Energy Information Administration
NOTICES
Forms; availability, etc.:
37023 Manufacturing energy consumption survey (EIA–846)

Environmental Protection Agency
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
36994 Permethrin
NOTICES
Pesticides; temporary tolerances:
37052 Methomyl

Farm Credit Administration
RULES
36985 Farm credit system banks and associations; organization; transfer of funds and equities; final rule and request for comments

Federal Aviation Administration
RULES
Airworthiness directives:
36989 General Electric
36987, 36988 Grob-Werke (2 documents)
36990 Hughes Helicopters, Inc.
PROPOSED RULES
37004 VOR Federal airways; correction
NOTICES
Meetings:
37105 Air traffic rules and communication requirements

Federal Deposit Insurance Corporation
NOTICES
37109 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
37052 Mississippi

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
37032 Boston Edison Co. et al.
37043 Gulf States Utilities Co. et al.
Environmental effects:
37041 Hydropower projects clustered in river basins; assessing procedures; inquiry; Salmon River Basin, ID; workshop
Hearings, etc.:
37032 ANR Pipeline Co.
37032 Arkla Energy Resources
37032 Atlantic City Electric Co.
37036 El Paso Natural Gas Co.
37039 Florida Gas Transmission Co.
37045 Great Lakes Gas Transmission Co.
37039 North Penn Gas Co.
37040 Pacific Interstate Transmission Co.
37041 Pacific Offshore Pipeline Co.
37039 Panhandle Eastern Pipe Line Co.
37041 Quillen, Kurt A., et al.
37041 Ringwood Gathering Co.
37042 Southern Natural Gas Co.
37042 Transwestern Pipeline Co.

Natural gas certificate filings:
37033 Columbia Gulf Transmission Co., et al.
37045 Seagull Interstate Corp. et al.
Small power production and cogeneration facilities; qualifying status:
37043 Northern Energy Group, Inc. et al.

Federal Highway Administration
NOTICES
37106 Heavy trucks; highway user fee liability study; inquiry

Federal Home Loan Bank Board
NOTICES
37109 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
37053 Trans-Pacific Freight Conference of Japan

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
37053 Bankvest, Inc., et al.
37053 Bellcorp, Inc.
37054 Hong Kong & Shanghai Banking Corp.
37054 Merchants National Corp. et al.
37055 National American Bancorp, Inc., et al.
37110 Meetings; Sunshine Act

Fish and Wildlife Service
RULES
Migratory bird hunting:
36996 Seasons, limits, and shooting hours; establishment, etc.; request for comments; correction
NOTICES
37059 Endangered and threatened species permit applications

Food and Drug Administration
RULES
Human drugs:
36991 Antibiotic drugs; erythromycin capsules
NOTICES
Food for human consumption:
37055 National Shellfish Sanitation Program Manual of Operations; harvesting and processing of shellfish, sanitation; draft availability
Laser variance approvals, etc.:
37056 Interscope, Inc., et al.
Medical devices; premarket approval:
37056 CILCO, Inc.
37057 Clini-Therm Corp.
37058 Medical, Inc.

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
36998 Diethylstilbestrol (DES) residues in cattle; antemortem inspection; correction

Forest Service
PROPOSED RULES
37005 Minerals; operations in Misty Fjords and Admiralty Island National Monuments, AK, etc.

General Services Administration
RULES
Federal Information Resources Management Regulation:
36995 ADP performance validation provisions, etc.; extension of effective date

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health.

Historic Preservation, Advisory Council
NOTICES
37016 Meetings

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau.
PROPOSED RULES
37006 Non-discrimination on the basis of handicap in federally conducted programs and activities

Internal Revenue Service
PROPOSED RULES
Income taxes:
37004 Rehabilitation expenditures; investment tax credit; hearing
NOTICES
Authority delegations:
37108 District Directors et al.; formal document requests

International Trade Administration
RULES
Export licensing:
37136 Commodity control list; electronics and precision instruments; navigation, direction-finding, radar and airborne communications equipment, etc.
37112 Commodity control list; metal-working machinery, chemical and petroleum equipment, etc.
NOTICES
Antidumping:
37018 Photo albums and filler pages from Korea
Countervailing duties:
37018 Carbon steel wire rod from Spain
37020 Chains and parts of iron or steel from Spain

International Trade Commission
NOTICES
Import investigations:
37065 Automotive visor/illuminated mirror packages and components
37065 Candles from China
37067 Double-sided floppy disk drives and components
37066 Frozen beverage dispensing machines
37066 Oil country tubular goods from Argentina, Canada and Taiwan
37067 Red raspberries from Canada
37068 Welded carbon steel pipes and tubes from India, Taiwan, Turkey and Yugoslavia

Interstate Commerce Commission
NOTICES
37068 Agency information collection activities under OMB review

Railroad services abandonment:
37068 Norfolk & Western Railway Co.

Justice Department
See Drug Enforcement Administration.

Labor Department
See Occupational Safety and Health Administration.

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
37060 Bairoil/Dakota CO_2 project, WY and ND
37061 Floy Canyon wilderness study area, UT
Meetings:
37061 Lewistown District Advisory Council
37059 McKinkey County Coal Fee Exchange
Oil and gas leases:
37060 Utah

Maritime Administration
NOTICES
Applications, etc.:
37107 American President Lines, Ltd.

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
37061 Alaska OCS; oil and gas lease sale, proposed
Outer Continental Shelf; development operations coordination:
37062 Kerr-McGee Corp.
37062 Shell Offshore Inc.
37062 Tenneco Oil Exploration & Production Co.

National Aeronautics and Space Administration
NOTICES
Meetings:
37070 Space and Earth Science Advisory Committee

National Bureau of Standards
NOTICES
Laboratory Accreditation Program, National Voluntary:
37021 Metals testing; inquiry

National Credit Union Administration
PROPOSED RULES
Federal credit unions:
36998 Credit union service organizations; investments and loans; statutory implementations

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
36995 Lamps, reflective devices, and associated equipment; alternative location for front identification lamps
36996 Occupant crash protection; seat belt assemblies; effective date deferred; correction
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
37108 Volvo White Truck Corp.

National Institutes of Health
NOTICES
Meetings:
37058 National Eye Institute

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
36997 Bering Sea and Aleutian Islands groundfish

National Park Service
NOTICES
Insignias:
37063 Oregon National Historic Trail
Meetings:
37064 Boston African American National Historic Site

National Science Foundation
NOTICES
37071 Antarctic Conservation Act of 1978; permit applications, etc.
Meetings:
37070 Earth Sciences Advisory Committee
37110 Meetings; Sunshine Act

Nuclear Regulatory Commission
RULES
36983 National security information program; implementation
NOTICES
Applications, etc.:
37098 General Public Utilities Nuclear Corp.
37098 Philadelphia Electric Co.
Meetings:
37097 Reactor Safeguards Advisory Committee
37098 Reactor Safeguards Advisory Committee; time change
Operating licenses, amendments; no significant hazards considerations:
37072 Bi-weekly notices

Occupational Safety and Health Administration
RULES
36992 Health and safety standards flammable and combustible liquids; CFR correction

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
37099 Demand Forecasting Advisory Committee
Power plan amendments:
37099, 37100 Northwest conservation and electric power plan (2 documents)

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
36992 Disputes arbitration; employer withdrawal liability; correction

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
37064 Big Thompson, Windy Gap Projects, CO

Securities and Exchange Commission
NOTICES
Applications, etc.:
37103 Freedom Investment Trust

37110 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
37104 Midwest Stock Exchange, Inc.

State Department
NOTICES
Meetings:
37105 International Telegraph and Telephone Consultative Committee (2 documents)

Statistical Reporting Service
NOTICES
37017 Fresh market vegetable program; proposed change

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
37021 Thailand

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Maritime Administration; National Highway Traffic Safety Administration.

Treasury Department
See Customs Service; Internal Revenue Service.

Veterans Administration
RULES
Board of Veterans Appeals:
36992 Practice rules

Separate Parts in This Issue

Part II
37112 Department of Commerce, International Trade Administration

---

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
Proposed Rules:
309.....36998

10 CFR
25.....36983
95.....36983

12 CFR
611.....36985
Proposed Rules:
701.....36998

14 CFR
39 (4 documents).....36987–36990
Proposed Rules:
71.....37004

15 CFR
376.....37112
379 (2 documents).....37112–37136
399 (2 documents).....37112–37136

19 CFR
Proposed Rules:
101.....37004

21 CFR
452.....36991

26 CFR
Proposed Rules:
1.....37004

29 CFR
1910.....36992
2641.....36992

36 CFR
Proposed Rules:
228.....37005

38 CFR
19.....36992

40 CFR
180.....36994

41 CFR
201–1.....36995
201–2.....36995
201–8.....36995
201–11.....36995
201–16.....36995
201–20.....36995
201–21.....36995
201–23.....36995
201–24.....36995
201–26.....36995
201–30.....36995
210–31.....36995
201–32.....36995
201–38.....36995
201–39.....36995
201–40.....36995

43 CFR
Proposed Rules:
17.....37006

49 CFR
571 (2 documents).....36995, 36996

50 CFR
20.....36996
611.....36997
675.....36997

UMI
985
1 1
SE
ISS
176
VOL
5 0

Federal Register / Vol. 50, No. 111 / Monday, June 10, 1985 / Notices

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral Activities; Environmental Assessment; Nez Perce National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on proposed mineral activities in the Salmon River Breaks Roadless Area on the Nez Perce National Forest. The Area is located in Idaho County, Idaho, about 10 miles southwest of Riggins, Idaho. The Area contains about 49,000 acres. The Forest Service proposes to allow mineral activities in the Area. The EIS will analyze the environmental effects of mineral activities in the Area.

DATES: Comments must be received by July 10, 1985.

ADDRESSES: Send written comments to Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville, Idaho 83530.

FOR FURTHER INFORMATION CONTACT: Ron Mitchell, Forest Planner, Nez Perce National Forest, Route 2, Box 475, Grangeville, Idaho 83530, (208) 983-1950.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to allow mineral activities in the Salmon River Breaks Roadless Area on the Nez Perce National Forest. The Area is located in Idaho County, Idaho, about 10 miles southwest of Riggins, Idaho. The Area contains about 49,000 acres. The Forest Service proposes to allow mineral activities in the Area. The EIS will analyze the environmental effects of mineral activities in the Area.

The Forest Service will prepare an environmental impact statement (EIS) on proposed mineral activities in the Salmon River Breaks Roadless Area on the Nez Perce National Forest. The Area is located in Idaho County, Idaho, about 10 miles southwest of Riggins, Idaho. The Area contains about 49,000 acres. The Forest Service proposes to allow mineral activities in the Area. The EIS will analyze the environmental effects of mineral activities in the Area.

The Forest Service will prepare an environmental impact statement (EIS) on proposed mineral activities in the Salmon River Breaks Roadless Area on the Nez Perce National Forest. The Area is located in Idaho County, Idaho, about 10 miles southwest of Riggins, Idaho. The Area contains about 49,000 acres. The Forest Service proposes to allow mineral activities in the Area. The EIS will analyze the environmental effects of mineral activities in the Area.

Rules and Regulations

Federal Register
Vol. 50, No. 176
Wednesday, September 11, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

Access to and Protection of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate an exception to personnel security background investigation requirements for access to certain Communications Security (COMSEC) information; to provide a procedure to ensure that licensees obtain prior NRC approval to effect any substantive changes to a licensee's security plan; and to adopt several revisions that are strictly ministerial in nature. These actions will revise NRC's regulations to reflect current agency policy and practice and make clarifications to the regulations that past agency experience indicates are necessary.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Policy and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: On March 13, 1985, the NRC published a proposed rule in the **Federal Register** (50 FR 10064) seeking to revise its regulations. No public comments were received as a result of this publication. Therefore, the proposed revisions will be adopted as originally drafted. Specifically, the National Communications Security Committee (NCSC) had granted NRC an exception to personnel security background investigation requirements relating to access by certain NRC licensee individuals to Communications Security (COMSEC) information. This exemption was granted in accordance with Section IV of NCSC–2, "National Policy on Release of Communications Security Information to U.S. Contractors and Other U.S. Nongovernmental Sources," and exempts NRC licensee facility security officers from the requirement of having a full field background investigation, current within five years, as a precondition for access to COMSEC information. All NRC licensee individuals involved currently have and will continue to possess, as a minimum, an NRC-granted "L" access authorization based on a National Agency Check (NAC) background investigation. The COMSEC information to which NRC licensee personnel may need access is limited to Confidential-National Security Information material. This exemption will be limited to fewer than ten NRC licensee and other facilities, and is based, in part, on the level of classification involved (Confidential), the short duration of classification normally experienced, and the lack of impact on other government communications. Therefore, in order to implement this exception, revisions to current NRC regulations are needed. Specifically, the current § 25.15 and § 95.35 state that an NRC "Q" access authorization is required as a precondition for access to COMSEC information. These sections are amended to reflect that an NRC "L" access authorization is sufficient for access to COMSEC information of the level and type specifically referenced by the recent NCSC exemption decision.

In a separate matter, the NRC staff has recognized a need to revise its regulations to better provide for changing security conditions at approved NRC security facilities covered by 10 CFR Part 95. The guidelines will clarify NRC policy by acknowledging that certain actions planned by the licensee at a security facility (e.g., remodeling or renovation of offices, moving NRC interests from one room or building to another) require the advance approval of NRC. A new section is now added to provide a procedure whereby the licensee would seek the advance approval of the NRC regarding any proposed substantive changes to the name, location, security procedures and controls, or floor plan of the security facility. NRC was concerned that the current § 95.15(d), which allows the licensee to make a change in an NRC approved security plan for the safeguarding of National Security Information and/or Restricted Data without prior NRC approval (provided the change did not decrease the effectiveness of the plan), may not be sufficiently precise. Whether or not a change contemplated by a licensee to a security plan decreases the plan's effectiveness is highly subjective. NRC staff has concluded that § 95.15(d) will be deleted in favor of a new § 95.18, which sets forth, in greater detail, the circumstances under which licensees may make changes to the name, location, security procedures and controls, and/or floor plan of the approved security facility. A new § 95.18(a) outlines a procedure whereby the licensee would require advance NRC approval prior to adopting revisions to the minimum security conditions upon which facility approval had originally been granted. A new § 95.18(b) now prescribes in greater detail those changes to security operations not requiring advance NRC approval but requiring prompt notification by the licensee. This revision will better ensure that changing conditions at a security facility, potentially impacting the protection of National Security Information and/or Restricted Data, are brought to the attention of NRC far enough in advance to provide a better opportunity to review and resolve them and avoid a situation which could affect continuing security facility approval.

Finally, NRC staff has identified several revisions that are generally ministerial in nature which should clarify and improve the effectiveness and accuracy of 10 CFR Parts 25 and 95.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject

to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0047.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the analysis may be obtained from Lawrence P. Himmelsbach, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4129.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to National Security Information and/or Restricted Data in connection with a license or application for a license will be impacted by this rule. Only 12 entities (which include five fuel cycle facilities, three transportation companies, one reactor and three other organizations) are currently required to meet the requirements of 10 CFR Parts 25 and 95. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Independent Offices Appropriation Act of 1952 and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 25.5, the definition of "L" access authorization is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a National Agency Check (NAC) or NAC and Inquiries (NACI) conducted by the Office of Personnel Management.

* * * * *

3. In § 25.15, paragraph (b) is revised to read as follows:

§ 25.15 Access permitted under "Q" or "L" access authorization.

* * * * *

(b) An "L" access authorization permits an individual access on a need-to-know basis to Confidential Restricted Data and Secret and Confidential National Security Information other than the categories specifically included in paragraph (a) of this section. In addition, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1985.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

5. In § 95.5, the definitions of "Authorized Classifier," "Infraction" and "L" access authorization are revised to read as follows:

§ 95.5 Definitions.

* * * * *

"Authorized Classifier" means an individual authorized in writing by appropriate authority to classify, declassify or downgrade the classification of information. This term applies to authorized derivative classifiers and authorized original classifiers.

* * * * *

"Infraction" means an act or omission involving failure to comply with NRC security requirements or procedures.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a National Agency Check (NAC) or NAC and Inquiries (NACI) conducted by the Office of Personnel Management.

* * * * *

§ 95.15 [Amended]

6. In § 95.15, paragraph (d) is removed.

7. A new § 95.18 is added to read as follows:

§ 95.18 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee or other person shall obtain prior NRC approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the NRC Director, Division of Security, Office of Administration, Washington, DC 20555, with a copy to the Regional Administrator of the cognizant Regional Office listed in Appendix A of Part 73. The NRC shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior NRC approval include:

(1) A change in the approved facility's classified mail address; or

(2) A temporary or permanent change in the location of the approved facility (e.g., moving or relocating NRC's classified interest from one room or building to another).

(b) A licensee or other person may effect a minor, nonsubstantive change to an NRC approved facility security plan for the safeguarding of National Security Information and/or Restricted Data without receiving prior NRC approval, provided prompt notification of such

minor change is furnished to the addressee noted in paragraph (a) of this section, and the change does not decrease the effectiveness of the plan. Some examples of minor, nonsubstantive changes to the facility security plan include:

(1) The designation/appointment of a new facility security officer; or

(2) A revision to protective personnel patrol routine, provided the new routine continues to meet the minimum requirements of this part.

8. Section 95.19 is revised to read as follows:

§ 95.19 Grant, denial or termination of security facility approval.

The Division of Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization, of the Commission's grant, denial, or termination of security facility approval. This information shall also be furnished to representatives of NRC, NRC licensees, NRC contractors, or other Federal agencies having a need to transmit National Security Information and/or Restricted Data to the licensee or other person.

9. In § 95.21, the heading is revised to read as follows:

§ 95.21 Withdrawal of requests for security facility approval.

* * * * *

10. In § 95.25, the heading is revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

* * * * *

11. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, matter containing National Security Information or Restricted Data must be under the direct control of an authorized individual to preclude physical, audio and visual access by persons who do not have the prescribed access authorization or other written Division of Security disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

12. The heading of § 95.35 and paragraph (a)(1) are revised to read as follows:

§ 95.35 Access to National Security Information and Restricted Data.

(a) * * *

(1)(i) A "Q" access authorization which permits an individual access to (A) Secret and Confidential Restricted Data and (B) Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information, or

(ii) An "L" access authorization which permits an individual access to Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section except that, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

* * * * *

13. IN § 95.41, the heading is revised to read as follows:

§ 95.41 Accountability for Secret matter.

* * * * *

14. In 95.53 the heading and paragraph (b) are revised to read as follows:

§ 95.53 Termination of security facility approval.

* * * * *

(b) In any instance where security facility approval has been terminated based on a determination of the Commission that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the Commission, immediately deliver all classified documents and materials to the Commission along with a certificate of nonpossession of National Security Information and Restricted Data.

15. Section 95.95 is revised to read as follows:

§ 95.55 Continued applicability of the regulations in this part.

The suspension, revocation or other termination of access authorization or the termination of security facility approval shall not relieve any person from compliance with the regulations in this part.

16. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and surveys of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission deems necessary to effect the purposes of the Act, E.O. 12356 and/or NRC rules.

Dated at Bethesda, MD this 30th day of August, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-21740 Filed 9-10-85; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), has promulgated a new regulation, § 611.1145, that sets forth the standards and procedures under which the FCA may direct a transfer of funds and equities between Farm Credit System (System) institutions.

DATES: Effective September 10, 1985

Written comments must be received on or before October 9, 1985.

ADDRESSES: Submit comments in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of the General Counsel, Farm Credit Administration 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4024.

SUPPLEMENTARY INFORMATION: The Farm Credit Act of 1971, as amended (Act), authorizes the FCA to regulate the borrowing, repayment, and transfer of funds and equities between System institutions. The FCA has adopted final regulations setting forth the standards and procedures under which it may direct a transfer of funds or equities between System institutions in the exercise of such power.

The primary source of funding for System banks and associations is debt capital obtained through the sale by the banks of long-term notes, bonds, debentures and other similar obligations, and short-term discount notes (hereinafter referred to collectively as "bonds") in the national capital markets. The joint and several liability of the banks on Systemwide bonds makes the System's financial condition only as strong as the sum of all of its component parts.

The System has used Systemwide bonds and discount notes almost exclusively over the last several years to finance lending activity. Should any bank default on its obligation to repay a

Systemwide bond for which the bank is primarily liable within the meaning of section 4.4(a) of the Act, the volume and price aspects of System funding operations would be very negatively affected. While the Act provides for a method to cure a bond default through a call by the Governor for payment first upon the other banks operating under the same title of the Act, and then upon other System banks for payment, such a default would damage, perhaps irreparably, the System's credibility and viability in the capital markets.

A significant decrease in the volume of funds available or a significant increase in the costs of the funds obtained could prevent System banks and associations from providing adequate levels of credit at competitive rates. The rates that are charged on System bonds are most likely to reflect investor assessments of the System's internal financial condition and the safety and soundness of its bonds relative to alternative investments.

Because of the dependence on the funding mechanism, it is imperative that the System address each district's financial problems swiftly in order to maintain investors' confidence that the System is effectively managing its assets and financial resources and will have no difficulty paying interest or principal on bonds as due. Absent adequate System action, it is imperative that the FCA utilize all of its authority under the Act to cause the System to marshal its resources in order to obviate defaults by System institutions on their financial obligations.

The final regulation sets forth standards and procedures under which the FCA may direct the sharing of resources by System institutions through the transfer of funds and equities to assure satisfaction of their financial responsibilities to each other and to investors. The FCA may direct such transfer between System banks when stock of a bank is impaired, the debt-to-capital ratio of a bank exceeds 20 to 1, a bank will be unable to repay its debt obligations, or a bank is not financially viable under specified criteria. Specific attention should be given to the formula for establishing financial viability.

The four criteria used to determine the financial viability of System institutions were developed by a committee of System financial officers and FCA staff. Criterion (b)(4)(i), the ratio of stock to earned net worth, measures the ability to absorb losses from retained earnings rather than from capital stock. A ratio of stock to earned net worth that exceeds 2 to 1 is a leading indicator that the capital structure of the institution has been seriously weakened. The critical value for this criterion is not applicable to banks for cooperatives because of their unique capital structure. Criterion (b)(4)(ii), relating to the ratio of debt to net worth, also measures the capital strength of the institution. A ratio exceeding 15 to 1 indicates a serious depletion of capital strength. Criterion (b)(4)(iii), relating to the amount of nonearning assets held, is an indicator of the quality of the assets in the institution's portfolio. When the level of nonearning assets reaches 15 percent of total assets, the institution may suffer severe operating losses or be required to charge a noncompetitive lending rate. Criterion (b)(4)(iv), relating to lendable equity, measures the ability of an institution to generate earnings. A negative lendable equity level indicates the institution no longer has the ability to generate operating earnings at competitive lending rates.

The regulation is applicable to System Federal land bank associations (FLBAs) and production credit associations (PCAs), as well as System banks. Associations benefit directly from bond issues in that bonds, issued through the banks, provide virtually the exclusive source of funds for association lending. The ability of a district bank to maintain a level of financial viability adequate to meet its obligations is largely dependent on the continued financial viability of its stockholder associations. The interests of banks and associations are inextricably intertwined so that financial conditions at one level necessarily support financial viability at the other level. The substantial benefits that associations derive from access to funds through their banks carry corresponding responsibilities on those associations to provide underlying financial support at their level to their banks.

Accordingly, paragraph (c) of the regulation provides that the FCA may direct a transfer of funds or equities between FLBAs or between PCAs where necessary to support their district bank, to support one another as determined by applying the criteria set forth in paragraphs (b)(2) and (b)(4) of the regulation to the associations, or to implement a System plan to provide financial assistance to their district bank. The ratio of debt to capital referenced in paragraph (b)(4)(ii) is 9 to 1 as applied to associations.

The regulation provides that the FCA shall establish the amount, timing, direction, repayment, and other terms of assessment necessary to accomplish a transfer, and the FCA may authorize a district bank to accomplish a transfer of funds or equities between associations through debits and credits to the accounts of the bank.

In acting on the regulation, the Federal Board determined that the financial condition of the banks and associations in a number of districts requires that the FCA have fully implemented its powers under the Act to regulate the sharing of resources between System institutions. Thus, the Federal Board found that public notice and publication for comment are not necessary and are contrary to the public interest, although the public will have 30 day to submit written coments to the Agency after the publication of the final regulation. For the same reasons, the Federal Board, acting pursuant to section 5.18(b)(2) of the Act, waived the 30-day period otherwise applicable under subparagraph (b)(1) of that section to final FCA Regulations. In accordance with 12 U.S.C. § 2252(b)(2), the regulation is effective on the date of publication.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organization and functions (Government agencies), Rural areas.

PART 611—ORGANIZATION

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations, is to be revised as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 91–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2251).

2. Subpart H is redesignated as Subpart I and a new Subpart H is added, the table of contents to read as follows:

Subpart H—Rules of Inter-System Fund Transfers

Sec.
611.1145 Inter-System transfer of funds and equities.

Subpart H—Rules for Inter-System Fund Transfers

§ 611.1145 Inter-System transfer of funds and equities.

(a) Section 5.18(11) of the Act authorizes the FCA to regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System, including banks, associations, and service organizations organized under the Act. This section sets forth the circumstances and procedures under which the FCA may direct such a transfer of funds and equities based on its determination with respect to the financial condition of one

or more institutions of the System. For purposes of this section, the term "bond" refers to long-term notes, bonds, debentures, or other similar obligations, or short-term discount notes issued by one or more banks pursuant to section 4.2 of the Act.

(b) The FCA may direct a transfer of funds or equities by one or more banks of the System to another bank of the System where it determines that:

(1) The receiving institution will not be able to make payments of principal or interest on bonds for which it is primarily liable within the meaning of section 4.4(a) of the Act; or

(2) The common or preferred stock, participation certificates, or allocated equities of the receiving institution have a book value less than their par or stated values; or

(3) The total bonds outstanding for which the receiving institution is primarily liable exceed 20 times the combined capital and surplus accounts of the bank; or

(4) Based on application to it of one or more of the following ratios, the receiving institution is not financially viable in that it will not be able to continue to extend new or additional credit or financial assistance to its eligible borrowers:

(i) The ratio of stock to earned net worth (including legal reserve, unallocated and reserved surplus, undistributed earnings, and allowance for losses) exceeds 2 to 1;

(ii) The ratio of the outstanding bonds to capital and surplus exceeds 15 to 1;

(iii) Nonearning assets (any noninterest-bearing assets, including but not limited to cash, nonaccrual loans, net fixed assets, acquired property, accrued interest receivable, and accounts receivable) exceed 15 percent of total assets;

(iv) Lendable net worth (interest-earning assets less interest-bearing liabilities) is zero or less.

(c) The FCA may direct a transfer of funds or equities between two or more Federal land bank associations or two or more production credit associations in district where it determines that such transfer:

(1) Is necessary to provide financial support to the district bank in which those associations are stockholders based on application of the criteria to the bank as set for th in paragraph (b) of this section; or

(2) Is necessary to provide financial support to one or more other like associations in the district based on application of the criteria set forth in paragraphs (b)(2) or (b)(4) of this section to the associations, provided that in applying paragraph (b)(4)(ii) of this section the ratio of outstanding indebtedness to capital and surplus of the receiving associations(s) shall not exceed 9 to 1; or

(3) Is an integral part of a plan that has been adopted by other institutions of the System, and approved by the FCA, under which those institutions will extend financial assistance to the district bank in which those associations are stockholders.

(d) A direction by the FCA for a transfer of funds or equities pursuant to this section shall be signed by the Governor and shall establish the amount, timing, duration, repayment, and other terms of assessments necessary to accomplish such transfer, taking into consideration the financial condition of each institution to be assessed. Where the FCA directs a transfer of funds or equities between associations under paragraph (c)(1) or (c)(2) of this section, it may authorize the district bank in which such associations are stockholders to accomplish the necessary assessments through debits and credits to the accounts of the bank.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-21794 Filed 9-10-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-28; Amdt. 39-5132]

Airworthiness Directives; Grob-Werke GmbH Model G109 Powered Gliders (Serial Nos. 6001 Through 6159 Inclusive) and Model G109B (Serial Nos. 6200 Through 6317 Inclusive) Certificated in Any Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement if necessary, of the main landing gear legs on certain Grob G109 powered gliders. The AD is needed to detect and prevent cracks in the main landing gear legs which could result in failure of the landing gear.

DATES: Effective—September 19, 1985.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective September 19, 1985.

ADDRESSES: The applicable service information may be obtained from: Burkhart Grob of America Incorporated, 1070 Navajo Drive, Bluffton Airport Complex, Bluffton, Ohio 45817.

A copy of the applicable service documents is contained in the Rules Docket, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE-153, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: The FAA has determined that cracks have developed in the region of the main landing gear leg boreholes due to overstressing on hard landings on two Grob G109 Powered Gliders. The cracks led to failure of the landing gear by fatigue. As a result of this failure, Grob-Werke GmbH has issued Technical Information TM 817-19 dated March 18, 1985, which requires inspection and replacement of the main landing gear legs. Luftfahrt Bundesamt (LBA), who has the responsibility and authority to maintain the continuing airworthiness of these powered gliders in the Federal Republic of Germany, has classified Grob-Werke Technical Information TM 817-19 dated March 18, 1985, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected powered gliders. LBA has issued AD 85-132 dated June 12, 1985, which requires owners of certain Grob-Werke G109 and G109B powered gliders to accomplish the provisions of Grob-Werke Technical Information TM 817-19, dated March 18, 1985.

Since this condition is likely to exists on other powered gliders of the same type design, an AD is being issued which requires inspection, and replacement if necessary, of the main landing gear legs on certain Grob G109 and G109B powered gliders.

Since a situation exist that requires the immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves 51 aircraft and will cost approximately $200 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under

Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contracting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Burkhart Grob: Applies to Model G109 Powered Gliders (serial numbers 6001 through 6159 inclusive) and Model G109B Powered Gliders (serial numbers 6200 through 6317 inclusive) certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure of the main landing gear legs, accomplish the following:

(a) Within the next 10 hours time in service, inspect the landing gear legs to determine if they are constructed with boreholes (P/N 109-5000.01) or without boreholes (P/N 109B-5000.01) in accordance with Instruction 1 of Grob-Werke Technical Information TM 817-19, dated March 18, 1985.

(b) If the landing gear is equipped with legs without boreholes no further action is necessary.

(c) If the glider is equipped with landing gear legs with boreholes:

(1) Within the next 10 hours time in service and thereafter at intervals not to exceed 25 hours time in service from the last inspection, inspect the legs for cracks in accordance with Instruction 2 of Grob-Werke Technical Information TM 817-19, dated March 18, 1985. If cracks are found, replace landing gear leg with a serviceable part before further flight.

(2) Exchange landing gear legs with boreholes for landing gear legs without boreholes in accordance with Instruction 4 of Grob-Werke Technical Information TM 817-19, dated March 18, 1985, no later than October 31, 1985.

Note.—Dimensions shown in TM 817-19 are in millimeters.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium 09667-1011, telephone 513.38.30.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, may adjust the compliance time specified in this AD.

Grob-Werke Technical Information TM 817-19 dated March 18, 1985, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Burkhart Grob of America Incorporated, 1070 Navajo Drive, Bluffton Airport Complex, Bluffton, Ohio 45817. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on September 19, 1985.

Issued in Burlington, Massachusetts on August 23, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-21609 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-ANE-27; Amdt. 39-5131]

Airworthiness Directives; Grob-Werke GmbH Model G102 Astir CS Gliders (Serial Nos. 1001 Through 1536 Inclusive) Certificated in Any Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection, and replacement if necessary, of the airbrake locking levers and revision of the flight manual to require an airbrake lever inspection on certain Grob G102 Astir CS Gliders. The AD is needed to prevent failure of the air brake locking levers which could result in asymmetric deployment of the airbrake, an unsafe flight condition.

DATES: Effective—September 19, 1985.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective September 19, 1985.

ADDRESSES: The applicable service information may be obtained from: Burkhart Grob of America Incorporated, 1070 Navajo Drive, Bluffton Airport Complex, Bluffton, Ohio 45817.

A copy of the applicable service documents is contained in the Rules Docket, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE-153, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: The FAA has determined that failure of an airbrake locking lever has occurred due to cracks in one leg of the lever, causing a one sided failure of the airbrake on a Grob Model Astir CS glider. As a result of this failure, Grob-Werke GmbH has issued Technical Information (TM) 306-26 which requires inspection, and replacement if necessary, of the airbrake locking levers and revision of the flight manual to require an airbrake lever inspection. Luftfahrt Bundesamt (LBA), who has the responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has classified Grob-Werke Technical Information TM 306-26 dated March 25, 1985, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected gliders. LBA has issued AD 85-98 Grob dated May 2, 1985, which requires owners of certain Grob-Werke Model Astir gliders to accomplish the provisions of Grob-Werke Technical Information TM 306-26, dated March 25, 1985.

Since this condition is likely to exist or develop on other gliders of the same type design, an AD is being issued which requires accomplishment of the provisions of Grob-Werke Technical Information TM 306-26 on certain Grob G102 Model Astir CS gliders.

Since a situation exists that requires the immediate adoption of this regulation it is found that notice and public procedure herein are impracticable and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves 49 aircraft and will cost approximately $400 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Burkhart Grob: Applies to model G102 Astir CS Gliders (serial numbers 1001 through 1536 inclusive) certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure of the air brake locking levers, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this AD, cut inspection holes in the wing root ribs and inspect the air brake levers (P/Ns 102-4123 and 102-4124) in accordance with Instruction 1 of Grob-Werke Technical Information TM 306-26, dated March 25, 1985.

(b) If solid cast aluminum levers are found, accomplish paragraph (d).

(c) If cast aluminum levers with a centerhole are found, accomplish the following:

(1) Install inspection windows in the wing and replace page 3 and add page 26a to the flight manual in accordance with Instruction 2 of Grob-Werke Technical Information TM 306-26, dated March 25, 1985, no later than March 31, 1986.

(2) Within the next 10 hours time in service after the effective date of this AD and thereafter at intervals not to exceed 10 hours, inspect the airbrake locking levers for cracks in accordance with Instruction 3 of Grob-Werke Technical Information TM 306-26, dated March 25, 1985, until accomplishment of Instruction 4 of Grob-Werke Technical Information TM 306-26, dated March 25, 1985. If cracks are found, replace airbrake locking lever with a serviceable part before further flight.

(d) Replace the cast aluminum airbrake levers with the sheet aluminum airbrake levers in accordance with Instruction 4 of Grob-Werke Technical Information TM 306-26, dated March 25, 1985, no later than 3000 hours time in service.

Note.—Dimensions shown in TM 306-26 are in millimeters.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium 09667-1011, telephone 513.38.30.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office may adjust the compliance time specified in this AD.

Grob-Werke GmbH Technical Information TM 306-26 dated March 25, 1985, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Burkhart Grob of American Incorporated, 1070 Navajo Drive, Bluffton Airport Airport Complex, Bluffton, Ohio 45817. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment become effective on September 19, 1985.

Issued in Burlington, Massachusetts on August 23, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-21611 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-ANE-24; Amdt. 39-5130]

Airworthiness Directives; General Electric Model CJ610-8A, -9, and CF700-2D, -2D-2 Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which imposes a reduced retirement life for certain stage 1 turbine disks on General Electric model CJ610-8A, -9, and CF700-2D, -2D-2 turbine engines. The AD is prompted by marginal disk material fatigue properties which could result in disk fracture.

DATES: Effective—November 15, 1985.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective November 15, 1985.

ADDRESSES: The applicable service bulletins (SBs), may be obtained from the Project Manager, CJ610/CF700, General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910; telephone (617) 594-0100.

A copy of each of the SBs is contained in Rules Docket No. 83-ANE-24 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk E. Gustafson, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7094.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring a reduction in retirement life for certain stage 1 turbine disks on General Electric model CJ610-8A, -9, and CF700-2D, -2D-2 turbine engines was published in the Federal Register on March 1, 1984, (49 FR 7582).

The FAA has determined that stage 1 turbine disks, Part Number (P/N) 5011T7P01 with serial numbers beginning with the letters GATSRM, installed in General Electric model CJ610-8A, -9, and CF700-2D, -2D-2 turbine engines, have reduced cyclic life due to grain size effects on material fatigue properties. Since this condition is likely to exist on engines incorporating these turbine disks, the AD would require removal of these disks from service, in accordance with General Electric Alert SBs (CJ610) A72-142 and (CF700) A72-145 at, or prior to, accumulating 5,000 total cycles.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

Conclusion

The FAA has determined that this regulation only involves 45 engines, the approximate cost to each engine is $23,730 and 9 or less small entities are affected. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

General Electric Company: Applies to General Electric Model CJ610-8A, -9, and CF700-2D-2 turbine engines.

Compliance is required as indicated unless already accomplished.

To prevent failure of the stage 1 turbine disk, P/N 5011T75P01, with serial numbers beginning with the letters GATSRM, accomplish the following:

Remove the disk from service in accordance with General Electric Alert SBs (CJ610) A72-142 or (CF700) A72-145, dated August 30, 1983, at or prior to accumulating 5,000 total cycles.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an alternative means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The General Electric Alert SBs (CJ610) A72-142 and (CF700) A72-145, dated August 30, 1983, described in this directive are incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the SBs from the manufacturer may obtain copies upon request to Project Manager, CJ610/CF700, General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, Rules Docket No. 83-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on November 15, 1985.

Issued in Burlington, Massachusetts, on August 22, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-21610 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-ASW-55; Amdt. 39-5127]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369 A, D, E, H, HE, HM, and HS Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time dye penetrant and tap test inspection as well as repetitive preflight checks of certain tail rotor blades for abrasion strip separation on Hughes Helicopters, Inc., Model 369 A, D, E, H, HE, HM, and HS series helicopters. The AD is prompted by reports of tail rotor blade abrasion strip separation which could result in loss of the tail rotor control and subsequent loss of the helicopter.

DATES: Effective September 19, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Hughes Helicopters, Inc., Centinela Avenue and Teale Street, Culver City, California 90230.

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, telephone (213) 536-6166.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring a one-time dye penetrant and tap test inspection as well as repetitive preflight checks of certain tail rotor blades for abrasion strip separation on certain Hughes Helicopters, Inc., helicopters was published in the **Federal Register** on June 7, 1985 (50 FR 23994).

The proposal was prompted by one accident which occurred as a result of separation of a tail rotor blade abrasion strip during helicopter operation. In that case, loss of the abrasion strip on a Model 369A helicopter tail rotor blade caused rotor system imbalance and was the primary cause for subsequent failure of the tail rotor gearbox. An investigation by the manufacturer, Hughes Helicopters, Inc., has determined that the condition which results in debonding and separation of the abrasion strip may exist or develop on certain tail rotor blades of Model 369 series helicopters. Accordingly, an airworthiness directive is being issued which requires a one-time dye penetrant and tap test inspection and repetitive preflight checks of the abrasion strip bond.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires removal from service of tail rotor blades with abrasion strip debonding on certain Hughes Helicopters, Inc., Model 369 series helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed July 19, 1985. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation only involves 550 helicopters, and it is estimated that the one-time cost of compliance is less than $50,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Hughes Helicopters, Inc., (Hughes Helicopters): Applies to all Model 369 A (OH-6A), 369D, 369E, 369H, 369HE, 369HM, and 369HS series helicopters, certificated in all categories, equipped with Hughes Helicopters Inc., tail rotor blades, Part Numbers (P/N) 369D21613-11, 369D21613-41, 369D21615, 369A1613-7, 369A1613-503, and 421-088.

Compliance is required as indicated, unless already accomplished. To prevent possible loss of tail rotor control, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, perform a one-time dye penetrant and tap

test inspection on the affected tail rotor blades with the following serial numbers (S/N) in accordance with procedures detailed in paragraphs a through l of the "PROCEDURES" section of Part I of Hughes Service Information Notices (SIN) DN–130, EN–19, HN–197, dated November 14, 1984, or an FAA-approved equivalent.

Note.—If desired an alternate tap test tool to the one specified in paragraph h may be used.

Note.—Model 369A (OH–6A) is to comply with Hughes SIN HN–197.

Blade P/N's	Blade S/N's Affected
369D21613–11	All SN's
369D21613–41	All SN's
369D21615	0363 and all prior
369A1613–7	5747 and all prior
369A1613–503	5607 and all prior
421–068	0171 and all prior

(b) Before the first flight of each day after the effective date of this AD, visually check each tail rotor blade abrasion strip for any evidence of bond failure along the entire abrasion strip/airfoil bond line and at the blade tip using the procedure specified in Part II, paragraph a, Hughes S/N's DN–130, EN–19, HN–197, dated November 14, 1984, or an FAA-approved equivalent.

(c) If, during the check of paragraph (b), debonding along the abrasion strip/bond line or blade tip is suspected, inspect the tail rotor blade prior to further flight in accordance with Part II, paragraph b, of Hughes SN's DN–130, EN–19, HN–197 dated November 14, 1984, or an FAA-approved equivalent.

(d) Remove from service all tail rotor blades where void indication or bond separation is noted.

Note.—Discrepant tail rotor blades may be returned to service after being repaired in accordance with FAA-approved data.

(e) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(f) The check required by paragraph (b) of this AD may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

(g) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Hughes Helicopters, Inc., Centinela Avenue and Teale Street, Culver City, California 90230. These documents also may be examined at the Office of the Regional Counsel, FAA, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective September 19, 1985.

Issued in Fort Worth, Texas, on August 20, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85–21608 Filed 9–10–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 85N–0394]

Antibiotic Drugs; Erythromycin Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new strength of erythromycin capsule. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective September 11, 1985; comments, notice of participation, and request for hearing by October 11, 1985; data, information, and analyses to justify a hearing by November 12, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new strength (125 milligrams) of erythromycin capsule. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective September 11, 1985. However, interested persons may, on or before October 11, 1985 submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 11, 1985 a written notice of participation and request for hearing, and (2) on or before November 12, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of

participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics, Macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Part 452 is amended in § 452.110c by revising the second sentence in paragraph (a)(1) and by revising paragraph (b)(2) to read as follows:

§ 452.110c Erythromycin capsules.

(a) * * *

(1) * * * Each capsule contains either 125 milligrams or 250 miligrams of erythromycin. * * *

* * * * *

(b) * * *

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the sample preparation method described in paragraph (d)(1) of that section.

* * * * *

Dated: August 30, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-21634 Filed 9-10-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Safety and Health Standards; Flammable and Combustible Liquids

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 1900–1910, revised as of July 1, 1985, in § 1910.106(b)(2)(iv)(*f*), appearing on page 223, the first paragraph should read as follows:

(*f*) Tanks and pressure vessels storing Class IA liquids shall be equipped with venting devices which shall be normally closed except when venting to pressure or vacuum conditions. Tanks and pressure vessels storing Class IB and IC liquids shall be equipped with venting devices which shall be normally closed except when venting under pressure or vacuum conditions, or with approved flame arresters.

Exemption: * * *

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2641

Definitions; Arbitration of Disputes in Multiemployer Plans

Correction

In FR Doc. 85-20461 beginning on page 34679 in the issue of Tuesday, August 27, 1985, make the following correction:

§ 2641.7 [Corrected]

On page 34685, third column, in § 2641.7(a)(3), second line, "§ 2614.9" should have read "§ 2641.9".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals Regulations; Rules of Practice

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: As a result of recent changes in legislation, the Veterans Administration is amending the Appeals Regulations of the Board of Veterans Appeals to reflect the expansion of the Board's jurisdiction to include questions concerning certain benefits for surviving spouses and children of deceased veterans. The Board of Veterans Appeals Rules of Practice are also being revised to provide for: Informal hearings; requests for opinions from the General Counsel of the Veterans Administration in individual appeals; reconsiderations involving allegations of the use of false or fraudulent evidence to obtain benefits from the Board; and vacating decisions.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach (01C), Special (Legal) Assistant to the Chairman, Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2978).

SUPPLEMENTARY INFORMATION: Proposed amendments to 38 CFR Part 19 were published in the **Federal Register** of April 17, 1985, at pages 15184 to 15186. Interested persons were given 30 days in which to submit comments, suggestions or objections. No comments were received. Minor technical changes have been made in the text.

Pub. L. 97-377 replaced certain benefits to surviving spouses and children of members of the Armed Forces who died on active duty before August 13, 1981, and former members who died as a result of service-connected disability incurred or aggravated before August 13, 1981. These benefits are intended to replace certain Social Security benefits withdrawn by Pub. L. 97-35, (the Omnibus Budget Reconciliation Act of 1981). Pursuant to Pub. L. 97-377, section 156, by Executive Order 12436 of July 29, 1983, the President designated the Veterans Administration as the Agency responsible for administering these benefits. The Veterans Administration is amending § 19.2(b), the regulation listing examples of the subject matter of appeals to the Board of Veterans Appeals, to reflect the Board's expanded jurisdiction to cover questions involving these benefits.

The amendments to §§ 19.157 and 19.176 are intended to formalize, respectively, the traditional practices with respect to informal hearings by the authorized representatives of appellants and the procurement of opinions of the General Counsel on legal questions in individual appeals.

The amendment to § 19.179 is designed to afford appellants notice when opinions of the General Counsel are obtained under amended § 19.176, as is now done in the case of advisory medical opinions.

The amendments to §§ 19.180, 19.185, 19.186, 19.187 and the new § 19.201 are designed to provide a formal procedure for reconsidering decisions based upon the allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant. This procedure is designed to ensure an equitable uniformity in the limited number of cases involved, which are now handled individually under § 19.101(b).

The new § 19.201 is designed to formalize traditional practice in vacating decisions.

The Administrator has certified that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are

defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation therefore is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the impact of these regulations is only upon individual benefit claimants. It will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

The Agency has also determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulations, inasmuch as they will only affect individual claimants seeking Veterans Administration benefits, they will not result in any significant effect on the economy, they will not have any significant impact upon private or governmental costs, and they will not affect business enterprises or otherwise have any adverse effect on the economy.

There is no Catalog of Federal Domestic Assistance number involved.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved September 4, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 19—BOARD OF VETERANS APPEALS

Part 19 of 38 CFR, Board of Veterans Appeals is amended as follows:

1. Section 19.2 is amended by adding an additional subject to the end of the listing contained in that section, to read as follows:

§ 19.2 Subject matter of appeals.

* * * * *

Benefits for surviving spouses and children of deceased veterans under Pub. L. 97–377, section 156. (38 CFR 3.812(d))

2. Section 19.157 is amended by adding a new paragraph (d) to read as follows:

§ 19.157 Rule 57; General.

* * * * *

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative in Washington, DC, may present oral arguments to the Board without personally appearing before the Board of Veterans Appeals hearing panel. These arguments will be recorded and transcribed by Board personnel for subsequent review by the panel members. This procedure will not be construed to satisfy an appellant's request to appear in person. (See 38 U.S.C. 4002)

3. Section 19.176 is amended by revising the title and by adding a new paragraph (c) to read as follows:

§ 19.176 Rule 76; Medical opinions and opinions of the General Counsel.

* * * * *

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Veterans Administration on legal questions involved in the consideration of an appeal. (38 U.S.C. 4004(c))

§ 19.179 [Amended]

4. Section 19.179 is amended by removing the word "medical" from the title.

5. In § 19.180, paragraph (b) is revised to read as follows:

§ 19.180 Rule 80; The decision.

* * * * *

(b) *Disposition of issues.* (1) The decision of the Board will dispose of each issue on appeal by allowance, denial, remand or dismissal, in whole or in part; or 38 U.S.C. 4004(a))

(2) If on reconsideration it is determined that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision of the Board will be vacated and the appeal voided with respect to those benefits. (38 U.S.C. 4004(a))

* * * * *

6. In § 19.185, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 19.185 Rule 85; When reconsideration is accorded.

* * * * *

(b) Upon discovery of new and material evidence in the form of records or reports of the military, naval or air service department concerned or officially corrected service department record; or (38 U.S.C. 4003, 4004(b))

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fradulent evidence submitted by or on behalf of the appellant. (38 U.S.C. 4004(a))

7. In § 19.186, paragraph (b)(1) is revised to read as follows:

§ 10.186 Rule 86; Filing and disposition of a motion for reconsideration.

* * * * *

(b) *Disposition.* * * *

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will be signed by the Chairman and will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion. (38 U.S.C. 4004(a))

* * * * *

8. Section 19.187 and the cross reference following it are revised to read as follows:

§ 19.187 Rule 87; Evidence considered.

(a) *Reconsideration based upon an allegation of obvious error of fact or law or new and material service department records or reports.* Reconsideration of an appellate decision for error shall be limited to review of the evidence of record at the time the decision was entered, but the Board may secure additional medical or legal opinion. Additional evidence, apart from service department records, submitted following the decision being reconsidered is subject to the provisions of Rule 94 (§ 19.194) concerning new and material evidence. (38 U.S.C. 4003, 4009)

(b) *Reconsideration based upon an allegation of false or fraudulent evidence.* Reconsideration of an appellate decision based upon an allegation that an allowance of benefits by the board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant will be limited to a review of the evidence of record at the time the decision was entered and only such additional evidence as it is required, in the Board's judgment, to establish the veracity of the evidence in question. The reconsideration panel will not readjudicate the underlying issue(s). (38 U.S.C. 4004(a))

Cross Reference: When reconsideration is accorded. See Rule 85, § 19.185. Disposition of issues. See Rule 80, § 19.180. Vacating a decision. See Rule 101, § 19.201.

9. The center heading "MISCELLANEOUS" is added directly preceding § 19.200.

10. New § 19.201 is added to read as follows:

§ 19.201 Rule 101; Vacating a decision.

An appellate decision may be vacated by the Board of Veterans Appeals at any time upon request of the appellant or his/her representative or on the Board's own motion.

(a) *Due process.* Where there has been a prejudicial failure to afford the appellant a personal hearing, a statement of the case, or notification of

the right to representation. Where there has been a failure to honor a request for a hearing, and a hearing is subsequently scheduled but the appellant fails to appear, the decision will not be vacated.

(b) *False or fraudulent evidence.* Where it is determined that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issues or issues to which, within the judgment of the Board, the false or fraudulent evidence was material. (38 U.S.C. 4004(a))

Cross Reference. The decision. See Rule 80; § 19.180. When reconsideration is accorded. See Rule 85; § 19.185.

(38 U.S.C. 210(c)(1); Pub. L. 97-377, Sec. 156)

[FR Doc. 85-21674 Filed 9-10-85; 8:45 am]
BILLING CODE 8320-01M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3113/R787; FRL-2894-2]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and the sum total of its metabolites in or on the raw agricultural commodity watercress. The regulation, to establish a maximum permissible level for residues of permethrin in or on watercress, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on September 11, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4E3113/R787], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 31, 1985 (50 FR 30965), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 4E3113 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Florida proposing the establishment of a tolerance for the residues of the insecticide permethrin [(3-phenoxyphenyl)-methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)methanol (3-PBA), calculated as parent, in or on the raw agricultural commodity watercress at 5.0 parts per million.

There were no comments received or requests for referral to an advisory committee in response to the proposed rule.

The data submitted in support of the tolerance were evaluated and previously discussed in a final rule document on permethrin published in the **Federal Register** of October 13, 1982 (47 FR 45008). The pesticide is considered useful for the purpose for which the tolerance is sought.

The Agency has further determined that the tolerance expression for permethrin in 40 CFR 180.378 (b) and (c) should reflect the sum of permethrin and its metabolites, not permethrin and its metabolites calculated as permethrin and is being revised accordingly.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 23, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended by revising the introductory text of paragraphs (b) and (c) and adding and alphabetically inserting the raw agricultural commodity watercress in paragraph (b), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) Tolerances are established for residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)methanol (3-PBA) in or on the following raw agricultural commodities:

Commodities	Parts per million
• • • • •	
Watercress	5.0
• • • • •	

(c) Tolerances are established for residues of permethrin and the sum total of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl(methanol (3-PBA) and 3-phenoxybenzoic acid in or on the following animal commodities.

* * * * *

[FR Doc. 85-21485 Filed 9-10-85; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-8, 201-11, 201-16, 201-20, 201-21, 201-23, 201-24, 201-26, 201-30, 201-31, 201-32, 201-38, 201-39, and 201-40

[FIRMR Amdt. 5]

Extension of the Effective Dates of FIRMR Amendments 2 and 4 Regarding ADP Performance Validation Provisions, Competition in the Acquisition of Information Resources, and Codification of Temporary Regulations

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule; extension of effective date.

SUMMARY: This regulation extends the effective dates of FIRMR Amendments 2 and 4 to October 1, 1985. Delays in the preparation for publication of revised pages for the looseleaf edition of the Federal Information Resources Management Regulation (FIRMR) are the basis for this action. The intended effect is to allow agencies and other users of the FIRMR sufficient time after receipt of the revised pages to implement the changes.

EFFECTIVE DATE: The effective date of Amendments 2 and 4 of the FIRMR is October 1, 1985, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Policy Branch (KMPP), Office of Information Resources, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: 1. Amendment 2—Revision of FIMR ADP Performance Validation Provisions, was published in the **Federal Register** on June 26, 1985 (50 FR 26364) with an effective date of August 26, 1985, but may be observed earlier. Amendment 4—Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Informational Resources and Codification of Temporary Regulation was published on July 1, 1985 (50 FR 27142; Corrections—50 FR 28208, July 11, 1985) with an effective date of August 30, 1985, but may be observed earlier. Amendment 2 provides changed provisions regarding agency performance validation of ADP equipment systems. Amendment 4 provides for the codification of Temporary Regulation 11 provisions modified as the result of agency and other interested party comments. Temporary Regulation 11 provided for the implementation of Public Laws 98-369 and 98-577 regarding competition. Other changes in Amendment 4 codified a number of other temporary regulations without change in policies or procedures.

2. The FIRMR is promulgated in the **Federal Register** and subsequently republished in integrated text form in a looseleaf edition. The looseleaf edition is distributed directly to the users in the form of revised pages which are integrated by the user into his or her desk copy. Because of mechanical problems in the Government Printing Office with the FIRMR data base revision to reflect the amendments changes, printing and distribution of these revised pages has been delayed. Corrective actions have been accomplished. It is important that users have available the changed provisions they are required to implement. Therefore, the effective dates have been revised as indicated. The extension of the effective dates will not significantly impact contractors or offerors or will not have a significant effect beyond agency internal operating procedures.

3. The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

Dated: September 5, 1985.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 85-21636 Filed 9-10-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-04; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 108 to provide an alternate location for front identification lamps on multipurpose passenger vehicles, trucks and buses whose overall width exceeds 80 inches. The rule allows them to be mounted on the top of the cab instead of "as close as practicable to the top of the vehicle." This action completes rulemaking on a petition by the Truck Body and Equipment Association.

EFFECTIVE DATE: October 11, 1985.

ADDRESS: Petitions for reconsideration of the rule should refer to the docket number and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: Paragraph S4.1.1 and Table I of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, requires trucks, multipurpose passenger vehicles, and buses of 80 or more inches overall width to be equipped with a series of three identification lamps mounted on the front and rear of the vehicle. According to Table II of Standard No. 108, this location must be "as close as practicable to the top of the vehicle." The Truck Body and Equipment Association (TBEA) petitioned for an amendment that would allow front identification lamps to be mounted, as an alternative, on the cab. In TBEA's view, safety would not be reduced since the lamps would still perform their function of identifying the presence of large vehicles in the roadway, and clearance lamps would still mark the height and width of the vehicle. It argued that an analogous precedent was found in paragraph S4.3.1.6 which allows clearance lamps to be mounted on the cab of a truck tractor to indicate overall width of the cab rather than the vehicle. To allow identification lamps also to be mounted on the cab will, in TBEA's opinion, reduce manufacturing costs.

A notice of proposed rulemaking on this subject was published on February 22, 1982, and an opportunity afforded for comment (47 FR 7711).

Nine comments were received on the proposal, six of them directly supporting it. The three remaining comments were directed towards an alleged necessity for a general review of requirements for identification lamps. Motor Vehicle Manufacturers Association and American Trucking Association commented that in their view no safety basis existed for evaluating the proposal. Wisconsin Electric Power

Company suggested that the lamps could be eliminated.

The agency did not consider elimination of the identification lamps, convinced that they are needed on larger vehicles to indicate their presence on narrow or congested roads, curves, and during inclement weather, in order to afford other motorists a cue to vehicle size, assisting them in avoiding accidents.

Those supporting the proposal pointed out that tractor-trailers are required to have identification lamps on the truck tractor cab, but not on the trailer, and therefore the cab is an appropriate location for them. Further, here is a potential for a small cost savings. Many chassis-cab manufacturers install identification lamps on the cab. If the body mounted to it is higher than the cab, the final-stage manufacturer must now add an additional set of identification lamps to meet the requirement that they be located "as close as practicable to the top of the vehicle." Implementation of the proposal will relieve the final-stage manufacturer of the necessity of adding identification lamps when they are already on the chassis-cab. This would serve to reduce costs where this manufacturing practice is being followed.

NHTSA has decided to adopt the proposal. In recognition of the fact that many manufacturers may wish to avail themselves of this option on a regular basis, NHTSA is amending Table II to specify that mounting the identification lamps as close as practicable to the top of the cab is an alternate location rather than one which is only an exception to the general rule that such lamps be mounted as close as practicable to the top of the vehicle.

Potential Benefits, Costs and Other Impacts

The primary benefit attributable to implementation of the rule is the slight reduction in the cost of manufacturing which petitioner believes will occur. Because identification lamps are presently required, there will be no increased manufacturing costs connected with this rule. NHTSA has considered the impacts of this rule and has determined that it is neither major within the meaning of E.O. 12291 nor significant under Department of Transportation guidelines regarding regulatory policy and procedure. The rule will have an impact only on those who voluntarily change their lighting systems from one location to another. The impacts are so minimal that preparation of a regulatory evaluation is not warranted. This rule would not have a significant effect on the human environment since neither the weight nor quantity of materials used in the manufacture or installation of the lamps is affected. Further, no impact on safety is anticipated. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Manufacturers of motor vehicles and chassis-cabs, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, those effects would not be significant given the minimal cost reductions associated with the rule.

Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles will be minimally impacted.

Because the rule relieves a restriction and imposes no additional burden on any person, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest. The amendment is effective 30 days after its publication in the Federal Register.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

In consideration of the foregoing, Table II of 49 CFR 571.108 is amended by revising the entry in the "Multipurpose passenger vehicles, trucks and buses" column for item "Identification lamps" as follows:

TABLE II.—LOCATION OF REQUIRED EQUIPMENT

[Multipurpose passenger vehicles, trucks, trailers, and buses, of 80 or more inches overall width]

Item	Location on—	
	Multipurpose passenger vehicles, trucks, and buses	. . .
. . .	. . .	. . .
Identification lamps.	On the front and rear—3 lamps, amber in front, red in rear, as close as practicable to the top of the vehicle, at the same height, as close as practicable to the vertical centerline, with lamp centers spaced not less than 6 inches or more than 12 inches apart. Alternatively, the front lamps may be located as close as practicable to the top of the cab.	. . .
. . .	. . .	. . .

The lawyer and program official principally responsible for this notice are Z. Taylor Vinson and Kevin Cavey, respectively.

Issued on: September 4, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-21642 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-59-M

---

49 CFR Part 571

[Docket No. 74-14; Notice 40]

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Improvement of Seat Belt Assemblies

Correction

In FR Doc. 85-20159 beginning on page 34152 in the issue of Friday, August 23, 1985, make the following corrections:

1. On page 34153, in the third column, in the fifth and seventh lines from the bottom of the page, the paragraph designation should read "S.7.1.1.3".

2. On page 34154, in the first column, in amendatory instruction "reviewed" should read "revised".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations, Indian Territory, and Ceded Lands

Correction

In FR Doc. 85-20726 beginning on page 35762 in the issue of Tuesday, September 3, 1985, make the following corrections:

1. On page 35762, in the first column, the heading should read as set forth above.

§ 20.110 [Corrected]

2. On page 35764, in the first column, in the second line of the first paragraph of § 20.110, insert "special" before "annual".

3. On the same page, in the second column in § 20.110(a)(2)(i), the fourth and fifth lines should read:

Bag and Possession Limits: Daily bag limit 3. Possession limit 6. No season limit.

4. On the same page, in the same column, in § 20.110(a)(3), the paragraph designated "(iiii)" should be designated "(iv)".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 41046-4171]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) amount of sablefish in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area will be achieved on September 4, 1985. He therefore closes all fishing by foreign and U.S. vessels in waters deeper than 200 fathoms (365 meters) in the subarea and declares that [because the TAC has been achieved,] sablefish [is] a prohibited species in the remainder of the subarea. This action is required by regulations governing the groundfish fishery of the Bering Sea and Aleutian Islands area.

DATES: This notice is effective from noon Alaska Daylight Time, September 4, 1985, until midnight Alaska Standard Time, December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act. Implementing rules at 50 CFR 675.20(a) provide for the total allowable catch (TAC) of each target species and the "other species" category to be apportioned among three components of the fishery; domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF). Under § 675.20(a)(7), when the combined catch by foreign and U.S. vessels in the fishery in a management area or applicable subarea reaches the amount of a target species or the "other species" category that is apportioned to the fishery, further fishing by U.S. vessels that involves the taking of that species is prohibited in the management area or applicable subarea for the remainder of the fishing year. Under § 611.93(b)(3)(ii)(A), if the amount of sablefish, turbots, or Pacific cod apportioned to the fishery will be reached, the Secretary will prohibit all foreign harvesting in all or part of the management area until January 1 of the following year.

The TAC for sablefish in the Bering Sea subarea is 2,625 metric tons (mt), of which the DAP is 2,275 mt, JVP 100 mt, and TALFF 250 mt. A directed DAP fishery for sablefish has produced a known landed catch as of August 27, 1985, of 1,703 mt. The JVP catch through August 17, 1985, was 22.9 mt and the foreign catch through August 10, 1985, was 49.2 mt. Based on these known catches and estimates of sablefish caught since the latest report dates, it is projected that the TAC of 2,625 mt will be reached at noon on September 4, 1985.

Historical catch and observer data indicate that sablefish are caught almost exclusively at depths greater than 200 fathoms. Fisheries, both foreign and domestic, for pollock, Pacific cod, yellowfin sole, and other species occur mainly in depths of less than 200 fathoms, where sablefish are not found or are taken in statistically insignificant amounts. Fisheries for some species such as turbots, do operate at depths greater than 200 fathoms and may harvest significant incidental amounts of sablefish.

The Regional Director finds, therefore, that all fishing in the Bering Sea subarea (Areas I, II, and III, north of the Aleutian chain east of 170° W. longitude and north of 55° N. latitude west of 170° W. longitude, see figure 2 of § 611.9) in waters deeper than 200 fathoms involves the taking of sablefish and must be prohibited under the regulations cited above. He further finds that those fisheries operating in depths less than 200 fathoms do not involve the taking of sablefish. Because the sablefish TAC has been achieved, vessels continuing to fish for other species, in waters less than 200 fathoms deep must treat sablefish as a prohibited species; i.e., they must be avoided and cannot be retained.

In accordance with §§ 675.20(a)(7) and 611.93(b)(3)(ii)(A), the Secretary issues this notice of closure prohibiting further fishing in waters more than 200 fathoms (365 meters) deep in the Bering Sea subarea by both U.S. and foreign fishing vessels from noon Alaska Daylight Time (2100 GMT), September 4, 1985, until midnight Alaska Standard Time, December 31, 1985. In the remainder of the Bering Sea subarea, sablefish are to be treated as a prohibited species in accordance with §§ 675.20(c) and 611.13.

Classification

This action is required by 50 CFR Part 675 and § 611.93 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-21685 Filed 9-6-85; 2:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 176
Wednesday, September 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 309

[Docket No. 84-023]

Biological Residues; Rescission of Obsolete Regulatory Provision Concerning Cattle Which Had Been Treated With DES

Correction

In FR Doc. 85-21136, beginning on page 36094, in the issue of Thursday, September 5, 1985, make the following correction:

On page 36095, at the bottom of the second column, in amendatory instruction 3, "§ 209.16(c)" should read "§ 309.16(c)".

BILLING CODE 1505-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board requests public comment on a proposed regulation concerning Federal credit union (FCU) involvement with credit union service organizations (CUSO's). Broadly defined, CUSO's are organizations that are established by or funded by one or more FCU's (with or without the participation of other parties) and that exist to provide services primarily to credit unions and credit union members. The Federal Credit Union Act (12 U.S.C. 1751, et seq.) authorizes FCU involvement with CUSO's, subject to various limitations. This proposed regulation is designed to implement the statutory authority, to eliminate the inconsistencies and ambiguities of the present regulation, and to provide maximum flexibility to FCU's while addressing basic safety and soundness concerns. Major changes from the present regulation include: (1) A restatement and clarification of the statutory limitations; (2) provision of guidance concerning the appropriate organizational structure for CUSO's; (3) an expansion of the permissible services and activities for CUSO's, along with a clarified process for approval of additional activities; (4) express prohibitions against conflict of interest and insider dealing; and (5) provisions to enable FCU's and NCUA to effectively monitor the financial condition of CUSO's.

DATE: Comments must be received on or before November 8, 1985.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 357-1100.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Acting General Counsel, or Hattie Ulan, Staff Attorney, Department of Legal Services, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

A credit union service organization (CUSO) is an organization that is established or funded by one or more credit unions, in some cases with other investors, for the purpose of providing any of various operational and financial services to credit unions or credit union members. Pursuant to the Federal Credit Union (FCU) Act, FCU's may make both loans to and investments in CUSO's. The lending authority (section 107(5)(D) of the FCU Act, 12 U.S.C. 1757(5)(D)) and the investment authority (section 107(7)(I), 12 U.S.C. 1757(7)(I)) each allow for up to one percent of the FCU's paid-in and unimpaired capital and surplus to be placed in CUSO's (for a total possible commitment of 2%).

The only statutory "definition" of a CUSO exists in the form of certain statutory limitations. The lending authority limits FCU's to making loans to organizations ". . . established primarily to serve the needs of member credit unions, and whose business relates to the daily operations of the credit unions they serve." The investment authority limits FCU investments to organizations ". . . providing services associated with the routine operations of credit unions." NCUA has previously stated that these two sections of the FCU Act refer to the same type of entity, and public comment concerning NCUA's CUSO rulemaking activities has supported that position.

The CUSO provisions were added to the FCU Act in 1977. Both sections of the statute require NCUA Board approval of CUSO operations. The Board has chosen to meet this requirement through general regulations rather than a separate review and approval process for each CUSO. NCUA promulgated its first CUSO regulation in 1979. The regulation placed many controls and restrictions on FCU involvement with CUSO's. Among other things, the regulation limited the structure of a CUSO to the corporate form, CUSO's were permitted to offer only a very limited number of specified services, and an application and approval process for the establishment of CUSO's was set out in the regulation. In 1982, NCUA substantially deregulated the CUSO rule. The limitations on structure and the approval process were both removed, and the list of permitted CUSO activities was replaced with authorized categories of activities.

In January of 1985, NCUA determined that a reevaluation of the CUSO rule was in order. The major reasons for the reevaluation were: (1) The ambiguity and lack of guidance provided by the existing regulation concerning key issues of interpretation of the statute; and (2) the existence of significant supervisory problems in a limited number of CUSO's, presenting risks to participating credit unions and the National Credit Union Share Insurance Fund (NCUSIF). Accordingly, at its January, 1985, meeting, the NCUA Board approved a Notice of Proposed Rulemaking on the CUSO regulation. (Section 701.27 of NCUA's Rules and Regulations, 12 CFR 701.27; See 50 FR 4698, February 1, 1985.)

The Notice of Proposed Rulemaking did not set out regulatory language but requested comment on five specific CUSO issues, as well as any other issues of concern to the public with respect to CUSO's. The issues were: (1) Should NCUA provide regulatory guidance concerning the capitalization and organizational structure of CUSO's in order to minimize the risk of loss to participating credit unions and the

NCUSIF? (2) should NCUA either deregulate the permissible services and activities of CUSO's, or, on the other hand, provide more specific guidance on permissible services and activities? (3) do legal considerations require some limits on the permissible customer base of CUSO's? (4) should NCUA prohibit or otherwise regulate "insider dealing" in CUSO's? and (5) should NCUA affirmatively assert examination authority over CUSO's?

Sixty-one commenters responded to the Notice of Proposed Rulemaking. The commenters included 38 FCU's, 6 state-chartered credit unions, 5 CUSO's, 5 state leagues (including one league service center), 2 credit union trade associations, 1 bank trade association, the National Cooperative Bank, 1 state banking department, and 2 individuals.

In light of the importance of the regulation and upon the recommendation of many of the commenters to the January Notice of Proposed Rulemaking, the NCUA Board determined that the next step in the regulatory process should be a proposed rule containing specific regulatory language.

The proposed regulation contains ten subsections. The first four subsections set forth the scope and parameters of the regulation and clarify the investment and loan limitations of the FCU Act. The next five sections address the five substantive issues that were discussed in the January Notice of Proposed Rulemaking, as well as certain additional issues. The last section sets forth a proposed policy with respect to any existing CUSO operations that are inconsistent with the proposed regulation—a one year "phase-in" period would be provided for CUSO's to come into compliance with the regulation if it is made final. The NCUA Board requests comment on all of the issues raised in the proposed regulation.

A section-by-section analysis of the proposed rule follows. Comments received on the January Notice of Proposed Rulemaking are addressed in the analysis.

Section-By-Section Analysis

Proposed § 701.27(a)—Scope

This section states the scope of the regulation. The regulation implements the authority in the FCU Act (sections 107(7)(I) and 107(5)(D)) for FCU's to invest in and make loans to CUSO's. The existing rule does not contain a similar section. The section is added to provide the reader, at the outset, with a simple statement of the purpose of the regulation and a reference to the statutory provisions.

Proposed § 701.27(b)—Investment and Loan Limits

This section explains the monetary (investment and lending) limits on FCU involvement with CUSO's. Section 107(5)(D) allows an FCU to loan up to 1%, in the aggregate, of its paid-in and unimpaired capital and surplus to CUSO's. Section 107(7)(I) allows an FCU to invest a like amount in CUSO's. Section (e) of the current regulation contains a reference to these statutory limits. The information is moved forward in order to improve the organization of the regulation. Also, a definition of paid-in and unimpaired capital and surplus—shares and undivided earnings—is set forth in the proposed regulation and is derived from Artical XVIII, Sections (g) and (h) of the Standard Federal Credit Union Bylaws.

Proposed § 701.27(c)—General Limitation on Purpose of Credit Union Service Organizations

This section addresses the general nonmonetary limits of the statute. There are two major limitations. First, a CUSO must provide services associated with the routine operations of credit unions (see Section 107(7)(I)). Second, a CUSO must exist primarily to meet the needs of its member credit unions (see Section 107(5)(D)).

This Section, as well as the two which precede it, set the stage for the remainder of the regulation, which is designed primarily to accomplish two purposes: (1) To fulfill the Board's responsibility to give meaning and effect to the statutory provisions, and (2) to establish prudential standards ensuring that FCU's that choose to become involved in CUSO's will do so in a safe and sound manner.

Proposed § 701.27(d)—Limited Applicability of Regulation

This section, which is new, is added to clarify that *not all* organizations which provide services to credit unions are subject to CUSO regulation. Only those organizations that a FCU has invested in or made a loan to pursuant to section 107(7)(I) or 107(5)(D) are covered. Organizations that provide services to credit unions for a fee or any other basis, but have not received loans or investments for FCU's are not subject to the regulation, even though they might be called CUSO's or provide services of the type authorized by this regulation. This section makes no substantive change; its purpose is to eliminate any confusion as to applicability of the regulation.

Proposed § 701.27(e)—Structure

The present regulation is silent concerning the appropriate organizational structure for CUSO's. As a result, CUSO's may now be legally structured as proprietorships, partnerships (which FCU's as general or limited partners), joint ventures, or corporations. These different organizational forms provide participating credit union with varying degrees of protection from liability for obligations of the CUSO. Investment in a CUSO as a corporate shareholder or limited partner should, if carried out properly, protect the FCU by limiting its potential liability to the amount of its investment. Other forms of organization may, however, expose FCU's to unlimited contract and tort liability, raising safety and soundness concerns both for individual FCU's and the NCUSIF. Further, although the FCU Act does not contain limits on the organizational form of CUSO's, it does, as discussed above, limit the *amount* of an FCU's investments in and loans to CUSO's. If an FCU were exposed to unlimited liability through investments in CUSO's, the statutory limits would have little meaning. For these reasons, in the January Notice of Proposed Rulemaking, the Board requested comment on whether investments in CUSO's should be limited to those structures that effectively minimize the risk of liability to participating FCU's.

The vast majority of commenters were in favor of a limitation on CUSO structure, citing the reasons stated above. Accordingly, the proposed rule requires that CUSO's be organized either as corporations, or as limited partnerships with FCU's participating only as limited partners. Also, the proposed rule clarifies that CUSO's may be established or funded by a single FCU, by more than one FCU, or by an FCU(s) with other parties. An organization formed without FCU involvement would become subject to the regulation if an FCU subsequently makes a loan to or invests in the organization.

Limiting CUSO's to the corporate and limited partnership forms will not provide an absolute guarantee against liability on the part of participating FCU's Case law establishes that courts will "pierce the corporate veil" and hold one corporate entity liable for the debts of another if equity dictates such a result. The courts have also treated limited partners as general partners (unlimited liability) under certain circumstances. In its January Notice, the Board requested comment on whether it

should provide any further guidance, by regulation or otherwise, on this issue.

The commenters agreed that there is a need for FCU's to consider the issue, and to organize and operate CUSO's in a manner that minimizes the risk of losing the protection of limited liability. Most commenters suggested that the regulation not set out specific requirements, but that some type of general guidance be given.

The Board agrees that specific requirements should not be set out in the regulation, since this is an area that may differ according to the common law of the various jurisdictions and the needs of different types of CUSO's. FCU's should be advised, however, of the factors that may lead to increased liability. The courts have looked to the following factors (list is exemplary only) in piercing the corporate veil: inadequate capitalization; lack of separate corporate identity (e.g., same office space, similar corporate names); common board of directors and employees; control of one corporation over another; and lack of separate books and records. The primary consideration in partnership cases is participation in the control of the business. If limited partners assume active control, they may lose their limited liability.

The proposed regulation contains general guidelines concerning avoidance of unlimited liability, and requires that FCU's participating in CUSO's obtain legal advice on this subject in order to ensure compliance with any laws peculiar to their jurisdiction.

Another issue raised in the proposal was whether there is a need for a distinction in the treatment of FCU investments in CUSO's and loans to CUSO's. The issue was raised because the risk of a court piercing the corporate veil and imposing additional liability generally applies only to investors (stockholders or owners). A lender is at risk for no more than the amount of its loan to the CUSO. Therefore, any regulatory limits on capital and structure need not apply to FCU loans to CUSO's. Most commenters noted, however, that formation and capitalization of a CUSO will normally require investments by some credit unions and thus a distinction between investments and loans would serve little or no purpose. The Board agrees and has made no such distinction in the proposed regulation.

Proposed Section 701.27(f)—Customer Base

CUSO customer base, that is, whom a CUSO may serve, is in effect limited by section 107(5)(D) of the FCU Act. This Section requires that a CUSO be "established primarily to serve the needs of its member credit unions. . . ." NCUA has interpreted this to include services both to member credit unions and to the individual members of the credit unions. Thus by statute, a CUSO must serve *primarily* its participating (investing and lending) credit unions and their members—service to other organizations and individuals could be permitted as long as this test were met.

The present regulation is silent on this subject, and practice has, as a result, varied from CUSO to CUSO—some have openly served the general public. This seems difficult to reconcile with the "primarily" requirement of the statute and with the limited membership requirements of credit unions in general.

The January Notice of Proposed Rulemaking requested comment on whether the regulation should provide clarification with respect to the appropriate customer base for CUSO's. The proposal set out three possible options: (1) Credit unions, other participating institutions and their members or customers; (2) credit union members generally, irrespective of credit union affiliation with the CUSO; and (3) incidential services to the public as long as the primary purpose is to serve credit unions, other participating institutions and their members or customers. The customer-base issue did not generate a lot of comment. For the most part, commenters only stated their preferred option. At least six commenters believed that a CUSO should be able to serve the general public, without limitation.

The proposed regulation simply incorporates the statutory limitation by requiring that CUSO's serve "primarily" affiliated credit unions and their members (§ 701.27(f)). This should help to remove the confusion under the present regulation concerning customer base. The Board considered defining the term "primarliy" as a certain percentage of business or percentage of customers served, but concluded that such a test would be arbitrary. The wording of § 701.27(f) provides notice of the statutory requirement and will enable NCUA to deal with any clear abuses.

Proposed § 701.27(g)—Services and Activities

The present regulation sets forth four general categories of activities that a CUSO may perform. For two of the categories—credit union operational functions and family financial services—the regulation includes a nonexclusive list of examples of activities. Also, services not within one of the four categories may be permitted as determined by the NCUA Board. (See § 701.27(b)(1)–(5) of NCUA Regulations.) To date, the NCUA Board has not ruled on any such services.

The present rule does not specify what process is followed for CUSO activities that may fall within one of the four general categories, but that are not specifically listed in the regulation. Some FCU's have sought NCUA staff approval for CUSO activities while others have obtained advice from private counsel or relied on their own interpretation of the regulation. This has resulted in inconsistencies in current CUSO operations. Also, in recent months there has been an increase in the number of questions received by NCUA concerning the permissible scope of CUSO activities. Examples include discount brokerage, real estate agencies, travel agencies, marketing of consumer goods, and participation in sale-and-leaseback arrangements. NCUA is concerned that this may lead to a new layer of regulation under the guise of staff interpretation .

The Notice of Proposed Rulemaking indicated that NCUA would like to eliminate inconsistencies and at the same time avoid a cumbersome review and approval process of permissible CUSO activities. The Notice suggested one course would be elimination of any listing of permissible CUSO activities, with each FCU or group of FCU's determining for themselves what activities their CUSO would perform. Under this approach, which was referred to as the self-determination approach in the proposal, FCU's would be required to determine that any CUSO activities are related to the FCU's "daily operations" and "associated with their routine operations"—the relevant limitations of section 107(5)(D) and 107(7)(I). Under this approach, permissible CUSO activities could vary, depending on the routine operations of the FCU's participating in the CUSO. Also, NUCA would retain the authority, on a case-by-case basis, in connection with the performance of its examination and supervision functions, to question whether the activities of a particular CUSO were consistent with the statutory limitations. The NCUA Board requested comment on whether the self-determination approach was workable and how the statutory guidelines should be incorporated into the regulation. For those who believed the approach would be unacceptable, the Board requested comments on why and specific recommendations as to alternative approaches.

Commenters' reactions to the "self-determination" suggestion were mixed. At least eight commenters in favor of self-determination said that this area

should be totally deregulated—CUSO's should be able to perform any activity that their member credit unions desire. These commenters argued further that NCUA should waive any right to a review of CUSO activities. This would seem to have the effect of a regulatory repeal of the statutory limitations on CUSO's, however, and thus is not considered feasible.

Several other commenters stated that deregulation of activities could work, especially if adequate safeguards were placed on CUSO structure. Most of these commenters agreed that NCUA should maintain some type of control over FCU involvement with CUSO activities, including NCUA's right to review CUSO activities after the fact.

Many commenters, including the two national credit union trade associations, were opposed to the "self-determination" approach as described in the proposal. NCUA review after the fact was criticized as being unfair to FCU's once they had invested time and resources in their CUSO's. The concept was also criticized in that different FCU's would be treated differently with respect to the type of CUSO activities in which they could become involved. Most of the commenters who did not favor self-determination suggested that a comprehensive list of permissible CUSO activities appear in the CUSO regulation, and that NCUA establish a specific approval process for those activities not on the list.

It was also suggested that the legislative history of the CUSO authority can be viewed as requiring this. House Report 95–23, in commenting on the CUSO provision enacted by Public Law 95–22, states: "Each 'leeway' investment is subject to the approval of the [NCUA Board] or [its] delegate, unless and until the issuance of rules and regulations provides a list of approved organizations or classes of organizations."

In light of the comments and the problems with self-determination, the NCUA Board has decided that an expanded, comprehensive list, with a more specific approval process for unlisted activities, is the best method of addressing CUSO service and activities. Permissible activities are categorized in two groups in the proposal: operational services (services provided to, or on behalf of, participating credit unions) and financial services (services provided, as appropriate, to either participating credit unions or their members). These categories are set forth at § 701.27(g)(1) and (2) of the proposed regulation. The services and activities from the current regulations are included. Discount brokerage service, which has previously been "approved" by interpretation of NCUA staff, is added to the list. In addition, certain other services which the NCUA determined to be "grey area" activities, including provision of vehicle warranty programs and real estate agency services have been added to the list. These "grey area" activities are those that do not clearly fall within one of the four general categories of activities of the current regulations. Comment is requested on all listed activities and on whether any additional services or activities should be added to the list.

The activities of sale-and-leaseback with affiliated credit unions and participation in purchase, sale and leasing of real property with affiliated credit unions were considered for inclusion in the list of permissible activities. The Board has determined that, although these two activities may, under certain circumstances, be acceptable for CUSO's to enter into with affiliated FCU's, they do not belong on a list of *ongoing* CUSO services or activities. Such real property transactions can be considered a matter of general business operation. In this connection, section 107(4) of the FCU Act (12 U.S.C. 1757(4)) authorizes an FCU to "purchase, hold and dispose of property necessary or incidental to its operations." FCU's should be advised, however, that, when engaging in a sale-and-leaseback or other real property transactions with a CUSO, they must (1) Follow generally accepted accounting principles (see discussion under § 701.27(i) below), (2) comply with NCUA's fixed asset regulation (see § 701.36 of NCUA regulations), and (3) comply with NCUA Interpretive Ruling and Policy Statement 81–7 concerning sale-and-leaseback arrangements.

It should also be noted that CUSO's will be subject to various state laws when they provide certain services and activities (e.g., insurance agency, real estate agency, and trust services). NCUA's regulation of FCU involvement with CUSO's is not intended to preempt any requirements that the state may impose on a CUSO providing any of the listed activities. Section 701.27(g)(3) of the proposal clarifies this point.

Section 701.27(g)(4) of the proposal provides that any services or activities not listed in (g)(1) or (2) must be submitted to NCUA for approval. Most of the commenters who addressed the issue of NCU approval of unlisted activities suggested that the most equitable method of handling a new approval is to make it available to all CUSO's, i.e., to add it to the list. The Board agrees. Normally, the first step in this process, required by section 553 of the Federal Administrative Procedure Act (5 U.S.C. 553), will be to publish the new activity for notice and comment. Section 701.27(g)(4) reflects a commitment to take this or other appropriate action on any proposed new activity within 60 days after receipt by NCUA.

Section 701.27(g)(5) of the proposal restates restrictions contained in section 107(7)(I) of the Act against use of the CUSO authority by a FCU to gain control of another financial institution or to invest in an insurance company, trade association, liquidity facility, or similar organization. Although there is no provision similar to this one in the current regulation, the provision makes no substantive change. It merely sets forth the restrictions of section 107(7)(I) in order to help avoid any oversight by FCU's and CUSO's.

Proposed § 701.27(h)—Insider Dealing

The present regulation does not address insider dealing between FCU's and CUSO's, although the preamble to the final rule contained a discussion of the issue. The preamble stated that FCU officials and employees could receive compensation for services rendered to the CUSO, but compensation that was tied to the volume of CUSO business generated by the official's or employee's credit union may be viewed as a misappropriation of the credit unions' corporate opportunity (see 47 FR 30463, July 14, 1982).

As stated in the January Notice, there are at least two reasons for questioning whether express regulatory guidance in this area may now be appropriate. First, the decision not to regulate was based at least in part on the notion that isolated problems could be addressed by NCUA as "unsafe and unsound practices" using the Agency's statutory enforcement powers. Recent court decisions, however, have restricted other financial regulators from using this approach by holding that a practice is unsafe and unsound only if it actually threatens the financial viability of the institution (see, *Gulf Federal Savings and Loan Association* v. *FHLBB*, 651 F.2d 259 (5th Cir. 1981)). It is for this reason that express regulatory restrictions on insider dealing were recently added to NCUA's lending and investment regulations. Second, NCUA has encountered a limited number cases where insider dealings in CUSO's have caused substantial losses in the CUSO, contributing to severe supervisory problems or even insolvency of the FCU. A common theme in these cases is that one or more management officials of the credit union bring about the formation of

a CUSO in the interest of their personal financial gain rather than in the interest of providing economical services to the credit union and its members.

Comment was requested on how the problem of insider dealing should be handled, given NCUA's concerns. A clear majority of the commenters favored an express prohibition against insider dealing. The primary reason given for such a prohibition was that CUSO's should not exist as a means of personal gain for FCU officials. One commenter suggested that compensation to a CUSO official who is also an FCU director may be used as a circumvention of the prohibition against compensation to directors in the FCU Act. (See section 111(c) of FCU Act, 12 U.S.C. 1761(c).) Several commenters suggested that a total restriction against insider dealing was not warranted. They suggested that incentive programs and bonus plans as well as salaries should be available to all of those working for the CUSO. These commenters did suggest that full disclosure be made to the credit union and that gifts and kickbacks to FCU officials should be prohibited.

NCUA believes that a broad prohibition against insider dealing may best serve the interest of FCU's and ultimately of the NCUSIF. Therefore proposed § 701.27(h) prohibits any FCU official or employee or any of their immediate families from receiving any type of payment of compensation from an affiliated CUSO. The limited exceptions to this rule which may be appropriate, e.g., where an FCU employee spends part of his or her time working for the CUSO, can be handled by having the CUSO reimburse the FCU directly. Nonetheless, if commenters believe that there should be additional exceptions to this prohibition, the Board welcomes such comment along with an explanation of both who the exception is warranted and how it would not present a conflict to interest for the official or employee.

Proposed § 701.27(i)—Accounting Procedures; Access to Information

In its January Notice, the Board requested comment on whether the regulation should require that FCU's follow generally accepted accounting principles (GAAP) in their involvement with CUSO's. There is no similar requirement under the current CUSO regulation, but § 702.3 NCUA's Regulations (12 CFR § 702.3) requires full and fair disclosure by FCU's in general with respect to their accounting practices and books and records. Full and fair disclosure is met by following either the accounting methods set forth in the *Accounting Manual for Federal Credit Unions* on other methods consistent with GAAP. There has been concern, on the part of both NCUA staff and the independent auditors of the NCUSIF, that FCU's have in some cases not adhered to GAAP in recording their CUSO arrangements. NCUA Regional staff, through internal comments, has reported several CUSO's that have not maintained current financial statements or other adequate business records.

Most of the commenters agreed that FCU involvement with CUSO's should be explicitly subject to GAAP. Even those commenters who did not favor a limitation on CUSO structure were in favor of the application of GAAP to FCU involvement with CUSO's and to a CUSO's own bookkeeping.

In light of these concerns, the proposed rule would require (1) That FCU's follow GAAP in their dealings with CUSO's; (2) that FCU's obtain an annual CPA audit and quarterly financial statements from their CUSO's; and (3) that CUSO's agree in writing with participating FCU's to follow GAAP. These requirements should not impose additional burdens on FCU's and CUSO's that are already following sound business and accounting practices.

It should be noted that GAAP requires that entities (FCU's) that control a fifty percent or greater financial interest in another company (e.g. a CUSO) must file consolidated financial statements with their subsidiary. For FCU's that do not control more than a fifty percent interest but have sufficient control to influence the operation or financial decisions of a CUSO, the equity method of accounting is recommended. In both cases (consolidated financial statements and the equity method), intercompany transactions should be eliminated. This should satisfy the concern of NCUA and others that FCU's and CUSO's provide an accurate statement of their financial position.

In its January Notice, comment was requested on whether NCUA should reserve both express examination authority over CUSO's and the right to assess a fee for any such examination. Although many commenters favored examination and fee authority, others objected that it would represent an unnecessary intrusion by NCUA into the affairs of an organization not directly regulated by NCUA. The proposal represents a compromise position: CUSO's would be required to agree to make their books and records available for NCUA inspection, but the authority of NCUA to impose a fee for such inspection would be dropped. As noted in the January Notice, NCUA does not have the time or resources, or the need, to conduct regular examinations of CUSO's. The Board's concern is with individual cases that may threaten the safety and soundness of FCU's and the NCUSIF.

Proposed § 701.27(j) —Preexisting Credit Union Service Organizations

The Board recognizes that some existing CUSO operations may be inconsistent with the proposed new rule, if and when it is made final. For example, based on the proposal, an existing CUSO structured as a general partnership and employing a director or employee of an affiliated FCU as its manager is structured legally and is legally compensating its manager. Both of these aspects of the CUSO's operations are inconsistent, however, with the proposed new rule. Section (g) of the proposal would address this by allowing a one year "phase-in" period, i.e., within one year after the effective date of the new rule either the CUSO's operation would have to come into compliance with the new rule or all participating FCU's would have to divest their interests in the CUSO.

Regulatory Procedures

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million dollars in assets). According to information available to the NCUA, less than 300 FCU's are involved in credit union service organizatioins. Further, this proposed rule is largely a clarification and edification of the current rule. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The only collection of information requirements in the proposed rule are that a credit union service organization "agree in writing" with its affiliated FCU to follow GAAP and allow NCUA access to its books and records. The requirements are found in § 701.27(i)(3) and (4). These collection of information requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments and recommendations regarding the information collection requirements of this proposed rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building,

Room 3208, Washington, D.C. 20503. Attn: Robert Neal.

List of Subjects in 12 CFR Part 701

Credit unions, Credit union service organizations.

By the National Credit Union Administration Board on September 5, 1985.

Rosemary Brady,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1757, 12 U.S.C. 1766, 12 U.S.C. 1789.

2. It is proposed that § 701.27 be revised to read as follows:

§ 701.27 Credit union service organizations

(a) *Scope.* This regulation implements sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)), which authorize Federal credit unions to invest in and make loans to credit union service organizations.

(b) *Investment and loan limits.* Section 107(7)(I) of the Act authorizes a Federal credit union to invest in credit union service organizations in amounts not exceeding, in the aggregate, 1% of the credit union's paid-in and unimpaired capital and surplus (shares and undivided earnings); section 107(5)(D) authorizes a Federal credit union to make loans to such organizations in additional amounts not exceeding, in the aggregate, 1% of its paid-in and unimpaired capital and surplus.

(c) *General limitations on purpose of Credit Union Service Organizations.* Sections 107(7)(I) and 107(5)(D) impose certain general limitations on credit union service organization operations. Included are the requirements of section 107(7)(I), that a credit union service organization provide services associated with the routine operations of credit unions, and section 107(7)(D), that a credit union service organization exist primarily to meet the needs of its member credt unions. This regulation implements the statutory provisions by addressing various issues, including the structure of credit union service organizations, their customer base, and the range of services and activities that they may provide. The regulation also establishes basic prudential standards for Federal credit union involvement with credit union service organizations, through provisions concerning insider dealing, accounting practices and NCUA access to books and records.

(d) *Limited applicability of regulation.* This regulation applies only in cases where one or more Federal credit unions have invested in or made loans to an organization pursuant to section 107(7)(I) or 107(5)(D). Any other organization is not subject to this regulation, regardless of its name or purpose.

(e)*/ Funding and structure.* A credit union service organization may receive investments or loans from a single Federal credit union, more than one credit union, or a credit union or credit unions along with other parties. A credit union service organization must be structured as either a corporation or a limited partnership. Federal credit unions may only participate as limited partners in a credit union service organization structured as a limited partnership. These structural requirements are designed to limit a Federal credit union's potential liability to the amount of its investment in and loans to the credit union service organization. Structure alone, however, will not completely protect the credit union. A credit union service organization established in the corporate form must be adequately capitalized and operated as a separate entity. In the case of a limited partnership, the Federal credit union limited partners must not engage in activities (e.g., control, management, decisionmaking) that would cause the limited partnership to be treated as a general partnership. Federal credit unions must obtain legal advice as to whether credit union service organizations are operated in a manner that meets the goal of limited liability.

(f) *Customer base.* Credit union service organizations must primarily serve affiliated credit unions (those which have either invested in or made loans to the credit union service organization) and the membership of such credit unions.

(g) *Permissible services and activities.*— (1) *Operational services.* A credit union service organization may perform any of the following operational services and activities: credit card and debit card services; ATM services; EFT services; accounting services; data processing; sale or lease of computer hardware and software; management and personnel training and support; payment item processing; locater services; marketing services; debt collection services; credit analysis; loan servicing and coin and currency services.

(2) *Financial services.* A credit union service organization may perform any of the following financial services and activities: financial planning and counselling; retirement counselling; investment counselling; discount brokerage services; estate planning; income tax preparation, developing and administering IRA, Keogh, deferred compensation, and other personnel benefit plans; trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; real estate agency services; agent for sale of insurance; personal property leasing; and provision of vehicle warranty programs.

(3) *State and local law.* A credit union service organization must comply with applicable state and local laws when engaging in activities listed in paragraphs (g) (1) or (2) of this section.

(4) *NCUA Approval of Other Services.* Any service or activity which is not authorized in paragraphs(g) (1) or (2) of these section must receive NCUA Board approval before a credit union service organization may offer the service or activity. Any request for NCUA Board approval of a new service or activity should include a full explanation of the service or activity and how that service or activity is associated with routine credit union operations. The request should be submitted to the appropriate NCUA Regional Office. The request will be treated as a petition to amend paragraphs(g) (1) or (2) of this section, and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

(5) *Statutory prohibitions.* Pursuant to section 107(7)(I) of the Act, a Federal credit union may not acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, or other similar organization.

(h) *Insider dealing.* Individuals who serve as officials of, or are employed by, a Federal credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from any credit union service organization affiliated with their Federal credit union. For purposes of this section, "official" means any director or committee member, and "immediate family member" means a spouse or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual. An "affiliated" credit union service organization is one which a Federal credit union invests in or loans to.

(i) *Accounting procedures; access to information.*—(1) *Federal credit union*

accounting. Federal credit unions must follow generally accepted principles (GAAP) in their involvement with credit union service organizations.

(2) *Audits and financial statements.* Federal credit unions must obtain, for any credit union service organization for which the credit union has an outstanding loan or investment, a CPA audit on at least an annual basis and financial statements (balance sheet and income statement) on at least a quarterly basis.

(3) *Credit union service organization accounting.* A credit union service organization must agree in writing, with its participating Federal credit unions, the follow GAAP.

(4) *NCUA access to credit union service organization books and records.* A credit union service organization must agree in writing, with its participating Federal credit unions, to provide the NCUA Board of its representative with complete access to any books and records of the credit union service organization as deemed necessary by the Board in carrying out its responsibilities under the Federal Credit Union Act.

(j) *Preexisting credit union service organizations.* Any credit union service organization that was in existence prior to the effective date of this regulation and that was legally operating in a manner that, although inconsistent with this regulation, was permitted under the previous NCUA regulation, may continue such operation until (date equalling one year from effective date of new regulation). This paragraph (§ 701.27(j)) expires on (1 day later).

[FR Doc. 85-21677 Filed 9-10-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-26]

Proposed Alteration and Establishment of VOR Federal Airways; California

Correction

In FR Doc. 85-18334 beginning on page 31384 in the issue of Friday, August 2, 1985, make the following corrections:

On page 31385, first column, in "V-230", second line insert "a S" after the word "including".

In "V-87", fourth line, "220°" should read "229°" and "Aslinas" should read "Salinas".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization; Chicago, IL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a notice which proposed to amend the Customs Regulations by slightly extending the geographical limits of the port of Chicago, Illinois. After analysis of the comments received in response to the notice and further review of the matter, Customs has determined that there is no need to extend the port limits.

DATE: Withdrawal effective September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman , Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), the port of Chicago, Illinois, is listed in the Chicago, Illinois, Customs District in the North Central Region. Customs has been requested to extend the eastern boundary of the port so that Michiana Airport, located in South Bend, Indiana, would be within 35 miles of the port limit thereby permitting consideration of its planned request for a foreign-trade zone.

Accordingly, by a document published in the **Federal Register** on February 11, 1985 (50 FR 5628), it was proposed to expand the existing port limits by slightly extending the eastern boundary to include Interstate 80 from its intersection with Indiana Route 49 to its intersection with Indiana Highway 421 in La Porte County, Indiana. Five comments were received in response to the notice.

Action—Withdrawal of Proposal

Based upon analysis of the comments received, and upon further review of the proposal, Customs has determined that the extended Chicago port limits are not needed. Michiana Regional Airport will receive consideration of its request for a foreign-trade zone regardless of the geographical limits of the port of Chicago. Accordingly, the notice published in the **Federal Register** on February 11, 1985 (50 FR 5628), is withdrawn.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Dated: September 4, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-21684 Filed 9-10-85; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[LR-238-81]

Investment Tax Credit for Certain Rehabilitation Expenditures; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to an investment tax credit for rehabilitation expenditures incurred in connection with the rehabilitation of a qualified rehabilitated building.

DATES: The public hearing will be held on Friday, October 11, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, September 27, 1985.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-238-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 or telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 46, 48, and 191 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, June 28, 1985 (50 FR 26794).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, September 27, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-21689 Filed 9-10-85; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Miscellaneous Minerals Provisions; Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: Misty Fjords and Admiralty Island Monuments were established by the Alaska National Interest Lands Conservation Act on December 2, 1980, for the purpose of protecting objects of ecological, cultural, Geological, historical, prehistorical, and scientific interest. Section 503(f)(2)(A) of the Act provides that the holders of valid mining claims within the Monuments may conduct mineral activities in accordance with regulations promulgated by the Secretary of Agriculture to ensure that the mineral activities are compatible, to the maximum extent feasible, with the purpose for which the Monuments were established. The proposed rule establishes the procedures the Forest Service would use in meeting the standard of section 503(f)(2)(A) of the Act.

DATE: Comments must be received on or before November 12, 1985.

ADDRESS: Comments or questions on the proposed rule may be addressed to: R. Max Peterson, Chief (2800), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry G. Stumpf, Minerals and Geology Management Staff, (703) 235-8011.

SUPPLEMENTARY INFORMATION: The lands within the Misty Fjords and Admiralty Island National Monuments were withdrawn from mineral entry on December 1, 1978, by Presidential Proclamations 4611 and 4623 and on December 2, 1980, by the Alaska National Interest Lands Conservation Act (Section 503(f)(1) (94 Stat. 2400). However, the Act provided for the evaluation and development of valid mining claims within the Monuments. In order for a claim to be valid, the claimant must demonstrate that a discovery of a valuable mineral deposit (within he meaning of the United States mining laws) was made within the boundaries of the claim. Therefore, the proposed rule can apply only to core claims (those patented or valid as of November 30, 1978) and to those unperfected claims on which a valuable mineral discovery was made after November 30, 1978, as defined by sections 504(a)(2) and 504(e)(1), respectively, of the Act, the proposed rule requires an identification of the resources that the Monuments were established to protect. In addition, the proposed rule establishes guidelines to assist Forest officers in determining whether proposed mineral activities are compatible with the protection of the identified Monument resources. The proposed rule also provides guidance to Forest officers in determining whether mitigation measures are feasible, that is, whether the measures will successfully reduce adverse environmental impacts of mineral activities on the identified resources without jeopardizing the economic viability of the overall project.

Regulatory Impact

The proposed rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that this regulation is not a major rule. The regulation will not have an effect on the economy of $100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. The regulation is essentially procedural, and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Controlling Paperwork Burdens on the Public

The proposed rule contains no information collection requirements not already required by existing regulations (36 CFR Part 228 Subpart A) for approval of mineral activities in the National Forest System. Those requirements were approved by the Office of Management and Budget through September 30, 1986, and assigned Clearance Number 0596-0022.

Small Entity Impact

In accordance with the Regulatory Flexibility Act of 1981 (5 U.S.C. 601 et seq.), the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities. It imposes no new paperwork or recordkeeping requirements on small entities. The information collection and reporting requirements to which a small entity would be subject under the proposed rule have not been increased and have been kept to the minimum necessary for the protection of the surface resources of the Misty Fjords and Admiralty Island National Monuments. These requirements are well within the capability of small entities involved in extracting minerals; therefore, the proposed rule should not affect the competitive position of small entities in relation to large entities, nor should it affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact Statement

The Forest Service has determined that the proposed rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required (42 U.S.C. 4321 et seq.).

List of Subjects in 36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mineral resources, Mines, National forests, National monuments, Surety bonds.

For reasons set out in the preamble, it is proposed to amend 36 CFR Chapter II as follows:

1. Revise the authority citation for Part 228 to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400, unless otherwise noted.

2. Add new § 228.80, Operations within Misty Fjords and Admiralty Island National Monuments, Alaska, to Subpart D of Part 228 to read as follows:

PART 228—MINERALS

Subpart D—Miscellaneous Minerals Provisions

§ 228.80 Operations within Misty Fjords and Admiralty Island National Monuments, Alaska.

(a) Mineral activities on valid mining claims in the Misty Fjords and Admiralty Island National Monuments must be conducted in accordance with the regulations in Subpart A of this Part and with the provisions of this section.

(b) Prior to approving plans of operations, consideration must be given to:

(1) The resources of ecological, cultural, geological, historical, prehistorical, and scientific interest likely to be affected by the proposed operations, including access; and

(2) The potential adverse impacts on the identified resource values resulting from the proposed operations.

(c) Plans of operations will be approved if, in the judgment of the authorized officer, proposed operations are compatible, to the maximum extent feasible, with the protection of the resource values identified pursuant to paragraph (b)(1) of this section.

(1) Operations will be deemed compatible if the plans of operations include, where appropriate, feasible measures for the prevention or mitigation of potential adverse impacts on the identified resource values.

(2) In determining the feasibility of measures to protect the identified resource values, the authorized officer shall consider the long term economic viability of the operation, the use of the best available technology and equipment, and both the effectiveness and practicality of the measures in preventing or mitigating adverse impacts.

Dated: August 26, 1985.

Douglas W. MacCleery,

Deputy Assistant Secretary for National Resources and Environment.

[FR Doc. 85-21737 Filed 9-10-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

Enforcement of Nondiscrimination on the Basis of Handicap in Department of the Interior Programs

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of the Interior.

DATES: To be assured of consideration, comments must be in writing and must be received on or before November 12, 1985. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Director, Office for Equal Opportunity, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Comments received will be available for public inspection in the Office for Equal Opportunity, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240 from 8:00 a.m. to 4:00 p.m., Monday through Friday. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph A. Canedo, Office for Equal Opportuntiy, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-3669 (voice) or (202) 343-4331 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of the Interior. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2962), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized)

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 comp., p. 127) since it affects only the programs and activities conducted by the Department, and its employment practices, and will not have more than a $100 million gross annual effect on the economy nor result in major increases in costs or prices for consumers, individual industries, Federal, state, or local governments, agencies, or geographic regions. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities since it affects only the programs and activities conducted by the Department, and its employment practices. It is not, therefore, subject to the Regulatory Flexibility Act. (5 U.S.C. 601-612).

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has stewardship over most of the nation's lands which are accessible to the public. For example, the National Park Service comprises 334 areas and over 79 million acres. Approximately 250 million persons visit our nation's national parks annually. Over the past few years an increasingly higher number of persons who are disabled have visited our parks. The same applies to the National Fish and Wildlife Refuges and Hatcheries administered by the U.S. Fish and Wildlife Service, the public lands and waters under the jurisdiction of the Bureau of Land Management and the Bureau of Reclamation, the program of the Bureau of Indian Affairs, and other components of the Department of the Interior.

The Department is totally committed to the concept of integration of disabled persons into its diverse programs in the national parks, historical sites, fish and wildlife refuges and hatcheries, public lands and waters, Bureau of Indian Affairs activities, recreational opportunities, and other Departmental programs.

Section-by-Section Analysis

Section 17.501 Purpose.

Section 17.501 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 17.502 Application.

The proposed regulation applies to all programs or activities conducted by the agency. The proposed regulation does not apply to facilities located outside the limits of the United States, nor to programs and activities conducted outside the United States.

Section 17.503 Definitions.

Agency. For purposes of this regulation "agency" means the Department of the Interior.

Auxiliary aids. "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 17.560(a)(1), they may also be necessary to meet other requirements of the regulation.

Complete complaint. The definition of "Complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 17.570(d)).

Facility. The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the terms "rolling stock or other conveyances, outdoor recreation and program spaces, park sites (and) developed sites" have been added as they are appropriate to the Department's programs and activities. The phrase, "or interest in such property," is deleted, because the term "facility", as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 17.549, 17.550, and 17.570(f).

Handicapped person. The definition of "handicapped person" is identical to the definition appearing in the Department's section 504 regulation for federally assisted programs (43 CFR 17.202(j)). This provides for constituency in the Department's application of section 504.

Historic preservation programs, Historic properties, and *substantial impairment.* These terms are defined in order to aid in the interpretation of § 17.550(a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

Qualified handicapped person. The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (*see, e.g.,* 45 CFR 84.3(k)(2)). It provides that a handicapped person is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency.

In other words, a handicapped person is qualified, if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979). In that case, the Court rules that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature.

The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the

modifications do not fundamentally alter the nature of the program.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504". This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 17.510 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 17.111 Notice.

Section 17.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 17.530 General prohibitions against discrimination.

Section 17.530 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 17.530 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 17.530. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The latter sections on program accessibility (§§ 17.549–17–551) and communications (§ 17.560) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board solely on the basis of handicap.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 17.530 (b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 17.503).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped person may be limited to those handicapped persons.

Section 17.540 Employment.

Section 17.540 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 17.570(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 17.549 Program accessibility: Discrimination prohibited.

Section 17.549 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 17.550 and 17.551.

Section 17.550 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58) with certain modifications. Thus, § 17.550 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§17.550(a)(1)). However, § 17.550, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 17.550 (a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generaly codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in section 17.560(e). This povision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504.

See, e.g., Dopico v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy fiancial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(3) is an effort to conform the agency's regualtion implmenting section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped pesons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

Compliance with § 17.550 (a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 17.550 (a) would fundamentally alter the nature

of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 17.570.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Section 17.550(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against handicapped persons on the other, § 17.550(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 17.550(b)(2) requires the agency to give priority to methods of providing program accessibility that permit handicapped persons to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons § 17.530(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 17.550(b)(2).

The special limitation on program accessibility set forth in § 17.550(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* definition of "historic preservation program," § 17.503). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Section 17.550(b)(3) has been added to clearly establish that this regulation applies to recreation programs conducted by the Department.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 17.551 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 17.551 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (General Services Administration regulations). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possible inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 17.550.

Section 17.560 Communications.

Section 17.560 requires the agency to take appropriate steps to ensure effective communications with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 17.560(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 17.560(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 17.560(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 17.550(a)(3)). Unless not required by § 17.560(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

Compliance with § 17.560 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administration burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of providing that compliance with § 17.560 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person

who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 17.570.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons invovled in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 17.560(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 17.511 is effectively communicated to handicapped persons.

Section 17.570 Compliance procedures.

Paragraph (a) specifies that paragraph (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 17.570(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 17.570(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 17.570(g)). One appeal within the agency shall be provided (§17.570(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 17.570(i)).

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may be delegated.

List of Subjects in 43 CFR Part 17

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, National Register of Historic Places, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Title 43 Code of Federal Regulations Part 17 is proposed to be amended as follows:

Dated: July 9, 1985.

Donald P. Hodel,

Secretary of the Interior.

Part 17 is amended by adding Subpart E to read as follows:

PART 17—[AMENDED]

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

Sec.

17.501 Purpose.
17.502 Application.
17.503 Definitions.
17.504–17.509 [Reserved]
17.510 Self-evaluation.
17.511 Notice.
17.512–17.529 [Reserved]
17.530 General prohibitions against discrimination.
17.531–17.539 [Reserved]
17.540 Employment.
17.541–18.548 [Reserved]
17.549 Program accessibility: Discrimination prohibited.
17.550 Program accessibility: Existing facilities.
17.551 Program accessibility: New construction and alterations.
17.552–17.559 [Reserved]
17.560 Communications
17.561–17.569 [Reserved]
17.570 Compliance procedures.
17.571–17.999 [Reserved]

Authority: 29 U.S.C. 794.

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

§ 17.501 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 17.502 Application.

This part applies to all programs or activities conducted by the agency within the limits of the United States, and all agency facilities located within the limits of the United States.

§ 17.503 Definitions.

For purpose of this part, the term—

Agency means Department of the Interior.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking

skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complaint or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any peson who has a physical, mental, or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical, mental, or sensory impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical, mental or sensory impairment" includes, but is not limited to, such disease and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental, physical, or sensory impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical, mental, or sensory impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical, mental, or sensory impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency programs or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from that program or activity.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 17.504–17.509 [Reserved]

§ 17.510 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not may not or meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 17.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this regulation.

§§ 17.512–17.529 [Reserved]

§ 17.530 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or

other arrangements, on the bases of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 17.531–17.539 [Reserved]

§ 17.540 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 17.541–17.548 [Reserved]

§ 17.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 17.550 and 17.551, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.550 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial or administrative burdens, the agency has the burden of proving that compliance with § 17.550(a) would result in such an alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible locations, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 17.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 17.550(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(3) *Recreation programs.* In meeting the requirements of § 17.550(a) in recreation programs, the agency shall provide that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. When it is not reasonable to alter natural and physical features, accessibility may be achieved by alternative methods as noted in § 17.550(b)(1).

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 17.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607 (General Services Administration Regulation) apply to buildings covered by this section.

§§ 17.552–17.559 [Reserved]

§ 17.560 Communications.

* * * * *

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 17.561–17.569 [Reserved]

§ 17.570 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director of the Office for Equal Opportunity.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the agency of the letter required by § 17.570(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by Under Secretary.

(j) The agency shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraph (g) and (j) of this section may be extended for an individual case when the Under Secretary determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 17.571–17.999 [Reserved]

[FR Doc. 85–21667 Filed 9–10–85; 8:45 am]
BILLING CODE 4310–10–M

Notices

Federal Register
Vol. 50, No. 176
Wednesday, September 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice

SUMMARY: Notice is hereby given in accordance with § 800.6(b)(3) of the Council's regulations (36 CFR Part 800), that on September 18, 1985, at 7:00 p.m., a public information meeting will be held at the Georgia Power Company Building, Kilowatt Room, 120 South Jefferson Street, Milledgeville, Georgia.

The purpose of the meeting is to provide an opportunity for representatives of national, State and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed construction of the Dogwood Retirement Housing project in West Central Milledgeville, Georgia, in an area bounded by West Hancock Street, East Columbia Street, West Green Street and South Jackson Street. It has been determined that this project will adversely effect the Milledgeville Historic District, a property eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on the National Register eligible district, and alternate courses of action that could avoid, mitigate, or minimize adverse effects on this district.

The following is a summary of the agenda of the meeting:

7:00 pm—Call To Order
7:00 pm—Introduction—Statement of Purpose—HUD
7:15 pm—Introduction—Statement of Purpose—ACHP
7:30 pm—Project Presentation—HUD & Bradfield Asssociates
8:00 pm—Resource Presentation—Georgia State Historic Preservation Officer
8:15 pm—Break
8:15 pm—Reconvene for Public Comment
9:30 pm—Adjourn

Testimony will be limited to 5 minutes per person. All who wish to give spoken testimony must register to speak. Speakers will be heard in the order of registration.

Written statements and other exhibits may be submitted to Mr. William Miller, Director, Housing Development Division, Department of Housing and Urban Development, 75 Spring Street, SW, Atlanta, Georgia, 30303 or Mr. Robert R. Garvey, Jr., Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC 20004, within fifteen (15) days after the date of the meeting for inclusion in the official record.

Additional information regarding the purpose of the meeting is available from the Executive Director, Advisory Council on Historic Preservation, telephone number (202) 786–0505, Attention: Eleni M. Silverman.

Dated September 6, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–21726 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 6, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Quarterly Report of manufacture and sales of snuff, smoking, and chewing tobacco
TB–39
Quarterly
Businesses or other for-profit; Small businesses or organizations; 200 responses; 100 hours; not applicable under 3504(h)
Larry T. Crabtree (202) 447–3489
• Agricultural Marketing Service
Tobacco Stocks Report
TB–26
Quarterly
Businesses or other for-profit; Small businesses or organizations; 800 responses; 800 hours; not applicable under 3504(h)
Larry T. Crabtree (202) 447–3489
• Agricultural Marketing Service
Almonds Grown in California Marketing Order 981
Almond Board of California forms
Recordkeeping; On occasion; Monthly; Annually
Businesses or other for-profit; 3,998 responses; 1,362 hours; not applicable under 3504(h)
Frank Grasberger (202) 447–5053
• Agricultural Marketing Service
Walnuts Grown in California Marketing Order No. 984
Walnut Marketing Board report forms

Recordkeeping; On occasion; Monthly; Annually
Businesses or other for-profit; 16,266 responses; 33,445 hours; not applicable under 3504(h)
Frank Grasberger (202) 447–5053
• Farmers Home Administration
Application for Loan and Guarantee (B&I)
FmHA 449–1
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 300 responses; 21,000 hours; not applicable under 3504(h)
Dwight Carmon (202) 475–4103
• Food and Nutrition Service
Destination Data Sheet
FNS 7
On occasion
State or local governments; 3,395 responses; 1,696 hours; not applicable under 3504(h)
Bessie Bradford (703) 756–3660

Revision

• Agricultural Cooperative Service
Annual Survey of Farmer Cooperatives
ACS–13, ACS–14A, B, C
Annually; Once per cooperative
Business or other for-profit; Small businesses or organizations; 6,060 responses; 1,745 hours; not applicable under 3504(h)
Ralph M. Richardson (202) 447–8955

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 85–21730 Filed 9–10–85; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

State of Minnesota Soil and Water Conservation Board Cost-Share Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Minnesota Soil and Water Conservation Board Cost-Share Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. This determination, which is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Department of Agriculture, Soil and Water Conservation Board, 90 West Plato, St. Paul, Minnesota 55107; or Gordell A. Brown, Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program, as described in section 126(a)(10), are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One of the State conservation programs is the Minnesota Soil and Water Conservation Board Cost-Share Program (MSWCC–SP) authorized by Minnesota Statutes (Minn. Stat. Chap. 40 and Minn. Rules Part 8400). This legislation authorizes the Soil and Water Conservation Board to administer the cost-share program.

The MSWCC–SP is a State funded incentive program designed for the purpose of saving the soil and protecting or improving the waters of the State through erosion control and pollution abatement practices. Cost-share payments are made to eligible landowners under the program for the satisfactory installation of soil erosion or sediment control and pollution abatement practices. These payments are available only to those landowners or operators located in Soil and Water Conservation Districts which have agreed to locally administer the program. In order to be eligible for assistance under the program, a landowner must be a cooperator with the District. Technical assistance is provided through the Districts to landowners.

Eligible cost-sharing practices are as follows:

(a) Sediment Retention, Erosion or Water Control Structures
(b) Stripcropping systems
(c) Terrace Systems
(d) Diversions
(e) Stormwater Control Systems
(f) Field Windbreaks
(g) Animal Waste Control Systems
(h) Permanent Vegetative Cover on Critical Areas

The authorizing legislation, rules and regulations, and operating procedures for the Soil and Water Conservation Board Cost-Share Program of the State of Minnesota have been carefully examined by the agencies of the U.S. Department of Agriculture using the criteria set forth in 7 CFR Part 14. The Department has concluded that the payments made under this cost-share program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures or protecting or restoring the environment. A "Minnesota Soil and Water Conservation Board Cost-Share Program Record of Decision" "Primary Purpose determination for Federal Tax Purpose" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS. Requests may be sent to the address listed above.

Determination

Therefore, it has been determined in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and of 7 CFR Part 14 that all cost-share payments made after September 30, 1979 under the Minnesota Soil and Water Conservation Board Cost-Share Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment.

Signed at Washington, DC on September 6, 1985.

John R. Block,
Secretary of Agriculture.
[FR Doc. 85–21727 Filed 9–10–85; 8:45 am]
BILLING CODE 3410–05–M

Statistical Reporting Service

Proposed Change in Fresh Market Vegetable Program

The current program of fresh market vegetable publications, which includes

celery, sweet corn, honeydew melons, lettuce, tomatoes, broccoli, carrots, and cauliflower is as follows:

January—Forecast of acreage for harvest January through March.

April—Forecast of acreage for harvest April through June and projected production during the January through June period. The projected production is based on average yield from the previous 3 years times the forecast of acres to be harvested.

July—Forecast of acreage for harvest July through August and preliminary acres planted, harvested, yield and production for the January through June period.

October—Forecast of acres for harvest October through December and projected production during the June through December period. The projected production is calculated using the same procedure as described for the April report.

Vegetable Summaries—Summaries are issued in December and June and contain acreage, yield, production and value estimates for the January through June and July through December periods.

The Statistical Reporting Service proposes the following modification in the Fresh Market Vegetable Program:

(1) Change all 3-month forecasts of acreage to be harvested to seasonal estimates (winter, spring, summer, and fall) of acreage for harvest and publish harvest dates with the forecasts. This will permit data to be collected and published for the same time periods generally used by industry.

(2) Discontinue all in-season estimates and projections of yield and production.

(3) Annual estimates of acreage planted and harvested and yield, production, and value will be made at the end of the year. These annual estimates will be published in the Vegetable Summary in December and again in June when final data are available.

The estimates program for asparagus, onions, and strawberries has been independent of the programs described above and will remain unchanged.

If the new program is adopted, it would become effective on December 1, 1985. Comments from data users regarding these proposed changes are invited.

Done at Washington, D.C. this 29th day of August 1985.

Raymond R. Hancock,

Acting Administrator.

[FR Doc. 85-21670 Filed 9-10-85; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-501]

Postponement of Final Antidumping Duty Determination: Photo Albums and Filler Pages From Korea

AGENCY: International Trade Administration, Import Admininstration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in this investigation that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). However, we have determined to postpone our final determination as to whether sales of photo albums and filler pages from Korea have occurred at less than fair value until not later than October 23, 1985.

EFFECTIVE DATE: September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-1777.

SUPPLEMENTARY INFORMATION: On February 19, 1985, we published a notice in the **Federal Register** (50 FR 7624) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of photo albums and filler pages from Korea were being, or were likely to be, sold at less than fair value. On March 18, 1985, the International Trade Commission determined that there is a reasonable indication that imports of photo albums and filler pages from Korea are materially injuring a U.S. industry. On July 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 28829). The notice stated that if the investigation proceeded normally, we would make our final determination by September 23, 1985.

On July 26, 1985, counsel for Korea Stationary Industry Cooperative Association, the respondents in this case, requested that we extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days aftrer the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Korea Stationary Industry Cooperative Association is qualified to make such a request since it accounts for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

In the companion Hong Kong investigation, respondents requested an extension of only 30 days. Counsel for petitioners has stated that an extension of 60 days in the case could jeopardize the chances of the ITC cumulating imports. We agree with counsel that the possibility constitutes a compelling reason for limiting the extension in this case to 30 days. Accordingly, the Department will issue a final determination in this case not later than October 23, 1985.

The public hearing is also being postponed until 1:00 p.m. on September 26, 1985, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 23, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85-21710 Filed 9-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-009]

Carbon Steel Wire Rod From Spain; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On June 4, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from Spain and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering all of the comments received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all carbon steel wire rod exported on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: .

Background

On June 4, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 23487) the preliminary results of its changed circumstances administrative review of the countervailing duty order on carbon steel wire rod from Spain (49 FR 28089, July 10, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received written comments from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., the Petitioners, Forjas Alavesas, S.A., an exporter, and Merex Corp. and Hansa-World Cargo Service, Inc., importers.

Comment 1: The petitioners had requested that their letter of May 9, 1985, concerning the revocation of the countervailing duty order, be published with our June 4, 1985, notice of preliminary results and tentative determination to revoke.

Department's Position: We are appending the letter to this notice. (see Appendix).

Comment 2: The petitioners claim that our notice of preliminary results does not adequately describe the conditions of their support for the revocation of the countervailing duty order. In that notice, we stated that the petitioners had advised the Department that they (the petitioners) were "no longer interested in" the countervailing duty order. However, petitioners maintain they have no objection to the initiation of proceedings to review and revoke the countervailing duty order only so long as the conditions in the May 9, 1985, letter are satisfied.

Department's Position: Our understanding is that the petitioners are no longer interested, *i.e.*, have no objection to our review and revocation of the countervailing duty order as long as the conditions of the letter are met. We are meeting the conditions of the letter.

Comment 3: The petitioners claim that there is a discrepancy in the wording between our notice of preliminary results and the terms of the Arrangement Concerning Trade in Steel Products between Spain and the United States ("the Arrangement"). The Arrangement provides that *shipments* of Spanish carbon steel wire rod on or after October 1, 1984, will be subject to export ceilings. Our notice provided that "the revocation will apply to all carbon steel wire rod *entered, or withdrawn from warehouse,* for consumption on or after October 1, 1984."

The petitioners argue that we should adhere to the Arrangement by making the revocation applicable only to shipments made on or after October 1, 1984.

Department's Position: Since the petitioners' lack of interest in continuation of the countervailing duty order is the basis of the revocation, and since the petitioners have unambiguously stated that their lack of interest in continuation applies only to shipments made on or after October 1, 1984, we are revoking this order with respect to shipments of Spanish wire rod exported on or after October 1, 1984. Exports prior to October 1, 1984, that are entered, or withdrawn from warehouse, for consumption after that date continue to be subject to the countervailing duty order.

If any interested party chooses to request, in accordance with the interim final/final rule (50 FR 32556, August 13, 1985), an administrative review for the period immediately preceding October 1, 1984, we will consider arguments that the revocation should affect exports (shipments) prior to October 1 that were entered after October 1.

Comment 4: Hansa argues that the revocation should be effective February 24, 1984, the publication date of the preliminary affirmative countervailing duty determination (49 FR 6962) and the date on which liquidation was suspended, rather than on October 1, 1984. Hansa states its belief that the Arrangement was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries. *See also* Comment 3.

Comment 5: All parties submitting comments requested that the Department conduct an administrative review of the period prior to revocation.

Department's Position: The Department published on August 13, 1985 (50 FR 32556), an interim-final/final rule itemizing when interested parties may request reviews.

Final Results of the Review and Revocation

After review of the comments received, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on carbon steel wire rod from Spain and that the order should be revoked on this basis.

Therefore, we are revoking the order on carbon steel wire rod from Spain effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of carbon steel wire rod from Spain which were exported prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and exported before October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and

§§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: September 4, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

Appendix

May 9, 1985.

Re Outstanding Countervailing Duty and Antidumping Orders Concerning Wire Rod from Spain.

Mr. Alan F. Holmer,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 3850, Washington, D.C. 20230

Dear Mr. Holmer: Paragraph 2(a)(2) of the Arrangement Concerning Trade in certain Steel Products Between Spain and the United States (the "Arrangement") which was confirmed as of January 18, 1985, requires the United States to initiate the legal process to terminate those antidumping and countervailing duty orders described in Appendix A to the Arrangement. The Appendix A orders include, but are not limited to, those resulting from:

—Antidumping petitions filed on November 23, 1983, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

—Countervailing duty petitions filed on November 23, 1983, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

On behalf of companies that filed those petitions (hereinafter the "Petitioners"), you are hereby notified that, based on the undertaking of Spain to limit its annual exports of wire rod to the United States to 1.01 percent of U.S. apparent domestic consumption for the duration of the Arrangement, and in reliance on the other understandings expressed herein, the Petitioners will not object to the initiation of legal process to terminate the antidumping and countervailing duty orders resulting from the above described petitions. Nor will they object during such process to the Department's proceedings provided they have assurance that the Spanish Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning wire rod. Petitioners also understand that the United States does not plan to agree to any modifications of the Arrangement that would affect the Spanish obligations concerning wire rod during the Arrangement term.

Petitioners do not intend to file petitions [as specified in paragraph 2(a)(3) of the Arrangement] seeking import relief with respect to wire rod from Spain during the period of the Spanish Arrangement provided that Arrangement proves to be an effective alternative to the results of unfair trade cases as defined by the remedial provisions (offsetting unfair trade practices) of the orders that will be terminated. To that end, Petitioners expressly do not waive any statutory rights to file such petitions as they may determine nor do they waive their right to take such other steps as may be provided by law.

It is Petitioners' understanding that the Arrangement with Spain is a "bilateral arrangement" within the meaning of Section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to Section 805(a) of said Act. Pursuant to those provisions and the requirements and terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of wire rod from Spain that (i) is not accompanied by an export certificate and (ii) is not issued consistent with the quantitative limitations specifically applicable to Spain as defined by the Arrangement.

We request that this letter be published together with the **Federal Register** notice of the initiation of the process required by paragraph 2(a)(2) of the Arrangement. Petitioners will assume that the understandings contained herein are valid and, unless informed otherwise, will undertake to furnish the Department with such documentation as necessary to implement their expression of no objection to the initiation of the referenced legal process and its conclusion.

Respectfully submitted,

Charles Owen Verrill, Jr., Esq.,

Robert E. Nielsen, Esq.,

Wiley & Rein, 1776 K Street, NW., Washington, D.C. 20006, (202) 429-7000.

Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., Raritan River Steel Co.

David E. Birenbaum, Esq.,

Alan G. Kashdan, Esq.,

Fried, Frank, Harris, Shriver & Jacobson (a partnership including professional corporations) *600 New Hampshire Ave., NW., Washington, D.C 20037, (202) 342-3500.*

Counsel for Petitioner: Atlantic Steel Co.

[FR Doc. 85-21692 Filed 9-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-044]

Chains and Parts Thereof of Iron or Steel From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission began an investigation and determined that revocation of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after June 21, 1982, will be liquidated without regard to countervailing duties.

EFFECTIVE DATE: September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On January 24, 1978, the Treasury Department published in the **Federal Register** a countervailing duty order on chains and parts thereof, of iron or steel, from Spain (43 FR 3258).

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Government of Spain had requested an injury determination for this order under aection 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On March 26, 1985, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, by reason of imports of chains and parts thereof, of iron or steel, from Spain if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning chains and parts thereof, of iron or steel, from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: September 5, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration

[FR Doc. 85-21691 Filed 9-10-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50842-5042]

National Voluntary Laboratory Accreditation Program; Metals Testing Inquiry

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for comments on need for establishing a laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program (LAP) under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated August 20, 1985, the Defense Industrial Supply Center (DISC) requests NBS to establish a LAP to accredit laboratories that test metals. A copy of the request letter is appended to this notice. Announcement of this letter and of the NBS request for comments with respect to the need for this LAP is being made under § 7.13(d) of the referenced procedures.

ADDRESS: Persons desiring to comment on the need for such a LAP are invited to submit their comments in writing on or before November 12, 1985, to James Nicolo, Chief, Testing and Evaluation Branch, Defense Industrial Supply Center, Philadelphia, PA 19111 (215-697-3000). A copy of such comments should be sent to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A 603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Peter S. Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A 531, Gaithersburg, MD 20899; phone (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Procedure Following Receipt of Comments

After the 60-day comment period, DISC will evaluate all comments pertaining to the need for the proposed LAP. Upon completion of that evaluation and further consultation with NBS, interested persons (those who submit comments or request to be placed on the NVLAP mailing list) will be notified of the decision by DISC and NBS whether to proceed with the development of this LAP.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: September 6, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

August 20, 1985

Appendix

Dr. Ernest Ambler,
Director, National Bureau of Standards, Gaithersburg, MD 20899

Dear Dr. Ambler: In accordance with § 7.13 of Title 15 of the Code of Federal Regulations, the Defense Industrial Supply Center (DISC) requests that you establish a Laboratory Accreditation Program (LAP) under the National Voluntary Laboratory Accreditation Program (NVLAP) to accredit laboratories that test metals. The authority for making such a request and determining the need for a LAP, are based on the vast amount of both bulk and finished metal products purchased by DISC. It is estimated that our annual expenditures for procuring metal products of all types exceeds ½ billion dollars. In addition to the large dollar investments we make for metal products, it is equally important to recognize that many of the products involved are used in critical applications with respect to both the safety and well-being of our servicemen as well as national defense.

Laboratories are to be accredited under this proposed LAP for those test methods identified in the appendix to this letter. Any suggestions from others to include additional metals test methods will be considered.

Need for a LAP

Benefits to the Public Interest. Using a LAP administered by the National Bureau of Standards would provide benefits to DISC and to the public as a whole. The Defense Industrial Supply Center procures large quantities of metals and metal products which need to be tested to ensure that the government is receiving fair value for the dollar. DISC also wants to ensure the credibility of test data used for contract decisions and possible litigation against future suppliers to meet contract specifications, which has been very costly for all parties involved and has impaired defense preparedness.

As far as benefits to the public, testing could remain in the private sector rather than be taken over by government testing facilities and extra resources would not have to be expended if reliable sources of test data were identified by this LAP. Another benefit would be a reduction in the variability among laboratories having differing interpretations of several test methods which increases the likelihood of disparate results. Periodic on-site assessments and proficiency testing conducted under the LAP will identify and correct misinterpretations thus providing more consistent testing.

National Need. There are currently no credible national programs accrediting laboratories for metals tests. Once established, a national recognized group of laboratories would allow anyone to verify the consistency and equivalence of testing being performed throughout the country. Therefore, DISC would like to establish a LAP of national scope to identify competent laboratories that will provide reliable test results.

Number and Users of Laboratories. There are dozens of metals testing laboratories in the country. DISC, the metals industry, as well as anyone buying metals and metals products would be users of accredited laboratories.

Development of Technical Details

We are ready to provide technical support for the development of the LAP. We offer the services of our in-house technical experts to support the development of this LAP. In addition, we are willing to negotiate the transfer of sufficient funding to NBS to ensure establishment of this LAP, if this is mutually determined to be necessary. We understand that you would provide the overall administrative framework as well as the necessary technical support to operate the LAP.

Please let us know if we can provide any other information. In the meantime, we look forward to the National Bureau of Standards' expeditious handling of this request. We would like to receive and respond to all comments regarding this request after it is published in the **Federal Register.** Our point of contact is James Nicolo, Chief, Testing and Evaluation Branch, Defense Industrial Supply Center, Philadelphia, PA 19111; (215) 697-3000.

Sincerely,

William T. McLean,

Brigadier General, USA, Commanding.

Test Methods

Title	ASTM
Methods of Tension Testing of Metallic Materials	E8
Test Method for Brinell Hardness of Metallic Materials.	E10
Test Methods for Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials.	E18
Macroetch Testing, Inspection, and Rating Steel Products Comprising Bars, Billets, Blooms and Forgings.	E381
Methods for Chemical Analysis of:	
Aluminum and Aluminum Base Alloys	E34
Cadmium	E396
Brasses, Special, and Bronzes	E54
Copper Alloys	E478
Chromium and Ferrochromium	E363
Nickel	E39
Nickel-Copper Alloys	E76
Nickel-Chromium	E38
Carbon Steel, Low-Alloy Steel, etc.	E350
Cast Iron	E351
Steel, Cast Iron, Open-Hearth and Wrought Iron	E30
Titanium and Titanium Alloys	E120
Non-Ferrous Metals and Alloys, Wrought	E55
Emission Spectrometry (Spectrographic Analysis) of:	
Steel, Carbon and Low-Alloy steel	E415

[FR Doc. 85-21638 Filed 9-10-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 6, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 12, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and Thailand have agreed to amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983 to establish specific limits for cotton dresses in Category 336, wool knit shirts and blouses in Category 438 and men's and boys' woven shirts of man-made fibers in Category 640, produced or manufactured in Thailand and exported, in the case of Category 438, during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985; and in the case of Categories 336 and 640, exported during the eight-month period which began on May 1, 1985 and extends through December 31, 1985. The letter to the Commissioner of Customs which follows this notice establishes these new specific limits. The limit for Category 640 includes swing and carryforward. No adjustments have been made to account for imports in Categories 336, 438 or 640, exported during the aforementioned periods. Such adjustments will be made as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 6, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of May 30, 1985 concerning imports in Category 438pt., produced or manufactured in Thailand.

This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1985.

Effective on September 12, 1985, the directive of December 21, 1985 is hereby further amended to establish a twelve-month restraint limit of 17,500 dozen [1] for wool textile products in Category 438.

Also effective on September 12, 1985, you are directed to amend the directive of December 21, 1984 to include the following restraint limits for cotton and man-made fiber textile products in Categories 336 and 640, exported during the eight-month period which began on May 1, 1985 and extends through December 31, 1985:

Category	8-mo restraint limit [1]
336	50,000 dozen
640	320,000 dozen

[1] The limits have not been adjusted to reflect any imports exported after April 30, 1984.

Textile products in Categories 336, 640 and 438pt.[2] which have been exported to the United States prior to January 1, 1985 in the case of Category 438 and prior to May 1, 1985 in the case of Categories 336 and 640 shall not be subject to this directive.

Textile products in Categories 336, 640 and 438pt.[2] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

[2] In Category 438, all T.S.U.S.A. numbers in the category except 383.1307, 383.1308, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724 and 383.9540.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–21724 Filed 9–10–85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force (CCAF Board of Visitors); Meeting

The Community College of the Air Force Board of Visitors will hold a meeting on October 22, 1985 at 8:00 a.m. in the Conference Room, Room 121, Building 836, located at Maxwell Air Force Base, Montgomery, Alabama.

The meeting is open to the public.

Agenda items include: Briefings and discussions on the State of the College and reports on findings and recommendations of the six Self-Study committees on CCAF's Reaffirmation of Accreditation.

For further information, contact Major Peter Macchia, Jr., (205) 293–7937, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112–6655.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–21713 Filed 9–10–85; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Receiving Inspection and Quality Audit of Defense Logistics Agency Managed Items

SUMMARY: Notice is hereby given that the Defense Logistics Agency (DLA) will be adjusting its receiving inspection and Quality Audit activity in order to assure product quality. The receiving inspection at the DLA depots will include limited technical inspection of all receipts of supplies from contractors where inspection and/or acceptance is at destination. The DLA Quality Audit, which has been in existence since 1970, is being expanded so that considerably more material managed by the Defense Construction Supply Center, Defense Electronics Supply Center, Defense General Supply Center, and Defense Industrial Supply Center will be randomly selected and subjected to a detailed technical inspection to assure compliance with requirements after the material has been placed in a "ready to issue" status at the DLA storage locations. When the expansion is fully implemented, the DLA Quality Audit

data will be distributed to industry and the military services. Any verification testing which is determined to be needed in either the receipt inspection or Quality Audit will be accomplished as previously announced in the **Federal Register** (notice of June 14, 1985, on Independent Product Verification of Defense Logistics Agency Managed Items).

For Further Information Contact: Mr. Michael F. Vezeau, Chief, Logistics Management Division, Quality Assurance Directorate, Defense Logistics Agency, Alexandria, VA 22304–6100 (202/274–6441).

Donald M. Babers,

Lieutenant General, USA, Director.

[FR Doc. 85–21715 Filed 9–10–85; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF ENERGY

Inventions Available for License

The Department of Energy hereby announces a number of inventions available for license, in accordance with 35 U.S.C. 207–209, in order to achieve expeditious commercialization of results of federally funded research and development. Further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of specifications of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Issued in Washington, D.C. on September 4, 1985.

J. Michael Farrell,

General Counsel.

United States Department of Energy Patent Applications

Serial No.	Title of Invention
564,113	UF_6-Recovery Process Utilizing Desublimation.
591,646	ELMO Bumpy Square Fusion Device.
614,506	Method and Apparatus for Measuring Areas of Photoelectric Cells and Photoelectric Cell Performance Parameters.
626,078	Non-Bonded Ultrasonic Transducers.
628,079	Fluidized Bed Gasification of Extracted Coal.
628,700	Vacuum Ultraviolet Laser.
631,265	Woven Heat Exchanger.
631,693	Device for Frequency Modulation of a Laser Output Spectrum.
631,697	Portable Cutting Apparatus.
631,696	Staged Fluidized Bed.
632,165	Acoustic Resonator and Method of Making Same.
632,347	Radiation-Hardened Polymeric Films.
632,742	Silicon Nitride Protective Coatings for Silvered Glass Mirrors.
632,743	Monitoring System for a Liquid-Cooled Fission Reactor.
635,019	Method of Burning Lightly Loaded Coal-Water Slurries.
635,020	Electron-Donor Dopant, Method of Improving Conductivity of Polymers by Doping Therewith, and a Polymer So Treated.
635,022	On-Line Temperature Sensor.
636,430	Tantalum-Copper Alloy and Method for Making Same.
636,511	Method of Bonding Silver to Glass and Mirrors Produced According This Method.
636,831	Capacitance Measuring Device.
636,652	Saturation Meter.
636,655	Reduction of Reabsorption Effects in Scintillators by Employing Solutes with Large Stokes Shifts.
636,656	Method for Fluorination of Actinide Fluorides and Oxyfluorides Using O_2F_2.
636,657	Precision Linear Ramp Function Generator.
636,658	Method for Removing Oxide Contamination from Silicon Carbide Powders.
636,659	Manufacturing Process to Reduce Large Grain Growth in Zirconium Alloys.
636,751	Thermoelectric Generator and Method for the Fabrication Thereof.
636,980	Process for Oil Shale Retorting Using Gravity-Driven Solids Flow and Solid-Solid Heat Exchange.
637,627	Fiber Optic Moisture Sensor.
637,628	Self-Contained Hot-Hollow Cathode Gun Assembly.
637,629	Method and Apparatus for Conducting Variable Thickness Vapor Deposition.
639,287	Quantitative Determination of Mineral Composition by Power X-Ray Diffraction.
640,286	Method and Apparatus for Casting Conductive and Semi-Conductive Materials.
641,222	Drying of Pulverized Material with Heated Condensible Vapor.
641,223	Disc Valve for Sampling Erosive Process Streams.
641,225	Magnetically Insulated Diode for Generating Pulsed Neutron and Gamma Ray Emissions.
641,522	Apparatus and Method for Identification of Matrix Materials in Which Transuranic Elements are Embedded Using Thermal Neutron Capture Gamma-Ray Emission.
641,547	Latch Assembly.
643,209	Long-Range Ordered Alloys Modified by Addition of Niobium and Cerium.
643,348	Shear Wave Transducer for Boreholes.
644,467	Electrochemical Methane Sensor.
645,650	Salinity Driven Oceanographic Upwelling.
645,657	Process for Removal of Ammonia and Acid Gases from Contaminated Waters.
645,651	Method for Preparing PB-Beta-Alumina Ceramic.
645,652	Corrosion Resistant Storage Container for Radioactive Material.
645,653	Method for Production of Ceramic Oxide and Carbide Bodies by Polymer Inclusion and Decomposition.
645,654	Fast Reactor Power Plant Design Having Heat Pipe Heat Exchange.
645,725	System and Method of Operating Toroidal Magnetic Confinement Devices.
645,956	Air Blast Type Coal Slurry Fuel Injector.
648,197	Thermophoretic Separation of Aerosol Particles from a Sampled Gas Stream.
648,211	Liquid Sampling System.
649,322	Heat Sinking for Printed Circuitry.
649,625	Measurement of Radionuclides in Waste Packages.
649,626	Method of Recovery of Actinides from Actinide-Bearing Scrap and Waste Nuclear Material Using O_2F_2.
649,627	Apparatus and Method for the Horizontal, Crucible-Free Growth of Silicon Sheet Crystals.
649,628	Gas Hydrate Cool Storage System.
649,772	Mechanical Connection for a Tubular Assembly.
650,484	Metallic Glass Composition.
650,593	Selective Radiative Cooling with MGO and/or LIF Layers.
652,395	Wide-Range Radiation Dose Monitor.
652,396	Stable n-$CuInSe_2$/Iodide-Iodine Photoelectrochemical Cell.
652,398	Method of Making a Radiation-Hard Electrical Coil.
655,486	Aluminum Battery Alloys.
655,487	Beam Current Sensor.
655,489	Polymer Blends for Use in Photo-electrochemical Cells for Conversion of Solar Energy to Electricity.
655,490	Counterpluse Railgun Energy Recovery Circuit.
655,499	Microchannel Plate Streak Camera.
655,500	Solid State Radiative Heat Pump.
655,582	Method for the Preparation of Photochromic Insulating Crystals.
655,583	Overpulse Railgun Energy Recovery Circuit.
655,588	Method for Removing Chlorine Compounds from Hydrocarbon Mixtures.
659,490	Electron Beam Enhanced Surface Modification for Making Highly Resolved Structures.
659,586	Sodium Nitrate Containing Mixture for Producing Ceramic-Glass Ceramic Seal by Microwave Heating.
659,587	Polarized Internal Target Apparatus.
661,841	Stabilizing Coal-Water Mixtures with Portland Cement.
661,842	Portland Cement for SO_2 Control in Coal-Fired Power Plants.
661,843	Remote Temperature Set Point Controller.
661,850	Molten Carbonate Fuel Cell Separator.
661,851	Integrated Current Collector and Catalyst Support.
661,852	Recovery of Tritium from Tritiated Molecules.
662,641	Transparent Electrode for Optical Switch.
662,642	Electro-Optic Harmonic Conversion to Switch a Laser Beam Out of a Cavity.
662,645	Limiter.
662,655	Polarization of Fast Particle Beams by Collisional Pumping.
662,656	Batteryless Magneto-Driven Portable Radiac.
662,657	Method of Synthesizing Polymers from a Solid Electrolyte.
662,658	Superheated Fuel Injection for Combustion of Liquid-Solid Slurries.
665,214	Antihypertensive Neutral Lipid.
666,585	Method and Apparatus for Maintaining Equilibrium in a Helical Axis Stellarator.
667,384	Semiconductor with Protective Surface Coating and Method of Manufacture Thereof.
668,688	Process for Oil Shale Retorting Using Gravity-Driven Solids Flow and Solid-Solid Heat Exchange.
676,148	Polysilane Positive Photoresist Materials and Methods for Their Use.
676,339	Monoclonal Antibodies to Human Glycophorin A and Cell Lines for the Production Thereof.

U.S. Patent

Patent No.	Title of Invention
4,498,836	Device for Identifying a Circumferential Position.

[FR Doc. 85–21660 Filed 9–10–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Proposed Form EIA–846, Manufacturing Energy Consumption Survey; Pilot Test.

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, Department of Energy.

ACTION: Notice of Intent to Conduct Pilot Test.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) has requested clearance from the Office of Management and Budget (OMB) to conduct a pilot test of Form EIA–846, the Manufacturing Energy Consumption Survey (MECS). The pilot test will be conducted with a sample of approximately 100 manufacturing establishments.

The purpose of this pilot test is to determine whether the questionnaire and instructions are complete and understandable to potential respondents. Therefore, the results will be used only to refine the EIA–846 prior to conducting the full-scale survey in 1986. (The full-scale survey proposal will require a separate clearance by OMB.)

The data collection form and instructions presented in this notice (copy reproduced following this notice) have been revised in accordance with comments received.

FOR FURTHER INFORMATION CONTACT: John L. Preston (202) 252–1128, Office of Energy Markets and End Use, Energy Information Administration, EI–652, Room 1F–093, Mail Stop 1H–053, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Action

I. Background

The EIA developed the MECS at the behest of Congress. In particular, the conference report accompanying the FY 1985 appropriation for the EIA indicated the expectation that, from this appropriation, a certain amount would be devoted to the MECS. The report identified $1.7 million of the appropriation for the MECS and three other programs. Of this amount, $1.1 million will be used to fund the MECS. In addition, the House Committee on Appropriations included the following language in the report to the House of Representatives on July 16, 1985:

> The Committee expects the Energy Information Administration to prepare and conduct the manufacturing energy consumption survey funded in fiscal year 1985 in an expeditious manner, taking into account the comments of industry, particularly with regards to confidentiality, but retaining the essential features of the survey, including information on energy expenditures, fuel-switching capabilities, and the use of non-purchased sources of energy such as cogeneration and waste or by-product utilization.

Finally, section 52 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275) requires the EIA to establish a National Energy Information System for use in describing and analyzing energy supply and consumption in the United States. The information collected via the MECS will become a part of the system.

Throughout the MECS development effort, the EIA has communicated with potential data providers, including numerous meetings with representatives of trade associations, and with potential data users. Prior to any detailed questionnaire development, the EIA issued two **Federal Register** notices concerning the MECS: 49 FR 7188, February 27, 1984, and 49 FR 29257, July 19, 1984. The February notice solicited comments on the initial design and development of the MECS. The July notice solicited volunteers of manufacturing establishments to participate as sites for visits by EIA staff. EIA staff also interviewed data users within the Department of Energy and in other Federal agencies to determine the various needs for and potential uses of MECS data.

The comments received from industry and from data users, and the results of the 20 site visits conducted by EIA within the manufacturing sector provided guidance on what information is readily available and what data are difficult or impossible to obtain. With this knowledge in mind, EIA developed a proposed MECS questionnaire. To provide ample opportunity for public input on the proposed survey, EIA issued another notice in the **Federal Register**, 50 FR 11486, March 21, 1985, soliciting comments on the proposed data collection form. A public hearing was also held in Washington, DC on May 20, 1985, to receive comments on the MECS.

At the hearing, representatives of the manufacturing sector expressed strong concerns about confidentiality, duplication of existing reports, and reporting burden imposed by particular questions. The proposed questionnaire was extensively reviewed by EIA in light of the concerns expressed in the responses to the March 1985, **Federal Register** notice and the statements made at the public hearing. As a result, the questionnaire was modified to reduce the information to be collected to the minimum necessary to obtain base line energy end use data for the manufacturing sector. In addition, for the full-scale survey, the EIA will use the Bureau of the Census as its agent to collect the data under the provisions of title 13 of the U.S. Code. The confidentiality concerns of industry are thus resolved because section 9 of title 13 provides ironclad confidentiality protection.

Consumption data similar to those which will be produced from the MECS are currently being collected by the Energy Efficiency Improvement Program, Form CE–189, which is administered by the DOE's Office of Conservation and Renewable Energy (CE). The CE–189 program is an annual data collection mandated by the Energy Policy and Conservation Act as part of a program to promote increased energy efficiency by American industry. It is not a statistical survey, but a census of very large energy-intensive corporations. The information cannot be used as a comprehensive manufacturing energy end use data base. Respondents to the CE–189 are corporations which consume one trillion or more Btu per year in any given industrial classification. While this approach captures much of the energy consumption by the more energy intensive industries such as chemicals, it falls short of complete or representative coverage in other sectors.

The EIA has compared CE–189 consumption estimates to data, available through 1981, from the Fuels and Electric Energy Consumed supplement to the Annual Survey of Manufactures produced by the Bureau of the Census. Comparisons at the two-digit SIC level reveal considerable differences, with biases that vary from industry to industry and from year to year. In addition, the manner in which the CE–189 data are collected precludes any geographic breakdown of the information and makes it impossible to measure consumption in important manufacturing subsectors.

The MECS is planned to be conducted once every three years to obtain statistically reliable information from a sample of manufacturing establishments. EIA staff have been working closely with CE staff to resolve any unnecessary duplication that may exist between the two data systems.

II. Current Action

The EIA will conduct the pilot survey with approximately 100 respondents immediately upon notification of clearance from OMB. Participation in this pilot survey will be mandatory for these respondents. The questionnaire and instructions which will be tested are identical to those which are currently being proposed for the full-scale survey except that the pilot survey will collect data for calendar year 1984 and the full-scale survey will collect data for 1985. The pilot survey forms will be sent out and returned by mail. The same procedure is planned for the full-scale study. In addition, all respondents will be debriefed on methodological issues. Based on the results of this pilot survey, the questionnaire and instructions will be further refined, as appropriate. The first full-scale MECS is currently scheduled to be undertaken in 1986.

The pilot survey will not be conducted by the Bureau of the Census and therefore the data will not be afforded the confidentiality protection of title 13 of the U.S. Code. The resulting data will be used only for testing purposes,

however, and for that reason, the EIA has developed a special masking procedure to assure confidentiality of the pilot study data. Respondents will be encouraged to multiply or divide each submitted value by a constant factor known only to them. This procedure will disguise the true values while allowing respondents to the pilot survey to logically work through the questionnaire. Respondents also may elect to claim exemption from public disclosure under the Freedom of Information Act in accordance with the instructions provided on the first page of the questionnaire.

Issued in Washington, D.C., September 5, 1985.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

GENERAL INSTRUCTIONS FOR THE MANUFACTURING ENERGY CONSUMPTION SURVEY

A. Who Should Report?

This survey is mandatory under the Federal Energy Administration Act of 1974, Pub. L. 93–275. A report is required from each establishment selected for the survey. No substitutions are permitted. Failure to respond may result in criminal fines, civil penalties, and other sanctions as provided by law.

B. When is the report due?

The questionnaire should be returned no later than 30 days after you receive it. Please use the enclosed return envelope. If it has been misplaced, send the questionnaire to: (Address)

C. How Is A Manufacturing Establishment Defined?

A manufacturing establishment is an economic unit at a single physical location where the mechanical or chemical transformation of materials or substances into new products is performed. These operations are generally conducted in facilities described as plants, factories, or mills and characteristically use power driven machines and material-handling equipment. The assembly of components of manufactured products is also considered manufacturing. Also included is the blending of materials such as lubricating oil, plastics, resins, or liquors.

D. Suppose there are two or more establishments at the same physical location. Which should respond?

The establishment named on page 1 of the questionnaire is the selected establishment, and the report should reflect only the activities at the establishment. If it is not clear which establishment has been selected, call (xxx) xxx–xxxxx for further instructions.

E. What Activities Should Be Included?

Include all activities conducted within the establishment, e.g., manufacturing, fabricating, processing and assembly; maintenance of plant and equipment; receiving, shipping, warehousing and storage; research; recordkeeping; health, safety, cafeteria, and other services.

If an establishment operates as a single economic unit, but produces several lines of products, the report should cover the activities of the entire facility.

F. What Period Should The Report Cover?

Data should be reported for the calendar year 1984. If your records are maintained in a fiscal year basis which does not coincide with the calendar year, but which ends between November 1 and February 28 inclusive, fiscal year data may be substituted. If your fiscal year ends between March 1 and October 31 inclusive, reasonable estimates for calendar year 1984 data will be acceptable.

If the selected establishment was acquired or sold during 1984, the report data should cover the period of operation by your company only.

G. May Estimates Be Provided Rather Than Actual Data?

Actual data should be provided when available and obtainable. In the event that such records are not maintained or are not readily available, reasonable estimates may be substituted.

Instructions for Section I

General Instructions

Energy sources used in manufacturing can be divided into two groups: combustible (capable of being burned) and non-combustible. The purpose of Section I is to follow combustible sources from their acquisition or production by this establishment through their use and/or finai disposition. Therefore, Section I is designed as a throughput table, with energy sources listed in the column headings. Throughput questions are listed along the side, and are designed to be answered from top to bottom for each energy source. Note that the noncombustible sources (electricity, steam, hot water, chilled water, and hot air) should not appear in Section I, but should accounted for in Section II.

Combustible energy sources consist of:

(1) Natural and transformed materials commonly used as sources of heat and power that are ordinarily brought on site or specifically produced on site, and

(2) Various combustible byproducts materials left over from manufacturing processes designed to produce other products.

Energy sources in the former group include (with units of measure following):

- Natural gas (Thousand cubic feet-MCF)
- Coal (Bituminous, Anthracite, Lignite) (Short Tons)
- Coal coke (Short Tons)
- Crude Oil (Thousand barrels)
- Gasoline (Thousand gallons)
- Distillate Oil (Thousand gallons)
- Residual Oil (Thousand gallons)
- Propane, Butane, LPG (Thousand pounds)
- Petrtoleum Coke (Thousand barrels)
- Roundwood; that is, wood cut specifically for use as a fuel (Short Tons)

Any of these sources that were at the establishment site at any time during 1984 should be accounted for in the matrix, even if none was used as a fuel on site.

Byproduct energy sources include:

- Blast furnace gas (Million Btu-MMBtu)
- Refinery offgas (MMBtu)
- Coke over gas (NNBtu)
- Hydrogen (MMBtu)
- Other waste gases (MMBtu).
- Wood chips, bark, and wood waste (MMBtu), 50 percent. moisture basis).
- Pulping/Black liquor (short tons, bone dry basis).
- Waste oils and tars (MMBtu).

There are a multitude of byproducts that arise from manufacturing processes, many of which are not intended, or even suited for use as energy sources. For that reason, *a byproduct should be accounted for in section I only if some or all of it was used as a fuel on the establishment site during 1985.* Byproducts that were not used as a fuel should be treated as manufactured products and not be reported in this survey.

After determining which energy sources should be included in Section I, set up a separate column for each source, with the energy source name, the units used for reporting, and the Btu content, entered in the header. The units of measure given above should be used if possible; if you use a different unit of measure and no straightforward conversion is possible, enter your units of measure. If you know the average Btu content of your energy sources, enter them in the space provided. (This

measure is especially importation for coal). Use continuation sheets if more columns are needed. Section I is designed for you to answer all questions for one energy source before proceeding to another. Where actual data for unavailable, carefully prepared estimates will suffice.

Specific Instructions

Item 1—Report working, beginning-of-year inventory, i.e. exclude tank bottoms. Include inventory owned by this establishment and stored offsite. Do not report inventories on site which are not owned by this establishment.

Item 2a—Amounts should include 1983 purchases not delivered until 1984. Exclude 1984 purchases not delivered until 1985.

Item 2b—Include in the cost all taxes and delivery charges.

Item 3—Self-Explanatory.

Item 4—All coal, oil, or gas produced from captive mines and wells should be reported. Captive mines and wells are those which are physically located on this establishment site. Do not report these quantities as transferred inputs from Item 3, even if the establishment's accounting methods show a transfer.

Byproduct energy sources should only be reported if some or all was used as a fuel on site during 1984. For those byproduct fuels, total production should be reported here, not just fuel use. Feedstock use and dispositions of these sources should be reported in their places.

Item 5—Self-Explanatory.

Item 6—Report the quantity of each energy source which was used as a feedstock, raw material, ingredient or additive. Report the total quantity, even if a byproduct resulting from processing was later used as a fuel on this site. That is, do not try to "net out" byproduct energy source production or fuel use. For example, the quantity of coal used to produce coke on site should be reported here, even though the coke may be reported as a byproduct in another column.

Item 7—Include all sales and transfers, whether to a utility, another non-utility company, or another establishment of your company.

Item 8—Same instructions as item 1, applied to end-of-year inventory.

Item 9—Self-Explanatory.

Item 10—Self-Explanatory.

Item 11—Report working capacity for tank storage, that is, the difference in volume between the maximum safe fill capacity and the quantity below which pump suction is ineffective (bottoms). Report all working capacity at this establishment, including capacity currently dedicated to storage of energy sources belonging to other establishments. Exclude any leased tankage at other establishments. Any tanks dedicated to storage that were undergoing routine cleaning, maintenance, inspection, or repair as of the end of 1984, and which were inended to return to service afterward, should be included in capacity estimates. Tanks that were unusable, filled with waste products or some other substance, or that were empty and in the process of being replaced by new storage equipment, should be excluded from capacity estimates. If storage capacity is not well-defined by physical limitations (such as coal storage in a large open field), report capacity as "N/A" (Not applicable).

Instructions for Section II

General Instructions

Section II is a counterpart of the throughput structure in Section I, adapted to the two most common non-combustible energy sources, electricity and steam. Other non-conbustible energy sources, such as hot water, chiled water, or hot air can be included by using or duplicating the steam subsection, with "hot water", "chilled water", or "hot air" substituted for "steam" everywhere it occurs.

Specific Instructions-Electricity

Item 1—The amount of purchased electricity should include quantities paid for before 1984, but not delivered until 1984. It should exclude any electricity purchased in 1984 but not delivered until 1985. Cost should include all taxes and system charges.

Item 2—Record all other inputs of electricity from outside the establishment that were not reported in item 1.

Item 3—For purposes of this item, electrical cogeneraton is defined as the production of electric energy and another form of useful energy (such as heat or steam) through the sequential use of energy. Report electricity cogenerated from all energy sources, including renewable sources.

Item 4—Report all electricity generated directly from renewable sources. Any produced as part of a cogeneration process should be reported in item 3. Electricity generated from geothermal steam which is then itself used, should be included in item 3.

Item 5—Self-explanatory.

Item 6—For purposes of this item, utilities are companies that are engaged primarily in producing and/or delivering electricity.

Item 7—Report all dispositions of electricity not covered in item 6.

Specific Instructions—Steom

Item 1—The amount of purchased steam should include quantities paid for before 1984, but not delivered until 1984. It should exclude steam purchased in 1984 but not delivered until 1985. Cost should include taxes and system charges.

Item 2—Report all quantities of steam brought in from outside the establishment other than that reported in item 1.

Item 3—Self-Explanatory.

Item 4—Self-Explanatory.

Instructions for Section III

General Instructions

The purpose of this section is to provide estimates of your establishment's capability under emergency conditions to replace crude oil, residual oil and distillate oil with other energy sources while maintaining your current production schedule. All replacement amounts entered in this section should be based on the production schedule and average daily oil consumption at your establishment during the week of October 6 through October 12, 1985.

Two sets of replacement numbers are requested, the amount that could be replaced in 7 calendar days and the amount that could be replaced in 90 calendar days. Seven-day switching capability should only include replacement of oil via minor adjustments (maintenance adjustments, routine installations of equipment already available on site, or change in operating mix) to equipment or processes currently in use or available for use. Ninety-day switching capability includes that capability, and also includes switching that could take place as a result of significant capital investment or major engineering modifications to existing equipment or processes. This could include, for example, retrofitting existing boilers to use another fuel or to create multi-fuel capability; it would not include the replacement of complete boiler installations.

Only oil products used as fuel should be considered in estimating fuel switching. In many cases, switching capability will not be a fixed or measured quantity. Thus, your best estimate is an acceptable response.

Specific Instructions

Item 1—Report the amount of oil, in gallons per day, that could be switched to one or more other fuels. Exclude from that amount any quantities for which the capability to switch is prevented by

legal, environmental, or regulatory constraints on the alternate fuel(s). Some constraints that would prevent switching in 7 days might not prevent switching within 90 days if appropriate engineering modifications could be made.

Item 2—Enter the amount of oil products in Item 1 that could be replaced by each individual alternate fuel shown, taking account of the same constraints that affected the overall quantity. Each entry must be less than or equal to the corresponding amount reported in Item 1, but the sum of all capabilities for alternate fuels must be at least as large as the amount in Item 1. The sum may be larger if some switching capability is to more than one alternate fuel.

Item 3—Report the additional amount of oil, over and above the amount reorted in Item 1, that could be switched to one or more other fuels assuming that all legal, environmental, and regulatory constraints on the use of the alternate fuels were temporarily suspended. The sum of Item 1 and Item 3 must not exceed the total amount of fuel use of oil products reported in Section 1.

Item 4—Enter a number beside each reason that represents a constraint against switching from oil to one or more alternate fuels. Rank order the reasons, with "1" representing the constraint that explains the largest proportion of value in Item 3. If the rank order is different for 7-day than for 90-day capability, determine the amount of capability constrained by each reason for both reference periods, add the two values for each reason, and rank the reasons on the basis of the sum.

BILLING CODE 6450-01-M

FORM EIA-846

UNITED STATES
DEPARTMENT OF ENERGY
ENERGY INFORMATION ADMINISTRATION

1985 Manufacturing Energy Consumption Survey

FORM APPROVED
OMB NUMBER

This report is mandatory under the Federal Energy Administration Act of 1974, P.L. 93-275. Failure to respond may result in criminal fines, civil penalties and other sanctions as provided by law.

The information reported on these forms may be (i) exempt from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act, 5 U.S.C. 552 (b) (4) (FOIA), or (ii) prohibited from public release by 18 U.S.C. 1905. However, before the determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing, satisfactory to the Department of Energy, concerning its confidential nature. Therefore respondents wishing to claim such exemption must state specifically (on an element-by-element basis, if possible), in a letter accompanying submission of this form, why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by these companies and the industry, and the type of competitive harm that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11, DOE's Freedom of Information Act Regulations, DOE will determine whether the information submitted should be withheld from public disclosure. If DOE receives the responses but does not receive a request with substantive justification that the information submitted should not be released to the public, DOE may assume that the respondent does not object to disclosure to the public of any information submitted by it on the forms.

1. Name and physical location of establishment.

NAME

NUMBER AND STREET

CITY, TOWN, VILLAGE, ETC.

COUNTY STATE ZIP

MAIL LABEL

(Please correct any error in name and mail address on label, including ZIP Code.)

SECTION I - QUANTITIES OF ENERGY SOURCES

o INSTRUCTIONS:	COPY FROM INSTRUCTIONS				
	ENERGY SOURCE ONE	ENERGY SOURCE TWO	ENERGY SOURCE THREE	ENERGY SOURCE FOUR	ENERGY SOURCE FIVE
a. For each energy source checked in the instructions, set up a separate column heading in Section I by copying the name and units of measurement exactly as shown. Ignore any unused columns.	Name:_____	Name:_____	Name:_____	Name:_____	Name:_____
b. Enter the average Btu content per unit of measurement for coal and "other energy sources" if used.	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____
c. If more than 5 columns are needed, use extra sheets.	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____
d. Enter a quantity of zero wherever a question does not apply to a given energy source.					
e. If recorded values are not readily available, carefully prepared estimates may be used.					
o ENERGY SOURCE INPUTS TO THE ESTABLISHMENT SITE (Questions 1 through 3)					
1. How much of the energy source, named in the column heading, was in the INVENTORY of this establishment at the end of calendar year 1983?	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
2a. During 1984, how much of this energy source was PURCHASED from utilities, dealers, or other firms, and delivered to the establishment?	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
2b. What was the total cost, including delivery charges, of this purchased energy source in 1984?	$____,____,____	$____,____,____	$____,____,____	$____,____,____	$____,____,____
3. During 1984, how much of this energy source was TRANSFERRED from outside establishments and delivered to this establishment? (Do not include the purchases recorded in ITEM 2a)	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o PRODUCED ON SITE					
4. During 1984, how much of this energy source was PRODUCED ON SITE at this establishment from captive mines or wells or as a result of the use of feedstocks, raw materials, ingredients, or additives to a product (e.g., wood chips, products and by-products of chemical processes)? INCLUDE ONLY THOSE ENERGY SOURCES THAT WERE USED AS FUELS ON THIS SITE IN 1984.	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o SUM OF ENERGY SOURCE INPUTS AND PRODUCTION					
5. Enter the sum of ITEMS 1, 2a, 3, & 4.	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____

o INSTRUCTIONS FOR SECTION I, PAGE 2:	COPY FROM INSTRUCTIONS				
	ENERGY SOURCE ONE	ENERGY SOURCE TWO	ENERGY SOURCE THREE	ENERGY SOURCE FOUR	ENERGY SOURCE FIVE
a. Transfer the energy source name and units used for reporting from Section I, page 1 to the corresponding columns on this page and continue with question 6 below.	Name:_____	Name:_____	Name:_____	Name:_____	Name:_____
b. Enter the average Btu content per unit of measurement for coal and "other energy sources" if used.	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____	Units used for reporting:_____
c. If more than 5 columns are needed, use extra sheets.	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____	Btu's per unit:_____
d. Enter a quantity of zero wherever a question does not apply to a given energy source.					
e. If recorded values are not available, carefully prepared estimates may be used.					
o ON SITE USE OF FEEDSTOCKS					
6. During 1984, how much of this energy source was used onsite as a feedstock, raw material, ingredient, or additive to a product (e.g., coal for coking, petrochemical feedstocks)?	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o DISPOSITION OF ENERGY SOURCES (Questions 7 through 10)					
7. During 1984, how much of this energy source was TRANSFERRED OR SOLD to other establishments? Include ALL establishments, whether or not not they are part of the same corporation as this establishment.	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
8. How much of this energy source was in the INVENTORY of this establishment at the end of calendar year 1984?	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o TOTAL FEEDSTOCK USE AND DISPOSITIONS					
9. Enter the sum of ITEMS 6, 7, and 8.	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o TOTAL CONSUMPTION OF PRIMARY ENERGY SOURCES					
10. Subtract ITEM 9 from ITEM 5. Enter Amount	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____
o TOTAL STORAGE CAPACITY					
11. What was the TOTAL STORAGE CAPACITY for this energy source at this establishment at the end of calendar year 1984?	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____	Quantity:_____

SECTION II - NON-PRIMARY ENERGY SOURCES

Electricity

1a. During 1984, how much electricity was purchased from utilities or other firms, and delivered to the establishment?
Quantity:_____Megawatthours

1b. What was the total cost of this purchased electricity?
$____,____,____

2. During 1984, how much electricity was transferred from outside establishments and delivered to the establishment? Do not include the purchases recorded in ITEM 1a.
Quantity:_____Megawatthours

3. During 1984, how much electricity was generated onsite by cogeneration?
Quantity:_____Megawatthours

4. During 1984, how much electricity was generated onsite from renewable sources?
a. from Solar
Quantity:_____Megawatthours
b. from Wind
Quantity:_____Megawatthours
c. from other renewable sources
Quantity:_____Megawatthours

5. During 1984, how much electricity was generated onsite by conventional generation and other processes besides cogeneration or renewable sources?
Quantity:_____Megawatthours

6. During 1984, how much electricity was sold to utilities? Include both sales and transfers for credit.
Quantity:_____Megawatthours

7. During 1984, how much electricity was transferred to other establishments? Do not include amounts reported in ITEM 6.
Quantity:_____Megawatthours

Steam

1a. During 1984, how much steam was purchased from utilities, dealers, or other firms, and delivered to the establishment?
Quantity:_____Million Btus

1b. What was the total cost of this purchased steam?
$____,____,____

2. During 1984, how much steam was transferred from outside establishments and delivered to the establishment? Do not include the purchases recorded in ITEM 1a.
Quantity:_____Million Btus

3. During 1984, how much steam was generated onsite from renewable sources?
a. from Solar
Quantity:_____Million Btus
b. from other renewable sources
Quantity:_____Million Btus

4. During 1984, how much steam was sold or transferred to another establishment?
Quantity:_____Million Btus

SECTION III: FUEL SWITCHING FROM CRUDE OIL OR OIL PRODUCTS

This section deals with your ability to respond to an energy crisis. Its purpose is to determine how much crude oil or oil products your establishment could back out of in the event of a sudden interruption of crude oil and product supplies. If your establishment has multiple-fuel capabilities, indicate the additional volumes of crude oil or oil products that you could eliminate under operating conditions as you had them over the last week. The 7-day switching capability is meant to give an estimate of your ability to switch out of oil by making use of currently unused multiple-fuel capabilities through minor adjustments in your physical plant. The 90-day capability is meant to capture the maximum fuel-switching ability that you could achieve within the indicated time period, if you made substantial capital investments under an emergency scenario.

	7-day capability in gallons/day	90-day capability in gallons/day
(1) Of the crude oil, residual oil and distillate oil currently consumed, what is the maximum amount that could be replaced by alternate fuels, given current legal and regulatory constraints?		
(2) How many gallons of oil in (1) could be replaced by:		
coal.....		
natural gas.....		
other fuel (Specify) _____		
(May add to more than total in (1))		
(3) If there were no legal or regulatory constraints, how much additional crude oil or oil products could you switch out of in a crisis?		

(4) On the list shown below, numerically rank the constraints that restrict your fuel switching capability, designating the largest volumetric constraint by the number 1.

|___| Federal government environmental restriction.

|___| State/Local government environmental restriction.

|___| Binding contract in place.

|___| Restrictions under the Powerplant and Industrial Fuel Use Act of 1978.

|___| Other (specify):

_____

_____

_____

_____

SECTION IV - CERTIFICATION

CERTIFICATION - This report is substantially accurate and has been prepared in accordance with instructions.					
Name of person to contact regarding this report		Telephone--->	Area code	Number	Extension
Name of company		Address (number and street, city, State, ZIP code)			
Period covered--->	From: Mo. / Day / Year	To: Mo. / Day / Year	Signature of authorized person	Title	Date

[FR Doc. 85-21673 Filed 9-10-85; 8:45 am]

BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket No. GT85-22-000]

Proposed Changes in FERC Gas Tariff; Tariff; ANR Pipeline Co.

September 4, 1985.

Take notice that on August 30, 1985, ANR Pipeline Company ("ANR") tendered for filing Original Sheet Nos. 1 through 1817 to its F.E.R.C. Gas Tariff, Original Volume No. 2 to be effective October 1, 1985. ANR states that the sole purpose of this filing is to reflect its new corporate name in lieu of its former name, Michigan Wisconsin Pipe Line Company, as fully more described by the Federal Energy Regulatory Commission's Notice of Redesignation issued on May 26, 1984.

ANR further states that copies of this filing were served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 30426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. PLumb,

Secretary.

[FR Doc. 85-21653 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-31-000, 001]

Filing of Revised Tariff Sheets Reflecting Tariff Adjustment; Arkla Energy Resources

September 4, 1985.

Take notice that on August 30, 1985 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate schedule G-2	Rate schedule X-26
40th Revised Sheet No. 4	39th Revised Sheet No. 185.
12th Revised Sheet No. 4A	12th Revised Sheet No. 185A.

AER states that the purpose of the above described tariff sheets is to (1) reflect the average projected cost of purchased gas for the six-month period commencing October 1, 1985; (2) recover or refund accumulated deferred purchased gas costs as of June 30, 1985; (3) set forth the reduced PGA and estimated incremental pricing surcharges to be billed during the PGA period and, (4) refund accumulated deferred transportation revenue as of June 30, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21655 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-1894-003, ID-2178-001, ID-2180-001]

Application; Atlantic City Electric Co.

September 5, 1985.

Take notice that on August 15, 1985, Atlantic City Electric Company tendered for filing Supplemental Applications regarding the holding of positions by L.E. Cooper, J.D. McCann and J.G. Salomone in Atlantic City Electric Company and Deepwater Operating Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21654 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-706-000, etc.]

Boston Edison Co. et al; Electric Rate and Corporate Regulation Filings

August 30, 1985.

Take notice that the following filings have been made with the Commission.

1. Boston Edison Company

[Docket No. ER85-706-000]

Take notice that Boston Edison Company on August 22, 1985, tendered for filing rate schedule supplements to its all-requirements rate schedules Nos. 47 and 51 for service to the Towns of Concord and Wellesley, Massachusetts to allow it to credit those two Towns for their receipt of energy provided by the New York Power Authority. The Company asks that the rate schedule supplements be made effective as of July 1, 1985.

Copies of the filing have been served upon the two Towns, the Massachusetts Municipal Wholesale Electric Company and the Massachusetts Department of Public Utilities.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Western Massachusetts Electric Company

[Docket No. ER85-707-000]

Take notice that Western Massachusetts Electric Company ("WMECO") on August 23, 1985, tendered for filing an amendment to its Resale Service Rate CD-1 with the City of Westfield, Massachusetts Gas and Electric Department ("Westfield"). In addition, take notice that WMECO also tendered for filing an amendment to its Rate Schedule 2 under which it presently provides firm wholesale electric service to Chester, Massachusetts Municipal Electric Light Department; Russell, Massachusetts Municipal Light Department; Fletcher Electric Light Company, Massachusetts Electric Company, and New York State Electric Gas Corporation (collectively the "Tariff customers").

WMECO states that the proposed rate schedule amendments are required because of the higher level of costs to be incurred by it due to the expected commercial operation on or about May 1, 1986 of the Millstone Unit 3 nuclear

generating station in Waterford, Connecticut.

WMECO proposes an effective date of October 23, 1985 (60 days after filing) for both of rate schedule changes. However, in order to synchronize the effectiveness of the filed changes with the expected commercial operation of Millstone Unit 3 on or about May 1, 1986, the Companies request that the effectiveness of both filings be suspended until the later of a five-month suspension beyond the requested effective date or the commercial operation of Millstone Unit 3.

WMECO states that the proposed increases to Westfield and the Tariff Customers would increase total revenues from jurisdictional sales and service by $2,446,652 based on the 12 month period ending December 31, 1986 (Period II). After taking into account anticipated fuel savings which will result from replacing fossil-fired generation with nuclear-powered generation when Millstone Unit 3 enters commercial operation, the total revenue increases during Period II are estimated by WMECO to be $1,880,192 or 30.0 percent.

The Companies state that copies of the filings were served upon the affected customers and the Department of Public Utilities of Massachusetts and the Department of Public Utility Control of Connecticut.

Comment date: September 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21652 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. CP77-8-006, etc.]

Columbia Gulf Transmission Co. et al.; Natural Gas Certificate Filings

September 4, 1985.

Take notice that the following filings have been made with the Commission.

1. Columbia Gulf Transmission Company

[Docket No. CP77-8-006]

Take notice that on August 14, 1985, Columbia Gulf Transmission Company (Petitioner), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP77-8-006 a petition to amend the order issued May 6, 1977, as amended, in Docket No. CP77-8, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of gas which Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), would acquire from Southland Royalty, *et al.* (Southland), in Vermilion Area Block 88, offshore Louisiana, and an additional receipt point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Petitioner is authorized to transport for Northern a contract demand volume of 130,000 Mcf of natural gas per day from a receipt point in Vermilion Area Block 245 through the Blue Water Project to a delivery point near Egan, Louisiana, pursuant to a transportation agreement dated September 3, 1976 (agreement).

Petitioner requests authority, pursuant to an amendment to the agreement dated April 4, 1985, to transport, as part of the currently authorized contract demand volumes, natural gas which Northern would acquire from Southland. It is indicated that Northern would deliver such gas to Petitioner at a sub-sea side tap in Vermilion Area Block 76. Petitioner requests that this tap be authorized as an additional receipt point.

Comment date: September 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP85-770-000]

Take notice that on August 9, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-770-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on a best-efforts, interruptible basis, up to 8,000 Mcf of natural gas per day of Texas Gas' gas produced from South Marsh Island Block 160 and Eugene Island Blocks 330 and 337, offshore Louisiana, as well as any excess volumes Applicant, at the request of Texas Gas, may agree to transport.

Applicant states that it would transport such gas for Texas Gas from the existing interconnection of the facilities of Applicant and Sea Robin Pipeline Company in Vermilion Parish, Louisiana, and would redeliver equivalent volumes to Texas Gas at an interconnection of the facilities of Applicant and Texas Gas at the terminus of the Blue Water Project near Egan, Acadia Parish, Louisiana.

Texas Gas, it is said, would pay Applicant a charge of 6.6 cents per Mcf of gas received for transportation at the point of receipt. It is said further that the transportation would continue for a period of seven years from the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: September 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Mississippi River Transmission Corporation

[Docket No. CP85-780-000]

Take notice that on August 14, 1985, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP85-780-000 an application pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 and § 284.107 of the Commission's Regulations for authority to provide transportation of natural gas, on an interruptible, best-efforts basis, for Western Gas Corporation (Western Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authority to transport up to 10,000 Mcf of natural gas per day for Western Gas on a best-efforts, fully interruptible basis, at Applicant's sole discretion and subject to availability of sufficient capacity in Applicant's system.

Applicant proposes a transportation rate of 6.25 cents per Mcf which rate is designed to recover costs attributable to the service proposed and includes the applicable GRI surcharge. Applicant requests that transportation authority be

granted retroactive to June 12, 1984, the date service commenced on a self-implementing basis. Applicant asserts that the term of the service would be four years from that date.

Applicant would receive Western Gas' gas at the inlet of Applicant's existing facilities located at the outlet of the Woodlawn field processing plant of Dorchester Gas Producing Company in Harrison County, Texas. Applicant would redeliver or cause to be redelivered equialent volumes of gas for Western Gas' account at the interconnection of the facilities of Applicant and Natural Gas Pipeline Company of America also located in Harrison County, Texas.

Comment date: September 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket Nos. CP68-75-013 and CP68-75-014]

Take notice that on August 16, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket Nos. CP68-75-013 and CP68-75-014 petitions to amend the order issued May 10, 1968, in Docket No. CP68-75, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional delivery point for the exchange of natural gas with Phillips Petroleum Company (Phillips) and to establish an area of interest under the exchange wherein additional delivery points would automatically be added and deleted, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

In Docket No. CP68-75-013, Northern proposes to establish an additional delivery point at the wellhead facilities of Phillips' Bernice No. 2 well and Phillips' gathering system in Ochiltree County, Texas, in accordance with an amendment to the Gray County gas exchange agreement, dated May 2, 1985.

In Docket No. CP68-75-014, Northern proposes to establish a specified area of interest wherein Northern would automatically add and/or delete delivery points under the exchange with Phillips in accordance with an amendment to the Gray County gas exchange agreement, dated June 1, 1985. It is stated that the area of interest would include Beaver, Custer, Dewey, Ellis, Harper, Major, Roger Mills and Woodward Counties, Oklahoma, and Carson, Gray, Hansford, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Roberts, Sherman and Wheeler Counties, Texas. Northern states that it would file annual reports pursuant to Part 154 of the Regulations appropriately revising its FERC Gas Tariff, Rate Schedule X-18 to reflect all additions/deletions which have occurred during the preceding year.

Comment date: September 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this Notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP85-781-000]

Take notice that on August 15, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85-781-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Pursuant to a transportation agreement between applicant and Southern dated July 18, 1984, Applicant states it has agreed to transport up to 1,500 dt equivalent of natural gas per day on behalf of Southern. Applicant states that Southern has gas supplies available in West Cameron Block 253, offshore Louisiana, which it desires to have transported and delivered for its account to Trunkline Gas Company (Trunkline), onshore Louisiana. Applicant explains that it would receive gas from Southern at an existing interconnection on Applicant's West Cameron System in West Cameron Block 250, offshore Louisiana, up to 1,500 dt equivalent of natural gas per day and then transport and redeliver equivalent quantities for the account of Southern to Trunkline at existing interconnections located onshore Louisiana in Beauregard and Allen Parishes, Louisiana, for further transport to Southern.

Applicant explains further that it would charge Southern a monthly charge of $10,566.75 and would reduce the quantity of gas received for transport for applicable shrinkage, for gas used or consumed as fuel or lost by shrinkage due to processing of the gas for the extraction of liquifiable hydrocarbons if such gas is processed. In addition, Applicant states that it would charge Southern an amount equivalent to the product of 23.16 cents per dt and the sum of

(1) the quantity of excess gas received by Applicant in said month if such gas in excess of the contract quantity was scheduled to be received by Applicant, plus

(2) the quantity of gas received by Applicant on any day is said month which is in excess of 102 percent of the contract quantity if such gas in excess was received by Applicant due to Applicant's inability to maintain precise control of receipts, plus

(3) the quantity of gas received by Applicant in said month which is in excess of the sum of (a) the contract quantity multiplied by number of days in such month, and (b) the sum of items (1) and (2) for all applicable days of said month, less

(4) the dt equivalent of the liquefiables extracted, if any, associated with gas transported in said month.

Comment date: September 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company

[Docket No. CP85-785-000]

Take notice that on August 15, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027 (referred to jointly as Columbia), filed in Docket No. CP85-785-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem Steel) for use as boiler fuel under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 0.950 billion Btu equivalent of natural gas per day for Bethlehem Steel's Homer Research Laboratories plant and up to 150 million Btu equivalent of natural gas per day for Bethlehem Steel's Central Heating and Refrigerating Building plant, through October 31, 1985, on an interruptible basis. Columbia states that the gas to be transported would be purchased from Northern Gas Marketing, Inc. (NGM), and Hadson Gas Systems, Inc. (Hadson). The transportation agreement specifies the points of receipt by Columbia Gulf and the point of redelivery by Columbia

Transmission to UGI Corporation (UGI), the distribution company serving Bethlehem Steel.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of natural gas delivered and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within UGI's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of UGI's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. I addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Columbia slso requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP85-795-000]

Take notice that on August 19, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-795-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Empire Detroit Steel, Division of Cyclops Corporation (Empire Detroit), under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 7.5 billion Btu equivalent of natural gas per day for Empire Detroit through October 31, 1985. Columbia states that the gas to be transported would be purchased from Ohio Gas Marketing Corporation (OGM) and would be used as process gas and boiler fuel in Empire Detroit's Mansfield, Ohio, plant.

It is indicated that Empire Detroit has made arrangements to purchase this gas from OGM. Columbia states that it would receive the gas from OGM and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Empire Detroit, near Mansfield, Ohio.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COH's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu of gas received from receipt points other than Leach, Kentucky, if the volumes or in excess of COH's TDE's. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccountable-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-800-000]

Taken notice that on August 20, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-800-000 a request pursuant to § 157.205 of the Commission's Regulations under the Nature Gas Act (18 CFR 157.205) for authorization to construct and operate five sales taps and appurenant facilities to permit direct retail sales of gas to end-users under the certificate issued in Docket Nos. CP83-59-000 and CP83-59-001, as amended in Docket No. CP83-59-002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate four sales taps and to sell approximately 100 Mcf of natural gas on an annual basis to each of the following residential customers:

Customer	Location	Line
William Sorrels	McCurtain County, Oklahoma	E32-3
Ronnie Shelby	Stephens County, Oklahoma	T
Gene Blevins	Cooke County, Texas	G
Richard Stripe	Grayson County, Texas	E10-5

Lone Star also proposes to construct and operate one sales tap and to sell approximately 4,000 Mcf of natural gas on an annual basis to the following commercial customer:

Customer	Location	Line
B.H. & T. Oil Co.	Murray County, Oklahoma	GD1

Lone Star states that the sales to each of these customers will be made at rates approved by the Oklahoma Corporation Commission or the Texas Railroad Commission.

Lone Star asserts that the proposed sales would not have any significant impact on its peak day or annual system operations.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. National Fuel Gas Supply Corporation

[Docket No. CP85-741-000]

Take notice that on July 26, 1985, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-741-000 a notice of the transfer of certain natural gas producing properties or, in the alternative, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by transfer certain production properties, all as were more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to transfer certain of its natural gas production properties, appurtenances and the service rendered thereby to its affiliate, Empire Exploration Inc. (Empire). Applicant further states that it does not believe that the transfer requires abandonment authorization pursuant to section 7(b) of the NGA since Empire is concurrently filing an application for a certificate of public convenience and necessity pursuant to section 7(c) of the NGA to continue the identical service in Docket No. CI85–597–000. Applicant asks that the Commission deem its alternative application for abandonment authority moot. To the extent, however, that the Commission determines that abandonment authorization is necessary, Applicant states that the public convenience and necessity permits the abandonment because (1) there would be no change in the service provided to Applicant's customers by virtue of the abandonment; (2) there would be no change in the price of the natural gas Applicant includes in its cost of service; and (3) by consolidating all exploration and production activities in one corporate unit, that unit would be able to continue to serve Applicant and its customers in an economic and reliable manner.

Comment date: September 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP85–787–000]

Take notice that on August 16, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–787–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for General Tire, Inc. (GTI), an industrial end-user of gas, under the certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport natural gas for GTI limited to quantities equivalent to 2.5 billion Btu on a peak day and 700 trillion Btu on an annual basis, pursuant to the terms of a June 27, 1985, gas transportation agreement. Natural avers that approximately 1.5 billion Btu in equivalent volumes of natural gas would be transported on an average day. The application reflects that the subject gas would be purchased by GTI from MidCon Ventures, Inc., pursuant to a June 25, 1985, contract.

Natural states it would receive the gas at existing inter-connections in (1) Montgomery County, Texas (the Sue-Ann Oil and Gas Company delivery point), (2) Marshall County, Oklahoma (Energy Consultants delivery point) and (3) Washita County, Oklahoma (Mustang Fuel Corporation delivery point) for transportation and delivery to Illinois Power Company (the local distributor) near Natural's compressor station 310 (Centralia) in Clinton County, Illinois, and for ultimate redelivery to GTI. It is stated that GTI would use 99 percent of the gas as boiler fuel and 1 percent of the gas for space heating in its Mt. Vernon, Illinois, plant.

Natural proposes initially to charge rates of 26.0 cents, 20.5 cents and 21.1 cents per dt equivalent to gas volumes transported from the respective above-mentioned delivery points. Additionally, Natural states it would charge the Gas Research Institute's surcharge funding unit per dt (currently 1.21 cents per dt). Also, thermally equivalent volumes of 9.4 percent, 8.2 percent and 2.2 percent would be deducted for volumes transported from each of the respective delivery points, for compressor fuel, it is explained.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Natural would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Natural advises that the transportation service commenced on July 3, 1985, as reported in Docket No. ST85–1474, for a 120-day period terminating October 31, 1985, which also is the date regulatory authorization under § 157.209(e) is scheduled to terminate. Natural requests that this transportation service be permitted to continue until the GTI transportation agreement terminates on its own accord in two years (July 3, 1987), in the event the Commission's Regulations are amended to allow such continuation of service.

Comemnt date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–807–000]

Take notice that on August 21, 1985, Northern Natural Gas Company, Division of InterNorth, Inc., (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–807–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation of natural gas for Bethehem Steel Corporation (Bethlehem), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to transport 25,000 Mcf of natural gas per day and more if requested by Bethlehem, and if the Applicant's operating conditions so permit. It is explained that the natural gas would be transported pursuant to a transportation agreement dated May 22, 1985. Applicant states that the agreement provides that Applicant would receive natural gas at points in Isanti and Chisago Counties, Minnesota, where the Applicant's facilities interconnect with the facilities of Midwestern Gas Transmission Company and also from Carlton County, Minnesota, where the Applicant's facilities interconnect with the facilities of Great Lakes Gas Transmission Company and transport it to a delivery point at Mills County, Iowa, to Natural Gas Pipeline Company of America for further transportation to Burns Harbor, Indiana.

Applicant states that the term of the proposed transportation is two years from the date of initial delivery.

Applicant further states that Bethlehem will pay Applicant for volumes delivered at Isanti, Chisago, and Carlton delivery points the initial rates of 10.46 cents per Mcf, 9.97 cents per Mcf, and 14.04 cents per Mcf, respectively. It is alleged that no new facilities would be required to provide the proposed transportation service.

Comment date: September 25, 1985, in accordance with Standard Papagraph F at the end of this notice.

12. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–808–000]

Take notice that on August 21, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–808–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act

(18 CFR 157.205) for authorization to modify one delivery point to accommodate increased volumes of natural gas for delivery to North Central Public Service Company (North Central) under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern request authority to modify Spring Lake Park No. 1, a town border station (TBS) located in Anoka County, Minnesota. Northern avers that North Central has informed Northern that the area served by the subject TBS has expanded substantially in recent years, with a subsequent load increase due to additional residential, commercial, and industrial customers. Northern proposes to modify the existing TBS in order to serve the increased requirements of North Central and its customers. Northern explains that such modification would consist of the replacement of the existing meter with two Rockwell AAT30 meters and would effectively double the delivery capability of the TBS. Northern states that the related volumes would remain within the currently authorized firm entitlement which was authorized by the Commission in Docket No. CP82–500–001 on July 29, 1983.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85–736–000]

13. Texas Gas Transmission Corporation

Take notice that on July 25, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–736–000 a request, as supplemented on August 14, 1985, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Mississippi Valley Gas Company (Mississippi Valley), as agent for System Fuels, Inc. (System Fuels), under the certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport beyond the primary term of 120 days to October 31, 1985, up to 200 billion Btu equivalent of low-priority natural gas per day, on an interruptible basis, for Mississippi Valley/System Fuels for ultimate delivery to System Fuels at its Gerald Andrus and Delta power plants.

Texas Gas proposes to charge for this service the rate provided in its Rate Schedule TSC 1 for Rate Schedule G sales customers, which is currently 16.26 cents, and the GRI surcharge of 1.25 cents.

Texas Gas indicates that the proposed transportation would be through the use of existing facilities. Texas Gas states that it would transport the gas from the tailgate of the Champlin Petroleum Company plant in Panola County, Texas; and existing interconnection between Texas Gas and Natural Gas Pipeline Company of America in Cameron Parish, Louisiana; an existing point on Texas Gas' 8-inch pipeline in Lafayette Parish, Louisiana; and existing point on Texas Gas's South Bayou Mallet pipeline in Acadia Parish, Louisiana; an existing point of interconnection between Texas Gas and Transcontinental Gas Pipe Line Corporation (Transco) pipeline in Evangeline Parish, Louisiana; and an existing interconnection between Texas Gas and Transco in Acadia Parish, Louisiana, to two existing interconnections between Mississippi Valley and Texas Gas in Washington County, Mississippi, and an existing interconnection in Bolivar County, Mississippi, for further transportation by Mississippi Valley to System Fuels' Gerald Andrus and Delta Power plants.

Texas Gas indicates that the gas would be used for boiler fuel to generate electricity. System Fuels is said to have purchased its gas supplies from TXG Gas Marketing Company in a first sale.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85–792–000]

14. Transcontinental Gas Pipe Line Corporation

Take notice that on August 19, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–792–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user gas on behalf of Venice Maid Company, Inc. (Venice), under the certificate issued in Docket No. CP82–426–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 500 dt equivalent of gas per day for use at Venice's plant in Vineland, New Jersey (Vineland plant), for a term expiring October 31, 1985. It is stated that the natural gas to be transported would be purchased from Transco Energy Marketing Company and would be used in steam generation. It is indicated that Transco would receive the gas at the tailgate of the Katy Exxon gas plant in Waller County, Texas, and would redeliver on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery with South Jersey Gas Company (South Jersey). In turn, South Jersey would redeliver such gas to the Vineland Plant.

Transco states that it would charge Venice the currently applicable transportation rate in accordance with its Rate Schedule T–II, FERC Gas Tariff, Second Revised Volume No. 1, which is currently 44.81 cents per dt. In addition, Transco states that it would apply its current transportation policy to the subject transportation which, among other things, requires that Venice periodically provide Transco with affidavits which state that the subject transportation is not displacing sales which Transco would otherwise make under any of its firm sales rate schedules.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Venice. The flexible authority requested applies only to points in the market area. Transco will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85–778–000]

16. Williston Basin Interstate Pipeline Company

Take notice that on August 13, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. CP85–778–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one sales tap and appurtenant facilities under the blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully

set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that its blanket certificate in Docket No. CP82-487-000, *et al.*, as amended, authorizes Williston to use the prior notice procedure under § 157.205 of the Commission's Regulations in connection with requests to construct and operate on-system sales taps for the purpose of serving new or existing retail customers to the extent permitted under Williston's FERC Gas Tariff. It is further stated that § 157.211(b)(2) of the Regulations is waived as to such requests.

Williston Basin proposes to construct and operate one sales tap and appurtenant facilities on its natural gas transmission system in Williams County, North Dakota, for the delivery of gas to Montana-Dakota Utilities Co. as the distributor for retail sale to Double EE Service, Inc. Williston Basin states the proposed sales tap would be used to deliver up to 2,500 Mcf of natural gas annually to provide fuel for an oil pumping operation. Williston Basin also indicates that the estimated cost for the sales tap would be $1,000.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-21650 Filed 9-10-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-1-33-000,001]

Notice of Proposed Change in Rate Pursuant to Purchased Gas Cost Adjustments; El Paso Natural Gas Co.

September 4, 1985.

Take notice that on August 30, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects a decrease in the purchased gas cost of $.0663 per dth and an increase of $.0132 per dth in the surcharge rate for a net adjustment in El Paso's currently effective sales rates which is a decrease of $.0531 per dth attributable to the PGA.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First revised volume No. 1	Sixth revised sheet No. 100; Fifth revised sheet No. 540.
Third revised volume No. 2	Thirty-first revised sheet No. 1-D.
Original volume No. 2A	Thirty-second revised sheet No. 1-C.

El Paso requests that the Federal Energy Regulatory Commission ("Commission") grant waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered revised tariff sheets to become effective on October 1, 1985.

El Paso further states that it is tendering Second Revised Sheet No. 24 of its FERC Gas Tariff, Original Volume No. 1-A to be effective October 1, 1985 in order to reflect the rate of $2.6579 per dth to be utilized to determine the fuel reimbursement charge payable under Section 6 of Rate Schedule T-1 or T-2 of said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in-kind, as included in El Paso's Stipulation and Agreement in Settlement of Rate Proceedings accepted and approved subject to certain conditions by letter order dated August 14, 1985 at Docket No. RP85-58-00, *et al.*

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-21656 Filed 9-10-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-1-34-000, 001]

Proposed Changes in FERC Gas Tariff; Florida Gas Transmission Co.

September 4, 1985.

Take notice that on August 30, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective October 1, 1985.

First Revised Volume No. 1

5th Revised Sheet No. 8
3th Revised Sheet No. 9

Original Volume No. 2

28th Revised Sheet No. 128

Reason For Filing

5th Revised Sheet No. 8 and 28th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 respectively to:

(i) Adjust the Primary Adjustment to reflect changes in the average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges;

(ii) Adjust the Balancing Adjustment to amortize over the six-month adjustment period, the balance in the current period Unrecovered Purchase Gas Account as of June 30, 1985.

(iii) Include a special surcharge (Order 94 Surcharge) to recover over a twelve month period the jurisdictional portion of retroactive payments made to producers in accordance with FERC Order Nos. 94 *et seq.*

3rd Revised Sheet No. 9 contains the estimated incremental pricing surcharges for the adjustment period.

The above-mentioned changes to the Primary and Balancing Adjustments are being made pursuant to Section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and § 154.38 *et seq.* of the Commission's Regulations (18 CFR 154.38, *et seq.*).

The net effect of the adjustments being filed for Rate Schedules G and I is to decrease the currently effective rates by a 1.606¢/therm. The net effect on the adjustments being filed for Rate Schedule T-3 is a decrease of .80¢/Mcf.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested State Commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a pary must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21657 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-000]

Proposed Changes in FERC Gas Tariff; North Penn Gas Co.

September 4, 1985.

Take notice that North Penn Gas Company (North Penn) on August 30, 1985, pursuant to Section 4 of the Natural Gas Act and Section 154.63 of the Commission's Regulations, filed proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to become effective October 1, 1985.

The proposed rate changes would increase North Penn's revenue from jurisdictional sales and services by $1,590,083, based on the twelve months ended May 31, 1985, adjusted for known and measurable changes through February 28, 1986.

North Penn states that the increased rates are necessary to reflect decreased sales and to recover increased depreciation, operation and maintenance expenses and to begin amortization of an extraordinary storage gas loss. The rates are based on an overall rate of return of 13.8% and on return on equity of 18%.

The filing changes North Penn's rate structure from a straight commodity rate to a two part demand commodity rate.

North Penn states that the cost of gas was computed using the base cost of gas reflected in North Penn's Seventy-Sixth Revised Sheet No. PGA-1. Additionally, North Penn is filing a tariff sheet which revises Section 6.2 of its Tariff (General Terms and Conditions). The revision changes the interest rate applicable to unpaid bills for gas delivered to the prime rate.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21658 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-194-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes

September 4, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 30, 1985, tendered for filing proposed changes in the revised tariff sheets as listed on the attached Appendix A. Panhandle requests an effective date of October 1, 1985 for the tendered tariff sheets.

These revised tariff sheets, as identified on Appendix A hereto, are being filed pursuant to section 4 of the Natural Gas Act, § 154.38(d)(4)(vi)(a) and § 154.209(a)(1) of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder. These revised tariff sheets will supersede those in effect immediately prior to October 1, 1985, although they do not reflect any changes in Panhandle's currently effective resale rates, as reflected in its September 1, 1985 purchased gas adjustment (PGA) filing in Docket Nos. TA85-3-28-000 and TA85-3-28-001, nor do they reflect any changes in Panhandle's various currently effective transportation rates which are included in Original Volume Nos. 1 and 2 of Panhandle's FERC Gas Tariff. Panhandle is also submitting herewith the jurisdictional cost and revenue study required by § 154.38(d)(4)(vi)(a) and Section 154.209(a)(1) of the Regulations.

Panhandle also states that it is submitting a revised tariff sheet related to its IT (Interruptible Transportation) rate schedule. This revision is designed to comply with a Commission directive. Further, Panhandle also is submitting

certain revisions to its sales rate schedules LS–1, LS–2, SS–1 and CS–1 to eliminate the recovery of purchased gas costs from the minimum commodity bill, and is separately stating purchased gas costs on its applicable rate tariff sheets, as required by Section 154.111 of the Commission's Regulations and the Commission's Order No. 380. Panhandle also is proposing to reduce the filing time from 45 days to 30 days with respect to its PGA, ANGTS and DCA tariff provisions contained in the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Panhandle states that the aforementioned cost and revenue study demonstrates that Panhandle's jurisdictional cost of service is greater by at least $22.4 million than the jurisdictional revenues for the applicable twelve-month period, as adjusted. Moreover, this study demonstrates that Panhandle is earning less than its previously allowed rate of return.

Panhandle could have chosen to seek an increase in its rates by submitting revised tariff sheets designed to recover this $22.4 million jurisdictional revenue deficiency, but chose not to at this time, without prejudice to its rights subsequently to seek such an increase. Therefore, this filing is made solely to comply with the provisions of § 154.38(d)(4) and § 154.209 of the Regulations, and is without prejudice to Panhandle's rights subsequently to seek an increase in rates to recover its increased costs, including but not limited to, the level of risk associated with respect to the pending Notice of Proposed Rulemaking in Docket No. RM85–1–000 (Parts A–D) (NOPR).

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Appendix A—Panhandle Eastern Pipe Line Company—Proposed Tariff Sheets

FERC Gas Tariff, Original Volume No. 1

Fifty-Third Revised Sheet No. 3–A
Thirtieth Revised Sheet No. 3–B
Fifth Revised Sheet No. 3–C
Fourth Revised Sheet No. 3–D
Twenty-Third Revised Sheet No. 22
Fifteenth Revised Sheet No. 24–A
Twenty-Sixth Revised Sheet No. 25
Seventeenth Revised Sheet No. 26–B
Seventeenth Revised Sheet No. 26–E
First Revised Sheet No. 32–Q
First Revised Sheet No. 42–C.2
Ninth Revised Sheet No. 43–1
Twelfth Revised Sheet No. 43–2
Fourteenth Revised Sheet No. 43–3
First Revised Sheet No. 43–9

FERC Gas Tariff, Original Volume No. 2

Eighth Revised Sheet No. 93
Ninth Revised Sheet No. 135
Eleventh Revised Sheet No. 611
Eleventh Revised Sheet No. 694
Eleventh Revised Sheet No. 695
Eleventh Revised Sheet No. 875
Eleventh Revised Sheet No. 876
Third Revised Sheet No. 1291
Third Revised Sheet No. 1292
Third Revised Sheet No. 1316
Third Revised Sheet No. 1317
Third Revised Sheet No. 1339
Third Revised Sheet No. 1340
Third Revised Sheet No. 1557
Third Revised Sheet No. 1558
Third Revised Sheet No. 1586
Third Revised Sheet No. 1610
Third Revised Sheet No. 1883
Third Revised Sheet No. 1884
Third Revised Sheet No. 1920
Fourth Revised Sheet No. 1963
Third Revised Sheet No. 1995
Fifth Revised Sheet No. 2049
Second Revised Sheet No. 2064
Fifth Revised Sheet No. 2242
Third Revised Sheet No. 2370
Third Revised Sheet No. 2457
Third Revised Sheet No. 2489
Third Revised Sheet No. 2524
First Revised Sheet No. 2546
First Revised Sheet No. 2570
First Revised Sheet No. 2640
Third Revised Sheet No. 2672
First Revised Sheet No. 2707
Second Revised Sheet No. 2731
First Revised Sheet No. 2754
First Revised Sheet No. 2779
First Revised Sheet No. 2827
First Revised Sheet No. 2850
First Revised Sheet No. 2873
First Revised Sheet No. 2884
First Revised Sheet No. 2911
First Revised Sheet No. 2935

[FR Doc. 85–21661 Filed 9–10–85; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA86–1–39–000, 001]

Pacific Interstate Transmission Co. Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 4, 1985.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on August 30, 1985, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Twenty-Eighth Revised Sheet No. 4
Eleventh Revised Sheet No. 4–A
Twenty-Third Revised Sheet No. 5.

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in Sections 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates applicable to Pacific Interstate's Southwest Division, thereon is October 1, 1985.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed October 1, 1985 Pacific Interstate Rate Schedule S–G–1 commodity rate of 322.61¢ per decatherm, an increase of 50.86¢ per decatherm from the 271.75¢ per decatherm rate effective April 1, 1985, the date of the last S–G–1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $59,589 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1985 an amount of $57,977.90, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost account at June 30, 1985. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance

with §§ 385.214 and 385.211 of the Commission's Rule of Practice and Procedure. All such motions or protests should filed on or before Sept. 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21659 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-62-000, 001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 4, 1985.

Take notice that Pacific Offshore Pipeline Company (Pacific Offshore) on August 30, 1985, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheets:

Fourth Revised Sheet No. 4
Second Revised Sheet No. 35
First Revised Sheet No. 36

Pacific Offshore requests an effective date of these tendered tariff sheets and the rates thereon of October 1, 1985.

Pacific Offshore also states that the above-tendered tariff sheets reflect a proposed October 1, 1985 Pacific Offshore Rate Schedule G-1 commodity rate of $2.313 per decatherm, an increase of $.290 per decatherm from the $2.023 per decatherm rate effective October 1, 1985, the date of the revised commodity rate, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $621,712 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1985 an amount of $613,291.86 which is the amount of Pacific Offshore's Unrecovered Purchased Gas Cost account at June 30, 1985.

Pacific Offshore also seeks Commission approval of modifications to its Net Gas Cost Adjustment provision to correct an inconsistency between sales and purchases in the computation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commissions Rule of Practice and Procedure. All such motions or protests should be filed on or before *Sept. 12, 1985.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21660 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-44]

Complaint; Kurt A. Quillen v. City of Longmont, Colorado

September 4, 1985.

Take notice that on August 15, 1985, Kurt A. Quillen submitted for filing a complaint against City of Longmont, Colorado (Longmont). Quillen seeks to have the Commission enforce Longmont's obligation under Section 210 of the Public Utilities Regulatory Policies Act of 1978 to purchase power, at full advoided cost, from Quillen.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21662 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No TA86-1-38-000, 001]

Filing of Revised Tariff Sheets; Ringwood Gathering Co.

September 4, 1985.

Take notice that on August 29, 1985, Ringwood Gathering Company tendered for filing Thirty-Fifth Revised Sheet PGA-1. Ringwood Gathering Company states that Thirty-Fifth Revised Sheet PGA-1 will become effective on October 1, 1985, and revise its Base Tariff Rate to reflect the increase in the system cost of purchased gas and recover the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates for October, 1985.

Ringwood Gathering Company states that copies of this filing were served upon Northwest Central Pipeline Corporation and Westar Transmission Company, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214. of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21663 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-103]

Resource Sort Workshop for Cluster Impact Assessment Procedure; Salmon River Basin, Idaho

Issued August 29, 1985

As part of the Resource Sort Phase (Phase 2) of the Cluster Impact Assessment Procedure (CIAP) for the Salmon River Basin, the Staff of the Federal Energy Regulatory Commission (Staff) will convene a Resource Sort Workshop at 9:30 a.m. on October 21-23, 1985, in the Bureau of Land Management, State Office, 3380 Americana Terrace, in Boise, Idaho. The purpose of the Resource Sort Phase of the CIAP is to further define the scope of the study by taking a more detailed look at the interaction of projects with target resources. The resource information from Phase 2 will be utilized as baseline

data for the remainder of the CIAP analysis.

The Staff is now compiling information on the target resources for inclusion in a Resource Sort Workshop Document (Document) that will be sent to Phase 1 CIAP participants for review on or about October 9, 1985. Others wishing to receive the Document and participate in the Workshop must contact the FERC Project Manager, Mr. Thomas Russo at (202) 376–1976, or Mr. John Staples at (202) 376–9064 by October 9, 1985.

In the Resource Sort Workshop, the Staff will verify the technical data in the Document with the CIAP participants and discuss analytical techniques that will be used in the Multiple Project Assessment Phase (Phase 3) of the CIAP. After a brief overview, Workshop participants will divide into smaller groups for consideration of the specific target resource categories. These groups will be chaired by the Staff individuals responsible for specific target resources and will entail open and informal discussions of the technical issues related to the Staff's analysis of the specific target resources. The Workshop will be concluded with a general meeting at which a brief summary of all the Workshop activities will be presented by the Staff, and the upcoming Phase 3 CIAP activities will be discussed.

In order to ensure the success of the Workshop, the Staff encourages all participating agencies and organizations to designate no more than two representatives to participate in the meetings. The Staff intends to encourage open dialogue and discussion among all participants with respect to the technical analysis of target resources.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21664 Filed 9–10–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–1–7–000, 001]

Southern Natural Gas Co., Proposed Changes in FERC Gas Tariff

September 4, 1985.

Take notice that Southern Natural Gas Company (Southern) on *August 30,* 1985, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 1, 1985. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net increase in Southern's rates of approximately .552¢ per Mcf as a result of the following items:

(1) A Current Adjustment pursuant to section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual increase in the cost of purchased gas to jurisdicational customers of $44,878,689 or approximately 12.396¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas costs of (.401¢) per Mcf, which is a decrease of 11. 788¢ per Mcf from the present Surcharge Adjustment.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to Section 9.6(3) of the General Terms and Conditions of Southern's tariff of (.060¢) per Mcf, which reflects a decrease of .056¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.601(a)(1)(ii) of the Commission's Regulations, Southern is also filing Twelfth Revised Sheet No. 45R with a proposed effective date of October 1, 1985. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning October 1, 1985, to be zero.

Copies of the filing were served upon the Company's jurisdiction customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214). All such motions or protests should be filed on or before Sept. 12, 1985. Protests appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21665 Filed 9–10–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–1–42–000, 001]

Proposed Changes in FERC Gas Tariff; Transwestern Pipeline Co.

September 4, 1985.

Take notice that Transwestern Pipeline Company (Transwestern) on August 30, 1985 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following Sheets:

1st Alternate Twenty-ninth Revised Sheet No. 5
1st Alternate Twenty-seventh Revised Sheet No. 6
Twelfth Revised Sheet No. 6A

The above tariff sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets is a decrease of $.3538/dth.

The rate change therein consists of:

(1) A decrease in the cost of Gas Adjustment of $.2585/dth based upon decreases in the projected gas costs; and

(2) A decrease in the Surcharge Adjustment of $.0953/dth due to a decrease in the balance in the Gas Cost Adjustment account as of June 30, 1985.

The proposed effective date of the above tariff sheets is October 1, 1985.

Copies of the filing were served on Transwestern's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commisison in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21666 Filed 9–10–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85–658–000, etc.]

Northern Energy Group, Inc., et al. Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Northern Energy Group, Inc. August 30, 1985

[Docket No. QF85-658-000]

On August 20, 1985, Northern Energy Group, Inc. (Applicant), of 5 West Main Street, Chateaugay, New York 12920 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Chateaugay, Franklin County, New York. The primary energy source will be biomass in the form of sawmill residue and whole tree chips. The electric power production capacity will be approximately 14.2 megawatts.

2. Mat-Su Energy Corporation

[Docket No. QF85-657-000]

August 30, 1985.

On August 19, 1985, Mat-Su Energy Corporation (Applicant), of General Delivery, Wasilla, Alaska 99687 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located near Big Lake Exit, off Parks Highway, in Matanuska-Susitna Bourough, Alaska. The primary energy source will be biomass in the form of wood chips. The electric power production capacity will be 15 megawatts.

3. David W. Larson

[Docket No. QF85-594-000]

August 30, 1985

On July 8, 1985, David W. Larson (Applicant), of RR1 Box 121, White Lake, South Dakota 57383 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. Supplemental information was filed on August 19, 1985 to complete the filing.

The 3.5 megawatt wind facility will be located in the White Lake Township, Aurora County, South Dakota.

4. Charles Vail

[Docket No. QF85-665-000]

September 5, 1985

On August 26, 1985, Charles Vail (Applicant), of 6227 North Twenty-Sixth Road, Arlington, Virginia 22207, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Portsmouth, New Hampshire. The facility will generate electric power by burning anthracite silt. The electric power production capacity of the facility will be 35,000 kW.

5. Errol Hydroelectric Limited Partnership

[Docket No. QF85-659-000]

September 5, 1985

On August 19, 1985, Errol Hydroelectric Limited Partnership (Applicant), c/o Swift River/Hafslund Company, 10 Harbor Street Danversport, Massachusetts 01923, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.4 megawatt hydroelectric facility will be located at the Errol Dam in Errol, New Hampshire.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Foster Wheeler New Hampshire, Inc.

[Docket No. QF85-661-000]

September 5, 1985.

On August 22, 1985, Foster Wheeler New Hampshire, (Inc.) (Applicant), of Foster Wheeler Power Systems, Inc., 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Swanzey, New Hampshire. The primary energy source will be biomass in the form of wood chips and waste paper. The electric power production capacity will be approximately 17.2 megawatts. Propane, natural gas or oil may be used for startup purposes only and will not exceed five percent of the total energy input during any calendar year.

7. InterWest Energy, Inc.

[Docket No. QF85-664-000]

September 5, 1985.

On August 26, 1985, InterWest Energy, Inc. (Applicant), of 305 111th Avenue, N.E., Bellevue, Washington 98004, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in the Village of Hillman, Montomorency County, Michigan. The primary energy source will be biomass in the form of wood waste. The electric power production will be 15 megawatts. The facility will not use oil, natural gas or coal.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the approrpriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21651 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES85-56-000 et al.]

Electric Rate and Corporate Regulation Filings; Gulf States Utilities Co. et al.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ES85-56-000]

September 4, 1985.

Take notice that on August 23, 1985, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the

Federal Power Act authorizing the Applicant to issue up to $100,000,000 Principal Amount of First Mortgage Bonds over a two-year period and seeking exemption from competitive bidding requirements.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. ES85-57-000]

September 4, 1985.

Take notice that on August 26, 1985, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act (i) to guarantee up to $20,000,000 principal amount of long-term, variable rate promissory notes to be issued pursuant to an employee stock ownership plan and trust sponsored by the Company (the "ESOP"), such promissory notes to be issued and sold by the ESOP in a private placement to qualified institutional lenders, (ii) to assume an obligation to purchase such notes under certain circumstances, and (iii) to assume a reimbursement obligation with respect to amounts which may be advanced from time to time under a bank letter of credit to be issued to support the payment of such notes.

Comment date: September 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER85-708-000]

September 5, 1985.

Take notice that on August 26, 1985, Arizona Public Service Company ("APA") tendered for filing a Notice of Cancellation of the Wholesale Power Agreement (Agreement) between Electrical District No. 7 (District) and "APS" for the supply of power, Rate Schedule FPC No. 13.

"APS" requests to cancel said Agreement as of December 21, 1985, pursuant to its term.

Copies of these filings have been served upon ED-7 and the Arizona Corporation Commission.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER85-687-000]

September 5, 1985.

Take notice that on August 15, 1985, the Idaho Power Company, tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes original Volume No 1) during June, 1985, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 44
Sierra Pacific Power Company—Supplement 40
Montana Power Company—Supplement 36
Portland General Electric Company—Supplement 36
Southern California Edison—Supplement 30
San Diego Gas & Electric Company—Supplement 25
Washington Water & Power Company—Supplement 30
Los Angeles Water & Power Company—Supplement 27
Puget Sound Power & Light Company—Supplement 17
City of Glendale—Supplement 25
City of Pasadena—Supplement 23
Pacific Gas & Electric Company—Supplement 11
Western Area Power Administration—Supplement 4
California Department of Water Resources—Supplement 1

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power and Light Company

[Docket No. ER85-714-000]

September 5, 1985.

Take notice that on August 28, 1985, Jersey Central Power and Light Company (Jersey Central) tendered for filing copies of revised tariff sheets providing for partial requirements and wheeling service for former full requirements wholesale customers of Jersey Central. These customers have obtained allotments of power from the Power Authority of the State of New York (PASNY) as of July 1, 1985. It has not been possible to effectuate all of the contractual arrangements relating to delivery of this power until now. The PASNY power has been received by Jersey Central since July 1, 1985. Jersey Central therefore requests waiver of the prior notice provisions of the Commission's regulations and an effective date of July 1, 1985 for these tariff provisions. As part of this filing Jersey Central also includes a revised index of purchasers to its original Volume Number 1.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER85-478-001]

September 5, 1985.

Take notice that on August 21, 1985, New England Power Company (NEP) submitted for filing an Explanatory Statement and an Offer for Settlement between NEP, the municipal Rate T-PTF Customers of NEP, and the Boston Edison Company.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Power Company

[Docket No. ER85-711-00]

September 5, 1985.

Take notice that American Electric Power Service Corporation (AEP) on August 28, 1985 tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operation subsidiary, Modification No. 6 dated April 30, 1985 to the Operating Agreement dated December 1, 1965 between the Toledo Edison Company (Toledo) and OPCO. The Commission has previously designated the 1965 Agreement as OPCO's Rate Schedule FERC No. 35 and Toledo's Rate Schedule FERC No. 1.

Section 1 of Modification No. 6 increases the demand rate for multi-party Short Term Power from $0.24/kW-week ($0.048/kW-day) to $0.35/kW-week ($0.070/kW-day) until April 14, 1985, and to $0.46/kW-week ($0.092/kW-day) thereafter when OPCO is the supplying party. Section 1 also increases Toledo's transmission demand rate for Short Term Power from $0.24/kW-week ($0.048/kW-day) to a rate not to exceed to $0.035/kW-week (0.070/kW-day). In addition, Section 3 of this Modification increases the transmission demand rate for Limited Term Power from $1.00 to $2.00 per kilowatt per month when OPCO is the supplying party and from $1.00 to a rate not to exceed $1.50 per kilowatt per month when Toledo is the supplying party.

AEP requests that this Modification become effective in two parts, allowing the $0.35/kW-week ($0.070/kW-day) rate for multi-party Short Term Power to become effective March 31, 1985 and the remainder of this Modification to become effective Autust 15, 1985. These effective dates would update OPCO's rates with Toledo to levels in effect between OPCO and other interconnected electric utility systems for the time periods specified allowing OPCO to charge similar rates for similar services.

Copies of this filing were served upon the Toledo Edison Company and the Public Utilities Commission of Ohio.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Oklahoma

[Docket No. ER85-709-000]

September 5, 1985.

Take notice that on August 26, Public Service Company of Oklahoma ("PSO") tendered for filing the Agreement for Interchange of Electric Power and Energy between Grand River Dam Authority ("GRDA") and PSO, dated May 22, 1985. PSO states that the Agreement, which supersedes and replaces, in its entirety, the Agreement for Interchange of Electric Power and Energy between GRDA and PSO dated December 22, 1981 (FERC Rate Schedule 224) and the First Amendment to such Agreement dated July 1, 1982, provides for a change in the relationship and methods of operation between PSO and GRDA in order for GRDA to assume independent control of its electric system and to operate its own load control area independently of the load control area of PSO. PSO proposes that the Agreement be made effective as of June 1, 1985, and, accordingly, requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been sent to GRDA and the Oklahoma Corporation Commission.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER85-713-000]

September 5, 1985.

Take notice that on August 28, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing a transmission agreement between Public Service Electric and Gas Company (Public Service) and Borough of South River.

Service under the Rate Schedule commenced July 1, 1985 and will continue throughout a Primary Term ending June 30, 1986, and thereafter for nine successive Terms of one year each ending June 30, 1995, unless terminated by either party.

Comment date: September 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the Comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21704 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-462-005, etc.]

Petition To Amend; Great Lakes Gas Transmission Co.

August 29, 1985.

Take Notice that on August 2, 1985, Great Lakes Gas Transmission Company, 2100 Buhl Building, Detroit, Michigan 48226 (Petitioner), filed in Docket Nos. CP79-462-005, CP66-110-034 and CP71-222-008, a petition to amend the Commission's order issued July 18, 1985, 32 FERC ¶ 62,191, pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in transportation volumes, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it seeks authorization to render transportation service, for the contract year beginning November 1, 1985, to Texas Eastern Transmission Corporation (TETCO) of volumes of natural gas to be purchased by TETCO from ProGas Limited, in the quantity of 75,000 Mcf of gas per day, instead of the 56,250 Mcf per day currently authorized for such contract year.

Petitioner states that pursuant to an order issued June 10, 1981, 15 FERC ¶ 61,154, as amended by the order issued July 18, 1985, Great Lakes is currently authorized to transport up to 75,000 Mcf of gas per day for TETCO. The current authorization, it is stated, provides for transportation service for TETCO of up to 75,000 Mcf per day and an amount equal to 75 percent and 50 percent of 75,000 Mcf of gas per day during the contract years beginning November 1 of 1985 and 1986, respectively.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 19, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21703 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-793-000 et al.]

Natural Gas Certificate Filings Seagull Interstate Corp. et al.

September 6, 1985.

Take notice that the following filings have been made with the Commission.

1. Seagull Interstate Corporation

[Docket No. CP85-793-000]

Take notice that on August 19, 1985, Seagull Interstate Corporation (Applicant), 1001 Fannin Street, Suite 1700, Houston, Texas 77002, filed in Docket No. CP85-793-000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-796-000]

Take notice that on August 19, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-796-000 a request

pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related facilities under its certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes the construction and operation of a tap and related facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG). It is stated that the location of the tap is on Arkla's Line JM-7 at Station 1038+00 in Section 35, Township 13, North, Range 5 West, Independence County, Arkansas. It is asserted that gas delivered by means of these facilities would be used to serve retail customers. It is further asserted that there are presently about 155 domestic customers, 12 commercial customers and 1 small industrial customer desiring service with the possibility of additional customers being added in the future. It is stated that these customers would use approximately 23,000 Mcf of natural gas annually and about 300 Mcf of a peak day.

Arkla states that the gas sold would be billed at ALG's regular retail rates applicable from time to time pursuant to ALG's Rate Schedules Nos. 1, 2 and 3. It is further stated that the facilities would cost approximately $10,065. Arkla states that the gas would be delivered from its general system supply which is adequate to provide the service.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gulf Transmission Company

[Docket No. CP85-799-000]

Take notice that on August 20, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP85-799-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Bethlehem Mines Corporation (Bethlehem Mines) under the certificate issued in Docket No. CP83-496-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport up to 4 billion Btu equivalent of natural gas per day for Bethlehem Mines' Hanover, Pennsylvania, plant, through October 31, 1985. Columbia Gulf states that the gas to be transported would be purchased from Northern Gas Marketing, Inc., and Hadson Gas Systems, Inc. (NGM and Hadson), and would be used as boiler fuel in Bethlehem Mines' Hanover plant.

It is indicated that Bethlehem Mines has made arrangements to purchase this gas from NGM and Hadson. It is explained that the gas purchased from NGM would be transported by Northern Natural Gas Company, Division of InterNorth, Inc., and Tennessee Gas Pipeline Company, Division of Tenneco Inc., and delivered to Columbia Gulf at Egan, Acadia Parish, Louisiana. Columbia Gulf states that the gas purchased from Hadson would be transported by United Gas Pipe Line Company and delivered to Columbia Gulf at Erath, Lafayette Parish, Louisiana. Columbia Gulf would redeliver the gas to Columbia Gas Transmission Corporation for redelivery to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Bethlehem Mines, near Hanover, Pennsylvania.

Columbia Gulf also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia Gulf will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi River Transmission Corporation

[Docket No. CP85-797-000]

Take notice that on August 19, 1985, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP85-797-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain additional natural gas storage facilities at Applicant's East Unionville Storage Field located in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the drilling and operation of six additional injection/withdrawal wells in its East Unionville storage field including the installation and use of measurement and related equipment and facilities. Applicant also proposes to install individual metering facilities at three of its existing injection/withdrawal wells and to construct and operate approximately 4.1 miles of additional gathering field lines. Applicant states that said wells are expected to increase the overall deliverability of the field, but would not alter the total storage capacity of the field.

Applicant estimates the total cost of the proposed wells and related facilities to be $8,300,000.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP85-774-000]

Take notice that on August 12, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-774-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon and reduce 6,000 Mcf of daily contract quantity of gas sold to Iowa-Illinois Gas and Electric Company (Iowa-Illinois) and for a certificate of public convenience and necessity authorizing an increase in the daily contract quantity of gas sold to Wisconsin Southern Gas Company, Inc. (Wisconsin Southern), and authorizing the rearrangements of specific delivery volumes to Northern Illinois Gas Company (NIGAS) without any change in its daily contract quantity, all as more fuliy set forth in the application which is

on file with the Commission and open to public inspection.

Natural states that Wisconsin Southern has requested an increase in its daily contract quantity of 6,000 Mcf of natural gas to help reduce its reliance on liquefied petroleum peak-shaving gas to meet its customers' winter demand. Further, it is stated that Iowa-Illinois has indicated its desire to reduce its daily contract quantity by 6,000 Mcf of natural gas since the volumes available to it from Natural exceed its estimated requirements for the foreseeable future. In order for Natural to increase its firm sales to Wisconsin Southern off its Illinois lateral, it is explained that Natural must either install new facilities or reduce contract quantities. Natural states that NIGAS has agreed to shift delivery volumes of 6,000 Mcf of natural gas per day from its Rock Falls delivery point on the Illinois lateral to other points on Natural's Amarillo Line. Therefore, Natural proposes to increase peak day deliverability to Wisconsin Southern by 6,000 Mcf, reduce peak day deliverability to Iowa-Illinois by 6,000 Mcf, and shift deliveries to NIGAS in order to effectuate the increased deliverability for Wisconsin Southern. Natural states that this proposal would result in no growth, no increase in the capacity of either the Illinois lateral or the Amarillo line, and no new facilities.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP85–788–000]

Take notice that on August 16, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–788–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northern Petrochemical Company (NPC) under the blanket certificate issued in Docket No. CP82–402–000 pursuant of section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Applicant entered into a gas transportation agreement (agreement) with NPC dated June 28, 1985. Pursuant to the terms of the agreement, Applicant proposes to transport up to 20 billion Btu of natural gas per day, on behalf of NPC for use in its Morris, Illinois, plant. It is indicated that Applicant would receive the gas at the existing interconnection with Endevco Pipeline Company in Nacogdoches County, Texas. Applicant would redeliver the gas for the account of NPC to Northern Illinois Gas Company in DuPage County, Illinois (Eola Road delivery point), and Livingston County, Illinois (Pontiac delivery point), it is explained. Applicant proposes to charge NPC 30.7 cents per million Btu and 28.1 cents per million Btu that Applicant receives for the account of NPC in Nacogdoches County, Texas, for delivery to the Eola Road and Pontiac delivery points, respectively. It is stated that this rate is consistent with Applicant's EUT–1 rate schedule on file with the Commission. NPC would also pay the GRI surcharge of 1.21 cents per million Btu, it is explained.

Applicant states that, pursuant to § 157.209(e)(1), of the Commission's Regulations, the transportation service was commenced on July 3, 1985. Applicant requests authority to perform such service until July 3, 1986, provided that the Regulations are amended to allow service beyond October 31, 1985.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of additional sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP83–14–103]

Take notice that on August 16, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP83–14–103 a petition to amend the order issued January 25, 1985, in Docket No. CP83–14–047 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of the term of the authorization granted from October 26, 1985, to October 26, 1987. Northern also seeks blanket authority automatically to implement contracts under Rate Schedule LVCS. Petitioner's proposals are more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on October 8, 1982, it filed an application for a certificate of public convenience and necessity for authorization to provide service through October 26, 1984, under two new flexible pricing rate schedules, the flexible pricing-pipeline option (FPO) rate schedule and the large volume contract service (LVCS) rate schedule. It is explained that Rate Schedule FPO would apply to a group of Petitioner's utility customers whose consumers possess alternative fuel capability and are designated and defined according to their natural gas requirements, in Petitioner's FERC Gas Tariff, Third Revised Volume No. 1, as priorities 6, 7 and 8 consumers. Petitioner further states that Rate Schedule LVCS would provide a similar service, but would apply to distributor customers which contract on an individual basis with end-users which consume more than 199 Mcf of natural gas per day and who possess alternative fuel capability.

Petitioner states that on May 25, 1984, the Commission authorized its flexible rate program through October 26, 1984, subject to certain conditions, and made such program applicable to any Rate Schedule CD–1 customer who had a viable alternative fuel available. Subsequently, on October 26, 1984, and January 25, 1985, the Commission issued orders extending the term of these flexible rate schedules to January 26, 1985, and October 26, 1985, respectively. Petitioner asserts the reasons for granting the certificate still exist and, as such, it seeks Commission approval herein to extend this service through October 26, 1987. Petitioner states that Rate Schedules FPO and LVCS are accomplishing their desired goals: (1) Returning load to the system that would otherwise use alternative fuels; (2) recovering fixed costs over a broader base of sales; (3) reducing Petitioner's take-or-pay exposure; (4) reducing Petitioner's system-wide gas costs reflected through Petitioner's purchased gas adjustment; and (5) assisting in reducing Petitioner's current gas supply situation.

Petitioner states that the flexibility afforded by these rate schedules would assist it and its distributor customers in their efforts to regain and retain markets and that any disruption in service provided under these flexible rate schedules would be detrimental to these gas markets. Petitioner further states that the limited extension of this program has impeded the effectiveness of this program by causing market

uncertainty beyond October 26, 1985, and that prompt review and approval would provide stability to this program.

Petitioner further seeks blanket authority automatically to implement contracts executed under Rate Schedule LVCS instead of waiting ten days before effectuating, as currently required. Petitioner states it would file on the tenth day of every month a revised sheet No. 4e to be included in its Volume I Tariff which reflects prior month activity.

Comment date: September 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–783–000]

Take notice that on August 15, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–783–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon and remove eighteen small volume measuring stations in the states of Iowa, Kansas, Minnesota, Nebraska, South Dakota and Texas under the abandonment authorization issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it has been informed by Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), that eighteen small volume measuring customers no longer desire natural gas service and wish to have their meters removed. Consequently, Northern indicates, it is requesting authority to abandon the eighteen small volume measuring stations. Northern estimates the cost to remove such facilities to be $4,500.

Northern proposes to abandon and remove the following measuring stations:

Customer	Location, county/State
Antonson, Mark	Dakota, Minnesota.
Clark, Kenneth	Lancaster, Nebraska.
Dalbec, Bruce	Wright, Minnesota.
Davidson, Roger	Carlton, Minnesota.
Downing, Coleman	Stevens, Kansas.
Haberer, George	Boone, Iowa.
Kays, James	Isanti, Minnesota.
Killebrew, Flavis	Roberts, Texas.
Knoll, Edward	Finney, Kansas.
Kruger, Robert	Dakota, Minnesota.
Mizner, Melvin	Scott, Minnesota.
Moore, R.L.	Carson, Texas.
National Cooperative Refinery Association	Barton, Kansas.
Otto, Rolland	Gage, Nebraska.
Paulson John	Clay, South Dakota.
Phillips, Forrest	Otoe, Nebraska.
Remmel, Charles	Hansford, Texas.
Woody, Richard	Carson, Texas.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of InterNorth.

[Docket No. CP85–816–000]

Take notice that on August 22, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–816–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by reclaim certain compression and appurtenant facilities at its Eunice compressor station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that, due to declining volumes of natural gas production, two 640-horsepower compressor units (Unit Nos. 5 and 6) and one 757-horsepower compressor unit (Unit No. 7) are no longer needed at the Eunice compressor station in Lea County, New Mexico. Northern further states that the four 1,213-horse-power compressor units (Unit Nos. 1–4) remaining at the Eunice station are sufficient to compress the present gas production and would continue to be adequate through the next three years.

Northern estimates the cost of removing the facilities to be $140,000 and the salvage value to be $35,000.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Northwest Central Pipeline Corporation

[Docket No. CP85–786–000]

Take notice that on August 15, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–786–000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for the sale of gas to The Gas Service Company (Gas Service) under the certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central proposes to tap its six-inch pipeline near Beloit, Mitchel County, Kansas, and to construct and operate a meter and regulator station for the sale of up to 1,000 Mcf of gas per year to Gas Service for resale to James E. Litton for irrigation purposes. Northwest Central indicates the estimated cost of these facilities is $3,910, which would be paid from treasury cash.

Northwest Central states that the new delivery point is for an existing customer and therefore not prohibited by an existing tariff and that the projected volume is within the full requirements service it renders gas services.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85–790–000]

Take notice that on August 16, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–790–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Tenneco Oil Company (TOC) under the certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request on file with the Commission and open to public inspection.

Tennessee states that it commenced the subject transportation service pursuant to § 157.209(a)(2) of the Regulations on June 28, 1985, as reported to the Commission in Docket No. ST85–1398. Tennessee indicates that it is filing the instant request for authorization under the prior notice procedure to continue this transportation service until the earlier of (i) October 31, 1985, or (ii) the effective date of a final rule in Docket No. RM85–1–000, in which event it is requested that this service for TOC be concurrent with any subsequent authorizations, subject to either party's right to terminate the agreement upon 30 days prior written notice.

It it stated that Tennessee and TOC are parties to a letter agreement dated June 19, 1979, as amended May 1, 1985 (gas processing agreement). Pursuant to such gas processing agreement, it is further stated that TOC has the right to process volumes from Tennessee's system supply at TOC's Chesterville gas processing plant (Chesterville) located in Colorado County, Texas. It is explained that in order to keep Tennessee whole with respect to the

plant fuel and shrinkage volumes incurred at Chesterville as a result of such processing, TOC has the option either to pay Tennessee for such volumes at 103 percent of Tennessee's weighted average cost of gas or make up such volumes in kind by delivering into Tennessee's system volumes available to TOC. Upon receipt of TOC's volumes, Tennessee states that it would transport such gas to Chesterville for delivery to TOC, which would simultaneously redeliver such volumes to Tennessee at Chesterville as make-up volumes under the processing agreement.

Tennessee proposes herein to transport natural gas for TOC pursuant to a gas transportation agreement (agreement), dated June 28, 1985, between Tennessee and TOC. It is stated that the gas to be transported under the agreement would be purchased by TOC from Dixon Management Corporation (Dixon) from reserves produced from the John Hastedt Well No. 2, Columbus field, Colorado County, Texas, and would be delivered to Tennessee for TOC's account under TOC's option to replace shrinkage volumes in kind as set forth above.

Tennessee also requests flexible authority to add or delete receipt points associated with sources of gas acquired by the end-users. The flexible authority requested applies only to points related to sources of gas supply, and not to delivery points in the market area. Tennessee will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Tennessee states that it would charge rates set forth in its Rate Schedule ITEU. Further Tennessee states that it would retain 0.9 percent of the volume received from TOC hereunder on any day. In addition, Tennessee states that it would collect the Gas Research Institute surcharge for all quantities transported under the transportation arrangement.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Eastern Transmission Corporation

[Docket No. CP85–804–000]

Take notice that on August 21, 1985, Texas Eastern Transportation Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85–804–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas for New Jersey Natural Gas Company (New Jersey Natural) and to construct and operate the additional pipeline facilities required to render this service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that New Jersey Natural has requested Applicant to provide a firm transportation service to enable New Jersey Natural to receive gas that it proposes to purchase from Carnegie Natural Gas Company (Carnegie). Applicant explains that it has agreed to transport on a firm basis for New Jersey Natural a maximum daily quantity of 27,000 dt equivalent of natural gas and such additional quantities on an interruptible basis as mutually agreed upon for a term extending through May 30, 2000; and that all gas to be transported by Applicant would be "Carnegie gas" as defined in an agreement dated August 12, 1985.

Applicant proposes to receive from Carnegie the stated quantities of natural gas at the existing point of interconnection between Applicant and Carnegie located at Applicant's meter station No. 1275 in Greene County, Pennsylvania, and transport equvalent volumes to New Jersey Natural at Applicant's meter station No. 953 in MIddlesex County, New Jersey.

To render this service Applicant proposes to construct and operate 11.10 miles of 30-inch, 36-inch and 42-inch pipeline loop in the states of West Virginia, Pennsylvania and New Jersey. The estimated cost of these facilities is $15,032,000 and Applicant states that it would initially finance these costs with funds on hand, borrowing under revolving credit on short-term financing.

Pursuant to the agreement which upon grant of the requested authorization would be filed with the Commission as part of Applicant's FERC Gas Tariff, Original Volume No. 2, Applicant states it would charge New Jersey Natural a monthly demand charge based upon the estimated annual cost of services for the proposed facilities, of $12.509 per dt equivalent of natural gas and an excess charge of $.4113 per dt for deliveries in excess of the firm quantity.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Texas Eastern Transmission Corporation

[Docket No. CP85–805–000]

Take notice that on August 21, 1985, Texas Eastern Transmission Corporation (Appiicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85–805–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide a firm storage delivery service for Public Service Electric and Gas Company (Public Service) pursuant to its Rate Schedule SS–II and to construct and operate additional facilities necessary to render those services, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to transport a firm daily delivery quantity (FDDQ) for Public Service of 27,915 dt equivalent of natural gas per day, and to construct and operate at an estimated cost of $15,186,000, 8 miles of 6-inch and 3 miles of 42-inch pipeline loop on its system at eight locations in Pennsylvania and New Jersey and the expansion of measuring and regulating station No. 128. Applicant states that it would initially finance the cost through revolving credit arrangements, short-term loans, and from cash on hand.

A precedent agreement has been executed with Public Service which has requested the FDDQ and that the annual costs associated with the new facilities would be borne by Public Service by use of a firm demand charge. Applicant estimates the firm demand charge to be $9.766 per dt of FDDQ per month.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

14. Texas Eastern Transmission Corporation

[Docket No. CP85–803–000]

Take notice that on August 21, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85–803–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide a firm storage and transportation service for certain of its Rate Schedule SS–III customers and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to provide the following service at the customers' nominated firm daily delivery quantities (FDDQ):

Customer	FDDQ dt per day
Algonquin Gas Transmission Company	1,290
Brooklyn Union Gas Company	10,340
Central Hudson Gas & Electric Corp.	886
Elizabethtown Gas Company	8,469
Long Island Lighting Company	14,771
New Jersey Natural Gas Company	9,552
Philadelphia Gas Works	25,702
Public Service Electric and Gas Company	60,069
Total	131,079

To perform this service, Applicant requests authorization to construct and operate $59,900,000 of facilities including:

(1) Approximately 16.25 miles of 36-inch pipeline loop, 9.71 miles of 30-inch pipeline loop, 4.0 miles of 26-inch pipeline loop and 27.00 miles of 24-inch pipeline loop at 16 locations on Applicant's existing system located in the states of Ohio and Pennsylvania.

(2) Two aerodynamic assembly changeouts at Applicant's Delmont compressor station located near Greensburg, Pennsylvania.

(3) Expansion of facilities at Applicant's meter station No. 034 located in Montgomery County, Pennsylvania and meter station No. 128 located in Union County, New Jersery.

Applicant states that in response to the nominations of the SS–III customers, Applicant determined that it was economically feasible to render the firm withdrawal service by means of the facilities for which authorization is requested. Accordingly, it is explained that precedent agreements have been executed with the eight SS–III customers who have requested FDDQs. These agreement call for the firm SS–III service to commence November 1, 1986, and to continue through March 31, 2006.

Applicant states that as provided by Rate Schedule SS–III, section 11, *Firm Service,* the annual costs associated with all facilities which must be added to Applicant's system to render the FDDQs would be borne only by the SS–III customers which requested such firm service by means of a firm demand charge. Based upon the estimated annual cost of service for the facilities, Applicant estimates a firm demand charge of $10.251 per dt equivalent of natural gas of FDDQ per month for the additional capacity increment. In the event that the actual cost of the facilities varies from the final estimated cost of construction, Applicant states that it would file amended rates to reflect such costs within ninety days after service commences. To the degree that over collections or under collections occur prior to the effectiveness of revised rates, Applicant states further that it would determine any adjustments including interest and would either resubmit billings to refund or recover such over collections or under collections.

Applicant proposes initially to finance the cost of constructing the proposed facilities through revolving credit arrangements, short-term loans, and funds on hand; permanent financing would be undertaken as part of Applicant's overall long-term financing programs at a later date.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

15. Texas Eastern Transmission Corporation

[Docket No. CP85–806–000]

Take notice that on August 21, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85–806–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport for Consolidated Gas Transmission Corporation (Consolidated) on a firm basis natural gas up to a maximum daily quantity of 200,000 dt equivalent of natural gas and such additional quantities on an interruptible basis as Applicant and Consolidated may mutually agree upon for a primary term of twenty years, and year to year thereafter, and to construct and operate certain facilities necessary therefore all as more fully set forth in the application which is on file with the Commisson and open to public inspection.

Applicant requests authority to construct and operate approximately 21.63 miles of 36-inch pipeline loop at five locations on Applicant's existing Penn-Jersey pipeline system located in the state of Pennsylvania at an estimated cost of $26,807,000. Applicant states it would initially fund the cost through revolving credit arrangements, short-term loans and funds and hand.

Applicant proposes to receive from Consolidated quantities of natural gas at an existing point of interconnection with Consolidated located at the Oakford storage field in Westmoreland County, Pennsylvania and to transport equivalent volumes, less applicable shrinkage, to Consolidated at the existing interconnection between Applicant and Consolidated located at Perulack, Pennsylvania. This proposed transportation agreement would facilitate Consolidated's proposed sale for resale of natural gas to Baltimore Gas and Electric Company and Washington Gas Light Company.

For all gas transported and delivered, Applicant would charge Consolidated a monthly demand charge based upon the estimated annual cost of service for the facilities of $2.9942 per dt equivalent of natural gas and an excess charge of $0.0974 per dt for any additional quantities transported on an interruptible basis.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

16. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–810–000]

Take notice that on August 21, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–810–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under Transco's certificate issued in Docket No. CP82–426–000 pursuant to section 7(c) of the Natural Gas Act on behalf of Progresso Quality Foods Corporation (Progresso), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the natural gas to be transported would be purchased from Transco Energy Marketing Company and would be used in steam generation. Transco states that the subject gas was not committed or dedicated to interstate commerce on November 8, 1978. It is indicated that Transco would receive the gas at the tailgate of the Katy Exxon gas plant in Waller County, Texas, and would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery with South Jersey Gas Company (South Jersey). In turn, South Jersey would redeliver such gas to Progresso's Vineland, New Jersey, plant.

Transco states that the peak day, average day and annual sales to be transported would be 1,000 dt equivalent of gas, 600 dt equivalent, and 219,000 dt equivalent, respectively. Transco states that the transportation service for Progresso would continue through October 31, 1985.

Transco states that on a peak day Progresso requires 950 Mcf for steam generation and 50 Mcf for space heating and hot water heating. Therefore, Transco indicates that the proposed

transportation volumes constitute all of the requirements at the plant.

Transco has submitted statements from GHR Pipeline Corporation and United Texas Transmission Company, intrastate transporters of the gas, indicating that they have sufficient capacity to transport the gas without detriment to their other customers.

Transco states that it would charge Progresso the currently applicable transportation rate in accordance with its Rate Schedule T–II, FERC Gas Tariff, Second Revised Volume No. 1. Transco indicates that currently the effective rate under that rate schedule is 44.81 cents per dt equivalent, including a 1.21 cent Gas Research Institute funding charge. In addition, Transco states that it would apply its current transportation policy to the subject transportation which, among other things, requires that Progresso periodically provide Transco with affidavits which state that the subject transportation is not displacing sales which Transco would otherwise make under any of its firm sales rate schedules.

Transco also requests flexible authority to add or delete sources of gas and/or receipt points. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt points, to file certain specified information with the Commission. Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user, Progresso, for use at the same end-use location and would remain within daily and annual volume levels proposed herein.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end this notice.

17. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–811–000]

Take notice that on August 21, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1896, Houston, Texas 77251, filed in Docket No. CP85–811–000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for permission and approval under the authorization issued in Docket No. CP82–426–000 pursuant to Section 7(b) of the NGA to abandon the service and facilities related to the sale and delivery of gas to Laurens Glass Works, Inc. (LGW), all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that on March 21, 1952, in Docket No. G–1782, it was authorized to construct and operate metering facilities and to deliver gas to LGW, a direct sale customer, which gas Transco sold on an interruptible basis for use in LGW's glass plant in Laurens, South Carolina. On December 2, 1972, the gas sales service agreement between Transco and LGW expired by its terms and no service has occurred since that date, it is stated.

Comment date: October 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP85–809–000]

Take notice that on August 21, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–809–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement between the parties dated February 14, 1984, United proposes the transportation of up to 60,000 Mcf of natural gas per day attributable to production in East Cameron Area Block 240, offshore Louisiana, on behalf of Southern. It is stated that the gas would be delivered to Applicant at the outlet side of Sea Robin Pipeline Company's (Sea Robin) measuring station at or near the onshore terminus of Sea Robin's existing pipeline system near Erath, Vermilion Parish, Louisiana. Applicant states that it would redeliver equivalent quantities of gas to Southern at the existing point of interconnection at Southern's Shadyside compressor station near Bayou Sale, St. Mary Parish, Louisiana, and/or Perryville, Ouachita Parish, Louisiana, and/or the outlet side of Applicant's measuring station at the existing interconnection between Southern's 20-inch south Section 28 Main line and Applicant's existing 20-inch crossover in St. Martin Parish, Louisiana (South Section 28 redelivery point).

It is asserted that for each Mcf of natural gas redelivered at the aforesaid redelivery points, except the South Section 28 redelivery point, Applicant would charge Southern an amount equal to Applicant's Southern or Northern Zone rate in effect from time to time, as applicable, less cost for company-used gas. Applicant states that effective July 1, 1985, the rates in Applicant's Northern Zone is 37.79 cents per Mcf and in Applicant's Southern Zone is 26.18 cents per Mcf excludng cost of company-used gas.

It is further explained that Applicant and Southern are parties to an exchange agreement dated July 1, 1985, as amended, which provides, *inter alia,* for the exchange of gas by Southern and Applicant at various delivery points, including the South Section 28 redelivery point, on a fee free basis. Based on that exchange agreement, Applicant would not charge a rate to Southern for volumes delivered to Southern at the South Section 28 redelivery point.

Comment date: September 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Taken further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21702 Filed 9-10-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 2G1241/T499; FRL-2894-3]

Methomyl; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the insecticide methomyl in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire August 8, 1987.

FOR FURTHER INFORMATION CONTACT:
By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA has renewed temporary tolerances for residues of the insecticide methomyl, S-methyl-*N*-[(methyl-carbamoyl)oxy]thioacetimidate, in or on the raw argicultural commodities pineapples at 0.2 part per million (ppm) and pineapple forage at 1.0 ppm.

These tolerances were renewed in response to pesticide petition PP 2G1241, submitted by E.I. du Pont de Nemours and Co., Agricultural Chemicals Dept., Barley Mills Plaza, Wilmington, DE 19898.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 352-EUP-106, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were avaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Neumours and Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 8, 1987. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any exoperience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of smal entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46-FR 24950).

Authority: (21 U.S.C. 346a(j))

Dated: August 29, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-21487 Filed 9-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-741-DR]

Major Disaster and Related Determinations; Mississippi

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-741-DR), dated September 4, 1985, and related determinations.

DATED: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Sewal H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of September 4, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from Hurricane Elena and flooding beginning on or about September 2, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Paul E. Hall of the Federal

Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Harrison and Jackson Counties for Individual Assistance and Public Assistance.

Hancock County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-21669 Filed 9-10-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Service to the Port of Portland, OR; Filing of Petition To Set Aside Order in Part

September 6, 1985.

Notice is hereby given that a petition has been filed by the Trans-Pacific Freight Conference of Japan and its member lines (petitioners) to set aside Ordering Paragraphs 2 and 3 of the Federal Maritime Commission's Order served October 29, 1973, in Docket No. 70-19, *Intermodal Service to Portland, Oregon* (17 FMC 141). The paragraphs which petitioners seek to have set aside require petitioners, except in emergency situations, to call at Portland directly by water on at least alternate sailings if they elect to provide indirect overland service to Portland, and stipulate that to the extent such indirect service is offered, that the applicable tariff provisions must assure that the service is made available to all similarly situated consignees.

In order for the Commission to make a thorough evaluation of the petition, interested persons are requested to submit views, arguments or data on the petition no later than October 7, 1985. Responsea shall be directed to the Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies. Responses shall also be served on counsel for petitioners: Charles F. Warren, Esq., Warren & Associates, P.C., 100 Connecticut Avenue NW., Washington, D.C. 20036.

Copies of the petition are available for examination at the Washington, D.C., office of the Commission, 1100 L Street, NW., Room 11101.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-21741 Filed 9-10-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankvest, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 30, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bankvest, Inc.*, Wilkes-Barre, Pennsylvania; to become a bank holding company by acquiring 38.99 percent of the voting shares of Peoples National Bank of Edwardsville, Edwardsville, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Security Corporation of Kentucky*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Danville Bancorp, Inc., Danville, Kentucky. Comments on this application must be received not later than October 3, 1985.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *B.P.C. Corporation*, Cookeville, Tennessee; to acquire 51 percent of the voting shares of Cumberland County Bank, Crossville, Tennessee.

2. *First Security Bankshares, Inc.* Lavonia, Georgia; to acquire 100 percent of the voting shares of Bank of Hartwell, Hartwell, Georgia.

3. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of Peoples Bank and Trust Company of Sylacauga, Sylacauga, Alabama.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Leland National Bancorp, Inc.*, Leland, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Leland National Bank, Leland, Illinois. Comments on this application must be received not later than October 3, 1985.

2. *Putnam County Bancorp, Inc.*, Hennepin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Putnam County Bank, Hennepin, Illinois.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Anchor Bancorp, Inc.*, Wayzata, Minnesota; to acquire 51 percent of the voting shares of Exchange State Bank, St. Paul, Minnesota. Comments on this application must be received not later than October 3, 1985.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to acquire 100 percent of the voting shares of American State Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, September 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21645 Filed 9-10-85; 8:45 am]

BILLING CODE 6210-01-M

Bellcorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding

company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bellcorp, Inc.*, Manhattan, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bancorp, Inc., Manhattan, Kansas.

Applicant has also applied to engage in acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, September 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21646 Filed 9-10-85; 8:45 am]

BILLING CODE 6210-01-M

The HongKong and Shanghai Banking Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 30, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The HongKong and Shanghai Banking Corp.*, Hong Kong; to retain certain assets and liabilities of the failed Golden Pacific National Bank, New York, New York.

Board of Governors of the Federal Reserve System, September 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21647 Filed 9-10-85; 8:45 am]

BILLING CODE 6210-01-M

Merchants National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 3, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of The Central National Bank of Greencastle, Greencastle, Indiana.

2. *Country Club Bancorporation, Inc.*, Country Club Hills, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of Heritage Bank of Country Club Hills, Country Club Hills, Illinois.

3. *The Indiana National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of Union Bank and Trust Company, Delphi, Indiana.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First American Bancshares, Inc.*, Baytown, Texas; to acquire 100 percent of the voting shares of 1st American Bank and Trust of Friendswood, Friendswood, Texas, a *de novo* bank. Comments on this application must be received not later than September 30, 1985.

Board of Governors of the Federal Reserve System, September 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21648 Filed 9-10-85; 8:45 am]

BILLING CODE 6210-01-M

National American Bancorp, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4 (c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National American Bancorp, Inc.*, Towanda, Pennsylvania; to engage *de novo* through its subsidiary, National Security American Life Insurance Company, Phoenix, Arizona. The Company will be a credit life, accident and health insurer/reinsurer, licensed by the State of Arizona. It will act as a reinsurer of credit life, accident and health insurance issued by Security of America Life Insurance Company in connection with extensions of credit made by the Applicant's subsidiary bank, pursuant to § 225.25(b)(9) of Regulation Y. The geographic area to be served is north central Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W, Atlanta, Georgia 30303:

1. *Peoples Financial Corporation*, Biloxi, Mississippi; to engage *de novo* through its subsidiary, PFC Service Corporation, Biloxi, Mississippi, in leasing of personal property pursuant to § 225.25(b)(5) of Regulation Y.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sloan State Corporation*, Sloan, Iowa; to engage *de novo* directly in making or acquiring loans and other extensions of credit such as would be made by a commercial financial company pursuant to § 225.25(b)(1) of Regulation Y. The geographic area to be served will be the States of Minnesota and Iowa.

Board of Governors of the Federal Reserve System, September 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21649 Filed 9-10-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0241]

Availability of Working Draft of National Shellfish Sanitation Program Manual of Operations, Part II, "Sanitation of the Harvesting and Processing of Shellfish"

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a working draft of the updated version of the National Shellfish Sanitation Program Manual of Operations, Part II, "Sanitation of the Harvesting and Processing of Shellfish." FDA has distributed this draft to State shellfish control officials, shellfish industry members, and other interested persons associated with the Interstate Shellfish Sanitation Conference (ISSC). The agency will provide the draft to other interested persons for review and comment upon request.

DATE: Comments by October 31, 1985.

ADDRESSES: The working draft is available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the draft are available from, and written comments should be addressed to, the Center for Food and Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149. Requests should identify the document as "Working Draft of the Updated National Shellfish Sanitation Program Manual of Operations, Part II, 'Sanitation of the Harvesting and Processing of Shellfish.'"

FOR FURTHER INFORMATION CONTACT: J. David Clem, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary program involving State shellfish control agencies, the shellfish industry, and FDA. Through international bilateral agreements, seven foreign countries also participate in the NSSP.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical control, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a three part manual of operations. The last NSSP Manual of Operations was published in 1965.

In 1982, interested State officials and members of the shellfish industry formed the ISSC. The purpose of ISSC is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for shellfish controls that will assure sources of safe and sanitary shellfish. The ISSC establishes procedures for the uniform application of those guidelines. Those persons interested in obtaining more information about the ISSC should contact Mr. Richard Thompson, Chairman, Interstate Shellfish Sanitation Conference, 2902 Dillon Hill Dr., Austin, TX 78745, phone c/o Texas Department of Health, 512-458-7510.

FDA and ISSC entered into a memorandum of understanding in March 1984 (see 49 FR 12751; March 30, 1984). This agreement provides, among other things, that FDA will publish revisions to the NSSP Manual of Operations. FDA provided additional information about its efforts to review the NSSP Manual of Operations in the Federal Register of February 26, 1985 (50 FR 7797).

In the Federal Register of August 8, 1984 (49 FR 31774), FDA announced the availability of a working draft of the National Shellfish Sanitation Program Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas." FDA received numerous comments on that draft that were reviewed by the agency and by an appointed ISSC committee. On July 8, 1985 (50 FR 27850), FDA announced the availability of the second draft of Part I of the National Shellfish Sanitation Program Manual of Operations, "Sanitation of Shellfish Growing Areas."

FDA is now announcing the availability of a working draft of Part II of the National Shellfish Sanitation Program Manual of Operations, "Sanitation of the Harvesting and Processing of Shellfish." FDA is revising this portion of the Manual of Operations to expand and to update it in light of current industry practices, State and Federal regulatory responsibilities, and public health concerns that are not adequately addressed under current guidelines. FDA expects to discuss the draft with ISSC representatives during the comment period. Persons who have comments on the working draft may submit those comments to FDA at the address listed above.

Dated: September 4, 1985.

Robert L. Spencer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21635 Filed 9-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80P-0403 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for two organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the two organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date—termination date
80P-0403 (extension)	Interscope, Inc., P.O. Box 169, Brighton, Massachusetts 02135.	Interscope, Inc. Laser Light Shows produced by Interscope, Inc. using the Model 100-01 Krypton, Argon, and/or HeNe laser projector manufactured by Brian B. O'Brien.	Sept. 29, 1983-Sept. 29, 1985.
85V-0207	N-Light-N-Ment Industries, Inc., 348 East 50th Street, New York, New York 10022.	Model 01 Variable Distance Large/Small Frame Laser Projection System family incorporating Class IV Argon and/or Krypton lasers and for laser light shows assembled and produced with the above family of projectors by N-Light-N-Ment Industries, Inc.	July 2, 1985-July 2, 1987.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: September 3, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-21628 Filed 9-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0402]

CILCO, Inc.; Premarket Approval of CILCO Nd: YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO, Inc., Huntington, WV, for premarket

approval, under the Medical Device Amendments of 1976, of the CILCO Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 11, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On December 17, 1984, CILCO, Inc., Huntington, WV 25701, submitted to CDRH an application for premarket approval of the CILCO Nd:YAG Ophthalmic Laser. The device is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy). On February 7, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 2, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 11, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 4, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–21632 Filed 9–10–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0416]

Clini-Therm Corp.; Premarket Approval of the Mark I/IV Hyperthermia System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Clini-Therm Corp., Dallas, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Mark I/IV Hyperthermia System. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 11, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administrative, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

SUPPLEMENTARY INFORMATION: On October 25, 1984, Clini-Therm Corp., Dallas, TX 75243, submitted to CDRH an application for premarket approval of the Mark I/IV Hyperthermia System. The device is an external microwave hyperthermia device. The Mark I is the basic treatment system. The microwave power level is controlled manually by the operator. The Mark IV system is the same basic system as the Mark I with the addition of computer control for the microwave power level and a colorgraphic display and printer. The Mark I/IV Hyperthermia System is indicated for combined use with radiotherapy in the palliative management of certain malignant solid surface and subsurface tumors (i.e., epidermoid, squamous cell or transitional cell carcinoma, adenocarcinoma, sarcoma, or melanoma) that are recurrent or progressive despite conventional therapy. On April 15, 1985, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 16, 1985, CDRH approved the application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDHR's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 11, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, nd Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 4, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–21633 Filed 9–10–85; 10:16 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0386]

Medical™, Inc.; Premarket Approval of the Omniscience® Cardiac Valve Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its apprval of the application by Medical™, Inc., Inver Grove Heights, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Omniscience® Cardiac Valve Prosthesis. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 11, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William G. Letzing, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

SUPPLEMENTARY INFORMATION: On June 12, 1984, Medical™, Inc., Inver Grove Heights, MN 55075, submitted to CDRH an application for premarket approval of the Omniscience® Cardiac Valve Prosthesis. The device is indicated for use as a replacement for a diseased, damaged, or malfunctioning aortic or mitral heart value. Test results indicate that, when used the proper anticoagulant therapy, the device is a safe and effective replacement heart valve. On November 5, 1984, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 3, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact William G. Letzing (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 11, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Reviewed petitions may be seen in the ofice above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 4, 1984.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–21629 Filed 9–10–85; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute (NEI), September 23–24, 1985, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until apprximately 12:00 noon on Monday, September 23. Following opening remarks by the Director, National Eye Institute, members of the NEI staff will give reports on the following: (1) FY85 and FY86 budget status, (2) program planning, and (3) the status of the NEI's Small Grant Program.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 12:00 noon until recess on Monday, September 23 and from 9:00 a.m. to adjournment on Tuesday, September 24, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–21790 Filed 9–10–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit Amendment for Incidental Take of Endangered Species

On July 11, 1985, a notice was published in the **Federal Register** (50 FR 28289) that an application for an amendment to PRT 2–9818, which was issued to the Country of San Mateo, CA and the Cities of South San Francisco, Dale City and Brisbane on March 4, 1983, for the incidental taking of mission blue and San Bruno elfin butterflies and San Francisco garter snakes, had been received from the County of San Mateo and the City of South San Francisco under section IX of the agreement to that permit.

The amendment was requested in order to perform work necessary to remedy landslide hazards in the South Slope Development area and allow temporary disturbance to an additional 25 acres of conserved habitat of the mission blue butterfly. Mitigation for the amendment would include a developer-funded program to control exotic plant species in an area of good quality butterfly habitat located elsewhere on San Bruno Mountain.

Notice is hereby given that on August 30, 1985, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, the U.S. Fish and Wildlife Service issued the above amendment to PRT 2–9818, subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 5, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–21644 Filed 9–10–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

New Mexico; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting and a request for public comment on the proposed McKinley County Coal Fee Exchange.

SUMMARY: The following Federal coal interests have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, Pub. L. 94–579, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 15 N., R. 7 W.,
Sec. 18, Lots 1 through 4, E½, E½W½;
Sec. 20, All;
Sec. 22, Lots 1 and 5, NE¼, E½NW¼;
Sec. 28, NE¼NE¼, W½NE¼, NW¼, N½SW¼;
Sec. 30, Lots 1 through 4, E½, E½W½.
T. 15 N., R. 8 W.,
Sec. 22, S½NE¼, S½;
Sec. 24, All;
Sec. 26, All;
Sec. 28, E½NE¼, SE¼SW¼, SE¼;
Sec. 34, N½.

Containing 4,830.85 acres of Federal coal.

In exchange for coal interests in these lands, the United States will acquire from Cerrillos Land Company (CLC), a wholly-owned subsidary of Santa Fe Southern Pacific Corporation, coal interests in the following described lands:

New Mexico Principal Meridian

T. 15 N., R. 6 W.,
Sec. 19 Lots 1 through 4;
Sec. 29, Lots 1 through 8, W½E½, W½.
T. 15 N., R. 7 W.,
Sec. 3, All;
Sec. 9, NE¼;
Sec. 11, W½.
T. 16 N., R. 7 W.,
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 27, Lots 1 through 8, NE¼, NE¼NW¼, S½NW¼, N½S½;
Sec. 33, E½NE¼, NE¼SE¼;
Sec. 35, W½NW¼, SW¼, W½SE¼.
T. 15 N., R. 8 W.,
Sec. 5, Lots 3 and 4, S½NW¼, S½;
Sec. 7, Lot 1, NE¼, E½NW¼, N½SE¼, SE¼SE¼;
Sec. 17, NE¼NE¼, W½NE¼, NW¼, NW¼SW¼, E½SW¼, W½SE¼, SE¼SE¼.
T. 16 N., R. 8 W.,
Sec. 21, All;
Sec. 29, All;
Sec. 31, E½, SE¼NW¼, E½SW¼.

Containing 6,280.17 acres of CLC coal.

There is no intent to exchange the surface, oil and gas, or other mineral rights associated with the affected lands.

In addition, Cerrillos further agrees to transfer to the United States other reserved mineral estates in the Chaco Cultural National Historic Park and certain outlying archaeological protection sites in the following described lands:

I. Park Additions

A. Southern Addition (02–129)

T. 21 N., R. 11 W.,
Sec. 21, All;
Sec. 22, All;
Sec. 23, All;
Sec. 25, All;
Sec. 26, NE¼.

B. Northern Addition (02–116)

T. 21 N., R. 10 W.,
Sec. 9, All.

C. Chacra Mesa

T. 21 N., R. 10 W. (02–113),
Sec. 33, that portion within the E½ of Sec. 33 lying north and east from the 6,400', mean sea level elevation, contour line.
T. 20 N., R. 10 W. (02–101),

Sec. 3, that portion within the NE¼ of Sec. 3 lying northeasterly fr om the 6,400', mean sea level elevei elevation, contour line.

T. 20 N., R. 10 W. (02–101), Sec. 12, that portion within the northern ½ and southeastern ¼ of Sec. 12 which lies northeasterly from the 6,400', mean sea level elevation, contour line.

II. Outlying Archaeological Protection Sites

A. Toh-la-kai

T. 17 N., R. 18 W.,
Sec. 33, SW¼SE¼SE¼.

B. Indian Creek

T. 20 N., R. 13 W.,
Sec. 7, W½SW¼NE¼, S½NW¼.

C. Bee Burrow

T. 19 N., R. 11 W.,
Sec. 29, SW¼SE¼.

D. Upper Kin Klizhin

T. 20 N., R. 11 W.,
Sec. 22, NE¼NE¼;
Sec. 23, W½NW¼NW¼.

E. Kin Nizhoni

T. 13 N., R. 9 W.,
Sec. 9, that portion of the E½ which lies north of the Ambrosia Lake Road right-of-way; and the easterly 360 feet of the E½W½ which lies north of the Ambrosia Lake Road right-of-way.

F. Haystack

T. 13 N., R. 10 W.,
Sec. 21, E½SW¼SE¼NE¼, SE¼SE¼ NE¼, E½NE¼SE¼, E½W½NE¼SE¼.

G. Andrews Ranch

T. 14 N., R. 11 W.,
Sec. 33, All.

Containing 4,893.08 acres in Chaco Park and outliers.

The value of the coal interests and the value of the other reserved mineral interests to the United States is greater than the value of the Federal land selected. Cerrillos has agreed to exchange all of its offered land without additional compensation from the United States.

The purpose of the exchange is to provide better land management by blocking up the existing checkerboard coal ownership pattern. The Department of Justice will review the antitrust considerations of the exchange application.

Meeting: The Bureau of Land Management will hold two informal information sessions to discuss the exchange proposal. Each session will be followed by a formal public meeting. The public is invited to submit comments on all public interest factors, including the antitrust consequences. Oral and written comments will also be accepted at the public meeting. Individuals wishing to comment orally are asked to provide written copies of their remarks, if possible. Written comments should be addressed to the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Written comments will be accepted until close of business October 24, 1985. At the conclusion of the comment period and public meeting, all written submissions and a transcript of the meeting will be forwarded to the Department of Justice for review of the antitrust consequences of the proposed exchange.

DATE: Two meetings will be held on October 17, 1985. An informal information session will be held from 1:30 p.m. to 2:30 p.m. The public meeting will commence at 2:30 p.m. In the evening another informal information session will be form 6:30 p.m. to 7:30 p.m., with the public meeting starting at 7:30 p.m.

ADDRESS: The meetings will be held at: the Classic Hotel, Ambassador Room, 6815 Menaul Blvd., NE, Albuquerque, New Nexico.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, Chief, Branch of Solid Minerals, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Telephone (505) 988–6109, (FTS) 476–6109.

Dated: September 3, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–21631 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-FB-M

[U–50355]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–50355 for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from May 1, 1985, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U–50355 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–21637 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-DQ-M

Wyoming; Bairoil/Dakota CO_2 Project

AGENCY: Bureau of Land Management (BLM), Department of the Interior

ACTION: Notice of availability of the draft environmental impact statement (DEIS).

SUMMARY: Puruant to section 102(2)(C) of the National Environmenal Policy Act of 1969, BLM has prepared a DEIS for the proposed Bairoil/Dakota CO_2 Project.

SUPPLEMENTARY INFORMATION: The DEIS analyzes three CO_2 projects. Exxon Company, USA applied for rights-of-way permit to build and operate a CO_2 pipeline from near Rock Springs, Wyoming, to Tioga, North Dakota. Amoco Production Company applied for rights-of-way for a CO_2 pipeline from near Rock Springs to Bairoil, Wyoming, plus a gas separation plant and various product pipelines and tank facilities at Bairoil. Shell Pipe Line Corporation applied for rights-of-way for a CO_2 distribution pipeline on the Cedar Creek Anticline near Baker, Montana. Each project would include various ancillary facilities.

DATES: The DEIS will be released September 13, 1985. Written comments on the adequacy of the DEIS will be accepted until November 12, 1985. Public hearings on the DEIS will held by the BLM at the following locations and times:

Crawford Room, Natrona County Library, 307 East Second Street, Casper, Wyoming—October 22, 1985, 7 p.m.

Library Basement, 6 West Fallon Avenue, Baker, Montana—October 23, 1985, 7 p.m.

Gate City Building Community Room, 204 Sims Street, Dickinson, North Dakota—October 24, 1985, 7 p.m.

The public hearing in Montana will be held jointly by BLM and the State of Montana Department of Natural Resources. Testimony concerning the adequancy of the DEIS will be accepted at these hearings. Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact the Division of EIS Services for advance registration by 4

p.m., October 9, 1985. Registration will also be accepted at the door.

FOR FURTHER INFORMATION CONTACT: Janis L. VanWyhe, Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228, (303) 236–1080.

Copies of the DEIS may be obtained at the above address. Copies of the DEIS may be inspected and a limited number of single copies may be obtained at the following addresses.

Bureau of Land Management, Public Affairs, Interior Building, Room 5600, 18th and C Street, NW., Washington, D.C. 20240

Bureau of Land Management, Casper District Office, 951 N. Poplar Street, Casper, Wyoming 82601

Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003

Bureau of Land Management, Rawlins District Office, P.O. Box 670 1300 Third Street, Rawlins, Wyoming 82301

Bureau of Land Management, Big Sandy Resource Area, P.O. Box 1170, 79 Winston Drive, Rock Springs, Wyoming 82902–1170

Bureau of Land Management, Dickinson District Office, P.O. Box 1229, Dickinson, North Dakota 58602

Bureau of Land Management, Miles City District Office, West of Miles City, P.O. Box 940 Miles City, Montana 59301.

Hillary A. Oden,

State Director.

[FR Doc. 85–21708 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-22-M

Lewistown District Advisory Council; Meeting

SUMMARY: The Lewistown District Advisory Council will meet October 1, 1985. From approximately 8:30 a.m. until 5:00 p.m. the Council will tour the Rocky Mountain Front, west and north of Great Falls, Montana. Beginning at 7:00 p.m., the Council will meet at the Circle 8 Guest Ranch west of Choteau, Montana. The Council will consider the following issues associated with the Rocky Mountain Front: threatened and endangered species, oil and gas development, land adjustment, and relationships with other agencies and landowners.

The tour will leave from the Circle 8 Guest Ranch. Because of limited capacity, members of the public who wish to participate in the tour must furnish their own transportation and must preregister with the District Manager no later than September 26, 1985.

Public comment will be sought during the evening meeting.

DATE: October 1, 1985, 8:30 a.m. to 5:00 p.m. and 7:00 p.m. to 9:00 p.m.

ADDRESS: Circle 8 Guest Ranch, Choteau, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown, Montana 59457. Telephone Number: 406–538–7461.

SUPPLEMENTARY INFORMATION: The Lewistown Advisory Council is authorized under section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739). The Council advises the District Manager concerning the planning for the management of the public lands administered within the Lewistown District.

Dated: September 3, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85–21711 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-DN-M

Environmental Statements; Availability; Floy Canyon Wilderness Study Area, UT

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Notice of 30-day comment period on a draft Environmental Assessment analyzing impacts of a proposed action in the Floy Canyon Wilderness Study Area (WSA).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Land Policy and Management Act, section 603, and the Bureau's Interim Management Policy, notice is hereby given of a 30-day public comment period on a draft Environmental Assessment starting with publication of this notice on the following action:

WSA Name: Floy Canyon
WSA Number: UT–060–068B
Proposed Action: Issue a commercial special recreation permit to Larry Allen of Hotchkiss, Colorado to conduct guided hunts for licensed hunters into the Floy Canyon WSA during the general and muzzleloader deer seasons.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Grand Resource Area, P.O. Box M, Moab, Utah 84532. A copy of the draft Environmental Assessment is available upon request.

September 4, 1985.

Gene Nodine,

District Manager.

[FR Doc. 85–21836 Filed 9–10–85; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

[FES 85–32]

Alaska Offshore; Availability of the Final Environment Impact Statement for Proposed Oil and Gas Lease Sale 92 in the North Aleutian Basin

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) for proposed oil and gas Lease Sale 92 in the North Aleutian Basin.

Single copies of the final EIS can be obtained from the Office of the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK; Anchor Point Public Library, Anchor Point, AK; Department of the Interior Resource Library, Box 36, 701 C Street, Anchorage, AK; Cordova Public Library, Box 472, Cordova, AK; Kenai Community Library, Box 157, Kanai, AK; Elim Learning Center, Elim, AK; Haines Public Library, P.O. Box 36, Haines, AK; North Star Borough Library, Fairbanks, AK; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK; Homer Public Library, Box 356, Homer, AK; Z.J. Loussac Public Library, 427 F Street, Anchorage, AK; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK; Kodiak Public Library, P.O. Box 985, Kodiak, AK; Metlakatla Extension Center, Metlakatla, AK; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK; Petersburg Extension Center, Box 289, Petersburg, AK; Seldovia Public Library, Drawer D, Seldovia, AK; Seward Community Library, Box 537, Seward, AK; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK; Sitka Community Library, Box 1090, Sitka, AK; Douglas Public Library, Box 469, Douglas, AK; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK; and Wrangell Extension Center, Box 651, Wrangell, AK.

Dated: September 6, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 85-21679 Filed 9-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service; Interiors.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD)

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0828, Block 15, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21716 Filed 9-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7779, 7780, and 7783, Blocks 275, 276, and 296, respectively, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours. 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21717 Filed 9-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4387, Block 91, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on September 3, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of

the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana coastal resources program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–21718 Filed 9–10–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Trail Markers; Missouri et al

AGENCY: National Park Service, Interior.

ACTION: Marking of designated national historic trail route and notice of intent to secure service mark registration of the trail marker symbol.

In the matter of Missouri, Kansas, Nebraska, Wyoming, Idaho, Oregon, and Washington: Intent to utilize trail markers bearing a distinctive symbol to mark segments of the Oregon National Historic Trail and intent thereby to establish use of the marker symbol for purposes of securing service mark registration.

SUMMARY: This notice is to advise that the Nation Park Service will proceed to implement plans for the marking of the Oregon National Historic Trail route established as a component of the National Trails System by Pub. L. 95–625 of November 10, 1978. Implementation will establish official use of the specific trail marker symbol design (figure 1) for purposes of securing trademark registration of the design.

Further, notice is given that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or execute any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

DATE: Action described will commence September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to: Regional Director, Pacific Northwest Region, National Park Service, Westin Bldg., 2001 6th Avenue, Seattle, Washington 98121, (206) 442–5565.

SUPPLEMENTARY INFORMATION: Uniform marking of each national historic trail with an appropriate and distinctive symbol is required under provisions of section 7(c) of the National Trails System Act, Pub. L. 90–543 as amended (82 Stat. 919; 16 U.S.C. 1214 et seq.). In order to prevent proliferation of the distinctive symbol, (figure 1) approved by the Oregon National Historic Trail Advisory Council, and to assure against its use for other than the purpose of marking the historic trail route the National Park Service will proceed to secure service mark registration under section 1115 of Title 15 of the United States Code through specific use identifying to the public the designated trail route and the services provided by the National Park Service in establishing and maintaining such route.

Trail markers bearing the symbol will be erected at appropriate points where the Oregon National Historic Trail route crosses lands administered by Federal agencies and will be maintained by each Federal agency in accordance with standards established by the Secretary of the Interior. Where the Oregon National Historic Trail route crosses non-Federal lands written cooperative agreements will be entered into with State and local Government agencies for lands under their administration and with private landowners for the erection and maintenance of trail markers to be provided by the Secretary.

Dated: August 30, 1985.

Mary Lou Grier,

Acting Director, National Park Service.



Figure 1

[FR Doc. 85-21597 Filed 9-10-85; 8:45 am]
BILLING CODE 4310-70-M

Draft General Management Plan; Public Meeting

The National Park Service, U.S. Department of the Interior, is holding a public meeting to review the Draft General Management Plan for the Boston African American National Historic Site, Beacon Hill, Boston, MA. The general public is hereby notified to attend the open meeting at Suffolk University, Munce Conference Room (Rm. 110), Archer Building, 20 Derne Street, Boston, MA, on Thursday, September 26 at 7 p.m. Testimony and comments will be taken. For information contact Site Manager, Boston African American National Historic Site, 15 State St., Boston, MA 02109 (617) 742-5415.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region, National Park Service, U.S. Department of the Interior.

[FR Doc. 21690 Filed 9-10-85; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

[INT-DES 85-40]

Green Mountain Reservoir Water Marketing Program, Colorado; Availability of Draft Supplement to the Final Environmental Statement for Big Thompson, Windy Gap Projects

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the interior has prepared a draft supplement to the Colorado—Big Thompson, Windy Gap Projects, Colorado, Final Environmental Statement (INT-FES81-20). This proposed water marketing program would provide for future water demands that include industrial (oil shale and snowmaking), municipal, irrigation, recreation, fish and wildlife, and power out of Green Mountain Reservoir.

This supplement arrays three levels of water sales in addition to the no-action alternative for Green Mountain Reservoir. Written comments may be submitted to the Regional Director by the date stamped in the draft supplement to the final environmental statement.

Copies of the statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343-4991

Division of Management Support, Library Section, Code 962, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 236-5972

Regional Director, Bureau of Reclamation, PO Box 25247, Building 20, Denver Federal Center, Denver Colorado 80225, Telephone (303) 236-0688

Eastern Colorado Project Office, Bureau of Reclamation, 955 Wilson Avenue, PO Box 449, Loveland, Colorado 80539, Telephone: (303) 667-4410

Libraries

Glenwood Spring Branch Library, 806 Cooper Avenue, Glenwood Springs, Colorado 81601

University of Colorado Library, Boulder Campus, Boulder, Colorado 80302

Colorado State University Library, Fort Collins, Colorado 80523.

Single copies of the draft supplement to the final environmental statement may be obtained on request to the Director, Office of Environmental Affairs or the Regional Director at the above addresses. Please refer to the statement number.

Dated: September 6, 1985.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 85-21729 Filed 9-10-85; 8:45 am]
BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-222]

Certain Automotive Visor/Illuminated Mirror Packages and Components Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Customs Accessories, Inc. (Custom), Rally Accessories, Inc. (Rally), Walgreen Company (Walgreen), Allied Accessories and Auto Parts, Inc. (Allied), Cobbs Manf. Co. (Cobbs).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 30, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: September 3, 1985.
By Order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 85-21695 Filed 9-10-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-282 (Preliminary)]

Candles From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-282 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of candles of petroleum wax, provided for in item 755.25 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 21, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 4, 1985, by the National Candle Association, Arlington, VA.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on September 20, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact George L. Deyman (202-523-0481) not later than September 18, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before September 27, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rule (19 CFR 207.15). A signed original and fourteen (14) copies

of each submission must be filed with the Secretary to the Commission in accordance with §201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 6, 1985.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21693 Filed 9-10-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-214]

Certain Frozen Beverage Dispensing Machines; Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent on the basis of a settlement agreement; termination of the investigation.

SUMMARY: On June 13, 1985, complainant Refreshment Machinery, Inc., and respondent Stewart Sandwiches, Inc. (Stewart), filed a joint motion to terminate the above-captioned investigation as to respondent Stewart on the basis of a settlement agreement. The presiding administrative law judge issued an initial determination (ID) (Order No. 5) granting the motion on August 6, 1985. No petitions for review of the ID were filed, nor were any comments received from Government agencies or the public.

The U.S. International Trade Commission has determined not to review the ID terminating respondent Stewart. Since there are no other respondents, the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S International Trade Commission, telephone 202-523-1628.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of August 14, 1985 (50 FR 32776).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161].

Issued: September 6, 1985.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21700 Filed 9-10-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-255 and 256 (Preliminary) and 731-TA-275, 276 and 277 (Preliminary)]

Oil Country Tubular Goods From Argentina, Canada and Taiwan

Determinations

On the basis of the record [1] developed in investigations Nos. 701-TA-255 and 256 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] [3] by reason of imports from Canada and Taiwan of oil country tubular goods, provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Canada and Taiwan.

On the basis of the record [1] developed in investigations Nos. 731-TA-275, 276 and 277 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] [3] by reason of imports from Argentina, Canada, and Taiwan of oil country tubular goods, provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 22, 1985, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel for Lone Star Steel Company, Dallas, TX, and CF&I Steel Corporation, Pueblo, CO., alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of oil country tubular goods from Canada and Taiwan which are alleged to be subsidized by the Governments of Canada and Taiwan; and by imports of such merchandise from Argentina, Canada, and Taiwan which are alleged to be sold in the United States at less than fair value (LTFV). Accordingly, effective July 22, 1985, the Commission instituted prelimary countervailing duty investigations Nos. 701-TA-255, and 256 (Preliminary) and antidumping investigations Nos. 731-TA-275, 276 and 277 (Prelimiary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 31, 1985 (50 FR 31054). The conference was held in Washington, DC on August 9, 1985. All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 5, 1985. The views of the Commission are contained in USITC Publication 1747 (September 1985), entitled "Oil Country Tubular Goods from Argentina, Canada, and Taiwan. Determinations of the Commission in Investigations Nos. 701-TA-255 and 256 (Preliminary) and 731-TA-275, 276 and 277 (Preliminary) under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: September 5, 1985.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21700 Filed 9-10-85; 8:45 am]
BILLING CODE 7020-02-M

---

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury.

[3] Vice Chairman Liebeler dissenting.

[Investigation No. 337-TA-215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Decision on Review of Initial Determination and Issuance of Limited Temporary Exclusion Order

AGENCY: International Trade Commission.

ACTION: The Commission has determined to affirm the presiding officer's initial determination recommending temporary relief and to issue a limited temporary exclusion order in investigation No. 337–TA–215.

SUMMARY: The Commission has determined on review to affirm the presiding officer's initial determination recommending temporary relief in the above-captioned investigation. Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having reviewed the written submissions filed on remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined in investigation No. 337–TA–215 to issue a limited temporary exclusion order prohibiting entry into the United States, except under license, of double-sided floppy disk drives manufactured by or on behalf of the Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc., TEAC Corporation, an TEAC Corporation of America that infringe claims 1, 5, or 12 of U.S. Letters Patent No. 4,151,573.

The Commission further determined that the public interest factors enumerated in section 337(d), 19 U.S.C. 1337(d), do not preclude issuance of the aforementioned limited temporary excluson order and that the bond during the pendency of the investigation should be in the amount of 25 (twenty-five) percent of the entered value of the articles concerned.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

SUPPLEMENTARY INFORMATION: On December 6, 1984, Tandon Corporation (Tandon) filed a complaint and a motion for temporary relief under section 337. On January 22, 1985, the Commission instituted an investigation to determine whether there is a violation of section 337 in the unlawful importation of certain double-sided floppy disk drives into the United States or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent No. 4,151,573 (the '573 patent), the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the Unied States.

On May 30, 1985, the administrative law judge (Judge Harris) issued his initial determination in the above-referenced investigation granting complainant's motion for temporary relief under subsections 337 (e) and (f). All respondents and the Office of Unfair Import Investigations filed petitions for review on numerous issues. No Government agency comments were received.

On July 2, 1985, the Commission determined to review the initial determination on the issues of patent validity under 35 U.S.C. § 102, inequitable conduct, patent infringement, and domestic industry as these issues relate to the issue of whether there is reason to believe a violation of section 337 exists. The Commission also determined to review complainant's probability of success on the merits, and immediate and substantial harm to the domestic industry in the absence of temporary relief, harm to respondents if temporary relief is awarded, and the public interest.

The parties were requested to file briefs on the issues under review and on remedy, public interest, and bonding. Notice of the Commission's decision to review the initial determination was published in the **Federal Register**, 50 FR 28294. All parties have submitted briefs on all issues under review. The U.S. Customs Service has filed a submission on the issue of remedy. No other submissions were received.

Copies of the Commission's Acton and Order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: September 4, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21696 Filed 9–10–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-254 (Preliminary)]

Certain Red Raspberries From Canada; Determination

On the basis of the record [1] developed in investigation No. 701–TA–254 (Preliminary), the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of fresh and frozen red raspberries in containers of a gross weight of over 20 pounds, provided for in items 146.54, 146.56, and 146.74 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada.

Background

On July 18, 1985, growers, packers, and related trade associations filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured or is threatened with material injury by reason of subsidized imports of red raspberries from Canada. Accordingly, effective July 18, 1985, the Commission instituted countervailing duty investigation No. 701–TA–254 (Preliminary). Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 31, 1985 (50 FR 31048). A public conference was held in Washington, DC, on August 14, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on August 30, 1985. A public version of the Commission's report, *Certain Red Raspberries from Canada* (investigation No. 701–TA–254 (Preliminary), USITC Publication 1743, August 1985) contains the views of the Commission and information developed during the investigation.

By order of the Commission.

---

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Rohr determines that there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury.

Issued: September 3, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21694 Filed 9-10-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-251-253 (Preliminary), and 731-TA-271-274 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From India, Taiwan, Turkey, and Yugoslavia; Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that industries in the United States are materially injured [2] by reason of imports of the following welded carbon steel pipe and tube products which are alleged to be subsidized by the Governments of the specified countries:

Standard pipes and tubes [3] from India (inv. No. 701-TA-251 (Preliminary));

Line pipes and tubes [4] from Taiwan (inv. No. 701-Tas-252 (Preliminary)); and

Standard and line pipes and tubes from Turkey (inv. No. 701-TA-253 (Preliminary)).

The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that industries in the United States are materially injured [2] by reason of imports of the following welded carbon steel pipe and tube products which are alleged to be sold in the United States at less tha fair value (LTFV):

Standard pipes and tubes from India (inv. No. 731-TA-271 (Preliminary));

Line pipes and tubes from Taiwan (inv. No. 731-TA-272 (Preliminary));

Standard and line pipes and tubes from Turkey (inv. No. 731-TA-273 (Preliminary)); and

Standard pipes and tubes from Yugoslavia (inv. No. 731-TA-274 (Preliminary)).[5]

The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Yugoslavia of welded carbon steel line pipes and tubes which are alleged to be sold in the United States at LTFV (inv. No. 731-TA-274 (Preliminary)).[5]

Background

On July 16, 1985, petitions were filed with the Commission and the Department of Commerce by counsel for the individual producer members of the Subcommittees on Standard and Line Pipe of the Committee on Pipe and Tube Imports, alleging that industries in the United States are materially injured or threatened with material injury by reason of subsidized imports of welded carbon steel standard pipes and tubes form India and Turkey, subsidized imports of welded carbon steel line pipes and tubes from Taiwan, LTFV imports of welded carbon steel standard pipes and tubes from India, Turkey, and Yugoslavia, and LTFV imports of welded carbon steel line pipes and tubes from Taiwan, and that industries in the United States are being threatened with material injury by reason of subsidized imports from Turkey and by LTFV imports from Turkey and Yugoslavia. Accordingly, effective July 16, 1985, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-251-253 (Preliminary) and preliminary antidumping investigations 731-TA-271-274 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 24, 1985 (50 FR 30243). The conference was held in Washington, DC, on August 7, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 30, 1985. The views of the Commission are contained in USITC Publication 1742 (August 1985), entitled "Certain Welded Carbon Steel Pipes and Tubes from India, Taiwan, Turkey, and Yugoslavia: Determinations of the Commission in Investigations Nos. 701-TA-251-253 and 731-TA-271-274 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: September 4, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21697 Filed 9-10-85; 8:45 am]

BILLING CODE 7020-02-M

---

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern determines that the domestic industries are materially injured or threatened with material injury.

[3] For purposes of these investigations, the term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[4] For purposes of these investigations, the term "welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in 610.3208 and 610.3209.

[5] Investigation No. 731-TA-274 (Preliminary) included both standard and line pipes and tubes from Yugoslavia. The Commission made an affirmative determination with respect to standard pipes and tubes and a negative determination with respect to line pipes and tubes.

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance:—Extension

Bureau/Office:—Office of Proceedings

Title of Form:—Small Carrier Transfer Application

OMB Form No.:—3120-0025

Agency Form No.:—OP-FC-1

Frequency:—on Occasion

Respondents:—Regulated Motor Carriers of Property

No. of Respondents:—30

Total Burden Hrs.:—240

James H. Bayne,

Secretary.

[FR Doc. 21743 Filed 9-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-10 (Sub-32)]

Railroads; Norfolk and Western Railway Co.; Abandonment in Pulaski, Wythe, Carroll, and Grayson Counties, VA; Findings

The Commission has issued a certificate authorizing Norfolk and Western Railway Company to abandon its 56.80-mile rail line (a) between Dora Junction (milepost P 1.72) and Galax, VA (milepost 53.25), and (b) between Fries Junction (milepost P 39.8) and Fries, VA (milepost P 45.36), in Pulaski, Wythe, Carroll, and Grayson Counties, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-21744 Filed 9-10-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Final Environmental Impact Statement on Cannabis Eradication on Federal Lands in the Continental United States; Record of Decision

SUMMARY: This is the Record of Decision of the Administrator of the Drug Enforcement Administration [DEA], pursuant to 40 CFR 1505.2, with respect to DEA-EIS-1, the Final Environmental Impact Statement on the Eradication of Cannabis on Federal Lands in the Continental United States. A Notice of the Availability of the Final EIS was published in the Federal Register on July 26, 1985 (50 FR 30520).

Date: September 6, 1985.

Notice

Based on the environmental analysis documented in the Final EIS, I have decided, pursuant to 40 CFR 1505.2, to adopt Alternative 6, calling for the full range of manual, mechanical, and both spot and broadcast herbicidal methods to eradicate illegally cultivated cannabis on Federal lands. With regard to disposal of eradicated cannabis, it is my decision to adopt disposal Alternative 4, allowing the full range of disposal methods, including haul and burn, haul and landfill, shred and till, or posting the area. This decision is made after careful consideration of all written and oral comments received during scoping meetings, written and oral comments on the May 1984 Draft EIS and the March 1985 Supplement, comments received on the July 1985 Final EIS, as well as comments received by reviewers from the six cooperating Federal agencies and the Department of Health and Human Service's Public Health Service.

The other alternatives considered were Alternative 1: Manual Eradication (no action); Alternative 2: Mechanical Eradication; Alternative 3: Herbicidal Eradication; Alternative 4: No Application of Herbicides; and Alternative 5: No Broadcast Application of Herbicides. Other disposal alternatives considered were Alternative 1: Haul and Burn or Haul and Bury; Alternative 2: Till Under; and Alternative 3: Leave Cannabis on Site (after herbicidal eradication).

Providing DEA and Federal land managers with the full range of eradication and disposal methods will allow DEA to more effectively meet its mandate under the 1961 Single Convention on Narcotic Drugs and in its participation in the 1984 National Strategy for the Prevention of Drug Abuse and Drug Trafficking.

Although eradication Alternative 1 and disposal Alternative 1 are the environmentally preferable alternatives at the programmatic level, eradication Alternative 6 and disposal Alternative 4 will allow DEA operational flexibility in choosing the most appropriate method based on site-specific environmental analyses. The selected alternative will be carried out by DEA personnel, other law enforcement personnel, Federal land management personnel, or by contractors to any of these agencies. Decisions on which method to use for any given site will be made on the basis of site-specific analyses conducted in accordance with applicable NEPA implementing procedures for the Federal agency on whose lands an action is proposed. Selection of the eradication method would be based on a number of factors described in the EIS, such as available manpower and equipment, number of plots and configuration of plots, proximity to water bodies and human habitation or developed recreational areas, topography, foliage density and plant height, soil type, presence of endangered or threatened species or cultural resources, site accessibility, weather conditions, time of year, and maturity of plants. The responsible official at the site-specific level will ensure that all appropriate mitigation measures and operational procedures provided in Table 2-2 of the EIS are met.

Mitigation measures for all methods of eradication are provided in the EIS. They include following all label requirements, as well as requirements regarding application procedures, drift control measures, and public notification procedures, as set forth in Table 2-2. The need for monitoring herbicide residues in soil and ground and surface water will be determined on a case-by-case basis by Federal land managers based on site-specific environmental analyses. DEA will monitor domestically seized marijuana for herbicide residues.

I have carefully considered the analyses in the EIS, including worst case situations involving workers accidentally exposed to herbicides, humans and wildlife directly sprayed or ingesting contaminated foodstuffs, and the possible risk to persons smoking marijuana contaminated with herbicides. As DEA agreed to do in the Final EIS (see F-66), I have also considered information provided to DEA by EPA on August 8, 1985, summarizing the Agency's preliminary review of ongoing oncogenicity studies for glyphosate, together with a worst-case analysis of the EPA glyphosate data. EPA concluded that it "does not expect any significant risk from the level of glyphosate to which humans are likely to be exposed." DEA's worst-case analysis indicates a cancer risk to the public under the proposed herbicidal eradication program of less than 5 chances in one billion and to workers of less than 2 chances in a million. A copy of the worst-case analysis is available upon request and will be mailed to all persons on the EIS Distribution List. Because of the lack of significance of this information, supplementation is not warranted; DEA will, however, continue to monitor this situation.

Since the probability of the worst case accidents occurring in very low, and because all DEA personnel, other law enforcement officials, Federal land managers, and their contractors will be required to adhere to label instructions and to mitigation measures and operational procedures stipulated in Table 2-2 on the EIS, I believe the risk

under eradication Alternative 6 and disposal Alternative 4 to be acceptable.

I have also considered a 'citizens' petition' presenting allegedly new and significant information concening health risks of two herbicides and requesting that DEA prepare a second Supplement to the EIS. Because the health risks assertd in the petition were considered in the Final EIS, and because the information is not a significant addition to scientific knowledge on those questions, supplementation is not appropriate.

Alternative 6 allows for the use of manual, mechanical, and herbicidal methods, including the use of glyphosate, 2,4-D, and paraquat. The analysis indicates that the proper use of paraquat does not pose significant risk to public health or the environment. DEA, however, has entered into a consent judgment in Federal court in which it agreed that ". . . it would not use, or authorize the use of , paraquat to eradicate marijuana on U.S. Federal lands under the paraquat label currently registered with the Environmental Protection Agency . . ." Prior to any application of paraquat on Federal lands, DEA will consult with EPA and will consider all new information that becomes available on paraquat, including information presented during label change process and EPA review of ongoing oncogenicity and other studies.

Dated: September 6, 1985.

John C. Lawn

Administrator.

[FR Doc. 85-21719 Filed 9-10-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Ganes Chemical, Inc., et al., Registration

By Notice dated July 3, 1985, and published in the **Federal Register** on July 12, 1985; (50 FR 28484), Ganes Chemical Inc., Lessee of Siegfried Chemical Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II.
Pentobarbital (2270)	II.
Secobarbital (2315)	II.
Methandone (9250)	II.
Methandone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II.
Dextropropoxyphene (9273)	II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 5, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-21721 Filed 9-10-85; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Mallinckrodt, Inc.; Registration

By Notice dated June 10, 1985, and published in the **Federal Register** on June 19, 1985; (50 FR 25479), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II.
Opium Plant Form (9650)	II.
Concentrate of Poppy Straw (9670).	II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: September 5, 1985.

[FR Doc. 85-21720 Filed 9-10-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-57]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee; Open Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee (SESAC).

DATE AND TIME: October 2-3, 1985, 9 a.m. to 5:30 p.m., each day.

ADDRESS: Rowland Hall, Room 160, Johns Hopkins University, 34th and Charles Streets, Baltimore, Maryland 21218.

FOR FURTHER INFORMATION CONTACT: Dr. H. Warren Moos, Department of Physics and Astronomy, Johns Hopkins University, 34th and Charles Streets, Baltimore, Maryland 21218 (301) 338-7337.

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The Committee is chaired by Dr. Louis Lanzerotti and is composed of 19 members. The Committee operates both through a number of informal subcommittees and as a whole. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants). The purpose of the meeting is to establish a plan for follow-on Committee activities during the upcoming year.

Type of Meeting: Open.

Richard L. Daniels,

Deputy Director, Logistics Monagement and Information Programs Division, Office of Monagement.

September 5, 1985.

[FR Doc. 85-21607 Filed 9-10-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.

Date and time: September 27 and 28, 1985; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 1242A, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7958.

Summary minutes: May be obtained from contact person above.

Purpose of committee: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the earth sciences.

Agenda:

September 27

0830—Administrative Check-in
0900—Introduction
0915—Overview of the Earth Sciences Division
1000—Instrumentation & Facilities
1015—Break
1030—Continental Lithosphere
1100—Continental Scientific Drilling
1145—IRIS Program
1230—Working Lunch
1300—Discussion
1500—Meeting with Deputy Director
1600—Meeting with Division Scientific Staff
1700—Adjourn

September 28

Left open for any unfinished business.

September 6, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-21707 Filed 9-10-85; 8:45 am]

BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 11, 1985. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on July 15, 1985.

The applications received are as follows:

1. *Applicant:* Wayne Z. Trivelpiece, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for Which Permit Requested

Taking; Import into U.S.A.; Enter Site of Special Scientific Interest (SSSI No. 8).

The applicant proposes to collect 90 Adelie Penguin eggs from rookeries at Arctowski Station, King George Island, Antarctica (SSSI No. 8, western shore of Admiralty Bay, King George Island) as part of a population study of Adelie Penguins.

Location

King George Island, Antarctica

Dates

October 1985–March 1986

2. *Applicant:* Lucia de Leiris, 304 Third Beach Road, Middletown, Rhode Island 02840.

Activities for Which Permit Requested

Enter Specially Protected Area; Enter Site of Special Scientific Interest.

The applicant is a participant in the Artists in Antarctica Program and proposes to enter protected areas for the purpose of illustration of wildlife and landscape.

Locations

Dion Island, Specially Protected Area No. 8
Green Island, Specially Protected Area No. 9
Cape Shirreff, Specially Protected Area No. 11
Coppermine Peninsula, Specially Protected Area No. 16
Litchfield Island, Specially Protected Area No. 17
Fildes Peninsula, Site of Special Scientific Interest No. 5
Byers Peninsula, Site of Special Scientific Interest No. 6
Western Shore of Admiralty Bay, Site of Special Scientific Interest No. 8

Dates

December 1985–March, 1986

3. *Applicant:* William M. Hamner, Department of Biology, University of California, Los Angeles, California 90024.

Activities for Which Permit Requested

Taking; Import into U.S.A.; Enter Specially Protected Area.

The applicant is conducting a study of the interactions of *Euphausia superba* (krill) with the sea birds that feed on krill. Specimens are proposed to be taken, as follows:

I. *Handling*—Six-gram sonic pingers will be attached to penguins to record their swimming directions, depths and speeds. The pingers will be glued to feathers on the back and will fall off in 10 to 20 days. Other sea birds listed will be handled in the rookeries to obtain stomach contents through regurgitation of ingested food, which does not harm the bird being sampled. Samples obtained will be used to assess the importance of krill in the diets of breeding adults and the chicks they are feeding.

Species	Number
Adelie penguin	25
Chinstrap penguin	25
Gentoo penguin	25
Southern Black back gull	25
Blue-eyed shag	25
Wilson's storm petrel	25

II. *Sacrifice*—Cape petrels and storm petrels collected by shotgun will provide valuable information on prey selection at sea, which often differs from diets obtained near breeding sites.

Species	Number
Cape petrel	20 adults, 20 chicks.
Wilson's storm petrel	50 adults, 20 chicks.

Gut contents of these specimens will be preserved for analysis at the University of California, Los Angeles. Chicks will be disposed of. Adult specimens in good condition will be returned to the University of California museum collection.

III. *Photography*—The applicant proposed to conduct photographic documentation of behavior patterns of krill predators at sea and in the rookeries. Long lens photography will minimize distrubance of the animals.

Birds	Mammals
black browed albatross	antarctic fur seal
giant petrel	crabeater seal
blue petrel	elephant seal
southern fulmar	leopard seal
cape petrel	Ross seal
prion	Weddell seal
southern black backed gull	
antarctic petrel	humpback whale
white-chinned petrel	minke whale
white-headed petrel	southern right whale
Peal's petrel	sei whale
snow petrel	fin whale
south polar skua	killer whale
antarctic tern	
arctic tern	
blue-eyed shag	
american sheathbill	
Adelie penguin	
chinstrap penguin	
gentoo penguin	

The applicant also proposes to land on Litchfield Island in Arthur Harbor to conduct observations of penguin groups at sea. From the high observation point on Litchfield, swimming speeds and directions of penguins foraging in the habor and moving to and from the rookeries will be observed.

Location

Litchfield Island, Drake Passage, Bransfield Strait, Gerlache Strait, waters around Anvers Island.

Dates

December 1985–May 1986.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

Peter E. Wilkniss,

Division Director, Division of Polar Programs.

[FR Doc. 85–21712 Filed 9–10–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on August 28, 1985 (50 FR 34933), through August 30, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By October 11, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona; Date of amendment request: August 5, 1985.

Description of amendment request: The amendment would permit a one-time exception for approximately 24 hours to Technical Specifications 3.4.1.2, 3.4.1.3, and 3.7.1.6, involving the reactor coolant system pumps and the atmospheric dump valves, to allow the performance of the Natural Circulation Cooldown Test.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed amendment involved here is similar in that the exception request may reduce a safety margin in some way for a limited time only during the performance of the Natural Circulation Cooldown Test, but the results of an analysis of the planned test are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Branch Chief: George W. Knighton.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland; Date of application for amendments: June 28, 1985

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to: (1) Reflect a clarification of requirements associated with the containment purge isolation valves in TS Table 3.3–3, "Engineered Safety Features Actuation System Instrumentation," and TS Table 3.6–1, "Containment Isolation Valves," (2) modify TS 3.9.4, "Containment Penetration," to allow the use of an alternate closure for the emergency personnel escape lock, (3) delete TS 6.13, "Environmental Qualifications," and (4) correct identified spelling errors and changes in terminology.

Basis for no significant hazards consideration determination: BG&E has requested a change to TS Tables 3.3–3 and 3.6–1 to correct an inconsistency between operability requirements for the containment purge isolation valves and related requirements.

The containment purge isolation valves allow outside air to enter the containment and vent the containment atmosphere to the environment. At the present time, these valves are required to be isolated by the requirements of TS 3.6.1.7, "Containment Purge System," to prevent these valves from being opened, during Modes 1 through 4 (power operation through hot shutdown). Furthermore, the purge isolation valves are required to be operable, meaning capable of automatic closure to a leak-tight condition, by the requirements of TS 3.9.9, "Containment Purge Valve Isolation System," during core alterations or movement of irradiated fuel inside the containment (during Mode 6). A comparison of the requirements of TS 3.6.1.7 and TS 3.9.9 indicates that the containment purge isolation valves may be inoperable (open) in Mode 5 (cold shutdown) or in Mode 6 (refueling) when neither core alternations nor movement of irradiated fuel inside containment is underway or any time in Mode 6 when the containment purge valves are closed. Conditions under which the containment isolation valves may be inoperable are consistent with conditions under which containment (leak-tight) integrity is not required per TS 3.6.1.1 and TS 3.9.4.

BG&E has identified two inconsistencies regarding requirements associated with the containment purge isolation valves. The first instance of

inconsistency involves TS Table 3.6–1. In this case, the TS requires that the valve isolation response time for the containment purge isolation valves be applicable ". . . for Mode 5 and 6 during which time these valves may be opened." Since isolation response times should not be applicable when the valves are not required to be operable, BG&E has proposed to reword the applicability of the response time to be ". . . in Mode 6 when the valves are required operable and they are open." This proposed applicability wording is consistent with operability requirements of the containment purge isolation valves.

The second instance of inconsistency involves TS Table 3.3–3 which specifies operability requirements for devices for manual and automatic closure of the containment purge isolation valves. At the present time, the purge valve control switches for manual closure must be operable in Modes 5 and 6 and the containment radiation-high area monitor (for automatic closure) must be operable in Mode 6. The licensee has proposed changing the operability requirements for these closure devices to ". . . in Mode 6 when the valves are required operable and they are open."

The proposed changes to TS Tables 3.6–1 and 3.3–3 would not increase the probability or consequences of any accidents for which closure of the containment purge insolation valves is required. Operability of automatic and manual valve closure devices and closure response times would be applicable at all times when the containment purge isolation valves are required to be operable (these requirements only apply to the containment purge isolation valves). No new or different type of accident would be created by the proposed TS changes since no new operational modes are being created for the containment purge isolation valves. Finally, no safety margins are reduced since no operational or design changes are proposed. Accordingly, the Commission proposes to determine that the proposed changes to TS Tables 3.3–3 and 3.6–1 involve no significant hazards considerations.

The licensee has proposed a change to TS 3.9.4b which would provide a footnote to allow use of a temporary closure for the containment emergency personnel escape lock during refueling activities. At the present time, TS 3.9.4 requires at least one door in each air lock to be closed during core alterations or movement of irradiated fuel inside the containment.

The personnel escape lock described in Section 5.1.2.1 of the Calvert Cliffs Final Safety Analysis Report (FSAR) is located at elevation 49'4" and is provided with outer and inner doors. During refueling operations, the licensee proposes to replace the inner personnel escape lock door with a temporary closure; the outer door would remain open at this time. This temporary closure would contain several penetrations to facilitate work inside containment, during core alterations or movement of irradiated fuel, when containment integrity is required. The licensee has indicated that the temporary closure and its penetrations meet the applicable design requirements of the permanent door for use during reactor Mode 6 (refueling). Installation and leak testing of the temporary closure would be controlled by a plant procedure.

The Bases for TS 3/4.9.4 states the following with regard to containment closures such as the personnel escape lock: "The OPERABILITY and closure restrictions are sufficient to restrict radioactive material release from a fuel element rupture based upon the lack of containment pressurization potential while in the REFUELING MODE." Since no containment pressurization results from the design basis (fuel handling) event during Mode 6, containment closures need only be vapor-tight rather than capable of withstanding excess pressure. Since the temporary closure is fabricated to standards equivalent to the personnel escape lock for Mode 6 utilization and installation and testing will be in accordance with plant procedures, the temporary closure can be expected to perform in a manner equivalent to that of the personnel escape lock door during the design basis event in Mode 6. Accordingly, the proposed TS does not involve any increase in the probability or consequences of accidents previously considered. Moreover, since either a personnel escape lock door or the equivalent (temporary closure) will be in place during core alterations or movement of irradiated fuel inside containment, no new or different type of accident will be created. Finally, since the temporary closure performs in a manner equivalent to the permanent personnel escape lock door during Mode 6, no safety margin with regard to off-site dose following the design basis Mode 6 event will occur. Based upon these conclusions, the Commission proposes to determine that the proposed change to TS 3.9.4b, to allow use of a temporary closure device, involves no significant hazards considerations.

The licensee has proposed to delete TS 6.13, "Environmental Qualifications." This TS provides schedule requirements for completion of activities relating to environmental qualification of electrical equipment important to safety that have already passed. Moreover, environmental qualification requirements, including schedules, are incorporated in 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," and thus need not appear in the TS.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve a significant hazards consideration. One such example, (i), provides for "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Deletion of the superseded requirements of TS 6.13 is within the scope of example (i).

Accordingly, the Commission proposes to determine that the proposed deletion of TS 6.13 involves no significant hazards considerations.

Finally the licensee proposes to correct 14 spelling and one terminology error in the TS as detailed in the June 28, 1985 application. As indicated by example (i), these changes to the TS are not likely to involve a significant hazards consideration. Accordingly, the Commission proposes to determine that the correction of the spelling and terminology errors identified in the June 28, 1985 application involves no significant hazards considerations.

Local Public Document location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Posts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: June 25, 1985.

Description of amendments request: These amendments would delete items A.1 and A.2 of the Commission's February 29, 1980 Confirmatory Order for the Zion Nuclear facility. Item A.1 of that Order was a restriction on the power level to maintain a calculated peak clad temperature of 2050°F under the conditions of the 10 CFR Part 50, Appendix K analysis submitted by licensee on October 22, 1979; Item A.2

was a restriction on load following maneuvers.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.91(a)(1), the licensee submitted the following analysis of the amendment request using the standards in 10 CFR 50.92.

Criterion 1—A Significant Increase in the Probability of an Accident

Proposed Deletion of Item A.1

The consequences of a LOCA are not significantly increased by the deletion of the 2050°F limit and the subsequent adherence to the 220°F limit of 10 CFR 50.46 since this type of change to peak clad temperature during a large break LOCA would have no relationship to the probability of the initiating pipe break.

Proposed Deletion of Item A.2

Attachment 3 to the June 25, 1985 submittal demonstrated that there was no observable correlation between load changes above 50% and the frequency of reactor trips. Thus, the probability of an accident is not affected.

The FSAR already assumes conservative core parameters for the accident analyses. These values (T_{avg}, Pressure, etc.) will still bound actual core conditions during load changes, Thus, the consequences of any postulated accident are unchanged. While load follow maneuvers may have been considered to represent an additional risk in 1980, the experience gained since that time has shown that these load changes are routine in nature.

Criterion 2—A New or Different Kind of Accident

Proposed Deletion of Item A.1

The parameter referred to as the peak cladding temperature is the maximum calculated temperature which could be reached during the course of an already ongoing LOCA. Therefore, the increase in this parameter in and of itself is not an initiator of another unrelated accident. Thus, the 150°F increase in allowed peak cladding temperature during a LOCA does not create the possibility of a new or additional accident.

Proposed Deletion of Item A.2

The performance of load follow maneuvers affects a number of reactor parameters. Exemples of these parameters include rod position, boron concentration, and power distribution. Limiting combinations of these and other parameters have been considered in Zion initial design and each cycle-specific reload safety analysis.

In addition, all equipment necessary to accomplish changes in Zion power level has been originally designed for load following functions. Therefore, these power changes do not create the possibility of a new or different kind of accident not previously considered.

Criterion 3—A Significant Reduction in Margin of Safety

Proposed Deletion of Item A.1

The 150 °F increase in allowable peak clad temperature does not involve a significant reduction of safety margins. Attachment 2 to the application demonstrates the calculational superiority of the current anlysis over the methodology used for the October 22, 1979 submittal. It also demonstrates that Zion will be in compliance with 10 CFR 50.46 and the Standard Review Plan.

Proposed Deletion of Item A.2

Zion's safety analysis utilizes conservative core parameters as initial accident conditions. These values will still bound actual conditions during load changes. Thus, there has been no reduction in safety margins.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's analysis and agrees with the conclusion that the proposed amendment satisfies the three standards of 10 CFR 50.92 for no significant hazards consideration.

In addition, the Commission has provided guidance concerning the application of the standard for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards that apply to each of the proposed changes are discussed below.

Proposed Deletion of Item A.1

A new LOCA ECCS analysis for Zion was submitted by Commonwealth Edison Company in October 1984, then supplemented in February and April 1985. This new analysis, which was approved by the Commission on May 24, 1985, incorporates a number of methodological and calculational improvements over the analysis submitted on October 22, 1979. The new analysis reflects improved code interfacing for core reflooding rate data. It uses a BART computer model, a mechanistic core heat transfer model that represents an improvement over heat-up methods used in the 1979 analysis. It also accounts for increases in steam generator tube plugging, as well as assumes a higher total peaking factor for core power distribution prior to the postulated design basis LOCA.

In general, the new analysis, in addition to being calculationally superior to the methodology used for the October 22, 1979 submittal, also demonstrates that Zion will be in compliance with 10 CFR 50.46 and the Standard Review Plan.

Thus, example (vi) of the Commission's guidance for determining there are no significant hazards is applicable in this instance. Example (vi) reads as follows:

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a Previously used calculational model or design method.

Since what is involved here is a refinement to the calculational method and the results using this method are still in compliance with the Standard Review Plan, staff proposes to make a no significant hazards consideration determination for Item A.1.

Proposed Deletion of Item A.2

The October 1984 submittal by licensee discusses the operating stability of the Zion units while performing load changes above 50% power. As discussed therein, the excellent stability of the load follow mode of operation is demonstrated by the historical information presented. While load follow maneuvers may have been considered to represent an additional risk in 1980, the experience gained since that time has shown that these load changes are routine in nature.

Thus example (iv) of the Commission,s guidance regarding significant hazards derterminations is applicable in this instance. Example (iv) reads as follows:

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

Based on this criteria, staff proposes to make a no significant hazards consideration determination for Item A.2 since a lesser degree of risk has been demonstrated since the original review.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: July 12, 1985, supplemented July 26, August 2 and 7, 1985.

Description of amendments request: These amendments would raise the enrichment limits to approximately 3.7 w/o for the spent fuel pool and 4.0 w/o for the new fuel vault.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.91(a)(1) the licensee submitted the following analysis of the amendment using standards in 10 CFR 50.92.

Criterion 1

The storage of 3.7 w/o fuel in the Spent Fuel Pool and 4.0 w/o fuel in the New Fuel Vault could only affect the fuel handling accidents. The enrichment increase will not significantly affect the potential consequences of a fuel drop accident, since the isotopic content of a discharged assembly is relatively insensitive to the assembly's initial enrichment.

The probability of a fuel handling accident is similarly unaffected by the enrichment increase. There are no structural changes involved that could affect the handling characteristics of Zion's fuel.

Criterion 2

The enrichment increase does not create the possibility for any new or different type of accident. All other acceptance criteria and operating parameters (DNBR, F_Q, etc.) will remain unchanged

Criterion 3

While the storage of fuel with increased enrichment will potentially bring the Spent Fuel Pool and the New Fuel Vault somewhat closer to criticality than was previously possible, this safety margin reduction is not significant.

Attachments 2 and 4 to the July 12, 1985 submittal demonstrate that the results of the proposed change are clearly within all acceptable criteria. Specifically, the reactivity acceptance criteria of the Standard Review Plan, Section 9.1.1 and 9.1.2, have been satisfied.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edision Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed licensee's analysis and concludes that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: August 8, 1985.

Description of amendments request: These amendments would modify Technical Specifications to reflect installation of a degraded grid voltage protection system.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.91(a)(1) the licensee submitted the enclosed analysis of the proposed amendment using the Standard in 10 CFR 50.92.

Criterion 1

The installation of degraded grid voltage protection provides additional assurance that a stable source of power for the required safety related equipment will be available. This increases the probability that the equipment will be capable of performing the required function. Thus, the probability and consequences of the previously analyzed accidents have not been increased.

Criterion 2

Reference (a) to the August 8, 1985 application established the design criteria that spurious operation of the degraded grid protection system would not occur. Reference (b) to the August 8, 1985 application stated that this design goal has been met. Thus, this modification can only serve to enhance the power supply's reliability and does not create the possibility of a new type of accident.

Criterion 3

The margin of safety is increased by this change. As discussed above, the safety-related power supply should be more reliable when protected against a degraded grid voltage.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration

The staff has reviewed the licensee's analysis and concludes that the proposed amendment satisfies the criteria of 10 CFR 10.92. Based on that conclusion staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 2, 1985.

Description of amendment request: The proposed amendment would revise the Indian Point Nuclear Generating Unit No. 2 Technical Specifications to delete the Boron Injection Tank (BIT) and its associated limiting conditions for operation and surveillance requirements. Consolidated Edison has requested the elimination of the BIT in order to remove it as a source of operational and maintenance problems at Indian Point 2.

Basis for proposed no significant hazards consideration determinations: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee's analyses show that for all Final Safety Analysis Report (FSAR) cases, the Departure from Nucleate Boiling Ratio (DNBR) is above the limiting value of 1.30. The removal of the BIT will not create the possibility of a new or different kind of accident previously evaluated becasue the function of the BIT is to provide a source of concentrated boric acid to provide additional shutdown margin following a main steam line break. No new or different accidents would be involved. The removal of the BIT will not involve a significant reduction in margin of safety because, as stated above, the DNBR will remain above the minimum value of 1.30.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumer Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: June 27, 1985.

Description of amendment request: The amendment proposes changes to several Technical Specification surveillance frequencies. These surveillances are currently required to be performed at various intervals regardless of scheduled refueling shutdowns. These changes will allow continued operation of the plant between refueling shutdowns without having to take the plant to Cold Shutdown until a scheduled refueling outage. Standard Technical Specifications (STS) surveillance frequencies for equivalent equipment were used to establish these new surveillance frequencies.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards of 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (vi) of actions not likely to involve significant hazards considerations relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP).

The proposed changes to the surveillance requirements for the reactor safety system scram circuits, containment sphere isolation trip circuits, and emergency condenser trip circuits maintain the existing surveillance frequency of, each refueling outage, but change the bounding limit from 12 months to 18 months. This type of surveillance frequency currently exists in several other sections of the Big Rock Point Technical Specifications. The surveillance and replacement frequencies for the squib primers and trigger assemblies (liquid poison system components) are proposed to be changed from, at least every 12 months and replaced every 24 months, to, at least every 18 months and replaced every 36 months. Therefore, the surveillance testing and replacement frequencies are proposed to be decreased. The licensee maintains, however, that although these frequencies are being decreased, they do continue to limit the longest service of the components to the manufacturer's limit of 5 years.

Additionally, a smiliar change is proposed to the surveillance frequency for functional testing of the control rod permissive circuits. The current surveillance frequency provided in Section 6.2.2 and in Section 7.6 of the existing Technical Specifications requires functional testing of the permissive circuits to be "not less frequent than once every 12 months". The proposed change allows the functional testing to be performed no less frequent than every 18 months. Also, since the capability exists to accomplish this testing while at power, there is no need to tie the surveillance frequency to a refueling shutdown (as does current technical specifications). Consequently, the proposed change provides for testing prior to each major refueling shutdown.

Although the surveillance frequencies of all of these tests do increase, the proposed changes are consistent with existing surveillance frequencies established in BWR STS. These proposed changes, therefore, fit example (vi), described above, since the changes are clearly within all acceptable criteria with respect to the system or component specified in the SRP. The SRP specifies that BWR STS are consistent with the regulatory guidance contained in the SRP. On this basis, therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan.

Date of amendment request: July 19, 1985; supersedes March 10, 1982 application.

Description of amendment request: The submittal received proposes changes to Big Rock Point (the facility) Technical Specifications (TS) for the Plant Monitoring System. The submittal also includes proposed TS for the addition of the Containment Pressure and Containment Water Level Monitors. This submittal completes Consumers Power Company's (the licensee's) commitment and associated responses to these specific NUREG–0737 items. The original application was initially noticed in the **Federal Register** on August 23, 1983 (48 FR 38397).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve significant hazards considerations relates to a change that

constitutes an additional limitation, restriction, or control not presently included in the TS. Section 6.4 of the current TS provides the list of systems which are considered part of the plant monitoring system. This proposed change adds to that list the containment pressure and water level monitoring systems. The proposed new Section 6.4.4 and changed Section 7.6 provide the new limiting conditions for operation, associated actions, and surveillance requirements for these new systems. The addition of these systems and associated operability requirements to the facility TS provide additional limitations and restrictions and therefore fit example (ii) described above. On this basis, the staff proposes to determine that the requested TS changes would involve no significant hazards considerations.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: August 16, 1985.

Description of amendment request: The application requests changes be made to the Technical Specifications (TS) in support of the planned fuel reloading. Specifically, the reload I1 fuel Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) Limits are to be changed. The changes are required in order to implement new reactor operating limits for reload I1 fuel and facility power operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (iii) of actions not likely to involve significant hazards considerations relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previousiy acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the TS, that the analytical methods used to demonstrate conformance with the TS and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The proposed TS changes will implement reactor operating limits for reload I1 fuel. These reactor operating limits are based on the Loss of Coolant Accident (LOCA) analysis required by 10 CFR 50.46. The MAPLHGR limits for reload I1 are based on the LOCA analysis submitted by Consumers Power Company letter dated March 7, 1979 (Exxon Nuclear Company (ENC) Report XN–NF–78–53). Reload I1 is identical to the previous G3/G4 reloads in all respects except as described in the subsequent paragraph. The G3/G4 type reload TS changes were previously evaluated by the staff and, as a result, the staff issued Amendment No. 44 to the Facility Operating License (DPR–6).

Reload I1 fuel is identical in all respects to G3/G4 reloads except the reload I1 fuel has a smaller pellet-to-clad gap. The reload I1 fuel also has a higher helium prepressurization than the previous G3/G4 fuels. These minor differences have no effect on the thermal hydraulic design basis for ENC I1 fuel.

Therefore, since the reload does not contain any fuel assemblies significantly different from those previously found acceptable to the NRC, these proposed TS changes fit example (iii) described above.

Another example (i) of actions not likely to involve a significant hazards consideration relates to a change which is purely administrative, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The proposed column heading changes to Tables 1 and 2 of the facility TS are editorial in that they provide space for the additional column required for the reload I1 fuel Operating Limit TS described above, and therefore fit example (i).

On these bases, therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 6, 1984.

Description of amendment request: The proposed amendments would add Technical Specification 3/4.4.11 and an associated bases to provide operability and surveillance requirements for the Reactor Coolant System (RCS) Vent System required by 10 CFR 50.44(c)(3)(iii).

Basis for proposed no significant hazards consideration determination: The RCS vent system is a newly installed system required by 10 CFR 50.44(c)(3)(iii) to provide for post-accident venting of noncondensible gases from the high points of the reactor coolant system. The McGuire design provides vent paths from the pressurizer steam space and the reactor vessel head.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations by providing certain examples published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of an amendment likely to involve no significant hazards consideration relates to changes (ii) that constitute additional limitations, restrictions, or controls not presently included in the Technical Specifications. The proposed amendments of the Technical Specifications match the example because they would impose additional imitations for operation and additional surveillance requirements for a newly installed system not presently addressed in the Technical Specifications. The proposed addition does not replace or relax any existing requirements in the Technical Specification. Therefore, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment requests: November 12, 1984, and January 30, 1985.

Description of amendment request: The proposed amendments would change the action statement for the

limiting condition for operation, and the surveillance requirement, for Technical Specification 3/4.5.1, Cold Leg Injection Accumulators. Specifically the requirement to be in hot shutdown (specified in the action statement when one accumulator is inoperable for reasons other than a closed isolation valve) would be replaced by a requirement to reduce pressurizer pressure to less than 1000 psig. The requirement to be in hot standby within "1 hour and in HOT SHUTDOWN within the following 12 hours" (specified in the action statement when one accumulator is inoperable due to the isolation valve being closed) would be changed to require that the reactor be in hot standby within "6 hours and that pressurizer pressure be reduced to less than 1000 psig within the following 6 hours." Surveillance requirement 4.5.1.1.1.d, which requires periodic testing of the automatic opening feature of the accumulator isolation valves, would be deleted.

Basis for proposed no significant hazards consideration determination: Technical Specification 3.5.1.1 requires each cold leg injection accumulator to be operable with the isolation valve open when pressurizer pressure is above 1000 psig. The existing Specification 3.5.1.1 allows 1 hour to place the reactor in hot standby when accumulator inoperability is due to a closed isolation valve, but allows 6 hours when accumulator inoperability is not due to a closed isolation valve. This is inconsistent because the potential causes for accumulator inoperability other than a closed accumulator isolation valve (e.g., total loss of nitrogen gas pressure) have a safety significance comparable to that of a closed accumulator isolation valve. The 1 hour requirement is unnecessarily conservative since the inoperability of the accumulators for up to 6 hours was previously determined to pose negligible adverse safety consequence. Accordingly, the change from 1 hour to 6 hours to be in hot standby when inoperability is due to a closed isolation valve is equally acceptable and does not cause a significant adverse effect upon the probability or consequences of an accident previously evaluated, does not give rise to any new accident, and has no significant adverse impact upon a safety margin.

The other change to Specification 3.5.1.1 would require that pressurizer pressure be lowered below 1000 psig within 6 hours instead of placing the reactor in hot shutdown as currently required. Plant operating procedures require that the accumulators be isolated below a reactor coolant system pressure of 1000 psig in order to prevent inadvertent injection during planned depressurization (i.e., shutdown). In support of these operating procedures, licensee's analysis of a large break LOCA during a plant cooldown has previously demonstrated (see Supplement 2 to SER, Section 6.3.4) that adequate protection is provided without the cold leg injection accumulators if reactor coolant system pressure at the time of the accident was at or below 1000 psig. Thus, because accumulators serve no safety funtion below 1000 psig, the change does not adversely affect either the probability or consequences of an accident previously evaluated, does not give rise to any new accident, and has no adverse impact on a safety margin.

The accumulator isolation valves must be open for the accumulators to accomplish their safety (injection) function. The design of the control circuit for the motor-operated accumulator isolation valve as accepted by the staff in SER Section 7.3.3 protected against inadvertent closure of the valve by an automatic opening feature. Although the valve is normally open when RCS pressure is above 1000 psig, it receives a safety injection signal to override any bypass feature and cause automatic opening should the valve be closed. The licensee proposes to delete Surveillance Specification 4.5.1.1.1.d which requires periodic testing of the automatic opening feature of the accumulator isolation valves because changes in operating procedures negate the need for (and functioning of) such a feature (and hence the need for its testing). The licensee's operating procedure for unit startup requires that the valves be opened before exceeding 1000 psig, and that after opening, power to the valve operators is to be disconnected by removal of the breaker from the circuit. Hence, the possibility of inadvertent closure is eliminated by removal of the power source at all times except for those brief periods during planned startups and shutdowns when a deliberate change in valve position is required. The possibility of prolonged operation following inadvertent failure to open the isolation valves during repressurization of the reactor coolant system in accordance with the licensee's startup procedures is eliminated by Surveillance Specification 4.5.1.1.1.a(2) which would not be changed by the proposed amendments and requires verification at least once per 12 hours that each accumulator isolation valve is open. Elimination of the periodic test requirement where the function to be tested is no longer relied upon, and where the 12-hour surveillance requirement is retained, would not have a significant adverse effect on either the probability or consequences of any accident previously evaluated, give rise to any new accident mechanisms, or significantly reduce any safety margin.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions involving no significant hazards considerations. The proposed changes do not match any of the examples. However, based upon our preliminary review of the amendment requests and the above discussion, the Commission proposes to determine that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that this request involves no significant hazards consideration.

The licensee's letter of January 30, 1985, also requested changes to Technical Specfications for the Upper Head Injection Systems. This part of the request is outside the scope of this notice.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of amendment request: January 30, 1985.

Description of amendment request: The proposed amendments would revise action statements of the limiting conditions for operation and a surveillance requirement in Technical Specificiation 3/4.5.1.2, Upper Head Injection Accumulator System (UHI). Specifically, the requirement to be in hot shutdown (specified in ACTION (a) which applies when the UHI is inoperable for reasons other than a closed isolation valve) would be replaced by a requirement to reduce

presur-izer pressure to less than 1900 psig. The requirement to be in "HOT STANDBY within 1 hour and be in HOT SHUTDOWN within the next 12 hours" (specified in ACTION (b) which applies when the UHI is inoperable due to a closed isolation valve) would be changed to require that the reactor be in "at least HOT STANDBY within 6 hours and reduce pressurizer pressure to less than 1900 psig within the following 6 hours." Surveillance Specification 4.5.1.2.c(1) would be clarified to more accurately reflect the type of testing used to verify auto-matic closure of each UHI accumulator isolation valve (i.e., to reflect use of "an actual or simulated water level signal") and to clarify that "if actual water level is used, then the accumulator should be at atmospheric pressure."

Basis for Proposed No Significant Hazards Consideration Determination: Technical Specification 3.5.1.2 requires each UHI to be operable with the isolation valves open when pressurizer pressure is above 1900 psig (i.e., for Modes 1, 2, and 3, but for Mode 3 only above 1900 psig). The existing Specification 3.5.1.2 allows 1 hour to place the reactor in hot standby when UHI is inoperable due to a closed isolation valve (i.e., for ACTION (b)). but allows 7 hours when UHI inoperability is not due to a closed isolation valve (i.e., for ACTION (a)). This is inconsistent because the potential causes for UHI inoperability other than a closed isolation valve (e.g., total loss of the gas-bearing accumulator pressure) have a safety significance comparable to that of a closed isolation valve. The 1 hour requirement is unnecessarily conservative since the inoperability of UHI for up to 7 hours was previously determined to pose negligible adverse safety consequences. Therefore, the change from 1 to 6 hours to be in hot standby when UHI inoperability is due to a closed isolation valve is also acceptable and will not significantly increase the probability or consequences of accidents previously evaluated, will not create any new accident, and will not have a significant adverse effect upon safety margins.

The other change to ACTION (a) and ACTION (b) would permit the pressurizer pressure to be reduced below 1900 psig in operational Mode 3 (hot standby) instead of placing the reactor in hot shutdown. (for ACTION (b), an additional conservatism would be introduced in that the change would require that this pressure reduction be achieved within 12 hours, whereas the existing ACTION (b) provides a total period of 13 hours for the plant to be in hot shutdown.) Plant operating procedures require that the UHI isolation valves be closed below a reactor coolant system pressure of 1900 psig in order to prevent inadvertent injection during planned depressurization (i.e., shutdown). In support of these operating procedures, licensee's analysis of a large break LOCA during a plant cooldown has previously demonstrated (see Supplement 2 to SER, Section 6.3.4) that adequate protection is provided without UHI injection if reactore coolant system pressure at the time of the accident was at or below 1900 psig. Thus, because UHI serves no safety function below 1900 psig, the change does not adversely affect either the probability or consequences of an accident previously evaluated, does not give rise to any new accident, and has no adverse impact on a safety margin.

The current Surveillance Specification 4.5.1.2.c requires that each UHI accumulator isolation valve be periodically verified to close automatically when the water level is 76.25 ± 3.3 inches above the bottom inside edge of the water filled accumulator with atmospheric pressure in the accumulator. The specification requires clarification because in its present form it could be interpreted to mean that the actual tank water level is to be reduced to the setpoint in order to verify that each accumulator isolation valve closes. Such a limited interpretation is not intended; use of simulated signals to test safety systems in which an instrument reaching a setpoint actuates a devise is an industry-wide practice which is also acceptable to the Commission as evidenced by its acceptance for other safety related systems involved with water level (e.g., high pressurizer water level and low steam generator water level). Surveillance Specification 4.5.1.2.C would be modified to clarify that simulated signals may be used to verify automatic accumulator isolation valve closure.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions invloving no significant hazards considerations, (i), relates to purely administrative changes to the Technical Specifications. The change to Surveillance Specification 4.5.1.2.c matches the example because it merely clarifies the testing requirement consistent with the Commission's intended meaning. The changes to Specification 3.5.1.2 do not match any of the examples. However, based upon our preliminary review of the amendment requests as reflected in the above discussion, the Commission proposes to determine that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that this request involves no significant hazards consideration.

The licensee's letter of January 30, 1985, also requested changes to Technical Specifications with respect to the UHI membrane located between the water-filled and nitrogen bearing accumulators. This part of the request is outside the scope of this notice.

Local Public Document Room locations: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for Licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 12, 1985.

Description of amendment request: The proposed amendment would revise Section 3.2.3, "Nuclear Enthalpy Hot Channel Factor", by deleting the rod bow penalty multiplier. The basis of the requested change is contained in a Westinghouse Topical Report, WCAP-8691, Revision 1, which the staff has approved on December 29, 1982.

The report provides a basis for removing the rod bow penalty applied to the nuclear enthalpy hot channel factor by the use of a rod bow power peaking factor uncertainty. This is then statistically combined with the nuclear power distribution uncertainty and the engineering hot channel factor, to yield a new total heat flux hot channel factor uncertainty with a maximum value of 1.069. This value is the maximum required total peaking factor uncertainty, including the effects of rod bow.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for derterming whether a significant hazards consideration exists by providing a certain examples (48 FR 14870). One of these, Examples (vi),

involving no significant hazards consideration is "a change resulting from the application of a small refinement of a previously used calculational model or design method." The requested change matches this example since the rod bow calculational model has been refined by the NRC-accepted methodology provided in WCAP-8691 Revision 1. The staff therefore proposes to characterize the requested change as involving no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attoney for Licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Stevan A. Varga.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 12, 1985.

Description of amendment request: Present surveillance requirements (Technical Specifications Section 4.3.3.3.2) specify recalibrating the seismic monitoring instruments within 24 hours following a seismic event. The manufactures states that a typical channel calibration would take a minimum of 5 days assuming that all of the instruments could be removed at once and that the required personnel were available. If any equipment or personnel-related delays occurred, this would take even longer. Therefore, because of the complexity of the seismic instrumentation, the 24-hour requirement is impractical.

It is important to calibrate seismic instrumentation soon after a seismic event in order to confirm instrument characteristics and validate data reduction. However, it is also important not to remove the entire system from operation immediately following a seismic event since this is the period of time during which aftershocks may occur. If all of the seismic instrumentation were taken off-line for a channel calibration immediately after a seismic event, important aftershock data would probably be missed.

Therefore, for the reasons given above, the licensee recommends revising the surveillance requirements from 24 hours to 30 days to allow sufficient time for both aftershock recording and channel calibration in phases. Calibration in phases is recommended to allow part of the seismic instrumentation to be on-line at all times.

Basis for proposed no significant hazards consideration determination: The proposed amendment does not involve any modification of existing instruments, nor does it alter the operational procedure of any equipment. While the amendment would allow more time to complete channel calibration, it also ensures that some instruments (those that are not being calibrated) are available to monitor aftershock data. We conclude that the proposed amendment would not invlove any significant increases in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any accident previously analyzed, and would involve no reduction in the margin of safety. We, therefore, propose to characterize the proposed amendment as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Stevan A. Varga.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: July 19, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications to permit continued operation at rated thermal power for a specified time following a dropped control element assembly. Also, the current action statement C in Technical Specification 3.1.3.1 would be reformulated into new action statements C and H. This reformulation will better correlate the requirements for corrective action.

Basis for proposed no significant hazards consideration determination: The proposed changes would recognize the distinctions in safety analysis requirements by reconstructing the present action statement into two different action statements; one with applicability when control element assemblies are above the long term insertion limits and a separate one when the control element assemblies are inserted beyond the long term insertion limits. This separation will also aid in the standardization of technical specifications between St. Lucie Plant, Unit Nos. 1 and 2. No changes in safety analysis results or input are required as a result of this separation, or the addition of Figure 3.1-1a. Therefore, as required by 10 CFR 50.92(c)(1), the proposed changes do not result in an increase in the probability or consequences of any accident previously evaluated because no change in analysis input or assumptions is required for any transient.

The proposed changes to the technical specifications do not create the possibility of a new or different type of accident from any accident previously evaluated because neither the configuration of the plant nor its mode of operation will be modified. Therefore, there is no increase in the possibility of a new of different type of accident as discussed in 10 CFR 50.92(c)(2).

The proposed changes will not result in any reduction in the margin of safety as discussed in 10 CFR 50.92(c)(3) because no inputs to, or results from, plant safety analysis require change or modifications.

The required overpower margin for each transient analyzed for St. Lucie 1 is unaffected by the proposed changes, therefore, the difference between reactor safety limits and the results of the safety analysis, which is representative of the margin of safety, is unchanged.

Based on the above information, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 15 and May 21, 1984 as modified May 23 and August 26, 1985.

Description of amendment request: The proposed amendments would make changes in the technical specifications of St. Lucie Plant, unit Nos. 1 and 2 to reflect organizational changes, administrative changes (such as alphabetizing the definitions in the Unit 1 technical specifications) and changes to reflect the requirements of 10 CFR 50.72 and 50.73 as defined in Generic Letter 83-43.

The original changes that were proposed were contained in applications

dated May 15 and May 21, 1984. The newest versions of the proposed amendments address NRC staff comments on the original applications and the staff's request for additional information dated December 7, 1984. The licensee's responses are contained in letters dated may 23 and August 26, 1985 and address the specific requests of the staff by enclosing modified technical specifications that update the organization charts and clarify compliance with 10 CFR 50.72 and 50.73.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards contained in 10 CFR 50.92(c) by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards consideration, (i), relates to amendments of a purely administrative change to technical specifications, correction of an error, a change in nomenclature, or a change to achieve consistency throughout the technical specifications. The proposed changes to the St. Lucie Plant, Unit Nos. 1 and 2 Technical Specifications meet this example, in part, in that the amendments provide current organizational charts and amend the sections dealing with definitions and administrative controls to obtain consistency between the Unit 1 and Unit 2 Technical Specifications. Another example of actions involving no significant hazards consideration (vii) relates to changes to make a license conform to changes in the regulations, where the license changes result in very minor changes to facility operations clearly in keeping with the regulations. The proposed changes to the St. Lucie Plant, Unit Nos. 1 and 2 Technical Specifications meet this example, in part, in that the amendments incorporate the requirements of 10 CFR 50.72 and 50.73 as defined in Generic Letter 83–43. These changes deal exclusively and reporting requirements and do not affect plant operations.

Based on the above discussion, the staff concludes that the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety, because the changes do not affect the assumptions and inputs used in previously analyses nor do they affect in any way the normal operation of St. Lucie Plant, Unit Nos. 1 and 2. Therefore, the requirements of 10 CFR 50.92(c) are satisfied.

The NRC staff previously issued its proposed determination that the applications for amendments dated May 15 and May 21, 1984 did not involve a significant hazards consideration (June 20, 1984 at 49 FR 25359 for St. Lucie Plant, Unit No. 1 and July 24, 1984 at 49 FR 29909 for St. Lucie Plant, Unit No. 2).

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Florida Power & Light Company, Docket No. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 19, 1985.

Description of amendment request: The proposed amendment for St. Lucie Plant, Unit No. 1 would amend operating license DPR–67 technical specifications to add Incore Thermocouples, Containment Sump Water Level (narrow and wide ranges), Containment Pressure, and Reactor Vessel Level Monitoring System to Tables 3.3–11 and 4.3–7. The amendment for St. Lucie Plant, Unit No. 2 would amend Operating License NPF–16 technical specifications to add the Reactor Vessel Level Monitoring System to Tables 3.3–10 and 4.3–7. Appropriate operability and action statements will be added, also.

Basis for proposed no significant hazards consideration determination: The requested changes to the Technical Specifications (TS) would revise the tables to add instrumentation that is currently installed and operational. These additions will provide a higher degree of control and operational readiness by requiring operability and monthly surveillance of accuracy.

The requested license amendments do not increase the probability or consequences of accidents previously analyzed. The plant hardware and normal operating conditions are not affected by the proposed changes. Addition of monthly surveillances will not involve any significant increase in the probability or consequences of an accident previously evaluated, but will assure accurate output from these instrument channels. Based on this, the criteria set forth in 10 CFR 50.92(c)(1) is satisfied.

The plant hardware and basis plant operation are not affected by the proposed changes. Therefore, the possibility for a new or different type of accident is not created and the criteria of 10 CFR 50.92(c)(2) is satified.

Since the consequences of accidents previously evaluated are not increased and no new or different types of accidents are introduced, all margins of safety will be maintained. This satisfies the criteria of 10 CFR 50.92(c)(3).

In addition, the Commission has provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazard consideration, (ii), relates to changes that constitute an additional limitation, restriction, or control not presently included in the technical specifications, for example, a more stringent surveillance requirement. The proposed changes provide for additional control and more stringent surveillance requirements and the above cited example directly applies to this application.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: August 31, 1984 as modified April 12, 1985.

Description of amendment request: The proposed amendment would make changes to the technical specifications that would limit the use of the 8-inch containment purge system to required safety related purposes, such as (1) maintaining containment pressure within the technical specification limit, and (2) reducing containment atmosphere activity and/or improving air quality to an acceptable level for

containment entry to conduct safety related tasks.

The original application for amendment dated August 31, 1984 proposed that restrictions on the use of the 8-inch containment purge system be removed and that continuous purge using the 8-inch purge system be allowed. The staff found that continuous purge was unacceptable. The newest version of the proposed amendment addresses this staff position and was the result of several discussions with the licensee. The results are documented in the licensee's submittal of April 12, 1985. This submittal modifies the original application to limit the use of the 8-inch containment purge system to required safety related purposes, as indicated above.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to this amendment follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed technical specification would allow operation of the containment purge system for safety related purposes. This represents a potential increase in operating time now limited to 1000 hours, or less, per year. This would not increase the probability of an accident since this system cannot, in itself, cause an accident. The system does serve to mitigate the consequences of a potential release to the public following a Loss of Coolant Accident (LOCA). In the evaluation of the system's valves, they are assumed to be open when a LOCA occurs. The valves are designed to close within 5 seconds of the start of a containment isolation actuation signal. This meets NRC Branch Technical Position CSB 6–4. Further, the system has been designed to accommodate a single failure. In the event of an accident, offsite doses will not exceed the limits specified in 10 CFR Part 100.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Allowing the use of the 8-inch containment purge system for safety related purposes does not involve any evolution that is not currently performed. In addition, the system, in itself, cannot cause an accident; therefore, operation for safety related purposes does not lead to the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The containment purge system was originally designed for continuous operation. In the event of a LOCA, with a failure of a single 8-inch purge valve to close, the remaining valves will close within 5 seconds. Offsite doses due to a LOCA and one 8-inch purge valve failure will not exceed 10 CFR Part 100 limits.

Allowing purge through the 8-inch containment purge system for safety related purposes does not place the plant in a different configuration than what is currently routine practice. Therefore, the operation of the 8-inch purge system in this manner does not involve a significant reduction in a margin of safety.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards consideration (iv) relates to a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a safisfactory way that the criteria have been met. The proposed amendment, which would allow greater flexibility in the operation of the 8-inch purge system, is considered to be similar to example (iv) in that it involves relief from an operating restriction that was imposed prior to licensing because justification for the change requested in this amendment, based on plant operating experience, did not exist at that time.

The NRC staff previously issued a proposed determination that the original application for amendment dated August 31, 1984 did not involve a significant hazards consideration (September 28, 1984 at 49 FR 39390). The newest version of the proposed amendment is more restrictive than the original amendment application that was previously noticed.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

General Electric Company, Docket No. 50–70, General Electric Test Reactor (GETR) Vallecitos Nuclear Center, Alameda County, California

Date of amendment request: June 26, 1985, as supplemented July 15, 1985.

Description of amendment request: By letter dated June 26, 1985, as supplemented July 15, 1985, GE requested an amendment to their license renewal application dated October 21, 1975 that would convert their current reactor operating license TR–1 to a possess-but-not-operate license. Prior notice of the application for renewal was given in **Federal Register** on September 15, 1977 at 42 FR 46427.

Basis for proposed no significant hazards consideration determination: All reactor fuel, fueled experiments, and targets containing SNM have been removed from the reactor facility and shipped from the Vallecitos Nuclear Center (VNC). In addition, all contaminated resins have been removed from the demineralizers and shipped to a licensed waste disposal facility. Therefore, only activation and fission product contamination remain. A confinement approach will be utilized to minimize the possibility of contamination spreads and uncontrolled discharges. The confinement system consists of primary containers, piping, the ventilation system, and the reactor building.

Activities to be performed at the facility would include decontamination testing and decommissioning training exercises. Work will be limited to equipment, components, or devices would or could be removed, repaired, replaced or installed as part of "normal maintenance" under the operating license. In addition, all such work would exclude installation or reinstallation of any fuel, equipment, component or device for the purpose of restoring the

facility to a condition where it would be capable of operating as a nuclear reactor. The proposed activities would not involve the material alteration of the reactor facility.

The licensee has proposed Technical Specifications which (1) define the activities that require confinement and specify the actions to be taken and the equipment provided to achieve confinement; (2) provide assurance the reactor ventilation system is operable when required; (3) require that during the performance of restricted activities, the stack effluent shall be monitored or sampled; and (4) specify stack release rate limits that are lower than the current ones for the operating reactor facility.

There are no credible accidents which can be postulated which could result in the release of significant amounts of radioactive materials.

For the above reasons, the staff concludes that the proposed activities do not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the requested action does not involve a significant hazards consideration.

Attorney for licensee: George Edgar, Esquire, Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, D.C. 20036.

NRC Branch Chief: Cecil O. Thomas.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: June 24, 1985.

Description of amendment request: The amendment would add words that were inadvertently left out of Technical Specification 4.5.D.2 during retyping for a submittal dated April 22, 1983.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the criteria in 10 CFR 50.92 by providing examples of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870). One such example (i) of action not likely to involve significant hazards consideration is a purely administrative change to the Technical Specifications. The change to the Technical Specifications described above is similar to this example.

On the basis of the above, the Commission has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 23, 1985.

Description of Amendment Request: The amendment would make changes in the license conditions and Technical Specifications necessary to modify and test one of two trains of the standby service water (SSW) system during the fall 1985 scheduled outage to satisfy, in part, License Condition 2.C.(20).

The changes proposed are: (1) Change Technical Specifications 3.8.1.1 and 3.8.1.2 to require diesel fuel storage for each of diesel generators 11 and 12 to be increased from 48,000 to 57,200 gallons to be consistent with larger SSW pumps to be installed; (2) change License Condition 2.C.(20) to allow valves isolating the spent fuel pool coolers to be opened provided the associated SSW subsystem is declared inoperable in accordance with Technical Specifications; and (3) add a license condition to allow a temporary exception to Technical Specification 3/4.7.1.3 (which requires a 30 day water supply in the SSW cooling tower basin without makeup) provided a specified water level is maintained and two sources of makeup in addition to normal makeup are available.

Basis for proposed no significant hazards consideration determination: The proposed changes are needed to allow modifications to the standby service water system (SSW) during the outage scheduled in October and November 1985. The License Condition 2.C(20) requires modifications to the SSW system and verification that design flow can be achieved in all SSW system components prior to storing irradiated fuel in the spent fuel pool and requires the spent fuel pool coolers to be isolated from the SSW system by locked closed valves until the modifications and verification tests are completed. The licensee is planning to modify Train B of the SSW system in the fall 1985 outage and will modify Train A during the first refueling outage. The modifications proposed for the fall 1985 outage include installation of a larger capacity SSW pump in SSW cooling tower Train B which requires draining of the basin. Modifications also include relocation of the SSW loop B supply and return valves to the spent fuel pool cooler which requires taking the spent fuel pool cooler in the B loop out of isolation. Verification tests of design flow to spent fuel pool coolers will also require taking the spent fuel pool cooler out of isolation. The modifications and tests will be made while the plant is in cold shutdown. Prior to startup following the 1985 outage, the SSW cooling tower basin will be refilled and the spent fuel pool coolers will be isolated until the other SSW loop modifications are completed.

The design change will be performed in accordance with appropriate regulatory and industry codes and standards, the GGNS Quality Assurance Program, and the applicable requirements of the GGNS FSAR. The proposed technical specification changes to the fuel capacities (change 1) will make the technical specifications consistent with the plant as modified by the proposed design change. The proposed revision to License Condition 2.C.(20) (change 2) will allow a necessary design change to prevent water hammer in SSW loop B piping, permit SSW loop B flow testing and permit evolutions involving alternate decay heat removal methods. Since the SSW subsystem associated with an open valve to the fuel pool cooler must be declared inoperable by the proposed change, assurance is provided by appropriate technical specification action statements that the plant will be maintained in a safe condition. The proposed temporary license condition (change 3) will be in effect only while the plant is in cold shutdown. The major heat load handled by SSW during cold shutdown is decay heat from the reactor fuel. After day 17 from plant shutdown the dominant heat load on the SSW system (after a loss of offsite power coincident with the design basis loss of coolant accident) is from running equipment instead of reactor decay heat. The probability of a design basis loss of coolant accident while the plant is in cold shutdown is low and the consquences of the accident are small in comparison to having the accident at 100% power. The diversity of water sources offered for makeup to SSW basin A will ensure a water supply after the present capacity of 16 days (from

day eight of the outage) is used. Even in the unlikely event that no makeup can be provided, the inventory of water between 107' and 84' (providing an additional 16 day supply) can be utilized with a relatively small reduction in the design flow to equipment. If the provisions of the proposed license condition cannot be met, SSW basin A will be declared inoperable and appropriate technical specification action requirements will be implemented.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because of the low probability of an accident while the plant is in cold shutdown and the consequences of an accident in cold shutdown are not as severe as when the plant is at power. When the design change is complete, the increased flow and basin draindown ability of the new SSW pump will provide greater heat removal capacity than the present pump. Design requirements of 30 days without makeup water are assured (by use of the siphon between SSW basins A and B if required) until the first refueling outage. MP&L will provide a submittal prior to the first refueling outage to request operating license changes to facilitate SSW basin A design changes and removal of present restrictions on SSW operability and spent fuel storage prohibitions.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the license condition ensures an adequate supply of water to SSW basin A while the design change is in progress. Once the design change is completed, SSW basin design requirements of 30 days without makeup water will be assured (by use of the siphon if required) until the first refueling outage. MP&L will provide a submittal prior to the first refueling outage to request operating license changes to facilitate SSW basin A design changes and removal of present restrictions on SSW operability and spent fuel storage prohibitions. Thus, no new or different accident scenarios are postulated by performing the proposed design change to SSW basin B.

The proposed changes do not involve a significant reduction in a margin of safety because the proposed license condition ensures design water supply for SSW basin A while the design modifications are being performed and the return to the existing water supply when the modifications are completed and prior to a return to power operation.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Northeast Nuclear Energy Company, et al., Nos. 50-245 and 50-336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of amendment request: May 22, 1985 and supplemented by letter dated July 2, 1985.

Description of amendment request: The proposed amendments to the Operating Licenses would incorporate the proposed Revision 3 to the Suitability, Training & Qualification Plan. These amendments would: (1) Permit the use of contingency guard force personnel not normally assigned to the guard force to be assigned to replace striking guard force personnel; and (2) eliminate the requirement that Security Shift Supervisors (SSS) be required to requalify annually in crucial tasks performed by watchmen and guards, unless they are assigned to these tasks as a member of the contingency guard force. Any additional description of the changes beyond that stated above involves Safeguards Information, which is being withheld from public disclosure pursuant to 10 CFR 73.21.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The use of contingency guard force personnel to replace striking guard force personnel to perform specific crucial tasks is acceptable in that all contingency guard replacement personnel will satisfy all suitability, physical and mental requirements of the Suitability Training and Qualification Plan prior to performing any tasks.

The elimination of the requirement that Security Shift Supervisors (SSS) be required to requalify annually in crucial tasks performed by watchmen and guards, unless they are assigned to these tasks as a member of the contingency guard force, is acceptable because: The SSS will continue to qualify in these tasks during their initial training, and the need to utilize SSS as watchmen or guards is remote because of the availability of fully trained guard force personnel, and if the need should arise, SSS could, and would, be trained to perform specific watchmen and guard duties without unreasonable delay.

Therefore, the proposed change would not involve or create any of the three factors quoted above. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: John A. Zwolinski (Unit 1) and Edward J. Butcher, Acting (Unit 2).

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: July 24, 1985.

Description of amendment request: The proposed change to the Technical Specifications would authorize the licensee to increase the spent fuel pool storage capacity from 667 to 1112 storage locations. The proposed expansion is to be achieved by reracking the spent fuel pool with a combination of poison racks and non-poison racks in a two-region arrangement.

Region I consists of two 8 × 9 modules and three 8 × 10 modules and would store high-enrichment, core off-load assemblies. The region consists of poisoned spent fuel racks with a nominal center-to-center cell spacing of 9.8 inches. Fuel assemblies would be stored in every location. The five modules of Region I total 384 storage locations and are designed to accommodate 1.7 reactor cores of high enrichment nuclear spent fuel.

The spent fuel rack design for Region I is based upon the commonly accepted physics principle of a "neutron flux trap" with the use of neutron absorber materials. The racks are designed to

store Millstone 14 × 14 fuel with an initial enrichment of 4.5 weight percent U–235. The poison material to be used is Boraflex.

Region II consists of 14 modules of non-poisoned spent fuel racks with nominal center-to-center cell spacing of 9.0 inches. The modules consist of 962 cells with useable capacity of 728 storage locations.

Region II is reserved for fuel that has sustained at least 85% of its design burn-up. The spent fuel rack design is based on the criticality acceptance criteria specified in Revision 2 of Regulatory Guide 1.13 which allows credit for reactivity depletion in spent fuel. (Previously, the physics criteria for fuel stored in the spent fuel pool were defined by the maximum unirradiated initial enrichment of the fuel). Fuel assemblies are stored in a three-out-of-four logic pattern. The fourth location of the storage configuration remains empty to provide the flux trap to maintain the required reactivity control. Blocking devices will be used to prevent inadvertent placing of a fuel assembly in the fourth location.

The spent fuel racks in both regions are fabricated from 304 stainless steel which is 0.135 inches thick. Each cell is formed by welding along the intersecting seams. This enables each spent fuel rack module to become a free-standing module that meets the seismic design requirements without mechanical dependence on neighboring modules or fuel pool walls for support. The rack modules are classified ANS Safety Class III and Seismic Category I.

Both regions of the spent fuel have been designed to store fuel assemblies in a safe, coolable, subcritical configuration with K_{eff} less than or equal to 0.95.

The racks have been designed and will be provided by Combustion Engineering, Inc. (CE). CE racks of this type have been most recently licensed by the NRC for use at Florida Power and Light Company's St. Lucie Plant and at Arizona Public Services Company's Palo Verde nuclear plants. *Basis for proposed no significant hazards consideration determination:* The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards considerations is centered on three standards.

A. First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee's safety analysis of the proposed reracking has been accomplished using current NRC Staff accepted Codes and Standards. The results of the safety analysis demonstrate that the proposal meets the specified acceptance criteria set forth in these standards. In addition, the licensee has reviewed NRC Staff Safety Evaluations (SEs) for prior spent fuel pool rerackings involving spent fuel pool rack replacements to ensure that there are no identified concerns not fully addressed. The licensee has identified no such concerns.

The licensee has identified the following potential accident scenarios: (1) Spent fuel cask drop; (2) loss of spent fuel pool forced cooling; (3) seismic event; (4) spent fuel assembly drop; (5) criticality accident; and (6) Load Handling Accident. The probability of the occurrence of any of the first four listed accidents is not affected by the racks themselves; thus, reracking cannot increase the probability of these accidents.

All potential events which could involve accidental critically have been examined in the licensee's safety analysis. It was concluded that the bounding accident was dropping an unirradiated fuel assembly into a blocked fourth location in Region II. The probability of dropping a fuel assembly during fuel movement operations is not affected by the fuel storage racks.

The proposed Millstone Unit No. 2 spent fuel pool reracking will not involve an increase in probability of any previously evaluated load handling accident as accepted standards and procedures will be utilized as described in the licensee's safety analysis.

The consequences of the spent fuel cask drop accident have been evaluated as described in Sections 5.4 and 9.8 of the Millstone Unit No. 2 Final Safety Analysis Report (FSAR). By controlling the decay time for fuel stored within a specified distance from the cask set-down area to not less than 120 days prior to casks movement together with an administrative control specifying a minimum required boron concentration in the water of the spent fuel pool, the consequences of this accident type will remain well within 10 CFR Part 100 guidelines.

There is, however, an increase in the value of the 2-hour whole body dose at the site exclusion boundary for a postulated cask drop accident. The new racks increase the storage density of spent fuel within the distance L of the cask set-down area. This results in a calculated increase of the 2-hour whole body dose from 140 millirem to 240 millirem, an increase of 100 millirem. In review of this submittal, the licensee has recognized this increase and has designated it an unreviewed safety question. The calucated dose is well within the guidelines specified by 10 CFR Part 100 and, as such, the consequences of this type of accident will not be significantly increased from previously evaluated events.

The consequences of the loss of spent fuel pool forced cooling accident have been evaluated and are described in the licensee's safety analysis. There is ample time to effect repairs of the cooling system or to establish makeup flow to the spent fuel pool. The consequences of this type accident will not be significantly increased from previously evaluated accidents by this proposed reracking.

The consequences of a seismic event have been evaluated against the appropriate NRC standards. The results of the seismic and structural analysis show that the proposed racks meet all of the NRC structural acceptance criteria and are consistent with results found acceptable by the NRC Staff in previous poison rerack SEs. Thus, the consequences of seismic events will not significantly increase from previously evaluated seismic events.

The consequences of a spent fuel assembly drop accident are described in Section 14.19 of the Millstone Unit No. 2 FSAR. A complete list of assumptions is provided in FSAR Table 14.19–1. Results of the analysis are well below the limits of 10 CFR Part 100 and are presented in Section 14.19.3. The consequences of this type accident will not be significantly increased from previously evaluated accidents by this proposed reracking.

The consequences of a criticality accident have been evaluated for all potential events which could involve accidental criticality. The bounding criticality accident was found to be the dropping of a fresh fuel assembly into a blocked fourth location in Region II. Administrative controls in the form of a Technical Specification of minimum boron concentration for the water of the spent fuel pool will preclude the bounding criticality accident; therefore, the consequences of this type accident will not be significantly increased from previous accident evaluations by this proposed reracking.

The consequences of a load handling accident have been evaluated. The work to be done in the spent fuel pool will be performed in accordance with accepted construction practices, standards, and procedures. The consequences of this type accident will not be significantly increased from previous accident evaluations by this proposed reracking. Therefore, it is shown that the proposed Millstone Unit No. 2 spent fuel rack

replacement will not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee has evaluated the proposed rack replacement in accordance with the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plan sections, and appropriate industry Codes and Standards. In addition, the licensee has reviewed the NRC Safety Evaluation for the previous Millstone Unit No. 2 spent fuel rack replacement application and for other prior spent fuel pool rerackings.

The change to a two-region spent fuel pool creates the requirement to perform additional evaluations to ensure the criticality requirement is maintained. These include the evaluation of the limiting condition (dropping a fresh fuel assembly into a blocked fourth location in Region II). This evaluation shows that, when the boron concentration requirement is met per the proposed Technical Specifications, the criticality criterion is satisfied. Although this change does create the requirement to address additional aspects of a previously analyzed accident, it does not create the possibility of a previously unanalyzed accident.

C. Third Standard

Involve a significant reduction in a margin of safety.

The issue of "margin of safety," when applied to a spent fuel rack replacement, includes the following considerations:

a. Nuclear criticality considerations.

b. Thermal hydraulic considerations.

c. Mechanical, material, and structural considerations.

The margin of safety that has been established for nuclear criticality is that the neutron multipliciation factor (K_{eff}) in the spent fuel pool is to be less than or equal to 0.95, including all uncertainties, under all conditions. For the proposed modification, the criticality analysis is described in the licensee's safety analysis. The methods utilized in the analysis conform with ANSI N210–1976, "Design Objectives for LWR Spent Fuel Storage Facilities at Nuclear Power Stations"; ANSI N16.9–1975, "Validation of Calculational Methods for Nuclear Criticality Safety"; the NRC guidance, "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications" (April 1978), as modified (January 1976); and Regulatory Guide 1.13, "Spent Fuel Facility Design Basis," proposed Revision 2. The computer programs, data libraries, and benchmarking data used in the evaluation have been used in previous spent fuel rack replacement applications by other NRC licensees and have been reviewed and approved by the NRC. The results of the licensee's analysis indicate that K_{eff} is less than or equal to 0.95 under all postulated conditions, including uncertainties, at a 95/95 probability/confidence level. Thus, meeting the acceptance criteria for criticality, the proposed reracking does not involve a significant reduction in the margin of safety for nuclear criticality.

For thermal hydraulics, the relevant considerations for evaluating if there is a significant reduction in margin of safety are: (1) Maximum fuel temperature, and (2) the increase in temperature of the water in the pool. The licensee's thermal hydraulic evaluation shows that fuel cladding temperatures under abnormal conditions are sufficiently low to preclude structural failure and that boiling does not occur in the water channels between the fuel assemblies nor within the storage cells. However, the proposed rack replacement will result in an increase in the maximum heat load in the Millstone Unit No. 2 spent fuel pool. The licensee's safety analysis shows that the maximum temperature will not exceed the current margin of safety (150°F). For the maximum normal heat load case (full-core discharge at 150 hr. after shutdown, which fills the spent fuel pool to its capacity), the pool temperature will not exceed 150°F. Thus, there is no significant reduction in the margin of safety from a thermal hydraulic standpoint or from a spent fuel pool cooling standpoint.

The mechanical, material, and structural considerations of the proposed rack replacement are also analyzed in the licensee's safety analysis. The racks are designed in accordance with the applicable NRC Regulatory Guides, Standard Review Plan sections, and position papers, and appropriate industry Codes and Standards, as well as to Seismic Category I requirements. The materials utilized are compatible with the spent fuel pool and the spent fuel assemblies. The conclusion of the analysis is that the margin of safety is not significantly reduced by the proposed reracking.

Based on the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Edward J. Butcher, Acting.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application of amendment: June 27, 1985.

Description of amendment request: The proposed amendment will change the Technical Specifications (TS) to incorporate the changes as a result of implementation of NUREG–0737, Item II.K.3.16 requirements. The changes are as follows:

(1) Change the Safety/Relief valve self-actuation setpoint specified in Section 2.4.B from 1106 psig to 1120 psig.

(2) In Table 3.2.7, increase the Low-Low Set Logic opening and closing setpoints for Reactor Coolant System Pressure by 12 psi.

Basis for proposed no significant hazards consideration determination: NUREG–0737, Item II.K.3.16 required BWR licensees and BWR operating license applciants to investigate the feasibility of a number of actions and modifications to reduce challenges to SRVs. At the time, the operating history of SRVs had been poor, resulting in a relatively high failure rate per challenge. The evaluation was performed by the BWR Owners Group (BWROG–8134). The staff reviewed the BRW Owners Group study and endorsed three specific modifications along with an effective preventative maintenance program. The changes requested by this amendment (increasing valve simmer margin) is one of the staff approved modifications. This change will increase the self-actuation and Low-Low Set Logic setpoints of the safety/relief valves by 12 psi. This increase is safety/relief value simmer margin will increase valve reliability by reducing the probability of valve leakage and spurious opening during plant operation.

General Electric has performed the analysis supporting the 12 psi increase in safety/relief value settings. The results are provided in GE report NEDO–30771, dated September 1984. The analysis concludes that the setpoint increase is clearly within all acceptance criteria established in the NRC staff guidance. The staff, therefore, proposes that the changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Therefore, based on the reasons as described above, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Environment Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Cheif: Domenic B. Vassallo.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 11, 1985.

Description of amendment request: The proposed amendment would revise the surveillance capsule removal schedule technical specifications, change the titles of senior management officials in the technical specifications, and delete environmental qualification of electrical equipment administrative requirements (deadline and central records location) from the technical specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples, (i), of actions not likely to involve a significant hazards consideration relates to a purely administrative change to the Technical Specifications such as a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The changing of the titles of senior management officials comes under this example because only the titles are changing and not personnel or functions. Another one of the examples, (vii), of actions not likely to involve a significant hazards consideration relates to a change which would make a license conform to changes in the regulations, where the change results in very minor changes clearly in keeping with the regulations. The deletion of environmental qualification (EQ) of electrical equipment administrative requirements from the technical specifications comes under this example because the EQ rule (10 CFR 50.49) now addresses the administrative requirements.

Regarding the revision of the capsule removal schedule, the licensee has made a significant hazards consideration determination pursuant to 10 CFR 50.92. The licensee has stated that (1) the proposed change will not result in an increase in the probability or consequence of a previously evaluated accident, but instead will provide better information on the fluence to the inside surface of the reactor vessel; (2) the proposed capsule surveillance schedule will not create the possibility of a new or different kind of accident from any previously evaluated accident because the capsule assemblies have not changed, only their sequence of removal; and (3) there is not change in any margin of safety involved in this Technical Specification change.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: August 6, 1985.

Description of amendment request: The requested amendment would change the Technical Specifications for Susquehanna SES, Unit 1 to correspond with certain proposed design changes to the nitrogen makeup system.

In Licensee Event Report No. 83–114, dated September 13, 1983, PP&L noticed the NRC staff of the discovery of a postulated single failure event in the Division II Primary Containment Isolation System (PCIS) logic that could have resulted in the failure to isolate the nitrogen supply line. The PCIS Division II relay provides a closure signal to the outboard isolation valve of the drywell nitrogen supply system and the inboard isolation valve of the containment atmosphere control sample system. The drywell nitrogen supply line taps into the containment atmosphere sample line between the inboard valve and the outboard valve. With the nitrogen makeup system in service, coincident with a loss of coolant accident (LOCA), the PCIS Division II relay could fail in such a manner as to maintain the outboard isolation valve of the drywell nitrogen supply system and the inboard isolation valve of the containment atmosphere control sample system in the open position. This configuration could creat a direct path from the primary containment to the outside environment given the postulated single failure concurrent with a LOCA. A similar scenario can be postulated for the isolation valve in the suppression chamber nitrogen supply system and the inboard isolation valve for the containment atmosphere return line.

The design changes to correct this deficiency will consist of rerouting the drywell and wetwell makeup lines to spare penetrations and installing divisionalized isolation valves. The inboard valves will have Division I power and logic, and the outboard valves will be with Division II.

The licensee has proposed changes to Table 3.6.3–1 to ensure that the Technical Specifications properly reflect the installation of the modifications to the nitrogen makeup system. Those changes include the addition of two new isolation valves, SV–15738 and SV–15789. Two valves currently listed under the Containment Atmosphere Sample category, SV–15737 and SV–15787, are proposed to be deleted and moved to the newly formed category "Nitrogen Makeup", since in the new configuration, they will no longer be in the atmosphere sampling lines. The isolation signals for this new category are "B", Reactor Vessel Water Level—Low, Low Level 2; "Y", Drywell Pressure—High; and "R", SGTS Exhaust Radiation—High.

Valves SV–15736B and SV–15776B will now be dedicated to the sampling lines. Therefore the "R" isolation signal, SGTS Exhaust Radiation-High, is no longer applicable and is being deleted from the Technical Specifications for these valves.

Basis for Proposed No Significant Safety Hazards Consideration Determination

The licensee has stated that:

I. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the nitrogen makeup line is compatible with the FSAR design requirements. The proposed action does not increase the probability of an occurence or consequence of an accident or malfunction of equipment related to safety. All engineering has

been performed in accordance with plant design criteria to assure the required installation will not impact safety-related systems. The results of the most recent integrated leak rate test will be adjusted based on local leak rate testing of the new nitrogen makeup system configuration, when it is installed. Bypass leakage effects discussed in FSAR Subsections 6.2.3 and 6.2.1.1.5 remain unchanged by this proposed action.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Design of the proposed new penetrations, isolation valves and isolation circuitry is in accordance with the existing design basis of the plant.

III. The proposed change does not result in a significant reduction in a margin of safety. This change will increase the safety margin of the plant by ensuring that a single failure in the nitrogen makeup system isolation logic will not allow an uncontrolled release of radiation to the environment following a design basis accident. As stated in II above, the design change will be in accordance with the existing design basis.

The NRC staff agrees with the licensee's evaluation in this regard and proposes to find the proposed change to not involve a significant hazards consideration based on the licensee's ability to meet the three criteria described above.

Identical modifications have already been made for SSES Unit 2, with the corresponding Technical Specifications revised via Amendment 2 to License NPF–22, dated October 9, 1984.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for Licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 19, 1985.

Brief description of amendment: The application requests modifications to the Technical Specifications to: (1) Revise the definition of Operability to provide the additional guidance that only items necessary for a system to perform its safety-related function are necessary to demonstrate operability, and revise the title to Definition 1.4 to include the word MODE; (2) revise the Action statement associated with the structural integrity of the RCS to define what must be done when the structural integrity of a Class 1 or 2 component is discovered to be questionable when the plant is already over the temperature limits given in the Technical Specifications, and place restrictions on the time allowed for evaluation and temporary repair; and (3) revise the surveillance requirements of the Control Room Emergency Ventilation System (CREVS) to require that testing done to verify that the CREVS can maintain design control room temperatures only be performed once a year rather than every 31 days.

Basis for proposed on significant hazards consideration determination: The licensee has provided a discussion of the proposed amendment with respect to the issue of no significant hazards consideration which is presented below for each issue.

1. *Definition of Operable—Operability.*

This revision clarifies the definition by stating that non-safety-related portions of systems are not necessary to declare a safety-related system OPERABLE. The definition continues to require that all safety-related systems, subsystems, trains, components, or devices will be able to perform their safety-related function in order to be declared OPERABLE. Therefore, this revision does not impose a significant hazard consideration.

The staff has reviewed this discussion presented by the licensee and agrees that the proposed amendment is meant to clarify without degrading the definition of operability. The licensee has also proposed to add the word MODE to the title of Definition 1.4. The Commission has provided guidance to the NRC staff for a proposed no significant hazards consideration determination by providing examples of amendments that are not likely to involve a significant hazards consideration. One example is (i), a purely administrative change to technical specifications. The licensee's proposed change to the definition of operability, which is a clarification of the definition, and the revision to Definition 1.4's title fall under the domain of this example and therefore do not involve a significant hazards consideration.

2. *Structural Integrity.*

The present wording for ACTION Statement d does not specify a time limit for the evaluation or repair allowed by the ACTION statement. The statement has been revised to specify that the evaluation must be completed within 72 hours and repairs within the following 36 hours. The 72- and 36-hour limits are not based upon a specific accident analysis but upon a compromise between the time needed to perform the work and the need to ensure that the plant is not operated for an extended period with potentially degraded structural integrity. Since the revision prevents extended operation with potentially degraded structural integrity, a significant hazard consideration is not deemed to exist for this change.

The staff has reviewed the licensee's determination of no significant hazards consideration for this change to the Technical Specification and proposes to agree with that determination.

The proposed change is meant to clarify what must be done when the structural integrity of a Class 1 or 2 component is discovered to be questionable when the plant is already above the temperature limits given in the Technical Specification Action statements. This change is encompassed by example (i), as discussed above, of actions not likely to involve significant hazards considerations. Additionally, the licensee has proposed constraints on the time allowed for evaluation and repair of degraded components. This falls under example (ii) of actions not likely to involve a significant hazards consideration; that is, a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

3. *Control Room Emergency Ventilation System (CREVS).*

Surveillance Requirement 4.7.6.1.a presently requires a test of each train of the control room emergency ventilation system every 31 days. This test performs two major functions:

a. Maintains the charcoal absorbers in a dry condition to ensure that they will be able to fulfill their design function, and

b. Verifies that the service water coolers can perform their function of maintaining the control room temperature within design requirements.

The revised Surveillance Requirement 4.7.6.1.a will perform testing to meet Item a above every 31 days as is presently done. However, Item b above will now be performed annually per Surveillance Requirement 4.7.6.1.b instead of the present interval of 31 days. This increased surveillance interval is considered acceptable based on the following:

a. The emergency ventilation system has never failed to maintain temperature within design conditions during all testing performed to date, and

b. Modes of possible failure of the service water coolers, such as fouling, do not occur rapidly enough to justify testing on a monthly basis. Annual testing is considered adequate to detect any decrease in the capacity of the service water coolers.

Based upon the above, a significant hazard consideration is not deemed to exist.

The staff has reviewed this discussion presented by the licensee. It appears

that operation of the facility in accordance with the proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because testing will still be performed to demonstrate the capability of the CREVS to maintain the control room design basis temperature. The testing will be performed on a less frequent basis, but this should not impact the probability or consequences of an accident; or (2) create the possibility of a new or different kind of accident because a safety limit or limiting condition for operation has not been modified; or (3) involve a significant reduction in a margin of safety because annual testing appears adequate to detect any changes in the capacity of the service water coolers, and this test frequency is consistent with the rate at which degradation may occur.

Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: Edward J. Butcher, Acting.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 6, 1983, as supplemented June 29, 1983, April 3, 1984, July 11, 1984, November 28, 1984, February 8, 1985, and April 3, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to:

1. Change the requirement for calibration of the nuclear instrumentation power range amplifier from whenever indicated neutron power and core thermal power differ by more than 2% to whenever the Nuclear Instrumentation indication is 10% above the core thermal power or 2% below thermal power.

2. Increase the frequency of performing a heat balance check from daily to once per shift.

3. Delete the present requirement for daily calibration during non-steady-state operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee states that the calibration change (item 1) is needed because power range nuclear instruments (NI) that are within calibration limits at or near full power will read high (with respect to thermal power) at reduced power levels (a conservative error). However, if the NI are brought within calibration limits at reduced power, they will then read low (a non-conservative error) when the reactor returns to full power. This condition will then exist until the next calibration. To remove this temporary non-conservative condition, the licensee proposed a change that will require calibration of the power range nuclear instruments when the heat balance exceeds neutron indicated power by 2%.

With regard to item 2, the licensee noted that power imbalance and control rod insertion limits become more restrictive as power level increases. Therefore, neutron channels which are high impose stricter and more conservative limits on reactor operation. However, for human factors consideration related to unbounded out-of-calibration conditions, the licensee proposed an upper limit to 10% for nuclear indicated power exceeding heat balance.

With regard to item 3, the licensee states that the proposed TS changes would make the requirements for daily calibration of the power range neutron instrumentation during non-steady-state operation unnecessary. The reasons are that the proposed new Specification would require a heat balance check (comparison of indicated neutron power and core thermal power) at least once a shift and calibration whenever the nuclear instrumentation indication was 2% below thermal power or 10% above core thermal power. Since these requirements address any calibrations needed during steady-state or non-steady-state conditions more frequently than the present requirements, the present requirement can be deleted.

Since the proposed TS changes would (a) remove a calibration when performed at lower than full power level which results in a non-conservative condition at full power, (b) provide an upper bound limit for human factors consideration, and (c) delete a calibration that has been replaced by a more frequent calibration, the Commission's staff concludes that the proposed change would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John R. Stolz.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362; San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: May 9, 1985 (Reference PCN–184).

Description of Amendment Request: The proposed change would revise Technical Specification (T.S.) ¾.10.1, "Special Test Exceptions —Shutdown Margin." T.S. 3.10.1 allows the shutdown margin to be reduced to less than the normal operating shutdown margin requirements during the performance of low power physics tests, provided that certain conditions are met. As one of these conditions, Surveillance Requirement 4.10.1.2 requires that all control element assemblies (CEA's) not fully inserted in the core be demonstrated to be capable of full insertion when tripped from at least the 50% withdrawn position within 24 hours prior to reducing shutdown margin to less than the normal operating requirements. The proposed change will allow this surveillance to be performed within seven days prior to the tests instead of within 24 hours prior to the tests. This will enable low power physics testing to be completed without an additional trip to verify CEA insertability.

Low power physics tests are performed to verify core physics predictions. One of the test sequences measures CEA worths and may involve the reduction of shutdown margin as permitted by T.S. 3.10.1. Prior to initial criticality for performamce of the low power physics tests, rod drop testing is

performed to demonstrate CEA insertability. The reactor is brought critical and stabilized at the test plateau (approximately 10^{-2}% power). The preferred sequence for low power physics testing has CEA worth measurements made last. Since approximately five days would have elapsed from when the hot rod drop tests were last performed, the reactor would have to be tripped again to demonstrate CEA insertion capability and satisfy the current 24 hour criteria. The proposed change would eliminate the necessity for an additional trip during low power physics testing by requiring CEA insertability to be verified within seven days prior to reducing shutdown margin instead of within 24 hours.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): For example a change resulting from the application of a small refinement of a previously used calculational model or design method.

In this case, SRP Section 14.2, "Initial Test Program" and SRP Sections 15.1.1, 15.1.2, 15.1.3, 15.1.4 and 15.1.5 which relate to Reactor Coolant System (RCS) overcooling events provide the pertinent acceptance criteria. SRP Section 14.2 refers to Regulatory Guide (R.G.) 1.68, "Initial Test Programs for Water Cooled Nuclear Power Plants." R.G. 1.68 outlines the elements of an acceptable startup test program including requirements for CEA worth measurements during low power physics testing. The proposed change will facilitate CEA worth measurements and is consistent with R.G. 1.68 and SRP Section 14.2.

The proposed change does not affect the consequences of RCS overcooling events evaluated in accordance with SRP Section 15.1.1 through 15.1.5. Because of a negative moderator temperature coefficient, RCS overcooling results in a reactivity increase. Because of this, a post trip return to power may be experienced in overcooling events if insufficient negative reactivity is inserted via the CEA's. Since shutdown margin is reduced during CEA worth measurements, T.S. 4.10.1.2 provides added assurance that all CEA's are trippable. By increasing the period during which shutdown margin may be reduced following performance of surveillance requirement 4.10.1.2, the proposed change may result in an insignificant reduction in the assurance provided. The resultant increase in the probability of a stuck CEA coincident with an overcooling event has been calcuated by the licensee to be 1.8×10^{-7}. The proposed change has no effect on the consequences of overcooling events since it does not affect the amount by which shutdown margin may be reduced. Because the consequence of these events are not increased, the SRP acceptance criteria continue to be satisfied. Based on these considerations, the NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: July 17, 1984, as supplemented by letter dated October 3, 1984.

Description of amendment request: The proposed amendment would revise Technical Specification 4.6.1.2 and its associated bases regarding containment leakage surveillance requirements to proved clarifications on the leak rate testing of valves pressurized with fluid from a seal system. The clarifications are provided by the incorporation of Standard Technical Specifications 4.6.1.2.d.3) and 4.6.1.2.g (NUREG–0452, Revision 4) into Callaway Specifications 4.6.1.2.d.3) and 4.6.1.2.h and by an addition to bases 3/4.6.1.2 to include Callaway Plant specific requirements that are consistent with 10 CFR Part 50, Appendix J, Paragraph III.C.3.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This amendment request is similar to the example of an action involving no significant hazards consideration which relates to a change to make the license conform to regulations, where the license amendment results in changes to facility operations clearly in keeping with the regulations.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B. J. Youngblood.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: July 19, 1983, as modified April 13, 1984 and August 16, 1984 and supplemented April 5, 1985.

Description of amendment request: The original proposed change to the Technical Specifications (TS) was noticed in the **Federal Register** February 24, 1984 (49 FR 7051). The supplemented proposed change modified some portions of the original proposed change as well as adding new proposed changes to the TS. The following items have been modified from the original proposed changes: (1) The licensee withdrew the request to allow the inner door lock to remain open when containment is occupied, and (2) withdrew the request to delete or add valves related to the low pressure surge tank, the secondary systems isolation valves, the component cooling safety valve discharge, and the purification pump connection.

The supplement to the proposed change would revise the TS to (1) add a torque testing requirement for all threaded pipe caps or threaded plugs used to provide containment integrity, (2) administratively delete containment isolation valves that were either physically removed from systems or repiped such that the valves are no longer required for containment isolation, (3) administratively add valves and blank flanges that, due to redesignation, reconfiguration of piping, addition of valves not previously identified in TS, or installation of new valves, which are required for

containment isolation, (4) add valves, with notations to allow operation of certain valves to allow for surveillance testing, operation of component cooling water, and for sampling of containment atmosphere during postulated accident conditions, and (5) add new categories of containment isolation valves, in addition to the categories contained in the original proposed change, for Safety and Secondary Isolation Valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards by providing certain examples (April 6, 1983, 48 FR 14870) of amendments not likely to involve significant hazards consideration. Example (ii) involves a change that constitutes an additional limitation, restriction, or control not presently included in the TS.

Revision to the TS items (1) and (3) above are encompassed by this example. Item (1) adds a torque requirement for the pipe caps and threaded plugs that were proposed to be added to the TS in the original TS change request. The torque test requirement does not currently exist in the TS for these fittings. Item (3) proposes to add valves and blank flanges to the TS listing of containment valves that require testing in accordance with Appendix J to 10 CFR Part 50. These valves and blank flanges are part of plant modifications that removed the low pressure surge tank (LPST), connections to the purification pumps and the outside air particulate monitor (OAPM) from the containment boundary. The listing of the added valves and blank flanges is now provided for the new containment isolation valves that replaced valves removed or redesignated during the LPST, the purification pumps, and the OAPM modifications. Additionally, item (3) proposes to add valves and taps that were installed to allow connection of the hydrogen recombiner.

The staff has reviewed Items (2), (4), and (5) of the licensee's submittal in accordance with the standards of 10 CFR 50.92 and has determined that should these revisions be implemented, they would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previoulsly evaluated, or (3) involve a significant reduction in a margin to safety. The basis for this determination follows:

Various containment isolation valves and check valves associated with the LPST, purification pump, and OAPM have been replaced as containment barriers by the modifications discussed in item (3). Item (2) proposes to administratively remove the replaced boundaries from the TS. Item (4) proposes to add notation to (a) allow the OAPM isolation valves to be opened to allow sampling of containment air, (b) allow operation of normally open component cooling water (CCW) isolation valves under administrative controls to provide for isolation when CCW is determined to be involved in an accident, and (c) allow for surveillance of the hydrogen recombiner inlet taps under the in-service inspection program.

The original request also proposed the reorganization of the containment isolation valve listing into nine new categories. Revision to the TS item (5) above proposes to add the following additional categories to Table 3.6–1:

F. Safety Valves (Subject to Type C testing)

G.1 Secondary Automatic Isolation (not subject to Appendix J)

G.2 Secondary Manual Isolation (not subject to Appendix J)

G.3 Secondary Remote Manual Isolation (not subject to Appendix J)

G.4 Secondary Safety Valves (not subject to Appendix J)

These additional categories were proposed to (a) provide for containment isolation barriers in lines that were modified in conjunction with the removal of the LPST as part of the containment boundary, and (b) provide a listing of main steam and feedwater systems isolation valves in the TS. One additional valve is being reclassified from the original proposed change as requiring type C testing. These changes to the original proposed change reflect the hardware modifications approved by the NRC to remove the LPST from the containment boundary, and provides a listing of the closed system isolation valves that are required by General Design Criterion 57.

Based on the above discussions, the staff proposes to conclude that none of the requested actions would involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: John A. Zwolinski.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: June 26, 1985.

Description of amendment request: The proposed change would modify the surveillance interval requirements for Low and High Pressure Safety Injection Flow Tests, and for the Hot Leg Injection Flow Test, in the Technical Specification (TS). Additionally, the proposed change would renumber TS consistent with changes proposed to modify these surveillance intervals, and would correct a spelling error in the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). Example (i) of actions not likely to involve a significant hazards consideration determination involves a purely administrative change to the TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The proposed correction of a spelling error, and the proposed renumbering of the TS are consistent with this example.

The amendment request also proposes to change the Low Pressure Safety Injection Flow Tests from an 18 month surveillance interval, and the High Pressure Safety Injection and Hot Leg Injection Flow Test surveillance interval from 36 months, to an interval that requires these flow tests after completion of modification to ECCS subsystems that alter the subsystem flow characteristics. This proposed modification would make these flow test intervals for ECCS systems consistent with the Westinghouse Standard TS. The proposed change would, therefore, (1) not involve any significant increase in the probability or consequences of an accident previously evaluated; (2) not create the possibility of a new or different kind of accident from any accident previously evaluated; and (3) not involve a significant reduction in a margin of safety.

On these basis, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Cheif: John A. Zwolinski.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: July 30, 1985.

Brief description of amendment: Revise the Technical Specifications to reflect revised setpoints in the channels for overpressure delta T, overtemperature delta T, and loss of flow trips and the reactor coolant temperature to protect against departure from nucleate boiling (DNB).

Date of publication of individual notice in **Federal Register:** August 2, 1985 (50 FR 31447).

Expiration date of individual notice: August 16, 1985, 4:30 p.m.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 31, 1985.

Brief description of amendments: The amendments changed the Unit 1 and Unit 2 Technical Specifications (TS) to reflect clarification and increased flexibility for determination of reactor coolant system leakage as specified in TS 3/4.4.6.1, "Leakage Detection Systems" and TS 3/4.4.6.2, "Reactor Coolant System Leakage."

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment Nos.: 107 and 88.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 15997 at 15998).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of applications for amendments: February 26 and April 10, 1985.

Brief description of amendment: The amendment changes the Unit 2 Technical Specifications (TS) to reflect (1) analyses performed in support of Unit 1 Cycle 8 operation which is also applicable to Unit 2 which would allow more flexible limits for high pressure safety injection system flow, and (2) an increase from 24 hours to 7 days for the time period within which a scram test must be performed prior to reducing the shutdown margin below specified limits.

Date of issuance: August 30, 1985.

Effective date: August 30, 1985.

Amendment No.: 89.

Facility Operating License No. DPR–69. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1985 (50 FR 25480 at 25481).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power and Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: April 30, 1985.

Brief description of amendment: The amendment revises Technical Specifications Table 3.5–1 Items 6.a and 6.b to increase the voltage setpoint tolerances for loss of voltage and degraded grid voltage relays and increase the loss of voltage relay trip time. This completes our review of this item (TAC No. 57738).

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment No.: 93.

Facility Operating License No. DPR–74. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1985 (50 FR 25484).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locotion: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: January 30, 1985; supplemented July 8, 1985.

Brief description of amendments: These amendments would: (a) Permit full pressure testing of the containment in accordance with 10 CFR Part 50, Appendix J as requested by NRC-Region III; (b) add containment air lock testing; (c) reduce the number of tendons to be included in surveillance requirements in accordance with Regulatory Guide 1.35, Revision 2; and (d) remove obsolete containment liner surveillance requirements.

Date of issuance: August 27, 1985.

Effective date: August 27, 1985.

Amendment Nos.: 90 and 80.

Facility Operating License Nos. DPR–39 and DPR–48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16001).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: January 7, 1985 as revised March 14, 1985 which supersede previous requests dated June 4, 1976 and November 13, 1978.

Brief description of amendment: The amendment changes the Technical Specifications and Bases to incorporate Radiological Effluent Technical Specifications (RETS) which meet the requirements of Appendix I to 10 CFR Part 50. The amendment also includes administrative changes which relocate and reformat related Technical Specifications which are not part of the RETS, but were necessary in order to incorporate the RETS into the existing Technical Specifications.

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment No. 77.

Facility Operating License No. DPR–6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23546).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locotion: Notrh Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 13, 1984.

Brief description of amendment: The amendment issues changes to the technical specifications to (1) add limiting conditions for operation to require the containment purge and ventilation isolation valves to be electrically locked closed whenever the reactor is in a Hot Shutdown, Hot Standby, or Power Operation condition, and (2) add surveillance requirements to periodically check that these valves are closed and to periodically perform leak rate tests of the valves.

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment No. 90.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33362).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 15, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to provide new, mora restrictive pressure-temperature limits for heat-up, cooldown and hydrostatic test to account for the effects of irradiation of the reactor vessel materials for 6.6 effective full power years of operation.

Date of issuance: August 21, 1985.

Effective date: August 21, 1985.

Amendment No. 89.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27504).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos 1 and 2, Appling County, Georgia

Date of amendment request: February 15, 1985.

Brief description of amendment: The amendments revise the Technical Specifications to eliminate provisions that allow bypass of the high drywell pressure scram signal for the purpose of containment inerting and de-inerting.

Date of issuance: August 27, 1985.

Effective date: August 27, 1985.

Amendment No. 113 and 53.

Focility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16004).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: March 19, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to provide operating and surveillance requirements for automatic depressurization system bypass timers.

Date of issuance: August 27, 1985.

Effective date: August 27, 1985.

Amendment No. 52.

Facility Operating License No. NPF–5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20980).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 29, 1985.

Brief description of amendments: These amendments revise the Technical Specifications for the reactor trip system instrumentation and the engineered safety feature actuation system instrumentation. Of four groups of changes, the first provides criteria for when a channel needs to be adjusted following a heat balance, suspends the requirements for immediate shutdown when all trains of some instrumentation are inoperable, and changes the action statement when operable instrument channels are one less than the total number of available channels. The second group extends the period of time from one hour to two hours in which one channel of the reactor solid state protection system can be bypassed for surveillance testing. The last two groups are editorial in nature.

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment Nos.: 90 and 75.

Facilities Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20982).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 31, 1985, as supplemented June 7, 1985.

Brief description of amendments: The amendments revise the Technical Specifications by deleting the program and records retention requirements pertaining to environmental qualification of equipment.

Date of issuance: August 19, 1985.

Effective date: Within 30 days of date of issuance.

Amendment Nos.: 89 and 74.

Facilities Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29010).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 5, 1985, supplemented June 11, 1985 and modified June 20, 1985.

Brief description of amendment: The amendment modified the Maine Yankee Technical Specifications concerning Steam Generator Tube Surveillance Requirements.

Date of issuance: August 20, 1985.

Effective date: August 20, 1985.

Amendment No.: 84.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29006 at 29011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: June 6, 1985.

Brief description of amendment: The amendment added new technical specifications addressing the surveillance requirements related to the licensee's solid radioactive waste Process Control Program (PCP). Specifically, the requirements state that the PCP shall be used to verify the solidification of radioactive waste.

Date of issuance: August 22, 1985.

Effective date: October 3, 1985.

Amendment No.: 91

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27502 at 27508)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: June 11, 1985.

Brief description of amendment: The amendment changed the testing frequency of the auxiliary feedwater pumps from quarterly to monthly.

Date of issuance: August 19, 1985.

Effective date: within 30 days of issuance.

Amendment No.: 90.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29006 at 29013).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: January 7, 1985, as amended April 1, 1985.

Brief description of amendment: The changes to the Technical Specifications permit reactor operation of Peach Bottom, Unit No. 3 with Reload No. 6 (Cycle 7).

Date of issuance: August 23, 1985.

Effective date: August 23, 1985.

Amendment No.: 114.

Facility Operating License No. DPR–56. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7999) and May 21, 1985 (50 FR 20986).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania,

Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 27, 1985 and April 23, 1985, as supplemented August 1, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to allow the first of a three-phase fuel design transition from Westinghouse 15 × 15 low parasitic (LOPAR) design to the 15 × 15 Optimized Fuel Assembly (OFA) design with the introduction of Wet Annular Burnable Absorber (WABA) rods into the core and to allow an equivalent steam generator tube plugging level of up to 30% in any steam generator provided the equivalent average plugging level in all steam generators is less than or equal to 24%. The licensee's August 1, 1985 submittal provided additional information to the original amendment request and did not change the Technical Specifications.

Date of issuance: August 27, 1985.

Effective date: August 27, 1985.

Amendment No.: 61.

Facilities Operating License No. DPR-64. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23549) and July 3, 1985 (50 FR 27508).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: April 9, 1985, as supplemented May 20 and June 20, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to delete the Boron Injection System.

Date of issuance: August 26, 1985.

Effective date: September 2, 1985.

Amendment No. 44.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29015).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: September 17, 1984.

Brief description of amendment: The amendment adds to Technical Specifications 6.9.1.6 the requirement to report in the monthly operating report challenges to the pressurizer power operated relief value (PORV) and the pressurizer code safety valves.

Date of issuance: August 22, 1985.

Effective date: August 22, 1985.

Amendment No. 87.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12165).

The Commission's related evaluation of the amendment is contained in a letter to the licensee dated August 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 8, 1984.

Brief description of amendment: The amendment adds Technical Specification Section 6.2.3. which requires administrative procedures to be developed and implemented to limit facility staff working hours.

Date of issuance: August 22, 1985.

Effective date: August 22, 1985.

Amendment No.: 88.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12165).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

The Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 16, 1984.

Brief description of amendment: This amendment modifies paragraph 6.4.1 of the TSs to specify that the retraining and replacement training program for the facility staff is under the direction of the Nuclear Training Manager. Previously no position title was shown in paragraph 6.4.1.

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment No. 89

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12165)

The Commission's related evaluation of the amendment is contained in a letter to Toledo Edison Company dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339 North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 9, 1984.

Brief description of amendments: The amendments add a description of the post-accident sampling program to the NA-1&2 TS Administrtive Controls, Section 6 in response to NUREG-0737 Item II.B.3 (Post-Accident Sampling) and II.F.1.2 (Sampling and Analysis of Plant Effluents).

Date of issuance: August 20, 1985.

Effective date: August 20, 1985.

Amendment Nos.: 85 and 50.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of Initial notice in **Federal Register:** June 4, 1985 (50 FR 23543 at 23554).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and Alderman Library, Manuscripts Department, Univesity of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 150-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 28, 1984.

Brief description of amendments: The amendments are administrative in nature and correct discrepancies presently existing in the NA-1&2 TS which relate to the Radiological Effluent Technical Specifications (RETS). The amendments add the Containment Vacumm Steam Ejector (Hogger) as a gaseous release path that is monitored and specify the figure for the Low Population Zone in the appropriate TS figure and correct numbers are assigned to appropriate TS Table numbers.

Date of issuance: August 29, 1985.

Effective date: August 29, 1985.

Amendments Nos.: 67 and 53.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical specifications.

Date of initial notice Federal Register: The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29. 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virgina 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 15, 1985.

Brief description of amendments: The amendments revised the NA-1&2 TS 3/4 9.3 to specify a minimum decay time of 150 hours instead of the presently specified 100 hours prior to any movement of fuels for refueling operations.

Date of issuance: August 21, 1985.

Effective date: August 21, 1985.

Amendment Nos.: 66 and 52.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20969 at 20995).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: May 13, 1985.

Brief description of amendments: These amendments revise Technical Specifications Section 5.3 to modify the description of the fuel assemblies so that reconstituted assemblies may be placed into the core. In the reconstituted assemblies, fuel rods which are known to have failed have been removed and replaced with dummy (non-fueled) rods.

Date of issuance: August 26, 1985.

Effective date: August 26, 1985.

Amendment Nos. 102 and 102.

Facility Operating License Nos. DPR-32 and DPR-37. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 4, 1985 (50 FR 23555).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: February 11, 1985.

Brief description of amendment: The amendment provides relief from Surveillance Requirement 4.4.7 (Table 4.4-3) which requires that reactor coolant system chemistry limits for chlorides and fluorides be sampled on a continuing 72 hour basis. The relief from Surveillance Requirements 4.4.7 (Table 4.4-3) is applicable when the reactor coolant system is drained below the reactor pressure nozzle and the internals and/or head are in place. The relief is only applicable in Mode 6 (Refueling).

Date of issuance: August 21, 1985.

Effective date: August 21, 1985.

Amendment No.: 51.

Facility Operating License No. NPF-7: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1985 (50 FR 29006 at 29020).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland this 5th day of September 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85-21736 Filed 9-10-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Subcommittee on Structural Engineering and Seismic Design of Piping; Meeting

The ACRS Subcommittees on Structural Engineering and Seismic Design of Piping will hold a joint meeting on September 23 and 24, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, September 23, 1985—8:30 a.m. until the conclusion of business.

Tuesday, September 24, 1985—8:30 a.m. until the conclusion of business.

The Subcommittees will review the status of resarch programs on containment integrity, seismic margins, piping reliability, and other related matters. In addition, leak-before-break concept applied to high energy piping systems other than the primary coolant line will be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as

far in advance as is practicable so that appropriate arrangements can be made.

During the intial portion of the meeting, the Subcommittees, along with any of its consultants who may be pesent, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedules, etc., which may have occurred.

Date: September 5, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–21733 Filed 9–10–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee River Bend Station; Revisions

The **Federal Register** published on Tuesday, August 20, 1985 (50 FR 33657) contained notice of a meeting of the ACRS Subcommittee on River Bend Station scheduled for Wednesday, September 11, 1985, and the time has been changed to 3:45 p.m. in Room 1046, 1717 H Street, NW, Washington, DC. To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss the results of ongoing NRC investigations.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planr.ing to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 5, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–21734 Filed 9–10–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–352 OL, 50–353 OL]

Philadelphia Electric Co.; Oral Argument

In the matter of Philadelphia Electric Company, (Limerick Generating Station, Units 1 and 2).

Notice is hereby given that, in accordance with the Appeal Board's order of August 29, 1985, oral argument on the appeals of Limerick Ecology Action and Robert L. Anthony/Friends of the Earth from the Licensing Board's May 2, 1985, third partial initial decision on offsite emergency planning (LBP–85–14) will be heard at *1:00 p.m. on Friday, October 11, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: September 5, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–21732 Filed 9–10–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–289 (CH)]

General Public Utilities Nuclear (Three Mile Island Nuclear Station, Unit No. 1); Hearing

The Appeal Board as part of its decision on management-related issues in the Three Mile Island, Unit 1 (TMI–1) restart proceeding required that "Mr. Husted have no supervisory responsibilities insofar as the training of non-licensed personnel is concerned." ALAB–772, 19 NRC 1193, 1224 (1984).

The Commission upon reviewing that decision decided to offer Mr. Husted "an opportunity to request a hearing on whether the Appeal Board's condition barring him from supervisory responsibilities insofar as the training of non-licensed personnel is concerned should be vacated." CLI–85–2, 21 NRC 282, 317 (1985). The Commission in CLI–85–2 further stated that it would assign the matter to an Administrative Law Judge if Mr. Husted requested a hearing.

On March 25, 1985 Mr. Husted requested a hearing. Mr. Husted also requested that the proffered hearing be expanded to address whether he "is barred by concerns about his attitude or integrity from serving as an NRC licensed operator, or a licensed operator instructor or training supervisor."

Mr. Husted maintained that the expanded scope he requested would not require additional agency resources because it would involve consideration of the same factual issues as would the proffered hearing. Therefore, Mr. Husted argued, the potential benefit to himself justified such an expanded scope. [1]

Either hearing would focus on whether the following four concerns regarding Mr. Husted are true, and, if so, whether they require that he not be employed in the jobs in question:

(1) The alleged solicitation of an answer to an exam question from another operator during the April 1, 1981 NRC written examination;

(2) The lack of Forthrightness of his testimony before the Special Master;

(3) His poor attitude toward the hearing on the cheating incidents; and

(4) His lack of cooperative with NRC investigators.

Therefore, the Commission agrees that the expanded scope he has requested should not require additional agency resources.

Mr. Husted also noted the existence of a July 6, 1983 Stipulation between GPU Nuclear and the Commonwealth of Pennsylvania in which GPU Nuclear agreed not to utilize Mr. Husted to operate TMI–1 or to train operating license holders or trainees. Mr. Husted stated that the licensee has no objection

---

[1] Both the NRC staff and Three Mile Island Alert (TMIA) responded to Mr. Husted's request. The NRC staff opposed the expanded scope of hearing requested by Mr. Husted. For the reasons set forth in this Order, the Commission disagrees with the staff.

TMIA, without specifying exactly what relief it is seeking, argued that Mr. Husted's request is in reality an attempt by licensee to relitigate issues decided in the TMI–1 restart proceeding, and that intervenors in the restart proceeding have a due process interest in finality of decision.

TMIA's claims are without merit. The Commission is instituting this proceeding, to be held separate from the restart proceeding, in fairness to Mr. Husted, who was not given notice and an opportunity to intervene in the restart proceeding. TMIA's claims of an attempt to relitigate issues in the restart proceeding are unfounded. Those issues have been resolved for the purposes of that proceeding. Moreover, TMIA, if it meets the standards for intervention, may intervene in this separate proceeding. This will provide TMIA the opportunity to protect any interests it may have in this matter.

to the scope of hearing as requested by Mr. Husted. Mr. Husted further stated his understanding that the Commonwealth "cannot agree in advance of the proceeding that the outcome would control its view as to the continued need for the Stipulation concerning Mr. Husted."

The Commission recognizes the rights of the parties to this Stipulation. Nonetheless, the Stipulation resulted, at least in part, from an NRC proceeding to which Mr. Husted was not a party. Therefore, in fairness to Mr. Husted the Commission has decided to grant Mr. Husted's request for an expanded scope of hearing. This will provide Mr. Husted with an opportunity to demonstrate his fitness for the positions at issue, and, if results of the hearing are favorable to Mr. Husted, he can then take up the Stipulation with GPU Nuclearl and the Commonwealth.

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before an Administrative Law Judge, to be appointed by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel. The Administrative Law Judge will set the time and place for the hearing and shall hold prehearing conferences as necessary. The scope of the hearing will be as set forth above. The hearing will be conducted pursuant to the procedures contained in 10 CFR Part 2, Subpart G. Any petitions to intervene by any interested person shall be filed in accordance with 10 CFR 2.714 and, to be timely, shall be filed within 45 days of the date of this Notice. The NRC staff is to participate as a full party, and is to ensure that the record is fully developed.[2]XXXX

Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission.

Dated in Washington, D.C. this 5th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-21731 Filed 9-10-85; 8:45 am]

BILLING CODE 7590-01-M

[2] The Commonwealth of Pennsylvania on May 28, 1985 moved to disqualify the law firm of Shaw, Pittman, Potts & Trowbridge from representing both Mr. Husted and GPU Nuclear. That motion is hereby referred to the Administrative Law Judge for resolution.

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Demand Forecasting Advisory Committee; Regular Meeting

AGENCY: Demand Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Status Report on Contracts.
- Discussion of Demand Forecasts in Draft Plan.
- Adjourn meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

DATE: Wednesday, October 2, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION, CONTACT: Terry Morlan, (503)222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-21681 Filed 9-10-85; 8:45 am]

BILLING CODE 0000-00

Northwest Conservation and Electric Power Plan Proposed Model Conservation Standard Amendments, Additional Information

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of additional information available for public comment regarding proposed amendments to the Northwest Conservation and Electric Power Plan (Plan) relating to model conservation standards (MCS).

SUMMARY: Notice of proposed amendments to portions of the Plan relating to the MCS was published at pages 30654 through 30661 in the Federal Register of July 26, 1985. That notice described the proposed amendments, explained how to obtain additional information, and outlined the process for submitting comments and participating in public hearings. The Council recently released to all who requested them two additional documents providing updated technical background information relevent to the Council's proposed amendments. This notice describes these additional documents and explains how to obtain copies of them.

DATES AND ADDRESSES: Public comments regarding the proposed MCS amendments will be accepted at the Council's central office (Suite 1100, 850 SW. Broadway, Portland, Oregon 97205) until 5 p.m., Pacific time, on September 13, 1985. The remaining public hearings on the proposed amendments are scheduled for:

- Seattle, Washington, 9 a.m., September 9, 1985, Federal Building, Room 2866, 915 Second Avenue;
- Portland, Oregon, Wednesday, September 11, 1985, 10 a.m., Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon; and
- Missoula, Montana, 1:30 p.m., September 13, 1985, Missoula Sheraton, 200 S. Pattee Street.

Copies of the two additional background documents described in this notice may be obtained by wirting to Judy Allender at the Council's central office address given above.

FOR FURTHER INFORMATION CONTACT: Ruth Curtis, Information Coordinator, at (toll-free) 1-800-222-3355, from Montana, Idaho, Washington and California; (toll-free) 1-800-452-2324 in Oregon; or (503) 222-5161.

SUPPLEMENTARY INFORMATION: To stimulate further public discussion regarding the proposed MCS amendments and to provide the most recent data supporting the Council's proposals, the Council has released two additional documents for public review. Each of these documents is entitled "Model Conservation Standards Review Issue Paper, Updated Analysis of the Residential Standards Demonstration Program Conservation Measure Cost Reports" and provides recently reported information on MCS conservation measure costs from the Residential Standards Demonstration Program (RSDP). RSDP cost data was initially analyzed in the Council's March 15, 1985 Model Conservation Standards Review Issue Paper. Since publication of that paper, additional cost reports for houses involved in the RSDP program have become available. The first document, "Addendum I," includes additional RSDP data through August 16, 1985. It also includes a discussion of the data and procedures used to develop the Council's interim savings targets. The second document, "Addendum II," includes additional RSDP cost data made available between August 16 and August 22, 1985. Each of these updated documents provides detailed

information related to the following issues raised by the Council's proposed MCS amendments:

- Economic Feasibility for the consumer.
- Cost-effectiveness for the region.
- Indoor air quality and heat recovery ventilators.
- Early adoption of building codes meeting the existing MCS.
- Marketing programs to encourage energy-efficient housing.

The Council encourages interested parties to review the data contained in these two documents when preparing comments on the proposed MSC amendments.

Edward Sheets,

Executive Director.

[FR Doc. 85-21682 Filed 9-10-85; 8:45 am]

BILLING CODE 0000-00-M

Northwest Conservation and Electric Power Plan Draft Revision, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan (Plan) pursuant to the Northwest Power Act (16 U.S.C. 839 et seq.). Since that time to the Council has amended portions of the Plan. The Council has now released for public comment a draft revision of the entire Plan. This notice describes the draft revised Plan and explains how to participate in the comment process. The draft revised Plan is being considered separately from the current proposed amendments to those portions of the Plan dealing with model conservation standards (MCS), which are the subject of a different hearing and comment process (50 FR 30654-61, July 26, 1985; 50 FR 33435, August 19, 1985). Comments pertaining to the MCS should be submitted pursuant to the Council's MCS amendment process and according to the schedule established there.

DATES AND ADDRESSES: The public comment period regarding the draft revised Plan closes at 5 p.m. Pacific time on October 25, 1985. Public hearings on the draft revised Plan will be held at the following places and times:

- Missoula, Montana, 9:00 a.m., October 11, 1985, Village Red Lion, 100 Madison, Missoula, Montana.
- Salem, Oregon, 10:00 a.m., October 15, 1985, Employment Building Auditorium, 875 Union Street NE., Salem, Oregon.
- Boise, Idaho, 10:00 a.m., October 17, 1985, Downtowner Red Lion, 1800 Fairview, Boise, Idaho.
- Seattle, Washington, 9:00 a.m., October 21, 1985, Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington.

The Council currently expects to take final action on the draft revised Plan during its December 11-12, 1985 meeting now scheduled for Portland, Oregon. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and in accordance with the Council's practice of providing notice of its meeting agendas.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 SW. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon) no later than two business days before the hearing.

2. Those who do not reserve a time period will be permitted to present oral comments as time permits.

3. Use the hearing to summarize written comments. The comments themselves should not be read.

4. If possible, ten (10) copies of written comments should be submitted to the Council reporter at the hearings. This person will be sitting at a table near the Council members and will be identified at the start of the hearing by the chairman. When preparing these copies, refer to the guidelines below for written comments.

5. Comment time may be limited if the number of people signed up to testify is so large that it will be necessary to impose limits to allow all commenters an opportunity to speak. A 15-minute guideline is suggested.

6. Appearance at more than one hearing is unnecessary. At each hearing, scheduling preference will be given to individuals and groups who have not testified at earlier hearings.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon, 97205 by 5 p.m. Pacific time on Friday, October 25, 1985. Comments should be directed to the attention of Dulcy Mahar at this address.

2. *Comments should be clearly marked "Draft Revised Plan Comments".*

3. Written comments should be specific and concise are refer to sections or page numbers in the draft revised Plan.

4. If appropriate, submit a "marked up" copy of the draft revised Plan (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-spaced) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

FOR FURTHER INFORMATION CONTACT: Copies of the draft revised plan may be obtained by contacting Judy Allender at the address and telephone numbers listed above. Requests for further information should be directed to Dulcy Mahar, Director of Public Information and Involvement, at the address and telephone numbers listed above.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, "the Act"), the Council adopted a Northwest Conservation and Electric Power Plan on April 27, 1983. The Act requires the Council to review the Plan at least once every five years, and in the 1983 Plan the Council committed itself to revising the Plan every two years (Plan, p. 11-1). At its scheduled public meeting in Portland, Oregon on August 7, 1985, the Council voted to release the draft revised Plan for public comment.

The draft revised power Plan is made up of two volumes. Volume I contains the basis planning strategy, important regional power issues, lowest cost mix and schedules for new resources acquisitions, and an Action Plan the region needs to follow to ensure an adequate and reliable supply of electricity at the lowest cost. Volume II is the technical analysis and supporting material for the policy decisions presented in Volume I. The following describes those subjects and issues treated in the draft revised Plan.

Chapter-By-Chapter Analysis

Volume I

Chapter 1: Electricity—Cornerstone of the Northwest Economy

Thanks to the largest coordinated hydroelectric system in the world, the Northwest has historically enjoyed the

nation's cheapest electricity. This resource has been critical to the region's economic growth. The goal of the Plan is to ensure the Northwest maintains the lowest cost electrical energy future. This chapter details the recent history of electrical development in the Northwest and the actions that led to the Northwest Power Act and the Northwest Power Plan.

Chapter 2: The Regional Picture—Problems and Solutions

Currently the Northwest has a 2,300-megawatt surplus of electricity that could last from five to more than 20 years. This surplus is distributed unevenly among the region's utilities. Through regionwide cooperative actions, these differences can be used as opportunities to attain the lowest possible cost energy future for the region. Developing resources on a regional basis could save the Pacific Northwest $3.8 billion.

Cooperation is particularly important in three areas: (1) The need to develop regionally cost-effective conservation before turning to other, more expensive resources; (2) the need to allocate properly the cost of acquiring and holding resource options that provide flexibility for the regional power system; and (3) the need to make better use of the hydropower system.

The chapter also provides an overview of the current status of the region, including a description of the uncertainties that influence the Council's power planning strategy.

Chapter 3: The Council's Planning Strategy—Risk Management

This chapter sets out the overall goals of the Plan and the Council's planning strategy.

Because the future is uncertain, the Plan must be able to adapt to changing needs. At the same time it must choose the most cost effective way for providing enough electricity to meet any demand. The Council's planning strategy evaluates the contribution of specific resources to power system cost by examining the way resources work together over a wide range of possible loads. Risks are lessened by using flexible resources that can be modified to meet changing demands for electricity. Conservation is an example of such a resource.

The Plan includes a process called "optioning" to design and license resources and keep them "ready on the shelf" until they are needed. Having resources "at the ready" gives planners added time to be certain that demand levels in the region warrants a decision to enter the expensive construction phase.

Chapter 4: Future Electricity Needs

This chapter presents the range of forecasts for electrical energy demand. These forecasts play three roles in the power Plan: (1) They are the basis for deciding how much electricity is needed to support a healthy and growing economy; (2) they explore and define the uncertainty surrounding future resource needs; and (3) they are an essential component is assessing the effects of conservation actions taken as part of the Council's power Plan .

The analysis examines four forecasts representative of high, medium-high, medium-low and low electrical demand growth in the Northwest. The chapter also details the economic and demographic trends that shaped the forecasts and establishes the assumptions used in these forecasts.

Chapter 5: The Existing Regional Electric Power System

This chapter examines the existing resources and resource capacities available to the region, including hydropower, other renewable and congeneration resources, coal and nuclear plants, and imported power.

The Northwest's hydropower system produces approximately two-thirds of the total electricity used by the region. Thermal generating resources, such as coal and nuclear plants, provide most of the remaining electricity. Even with high economic growth, hydropower would still produce almost half the region's electricity at the turn of the century.

This chapter covers the major operating characteristics of the Northwest's electrical power system.

Chapter 6: Conservation Resources

Conservation is the Council's priority resource for meeting the Northwest's future electricity needs. Assuming high economic growth, close to 3,900 average megawatts of conservation would be available at an average cost of 2.1 cents per kilowatt-hour. This amount of available power is equal to more than the amount eight coal plants could produce and it is available at less than half the cost of coal-produced power.

This chapter assesses the amount of new conservation available and its cost. The Council considered cost-effective conservation to be measures the systemwide cost of which was less than that of a comparable amount of electricity produced at a new generating facility. The Northwest Power Act grants conservation a 10 percent cost advantage over other resources.

The chapter analyzes conservation possibilities in each of the power demand sectors: residential, agricultural, commercial, industrial, and governmental.

Chapter 7: Generating Resources

A variety of generating resources are potentially available to meet future Northwest electricity demand. Each resource was analyzed to determine its availability to the region, its reliability, and cost effectiveness. Generating resources that met these criteria were included in the resource portfolio. Other resources, classified as promising, are recommended in the Action Plan for further research, development or demonstration.

Resources reviewed include coal, geothermal, hydropower, municipal solid waster, natural gas, nuclear power, solar, wind, wood residue, cogeneration and waste heat. Also examined were improvements to the efficiency of existing generating projects and the hydropower system.

The Washington Public Power Supply System Nuclear Projects 1 and 3 were found to be cost effective, but a number of legal and financial barriers to their completion make it impossible to rely on power from the plants until such barriers are overcome.

Chapter 8: Resource Portfolio

The 20-year resource portfolio identifies what resources must be developed, to what extent, how soon, and in what order. It includes the potential range of future energy needs, and the lowest cost mix of new resources necessary to meet those needs. Like a stock portfolio, the resource portfolio is diversified and carefully selected to lower economic risks faced by the Northwest.

If the region experiences high economic growth, the following resources need to be developed in this order: conservation, available hydropower, better use of the hydropower system, cogeneration, and coal-fired power plants. If growth is low, conservation alone could take care of all the region's new electrical power needs. Resource schedules for medium-low medium-high growth also included.

Chapter 9: 1985 Action Plan

The Action Plan sets down steps that must be taken in the near term to realize the long-term goals of the Plan. It summarizes the progress made in implementing the 1983 Plan and, building on that progress, establishes a new direction for the near term. It contains a detailed Plan for the

Bonneville Power Administration and recommended actions for the region's other power entities, including investor-owned utilities, and the public utility regulatory commissions.

Given the current regional surplus of electricity, the Action Plan emphasizes acquiring only lost opportunity resources in the near term. These are resources that must be secured now or lost forever. It also stresses the need to build the capability to acquire other new resources so that they are available when needed.

Chapter 10: Conclusion

This chapter is brief summary of the key points of the Plan. It is followed by a glossary of terms used in the Plan.

Appendix I–A: Model Process for Acquiring Resources

The Council's Options Steering Committee and several of its task forces suggested that the Council develop an overall approach to acquiring options on, and the eventual construction of, major resources (see Volume I, Chapter 3). In response, the Council developed this model process for acquiring resources, which accommodates acquisitions by both Bonneville and other regional utilities.

Appendix I–B: Method of Surchage

The Northwest Power Act authorizes a surcharge on Bonneville customers whose jurisdictions fail to implement conservation measures that achieve savings of electricity comparable to those saved by the model conservation standards. The Council has drafted a methodology for calculating this surcharge.

Volume II

Chapter 1: Introduction

Chapter 2: Economic, Demographic and Fuel Price Assumptions

Economic and demographic assumptions are the dominant factors affecting the forecasts of the demand for electricity. Demand generally parallels economic growth, but is influenced by shifts in the relative price of electricity and other fuels, by changes in the composition of economic activity, and by the gradual replacement of inefficient buildings, factories and machines with more efficient ones.

These influences are extremely important and, at the same time, highly uncertain. The range of future electricity demands included in the Plan is designed to reflect the extent of this underlying uncertainty.

Chapter 3: Forecast of Demand for Electricity

This chapter describes in more detail the demand forecasts presented in Chapter 4, Volume I.

Chapter 4: Financial Assumptions and Cost Effectiveness of Conservation

Financial variables are used in estimating the quantities and costs of resources, projecting future demand for electricity, and simulating the operation of the power system with alternative sets of resources. In all of these analyses, the values for variables such as escalation rates, cost of capital, and discount rates are important because they directly influence the outcome of the analysis. These values must be consistent through all of the analysis.

Chapter 5: Conservation Resources

This chapter contains detailed descriptions of the calculations used to assess the amount and cost of achievable conservation available to the Northwest.

Chapter 6: Generating Resources

This chapter details existing resources and the basis for selecting new generating resources. It also provides the distribution of existing resources between public and investor-owned utilities.

Chapter 7: Better Use of the Hydropower System

The hydropower system uses the worst case scenario of low water conditions on record for planning purposes. In most years, large amounts of hydropower are available in excess of this critical period amount. The Council's studies assessed various strategies for improving the use of this electricity and concluded that such improvements have the potential of saving the Northwest about $1.2 billion by reducing the need to build new thermal plants.

Chapter 8: Resource Portfolio

This chapter describes in detail the Council's resource portfolio and the analytical methods and computer models used to develop it.

Chapter 9: Consideration of Environmental Quality and Fish and Wildlife

The Act requires the Council to give due consideration to environmental quality and fish and wildlife protection in its Plan.

Environmental quality and fish and wildlife concerns were analyzed for various resources. The costs for pollution abatement equipment and fish and wildlife mitigation required under state and federal regulations were included in the estimates of generic resource costs. This information was used in selecting the individual components of the resource portfolio. This chapter describes the process the Council used in considering environmental quality and fish and wildlife in its preliminary selection of resources.

Chapter 10: Public Involvement

An extensive public involvement program is being conducted to ensure widespread participation in the development of the revised Plan. The distribution of this draft for public comment is part of that effort. None of the determinations contained in it are final. They are all open to change based on the comments the Council receives.

Appendix II–A: Method for Determining Environmental Costs and Benefits

The Council has developed a method for the Bonneville Power Administration to use in assessing the environmental costs and benefits of specific resource acquisition decisions.

Appendix II–B: Conditions for Bonneville Financial Assistance to Hydropower Development in the Region

In order to protect the Northwest's fish and wildlife when hydropower projects are developed, various conditions must be met if the Bonneville Power Administration finances or assists with the development of these projects.

Overview of the Plan as a Whole

An underlying theme throughout the draft Plan is a call for regional cooperation. The Council's draft Plan calls for a series of specific cooperative actions that could save the Pacific Northwest $3.8 billion in the next 20 years. The Council strongly believes regional cooperation is the best strategy for realizing a low-cost electrical energy future.

One of the keys to this cooperation will be the role assumed by the Bonneville Power Administration, the region's federal power marketing agency. Currently, Bonneville serves about half the region's electric power needs—100 of the 115 public utilities and a small portion of one investor-owned utility's needs. The other half of the regional electricity load is served by investor-owned utilities and public utilities with their own generation.

This situation could change in the near future because of disparities in how the current surplus is distributed.

The public utilities, with their access to the federal base system (principally power from the federal dams) appear to have a much larger share of the surplus. But the investor-owned utilities could need new resources within the decade if economic growth is rapid. The investor-owned utilities could turn to Bonneville when they have exhausted their own cost-effective resources.

If the investor-owned utilities do turn to Bonneville, the agency's obligations to supply power could double in the next 20 years. Even with this doubled load, it would be cheaper to the region as a whole for Bonneville to supply power to them than for the investor-owned utilities to develop their own generating resources. The utilities are deterred from turning to Bonneville by the fact that there is currently no policy for a competitively-priced, predictable rate for power from new resources. Since one of the greatest uncertainties before the region today is what demands, if any, will be placed on Bonneville in the next 20 years, such a policy could significantly reduce uncertainty.

Cooperation among power institutions is essential to keep future electrical power costs down. This cooperation is particularly important in three areas.

First, the need to develop regionally cost-effective conservation before turning to more expensive resources. The resource disparity among utilities could result in a situation in which conservation would go undeveloped in the service areas of utilities with a surplus, while other utilities turned to higher cost or higher risk resources. That could cost the region as a whole $1.4 billion more for electricity than if all cost-effective conservation were developed first.[1] The draft Plan calls for mechanisms to transfer conservation among utilities.

Second, cooperation is key to allocating the cost of acquiring and holding potential resource options that provide flexibility for the regional power system. The cost of preserving the two partially completed Washington Public Power Supply System nuclear plants (WNP–1 and 3) may range between $24 million and $72 million a year. Currently, Bonneville pays the bulk of this cost. Bonneville does not appear to need the output of these plants unless the investor-owned utilities place substantial demands on the agency. The uncertainty of these demands has led to dissatisfaction about who pays for the presevation costs. A system to allocate costs equitably could enhance preservation of the two plants, which have a value of $1.2 billion to the region.

Third, the need to make better use of the hydropower system also requires cooperation. Specifically, the draft Plan addresses better ways to use the hydropower that is available in all but the driest years. Because hydropower depends on the weather—rainfall and snowpack—the amount of power available varies both from year to year and within each given year. Planning for the system is based on critical water, the lowest water available in very 100 years. However, the average annual difference between critical water and average water produces enough electricity to serve four cities the size of Seattle. This additional power is called nonfirm because it is not always available. Strategies to "firm-up" this power so that it could serve firm loads could save the region $1.2 billion. Bonneville needs to develop a policy for allocating nonfirm energy to serve customers whose loads are growing.

The draft Plan also addresses other uncertainties facing the region:

The volatility of the direct service industries represents a major uncertainty for the region. These industries, primarily aliminum plants, use 15 percent of the regional load, which they buy directly from Bonneville. Because of economic factors, the Northwest aluminum companies tend to operate "swing" plants, operating when aluminum prices are high and shutting down when they are not. In the last five years, the power use by these plants has fluctuated by as much as 1,000 megawatts per year. The long-term future of these plants in the region is uncertain.

Incomplete date on consevation programs creates another uncertainty. While considerable progress has been made—principally through the adoption of the model conservation standards in six Washington areas and other code and building practice improvements spurred by the standards—much remains to be done. The Council's first Plan called for Bonneville to develop and test programs to build capability for conservation across all sectors—residential, agricultural, commercial, industrial and governmental. Building capability means developing and testing programs so that they are ready to use if the region needs them. With the exception of the residential sector, the region still has little conservation experience. Bonneville needs to develop such programs across all sectors.

The futue of WNP–1 and WNP–3—plants which could provide 1,600 megawatts—is also a question mark. While the Council has found the plants cost effective, it has also identified a number of legal and financial barriers to their completion. The region cannot rely on future power from these plants until these barriers are overcome.

The potential for future out-of-region sales and purchases is largely unknown. The Council will conduct a West Coast energy study to gain information on import and export opportunities.

Edward Sheets,

Executive Director.

[FR Doc. 85–21683 Filed 9–10–85; 8:45 am]

BILLING CODE 0000–00–M

[1] This cost and those that follow are determined by what the region would have to pay if it needed new power and had to turn to more expensive resources to supply it.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–14707 (Filed No. 812–6158)]

Freedom Investment Trust; Application

September 5, 1985.

Notice is hereby given that Freedom Investment Trust ("Applicant"), Three Center Plaza, Boston, Massachusetts 02108, filed an application on July 22, 1985, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant, including its two series of shares and future series, from the provisions of sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the assesment of a contingent deferred sales charge upon certain redemptions of its shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rule thereunder for the text of the applicable provisions.

Applicant is an open-end diversified management investment company organized as a Massachusetts business trust. Applicant states that it is a series company which currently has two series: the Freedom Gold & Government Trust Series and the Freedom Regional Bank Fund Series ("Funds"). Applicant currently assesses sales charges of up to 5% and 6% of the public offering price, respectively, on purchases of shares of each Fund, except that the initial sales charge on shares of the Funds purchased in volumes of $1,000,000 or more has been eliminated.

Applicant intends to impose a contingent deferred sales charge on certain redemptions of shares having an

initial purchase price of $1,000,000 or more. Applicant states that the contingent deferred sales charge would only be imposed on redemptions occurring within one year of a purchase and will never exceed ¾ of 1% of the lesser of (1) the net asset value of the shares redeemed, or (2) the total cost of such shares. No contingent deferred sales charge will be imposed when the investor redeems (1) amounts derived from increases in the value of his account above the total cost of shares being redeemed due to increases in the net asset value per share of a Fund, (2) shares acquired through reinvestment of dividend income and capital gains distributions, or (3) shares held for at least one year.

In determining whether a contingent deferred sales charge is paybable, Applicant states that shares held the longest will be redeemed first. Furtherore, shares held prior to the imposition of the contingent deferred sales charge may be redeemed without imposition of such charge. Thre is also to be a contingent deferred sales charge on exchanges of shares between the Funds of the Applicant and other investment companies that have the same adviser as the Applicant.

Applicant submits that the proposal to eliminate the front-end charge and to impose a contingent deferred sales charge under these conditions is consistent with all provisions of the Act. Applicant further submits the such an exemption is clearly in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 27, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21738 Filed 9-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22385; File No. SR-MSE-85-10]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to its Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1985 the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as describe in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated hereby amends its fee schedule as follows:

Additions italicized—[Deletions Bracketed]

[Agency] Transaction Fee Schedule

ITEM CHARGE

Round lot trades/month	Rate (per trade)
0 to 500	10.0
501 to 1000	0.0
1001 and over	−10.0
Odd Lot Item Fee	0.0

VALUE CHARGE

Total gross dollar value/month in millions	Rate (per $1,000)
0.0 to 10.0	16.0
10.1 to 25.0	12.0
25 1 to 125.0	8.5
125.1 to 250.0	8.0
250.1 to 350.0	7.5
350.1 to 450.0	6.5
450.1 to 550.0	4.5
550.1 and over	3.0

In calculating this amount, each cross order will be valued up to the first 50,000 shares only.

Adjustments are made for: Principal specialist and market maker trades, floor brokerage and specialist give-ups.

For round lot orders entered through the MAX System, the order entering firm will receive a credit of 15.0¢ per trade. Such credit shall be calculated monthly and will be applied against the firm's total monthly bill.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Ruke Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The tex. of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Midwest Stock Exchange, Incorporated is initiating a 15¢ per trade credit to order entering firms for all round lot trades entered through the MSE Automatic Execution System (MAX). MSE's total costs for the development and use of the MAX system is fixed. Therefore, as the number of trades entered through the MAX system increases, the more cost efficient the system becomes. In addition because trades are automatically executed through MAX, there is no labor intensive activity involved in executing and reporting trades. The proposed credit will pass on these efficiencies to the user firms. The proposed credit will become effective on October 1, 1985.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed fee schedule will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of

the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 2, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21739 Filed 9–10–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/886]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 3, 1985 from 10:00 a.m. until 1:00 p.m. in the East Auditorium, Room 2925, Department of State, 2201 C Street, NW., Washington, D.C.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting on October 3 is to:

1. Introduce the Committee's new Charter;
2. Review the results of the Ad Hoc Group for Special S;
3. Discuss the level of documents and document flow;
4. Assess delegation and non-delegation discipline;
5. Review participation by foreign entities in Committee meetings;
6. If necessary, prepare U.S. contributions for international meeting of the CCITT dealing with such matters.

Members of the general public may attend the meeting and join in the dicussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise Mr. Earl Barbely, Department of State; telephone (202) 632–5832. All attendees must use the 21st Street entrance to the building.

September 3, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85–21722 Filed 9–10–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/885]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A (International CCITT Study Groups I, III, and VIII) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 3, 1985 at 2:00 p.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, D.C.

Study Group A deals with U.S. Government aspects of international telegram and telephone operations and tariffs. The Study Group will discuss international telecommunications questions relating to telephone, telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international meeting of several CCITT Study Group I and III Working Parties and to develop delegations for such meetings.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to seating available. In the regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C., telephone (202) 632–5832. All attendees must use the C Street entrance to the building.

Dated: September 4, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85–21723 Filed 9–10–85; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Informal Airpace Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Informal Airspace Meeting.

SUMMARY: This notice announces an informal airspace meeting to discuss the proposed establishment of special air traffic rules and communication requirements at the Willow Grove, Pennsylvania, Naval Air Station Airport.

DATE: October 7, 1985, 7:00 P.M. to 10:00 P.M. Eastern daylight time.

ADDRESS: The Hatboro-Horsham Senior High School, 227 Meetinghouse Road, Horsham, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Acting Manager, Airspace and Procedures Branch, AEA–530, Air Traffice Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica New York 11430; Telephone: (718) 917–1228 .

Dated: September 3, 1985.

Joseph Kelley,

Acting Manager, Airspace and Procedures Branch, AEA-530.

[FR Doc. 85-21612 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 85-24]

Study of Highway User Fee Liability for Heavy Trucks; Opening of Docket

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for comments.

SUMMARY: Section 931 of the Deficit Reduction Act of 1984 directs the Department of Transportation (DOT) to conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system. The purpose of this notice is to describe the scope of the study and to establish a public docket for receipt of information and comments related to areas under investigation.

DATE: Comments must be received on or before December 31, 1986.

ADDRESS: Submit written comments preferably in triplicate, to FHWA Docket Number 85-24, FHWA, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. Any comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Mingo, Chief, Systems Analysis Branch, (202) 426-0570; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Study Mandate

Section 931 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 494) requires the Secretary of Transportation to "conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the cost of the highway system." The final report must be submitted to Congress by October 1, 1987.

Background

In 1982, a report on the allocation of Federal highway program costs was completed and forwarded to Congress as required by the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689). This concluded a comprehensive study of costs occasioned by different vehicle classes and development of a methodology to assign costs to vehicle groups. Two premises underlying the study were that the level of user fee contributions should equal the level of the highway program to be financed and that equity-based methods would be employed in the assignment of costs. Costs were limited those at the Federal level and were defined as Trust Fund obligations.

Unlike prior studies, the major focus was on rehabilitation. The incremental method of the prior cost allocation studies was, therefore, only employed for certain new construction costs and an alternative approach was employed for rehabilitation. For pavement rehabilitation, resurfacing, reconstruction, and restoration (4R), a consumption (or damage) approach was developed. Poor pavement condition was considered a result of a combination of factors, some load induced, some environmental. Distresses, weighted by their importance in the decision to rehabilitate, were attributed to axles and then to vehicle classes in proportion to their distribution of axle loads. Costs of pavement distresses that were unrelated traffic were assigned to all vehicle classes.

A last category of costs included those unrelated to vehicle dimension, such as safety enforcement and highway administration. These costs were considered residual and allocated to all vehicle classes. Costs were combined and used to assign responsibility, which was then compared with each class' user fee payments.

Among the more significant findings of the study was the sharply increasing cost associated with increases in axle loads. Pavement deteriorates more rapidly under heavier axle load conditions and the study effectively illustrated the greater responsibility of the heavier weights. This finding becomes all the more important in the context of a future highway program where the majority of the costs will be associated with rehabilitation and where truck operating weights will be higher than at present.

While the study identified a cross-subsidy of higher weight vehicles by lighter ones, the vehicles at the upper end of the weight spectrum were not analyzed in detail. A follow-up study, "Alternatives to the Heavy Vehicle Use Tax" focused on heavy trucks and distinguished among high-annual-mileage and low-annual-mileage vehicles in order to explore non-lump-sum highway user fees that would track better with individual vehicle cost responsibilities. The latter study used the data and methodology of the 1982 highway cost allocation study, but slightly modified their application. This study will begin where the other studies terminated and will explore the detailed characteristics and cost responsibilities of the heaviest trucks currently using our highways.

Scope

The objective of the study is to determine the cost responsibility of trucks weighing over 80,000 pounds, gross vehicle weight (GVW). In order to determine responsibility of such vehicles, a comprehensive analysis of costs and division of responsibilities is required. The focus will be, however, on those vehicles which for any reason operate over 80,000 pounds GVW. Axle loadings will be the major basis of the damage functions. Highway costs will be estimated and allocated in a manner similar to the 1982 Highway Cost Allocation Study (HCAS). Data bases will be updated and revisions made in the forecasting models to reflect changed economic circumstances. Recent developments in cost allocation procedures and damage equations will be incorporated.

Methods

It is anticipated that the general approach developed for the 1982 HCAS will be applied in this analysis. We propose to include in the costs to be allocated Federal, State, and local investment requirements, updated to a forecast year of 1990. The general categories of costs include: new pavement and bridge construction and major widening of existing facilities; pavement reconstruction, resurfacing, minor widening, restoration, and rehabilitation; bridge replacement costs, due to structural inadequacy of functional obsolescence; and repaired bridge costs. Right-of-way and grading costs as well as administration and planning costs will also be included.

New facility costs will likely be allocated using an updated version of the incremental method. Pavement costs will be assigned based on current design standards for thickness, width, etc., that are required to carry the estimated traffic loadings. Vehicles will be

changed in proportion to the thickness and width requirements that they impose. To estimate this, vehicles will be hypothetically removed from traffic until further removal would not reduce the payment thickness requirement. This threshold represents the minimum feasible thickness and will be treated as a residual cost.

In contrast, pavement 4R costs will likely be distributed through the consumption or damage approach. Damage will be defined as pavement distresses weighted by their importance in the decision to rehabilitate the road. Models based on pavement performance theory and actual section performance will be employed to relate damage and traffic loadings. Repair and reconstruction costs will then be assigned to each vehicle based on its contribution to the wearing of pavements.

The residual cost category, that is those costs not attributable to vehicle weight or size requirements, will be charged to all highway users. These costs, such as minimum pavement thickness and width, program administration, planning, and safety expenditures, will be allocated based on some measure of highway use.

Since the 1982 study, new information on vehicles and vehicle travel has become available; this information as well as refinements to the damage equations and deterioration models will be incorporated in the analyses. Recommendations by the National Motor Carrier Advisory Committee (NMCAC) have also been adopted. The pavement cost responsibility will focus on axleweight equity rather than GVW equity and vehicle classifications will incorporate axleweight, spacings, and groupings. State and local taxes will be considered in the user-fee payment categories. In addition, the NMCAC, and the industry through this Notice, are asked to provide assistance in obtaining representative data on heavier vehicles; we are also soliciting information on vehicle life and on fuel and tire use.

Task Outline

In order to conduct the study, the following broad categories of tasks will be performed.

Task 1 Review Theories of Cost Allocation

The first task is to review economic and political theories of cost allocation and user fee philosophies. Alternative approaches, including application of marginal cost pricing will be considered.

Task 2 Update Truck Fleet Information

The 1982 Truck Inventory and Use Survey from the Bureau of the Census and more recent truck weight data will be incorporated into the data base. Supplemental information on heavy trucks and their axle configurations will be obtained and included in the truck fleet files. Vehicle classification will be modified to focus on axle loads. All data will be projected to 1990.

Task 3 Update Highway Cost Forecasts

Costs for highways, at the Federal, state, and local level, will be obtained and projected to the 1990 analysis year.

Task 4 Revise and Apply Cost Allocation Procedures

A. Improve Pavement Models

Current pavement distress models are based on empirical data and mechanistic response models. Additional pavement sections from the pavement long term monitoring project will be employed if possible to update the distress models and the relationship of traffic to failure. Alternative procedures for weighting the distresses will be evaluated and the distress models will be refined.

B. Improve Bridge Cost Allocation Procedures by Incorporating Fatigue Considerations

A major shortcoming of the 1982 HCAS was that vehicles exceeding the design moment of a bridge were assessed no more than those at the threshold. Clearly, application of increasing stress beyond the design moment shortens bridge life and can ultimately result in failure. This relationship of the moment produced by any vehicle to bridge life can be represented as fatigue life. The definition of fatigue for varying bridge types, an estimate of the loss of bridge life as a function of overstress cycles, and cost as a product of vehicle moment production will be incorporated into the bridge cost allocation.

Task 5 Revise the Revenue Forecasting Model

Detailed information on State user fees and fees associated with special permits will be incorporated. Costs associated with heavy truck fuel and tire consumption as well as other cost factors that might vary with vehicle weight will be obtained and included in the model.

Task 6 Report Results

Comparison will be made between cost responsibilities and user fee payments for a selected set of example vehicles. These vehicles will be carefully chosen to illustrate the ranges of overpayments or underpayments by the entire population of vehicles as well as by those in most widespread use.

Information Request

Those wishing to comment on any aspect of the study or provide information on heavy vehicle operation, axleweight and groupings, or fuel and tire use are requested to send such comments or information to the docket established by this Notice.

Issued on August 30, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-21709 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-22-M

Maritime Adminstration

[Docket No. S-777]

Application to Amend Contract MA/MSB-417 To Provide Service From Guam to Thailand and to Southeast and South Asia, American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL), by letter application of August 23, 1985, has requested amendment of its subsidized service description as set forth in Appendix A of APL's Operating-Differential Subsidy Agreement, Contract MA/MSB-417, so as to permit carryings of cargo in U.S. foreign commerce from Guam to Thailand and from Guam to extension area ports on Trade Routes 17 and 28, Southeast and South Asia, Persian Gulf-Red Sea.

APL currently serves Guam biweekly by means of a subsidized U.S.-flag feeder vessel relaying cargoes to an from APL line haul vessels operating in transpacific trade. APL's current Guam authority includes up to a 26 Guam calls annually, and includes service in U.S. foreign commerce Guam and the Philippines and to Guam from foreign ports served under APL's subsidy contract.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington D.C. 20590. Comments must be received no later than 5:00 P.M on September 26, 1985

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: September 6, 1985.

Georgia P. Stamas,

Secretary

[FR Doc. 85-21630 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP85-7; Notice 2]

Volvo White Truck Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Volvo White Truck Corporation of Greensboro, North Carolina, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101 Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 30, 1985, and an opportunity afforded for comment (50 FR 18344).

Paragraph S5.2.1 of Federal Motor Vehicle Safety Standard No. 101, in conjunction with Table I, requires that the windshield defroster and the fan be labelled with the appropriate identifying symbols; words are optional. Volvo White produced up to 2,789 heavy duty trucks which used the optional identifying words for the defroster and the fan instead of the required symbols. The trucks involved are the Volvo F7, F10 and N12 series.

Volvo White claimed that the drivers of such heavy duty trucks are professionals and would be unlikely to be unfamiliar with the operation of the controls, as an "average" driver might be when using a rented or borrowed passenger car. Volvo White also stated that the Table I words were mandatory prior to the 1980 amendment to the standard. In addition, Volvo White is unaware of any complaints, accidents, or potential accidents relating to this noncomliance. Volvo White believed that the owners and operators of the vehicles would find the noncompliance to be inconsequential and would view any recall as a nuisance.

No comments were received on the petition.

The agency has decided to grant the petition by Volvo White. The trucks concerned are in the two highest weight categories, Class 7 and Class 8, with gross vehicle weight ratings of 26,000 pounds and higher. Vehicles of this size and type are not likely to be driven by those who are unfailiar with the controls; these vehicles are operated by professional drivers, as Volvo White argued. The wording used by Volvo White does comply with requirements formerly in effect. Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 21643 Filed 9-10-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Delegation of Authority; District Directors, et al.

[Delegation Order No. 213]

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The purpose of this delegation order is to delineate the authority to issue Formal Document Requests as described in Section 982 of the Tax Equity and Fiscal Responsibility Act of 1982.

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Ring, OP:EX:N:I, 111 Constitution Avenue NW., Room 2515, Washington, DC 20224.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1978.

Arsenio Martinez,

Acting Director, Office of National and International Programs.

[Order No. 213]

EFFECTIVE DATE: September 4, 1985.

Authority to Issue Formal Document Requests

The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1 and section 982 of the Internal Revenue Code to issue Formal Document Requests and to perform the other functions related thereto are delegated to all District Directors, Service Center Directors, and the following officers and employees:

(1) *District Examination:* Chiefs of Division; Chiefs of Examination Section; Chiefs of Examination Branches; Case Managers; Group Managers; Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(2) *District Employee Plans and Exempt Organization:* Chief of Division; Branch Chief; Chief, Technical/Review Staff; Group Managers; Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(3) *District Collection Activity:* Chiefs and Assistant Chiefs of Divisions; Chiefs of Field Branches; Chiefs, Automated Collection Branch; Chiefs, Special Procedures Staffs; Chiefs, Technical and Office Compliance Branches and Groups; Chiefs, Collection Section; Chiefs, Collection and Taxpayer Service Section; Group Managers; Revenue Officers; Revenue Representatives; and Office Collection Representatives.

(4) *District Criminal Investigation:* Chief and Assistant Chief of Division; Chiefs of Branches; Group Managers; and Special Agents.

(5) *Inspection:* Assistant Commissioner; Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors, Internal Auditors and Internal Security Inspectors; Investigators (Internal Security); and Internal Security Assistants.

(6) *Service Center:* Chief, Compliance Division; Chief, Examination Branch; Chief, Collection Branch; Chief, Criminal Investigation Branch; Revenue Agents; Tax Auditors; Tax Examiners in the correspondence examination function; and Special Agents.

(7) *Foreign Operations District:* Director, Assistant Director; Chief of Divisions and Branches; Special Agents; Case Managers; Group Managers; Internal Revenue Agents; Attorneys Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

The authority delegated herein may not be redelegated.

To the extent that the authority previously executed consistent with this Order may require ratification, it is hereby approved and ratified.

Dated: July 5, 1985.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85-21706 Filed 9-10-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 176
Wednesday, September 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Deposit Insurance Corporation	1, 2
Federal Home Loan Bank Board	3
Federal Reserve System	4
National Science Foundation	5
Securities and Exchange Commission	6
Department of Education	7

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 16, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Evansville Morris Plan Co., Inc., an operating noninsured industrial bank located at 222 Main Street, Evansville, Indiana.

Thrift, Incorporated, an operating noninsured industrial bank located at 4601 Lincoln Avenue, Evansville, Indiana.

Fidelity Investment, Inc., an operating noninsured industrial bank located at 714 North Michigan Street, South Bend, Indiana.

Application for consent to relocate the main office:

First Mutual Savings Bank, Bellevue, Washington, for consent to relocate its main office from 10430 N.E. 6th Street to 400—108th Avenue, NE., within Bellevue, Washington.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report June 30, 1985.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21767 Filed 9-9-85; 11:09 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 16, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Bank of the Federated States of Micronesia, a proposed new bank to be located at 100 Main Street, Kosrae, Federated States of Micronesia.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21768 Filed 9-9-85; 11:09 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50.

DATE PUBLISHED: Monday, September 9, 1985, Page No. 36705.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the

agenda for the Open Meeting: Appraised Equity Capital.

John F. Ghizzoni,

Assistant Secretary.

No. 22, September 9, 1985.

[FR Doc. 85-21766 Filed 9-9-85; 11:09 am]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 16, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21762 Filed 9-9-85; 10:38 am]

BILLING CODE 6210-01-M

5

NATIONAL SCIENCE FOUNDATION

AGENCY: National Science Board.

DATE AND TIME: September 20, 1985: 8:30-9:00 a.m.—Closed Session; 9:00-9:30 a.m.—Open Session.

PLACE: National Science Foundation, Washington, D.C.

STATUS: Part of this meeting will be closed to the public. Part of the meeting will be open to the public.

MATTERS TO BE CONSIDERED SEPTEMBER 20:

Closed Session (8:30-9:00 a.m.)

1. Minutes—August 1985 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (9:00-9:30 a.m.)

4. Grants, Contracts, and Programs
5. Minutes—August 1985 Meeting
6. Chairman's Report
7. Director's Report
8. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 85-21846 Filed 9-9-85; 3:23 pm]

BILLING CODE 7555-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 16, 1985.

A closed meeting will be held on Tuesday, September 17, 1985, at 2:30 p.m. An open meeting will be held on Thursday, September 19, 1985, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 17, 1985, at 2:30 p.m., will be:

Formal order of investigation.

Institution of administrative proceeding of an enforcement nature.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, September 19, 1985, at 10:00 a.m., will be:

1. Consideration of proposals by five options exchanges and the NASD that would establish uniform, premium-based, customer margin requirements for short options positions. For further information, please contact Eneida Rosa at (202) 272-2381 or Sharon Lawson at (202) 272-3116.
2. Consideration of whether or under what conditions to allow exchanges to participate in the integrated market making pilot discussed in Securities Exchange Act Release No. 22026 (May 8, 1985). For further information, please contact Sharon Lawson at (202) 272-2825.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

John Wheeler,

Secretary.

September 6, 1985.

[FR Doc. 85-21820 Filed 9-9-85; 1:53 pm]

BILLING CODE 8010-01-M

7

DEPARTMENT OF EDUCATION

National Council on Educational Research; Full Council Meeting

Correction

FR Doc. 85-21370 was published in the Notices section of the **Federal Register** on page 36650 in the issue of Monday, September 9, 1985. It should have appeared in the Sunshine Act Meetings section of the Issue.

BILLING CODE 1505-02-M

federal register

Wednesday
September 11, 1985

Part II

Department of Commerce

International Trade Administration

15 CFR Parts 376, 379, and 399

Revisions to the Commodity Control List Based on COCOM Review; Final Rule

15 CFR Parts 379 and 399

Revisions to the Commodity Control List Based on COCOM Review; Electronics and Precision Instruments; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376, 379 and 399

[Docket No. 50840-5040]

Revisions to the Commodity Control List Based on COCOM Review

AGENCY: Office of Export Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises several List entries in the categories of Metal-Working Machinery; Chemical and Petroleum Equipment; Electrical and Power Generating Equipment; General Industrial Equipment; Transportation Equipment; Metals, Minerals, and their Manufactures; and Chemicals, Metalloids, Petroleum Products and Related Materials.

These revisions resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability from abroad of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

This rule also makes changes to the Export Administration Regulations in order to conform their provisions with new export control policy. A section is added to the Regulations on numerical control units, numerically controlled machine tools, dimensional inspection machines and specifically designed software.

EFFECTIVE DATE: This rule is effective September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Assistance Division, Office of Export Administration, Telephone (202) 377-3856.

For questions of a technical nature regarding metal-working machinery, chemical and petroleum equipment, general industrial equipment, and transportation equipment, call Bruce Webb, Capital Goods and Production Materials Division, Office of Export Administration, telephone (202) 377-3806. For questions on chemicals and materials, call Jo-Anne Jackson, Capital Goods and Production Materials Division, telephone (202) 377-0896. For questions on equipment for the manufacture or testing of electronic components and materials (1355A), call Randy Williams, Scientific and Electronic Equipment Division, telephone (202) 377-3109.

SUPPLEMENTARY INFORMATION:

Equipment controlled for export by the Department of Commerce that is affected by the latest COCOM agreement includes the following:

Spin-forming and flow-forming machines specially designed or adapted for use with numerical or computer controls;

Specially designed equipment, tooling and fixtures for the manufacture or measuring of gas turbine blades or vanes;

Specially designed or modified equipment, tools, dies, molds and fixtures for the manufacture or inspection of aircraft airframe structures or aircraft fasteners;

Specially designed or modified equipment, tools, dies, molds, fixtures and gauges for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines;

Equipment for the production of liquid fluorine;

Vacuum pump systems;

Electric vacuum furnaces;

Electrochemical, semiconductor and radioactive devices for the direct conversion of chemical, solar, or nuclear energy to electrical energy;

Certain electric arc devices for generating a flow of lonized gas in which the arc column is constricted;

Metal rolling mills;

Isostatic presses;

Equipment for the manufacture or testing of electronic components and materials;

Test facilities and equipment for the design and development of aircraft or gas turbine aero-engines;

Machine-tools for generating optical quality surfaces;

"Robots", "robot" controllers and "robot" end-effectors;

Marine gas turbine engines;

Aircraft and helicopters;

Compasses, gyroscopes (gyros), accelerometers and inertial equipment;

Magnetic metals; and

Cobalt-, nickel-, and titanium-based alloys.

Changes to the export licensing requirements for items on the Commodity Control List include:

(1) Revision of the validated license requirements for export of certain spin-forming and flow-forming machines that are specially designed or adapted for use with numerical or computer controls (ECCN 1075A);

(2) The lifting of validated license controls over certain blade and/or vane belt grinding machines, edges radiusing machines, and aerofoil milling and/or grinding machines (ECCN 1080A);

(3) The revision of the validated license requirements for export of certain equipment, tools, dies, molds and fixtures for the manufacture or inspection of aircraft, airframe structures or aircraft fasteners (ECCN 1081A);

(4) The revision of the validated license controls on numerical control units, numerically controlled machine, tools, and dimensional inspection machines (ECCN 1091A);

(5) Lifting of validated license controls on certain equipment for production of liquid hydrogen (ECCN 1110A);

(6) Revison of the license controls on exports of certain equipment for the manufacture or testing of electronic components and materials (ECCN 1355A);

(7) New validated license controls on specially designed tooling and fixtures for the manufacture of fiber-optic connectors and couplers (a new ECCN 1359A) and on machinery and equipment for the manufacture of hydrofoil vessel and surface-effect vehicle structures and components (a new ECCN 1364A);

(8) New validated license requirements for "robots", "robot" controllers and "robot" end-effectors (a new ECCN 1391A);

(9) Revision of the validated license requirements on exports of certain surface-effect vehicles and water screw propellers (ECCN 1416A); and

(10) Lifting of validated license controls on some larger aircraft engines and related components and expansion of controls to include small engines and some helicopter power transfer system components (ECCN 1460A).

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 25, 1985, may be exported under the general license provisions up to and including October 9, 1985. Any such items not actually exported before midnight October 9, 1985 require a validated export license.

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves foreign and military affairs functions of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Applications for validated export licenses and reexport requests required by this rule will be made on Form ITA–622P and on Form ITA–699P. (The collections of this information have been approved by the Office of Management and Budget under control numbers 0625–0001 and 0625–0009.) OMB approval of reporting requirements under § 376.11 is pending. Comments may be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, ATTN: Desk Officer for International Trade Administration, Department of Commerce.

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns foreign and military affairs functions of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Therefore, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in CFR Parts 376, 379, and 399

Exports, science and technology.

Accordingly, Parts 376, 379 and 399 of the Export Administration Regulations are amended as follows:

PART 376—[AMENDED]

1. The authority citation for 15 CFR Part 376 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Part 376 is amended by revising § 376.11 to read as follows:

§ 376.11 Numerical control units, Numerically controlled machine tools, Dimensional inspection machines, Direct numerical control systems, Specially designed assemblies, and Specially designed software.

This section set forth special provisions relating to the licensing for export or reexport of numerical control units, numerically controlled machine tools, dimensional inspection machines, and specially designed software for such commodities to destinations in Country Groups Q, W, or Y or the People's Republic of China.

(a) *Numerical control units.* Include the following information with the validated license application (Form ITA–622P) and reexport request (Form ITA–699P):

(1) Make and model number of the control unit;

(2) Description of the manner in which the computer is embedded in, incorporated in, or associated with the CNC unit. Specify the make and the model of the computer (For a clarification of terms, refer to the technical notes in ECCN 1091A or Advisory Note 16 of ECCN 1585A of the Commodity Control List—Supp. No. 1 to § 399.1);

(3) Number of axes the control unit is capable of simultaneously controlling in a coordinated contouring mode, and type of interpolation (linear, circular, and other);

(4) Minimum programmable increment;

(5) Number and type of parallel data communication interfaces;

(6) Number and type of serial data communication interfaces;

(7) The internal word size in number of bits, including parity bit;

(8) A description and an itemized list of all machine control features that will be supplied with the control unit;

(9) A description and an itemized list of all software/firmware to be supplied with the control unit, including software/firmware for any programmable control unit or device to be supplied with the control unit;

(10) A description and an itemized list of all documentation for the software/firmware above.

(b) Numerically controlled machine tools and dimensional inspection machines. Include the following information with the validated license application (Form ITA–622P) or reexport request (Form ITA–699P):

(1) Name and model number of machine tool or dimensional inspection machines;

(2) Type of equipment, e.g., horizontal boring machine, machining center, dimensional inspection machine, turning center, etc.;

(3) Description of the linear and rotary axes capable of being simultaneously controlled in a coordinated contouring mode, regardless of the fact that the coordinated movement of the machine axis may be limited by the numerical control unit supplied with the machine tool;

(4) Maximum slide travel in each axis;

(5) Power of spindle drive motor;

(6) Number of working spindles;

(7) Spindle diameter (inside bearing diameter);

(8) Motion of the spindle axis measured in the axial direction in one revolution of the spindle, and a description of the method of measurement;

(9) Motion of the spindle axis measured in the radial direction in one revolution of the spindle, and a description of the method of measurement;

(10) Incremental positioning accuracy in any 200 mm of travel, and a description of the method for measurement;

(11) Overall positioning accuracy, and a description of the method for measurement.

PART 379—[AMENDED]

3. The authority citation for 15 CFR Part 379 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 379.1 [Amended]

4. Paragraph (a) of § 379.1 is amended by revising the second sentence to read: "The data may take a tangible form, such as a model,[3] prototype,[3] blueprint, or an operating manual (the tangible form may be stored on recording media); or they may take an intangible form such as technical service."

5. Paragraph (b) of § 379.4 is revised to read as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(b) *Restrictions applicable to Country Groups Q, W, Y, T and V, Afghanistan and the People's Republic of China.*

(1) The following are definitions of terms used to describe certain types of technical data restricted for export to Country Groups Q, W, Y, T and V, Afghanistan and the People's Republic of China;

(i) "Operation technical data" is defined as explicit data in such forms as manuals, instruction sheets, blueprints or software, provided they are:

(*a*) Sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or specifically authorized for reexport, to the same consignee and destination to which the commodity was or will be exported under this license of authorization;

(*b*) A single shipment sent no later than one year following the shipment of the commodity to which the technical data are related;

(*c*) Of a type delivered with the commodity in accordance with established business practice;

(*d*) Necessary to the assembly, installation, maintenance, repair, or operation of the commodity [1]; and

(*e*) Not related to the production, manufacture, or construction of the commodity.

(ii) "Sales technical data" is defined as data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any commodity, plant or technical data, provided that:

(*a*) The commodity, plant or technical data are not (and are not related to) a commodity:

(*1*) Identified by the code letter "A" following the Export Control Commodity Number (ECCN) on the Commodity Control List (Supplement No. 1 to § 399.1), or

(*2*) Shown in Supplement Nos. 2 or 3 Part 370 (controlled by U.S. Department of State and Nuclear Regulatory Commission, respectively);

(*b*) The technical data are of a type customarily transmitted with a prospective or actual quotation, bid, or offer (in accordance with established business practice); and

(*c*) The export will not disclose the detailed design, production, or manufacture, or the means of reconstruction, of either the quoted item or its product. Similarly, a quotation, bid, or offer for technical data or services must not disclose the detailed technical process involved.

Note.—Neither this authorization nor its use means that the U.S. Government intends, or is committed, to approve an export license application for any commodity, plant or technical data that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that an export license (when required) is not approved by the Office of Export Administration.

(iii) For definitions relating to computer software, see Advisory Note 12 in Supplement No. 3 to Part 379.

(2) No technical data may be exported under this general license to Country Groups Q, W, or Y or to Afghanistan, except:

(i) Software that is not explicitly controlled in Supplement No. 3 to Part 379, or that is not related to any commodity controlled for national security or nuclear non-proliferation reasons on the Commodity Control List, or that is not related to any commodity/technical data listed in paragraphs (c) or (d) of this section.

(ii) "Operation technical data" defined in paragraph (b)(1)(i) of this section, including software in object code explicitly listed in Supp. No. 3 to part 379 and described on the license application for the commodity.

(iii) "Sales technical data" defined in paragraph (b)(1)(ii) of this section.

(3) The following technical data may be exported under this general license to Country Groups T and V, *except* to the People's Republic of China:

(i) "Sales technical data", as defined in paragraph (b)(1)(ii) of this section, but including "sales technical data" for a commodity identified by the code letter "A" following the Export Control Commodity Number (ECCN) on the Commodity Control List; and

(ii) "Operation technical data" as defined in paragraph (b)(1)(i) of this section, but including "operation technical data", for commodities listed in paragraphs (c) and (d) of this section.

(4) The following technical data may be exported under this general license to the People's Republic of China:

(i) "Operation technical data" as defined in paragraph (b)(1)(i) of this section;

(ii) "Sales technical data" as defined in paragraph (b)(1)(ii) of this section.

* * * * *

6. Section 379.4 is amended by removing the word "and" from the end of paragraph (d)(15); redesignating paragraph (d)(16) as (d)(19); and adding (d)(16), (17) and (18), reading as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(d) * * *

(16) Technical data for metal-working manufacturing processes and specially designed "software" therefor;

(i) The following are definitions of terms used in this paragraph (d)(16):

(A) "Hot die forging" is a deformation process where die temperatures are at the same nominal temperature as the workpiece and exceed 850 K (577 °C, 1,070 °F);

(B) "Superplastic forming" is a deformation process using heat for metals that are normally characterized by low values of elongation (less than 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values;

(C) "Diffusion bonding" is a solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material;

(D) "Metal powder compaction" is a process capable of yielding parts having a density of 98% or more of the theoretical maximum density;

(E) "Direct-acting hydraulic pressing" is a deformation process that uses a fluid-filled flexible bladder in direct contact with the workpiece;

(F) "Hot isostatic densification" is a process of pressurizing a casting at temperatures exceeding 375 K (102 °C, 215.6 °F) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting;

(G) "Vacuum hot pressing" is a process that uses a press with heated dies to consolidate metal powder under reduced atmospheric pressure into a part;

(H) "High pressure extrusion" is a process yielding a single-pass reduction ratio of 4 to 1 or greater in a cross sectional area of the resulting part;

(I) "Isostatic pressing" is a process that uses a pressurizing medium (gas, liquid, solid particles, etc.) in a closed cavity to create equal force in all directions upon a metal powder-filled container for consolidating the powder into a part.

(ii) Technical data covered by paragraph (d)(16) is as follows:

(A) Technical data for the design of tools, dies and fixtures specially designed for the following processes:

(*1*) "Hot die forging";

(*2*) "Superplastic forming";

(*3*) "Diffusion bonding";

[1] Section 376.10(a)(1)(vii) requires exporters of digital computer equipment to describe on their license application any software, including that shipped under General License GTDR, to be used with the equipment.

(*4*) "Metal powder compaction" using:
(*i*) "Vacuum hot pressing";
(*ii*) "High-pressure extrusion"; *or;*
(*iii*) "Isostatic pressing";
(*5*) "Direct-acting hydraulic pressing";
(B) Technical data consisting of process parameters as listed below used to control:
(*1*) "Hot die forging":
(*i*) Temperature;
(*ii*) Strain rate;
(*2*) "Superplastic forming" of aluminum alloys, titanium alloys and superalloys:
(*i*) Surface preparation;
(*ii*) Strain rate;
(*iii*) Temperature;
(*iv*) Pressure;
(*3*) "Diffusion bonding" of superalloys and titanium alloys:
(*i*) Surface preparation;
(*ii*) Temperature;
(*iii*) Pressure;
(*4*) "Metal powder compaction" using:
(*i*) "Vacuum hot pressing":
(*a*) Temperature;
(*b*) Pressure;
(*c*) Cycle time;
(*ii*) "High-pressure extrusion":
(*a*) Temperature;
(*b*) Pressure;
(*c*) Cycle time;
(*iii*) "Isostatic pressing":
(*a*) Temperature;
(*b*) Pressure;
(*c*) Cycle time;
(*5*) "Direct-acting hydraulic pressing" of aluminum alloys and titanium alloys:
(*i*) Pressure;
(*ii*) Cycle time;
(*6*) "Hot isostatic densification" of titanium alloys, aluminum alloys and superalloys:
(*i*) Temperature;
(*ii*) Pressure;
(*iii*) Cycle time;
(17) Technical data for floating drydocks, limited to the following:
(i) That portion of the design of a floating dock covered by ECCN 1425A(a) that relates to the incorporation of the three types of facilities described in the Note to ECCN 1425A(a); and
(ii) Design, production and use of on-board floating dock facilities covered by ECCN 1425A(b) that permit the operation, maintenance and repair of nuclear reactors;
(18) Data bases generated by the use of equipment controlled by ECCN 1363A; and
(19) * * *

7. Section 379.4(f)(1) is amended by enclosing the second sentence of paragraph (i)(*a*) in parentheses and by revising paragraphs (i)(*b*), adding (i)(*k*), and revising (ii)(*b*) to read as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(f) Written assurance requirements.
(1) * * *
(i) * * *
(*b*) Pyrolitically-derived materials formed on a mold, mandrel or other substrate from precursor gases that decompose in the 1,573K (1,300 °C) to 3,173K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa (including the composition of precursor gases, flow rates, and process control schedules and parameters);

* * * * *

(*k*) Technical data/software specifically identified in ECCN 1391A. (Operation software defined by § 379.4(b)(1) shall be described in the license applications for these commodities.);
(*l*) Technical data for the design and production (except assembly and testing) of two-axis numerical control units with an "embedded" computer;

* * * * *

(ii) * * *
(*b*) Sales technical data supporting a price quotation as authorized in § 379.4(b) (3) and (4).

* * * * *

8. Paragraph (g) of § 379.4 is revised to read as follows:

"(g) Software and other technical data listed under ECCN 1391A on the Commodity Control List may be exported or reexported under General License GTDR only to Country Groups T & V, except Afghanistan and the People's Republic of China, subject to the written assurance requirements contained in § 379.4(f)(1)(i)(*k*). Such software and technical data require a validated license for export to any other Country Group. The export or reexport of all other software and technical data listed under any other ECCN on the Commodity Control List requires a validated license to any Country Group."

9. Supplement No. 3 to Part 379, Computer Software, is amended by adding a paragraph (d), reading as follows:

Supplement No. 3—Computer Software

* * * * *

List of Software Subject to this Supplement to Part 379

* * * * *

(d) "Specially designed software" for the following:
(1) Technical data described in paragraph (d)(16) of § 379.4 for metal-working manufacturing processes;
(2) Spin-forming and flow-forming machines controlled under ECCN 1075A;
(3) Equipment, tooling and fixtures controlled under ECCN 1080A for the manufacturing or measuring of gas turbine blades or vanes;
(4) Equipment, tools, dies, molds and fixtures controlled under ECCN 1081A for the manufacture or inspection of aircraft, airframe structures, or aircraft fasteners;
(5) Equipment, tools, dies, molds, fixtures and gauges controlled under ECCN 1086A for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines;
(6) Electric vacuum furnaces controlled under ECCN 1203A;
(7) Electric arc devices controlled under ECCN 1206A;
(8) Metal rolling mills controlled under ECCN 1305A;
(9) Isostatic presses controlled under ECCN 1312A;
(10) Equipment controlled under ECCN 1354A for the manufacture or testing of printed circuit boards;
(11) Equipment controlled under ECCN 1357A for the production of fibers controlled by ECCN 1763A, or their composites;
(12) Equipment controlled under ECCN 1358A for the manufacture or testing of devices and assemblies controlled under ECCN 1588A and ECCN 1572A;
(13) Test facilities and equipment controlled under ECCN 1361A for the design or development of aircraft or gas turbine aero-engines;
(14) Water tunnel equipment controlled under ECCN 1363A, including software that contains databases generated by the use of equipment controlled under that ECCN;
(15) Equipment controlled under ECCN 1365A specially designed for in-service monitoring of acoustic emissions in airborne vehicles or underwater vehicles;
(16) Machine tools controlled under ECCN 1370A for generating optical quality surfaces;
(17) Computer-controlled pumping and flooding systems that will permit the docking of listing vessels when used with floating docks controlled under ECCN 1425A;
(18) Design and production of aircraft and helicopter airframes and propulsion systems controlled under ECCN 1460A;
(19) Integration software for integrated flight instrument systems, automatic pilots, inertial or other equipment using accelerometers or gyros controlled under ECCN 1485A;
(20) Marine or terrestrial acoustic or ultrasonic systems or equipment controlled under ECCN 1510A; and
(21) Precision linear and angular measuring systems controlled under ECCN 1532A.

PART 399—[AMENDED]

10. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

10a. Paragraph (n) of § 399.1 is revised to read as follows:

§ 399.1 The Commodity Control List and how to use it.

* * * * *

(n) *Software and technical data.* Software and other technical data listed under CCL entries are controlled by the subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

Supplement No. 1 [Amended]

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0, a Note is added under the heading "Metal-Working Machinery" after the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery) is amended by revising the *GLV $ Value Limit* of ECCN 2018A to read "$1,000 for Australia, Japan, New Zealand, and members of NATO; $0 for all other destinations."

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Comodity Group 0 (Metal-Working Machinery), ECCN 1075A is amended by adding a Note, removing paragraphs (a) and (b) and revising the heading and the *GLV $ Value Limit*, as follows:

1075A Spin-forming and flow-forming machines specially designed or adapted for use with numerical or computer controls and specially designed components therefor.

Note.—For specially designed "software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1080A is revised to read as follows:

1080A Specially designed equipment, tooling and fixtures for the manufacture or measuring of gas turbine blades or vanes; specially designed components and accessories therefor.

Note.—For "specially designed software" for use of the equipment, components and accessories, see Supp. No. 3 to Part 379.

Unit: Report machines in "number"; parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Specially Designed Equipment Controlled by ECCN 1080A

(a) Blade or vane airfoil or root automatic measuring equipment;

(b) Precision vacuum investment casting equipment, including core-making equipment;

(c) Small-hole drilling equipment for producing holes having depths more than four times their diameter and less than 0.03 inch (0.76 mm) in diameter;

(d) Directional solidification casting equipment and directional recrystallization equipment;

(e) Segmented cast blade or vane bonding equipment;

(f) Integral blade-and-disc casting equipment;

(g) Blade or vane coating equipment, *except* furnaces, molten-metal baths and ion-plating baths;

(h) Ceramic blade or vane molding and finishing machines;

(i) Molds, cores and tooling for the manufacture and finishing of:

(1) Cast hollow turbine blades or vanes;

(2) Turbine blades or vanes produced by powder compaction;

(j) Composite metal turbine blade or vane molding and finishing machines; and

(k) Inertial blade or vane welding machines.

15. In Supplement No. 1 § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1081A is revised to read as follows:

1081A Specially designed or modified equipment, tools, dies, molds and fixtures for the manufacture or inspection of aircraft, airframe structures or aircraft fasteners; specially designed components and accessories therefor.

Note.—For "specially designed software" for the use of the equipment, components and accessories, see Supp. No. 3 to Part 379.

Unit: Report machines in "number"; parts and components in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GVL $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Machinery Controlled by ECCN 1081A

(a) Equipment, tools, dies, molds or fixtures for:

(1) Hydraulic stretch forming:

(i) Whose machine motions or forces are digitally controlled or controlled by electrical analog devices; or

(ii) That are capable of thermal-conditioning the workpiece;

(2) Milling aircraft skins or spars;

(b) Tools, dies, molds or fixtures for:

(1) "Diffusion bonding";

(2) "Superplastic forming";

(3) "Hot die forging";

(4) Metal powder compaction by vacuum hot pressing, high-pressure extrusion or isostatic pressing;

(5) Direct-acting hydraulic pressing of aluminum alloys and titanium alloys;

(6) Manufacturing, inspecting, inserting or securing of specially designed high-strength aircraft fasteners.

Note.—1. For the definition of the processes and control of the metal-working manufacturing technologies mentioned in sub-paragraph (b), see § 379.4(d)(16).

(Advisory) Note.—2. Licenses are likely to be approved for export of equipment covered by sub-paragraph (a)(2) to satisfactory end-users in Country Groups QWY provided that the machinery does not present an improvement on machinery in production before the list of January of the year ten years preceding the year of the proposed export.

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1086A is revised to read as follows:

1086A Specially designed or modified equipment, tools, dies, molds, fixtures and gauges for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines; specially designed components and accessories therefor.

Note.—For "specially designed software" for the use of the equipment, components and accessories, see Supp. No. 3 to Part 379.

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1086A

(a) Equipment, tools, dies, molds, fixtures and gauges:
(1) For automated production inspection;
(2) For automated welding;
(b) Tools, dies, fixtures and gauges:
(1) For solid-state joining by inertial welding or thermal bonding;
(2) For manufacture and inspection of high-performance gas turbine bearings;
(3) For rolling specially configured rings such as nacelle rings;
(4) For forming and finishing turbine discs; and
(c) Compressor or turbine disc broaching machines.

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery) is amended by revising the *GLV $ Value Limit* of ECCN 1088A to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1091A is revised to read as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See section 376.11 for special information to include on the validated license application and reexport request.

Unit: Report machines in "number"; parts and accessories in "$ value."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: TE.
Reason for Control: National security; nuclear non-proliferation, except exports to those countries listed in Supplement Nos. 2 or 3 to Part 373.
Special Licenses Available: None for those dimensional inspection machines that, according to the manufacturer's technical specifications, can be equipped with controls defined in the List below of this ECCN 1091A. See Part 373 for special licenses that may be available for other commodities controlled by ECCN 1091A.

List of Commodities Controlled by ECCN 1091A

(a) Units for numerically controlling simultaneously coordinated (contouring and continuous path) movements of machine tools and dimensional inspection machines in two or more axes, *except* those having all of the following characteristics:
(i) No more than two contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated. Units may have:
(1) One or more additional axes for which rate of movement is not coordinated, varied or modulated with that of another axis;
(2) One additional set of two contouring axes provided a separate feed rate number, standard or optional, does not control more than any two contouring axes; or
(3) Two contouring axes switchable out of any number of axes;
(ii) Minimum programmable increment equal to or greater than 0.001 mm (0.00004 in.);
(iii) Interfaces limited as follows:
(1) No integral interface designed to meet ANSI/IEEE standard 488–1978, IEC publication 625–1, or any equivalent standard; and
(2) No more than two interfaces meeting EIA standard RS–232–C, or any equivalent standard;
(iv) On-line (real-time) modification of the tool path, feed rate and spindle data limited to the following:
(1) Cutter diameter compensation normal to the centerline path;
(2) Automatic acceleration and deceleration for starting, cornering and stopping;
(3) Axis transducer compensation including lead screw pitch compensation (measurements on one axis may not compensate another axis);
(4) Constant surface speed with or without limits;
(5) Spindle growth compensation;
(6) Manual feed rate and spindle speed override;
(7) Fixed and repetitive cycles (does not include automatic cut vector generation);
(8) Tool and fixture offset;
(9) Part program tape editing, excluding source program language and centerline location data (CLDATA);
(10) Tool length compensation;
(11) Part program storage;
(12) Variable pitch threading;
(13) Inch/metric conversion;
(14) Feed rate override based on spark voltage for electrical discharge machines;
(v) Word size equal to or less than 16 bits (excluding parity bit(s));
(vi) "Software"/"firmware", including "software"/"firmware" of any programmable unit or device furnished, shall not exceed control unit functions as provided in (i) to (v) above, and is restricted as follows:
(1) Only the following application programs can be furnished, which shall be executable without further compilation, assembly, interpretation, or processing, other than control unit parameter initialization, and memory storage loading, and each shall be supplied as an entity rather than in modular form:
(a) An operating program to allow the unit to perform its normal functions;
(b) One or more diagnostic programs to verify control or machine performance and permit localization of hardware malfunctions;
(c) A translator program with which the end-user can program the control-to-machine interface;
(2) Program documentation for application programs shall not contain the following:
(a) Listing of program instructions (*except* that necessary for diagnostics for routine hardware maintenance);
(b) Description of program organization or function beyond that required for program use and for maintenance of hardware with which these programs operate;
(c) Flow charts, logic diagrams or the algorithms employed (*except* those necessary for use of diagnostics for routine hardware maintenance);
(d) Any reference to specific memory storage locations (*except* those necessary for diagnostics for routine hardware maintenance);
(e) Any other information about the design or function of the "software" that would assist in the analysis or modification of all or part of the "software";

Notes.—1. For "digital computers" either "incorporated" in or "associated" with but not "embedded" in controllers, see ECCN 1565A.
2. For technical data relating to numerical control units, see § 379.4(f)(1)(i)(*1*).

(b) Machine tools and dimensional inspection machines that, according to the manufacturer's technical specifications, can be equipped with numerical control units covered by sub-item (a) above, *except:*
(i) Boring mills, milling machines, and machining centers having all of the following characteristics:
(1) Not more than three axes capable of simultaneously coordinated contouring motion, *i.e.*, the total number of linear plus rotary contouring axes cannot exceed three. (A secondary parallel contouring axis, e.g., W axis on horizontal boring mills, is not counted in the total of three contouring axes.

A secondary rotary table, the centerline of which is parallel to the primary rotary table, is also not counted in the total of three contouring axes. Machines may have non-contouring parallel or non-contouring, non-parallel rotary axes in addition to the three axes capable of simultaneously coordinated contouring motion. Machines having the capability of being simultaneously coordinated in more than three axes are not excluded from control even if the numerical control unit attached to the machine limits it to three simultaneously coordinated contouring axes. For example, a machine with a control unit switchable between any three out of four contouring axes is not excluded from control);

(2) Maximum slide travel in any axis equal to or less than 3,000 mm (120 in);

(3) Spindle drive motor power equal to or less than 35 kw (47 hp);

(4) Single working spindle (the machine may have multiple tool heads or turrets as standard or optional, but only one working spindle may be operative at a time). A spindle capable of driving a multiple drill head is considered as a single spindle;

(5) Axial and radial axis motion measured at the spindle axis in one revolution of the spindle equal to or greater than $D\times2\times10^{-5}$ mm TIR (peak-to-peak) where D is the spindle diameter in mm;

(6) An incremental positioning accuracy equal to or greater (coarser) than ±0.002 mm in any 200 mm of travel (+0.00008 in. in any 8.0 in. of travel);

(7) Overall positioning accuracy in any axis equal to or greater (coarser) than:

(a) ±0.01 mm (0.0004 in.) for machines with total length of axis travel equal to or less than 300 mm (12.0 in.);

(b) $\pm\{0.01+\{0.0025/300\times(L-300)\}\}$ mm (with L expressed in mm) $(0.0004+\{0.0001/12\times(L-12)\})$in.) (with L expressed in inches) for machines with a total length of axis travel, L, greater than 300 mm (12 in.) and equal to or less than 3,300 mm; (130.0 in.);

(c) ±0.035 mm (0.0014 in.) for machines with a total length of axis travel greater than 3,300 mm (130.0 in.);

Note.—Positioning accuracy is that accuracy that would be obtained in a temperature-controlled environment of 20 °C±2 °C with any mechanical compensation techniques shipped with the machine or any electronic compensation described in sub-item (a)(iv). Positioning accuracy of machines shipped without numerical control units will be that attained with a control unit used during checkout of the machine and with feedback systems identical to those that will be used with the machine, or by accuracy previously obtained with an identical machine and feedback system and control unit that will be connected to the machine.

(ii) Machine tools (other than boring mills, milling machines and machining centers described in (i) above) and dimensional inspection machines, having all of the following characteristics:

(1) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm (0.00003 in.) TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc);

(2) Meeting the requirements of (i)(1), (i)(6) and (i)(7) above;

(For high precision turning machinery, see also ECCN 1370A.)

(c) "Direct numerical control systems" (DNC) consisting of a dedicated stored program computer acting as a host computer and controlling, on-line or off-line, one or more numerically controlled machine tools or inspection machines, as defined in sub-item (b) above, related "software", and interface and communication equipment for data transfer between the host computer memory, the interpolation functions, and the numerically controlled machine tools;

(d) Specially designed sub-assemblies and "software" that, according to the manufacturer's technical specifications, can upgrade the capabilities of numerical control units and machine tools so that they become controlled by sub-items (a), (b) or (c) above.

Note.—Specially designed printed circuit board sub-assemblies are controlled by this sub-item.

(For machine tool parts and components, see also ECCN 1093A.)

Technical Notes.—1. "Numerical control" is defined as the "automatic control of a process performed by a device that makes use of numeric data usually introduced as the operation is in progress".

2. "Contouring control" is defined as "two or more numerically controlled motions operating in accordance with instructions that specify the next required position and the required feed rates to that position. These feed rates are varied in relation to each other so that a desired contour is generated".

3. For computer-related terms, see ECCN 1565A.

4. A "direct numerical control system" (DNC) is defined as "a system connecting a set of numerically controlled machines to a common memory for part program or machine program storage with provision for on-demand distribution of data to the machines".

5. Axis nomenclature shall be in accordance with international standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

6. The value of the positioning accuracy does not include the width of backlash. The value is determined by the usual statistical methods (random tests), *i.e.*, by approaching from only one direction a minimum of 5 measurement points up to a maximum of 25 measurement points as random tests along one axis. National standards may be used for this measuring method.

(Advisory) Notes.—1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of numerical control units that have all of the following characteristics to non-aerospace, non-nuclear civil end-users, when the numerical control units are either exported by themselves or exported with equipment excluded from control by sub-item (b) above:

(a) No more than three contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated (units may be capable of controlling one or more additional axes for which rate of movement is not coordinated), varied or modulated with that of another axis);

(b) Meeting the requirements of sub-items (a)(ii) to (vi) above.

2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for the shipment of floor-type horizontal boring mills covered by sub-item (b)(i) above to non-aerospace civil end-users for civil end-uses, provided that all of the following conditions are met:

(a) Maximum transverse (X-axis) travel equal to or less than 15,000 mm (600.0 in.);

(b) Maximum vertical (Y-axis) travel equal to or less than 5,000 mm (200.0 in.);

(c) Maximum (Z-axis) travel equal to or less than 3,000 mm (120.0 in.);

(d) Spindle-drive motor power equal to or less than 75 kW (100 hp);

(e) Meeting the requirements of sub-items (b)(i)(1) and (b)(i)(4) to (7) above.

(Advisory) Note for the People's Republic of China.—Licenses are likely to be approved for export to satisfactory end-users, other than nuclear or aerospace, in the People's Republic of China for numerically controlled machine tools, dimensional inspection machines, specially designed sub-assemblies, and specially designed software, as follows:

(a) Numerical control units having all of the following characteristics that are exported separately from, or with equipment permitted by paragraph (b) below:

Note.—Numerical control units exported separately from equipment must be for use with and specially configured for equipment permitted by paragraph (b) below. For example, exports of numerically controlled units are not covered by this Note if they are to be interfaced to inspection machines or tools with two linear Simultaneously Coordinated Contouring (SCC) axes and two rotary SCC axes. (Before exporting under this provision, exporters must submit specifications of equipment to which the numerical control tools will be interfaces).

(1) No more than four (4) contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated. (Units may be capable of controlling one or more additional axes in which the

rate of movement is not coordinated, varied, or modulated with that of another axis. Units may also be capable of controlling up to four (4) additional axes, provided that separate feedrate numbers, standard or optional, do not control more than any four (4) contouring axes);

(2) Minimum programmable increment equal to or greater than 0.001 mm (0.00004 in.);

(3) Interfaces as follows:

(i) No integral interface designed to meet ANSI/IEEE standard 488–1978, IEC publication 625–1, or any equivalent standard; and

(ii) Unlimited number of interfaces meeting EIA standard RS–232–C or any equivalent standard.

(4) On-line (real-time) modification of the tool path, feedrate, and spindle data limited to the following:

(i) Cutter diameter compensation normal to the center line path;

(ii) Automatic acceleration and deceleration for starting, cornering, and stopping;

(iii) Axis transducer compensation including lead screw pitch compensation (measures on one axis may not compensate another axis);

(iv) Constant surface speed with or without limits;

(v) Spindle growth compensation;

(vi) Feedrate and spindle speed override;

(vii) Fixed and repetitive cycles (including automatic cut vector generation);

(viii) Tool and fixure offset;

(ix) Part program tape editing, including source program language and centerline location data (CLDATA);

(x) Tool length compensation;

(xi) Part program storage;

(xii) Variable pitch threading;

(xiii) Inch/metric conversion; and

(xiv) Feedrate override based on spark voltage for electrical discharge machines;

(5) Word size not exceeding 16 bits (excluding parity bits);

(6) Software/firmware, including software/firmware of any programmable unit or device furnished, not exceeding control unit function as provided in (a)(1) through (a)(5) of this Note, and restricted as follows:

(i) Application programs executable without further compilation, assembly, interpretation, or processing, other than control unit initialization, and memory storage loading, and each supplied as an entity rather than in modular form, as follows:

(A) One operating program to perform its normal functions;

(B) One or more diagnostic programs to verify control or machine performance and to localize hardware malfunctions; and

(C) One translator program for programming the control-to-machine interface.

(ii) Documentation for application programs not containing the following:

(A) Program listings (except that necessary for diagnostics for routine hardware maintenance);

(B) Program organization or function descriptions beyond that required for use and maintenance of exported hardware and software;

(C) Flow charts, logic diagrams, or alogorithms employed (except that necessary for use of diagnostics for routine hardware maintenance);

(D) Any reference to specific memory storage locations (except those necessary for diagnostics for routine hardware maintenance); and

(E) Any other information that would assist in the analysis or modification of all or part of the software.

(b) Machine tools and dimensional inspection machines normally and usually equipped with numerical control units described by paragraph (a) above, as follows:

(1) Boring mills, milling machines, and machining centers having all of the following characteristics;

(i) Not more than four (4) axes capable of simultaneously corrdinated contouring motion, of which no more than three (3) axes shall be linear and no more than one (1) axis shall be rotary;

Note.—A secondary contouring axis, parallel with a primary axis, e.g., W-axis on horizontal boring mills, is not counted in the total of four (4) contouring axes. A secondary rotary table with the centerline parallel to the primary rotary table is also not counted in the total of four (4) contouring axes. Machines may have non-contouring parallel and/or non-contouring, non-parallel rotary axes in addition to the four (4) contouring axes.

(ii) Maximum transverse (X-axis) travel equal to or less than 20,000 mm (800.0 inches);

(iii) Maximum vertical (Y-axis) travel equal to or less than 5,000 mm (200.0 inches);

(iv) Maximum horizontal (Z-axis) travel equal to or less than 3,000 mm (120.0 inches);

(v) Unlimited spindle drive motor power;

(vi) Not more than two (2) simultaneously working spindles (the machine may have multiple tool heads or turrets. A spindle capable of driving a multiple drill head is considered as a single spindle);

(vii) Axial and radial axis motions measured at the spindle axis in one revolution of the spindle equal to or greater than $D\times2\times10^{-5}$ mm (peak-to-peak) where D is the spindle diameter in mm (or $D\times2\times10^{-5}$ in. TIR with D in inches);

(viii) An incremental positioning accuracy equal to or greater (coarser) than ±0.002 mm (0.00008 inches) in any 200 mm (8.0 inches) of travel;

(ix) An overall positioning accuracy in any axis equal to or greater (coarser) than:

(A) ±0.003 mm (±0.0001 in.) for machines with a total axis travel equal to or less than 300 mm (12.0 inches);

(B) $\pm\{0.003+\{0.001/300\times\{L-300\}\}\}$ mm (with the total axis travel, L, measured in mm) or $\pm\{0.0001+\{0.00004/12\times\{L-12\}\}\}$ in. (with L measured in inches) for machines with a total axis travel greater than 300 mm (12 in.) but equal to or less than 3,300 mm) 130.0 inches);

(C) ±0.013 mm (±0.0005 in.) for machines with a total axis travel greater than 3,300 mm (130.0 inches).

(2) Machine tools (other than boring mills, milling nachines and machining centers described in paragraph (b)(1) above) and dimensional inspection machines, having all of the following characteristics:

(i) Not more than four (4) axes capable of simultaneously coordinated contouring motion, of which no more than three axes shall be linear and no more than one axis shall be rotary;

Note.—Up to four (4) secondary contouring axes parallel with the primary axis but not simultaneously coordinated with the four (4) primary axes may be permitted.

(ii) No more than two (2) simultaneously working spindles (the machine may have multiple tool heads or turrets);

(iii) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (0.00003 inches TIR) (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc.);

(iv) An incremental positioning accuracy equal to or greater (coarser) than ±0.002 mm (±0.00008 inches) in any 200 mm (8.0 inches) of travel;

(v) An overall positioning accuracy in any axis equal to or greater (coarser) than:

(A) ±0.005 mm (±0.0002 inches) for machines with a total axis travel equal to or less than 300 mm (12.0 inches);

(B) $\pm\{0.005\text{ mm}+\{0.002/300\times\{L-300\}\}\}$ mm (with the total axis travel, L, measured in mm) or $\pm\{0.0002+\{0.00008/12\times\{L-12\}\}\}$ inches (with L measured in inches) for machines with a total axis travel greater than 300 mm (12.0 inches)

but equal to or less than 3,300 mm (130.0 inches);

(C) ±0.025 mm (±0.001 inches) for machines with a total travel greater than 3,300 mm (130.0 inches).

19. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery) is amended by revising the *GLV $ Value Limit* of ECCN 1093A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 1 (Chemical and Petroleum Equipment) following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

21. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 1110A is amended by revising the heading and the *GLV $ Value Limit*, as follows:

1110A Equipment for the production of liquid fluorine, and specially designed components therefor.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

22. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1118A to read "$1,000 for Australia, Japan, New Zealand, and members of NATO (except that there is no limit on exports to Canada); $0 for all other destinations."

23. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 2120A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

24. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 4127B to read "$1,000 for Country Groups T & V; $0 for all other destinations."

25. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the heading of ECCN 4128B to read as follows:

4128B Pipes, valves, fittings, heat exchangers, or magnetic, electrostatic or other collectors made of graphite or coated in graphite, yttrium or yttrium compounds resistant to the heat and corrosion of uranium vapor.

* * * * *

26. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 1129A is revised to read as follows:

1129A Vacuum pump systems and specially designed components, controls and accessories therefor.

Controls for ECCN 1129A

Unit: Report pumps, valves, cocks, and regulators in "number"; parts, controls and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1129A

(a) Cryopump systems (*i.e.*, systems in which the circulation of cooled or liquefied gas is used to achieve a vacuum, static or dynamic, by lowering the temperature of the environment) designed to operate at temperatures of less than −200 °C (−328 °F) measured at atmospheric pressure; and

(b) Vacuum pump systems capable of evacuating a chamber of volume greater than one (1) liter to pressures below 10^{-8} torr (1.3×10^{-6} pascals while the temperature in the chamber is maintained above 800 °C (1,472 °F).

27. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1131A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

28. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1133A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

29. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1142A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

30. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1142A to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

31. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 2 "Electrical and Power-Generating Equipment" following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, See ECCN 1565A.

32. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by revising the heading and adding a Note, reading as follows:

1203A Electric vaccum furnaces, specially designed components and controls therefor.

Note.—For "specially designed software" for the use of such furnaces, components or controls, see Supp. No. 3 to Part 379.

* * * * *

33. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 4203B to read "$2,000 for Country Groups T,V and Q; $0 for all other destinations."

34. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generation Equipment), ECCN 1205A is amended by revising the *GLV $ Value Limit* and List of Electromechanical . . . Devices Controlled by ECCN 1205A, as follows:

1205A Electrochemical, semiconductor and radioactive devices for the direct conversion of chemical, solar, or nuclear energy to electrical energy.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Electromechanical, Semi-Conductor, and . . . Controlled by ECCN 1205A

(a) Electro-chemical devices, as follows, and specially designed components therefor:

(1) Fuel cells operating at temperatures of 523 °K (250 °C, 482 °F) or less, including regenerative cells, *i.e.*, cells for generating electric power, to which all the consumable components are supplied from outside the cell;

Note.—The temperature of 523 °K or less is intended to refer to the fuel cell and not to the fuel conditioning equipment, which may be either an ancillary or an integral part of the fuel cell battery and which may operate at over 523 °K.

(2) Primary cells and batteries having *any* of the following characteristics:

(i) Possessing a means of activation and having an open circuit storage life in the unactivated condition, at a temperature of 294 °K (21 °C, 70 °F) of 10 years or more;

(ii) Silver-zinc reserve batteries possessing a means of activation and having an open circuit storage life in the unactivated condition, at a temperature of 249 °K (21 °C, 75 °F), or 3 years or more;

(iii) Utilizing a lithium anode with lithium salt solute in organic solvent (non-aqueous) electrolyte and having an energy density at the 24-hour discharge rate of greater than 100 Watt-hours per pound at 297 °K (24 °C, 75 °F) and greater than 35 Watt-hours per pound at 244 °K (−29 °C, −20 °F). (Energy density is obtained by multiplying the average power in watts (average voltage times average current in amperes) by the duration of the discharge in hours to 90 percent of the initial load voltage and dividing by the total weight of the cell (or battery) in pounds. As regards secondary (rechargeable) batteries, energy density is measured after 500 charge/discharge cycles.)

(3) Molten salt electrolyte cells and batteries that normally operate at temperatures of 773 °K (500 °C, 932 °F) or below.

(b) Photo-voltaic cells as follows, and specially designed components therefor:

(1) With a power output of 14 mW or more per sq. cm under 100 mW per sq. cm tungsten 2,800 °K (2,527 °C, 4,581 °F) illumination;

(2) All gallium arsenide photo-voltaic cells excluding those having a power output of less than 4 mW measured by the above technique; or

(3) With a power output of 450 mW or more per sq. cm under 10 Watts per sq. cm silicon carbide 1,750 °K (1,477 °C, 2,691 °F) illumination;

(4) Electromagnetic (including laser) and ionized particle radiation resistant;

(c) Power sources based on radioactive materials systems other than nuclear reactors, *except:*

(1) Those having an output power of less than 0.5 Watt and a total weight (force) of more than 890 N (90.7 kg, 200 lb); or

(2) Those specially designed and developed for medical use within the human body.

Notes.—1. See also ECCN 1570A.

2. This ECCN does not control the following cells and power source devices, and specially designed components therefor (nothing in this Note shall be construed as sanctioning the export of technology for such cells, power source devices or specially designed components):

(a) Fuel cells controlled by sub-item (a)(1) above with a maximum output power greater than 10 kW that use gaseous pure hydrogen and oxygen/air reactants, alkaline electrolyte and a catalyst support by carbon either pressed on a metal mesh electrode or attached to a conducting porous plastic;

(b) Primary cells and batteries covered by sub-item (a)(2)(iii) above that are specially designed for consumer applications in watches, pacemakers, calculators and hearing aids;

(c) Power source devices covered by sub-item (c) above that have an output power of 0.5 W or more and an overall efficiency of 8% or less. (Overall efficiency is obtained by dividing the electrical output, expressed in watts, by the thermal input, expressed in watts. It is understood that this efficiency is to be measured at the beginning of life.)

35. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1206A is amended by revising the heading, adding a Note, and revising the *GLV $ Value Limit* to read as follows:

1206A Electric arc devices for generating a flow of ionized gas in which the arc column is constricted (except devices wherein the flow of gas is for isolation purposes only and devices of less than 100 kW for cutting, welding, melting, plating or spraying); equipment incorporating such devices; specially designed components, accessories and control or test equipment.

Note.—For specially designed "software" for the use of such devices, equipment, components, accessories, or control or test equipment, see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

36. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 4261B to read "$1,000 for Country Groups T & V; $0 for all other destinations."

37. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 3, "General Industrial Equipment" following the existing Note, reading as follows:

Note. Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

* * * * *

38. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), a new entry 1302A is added (in numerical order, disregarding the first digit), reading as follows:

1302A Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa.

Note.—For control s of related technical data, see § 379.4(f)(1)(i)(*b*).

Controls for ECCN 1302A

Unit: Report nozzles in "number".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

39. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1305A is amended by revising the heading, adding a Note, revising the *GLV $ Value Limit*, revising paragraphs (a) and (b), and adding a Technical Note reading as follows:

1305A Metal rolling mills; specially designed components, accessories and controls therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

(a) Isothermal rolling mills, *except* those capable of operating only at ambient temperatures; and

(b) Other mills specially designed or redesigned for the rolling of metals and alloys with a melting point exceeding 1,900 °C (3,542 °F).

Technical Note.—In an isothermal rolling mill, a constant instantaneous temperature profile is maintained in the contact area between the workpiece and the rolls.

40. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by revising the heading and adding a Note, as follows:

1312A Isotatic presses as follows, and specially designed dies and molds (except those used in isostatic presses operating at ambient temperatures), components, accessories and controls therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

41. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 2317A to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

42. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 2319A to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

43. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) ECCN 1352A is amended by revising the heading and the *GLV $ Value Limit* to read as follows:

1352A Nozzles, dies and extruder barrels specially designed for the processing of the fluorocarbon materials covered by ECCN 1754A (a)(2).

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

44. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 1353A of Commodity Group 3 (General Industrial Equipment) is amended by revising the heading and the *GLV $ Value Limit* to read as follows:

13453A Equipment specially designed for the manufacture of cable and optical fibers controlled by ECCN 1526A.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

45. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) ECCN 1354A is amended by revising the heading, adding a Note, and revising the *GLV $ Value Limit* as follows:

1354A Equipment designed for the manufacture or testing of printed circuit boards as follows, and specially designed components and accessories therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

46. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 1355A of Commodity Group 3 (General Industrial Equipment) is revised to read as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

Controls for ECCN 1355A

Unit: Report photographic plates in "sq. ft." when applicable; machinery and equipment in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $100 for commodities defined in paragraphs (b)(2)(i) and (ii) of the List below to Country Groups T & V, except $0 for the People's Republic of China and Afghanistan; $500 for other commodities to Country Groups T & V, except $0 for the People's Republic of China and Afghanistan; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1355A

(a) Equipment specially designed for the manufacture or testing of electron tubes, optical elements and specially designed components therefor controlled by ECCNs 1541A, 1542A, 1555A, 1556A, 1558A or 1559A;

(b) Equipment specially designed for the manufacture or testing of the following semiconductor devices, microcircuits and assemblies, and systems incorporating or having the characteristics of such equipment:

(1) Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of sub-paragraph (b), as follows:

Note.—Boron nitride crucibles and fixtures used in the preparation of semiconductor materials are considered to be specially designed accessories under this ECCN.

(i) Equipment for producing polycrystalline silicon controlled for export by ECCN 1757A(f) having a purity of 99.99% or greater in the form of rods (ingots, boules), pellets, sheets, tubes or small particles;

(ii) Equipment specially designed for purifying or processing III–V and II–VI semiconductor materials covered by ECCN 1757A, except crystal pullers, for which see paragraph (iii) below;

(iii) Crystal pullers, furnaces and gas systems, as follows:

(*a*) Types with specially designed "digitally controlled" temperature, power input or gas, liquid or vapor flow;

(*b*) Diffusion, oxidation and annealing furnaces for operation at pressures above 1 atmosphere (nominal);

(*c*) Annealing or re-crystallizing equipment other than constant temperature furnaces employing high rates or energy transfer capable of processing wafers at a rate greater than 50 square centimeters per minute;

(*d*) Plasma-enhanced or photo-enhanced chemical reactor equipment;

(*e*) Equipment for automatic control of crystal taper and diameter, *except* taper and diameter control mechanisms using any of the following equipment techniques:

(*1*) Radiation pyrometers;

(*2*) Thermocouples;

(*3*) RF power sensors;

(*4*) Mass weighing (without digital or anomaly control permitting the growth of semiconductors);

(*f*) Crystal pullers having any of the following characteristics:

(*1*) Rechargeable without replacing the crucible container;

(*2*) Capable of operation of pressures above or below 10^5 pascals (1 atmosphere absolute);

(*3*) Capable of pulling crystals of a diameter greater than 76.2 mm (3 inches);

(*4*) Specially designed to minimize convection currents in the melt by the

use of magnetic fields or multiple crucibles;

(5) Capable of pulling sheet or ribbon crystals;

(Advisory Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of crystal pullers controlled for export by sub-paragraph (f)(2) above that can be operated at pressures up to 2.5×10^5 pascals (2.5 atmospheres absolute).)

(g) Vacuum induction-heated zone-refining equipment for operation at a pressure of 0.01 pascal or less;

(iv) Equipment for epitaxial growth of semiconductor materials having any of the following characteristics:

(a) Operation at pressures below 10^5 pascals (1 atmosphere absolute);

(b) "Digitally controlled";

(c) Rotating vertical-support, radiant-heated reactors;

(d) Specially designed for processing bubble memories;

(e) Metal-organic chemical vapor deposition reactors;

(f) For liquid phase epitaxy;

(v) Molecular beam epitaxial growth equipment;

(vi) "Magnetically-enhanced" sputtering equipment;

(Technical Note.—"Magnetically-enhanced" refers to equipment incorporating a cathode assembly having an integral magnetic structure for enhancing the plasma intensity.)

(vii) Equipment designed for ion implantation, or for ion-enhanced or photo-enhanced diffusion;

(viii) Equipment for selective or non-selective removal by dry methods of passivation layers, dielectrics, semiconductor materials, resists or metals, *except* horizontal, cylindrical plasma etchers without digital control, end-point detection, automatic loading or rotating mechanisms and not having the capability for parallel plate etching as used in semiconductor device manufacture;

(Note.—This sub-paragraph (viii) does not include vacuum sputtering equipment designed to operate in the sputter-etch mode.)

(ix) Equipment for semiconductor device fabrication operating below 10^5 pascals (1 atmosphere absolute) for the chemical vapor deposition of oxides, nitrides, metals and polysilicon;

(Note.—This sub-paragraph does not cover reactive-sputtering equipment.)

(x) Electron beam systems (including scanning electron microscopes), capable of mask making or semiconductor device processing and having any of the following characteristics:

(a) Electrostatic beam deflection;

(b) Shaped, non-Gaussian beam profile;

(c) Beam blanking capability;

(d) Digital-to-analog conversion rate greater than 3 MHz;

(e) Digital-to-analog conversion accuracy greater than 12 bits;

(f) Target-to-beam position feedback control precision of 1 micrometer or finer.

(Note.—This sub-paragraph does not cover electron beam deposition systems, and sub-paragraph (x)(c) above not cover scanning electron microscopes equipped for Auger analysis.)

(xi) Automatic sawing equipment, specially designed for the processing of semiconductor wafers and capable of slicing ingots of 3 inches (76.2mm) or greater in diameter;

(xii) Surface finishing equipment, specially designed for the processing of semiconductor wafers and having any of the following characteristics:

(a) Waxless or non-adhesive mounting;

(b) Double-sided simultaneous polishing or lapping;

(c) Capable of polishing and lapping wafers greater than 2 inches (50.8mm) in diameter;

(d) Lapping or polishing in two stages on the same machine;

(xiii) Interconnection equipment specially designed to permit the integration of equipment controlled for export by this ECCN into a complete system.

(2) Masks, mask substrates, mask-making equipment and image-transfer equipment for the manufacture of devices and components as specified in the heading of sub-paragraph (b) (Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and for ultraviolet lithography, as well as the usual ultraviolet and visible photolithography.), as follows:

(i) Finished masks, reticles and designs therefor;

(ii) Hard surface (e.g. chromium, silicon, iron oxide) coated substrates (e.g. glass, quartz, sapphire) for the preparation of masks having dimensions greater than 76.2×76.2 mm (3×3 inches);

(iii) Computer-aided design (CAD) equipment for transforming schematic or logic diagrams into designs for producing semiconductor devices or microcircuits, having any of the following functions:)

(a) Storage of pattern cells for subdivision of integrated circuits;

(b) Scaling, positioning or rotation of pattern cells;

(c) Interactive graphic capabilities;

(d) Design rule and circuit checking;

(e) Circuit layout modification of the arrangement of the elements;

(Note.—"Software" that performs any of the functions in this sub-paragraph (iii), or that can be used for transient analysis, for logic analysis or logic checking, for automatic routing or cell placement, for the generation of test vectors or for process simulation is "specially designed software" controlled for export by the heading of this ECCN.)

(iv) Mask fabrication machines using photo-optical methods as follows:

(a) Step and repeat cameras capable of producing arrays larger than 63.5×63.5 mm (2.5×2.5 inches), or capable of producing a single exposure larger than 3.75×3.75 mm (0.15×0.15 inches) in the focal plane, or capable of producing useful line widths of 3.5 micrometers or less:

(b) Pattern generators specially designed for the generation and/or manufacture of masks or the creation of patterns in photosensitive layers and with placement precision finer than 10 micrometers;

(c) Mask fabrication equipment containing automatic adjustment of focus or adjustment of the mask material into the focal plane;

(d) Equipment for altering masks or reticles to remove defects; (For electron-beam systems, see sub-paragraph (b)(1)(x) above.)

(v) Masks or reticle inspection equipment, as follows:

(a) For comparison with a precision of 0.75 micrometer or finer over an area of 63.5×63.5 mm (2.5×2.5 inches) or greater;

(b) "Digitally controlled" equipment with a resolution of 0.25 micrometer or finer and with a precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm (2.5 inches) or greater;

(c) "Digitally controlled" defect inspection equipment;

(Note.—Conventional scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection are not covered by this sub-paragraph (v).)

(vi) Align and expose equipment using photo-optical methods, including projection image transfer equipment, capable of performing any of the following functions;

(a) Production of a useful pattern size of less than 5 micrometers;

(b) Alignment with a precision finer than 1 micrometer;

(c) Field coverage greater than 76.2×76.2 mm (3×3 inches);

(d) Wafer backside alignment;

(e) Automatic alignment by the sensing of patterns or index marks on the substrate;

(f) Projection image transfer for processing slices (wafers) of 50.8 mm (2 inches) or greater in diameter;

(Note.—Non-contacting (proximity) image transfer equipment is covered only by these sub-paragraphs (a) to (e) above.)

(vii) Electron beam, ion beam, or X-ray equipment for projection image transfer (For laser equipment, see Technical Note 3 below.);

(viii) Photo-optical or non photo-optical step and repeat or partial field equipment for the transfer of the image onto the wafer;

(ix) Mask contact image transfer equipment for imaging a field greater than 76.2x76.2 mm (3x3 inches).

(3) "Digitally controlled" inspection equipment for the detection of defects in processed wafers, substrates or chips using optical pattern comparison or other machine scanning techniques (Note: Conventional scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection, are not covered by this sub-paragraph (3).);

(4) Specially designed "digitally controlled" measuring and analysis equipment, as follows:

(i) Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

(ii) Equipment for concurrent etching and doping profile analysis (employing capacitance-voltage or current-voltage analysis techniques);

(iii) Equipment for line-width measurement with a resolution of 1.0 micrometer or finer;

(iv) Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometers or less with a resolution of 1.0 micrometer or finer.

(5) Equipment for the assembly of microcircuits, as follows:

(i) "Digitally controlled" die (chip) mounters and bonders with a positioning accuracy finer than 50 micrometers, or incremental steps finer than 6.4 micrometers;

(ii) "Digitally controled" wire bonders and welders for performing consecutive bonding operations;

(iii) Equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

(iv) Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled for export by ECCN 1564A(l)(b) and having a throughput equal to or greater than one package per minute.

(6) "Digitally controlled" wafer probing equipment, as follows:

(i) Positioning accuracy finer than 50 micrometers, or incremental steps finer than 6.4 micrometers.

(ii) Individual die location read-out (X–Y position information) during testing;

(iii) Capability of testing devices having more than a total of 24 terminals;

(iv) Automatic slice (wafer) alignment.

(7) Test equipment as follows (for standard test instruments, see ECCN 1529A):

(i) Computer-controlled equipment or equipment with a computer-management compatible interface specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of performing any of the following functions:

(a) Measurement of time intervals of less than 10 nanoseconds;

(b) Measurement of parameters (e.g., f_T, S-parameters, noise figure) at frequencies greater than 250 MHz;

(c) Resolution of currents of less than 100 picoamperes;

(d) Measurement of spectral response at wavelengths outside the range from 450 to 950 nanometers;

Technical Note.—Discrete semiconductor devices include, for example, diodes, transistors, thyristors, photocells, and solar cells.

(ii) "Digitally controlled" equipment specially designed for testing microcircuits, and assemblies thereof, capable of performing any of the following functions:

(a) Functional (truth table) testing at a pattern rate greater than 2 MHz;

(b) Resolution of currents of less than 1 nanoampere;

(c) Testing of integrated circuits (not mounted on circuit boards) in packages having more than a total of 24 terminals (This sub-paragraph does not cover equipment specially designed for and dedicated to the testing of circuits not covered by ECCN 1564A.);

(d) Measurement of rise times, fall times and edge placement times with a resolution of less than 20 nanoseconds.

Technical Note.—1. The terms "microcircuit" and "assembly" are defined in ECCN 1564A.

Technical Note.—2. Test equipment that is not of a general-purpose nature and that is specially designed for, and dedicated to, testing assemblies or a class of assemblies for home and entertainment applications is not controlled by this sub-paragraph (b)(7) of ECCN 1355A.

Note.—Test equipment that is not of a general-purpose nature and that is specially designed for, and dedicated to, testing electronic components, assemblies, sub-assemblies and mircocircuits specifically excluded by ECCN 1564A is not controlled by this sub-paragraph, provided such test equipment does not incorporate computing facilities with user-accessible programming capabilities.

(iii) Equipment specially designed for determining the performance of focal-plane arrays at wavelengths greater than 1,200 nanometers, using "digitally controlled" measurements or computer-aided evaluation and having any of the following characteristics:

(a) Using scanning light spot diameters of less than 0.12 mm (0.005 inch);

(b) Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise;

(c) Designed for evaluating arrays capable of creating images of greater than 32 x 32 line elements;

(iv) Specially designed for bubble memories;

(8) Class 10 filters capable of providing an environment of 10 or less particles of 0.3 micrometer or greater per cubic foot and filter materials therefor;

Note.—This sub-paragraph (b)(8) also controls such equipment used or modified for use in the manufacture of testing of other devices such as: imaging devices, electro-optical devices, acoustic-wave devices, film-memory devices.

Technical Note.—3. For equipment used in the manufacture and processing of semiconductors and semiconductor materials that is specially designed to employ lasers or laser technology, see ECCN 1522A.

Technical Note.—4. The term "digitally controlled" refers to automated equipment whose functions are partially or entirely controlled by stored, digitally coded, electrical signals. This does not include equipment with controls using the following:

(a) Cams and other purely mechanical means;

(b) Switches including thumbwheels switches;

(c) Plugboards;

(d) On-off and analog controllers;

(e) Diode matrices;

(f) Punched paper tape controllers without a capability to compute, manipulate or store and re-run program data.

Note for the People's Republic of China.—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following machinery and equipment:

(a) Equipment for deposition of electronic grade polysilicon defined in paragraph (b)(1)(i);

(b) All types of crystal pullers defined in paragraphs (b)(1)(iii) (a) through (f), *except* those that are rechargeable without opening, magnetic, or computer-controlled;

(c) All types of diffusion furnaces defined in paragraphs (b)(1)(iii) (a) through (f), *except* those types with computer feedback control;

(d) Vacuum induction-heated zone-refining equipment defined in paragraph (b)(1)(iii)((g);

(e) Manual type of magnetically-enhanced sputtering equipment defined in paragraph (b)(1)(vi);

(f) All types of equipment designed for ion implantation, or for ion-enhanced or photo-enhanced-diffusion (paragraph (b)(1)(vii), *except* those having raster scan techniques or an associated computer or those introduced after January 1, 1980;

(g) All barrel or barrel/planer types of dry-etching equipment defined in paragraph (b)(1)(viii);

(h) Low pressure chemical vapor deposition equipment defined in paragraph (b)(1)(ix);

(i) All automatic wafer sawing equipment defined in paragraph (b)(1)(xi);

(j) Wafer surface finishing equipment defined in paragraph (b)(1)(xii) that is for lapping and single side polishing;

(k) Hard surface coated substrates defined in paragraph (b)(2)(ii) that are 5x5=inch or smaller;

(l) Computer-aided design (CAD) software for IC design controlled under ECCN 1355A that has been been previously approved for export to China;

(m) Photo-optical mask fabrication equipment defined in paragraph (b)(2)(iv) that does not exceed the performance capabilities of U.S.-designed photolithographic step and repeat cameras and pattern generator systems introduced in volume into the market before December 31, 1976;

(n) Manual types of mask inspection equipment defined in paragraph (b)(2)(v);

(o) Photo-optical Contact and Proximity mask align and expose equipment defined in paragraph (b)(2)(vi), and projection aligners that can produce useful pattern sizes no finer than 3 micrometers;

(p) Contact image transfer equipment defined in paragraph (b)(2)(ix);

(q) Semiautomated types of digitally controlled wafer and chip inspection equipment defined in paragraph (b)(3);

(r) Auto wire and die bonders defined in paragraph (b)(5);

(s) Wafer probing equipment defined in paragraph (b)(6); and

(t) Analog test equipment TV circuits, OP AMPs and voltage regulatory; A/D and D/A circuit test equipment; and digital test equipment with test data rates of 10 MHz or less defined in paragraph (b)(7)(ii).

47. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1356A is amended by revising the heading to read as follows:

1356A Equipment specially designed for the continuous coating of polyester-base magnetic tape subject to control under ECCN 1572A(d) or free from control under Exception 3 to ECCN 1572A, and specially designed components therefor.

* * * * *

48. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1357A is amended by revising the *GLV $ Value Limit* to read "$2,000 for County Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations, "by revising the phrase "covered by paragraphs (a) and (b) above" in paragraph (d) of the List of Equipment to read "covered by sub-paragraphs (a) and (b) of ECCN 1763A."; and by revising the heading and adding two Notes, as follows:

1357A Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor.

Notes.—1. For technical data and procedures, see § 379.4(d)(11).

2. For "specially designed software", see Supp. No. 3 to Part 379.

49. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1358A is amended by removing paragraph (f), revising the *GLV $ Value Limit* to read "$1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations," and revising the heading and adding a Note, as follows:

1358A Equipment specially designed for the manufacture or testing of devices and assemblies thereof controlled by ECCN 1568A (b), (c), (d) or (e) and for magnetic recording media, other than tape, controlled by ECCN 1572A (d) or free from control under Exception 3(c)(4) to ECCN 1572A (for magnetic tape production equipment, see ECCN 1356A); and specially designed components therefor.

Note.— For "software", see Supp. No. 3 to Part 379.

50. Supplement No. 1 to § 399.1 (the Community Control List), Commodity Group 3 (General Industrial Equipment), is amended by adding a new entry 1359A (in numerical order, disregarding the first digit), reading as follows:

1359A Specially designed tooling and fixtures for the manufacture of fiber-optic connectors and couplers controlled by ECCN 1526(f).

Controls for ECCN 1359A

Unit: Report in "$ Value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

51. Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General industrial equipment), is amended by adding a new entry 1360A (in numerical order, disregarding the first digit), reading as follows:

1360A "Digitally controlled" equipment capable of automatic X-ray orientation and angle correction of double-rotated stress-compensated (SC) quartz crystals controlled by ECCN 1587A with a tolerance of 10 seconds of arc maintained simultaneously in both angles of rotation.

(For the definition of "digitally controlled", see ECCN 1355A.)

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

52. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial equipment), ECCN 1361A is amended by revising the heading and adding a Note; by revising the *GLV $ Value Limit*, paragraph (d), and the Advisory Notes; and by adding new paragraphs (e), (f) and (g) to the list of Wind Tunnels Controlled by ECCN 1361A, reading as follows:

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines; and specially designed components, and accessories therefor.

Note.—For "software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Wind Tunnels Controlled by ECCN 1361A

* * * * *

(d) Automated control systems, instrumentation (including sensors) and automated data-acquisition equipment, specially designed for use with wind tunnels and devices controlled by sub-paragraphs (a), (b) or (c) above;

(e) Models, specially designed for use with wind tunnels or with the devices

covered by sub-paragraphs (a) (b) or (c) above, of controlled aircraft, helicopters, air-foils, or surface-effect vehicles;

Note.—Specially designed models are those equipped with sensors and a means of transmitting data from the sensors to the data-acquisition system, or equipped with features for using non-intrusive sensors (*i.e.*, not directly connected to the model or not located in the flow adjacent to the model). Other models are controlled by ECCN 9999M.

(f) Specially designed electromagnetic interference and electromagnetic pulse (EMI/EMP) simulators;

(g) Specially designed test facilities and equipment for the development of gas turbine aero-engines and components, as follows:

(1) Special test facilities capable of applying dynamic flight loads, measuring performance or simulating the design operating environments for rotating assemblies or aero-engines;

(2) Test facilities, test rigs and simulators for measuring combustion system and hot gas flow path performance, heat transfer and durability for static assemblies and aero-engine components;

(3) Specially designed test rigs, equipment of modified gas turbine engines utilized for development of gas turbine aero-engine internal flow systems (gas path seals, air-oil seals and disc cavity flow fields).

(Advisory) Notes.—1. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of supersonic wind tunnels capable of Mach velocities of 1.4 or more, but less than 5, and not specially designed for or fitted with means of preheating the air, provided that the tunnels could not reasonably be used for strategic purposes.

2. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of specially designed components controlled by this ECCN 1361A, for wind tunnels and for facilities and equipment covered by sub-paragraph (g) previously exported, provided that such components will not upgrade the performance of the wind tunnel, facilities or equipment and, for normally-consumable replacement components, the quantity will not exceed a 6-month supply.

53. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1362A is amended by revising the *GLV $ Value Limit* to read "$1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

54. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 3362A to read "$200 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

55. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by adding a new entry 1362A (in numerical order, disregarding the first digit), reading as follows:

1363A Specially designed water tunnel equipment, components and accessories for the design and development of vessels.

Note.—For "specially designed software" and/or databases in software form, see Supp. No. 3 to Part 379.

Controls for ECCN 1363A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason or Control: National security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1363A

(a) Automated control systems, instrumentation (including sensors) and data acquisition equipment specially designed for water tunnels;

(b) Automated equipment to control air pressure acting on the surface of the water in the test section during the operation of the water tunnel;

(c) Components and accessories for water tunnels, as follows:

(1) Balance and support systems;

(2) Automated flow or noise measuring devices; *and*

(3) Models of hydrofoil vessels, surface-effect vehicles and specially designed equipment and components controlled by ECCN 1416A (a), (b), (d) and (e) for use in water tunnels (Other models are controlled by ECCN 9999M.);

Note.—The water tunnels referred to in this ECCN are used for the hydrodynamic testing of a fixed model, using a moving fluid.

56. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 3363A to read "$1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

57. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), is amended by adding a new entry 1364A (in numerical order, disregarding the first digit), reading as follows:

1364A Machinery and equipment for the manufacture of hydrofoil vessel and surface-effect vehicle structures and components, and specially designed components and accessories therefor.

Controls for ECCN 1364A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Machinery and Equipment controlled by ECCN 1364A

(a) Specially designed equipment for manufacturing anisotropic, orthotropic or sandwich structures controlled by ECCN 1416A (d)(3);

Technical Notes.—1. Anisotropic construction is the use of fiber re-inforcing members or metallic members aligned so that the load-carrying ability of the structure can be primarily oriented in the direction of expected stress (at other than right angles).

2. Orthotropic construction is a means of stiffening plates in which the structural members are at right angles to each other.

3. Sandwich construction is the use of structural members of plates fabricated and permanently affixed in layers to enhance their strength and reduce their weight.

(b) Specially designed equipment for the production and testing of flexible materials for skirts, seals, air curtains, bags and fingers for surface-effect vehicles;

(c) Specially designed equipment for the production of water-screw propellers controlled by ECCN 1416A(e);

(d) Specially designed equipment for the production, dynamic balancing and automated testing and inspection of lift fans for surface-effect vehicles;

(e) Specially designed equipment for the production of water-jet propulsion pumps rated at 3,000 hp or greater, or multiple-pump system equivalents thereof;

(f) Specially designed equipment for the production, dynamic balancing and automatic testing of sectored disc and concentric-drum rotors for DC homopolar machines.

(See also ECCN 1416A.)

58. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by adding a new entry 1365A (in numerical order, disregarding the first digit), reading as follows:

1365A Equipment specially designed for in-service monitoring of acoustic emissions in airborne vehicles, or underwater vehicles controlled by ECCN 1418A, capable of discriminating acoustic emissions related to crack growth from innocuous noise sources and capable of spatial location of the crack, and specially designed components and accessories therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

Technical Note.—The methods used for discriminating acoustic emissions from innocuous noise sources include pattern recognition techniques.

Controls for ECCN 1365A

Unit: Report in "$ value."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: TE.
Reason for Control: National security.
Special Licenses Available: See Part 373.

59. In Supplement No. 1 § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1370A is amended by revising the heading, adding a Note, and revising the *GLV $ Value Limit* as follows:

1370A Machine tools for generating optical quality surfaces, specially designed components and accessories therefor.

Note.—For "specifically designed software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: "$1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

* * * * *

60. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* for ECCN 1371A to read "$1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

61. In Supplemental No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), is amended by adding a new ECCN 1372A (in numerical order, disregarding the first digit), reading as follows:

1372A Industrial gas turbine engine components, as follows:

Core section modules and specially designed components of industrial gas turbine engines derived from gas turbine aero-engines controlled by ECCN 1460A and marine gas turbine engines controlled by ECCN 1431A. (Industrial gas turbine engines *adapted* as marine gas turbine engines are controlled by ECCN 1431A.)

Controls for ECCN 1372A

Unit: Report in "$ value."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: TE.
Reason for Control: National security.
Special Licenses Available: See Part 373.

62. Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), is amended by adding a new ECCN 1385A (in numerical order, disregarding the first digit), reading as follows:

1385A Specially designed production equipment for compasses, gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A.

Controls for ECCN 1385A

Unit: Report in "$ value."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: TE.
Reason for Control: National security.
Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1385A

Technical Note.—Reserved.

(a) For ring laser gyro equipment, the following equipment used to characterize mirrors, having the threshold accuracy shown or better:
(1) Rectilinear scatterometer (10 ppm);
(2) Polar scatterometer (10 ppm);
(3) Reflectometer (50 ppm);
(4) Profilometer (5 angstroms).
(b) For other inertial equipment:
(1) Inertial Measurement Unit (IMU) module tester;
(2) IMU platform tester;
(3) IMU stable element handling fixture;
(4) IMU platform balance fixture;
(5) Gyro tuning test station;
(6) Gyro dynamic balance station;
(7) Gyro run-in/motor test station;
(8) Gyro evacuation and fill station;
(9) Centrifuge fixture for gyro bearings;
(10) Accelerometer axis align station;
(11) Accelerometer test station.

63. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by adding a new entry 1391A (in numerical order, disregarding the first digit), reading as follows:

1391A "Robots", "robot" controllers and "robot" end-effectors; and specially designed components therefor.

Note.—See also § 379.4(f)(1)(i)(*k*) and § 379.4(g).

Controls for ECCN 1391A

Unit: Report in "$ value."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Group T&V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: TE.
Reason for Control: National security.
Special Licenses Available: See Part 373.

List of Equipment and "Specially Designed Software" Controlled by ECCN 1391A

(a) "Robots" having any of the following characteristics, and specially designed components therefor:

Note.—"Robot" mechanical structures are included in specially designed components for the above.

(1) Capable of employing feedback information on-line (real-time) from one or more "sensors" to generate "programs" or modify programmed instructions or numerical program data, *except* those using information derived only from "sensors" used to measure:
(i) The internal state of the "robot", *i.e.*, velocity, position (other than inertial position measuring systems), drive motor current, voltage, or pressure or temperature of fluid;
(ii) Through-the-arc current (or voltage) for weld seam tracking; *or*
(iii) Binary or scalar values for:
(a) Position, via proximity "sensors" (photo-electric, inductive or capacitive);
(b) Voltage, current, or hydraulic/pneumatic pressure of tool driving motor for the determination of force or torque; *and*
(c) External safety functions;
(2) Specially designed to comply with national safety standards applicable to explosive munitions environments;
(3) Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g., incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839°K (566 °C or 1050 °F);

(4) Specially designed for underwater use (*i.e.*, incorporating special techniques or components for sealing, pressure compensation, or corrosion resistance);

(5) Operable at altitudes exceeding 30,000 meters;

(6) Specially designed for outdoor applications and meeting military specifications therefor;

(7) Specially designed or rated for operating in an electromagnetic pulse (EMP) environment;

(8) Specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (*i.e.*, non-nuclear industry) ionizing radiation;

(9) Equipped with "robot" manipulator arms that contain titanium-based alloys covered by ECCN 1671A, or fibrous and filamentary materials covered by ECCN 1763A;

(10) Equipped with precision measuring devices covered by ECCN 1532A;

(11) Specially designed to move autonomously its entire structure through three-dimensional space in a simultaneously coordinated manner, *except* systems in which the "robot" moves on a fixed track;

Note.—Sub-item (a) above does not control "robots" specially designed for household use or those modified from household "robots" for educational purposes (pre-university) if not controlled for export by the other provisions of this ECCN.

(b) Electronic controllers having any of the following characteristics:

Notes: 1. For controllers capable of controlling numerically controlled machine tools or dimensional inspection machines, see ECCN 1091A.

2. For controllers with "digital computers" either "incorporated in" or "associated with" but not "embedded in", see ECCN 1565A.

(1) Controllers specially designed to be part of a "robot" controlled by sub-paragraphs (a)(2) to (a)(8), (a)(10) or (a)(11) above;

(2) Minimum programmable increment less (finer) the 0.001 mm for linear axis;

(3) Having more than one integral interface that meets or exceeds ANSI/IEEE standard 488–1978, IEC publication 625–1, or any equivalent standard for parallel data exchange;

(4) Capable of being programmed by means other than lead-through, key-in, or teach-pendant techniques;

(5) Word size exceeds 16 bit (excluding parity bit(s));

(6) Incorporating interpolation algorithms with an order of interpolation higher than linear or circular;

(7) Permitting on-line (real-time) generation or modification of the programmed path, velocity and functions other than the following:

(i) Manual velocity override;

(ii) Fixed linear or rotary axis offset;

(iii) Manual "robot" path editing (including manual path compensation) excluding "source language" used to program automatically the "robot" path, velocity or function;

(iv) Branching to pre-programmed modification of "robot" path, velocity or function;

(v) Fixed cycles (e.g., macro instructions or pre-programmed sub-routines);

(vi) Key-in or teach-in modifications;

(c) "End-effectors" having any of the following characteristics:

(1) Equipped with one or more "sensors", *except* those used to measure the parameters or values specified in sub-paragraphs (a)(1) (i), (ii) or (iii) above;

(2) Having integrated computer-aided data processing, *except* those using "sensors" used to measure the parameters or values specified in (a)(1) (i), (ii) or (iii) above;

(3) Equipped with a integral interface that meets or exceeds ANSI/IEEE Standard 488–1978, IEC publication 625–1, or any equivalent standard for parallel data exchange;

(4) Having any of the characteristics in (a)(2) to (a)(8) and (a)(10) above.

Note 1.—Definitions of the terms used in this ECCN 1391A:

(a) A "robot" is a manipulation mechanism that is reprogrammable, multifunctional, and capable of positioning or orientating material, parts, tools or special devices through variable movements in three-dimensional space. "Robots" incorporate two or more closed or open loop servo-devices (including stepping motors). They are reprogrammed by means of the teach/playback method, an electronic computer, or a programmable logic controller. "Robots" may be of the continuous path or point-to-point variety and may use "sensors".

Note.—The above definition does not include the following devices:

(1) Manipulation mechanisms that are only manually/tele-operator controllable;

(2) Fixed sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed stops, such as pins or cams. The sequence of motions and the selection of paths or angles are not variable or changeable by mechanical, electronic or electrical means;

(3) Mechanically controlled variable sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed but adjustable stops, such as pins or cams. The sequence of motions and the selection of paths or angles are variable within the fixed program pattern. Variations or modifications of the program pattern (e.g., changes of pins or exchanges of cams) in one or more motion axes are accomplished only through mechanical operations;

(4) Non-servo-controlled variable sequence manipulation mechanisms that are automated moving devices operating according to mechanically fixed programmed motions. The program is variable, but the sequence proceeds only by the binary signal from mechnically fixed electrical binary devices or adjustable stops;

(5) Stacker cranes defined as Cartesian coordinate manipulator systems manufactured as an integral part of a vertical array of storage bins and designed to access the contents of those bins for storage or retrieval.

(b) "End-effectors" include grippers, "active tooling units" and any other tooling that is attached to the baseplate on the end of the "robot's" manipulator arm(s).

(An "active tooling unit" is a device for applying motive power, process energy or sensing to the workpiece.)

(c) For the purposes of this ECCN, a "sensor" is defined as a detector of a physical phenomenon, the output of which (after conversion into a signal that can be interpreted by a controller) is able to generate "programs" or modify programmed instructions or numerical program data. This includes "sensors" with machine vision, infrared imaging, acoustical imaging, tactile feel, inertial position measuring, optical or acoustic ranging or force or torque measuring capabilities.

Note.—For computer-related terms, see ECCN 1565A.

(Advisory) Note 2. Licenses are likely to be approved for export to satisfactory civil end-users, other than nuclear or aerospace, in Country Groups QWY of "robots" controlled by sub-paragraph (a)(1) above, when limited as follows:

(a) The "robot" has none of the characteristics found in sub-paragraphs (a)(2) to (11);

(b) The controller is not specially designed to be part of a "robot" controlled by sub-paragraph (a) (2) to (8), (a) (10) or (a) (11);

(c) The controller does not exceed the parameters found in sub-paragraphs (b)(2) to (b)(7);

(d) "End-effectors" shall not exceed the parameters of sub-paragraph (c):

(e) *Reserved.*

(f) Documentation shall be limited to that necessary to perform the intended operations or for the maintenance and repair of the "robot";

(g) Vision systems shall be limited as follows:

(1) Capable of processing no more than 100,000 pixels using an industrial television camera or no more than 65,536 pixels using a solid-state camera;

(2) Using a single-scene analysis processor limited to no more than 16-bit word size (excluding parity bit(s)) and no parallel processing for the same task;

(3) *Reserved.*

Note.—This scene analysis limitation does not preclude approximation of the third dimension by viewing at a given angle, nor limited gray scale interpretation for the preception of depth or texture for the approved tasks;

(4) Vision system not programmable by the user *except*:

(i) To input reference images through the system's camera;

(ii) To input values of fixed parameters, including teach-in parameters; *or*

(iii) To select pre-programmed sub-routines;

(5) Not capable of continuous reaction or continuously updating the "robot" position while the "robot" is moving;

Note.—This precludes the use of vision systems for weld seam tracking during the welding operation but does not preclude straight-line or single-plane weld seam tracking using a single pass.

(6) Capable of no more than one scene analysis every 0.1 second;

(h) The "robot" is not intended for use in the production of controlled electronics or micro-electronics products.

64. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment) is amended by revising the *GLV $ Value Limit* for ECCN 5399D to read "$2,000 for Country Group Q. A General License *GLV* is not applicable to other destinations; however, another general license may apply."

65. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4, a Note is added after the heading "Transportation Equipment" following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

66. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 5406D to read "$200 for Country Group Q. General License *GLV* is not applicable to other destinations; however, another general license may apply."

67. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 2409A to read "$2,000 for Country Group T&V, except $0 for the People's Republic of China; $0 for all other destinations."

68. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 4409B to read "$2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

69. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 2410A to read "$2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

70. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is revised to read as follows:

1416A Vessels, surface-effect vehicles, water-screw propellers, and specially designed components.

Unit: Report vessels or vehicles in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1416A

(a) Hydrofoil vessels with automatically controlled foil systems capable of speeds of above 40 knots in rough water (Sea State Five);

(b) Surface-effect vehicles, *i.e.*, hovercraft, air cushion vehicles (both sidewall and skirted varieties) and all variations of vehicles using the wing-in-ground effect for positive lift;

(c) Vessels incorporating any item included in an ECCN beginning with the numeral 2 or listed in Supplement No. 2 to Part 370, any commodity defined in ECCNs 1485A, 1501A, 1502A, and 1510A (*except all types of fish-finding or whale-finding equipment*), or incorporating degaussing facilities;

(d) Specially designed components for the above vessels, as follows:

(1) Advanced hull forms that incorporate any of the following:

(i) Stepped hulls for hydrofoil vessels;

(ii) Hulls for air cushion vehicles with trapezoidal planforms;

(iii) Hulls for surface-effect vehicles with catamaran-like sidewalls;

(iv) Hulls for wing-in-ground effect vehicles;

(2) Fully submerged subcavitating or supercavitating hydrofoils;

(3) Lightweight structural components for hydrofoil vessels and surface-effect vehicles, constructed using anisotropic, orthotropic or sandwich construction methods;

Technical Notes

1. Anisotropic construction methods relate to the use of fiber reinforcing members aligned so that the load-carrying ability of the structure can be primarily orientated in the direction of expected stress (oriented at other than right angles).

2. Orthotropic construction methods relate to means of stiffening plates, in which the structural members are at right angles to each other.

3. Sandwich construction methods relate to the use of structural members or plates fabricated and permanently affixed in layers to enhance their strength and reduce their weight.

(4) Flexible skirts, seals and fingers for surface-effect vehicles;

(5) Systems for automatically controlling the stability of hydrofoil vessels or surface-effect vehicles;

(6) Power transmission shaft systems that incorporate composite material components, for hydrofoil vessels and surface-effect vehicles;

(7) Lightweight, high capacity (K factor greater than 150) gearing (planetary, cross-connect and multiple input/output gears and bearings) for hydrofoil vessels and surface-effect vehicles;

Technical Note.—For the K factor, see AGMA tables of K factor values (based on tooth profile, pinion and gear materials and surface endurance limits).

(8) Water-cooled electrical propulsion machinery (motor and generator), including sectored-disc and concentric-drum rotors for DC homopolar machines for hydrofoil vessels and surface-effect vehicles;

(9) Superconducting electrical propulsion machinery for hydrofoil vessels and surface-effect vehicles;

(10) Lift fans for surface-effect vehicles, rated at greater than 400 hp;

(11) Waterjet propulsor systems rated at 3,000 input hp or greater for hydrofoil vessels and surface-effect vehicles;

(12) Moisture and particulate separator systems capable of removing 99.9% of particles larger than two micrometers in diameter with a maximum pressure loss of 1.6 kPa (16 millibar), for gas turbine engine air inlets for hydrofoil vessels and surface-effect vehicles;

(e) Water-screw propellers, as follows:

(1) Supercavitating propellers rated at greater than 10,000 hp;

(2) Contrarotating propellers rated at greater than 20,000 hp;

(3) Controllable-pitch propellers rated at greater than 20,000 hp;

(4) Ventilated, base-ventilated and super-ventilated propellers.

(For marine gas turbine engines, see also ECCN 1431A.)

71. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 1418A to read "$2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations."

72. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1425A is amended by revising the heading, adding a Note, revising the title of the Definitive List of Characteristics . . . Controlled by ECCN 1425A, revising the semicolon at the end of paragraph (c)(2) to a period, and removing paragraph (d), as follows:

1425A Floating docks, as follows.

Note.—Software for this ECCN is covered in Supp. No. 3 to Part 379.

* * * * *

Definitive List of Characteristics Describing Floating Docks and Technology Therefor Controlled by ECCN 1425A

* * * * *

73. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4, (Transportation Equipment), ECCN 1431A is amended by revising the heading, the *GLV $ Value Limit*, and adding new Notes, as follows:

1431A Marine gas turbine engines (marine propulsion or shipboard power generation engines), whether originally designed as such or adapted for such use, and specially designed components therefor.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

Note 1.—*Reserved.*

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for the shipment of engines in appropriate numbers and their specially designed components for non-marine propulsion or non-shipboard civil end-use.

(Advisory) Note 3.—Applications to export core-section modules and specially designed components covered by ECCN 1460A shall be reviewed under the provisions of that ECCN, even if the gas turbine aero-engine has been modified for use in marine propulsion or shipboard power generation.

Note 4.—*Reserved.*

Note 5.—*Reserved.*

74. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 4431B to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

75. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the *GLV $ Value Limit* of ECCN 5431D to read "$1,000 for Country Group Q. General License *GLV* is not applicable to other destinations; however, another general license may apply."

76. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by revising the second sentence of the *Technical Data* paragraph to read "No technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories or components thereof (except that listed in § 379.4 (d) may be exported under General License *GTDR*, and exports of these technical data to all destinations, *except Canada*, require a validated export license."; by revising in paragraph "2" under *Special Foreign Policy Controls* the phrase "in paragraph (b)" to read "in paragraph (a)"; by revising in paragraph "3" under *Special Foreign Policy Controls* the phrase "in paragraph (c)" to read "in paragraphs (b) and (c)"; and by revising the heading, adding a Note, and revising the *GLV $ Value Limit* and the List of Nonmilitary Equipment Controlled by ECCN 1460A to read as follows:

1460A Aircraft and helicopters, aero-engines and aircraft and helicopter equipment.

Note.—For "software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Nonmilitary Equipment Controlled by ECCN 1460A

(a) Aircraft and helicopters, *except* those that do not contain equipment listed in Supp. No. 2 to Part 370 or in ECCNs 1485A, 1501A or any ECCN beginning with the numeral 2 and are of types in bona fide normal civil use (Specify make and model of aircraft and type of avionic equipment installed on aircraft.); and

(b) "Helicopter power transfer systems" *except* those that have been in civil use in bona fide "civil helicopters" for more than eight years (Helicopter power transfer systems in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ.);

(c) Gas turbine engines and auxiliary power units (APUs) for use in aircraft or helicopters, *except:*

(1) Jet, turboprop and turboshaft aircraft engines in civil use in bona fide "civil aircraft" or "civil helicopters" for more than eight years (Jet, turboprop and turboshaft aircraft engines in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ.);

(2) Gas turbine powered aircraft APUs in civil use in bona fide "civil aircraft" or "civil helicopters" for more than eight years (Gas turbine powered aircraft APU's in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ.);

(d) Specially designed components for gas turbine engines, APUs and "helicopter power transfer systems", controlled by sub-paragraphs (b) and (c) above, as follows:

(1) Embodying technologies listed under Notes 8 or 9;

(2) Engine hot-section components;

(3) Engine control system components;

(4) Gas turbine engine or APU rotor system components (including bearings);

(Aero-engines, APUs or "helicopter power transfer systems" that have any special feature designed for a military application are controlled by the Department of State (See Supp. No. 2 to Part 370). For industrial gas turbine engines components, see ECCN 1372A; for marine gas turbine engines, see ECCN 1431A.)

Note 1.—*Reserved.*

Note 2.—The period of bona fide civil use referred to in sub-paragraphs (b) and (c) above begins with the date that the particular engine or "helicopter power transfer system" (model and specifications) or its most recent modification was certified as airworthy for commerical service by the Federal Aviation Administration (FAA). However, it is recognized that many modifications that may require recertification may pertain to minor safety or operational changes that do not significantly enhance the performance of a particular gas turbine aero-engine or improve its reliability.

(a) A gas turbine aero-engine recertified as the result of incorporating any technology listed in Note 4 will be treated as a newly certified engine. Recertification that does not result from incorporation of such technology, or modifications that do not require

recertification by the FAA, will not affect the current period of civil use of the engine;

(b) Modification of a gas turbine APU by incorporation of any technology listed in Note 4 will cause it to be treated as a new APU. Other modifications will not affect the current period of civil use of the APU;

(c) Modification of a "helicopter power transfer system" by incorporation of any technology listed in Note 5 will restart the control period for the "helicopter power transfer system" as though it were newly certified in a helicopter. Other modifications will not affect the current period of civil use of the "helicopter power transfer system".

Note 3.—"Helicopter power transfer systems" referred to in sub-paragraph (b) above are defined as all those components that transfer power from the engine to the main and tail rotor blade(s).

Note 4.—*Reserved.*

Note 5.—*Reserved.*

(Advisory) Note 6.—Licenses are likely to be approved for export to satifactory end-users for civil end-uses in Country Groups QWY of the following equipment:

(a) "Helicopter power transfer systems" controlled by sub-paragraph (b) above for incorporation in bona fide "civil helicopters";

(b) Gas turbine engines or APUs controlled by sub-paragraph (c) above for incorporation in bona fide "civil aircraft" or "civil helicopters";

(c) Specially designed components controlled by sub-paragraph (d) above, for use in engines, APUs or "helicopter power transfer systems", as follows:

(1) Produced for use in bona fide "civil aircraft" or "civil helicopters" in appropriate quantities; *or*

(2) To support the assembly of that number of "helicopter power transfer systems", engines or APUs required for installation in, and as standard spares for, bona fide "civil aircraft" or "civil helicopters" in current production; *or*

(3) To support current civil fleet operations.

Note 7.—*Reserved.*

Note 8.—Listing of aero-engine/APU design, manufacturing, construction and fabrication technologies affecting the period of bona fide civil use referred to in Note 1, and affecting components identified in (d)(1) above.

I. Materials and manufacturing procedures

Ceramic, ceramic composite or composite hot-section components (combustor, turbine blades and vanes, seals, discs, flow path).

Turbine blades on basis of directional solidification or monocrystal technology.

- directional solidification
- monocrystal technology

Turbine blades consisting of several parts connected by diffusion bonding.

Fiber technology in frames or in highly stressed discs, casings, blades and vanes.

Protective coating technology for air-cooled turbine blades and vanes with internal and external cooling passages and their related flow paths capable of operating in high gas temperature environments (in excess of 1400 °C).

Irrespective of the actual gas temperature environment in which they will be used, involving applications of metallic or ceramic materials by vapor, pack, plasma, electron beam, sputtering or sintering processes.

Metallic coatings.

- plasma sprayed
- other

Ceramic coatings.

Application of powder metallurgy for fan, compressor and turbine blades or vanes; discs, wheels, reduction gears, engine main shafts and frames.

- discs
- fans, compressor and turbine blades or vanes, wheels, reduction gears, engine main shafts and frames

Cooled components on basis of electrostream or laser drilling methods.

- electrostream drilling
- laser drilling

Electron beam drilling for small holes in turbine blades and vanes (ECCN 1080A(c) sets out the parameters for small holes).

Titanium or super alloy casting on basis of centrifugal techniques.

Ceramic core casting technology for casting holes in turbine blades and vanes.

II. Construction methods

Adjustable flow path geometry and associated control systems for:

- fans
- gas generator turbine(s)
- fan/power turbine(s)
- propelling nozzles

(Adjustable flow path geometry and associated control systems do not include: inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.)

Full authority or hybrid digital electronic control and respective sensor equipment.

High temperature (capable of utilizing gases heated above 1100 °C heat exchangers for preheating compressor exit air.

Combustors with combustion in several stages.

Maintenance of compressor or turbine tip clearance through methods employing active compensating casing technology:

- compressor alone
- turbine alone
- compressor and turbine

Ceramic bearings.

Nozzles with thrust vectoring (not including reverse thrust).

Note 9.—Listing of helicopter power transfer system design, manufacturing, construction and fabrication technologies affecting the periods of bona fide civil use referred to in Note 1, and affecting components identified in (d)(1) above.

I. Materials and manufacturing procedures

A. Rotor heads, containing:

- Elastomeric bearings (oscillating bearings using flexible synthetic material to allow the relative movement of the supported parts)
- Load carrying structures applying fiber technology
- Hot-isostatically pressed materials

B. Gears boxes, containing:

- Novikoff-type gears
- Gears or gear support structures based on materials applying directional solidification or monocrystal technology
- High contact-ratio double-helical (arrow shaped) gears
- Fiber technology
- Hot-isostatically pressed components
- Casings without shims and the interchangeable bevel gears associated with them
- Gear tooth surfaces hardened by vacuum carburizing or ion nitriding

C. Drive shaft systems containing super critical drive shafts.

II. Construction methods

A. Components fabricated by diffusing bonding.

B. High-survivability loss-of-lubrication technology for high-speed bearings (DN equal to or greater than 2.4 million where D is expressed in millimeters and N in rpm).

77. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the heading of ECCN 4460B to read "Nonmilitary aircraft and helicopter equipment and aero-engines."; by removing the phrase "aircraft, helicopters and" from the *Unit* paragraph; by revising the *GLV $ Value Limit* to read "$2,000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations."; by revising the second sentence under the *Technical Data* heading to read "No technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof (except that listed in section 379.4(d) may be exported under General License *GTDR*, and exports of these technical data to all destinations, *except Canada*, require a validated export license."; by removing paragraph (a)(2) from the List of Nonmilitary Equipment Controlled by ECCN 4460B and redesignating paragraph (a)(3) as (a)(2); and by

removing the colon at the end of paragraph (b) introductory text, removing paragraph (b)(1), removing the designation "(2)" from paragraph (b)(2), and removing the phrase "10,000 pounds or less empty weight," from paragraph (b)(2).

78a. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by revising the second sentence under the *Technical Data* heading of ECCN 5460F to read "No technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof (except that listed in section 379.4(d)) may be exported under General License *GTDR*, and exports of these technical data to all destinations, *except Canada*, require a validated export license."

78b. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) ECCN 6460F is amended by inserting the phrase "(except that listed in § 379.4(d))" immediately before the phrase "may be exported under General License GTDR" under the heading of *Technical Data*, and by revising the phrase "ECCNs 1485A or 1501A" to read "ECCNs 1460A, 2460A or 5460F" in the undesignated paragraph following paragraph (b).

79. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1485A is amended by revising the heading and adding a Note, revising the *GLV $ Value Limit*, the Advisory Note, and paragraphs (b), (e), (h), and (i) of the List of Compasses . . . Controlled by ECCN 1485A, and adding a paragraph (j) to the List, as follows:

1485A Compasses, gyroscopes (gyros), accelerometers and inertial equipment and specially designed components therefor. (See also ECCN 1385A.)

Note.—For "software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Compasses . . . Controlled by ECCN 1485A

(b) Integrated flight instrument systems that include gyro-stabilizers or automatic pilots for aircraft, *except* those systems integrated solely for VOR/ILS navigation and approaches;

Note.—An integrated flight instrument system is a primary instrument display system of attitude and azimuth with facilities for giving maneuver guidance information to the pilot and often integrated with an autopilot to the extent of embodying a common unit for setting up the required demands.

* * * * *

(e) Automatic pilots used for purposes other than aircraft control *except* marine types for surface vessels;

* * * * *

(h) Continuous output accelerometers that utilize "servo" or "force balance" techniques and gyros, both specified to function at acceleration levels greater than 100 g;

(i) Inertial or other equipment using accelerometers controlled by sub-paragraphs (f) or (h) above or gyros controlled by sub-paragraphs (g) and (h) above, and systems incorporating such equipment;

(j) Specially designed test, calibration and alignment equipment for the above.

(Advisory) Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment of the following description:

(a) Types and series controlled by sub-paragraph (b), provided the equipment has been in normal civil use for more than two years, is standard equipment of aircraft excluded from control under ECCN 1460A and is, or is to be, installed in civil aircraft;

(b) Types and series covered by sub-paragraph (d) above, provided the equipment has been in normal civil use for more than two years and is intended for a clearly civil application;

(c) Specially designed components covered by this ECCN and equipment covered by sub-paragraph (j), provided they are not controlled by sub-paragraphs (f), (g) or (h) and are intended for use with exports meeting the conditions of sub-paragraphs (a) and (b) of this Note.

80. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 6, "Metals, Minerals and their Manufactures" following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

81. In Supplement No 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 4601B is revised to read: "$2,000 for Country Groups T & V; $1,000 for Country Group Q; $0 for all other destinations."

82. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), a new ECCN 1603A is added (in numerical order, disregarding the first digit), reading as follows:

1603A Seamless tube and pipe having an outside diameter or 60 mm (2.36 inches) or greater, and seamless fittings therefor, made of nickel-base superalloys that contain the following major alloying elements: 19.0 weight % or more chromium, 7.4% or more molybdenum, a maximum of 6.0% iron, and 3.0% or more niobium (columbium) or niobium and tantalum combined.

Controls for ECCN 1603A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason For Control: National security.

Special Licenses Available: See Part 373.

(Advisory) Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of tube and pipe controlled for export by this ECCN.

83. In Supplement No. 1 to § 339.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 2603A is revised to read: "$1,000 for Australia, Japan, New Zealand, and members of NATO; $0 for all other destinations."

84. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 3604A is revised to read: "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

85. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufacturers), the *GLV $ Value Limit* for ECCN 3605A is revised to read: "$200 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

86. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 3607A is revised to read: "$200 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

87. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 3608A is revised to read "$500 for Country Groups T & V, except $0 for

the People's Republic of China; $0 for all other destinations."

88. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 2616A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China: $0 for all other destinations."

89. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), ECCN 1631A is amended by revising the *GLV $ Value Limit* and List of Magnetic Metals Controlled by ECCN 1631A, as follows:

1631A Magnetic metals of all types and of whatever form.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China: $0 for all other destinations.

* * * * *

List of Magnetic Metals Controlled by ECCN 1631A

(a) Initial permeability: 0.15 henry/m (120,000 gauss/oersteds) or more calculated at induction O and magnetic field strength O or the equivalent:

(b) Remanence: 98.5% or over of maximum magnetic flux for materials having magnetic permeability:

(c) A composition capable of an energy product of:

(1) 95.500 joules/m^3 (12×10^6 gauss-oersteds) or greater; or

(2) 55,700 joules/m^3 (7×10^6 gauss-oersteds) or greater and having a coercive force of 159,155 amperes/m (2,000 oersteds) or greater:

(d) Grain-orientated iron alloy sheets or strips of a thichness of 0.1 mm (0.004 inch) or less:

(e) Magnetostrictive alloys as follows:

(1) Saturation magnetostriction greater than 5×10^{-4}; or

(2) Magnetomechanical coupling factor (k) greater than 0.8.

90. In Supplement No. 1 to § 399.1 (the Commodity Control List). Commodity Group 6 (Metals, Minerals, and their Manufactures), ECCN 1635A is amended by revising the *GLV $ Value Limit* and adding a List of Items Controlled by ECCN 1635A, as follows:

1635A Iron and steels, alloyed, containing 10 percent or more molybdenum (but more than 5 percent molybdenum in any alloys containing more than 14 percent chromium), *except products obtained by casting and having a carbon content of more than 1.5 percent.*

* * * * *

GLV $ Value Limit $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Items Controlled by ECCN 1635A

(a) *Reserved.*

(b) Steel alloys in crude or semi-fabricated form, containing a combination of the following major alloy elements in the amounts listed:

(1) 4.5 to 5.95% nickel by weight:

(2) 0.3 to 1.0% chromium:

(3) 0.2 to 0.75% molybdenum:

(4) 0.04 to 0.15% vanadium.

(5) Less than 0.19% carbon.

(See also ECCN 1672.)

91. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and their Manufactures), the *GLV $ Value Limit* for ECCN 4635B is revised to read "$1,000 for Country Groups T & V; $0 for all other destinations."

92. In Supplement No. 1 to § 339.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), ECCN 1648A is amended by revising the *GLV $ Value Limit* and adding a reference at the end of paragraph (c) of the List of Characteristics . . . Controlled by ECCN 1648A, as follows:

1648A Cobalt-based alloys (e.i., containing a higher percentage by weight of cobalt than of any other element).

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Characteristics of Cobalt-Based Alloys Controlled by ECCN 1648A

* * * * *

(c) * * *

(See also ECCN 1672A.)

93. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 1649A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

94. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 1658A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

95. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), ECCN 1661A is amended by revising the *GLV $ Value Limit* and adding a reference at the end of paragraph (c) of the List of Characteristics . . . Controlled by ECCN 1661A, as follows:

1661A Nickel-based alloys (i.e., containing a higher percentage by weight of nickel than of any other element).

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Characteristics of Nickel-Based Alloys Controlled by ECCN 1661A

* * * * *

(c) * * *

(See also ECCN 1672A.)

96. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* of ECCN 1670A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

97. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), ECCN 1671A is amended by revising the *GLV $ Value Limit* and List of Nominal Compositions . . . Controlled by ECCN 1671A, as follows:

1671A Titanium-based alloys in crude and semi-fabricated form, or as scrap.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Nominal Compositions of Titanium-Based Alloys . . . Controlled by ECCN 1621A

* * * * *

Titanium-based alloys in crude and semi-fabricated form, or as scrap, having a nominal composition of 6% aluminum, 2% tin, 4% zirconium, 6% molybdenum and the balance titanium.

(See also ECCN 1672A.)

98. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), a new ECCN 1672A is added (in numerical order, disregarding the first digit), reading as follows:

1672A Aluminides of titanium containing 12 weight % or more aluminum, and aluminides of nickel, cobalt and iron containing 10 weight % or more aluminum, in crude or semi-fabricated forms, and scrap thereof.

(See also ECCNs 1635A, 1648A, 1661A and 1671A.)

Controls for ECCN 1672A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: None.

99. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), a new ECCN 1674A is added (in numerical order, disregarding the first digit), reading as follows:

1674A Vanadium of 99.7% or higher purity (including scrap) and alloys containing vanadium of 99.7% or higher purity as an alloying agent (including scrap).

Controls for ECCN 1674A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM

Reason for Control: National security.

Special Licenses Available: None.

100. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), the *GLV $ Value Limit* for ECCN 4674B is revised to read "$1,000 for Country Groups T&V; $0 for all other destinations."

101. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and their Manufactures), a new ECCN 1675A is added (in numerical order, disregarding the first digit), reading as follows:

1675A Superconductive materials of all types and processed conductors containing at least one superconducting constituent, designed for operation at temperatures below 103K (−170 °C, −274 °F), except processed conductors possessing all of the characteristics listed in this entry.

Controls for ECCN 1675A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of Items Controlled by ECCN 1675A

Superconductive materials of all types and processed conductors containing at least one superconducting constituent, designed for operation at temperatures below 103K (−170 °C, −274 °F), *except processed conductors possessing all of the characteristics:*

(a) The superconducting constituent, when evaluated in sample length of less than one meter, does not remain in the superconducting state when exposed to an applied magnetic field in excess of 12 tesla (120 kilogauss) at a temperature of 4.2 K (−268 °C, −451.6 °F);

(b) The superconducting constituent of filament has a. cross-section area greater than 3.14×10^{-4} mm² (20-micrometer diameter for circular filaments);

(c) The superconducting filament(s) are embedded in a copper or copper-based mixture matrix; *and*

(d) The conductor is either non-coated or insulated with varnish, glass fiber, polyamide or polyimide.

Technical Note.—Superconductive materials are metals, alloys and compounds that lose electrical resistance near absolute zero of temperature, *i.e.*, they have infinite electrical conductivity and can carry very large electrical currents without Joule heating. The super conducting state for each material is individually characterized by a critical temperature, a critical magnetic field (which is a function of temperature) and a critical current density (which is a function of both magnetic field and temperature). Materials remain in the superconducting state provided temperature, magnetic field and current density are all less than the critical values.

(Advisory) Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of individual shipments of niobium-titanium wire covered by this ECCN having a filament cross-sectional area of 9.5×10^{-5} mm² (or 11-micrometer diameter) or greater in a copper or copper-based mixture matrix, in quantities not exceeding 10 kg.

102. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 7, "Chemicals, Metalloids, Petroleum Products and Related Materials" following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

103. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1701A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

104. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4707B is amended by revising the phrase "$100 for chemicals in subentry (a)" to read "$200 for chemicals in subentry (a)".

105. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 2708A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

106. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 3711A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

107. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1715A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

108. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4720B is revised to read

"$200 for Country Groups Q, T & V; $0 for all other destinations."

109. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4721B is revised to read "$2,000 for Country Groups T & V; $0 for all other destinations."

110. In Supplement No. 1 to §399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1733A is revised to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations and $0 for items in sub-paragraphs (d) (1), (2) and (3) to all destinations except Canada."

111. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), is amended by adding a new ECCN 1749A (in numerical order, disregarding the first digit), reading as follows:

1749A Polycarbonate sheet of 1.5 mm (0.060 inch) to 25.4 mm (1 inch) thickness, having no major defects and having all of the optical characteristics listed below.

Controls for ECCN 1749A

Unit: Report in "sq. ft."
Validated License Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: CM
Reason for Control: National security.
Special Licenses Available: None.

List of Polycarbonate Sheet Controlled by ECCN 1749A

Polycarbonate sheet of 1.5 mm (0.060 inch) to 25.4 mm (1 inch) thickness, having no major defects and having all of the following optical characteristics:

(a) Less than 2% haze as determined by method ASTM D1003;

(b) An angular deviation, as determined by method ASTM D637, as follows:

(1) Not more than 12 minutes at any location more than 25.4 mm (1 inch) from the edge of the sheet for sheet thickness of 1.5 mm (0.060 inch) to 9.5 mm (0.375 inch); or

(2) Not more than 20 minutes at any location more than 25.4 mm (1 inch) from the edge of the sheet for sheet thickness over 9 5 mm (0.375 inch) to 25.4 mm (1 inch);

(c) Total number of minor optical defects (excluding those within 25.4 mm (1 inch) of the sheet edge) as follows:

(1) Not exceeding 1 per 0.368 m ^{2} (4 ft ^{2}) for sheet that is 12.7 mm (0.5 inch) or less in thickness; or

(2) Not exceeding 2 per 0.092 m ^{2} (1 ft ^{2}) for sheet over 12.7 mm (0.5 inch) in thickness.

Technical Note.—Major defects are defined as variations in the material that cause angular deviations either side of the undeviated position in excess of those listed in sub-paragraph (b) above. Minor defects include any embedded particles, bubbles, scratches or internal inhomogeneity that reduce visibility through the plastic, and those localized imperfections that cause a variation in angular deviation of more than 5 minutes within a distance of not more than 508 mm (20 inches) on the screen when tested by method ASTM D637. (It is not intended that the entire sheet be quantitatively surveyed for such variation in deviation, but that localized imperfections suspected of being detrimental be evaluated by means of this test.)

(For manufactures thereof, see item x on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370 of the Export Administration Regulations.)

112. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4754B is revised to read "$1,000 for Country Groups Q, T & V; $0 for all other destinations."

113. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4755B is revised to read "$1,000 for Country Groups T & V; $200 for Country Group Q; $0 for all other destinations."

114. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1760A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

115. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1763A is revised to read "$500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

116. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 1781A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

117. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4782B is revised to read "$2,000 for Country Groups Q, T & V, and Canada; $0 for all other destinations."

118. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 4783B is revised to read "$2,000 for Country Group Q, T & V, and Canada; $0 for all other destinations."

119. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), the *GLV $ Value Limit* for ECCN 5799D is revised to read "$200 for Country Group Q. General License *GLV* is not applicable for other destinations; however, another general license may apply."

120. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 8, "Rubber and Rubber Products", following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

121. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), the *GLV $ Value Limit* for ECCN 1801A is revised to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

122. In Supplement No. 1 to § 399.1 (the Commodity Control List), a Note is added under the title of Commodity Group 9, "Miscellaneous", following the existing Note, reading as follows:

Note.—Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 379 of the Export Administration Regulations; see § 379.4. For computer-related terms, see ECCN 1565A.

Dated: August 28, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-21328, Filed 9-5-85; 8:45 am]

BILLING CODE 3510-DT-M

---

15 CFR Parts 379 and 399

[Docket No. 50838-5138]

Revisions to the Commodity Control List Based on COCOM Review; Electronics and Precision Instruments

AGENCY: Office of Export Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises several List entries in the categories of Electronics and Precision Instruments.

These revisions resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability from abroad of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Assistance Division, Office of Export Administration, Telephone: (202) 377-3856. For questions of a technical nature regarding electronics and precision instruments, call Randy Williams, Scientific and Electronic Equipment Division, Office of Export Administration, Telephone: (202) 377-3109.

SUPPLEMENTARY INFORMATION:

Regulatory Changes

Equipment controlled for export by the Department of Commerce that is affected by the latest COCOM agreement includes the following:

Navigation, direction-finding, radar and airborne communication equipment;

Single- and multi-channel communication transmission equipment;

Radio relay communication equipment;

Lasers and laser systems;

Cable and optional fibers;

Electronic measuring, calibrating counting, testing, and/or time interval measuring equipment;

Frequency synthesizers;

Electronic vacuum tubes (valves);

Electronic component assemblies, sub-assemblies, printed circuit boards, and substrates and microcircuits; and

Recording or reproducing equipment.

Changes to the export licensing requirements for items on the Commodity Control List include:

(1) Revision of the validated license controls on certain types of navigation, direction finding, radar and airborne communication equipment (ECCN 1501A);

(2) New validation license controls over certain types of receivers incorporating digital signal processing (ECCN 1516A);

(3) New validated license controls over certain types of statistical multiplexers (ECCN 1519A);

(4) Clarification of export controls on certain radio relay communications equipment by setting out the characteristics of certain equipment *not* subject to validated license controls (ECCN 1520A);

(5) Revision of the validated license controls on certain electron tubes and specially designed components therefor (ECCN 1555A);

(6) Clarification of export controls on certain hydrogen/hydrogen isotope thyratrons by setting out characteristics of those thyratrons subject to validated license controls (ECCN 1559A);

(7) New validated license controls on certain types of ceramic microcircuit packages (ECCN 1564A);

(8) Addition of validated license controls on certain magnetometer test facilities and magnetic compensation systems (ECCN 1571A);

(9) Lifting of validated license controls on certain types of floppy diskettes (ECCN 1572A); and

(10) Establishment of a new CCL entry controlling certain superconductive electromagnets and solenoids (ECCN 1573A) and an entry controlling certain other cryogenic electronic devices, circuits and systems (ECCN 1574A).

Saving Clause

Shipments of items removed from general license authorization as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 25, 1985, may be exported under the general license provisions up to and including October 9, 1985. Any such items not actually exported before midnight October 9, 1985 require a validated export license.

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves a foreign and military affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Applicants for the validated export license required by this rule will use Form ITA-622P. The collection of this information has been approved by the Office of Management and Budget under control number 0625-0001.

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Therefore, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 379 and 399

Exports, Science and technology.

Accordingly, Parts 379 and 399 of the Export Administration Regulations are amended as follows:

PART 379—[AMENDED]

1. The authority citation for 15 CFR Part 379 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Supplement No. 3 to Part 379, "Computer Software", is amended by

revising the phrase "sub-paragraph (a)(2), (a)(3), (b)(5)(v), or (b)(5)(vi)" to read "sub-paragraph (a)(2) or (a)(3)" in paragraph (b)(1)(i)(B); by revising the phrase "Advisory Note 5" to read "Advisory Note 3" in paragraph (a)(3)(i) of the Advisory Note 10; and by adding a paragraph (c) under "List of Software Subject to this Supplement to Part 379", as follows:

Supplement No. 3—Computer Software

* * * * *

(a) * * *

(b) * * *

(c) "Specially designed software" for equipment, as follows:

(1) Navigation and direction finding equipment controlled under ECCN 1501A(b);

(2) Radar equipment controlled under ECCN 1501A(c);

(3) Equipment controlled under ECCN 1502A;

(4) Equipment controlled under ECCN 1510A;

(5) Equipment controlled under ECCN 1516A;

(6) Equipment controlled under ECCN 1519A;

(7) Equipment controlled under ECCN 1520A;

(8) Equipment controlled under ECCN 1567A;

Advisory Notes.—* * *

* * * * *

PART 399—[AMENDED]

3. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 98–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

Supplement No. 1 [Amended]

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended by adding a NOTE under the heading and revising the *GLV $ Value Limit* and the List of Navigation, Direction Finding . . . Equipment Controlled by ECCN 1501A, to read as follows:

1501A Navigation, direction finding, radar and airborne communication equipment

Note.—See also ECCNs 1485A (b) and (i), 1573A and 1574A.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China and Afghanistan: $0 for all other destinations.

* * * * *

List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A

(a) Airborne communication equipment having *any* of the following characteristics, and specially designed components therefor:

(1) Designed to operate at frequencies greater than 156 MHz;

(2) Incorporating facilities for:

(i) The rapid selection of more than 200 channels per equipment; or

(ii) Equipment using frequency synthesis techniques (see also ECCN 1531), *except equipment operating in the frequency range of 108 to 136 MHz with 720 channels or fewer at not less than 25 KHz spacing, that has been in normal civil use for at least one year;*

(3) Rated for continuous operation over a range of ambient temperatures extending from below −55°C to above +55 °C; or

(4) Designed for modulating methods employing any form of digital modulation using time and frequency redundancy such as "Quantized Frequency Modulation" (QFM);

(b) Navigation and direction finding equipment, as follows, specially designed components therefor, and specialized testing, calibrating and training/simulating equipment therefor:

(1) Airborne navigation and direction finding equipment having the following characteristics:

(i) Designed to make ue of "Doppler" frequency phenomena;

(ii) Utilizing the constant velocity and/or rectilinear propagation characteristics of electromagnetic waves having frequency less than $4x10^{14}$ Hz (wavelength 0.75 micron);

(iii) Radio altimeters having the following characteristics:

(*a*) Pulse modulated;

(*b*) Frequency modulated having a displayed electrical output accuracy better than ±3 feet (±0.914 m) over the range between 0 and 100 feet (30.4 m) or better than ±3 percent above 100 feet (30.4 m); or

(*c*) Frequency modulated that have been in normal civil use for less than one year:

Technical Note.—The accuracy is related to that provided by the electrical output circuits of the altimeter at any altitude. The word "accuracy" also refers to the equipment's accuracy over time. This accuracy over time is defined for the instrument itself without reference either to a calibrated value or to a designated electrical value.

(iv) Direction finding equipment operating at frequencies greater than 5 MHz;

(v) Rated for continuous operation over a range of ambient temperatures extending from below −55 °C to above +55 °C;

Notes.—Reserved.

2. Direction finding equipment specially designed for search and rescue purposes and operating at a frequency of 121.5 MHz or 243 MHz is not covered by this sub-paragraph (b). This exclusion also applies to personal locator beacons operating in this form that may also have an additional channel selected for voice mode only.

(2) Ground and marine equipment for use with airborne navigation equipment utilizing the constant velocity and/or the rectilinear propagation characteristics of electromagnetic waves having frequency less than $4x10^{14}$ Hz (wavelength 0.75 micron);

(3) Ground and marine direction finding equipment operating at frequencies greater than 30 MHz; and

(4) Timing receivers whose only function is automatically providing time derived from satellite signals to within 1 millisecond of Universal Coordinate Time (UCT) or better;

(5) Ground or marine navigation and geodetic positioning systems designed for use with satellite-provided timing, positioning or navigation information;

(c) Radar equipment as follows, and specially designed components, specialized testing, calibrating and training/simulating equipment: (For lidar equipment, see ECCN 1522A.)

(1) Airborne radar equipment; or

(2) Ground and marine radar equipment having one or more of the following features:

(i) Operating at a frequency not in normal civil use or at a frequency or more than 10.5 GHz;

(ii) Operating at a frequency of less than 1.5 GHz and having a peak output power from the transmitter greater than 2.5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power from the transmitter greater than 1.5 MW; or operating at a frequency within the range of 3.5 to 6 GHz and having a peak output power from the transmitter greater than 1 MW; or operating at a frequency within the range of 6 to 10.5 GHz and having a peak output power from the transmitter greater than 500 kW;

(iii) Operating at a frequency of less than 3.5 GHz and having an 80 percent or better probability of detection for a 10 sq. meter target at a free space range of 250 nautical miles; or operating at a frequency within the range of 3.5 to 10.5 GHz and having an 80 percent or better probability of detection for a 10 sq. meter target at a free space range of 100 nautical miles:

Technical Note.—Probability of detection is determined on the principle on which it is based, according to the following parameters:

(a) Radial closing velocity of the target: 2,000 feet per second (610 meters per second);

(b) Probability of false alarm: 10^{-6};

(c) Operator factor: 3 db; and

(d) Fluctuation of the target in accordance with Rayleigh distribution.

(iv) Utilizing other than pulse modulation with a constant and/or staggered pulse repetition frequency, in which the carrier frequency of the transmitter signal is not changed deliberately between groups of pulses, from pulse to pulse or within a single pulse, *except civil commercial airport radars using a carrier frequency that may change from pulse to pulse between two fixed frequencies separated in time and in frequency by constant magnitudes;*

(v) Utilizing a Doppler technique for any purpose, other than M.T.I. systems using a conventional double or triple pulse delay line cancellation technique, *except those utilized for surveillance and control radars for aerial navigation in civil airports;*

(vi) Including any digital signal processing techniques used for automatic target tracking, or having a facility for electronic tracking;

(vii) Including signal processing techniques other than those covered by paragraph (c)(2)(vi) above, that have been in normal civil use for a period of less than two years; or

(viii) In the case of ground radar, having been in commercial use for a period of less than one year.

Note.—See also paragraphs (b) and (h) of the List of ECCN 1485A and paragraphs (b) and (c) of the List of ECCN 2120A.

Note 1.—This ECCN does not control the following:

(a) Standard commercial airborne equipment listed in subparagraph (b)(1)(ii) above needed to equip civil aircraft or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, provided such equipment is in conformity with ICAO standards and assures no function exceeding those resulting from such standards, is not designed to use satellite-broadcasted navigation signals and is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz. (Standard commercial airborne equipment designed to make use of hyperbolic grids at frequencies of less than 3 MHz may be exported if coordinate conversion equipment, that has been in normal civil use for less than one year or could not be shipped under the provisions of ECCN 1565, is not included and is not separately supplied.) Normal civil equipment released by this paragraph consists of: marker beacons, ILS, VOR ("OMNI"), Omega, Loran A and B.

(b) Ground and marine equipment listed in sub-paragraph (b)(2) above, for use with airborne navigation equipment using the constant velocity or rectilinear propagation characteristics of electromagnetic waves having a frequency less than 4×10^{14} Hz (wavelength 0.75 micrometer), provided the ground equipment is for use at civil airports or for civil use in association with civil airborne equipment, and:

(1) Is in conformity with ICAO standards and assures no function exceeding those resulting from such standards;

(2) Is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz;

(c) Equipment listed in sub-paragraph (b)(5) of this ECCN restricted to use with TRANSIT satellite systems or other uncontrolled systems that is not also controlled by sub-paragraph (b)(4) of this ECCN;

(d) Secondary radar equipment controlled by sub-paragraph (c) of this ECCN specially designed for civil air traffic identification and control purposes;

(e) Equipment assemblies for civil marine automatic radar plotting aids or electronic relative motion analyzers designed to achieve the requirements published by the International Maritime Organization in accordance with the Safety of Life at Sea (SOLAS) conventions, provided the designed tracking speeds do not exceed relative values of greater than 150 knots (77.1 meters/second);

(f) Ground radar of the hand-held or automobile-mounted type used for vehicle speed monitoring by police authorities and operating in the frequency band from 10.5 to 10.55 GHz.

Note 2.—Specialized testing or calibrating equipment shipped pursuant to the various exception clauses in the ECCN shall be limited to equipment:

(a) Shipped with operational equipment for which exception clause is intended: *or*

(b) Specifically for such operational equipment that has previously been exported.

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of commercial airborne equipment needed to equip civil aircraft or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, and containing neither of the characteristics in paragraph (a)(4) of the ECCN. Applications for licenses issued by virtue of this Note should include identification of aircraft for which this equipment is intended.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of navigation equipment controlled by paragraph (b)(1)(i) of this ECCN, provided that it is to be installed in civil aircraft or helicopters and is normal standard equipment of a type installed in civil aircraft or helicopters. Applications for licenses issued by virtue of this Note should include identification of aircraft for which the equipment is intended.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of standard commercial airborne equipment listed in sub-paragraphs (b)(1) (ii) and (iii) of this ECCN needed to equip civil aircraft or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, provided that such equipment is equivalent in all characteristics and performance to standard equipment of aircraft not subject to export controls, and:

(a) (For Loran-C equipment covered by sub-paragraph (b)(1)(ii) of the ECCN), is in conformity with ICAO standards, assures no function exceeding those resulting from such standards, and is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz. Standard commercial airborne equipment designed to make use of hyperbolic grids at frequencies of less than 3 MHz may be exported if "coordinate conversion equipment" that has been in normal civil use for less than one year or could not be shipped under the provisions of ECCN 1565A, is not included and is not separately supplied: *or*

Technical Note.—By "coordinate conversion equipment" is meant electronic equipment designed to compute the position of the aircraft in one coordinate system when furnished position information in another coordinate system.

(b) For equipment covered by sub-item (b)(1)(iii) of this ECCN, are frequency-modulated radio altimeters that have been in normal civil use for a period of more than one year.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled for export by paragraph (b)(3) of this ECCN when the three following conditions are met:

(a) The equipment is to be installed at civil airports or for use on civil air routes;

(b) The equipment is designed to operate at frequencies between 30 MHz and 157 MHz, excluding single side band equipment;

(c) The equipment employs a loop system or a system employing a number of spaced vertical aerials uniformly disposed around the circumference of a circle, excluding electronically commutates types.

(Advisory) Note 5.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled for export by paragraph (c)(1) of the ECCN when it is to be installed in civil aircraft, provided that this equipment:

(a) Has been in normal commercial service for at least one year;

(b) Is specially designed for use as a commercial weather radar;

(c) Is a normal and reasonable equipment for such civil aircraft;

(d) Does not contain significant advanced technology of strategic value for other applications.

Applications for licenses issued by virtue of this Note should include indentification of aircraft for which this equipment is intended.

(Advisory) Note 6.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following:

(a) Radar equipment controlled for export only by paragraph (c)(2) (i), (ii) or (iii) of this

ECCN, provided that both of the following conditions are met:

(1) It is specially designed for the surveillance and coordination of airfield surface traffic; *and*

(2) It is to be installed at airports operating scheduled commercial flights;

(b) Radar equipment controlled for export only by paragraph (c)(2) (ii) or (iii) of this ECCN, or both, provided that all the following conditions are met:

(1) Operating at a frequency of not more than 1.5 GHz and having a peak output power from the transmitter not greater than 5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power not greater than 2.5 MW;

(2) Having an 80% or better probability of detection for a 10 sq. m. target at a free space range of 270 nautical miles;

(3) Having a pulse repetition fequency exceeding 300 pulses per second;

(4) It is to be installed for air traffic control of scheduled international commercial flights;

(c) Radar equipment controlled for export only by paragraph (c)(2) (iv) or (v) of this ECCN, provided that it is to be installed for air traffic control purposes in international airports and has been in normal civil use for a period of not less than three years;

(d) Radar equipment controlled for export by paragraph (c)(2)(vi) of this ECCN, provided that it is specially designed for marine, harbor or meteorological use, or has been in normal civil use for not less than three years;

(e) Radar equipment controlled for export only by paragraph (c)(2)(vii) of this ECCN, provided that it is specially designed for marine (or harbor) use, or radar equipment controlled for export only by paragraph (c)(2) (vii) or (viii) of this ECCN, or both, provided that it is specially designed for meteorological observation.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1502A is amended by revising the heading, the *GLV $ Value Limit*, and the list of Equipment Controlled by ECCN 1502A, as follows:

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultra-sonic waves, and specially designed components therefor.

* * * * *

GLV $ Value Limit: For police-model infrared viewers, the $ value limit is $1,000 only to Australia, Japan, New Zealand and members of NATO, and $0 to all other destinations. For items other than police-model infrared viewers, the $ value limit is $1,000 to Country Groups T & V, except $0 to the People's Republic of China; $0 to all other destinations.

* * * * *

List of Equipment Controlled by ECCN 1502A

Communciation, detection or tracking equipment of a kind using ultraviolet radiation, infrared radiation or ultrasonic waves, and specially designed components, *except—*

(a) *Ultransonic devices that operate in contact with a controlled material to be inspected, or that are used for industrial cleaning, sorting or materials handling, industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems, medical applications, emulsification, homogenization, or simple educational or entertainment devices;*

(b) *Underwater ultrasonic communciations equipment designed for operation with amplitude modulation and having a communications range of 500 m or less (Sea State 1), a carrier frequency of 40 to 60 kHz and a carrier power supplied to the transducer of 1 W or less;*

(c) *Industrial equipment employing cells not described in ECCN 1548;*

(d) *Industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems;*

(e) *Medical equipment;*

(f) *Industrial equipment used for inspection, sorting or analysis of the properties of materials;*

(g) *Simple educational or entertainment devices that employ photo cells;*

(h) *Flame detectors for industrial furnaces;*

(i) *Equipment designed for measuring radiated power or energy for laboratory, agricultural or industrial purposes using a single detector cell with no scanning of the detector and single detector cell assemblies or probes specially designed therefor, having a response time constant exceeding 1 microsecond;*

(j) *Infrared geodetic equipment, provided that equipment uses a lighting source other than a laser and is manually operated, or uses a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment; and specialized parts therefor.*

(k) *Equipment for non-contact temperature measurement for laboratory or industrial purposes utilizing a single detector cell with no scanning of the detector;*

(l) *Instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds; and*

(m) *Infrared or ultraviolet sensing devices, not otherwise controlled for export by Supp. No. 2 to Part 370 of the Export Administration Regulations, containing image intensifiers controlled for export by ECCN 1555 of the Commodity Control List.*

(For communications equipment employing fiber optics, see ECCN 1519A.)

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1505A is amended by revising the *GLV $ Value Limit* to read: "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by revising the heading and adding a Note, revising the *GLV $ Value Limit*, and revising the introductory paragraph and paragraphs (a) and (b) of the List of Systems and Equipment Controlled by ECCN 1510A, redesignating the Advisory Notes 1 and 2 as "(Advisory) Notes 6 and 7", and adding Notes 1–5 as follows:

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment (including but not limited to geophones (except moving coil or moving magnet electro-magnetic geophones), hydrophones, transducers, towed hydrophone arrays and beamformers) therefor, except those systems or equipment listed below.

Note.—For "specially designed software". See Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China: $0 for all other destinations.

* * * * *

List of Systems and Equipment Controlled by ECCN 1510A

Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment (including but not limited to geophones (except moving coil or moving magnet electro-magnetic geophones), hydrophones, transducers, towed hydrophone arrays and beamformers) therefor, *except*:

(a) *Marine systems or equipment, of the following description:*

(1) *Active (transmitting, or transmitting and receiving) systems or equipment, including but not limited to depth sounders and fish-finders and*

their associated beamformers with the following characteristics:

(i) *Depth sounders used solely for measuring the depth of water or the distance of submerged and/or buried objects or fish and/or whales vertically below the apparatus;*

(ii) *Horizontally operated fish, whale or object detection and/or location systems, having all of the following characteristics;*

(A) *Transmitting frequency of 15 kHz or greater;*

(B) *Sound pressure level less than 250 dB (reference 1 micropascal at 1 meter) for equipment with operating frequency between 15 and 30 kHz, with no decibel limitation for equipment operating at frequencies of 30 kHz or higher;*

(C) *Transmission capability limited to* ±10 percent of the design center frequency;

(D) *Not designed to withstand pressure during normal operation at depths greater than 1,000 meters;*

(E) *Displaying a range of 5,000 meters or less;*

(iii) *Electronic noise sources for vertically directional use only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) noise sources*

(2) *Passive (receiving whether or not related in normal application to separate active equipment) acoustic hydrophones and/or transducers having all of the following characteristics:*

(i) *Incorporating sensitive elements made of piezoelectric ceramics or crystal, and with a sensitivity no greater than −192 dB (reference 1 volt per micropascal):*

(ii) *Not designed for operation at depths greater than 100 meters:*

(iii) *Independently mounted or configured and not reasonably capable of assembly by the user into a towed hydrophone array.*

(b) *Terrestrial systems or equipment having both of the following characteristics:*

(1) *Not reasonably capable of conversion by the user to underwater or marine applications controlled for export by this ECCN:*

(2) *Not employing geophones or other transducers controlled for export by this ECCN.*

Note 1.—Signal and data-processing parameters for related equipment are defined in ECCNs 1529A and 1565A, and parameters for related cable in ECCN 1528A.

Note 2.—Magnetic detection and locating apparatus is covered by ECCN 1571A.

Note 3.—*Reserved.*

Note 4.—*Reserved.*

Note 5.—Passive hydrophone sensitivities cited in this ECCN are based on sensitivity being defined as 20 times the logarithm to the base 10 of the ratio of rms output voltage to a 1 volt reference, when the hydrophone sensor is placed in a plane wave acoustic field having an rms pressure of 1 micropascal. For example, a hydrophone of −160 dB (reference 1 volt per micro-pascal) would yield an output voltage of 10^{-8} volts in such a field, while one of −180 db sensitivity would yield only 10^{-9} volts output.

(Advisory) Note 6.—* * *

(Advisory) Note 7.—* * *

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5510D is amended by revising the *GLV $ Value Limit* to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1514A is amended by revising the heading and the *GLV $ Value Limit* to read as follows:

1514A Pulse modulators capable of providing electric impulses of peak power exceeding 20 MW or of a duration of less than 0.1 microsecond, or with a duty cycle in excess of 0.005; and pulse-transformer, pulse-forming equipment or delay lines being specially designed components of such modulators.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1516A is amended by revising the heading, *GLV $ Value Limit,* and the List of Receivers . . . Controlled by ECCN 1516A, as follows:

1516A Receivers, and specially designed components and accessories therefor. (For instruments using time compression of the input signal or FFT techniques associated with receivers, see ECCN 1529A(b)(4).)

* * * * *

GLV $ Value Limit: $1,000 for Australia, Japan, New Zealand, and members of NATO; $0 for all other destinations.

* * * * *

List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A

(a) Panoramic radio receivers that search or scan automatically a part of the electromagetic spectrum and indicate or identify the received signals; *except ancillary equipment for commercial receivers with which the frequency searched does not exceed a bandwidth of 20 MHz or does not incorporate a raster or storage display capability;*

(b) Digitally-controlled radio receivers, whether or not computer controlled, that search or scan automatically a part of the electromagnetic spectrum, in which the switching operation takes less than 10 milliseconds, and that indicate or identify the received signals, *except non-ruggedized digitally controlled preset type radio receivers designed for use in civil communications having 200 selective channels or fewer.* (For digitally controlled radio receivers using frequency synthesizers, also see ECCN 1531A); or

(c) Receivers for spread spectrum and frequency agile systems having a total transmitted bandwidth that is:

(1) 100 or more times greater than the bandwidth of any one information channel; and

(2) In excess of 50 kHz.

(d) Receivers incorporating digital signal processing, *except receivers specially designed for internationally allocated civil frequency bands only and that do not permit user-accessible reprogrammability of the digital signal-processing circuits;*

Technical Note 1.—"Spread spectrum" is defined as the technique whereby energy in a relatively narrow-band communications channel is spread over a much wider energy spectrum under the control of a random or pseudo-random bit stream. On receipt, the signal is correlated with the same bit stream to achieve the reverse process of reducing the bandwidth to its original form. By allocating different bit streams to different subscribers transmitting simultaneously, significantly greater use can be made of available bandwidth.

Technical Note 2.—"Frequency egility" (or frequency hopping) is another form of spread spectrum in which the transmission frequency of a single communications channel is made to change by discrete steps under the control of a similar bit stream. (Also see ECCN 1517A(c).)

Note.—This ECCN does not control radio frequency spectrum analyzers (see ECCN 1533A) or field strength meters (aee ECCN 1529A).

Advisory Note.—Applications for validated export licenses generally will be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such

violations or in distancing the United States from such violations.

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1517A is amended by revising the heading, *GLV $ Value Limit*, and List of Radio Transmitters . . . Controlled by ECCN 1517A, as follows:

1517A Radio transmitters, except radio relay communications equipment (for which see ECCN 1520A), and specially designed components therefor.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Radio Transmitters and Components Controlled by ECCN 1517A

(a) Transmitters or transmitter-amplifiers designed to operate at output frequencies greater than 960 MHz;

(b) Transmitters or transmitter-amplifiers designed to provide any of the following features:

(1) Any system of pulse modulation (that does not include amplitude-, frequency- or phase-modulated television or telegraphic transmitters or pulse-width modulated sound broadcasting transmitters);

(2) Rated for operation over a range of ambient temperatures extending from below −40 °C to above +60 °C;

(c) Transmitters for spread spectrum and frequency agile systems having a total transmitted bandwidth that is (For the definition of "spread spectrum" and "frequency agility", see Technical Notes 1 and 2 to ECCN 1516A.):

(1) 100 or more times greater than the bandwidth of any one information channel; and

(2) In excess of 50 kHz.

(For quartz crystals, see ECCN 1587A; for radio transmitters incorporating transmitter drive units, exciters, and master oscillators using frequency synthesis, see also ECCN 1531A.)

Note.—This ECCN does not control the following transmitters or transmitter-amplifiers, or systems containing such equipment, accessories and sub-assemblies therefor:

(a) Specially designed for medical applications and operating at I.S.M. frequencies;

(b) Having an output power of not more than 10 W, specially designed for:

(1) Industrial or civil intrusion detection and alarm;

(2) Industrial and traffic detection, counting, speed measurement, identification and movement control;

(3) Carrying the information from the equipment above, or the information of environmental, air or water, pollution detection or measurement systems.

(c) Transmitters using wideband amplifiers designed for non-frequency agile civil applications, such as television and mobile service.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments). ECCN 1518A is amended by revising the *GLV $ Value Limit* to read "$2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments). ECCN 1519A is amended by revising the heading, *GLV $ Value Limit* and List of Equipment Controlled by ECCN 1519A, as follows:

1519A Single- and multi-channel communication transmission equipment, including terminal, intermediate amplifier or repeater equipment and multiplex busses and multiplex equipment used for communications within or between communication or other equipment and systems by line, cable, optical fiber or radio means, and associated modems and multiplex equipment.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Equipment Controlled by ECCN 1519A

(a) Employing analog transmission techniques with analog input and output, designed to deliver, carry or receive baseband frequencies higher than 19 MHz into, or in, a communications system, but only higher than 300 kHz for equipment suitable for use with underwater cable (analog transmission techniques include, inter alia, frequency division multiplex (FDM)):

(b) Employing digital transmission techniques designed for operation at a total bit rate at the highest level multiplex point exceeding 8.5 Megabits per second, with analog input and output, designed for use on communications circuits:

Notes.—1. *Reserved.*

2. Digital transmission techniques include, inter alia, pulse code modulation (PCM).

(c) Data communications equipment employing digital transmission with digital input and output, including telegraphic and data transmission, having any of the following characteristics:

(1) Designed for operation at a data signalling rate in bits per second, excluding servicing and administrative channels, numerically exceeding either:

(i) When using FDM voice channel:

(a) 9,600; *or*

(b) 320% of the channel (or sub-channel) bandwidth in hertz; *or*

(ii) When using baseband: 19,200;

(2) Employing an automatic error detection and correction system having both of the following characteristics:

(i) Retransmission not required for correction; and

(ii) A data signalling rate exceeding 300 bits per second; and

(3) Statistical multiplexers designed for operation at a "data signalling rate" in bits per second, excluding servicing and administrative channels, numerically exceeding either:

(i) 4,800; *or*

(ii) 160% of the channel (or sub-channel) bandwidth in hertz;

Notes.—1. This sub-item is not intended to cover frequency division multiplexers used to subdivide a voice channel or data channels not exceeding the limits of (c)(1) above.

2. For statistical multiplexers that satisfy the definitions of either "data (message) switching" or "stored-program-controlled circuit switching", as well as for the definitions of these terms, see ECCN 1567A.

(d) Components and accessories specially designed for the above equipment, and test equipment specially designed for the equipment covered by (b) above. (See ECCN 1526A for connectors, including wave-length multiplexers.)

Technical Note 1.—"Data signalling rate" is as defined in ITU Recommendation 53–36, taking into account that for non-binary modulation, "bauds" and "bits per second" are not equal. Bits for coding, checking and synchronization function are to be included.

Technical Note 2.—In the case of data communications equipment designed to operate in one voice channel, "bandwidth" will normally be as defined in CCITT Recommendation G.151, namely 3,100 Hz. In the case of CCITT or CCIR voice frequency telegraph systems, "bandwidth" may be considered as the number of channels times the channel spacing.

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by sub-paragraph (a) of this ECCN and specially designed components and accessories therefor, as follows:

(a) Equipment specially designed for the transmission of television signals by cable between camera and studio or between studio and television transmitter not exceeding 50 miles (80 km) for a link with respect to any one installation. (For radio relay links, see ECCN 1520A.)

(b) Equipment to be used for closed circuit television or television distribution (community aerial systems and cable television systems) with an upper frequency limit of 960 MHz.

(c) Equipment designed to deliver, carry or receive baseband frequencies up to an including 62 MHz.

Note 2.—This ECCN does not cover:

(a) Telemetering, telecommand and telesignalling equipment designed for industrial purposes, together with data transmission equipment not intended for the transmission of written or printed text and specially designed components, accessories and test equipment therefor. By telemetering, telecommand and telesignalling equipment is meant sensing heads for the conversion of information into electrical information, the systems used for its long-distance transmission, the processes used to translate electrical information into coded data (telemetering), into control signals (telecommand), and into display signals (telesignalling);

(b) Facsimile equipment other than that controlled for export by ECCN 1527A;

(c) Equipment employing exclusively the direct current transmission technique;

(d) Electronic measuring equipment suitable for use with PCM transmission equipment defined in CCITT Recommendation series G.700 to 746 (ITU Geneva) for PCM up to 8.5 Megabits per second.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by sub-paragraph (b) of the List above, and components, accessories, sub-assemblies and cable therefor, provided that:

(a) The equipment is to be used in non-strategic applications;

(b) The equipment is for other than underwater use;

(c) The equipment is to be permanently installed in a non-fiber optic circuit operated by the civilian authorities of the importing country; *and*

(d) The equipment is to be used for general commercial traffic, as follows:

(1) A total digital bit rate at the highest level multiplex point of 45 Megabits per second or less; *and*

(2) Either of the following—

(i) A total number of voice channels per each physical bearer (wire or radio) of 672 or less; or

(ii) A monochrome *or* color television channel with a maximum nominal bandwidth of 6 MHz, and associated sound channels;

(e) *Reserved.*

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of electronic measuring and test equipment suitable for use with PCM transmission equipment defined in CCITT Recommendation series G.700 to 746 (ITU Geneva) for PCM over 8.5 Megabits per second and up to 45 Megabits per second.

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising the heading and the *GLV $ Value Limit* and by adding a List of Equipment Controlled by ECCN 1520A, as follows:

1520A Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Equipment Controlled by ECCN 1520A

(a) Radio relay communication equipment designed for use at frequencies exceeding 960 MHz, *except:*

(1) *Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 15 GHz, with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;*

(2) *Ground communication radio equipment for use with temporarily fixed services operated by the civilian authorities of the importing country and designed to be used at fixed frequencies not exceeding 15 GHz with a power output of not more than 5 W;*

(b) Stand-alone radio transmission media simulators/channel estimators, especially designed for testing equipment covered by sub-paragraph (a) above, *except those in which the adjustments are only made manually.*

(Advisory) Note 1. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment, and specially designed components and accessories therefor, covered by sub-paragraph (a) of the List above, specially designed for the transmission of television signals between camera and studio or between studio and television transmitter, and not exceeding a line-of-sight distance with respect to any one installation.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment, and specially designed components and accessories therefor, covered by sub-paragraph (a) of this ECCN, to be permanently installed in a circuit operated by the civilian authorities of the importing country for civil television transmission or for general commercial traffic, provided that:

(a) Associated multiplex equipment is considered separately under the provisions of ECCN 1519A; and

(b) No equipment with a base bandwidth exceeding the limits set forth in Note 1(c) to ECCN 1519A is included.

(Advisory Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment, and specially designed components and accessories therefor, covered by sub-paragraph (a) of the List above for communications satellite earth stations, provided that it is to be installed for operation in the framework of an INTELSAT, MARISAT, EUTELSAT or INMARSAT satellite communication system.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment, and specially designed components and accessories therefor, covered by sub-paragraph (a) of the List above with a maximum capacity of 1,920 voice channels of 4 kHz each, for industrial use (e.g., remote supervision, control and metering of oil and gas pipelines), public utility service (e.g., electricity networks) including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunications links.

(Advisory) Note 5.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of tropospheric scatter communication equipment, and specially designed components and accessories therefor, covered by sub-paragraph (a) of the List above, provided that it will be permanently installed at specified sites for civil communication purposes and has all of the following characteristics:

(a) Fixed frequency of 2.7 GHz or less;

(b) Frequency modulation;

(c) Power amplifier output of 10 kW or less.

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1521A is amended by revising the heading and the *GLV $ Value Limit* and by adding NOTES, reading as follows:

1521A Solid-state broadband amplifiers and related equipment having an untuned bandwidth exceeding 100 MHz or an output power exceeding 50 W, and specially designed components and accessories therefor.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

Technical Note.—The bandwidth is defined as the band of frequencies over which the power amplification does not drop to less than one-half of its maximum value.

Notes: 1.—This ECCN does not control the following amplifiers and specially designed components and accessories therefor:

(a) Those specially designed for civil television receivers (aerial amplifier);

(b) Those specially designed for community television distribution systems;

(c) Those operating in the range of 380 to 512 MHz and designed for civil communication equipment, provided that the power output does not exceed 20 W;

(d) Those with an output power exceeding 50 W when:

(1) Designed for use in radio communication equipment for frequencies not exceeding 32 MHz; *or*

(2) Having a bandwidth of 10 MHz or less.

2. For amplifiers designed to operate at frequencies above 1 GHz, see ECCN 1537A.

3. For parametric amplifiers, see ECCN 1537A.

4. For amplifiers specially designed for and intended to work with oscilloscopes, see ECCN 1584A.

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the *GLV $ Value Limit* and the List of Lasers . . . Controlled by ECCN 1522A, as follows:

1522A Lasers and laser systems, and equipment containing them.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Lasers and Laser Systems Controlled by ECCN 1522A

(a) Lasers and specially designed components therefor, including amplification stages, *except the following when not specially designed for equipment covered by sub-paragraph (b) below:*

(i) *Argon, krypton, and non-tunable dye lasers with both of the following characteristics:*

(1) *An output wavelength in the range from 0.2 to 0.8 micrometer;*

(2) *A pulsed output not exceeding 0.5 Joules per pulse and an average or continuous wave maximum rated single- or multi-mode output power not exceeding 20 watts;*

(ii) *Helium-cadmium, nitrogen and multigas lasers not otherwise specified in this ECCN with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer; and*

(2) *A pulsed output not exceeding 0.5 Joules per pulse and an average or continuous wave maximum rated single- or multi-mode output power not exceeding 120 watts;*

(iii) *Helium-neon lasers with an output wavelength shorter than 0.8 micrometer;*

(iv) *Ruby-lasers with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer; and*

(2) *An energy output not exceeding 20 Joules per pulse;*

(v) Co_2, CO or CO/CO_2 lasers having either or both of the following characteristics:

(1) *An output wavelength in the range of 9 to 11 micrometers, and a pulsed output not exceeding 2.0 Joules per pulse and a maximum rated average single- or multi-mode output power not exceeding 1,200 watts or a continuous wave maximum rated single- or multi-mode output power not exceeding 2,500 watts;*

(2) *An output wavelength in the range of 5 to 7 micrometers and having a continuous wave maximum rated single- or multi-mode output power not exceeding 50 watts;*

(vi) *Nd: YAG lasers having an output wavelength of 1.06 micrometers with either of the following characteristics:*

(1) *A pulsed output not exceeding 0.5 Joules per pulse and maximum rated average single- or multi-mode output power not exceeding 10 watts or a continuous wave maximum rated single- or multi-mode output power not exceeding 50 watts; or*

(2) *A pulsed output not exceeding 10 Joules per pulse with a pulse width not less than 50 microseconds and maximum rated average single- or multi-mode output power not exceeding 50 watts;*

(vii) *Nd: Glass lasers with both of the following characteristics:*

(1) *An output wavelength of 1.06 micrometers; and*

(2) *A pulsed output not exceeding 2 Joules per pulse;*

(viii) *Tunable CW dye lasers, with both of the following characteristics:*

(1) *An output wavelength shorter than 0.8 micrometer; and*

(2) *An output not exceeding an average or continuous wave maximum rated single- or multi-mode output power of 1 watt;*

(ix) *Tunable pulsed laser (for argon and krypton lasers, see sub-paragraph (a)(1) of this ECCN, including dye and* N_2, with all of the following characteristics:.

(1) *An output wavelength shorter than 0.8 micrometer;*

(2) *A pulse duration not exceeding 100 nanoseconds; and*

A peak power output not exceeding 1 MW;

(x) *Single-element semiconductor lasers with a wavelength shorter than 1 micrometer designed for, and used in, equipment as defined under sub-paragraphs (b) (xiii) and (xiv) of this ECCN;*

(b) Laser systems or equipment incorporating lasers, and specially designed components therefor, *except the systems and equipment listed below incorporating lasers excluded from export controls under sub-paragraph (a) above:*

(i) *Specially designed for industrial and civilian intrusion detection and alarm systems;*

(ii) *Specially designed for medical applications;*

(iii) *Equipment for educational and laboratory purposes;*

(iv) *Specially designed for traffic and industrial movement control and counting systems;*

(v) *Specially designed for detection of environmental pollution;*

(vi) *Optical spectrometers and densitometers;*

(vii) *Equipment containing continuous wave helium-neon gas lasers (but see sub-paragraph (c) of this ECCN);*

(viii) *Textile-cutting and textile bonding equipment;*

(ix) *Paper cutting equipment;*

(x) *Equipment containing lasers for drilling diamond dies for the wire drawing industry;*

(xi) *Electronic scanning equipment with auxiliary electronic screening unit specially designed for printing processes, including such equipment when used for the production of color separations;*

(xii) *Laser-radar (lidar) equipment specially designed for surveying or meteorological observation;*

(xiii) *Consumer-type reproducers for video or audio discs, employing non-erasable media;*

(xiv) *Price scanners (point of sale);*

(xv) *Systems designed for surveying purposes, provided that there is no capability of measuring range;*

(xvi) *Equipment specially designed for the marking of components;*

(xvii) *Specially designed gravure (printing plate) manufacturing equipment;*

(c) Laser measuring systems that maintain over the full scale a resolution equal to or less (finer) than 0.0001 mm and an accuracy equal to or less (finer) than 1.0 ppm for a 48-hour period over a temperature range of ±10 °C around a standard temperature and at a standard pressure (standard temperature and pressure as indicated in IEC Publication No. 160).

Technical Note.—"Tunable" refers to the ability of a laser to produce an output at any wavelength within its tuning range. A line-selectable laser that can operate only on discrete wavelengths is not considered tunable.

Note 1.—The term "specially designed components" is intended, among other things, to include active and passive components in semifabricated forms as well as in fabricated forms.

Note 2.—*Reserved.*

Note 3.—This ECCN is intended to cover semiconductor lasers but not non-coherent light-emitting diodes and assemblies or integrated circuits containing such light-emitting diodes. (See ECCNs 1544A and 1564A.)

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY or equipment listed in sub-paragraph (b) of this ECCN containing lasers described in (a)(vi)(1) and (a)(vii), provided that the lasers have a maximum pulsed output not exceeding 2 Joules per pulse. The shipment of spare laser rods for equipment exported under this Advisory Note will be restricted to rods having no greater output power energy capability than those originally exported with the equipment.

Note 5.—For laser feedback systems and laser interferometers, see also ECCN 1093A(c).

(Advisory) Note 6.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of semi-conductor lasers, designed and destined for use with civilian fiber-optic communications systems, either uncontrolled or eligible for export, having an output wavelength not longer than 1,000 nanometers and not exceeding 100 mW CW.

Note 7.—Sub-paragraph (a) does not control uncooled, unsegmented mirrors with glass or dielectric substrates for use as end reflectors for laser resonators. (For segmented mirrors, see ECCN 1556A.)

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1526A is amended by revising the heading, the *GLV $ Value Limit* and the List of Cable Controlled by ECCN 1526A, as follows:

1526A Cable and optical fibers, and components and accessories.

* * * * *

GLV $ Value Limit: $1,000 for Country Group T & V, except $0 for the People's Republic of China: $0 for all other destinations.

* * * * *

List of Cable Controlled by ECCN 1526A

(a) Underwater communication cable as follows:

(1) Reversed-twist double-armored cable used for towing or suspending and communicating with submerged devices;

(2) Unarmored or single-armored ocean cable having an attenuation of 1.62 dB/km (3.0 dB per nautical mile) or less, measured at a frequency of 600 kHz;

(b) Coaxial cable with an inner diameter of the outer conductor of the core greater than 14 mm (0.551 inch), having:

(1) An air dielectric in which the spacing is accomplished by discs, beads, spiral, screw of any other means;

(2) A form dielectric and a solid copper or aluminum outer conductor:

Note.—Technology for the manufacture of foam dielectrics used in cables remains free from export control.

(c) Optical-fiber communication cable or optical fibers therefor, having any of the following characteristics:

(1) An attenuation at any operating wavelength of 3.0 dB/km or less;

(2) Optical fibers capable of withstanding a "proof test" tensile stress of 1.1×10^9 N/m^2;

Technical Note.—"Proof test" consists of on-line or off-line production screen testing that dynamically applies as prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/sec while passing between capstans approximately 15 cm in diameter. The ambient temperature is a nominal 20 °C and relative humidity a nominal 40%.

(3) Specially designed for underwater use;

(4) Specially designed to be insensitive to nuclear radiation;

(d) Optical fibers for sensing purposes, having any of the following characteristics:

(1) Specially fabricated either compositionally or structurally, or modified by coating to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive;

(2) Modified structurally or by coating to have either very low ("beat length" greater than 50 cm) or very high ("beat length" less than 5 cm) birefringence:

Technical Note.—"Beat length" is defined as the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve 2π radian(s) phase difference.

(e) Secure communications cable, being either coaxial or multiconductor communication cable protected by mechanical or electrical means from physical damage or intrusion in such a manner that communications security is maintained between terminals without the necessity for encryption.

(f) Components and accessories specially designed for the above optical fibers or cable, including fiber-optic bulkhead or hull penetration connectors impervious to leakage at any depth for use in ships or vessels, and multiport fiber-optic couplers (including but not limited to T, Star, bi-directional and wavelength division multiplexing and demultiplexing couplers), *except connectors for use with optical fibers or cable with a repeatable coupling loss of 0.5 dB or more.* (See also Supp. No. 2 to Part 370 of the Export Administration Regulations.)

Note 1.—Sub-paragraph (e) above does not control cable that is "armored" by only either a tough outer sheath or an electromagnetic screen.

Note 2.—Associated equipment for sub-paragraphs (a), (b), (c) and (d), and specially designed components therefor, are covered under ECCN 1519A.

Note 3.—For military type cable (shear resistant, etc.) see Supp. No. 2 to Part 370 of the Export Administration Regulations.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of cable defined in sub-paragraph (a)(1), when used for civil applications in oceanographic research or in natural resources exploration.

(Advisory) Note 5.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of cable, optical fibers, connectors and couplers covered by sub-paragraphs (a)(2), (b), (c) (1), (2) and (3), and (f) above, provided that:

(a) The cable, optical fibers, connectors or couplers are for a specific civil end-use;

(b) The quantities of cable, optical fibers, connectors or couplers are normal for the purpose;

(c) The optical fibers specially designed for underwater use have performance characteristics inferior to those described in sub-paragraphs (c)(1) or (c)(2); *and*

(d) Connectors covered by sub-paragraph (f) are not specially designed fiber-optic bulkhead or hull penetration connectors for use in ships or vessels.

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1527A is amended by revising the heading and adding three Notes at the end of the entry, reading as follows:

1527A Cryptographic equipment and specially designed components therefor, designed to ensure secrecy of communications (such as telegraphy, telephony, facsimile, video and data communications) or of stored information; and "software" controlling or computers performing the functions of such cryptographic equipment.

* * * * *

Notes.—1. This ECCN also covers video systems that, for secrecy purposes, use digital techniques (conversion of an analog, *i.e.*, video or facsimile, signal into a digital signal).

2. This ECCN does not cover simple cryptographic devices or equipment only ensuring the privacy of communications, as follows:

(a) Equipment for voice transmission making use of fixed frequency inversions or fixed band scrambling techniques in which the transposition changes occur not more frequently than once every 10 seconds;

(b) Standard civil facsimile and video equipment designed to ensure the privacy of communications by an analog transmission using non-standard practices for intended receivers only (video system equipment effecting the transposition of analog data);

(c) Video systems for pay television and similar restricted audience television, including industrial and commercial television equipment using other than standard commercial sweep systems.

3. "Digital computers" and digital differential analyzers (incremental computers) designed or modified for, or combined with, any cipher machines, cryptographic equipment, devices or techniques including "software", "microprogram" control ("firmware") or specialized logic control (hardware), associated equipment therefor, and equipment or systems incorporating such computers or analyzers are covered by this ECCN or by Supp. No. 2 to Part 370 of the Export Administration Regulations.

19. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the *GLV $ Value Limit* and the List of Equipment Controlled by ECCN 1529A, as follows:

1529A Electronic measuring, calibrating, counting, testing, or time interval measuring equipment, whether or not incorporating frequency standards.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Equipment Controlled by ECCN 1529A

(a) Equipment, as follows:

(1) Designed as reference frequency standards for laboratory use and having either of the following characteristics:

(i) A long-term drift (ageing) over 24 hours or more of 1 part in 10^{10} or better;

(ii) A short-term drift (stability) over a period from 1 to 100 seconds of 1 part in 10^{12} or better;

(2) Designed for fixed ground or mobile use and containing frequency standard(s) having either of the following characteristics:

(i) A long-term drift (ageing) over 24 hours or more of 1 part in 10^{9} or better; *or*

(ii) A short-term drift (stability) over a period from 1 to 100 seconds of 1 part in 10^{12} or better;

(b) Instruments of the following description:

(1) Designed for use at frequencies exceeding 18 GHz;

(2) "Comb frequency generators" designed and rated for use at frequencies exceeding 12.5 GHz;

(3) Designed for use at frequencies exceeding 1 GHz, of the following description:

(i) "Swept-frequency network analyzers" for the automatic measurement of complex equivalent circuit parameters over a range of frequencies;

(ii) Specially calibrated microwave instrumentation receivers capable of measuring amplitude and phase simultaneously;

(iii) Automatic "frequency (heterodyne) converters" and "transfer oscillators";

(iv) Instruments in which the functions can be controlled by the injection of digitally coded electrical signals from an external source;

(4) Spectrum analyzers employing time compression of the input signal or FFT (Fast Fourier Transform) techniques;

(5) Incorporating computing facilities with user-accessible reprogramming capability and an alterable program and data memory of a total of more than 32,768 bits;

Note.—Alterable (read/write) memory is that part of the internal memory of the instrument that can be accessed or modified by the user during normal operations of the instrument for data and operating parameters or program storage and data manipulation respectively.

(6) Digital instruments incorporating computing facilities, of the following description:

(i) Digital test instruments with user accessible reprogramming capability (including digital circuit testers, logic (state and/or timing) analyzers, bus analyzers, serial data analyzers, digital work generators) specially designed for examining and/or comparing the absolute or relative information content (e.g., logic states, mnemonics, etc.) or the timing of one or more digital bit streams, *except:*

(*a*) *Logic probes, logic pulsers, digital current tracers (or current "sniffers"), signature analyzers and other digital circuit testers capable of observing single events and/or providing stimulus at single test points;*

(*b*) *Logic clips and logic comparators;*

(*c*) *Logic (state or timing) analyzers with not more than 16 (not including qualifier channels) input channels and a maximum sampling rate of 20 MHz or less;*

(*d*) *Digital word generators capable of operating at a maximum clock rate of 2 MHz or less with word lengths of 8 bits or less;*

(ii) Microprocessor and microcomputer development instruments and systems, specially designed for use in debugging, diagnosing, emulating, simulating, designing, evaluating, programming or reprogramming "software" or equipment of signal processor-, computer- or memory-based devices, systems or microsystems (e.g., emulators, simulators, memory programmers) *except those used only with microprocessors and microcomputers not covered by ECCN 1564A;*

(c) Digital counters of the following description:

(1) Capable of counting successive input signals with less than 5 nanoseconds time difference without prescaling (digital division) of the input signal (for counter-timers having a time interval measurement mode, see paragraph (d) of this ECCN);

(2) Employing prescaling of the input signal, in which the prescaler is capable of resolving successive input signals with less than 1 nanosecond time difference; or

(3) Capable of measuring burst frequencies exceeding 100 MHz for a burst duration of less than 5 milliseconds;

(d) Time interval measuring equipment employing digital techniques, capable of measuring time intervals of less than 5 nanoseconds on a single shot basis;

(e) Testing equipment rated to maintain specified operating data when operating over a range of ambient temperatures from below −25 °C to above +55 °C;

(f) Digital voltage measuring apparatus, with or without electrical outputs, irrespective of the physical units in which calibrated, with a reading speed (from zero to the measured value but not including changes in range or polarity) faster than 25 accesses per second and having *any* of the following characteristics:

(1) A digital resolution at all points on the scale greater than 1 part in 200,000;

(2) An accuracy, measured without reference to an external standard, better than 1 part in 50,000 (0.002%) of reading over an ambient temperature range of ±5 °C or more, or a stability better than 10^{-6} of reading over a period of 24 hours or more;

(3) Capable of more than 500 independent measurements per second; *except visual quantization apparatus capable of providing an average value, displayed or not, of the results of the measurement; and Multi-channel analyzers of all types used in nuclear experimentation;*

Notes.—1. Reading speed is assumed not to include changes in range or polarity.

2. Sub-paragraph (f) of this ECCN does not control—

(a) Visual quantization apparatus capable of providing an average value, displayed or not, of the results of the measurement;

(b) Multichannel analyzers of all types used in nuclear experimentation;

(c) Industrial telemeasuring devices in which the pre-set storage value is used as a basis for measuring.

(g) Transient recorders, utilizing analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single input signals at successive intervals of less than 50 nanoseconds.

Technical Notes.—1. "Comb frequency generators" (sub-paragraph (b)(2)) are generally understood to be devices that generate a spectrum of harmonics.

2. "Swept-frequency network analyzers" as understood in sub-paragraph (b)(3)(i) above involve the automatic measurement of frequencies. This involves swept-frequency measurement techniques but not CW point-to-point measurements.

3. "Amplitude and phase receivers" (sub-paragraph (b)(3)(ii) of this ECCN) are instruments capable of measuring the amplitude of a microwave signal or the amplitude of two microwave signals and the relative phase between them. The principal application of these instruments is the measurement of near and far zone phase and amplitude antenna patterns. They can also be used for measurement of microwave device and components characteristics. In general, they are more sophisticated and sensitive (better than −100dBm) than phase and impedance measuring instruments such as RF vector impedance meters and vector voltmeters. They also feature wide dynamic range (80 dB) and very good linearity (approximately ±0.25 dB).

4. "Frequency (heterodyne) converters" (sub-paragraph (b)(3)(iii)) down convert an unknown frequency by mixing with an accurately known frequency. The accurately known frequency is developed by multiplication of a crystal-derived reference which is passed through a harmonic generator. By mixing the appropriate harmonic and the unknown frequencies, an accurate third frequency results.

5. "Transfer oscillators" (sub-paragraph (b)(3)(iii)) are based also on the property of harmonic mixing. Differences exist in that a local oscillator is utilized whereas a crystal-derived reference frequency is utilized in the case described in Note 4 above. The unknown frequency is mixed with the local oscillator (LO) and the two are phase-locked by tuning the LO. The LO can then be measured by a counter.

6. By "user-accessible reprogramming capability" as used in sub-paragraphs (b)(5) and (b)(6)(i) above is meant:

(a) The instrument contains a computing facility, e.g., a microprocessor; *and*

(b) The user has the ability to alter the computing program through external controls, e.g., switches, keyboards, digital busses, etc.

7. One example of FFT techniques is described in "An algorithm for the machine computation of complex Fourier series" by Cooley and Tukey in "Mathematics of Computation", April 1965, page 297.

8. "Burst frequency measurement" counters (sub-paragraph (c)(3)) contain special gating circuits that start only when the input signal is present and stop counting at the completion of the burst.

Note.—Instrumentation incorporating computing facilities remains controlled under this ECCN 1529A even if the computing facility has been removed. Such instrumentation *cannot* be classified under ECCN 6599G.

Note 1.—For frequency synthesizers, see ECCN 1531A; for frequency spectrum analyzers, see ECCN 1533A; for microwave equipment, see also ECCN 1537A; for analog-to-digital converters, other than digital voltage measuring instruments, see ECCN 1568A.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment designed for fixed ground use covered only by sub-paragraph (a)(2)(i) of this ECCN, provided that:

(a) The long-term drift (ageing) over 24 hours or more is not better than 5 parts in 10^{10}; and

(b) The equipment is a reasonable requirement for the stated legitimate civil end-use.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of items defined in sub-paragraph (b)(4) of this ECCN, having *any* of the following characteristics:

(a) Capable of computing 512 complex spectral lines in 200 milliseconds or more;

(b) Capable of computing 512 real spectral lines in 100 milliseconds or more;

(c) Having no zoom capability and capable of computing 512 complex spectral lines in 100 milliseconds or more, or capable of computing 512 real spectral lines in 50 milliseconds or more..

Technical Note.—Zoom capability (range translation) permits spectrum analysis starting from an arbitrary frequency rather than at zero frequency, leading to an improved resolution.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of instruments defined in sub-paragraph (b)(5) of this ECCN, provided that:

(a) The instruments have been designed for non-strategic use and by nature of design, software, microprogram control (firmware), specialized logic control (hardware), or performance are substantially restricted to the particular application for which they have been designed.

(b) The instruments are not covered by any other part of ECCN 1529A and do not exceed the limits of Advisory Note 4 to ECCN 1565A. (See also Supp. No. 2 to part 370 of the Export Administration Regulations, ECCN 1355A and sub-paragraph (i) of ECCN 1485A.)

(Advisory) Note for the People's Republic of China.—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Frequency standards equipment defined in sub-paragraph (a) for non-military configurations for quartz and rubidium and appropriate quantities of cesium standards to NBS-type users;

(b) Instruments defined in sub-paragraph (b)(1) up to 40 GHz;

(c) Manual transfer oscillators and frequency converters defined in sub-paragraph (b)(2) up to 40 GHz and comb frequency devices up to 12.5 GHZ;

(d) Non-programmable network analyzers defined in sub-paragraph (b)(3)(i) up to 40 GHz; and programmable network analyzers up to 18 GHz;

(e) Direct impedance measuring devices defined in sub-paragraph (b)(3)(iii) up to 18 GHz;

(f) Instruments defined in sub-paragraph (b)(3)(iv) up to 18 GHz;

(g) Spectrum analyzers defined in sub-paragraph (b)(4) employing FFT with realtime capability of calculating 512 complex lines in not less than 50 milliseconds and time compression instruments limited to 100 KHz and not capable of calculating complex lines;

(h) Instruments defined in sub-paragraph (b)(5) with memories up to 64 kbits;

(i) Equipment defined in paragraph (b)(6) necessary for maintenance, repair and use of microcircuits and computers described by the Advisory Notes for the People's Republic of China in ECCNs 1564A and 1565A;

(j) Digital counters defined in sub-paragraph (c) that perform non-prescaled (direct) countings up to 550 MHz, or prescaled counting up to 1.5 GHz, and counters capable of measuring burst frequencies up to 200 MHz for a burst duration of more than 0.5 milliseconds;

(k) Time interval measuring equipment defined in sub-paragraph (d) capable of measuring 10 nanosecond time intervals for single shot and 0.1 nanoseconds for averaging repetitive time intervals;

(l) Digital voltmeters defined in sub-paragraph (f); and

(m) Transient recorders capable of sampling single input signals at successive intervals of not less than 20 nanoseconds.

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 4530B is amended by revising the *GLV $ Value Limit* to read "$2,000 for Country Groups T & V; $0 for all other destinations".

21. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising the *GLV $ Value Limit* and the Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A, as follows:

1531A Frequency synthesizers.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A

(a) Frequency synthesizers containing frequency standards covered by ECCN 1529A(a) or temperature-compensated

crystal oscillators covered by ECCN 1587A(c);

(b) Instrument frequency synthesizers and synthesized signal generators, and specially designed components and accessories therefor, designed for ground use, producing output frequencies whose accuracy and short- and long-term stability are controlled by, derived from, or disciplined by the input frequency or internal master standard frequency, and having *any* of the following characteristics:

(1) A maximum output frequency in excess of 550 MHz;

(2) Having a phase noise to signal ratio better than –60 dB or an AM noise to signal ratio better than –70 dB referred to the 30 kHz band centered on the carrier, excluding the 1 Hz band centered on the carrier.

(3) Electrically programmable in frequency (in that the output frequency can be controlled or selected by the injection of digitally coded electrical signals from an external control source) with a switching speed from one selected output frequency to another selected output frequency of less than 10 milliseconds;

(4) Electrically programmable in phase (in that the phase of the output frequency can be varied relative to the internal or external reference standard, or selected in accordance with an externally supplied code or signal with a switching speed from one selected phase value to another of less than 10 milliseconds) except those equipments incorporating pre-emphasis networks for frequency modulation ;

(5) Having a level of spurious components in the output better than –80 dB non-harmonic and/or –60 dB harmonic component measured relative to the selected output frequency;

(6) Having more than 3 different selected synthesized output frequencies available simultaneously from one or more outputs;

(7) With facilities for pulse modulation of the output frequency;

(c) Airborne communication equipment using frequency synthesizers, as follows, and specially designed components and accessories therefor:

(1) Designed to receive or transmit frequencies greater than 156 MHz;

(2) Incorporating facilites for the rapid selection of more than 200 channels per equipment, *except those equipments operating in the frequency range of 108 to 136 MHz incorparating facilities for the rapid selection of 720 channels or fewer at not less than 25 kHz channel spacing, and that have been in normal civil use for at least one year;*

(3) With a switching speed from one selected output frequency to another of less than 10 milliseconds;

(4) Frequency synthesizers, designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in sub-paragraph (b) of this ECCN.

Note.—See also ECCN 1501A(a).

(d) Digitally-controlled radio receivers, whether or not computer-controlled, that search or scan automatically a part of the electromagnetic spectrum, using frequency synthesizers, as follows, and specially designed components and accessories therefor:

(1) Digitally-controlled receivers in which the switching operation takes less than 10 milliseconds, except non-ruggedized digitally-controlled preset type radio receivers designed for use in civil communications, that have 200 selective channels or fewer;

(2) Frequency synthesizers designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameter specified in sub-paragraph (b) above, *except* those specially designed for receivers freed from export control under sub-paragraph (1) above;

Note.—See also ECCN 1516A.

(e) Radio transmitters incorporating transmitter drive units, exciters and master oscillators using frequency synthesis, as follows, and specially designed components and accessories therefor:

(1) Having an output frequency of up to 32 MHz with a frequency resolution of better than 10 Hz and with a switching speed from one selected output frequency to another selected output frequency less than 10 milliseconds;

(2) Having an output frequency from 32 MHz to 235 MHz with a frequency resolution of better than 250 Hz and with a switching speed from one selected output frequency to another of less than 10 millisesconds;

(3) Having an output frequency greater than 235 MHz, *except*

(i) *Television broadcasting transmitters having an output frequency from 470 MHz-to 960 MHz with a frequency resolution of not better than 1 kHz and where the manually-operated frequency synthesizer incorporated in or driving the transmitter hos an output frequency not greater than 120 MHz and*

(ii) *FM and AM ground communications equipment for use in the land mobile service and operating in the 420 to 470 MHz band, with a power output of 50 watts for mobile units and 300 watts for fixed units, with a frequency resolution of not better than 6.25 kHz and with a switching speed from one selected output frequency to another selected output frequency greater than 50 milliseconds;*

(4) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(5) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated frequency synthesizer; and

(6) Frequency synthesizers designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in sub-paragraph (b) of this ECCN.

Note.—See also ECCN 1517A.

Technical Note.—"Frequency synthesizer" means any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

(Advisory) Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment defined in sub-paragraph (b)(3) of this ECCN, with a switching speed not less than 5 milliseconds.

22. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1532A is amended by revising the heading and the *GLV $ Value Limit* and by adding a NOTE as follows:

1532A Precision linear and angular measuring systems as follows, and specially designed components therefor.

Note.—For "specially designed software", see Supp. No. 3 to Part 379.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

23. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the heading and the *GLV $ Value Limit*, adding Notes after the List of Radio Spectrum Analyzers Controlled by ECCN 1533A, and redesignating the Advisory Note as Note 5, as follows:

1533A Radio spectrum analyzers, and specially designed components and accessories therefor.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

Technical Note.—Radio spectrum analyzers are apparatus capable of indicating the single-frequency components of multi-frequency signals.

Note.—1. This ECCN does not cover optical spectrum analyzers.

Note.—2. This ECCN does not control instruments covered only by sub-paragraph (c), provided that the instrument is not capable of operating at frequencies over 2 GHz.

Note.—3. For spectrum analyzers employing time compression of the input signal or FFT techniques, see ECCN 1529A(b)(4).

Note.—4. If the radio spectrum analyzer is an oscilloscope plug-in, the associated mainframe is covered by ECCN 1584A.

(Advisory) Note 5.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment defined in sub-paragraph (d) of this ECCN.

24. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1534A is amended by revising the heading, the *GLV $ Value Limit*, and the Notes following the List of Flatbed Microdensitometers Controlled by ECCN 1534A, as follows:

1534A Flatbed microdensitometers (except cathode-ray types) having any of the characteristics in the List below, and specially designed components therefor.

* * * * *

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Flatbed Microdensitometers Controlled by ECCN 1534A

* * * * *

Technical Note.—Density resolution (expressed in density units) is measured over the optical density range of the instrument.

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment specially designed for medical applications, provided that the equipment is a reasonable requirement for the stated application.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for civil end-uses of equipment defined by sub-paragraph (b) of ECCN 1534A, provided that the spatial resolution is not better (less) than 2 micrometers and the density resolution is not better (less) than 0.01 in density units.

25. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by removing the reference to "1526(a)" from the heading; by revising the *GLV $ Value Limit;* by revising sub-paragraphs (a), introductory text of (e), and (g) of the List of Microwave Equipment Controlled by ECCN 1537A, and by adding a NOTE at the end of the entry, as follows:

1537A Microwave equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment defined in ECCNs 1501A, 1517A, 1520A, 1526A(a), 1529A and Supp. No. 2 to Part 370).

* * * * *

GLV $ Value Limit: $1000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Microwave Equipment Controlled by ECCN 1537A

(a) Rigid and flexible waveguides designed for use at frequencies in excess of 18 GHz;

* * * * *

(e) TR and anti-TR tubes and specially designed components therefor, *except those designed for use in waveguides and having any of the following characteristics that are in normal civil use for ground or marine radar:*

(i) * * *
(ii) * * *
(iii) * * *

* * * * *

(g) Phased array antennae and sub-assemblies, designed to permit electronic control of beam shaping and pointing (see Supp. No. 2 to Part 370 of the Export Administration Regulations), and specially designed components therefor (including but not limited to duplexers, phase shifters and associated high-speed diode switches);

* * * * *

Note.—Paragraph (g) of this ECCN does not control duplexers and phase shifters specifically designed for use in civil television systems or in other civil radar or communication systems not controlled elsewhere on the Commodity Control List.

26. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1541A is amended by revising the *GLV $ Value Limit* to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

27. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1542A is revised to read as follows:

1542A Cold cathode tubes and switches.

Controls for ECCN 1542A

Unit: Report tubes and semiconductor devices in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China: $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: Special licenses are not available for those triggered spark-gaps having an anode delay time of 15 microseconds or less and rated for peak current of 3,000 amps or more, and specially designed parts therefor. See Part 373 for special lincenses available for other equipment defined in ECCN 1542A.

List of Cold Cathode Tubes and Switches Controlled by ECCN 1542A

(a) Triggered spark-gaps, having an anode delay time of 15 microseconds or less and rated for a peak current of 3,000 A or more; specially designed parts therefor, and equipment incorporating such devices;

(b) Cold cathode tubes, whether gas-filled or not, operating in a manner similar to a spark gap, containing three or more electrodes and having all of the following characteristics:

(1) Rated for an anode peak voltage of 2,500 V or more;

(2) Rated for peak currents of 100 A or more;

(3) An anode delay time of 10 microseconds or less; and

(4) An envelope diameter of less than 25.4 mm (1 inch).

Notes: 1. Triggered spark-gaps are tubes with a structure consisting of two opposed anodes with shapes resembling flattened hemispheres, and with one or more triggering probes placed approximately in the center of one anode. The structure is sealed and contains a mixture of gases, principally nitrogen, under less than atmospheric pressure.

2. Sub-paragraph (b) of the List above covers gas "krytron" tubes, vacuum "krytron" tubes and similar tubes.

28. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1544A is amended by revising the *GLV $ Value Limit;* revising paragraphs (a), (c), (d), and (e) of the List of . . . Diodes and Dice . . . Controlled by ECCN 1544A; removing "; and " from the end of paragraph (f) and

inserting a period instead; removing paragraph (g); and revising the Notes, as follows:

1544A Semi-conductor diodes . . .

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Semiconductor Diodes and Dice and Wafers Therefor Controlled by ECCN 1544A

* * * * *

(a) Mixer and detector diodes designed or rated for use at input or output frequencies greater than 3 GHz; *except*:

(1) *Point contact diodes designed or rated for use at input or output frequencies of 12.5 GHz or less;*

(2) *Schottky diodes designed or rated for mixer use at input or output frequencies of less than 12.5 GHz and having or noise figure of more than 6.5 dB;*

(3) *Schottky diodes designed or rated for detector use at input or output frequencies of less than 12.5 GHz and having a minimum rate tangential sensitivity of either worse than −45 dBm under unbiased conditions or worse than −50 dBm under biased conditions;*

* * * * *

(c) Voltage variable capacitance diodes designed or rated for use at input or output frequencies greater than 1.7 GHz;

(d) Fast recovery diodes, of the following description:

(1) Having a rated maximum reverse recovery time of less than 1 nanosecond; or

(2) Having both a rated forward rectified current over 5 amperes and a rated maximum reverse recovery time of less than 20 nanoseconds;

Note 1.—When average reverse recovery time is quoted instead of maximum reverse recovery time, the maximum may be regarded as two times the average.

Note 2.—When reverse recovery time is not quoted, diodes rated for a stored charge of less than 25 picocoulombs shall be regarded as covered by paragraph (d) of this ECCN.

(e) PIN diodes designed or rated for use at input or output frequencies above 1.7 GHz, with a peak power greater than 5 W or a maximum CW power greater than 500mW.

* * * * *

Note 1.—Diodes constructed with a rectifying deposited metal semiconductor junction or barrier, such as hot-carrier or Schottky-barrier diodes, will normally be considered under sub-paragraphs (a) and (d) above.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of non-coherent light-emitting diodes defined in sub-paragraph (f) above, for use in identifiable civilian communications systems.

Note 3.—For photodiodes, see ECCN 1548A.

29. In Supplement No. 1 § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1545A is amended by revising the *GLV $ Value Limit* to read "$1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

30. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1547A is amended by revising the *GLV $ Value Limit* to read "1,000 for Country Groups T & V, except $0 for the People's Republic of China, $0 for all other destinations."

31. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1548A is amended by revising the heading, the *GLV $ Value Limit* and the List of Photosensitive Components —Controlled by ECCN 1548A, as follows:

1548A Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China, $0 for all other destinations.

* * * * *

List of Photosensitive Components and Dice and Wafers Therefor Controlled by ECCN 1548A

(a) Photosensitive components (including photodiodes, phototransistors, photothyristors, photoconductive cells and similar photosensitive components):

(1) Having a peak sensitivity at a wavelength longer than 1,200 nanometers or shorter than 190 nanometers; *or*

(2) Having a peak sensitivity at a wavelength shorter than 300 nanometers and having an efficiency of less than 0.1% relative to peak response at wavelengths longer than 400 nanometers;

Note.—Vacuum photodiodes specially designed for use in spectrophotometry having a peak response at a wavelength shorter than 300 nanometers are not covered by this sub-paragraph. (For photomultiplier tubes containing microchannel plates, see ECCN 1549A.)

(b) Semi-conductor photodiodes and phototransistors with a response time constant of 95 nanoseconds or less measured at the operating temperature for which the time constant reaches a minimum;

(c) Specially designed or rated as electromagnetic (including laser) and ionized-particle radiation resistant;

(d) Linear and focal plane arrays (hybrid or monolithic) having the characteristic in (a) or (b) above, and specially designed components therefor.

Note 1.—The time constant is defined as the time taken from the application of a light stimulus for the current increment to reach a value of 1−1/*e* times the final value (*i.e.*, 63% of the final value).

Note 2.—This ECCN does not control the following:

(a) Germanium photo devices with a peak sensitivity at a wavelength shorter than 1,750 nanometers;

(b) Infrared single-element encapsulated photo-conductive cells or pyroelectric detectors intended for civil applications and using any of the following:

(1) Evaporated lead sulphide;

(2) Triglycine sulphate with a surface area of 20 mm^2 or less;

(3) Lead-lanthanum-zirconium titanate ceramic.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for civil applications of semi-conductor photodiodes controlled by sub-paragraph (b) above, with a response time constant of 0.5 nanosecond or more and with a peak sensitivity at a wavelength neither longer than 920 nanometers nor shorter than 300 nanometers.

32. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1549A is amended by revising the *GLV $ Value Limit* and paragraph (a) of the List of Photomultiplier Tubes Controlled by ECCN 1549A, by redesignating the Advisory Note as "(Advisory) Note 1", and by adding a NOTE 2 following the Advisory Note 1, as follows:

1549A Photomultiplier tubes

* * * * *

GLV $ Value Limit: $1,000 for Country Group T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Photomultiplier Tubes Controlled by ECCN 1549A

Photomultiplier tubes of the following descriptions:

(a) Those for which the maximum sensitivity occurs at wavelengths shorter than 300 nanometers;

Note.—Photomultiplier tubes specially designed for use in spectrophotometry having a peak sensitivity at a wavelength shorter than 300 nanometers are not covered by this sub-paragraph.

(For photosensitive components, see ECCN 1548A.)

* * * * *

Note 2.—For microchannel plate electron multipliers, see ECCN 1556A.

33. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1553A is amended by revising the *GLV $ Value Limit* to read "$1,000 for Country Group T & V, except $0 for the People's Republic of China; $0 for all other destinations."

34. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1555A is revised to read as follows:

1555A Electron tubes and specially designed components therefor. Controls for ECCN 1555A

Unit: Report tubes, semi-conductors devices, and systems in "number"; parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Group T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security, nuclear non-proliferation. Nuclear non-proliferation controls do not apply to those countries listed in Supp. Nos. 2 or 3 to Part 373.

Special Licenses Available: A Distribution License is available for shipment of equipment defined in paragraphs (a) and (b) of the List below to countries listed in Supp. Nos. 2 or 3 Part 373. Other special licenses, as well as a Distribution License, may be available for other equipment in the List; see Part 373.

List of Electron Tubes Controlled by ECCN 1555A

Electron tubes, as follows and specially designed components therefor:

(a) Electron tubes for image conversion or intensification, incorporating:

(1) Fiber-optic face-plates covered by ECCN 1556A(a);

(2) Microchannel-plate electron multipliers; *or*

(3) Gallium arenside or other epitaxially grown semi-conductor photocathodes covered by ECCN 1556A(c);

(b) Electron tubes for television/video cameras:

(1) Incorporating fiber-optic face-plates covered by ECCN 1556A(a);

(2) Incorporating microchannel-plate electron multiplier;

(3) Coupled with electron tubes covered by paragraph (a) of this ECCN;

(c) Ruggedized electron tubes for television/video cameras having a maximum length-to-bulb diameter ratio of 5:1 or less.

Note.—The image intensifiers, image converters and camera tubes defined in paragraph (a) of this ECCN above have significant military as well as commercial use and, as such, licensing jurisdiction is shared between the Office of Munitions Control (Department of State) and the Department of Commerce.

Note 1.—This ECCN does not cover: (a) commercial standard television/video camera tubes not incorporating fiber-optic face-plate covered by ECCN 1556A (a) *or* (b) commercial standard X-ray amplifier tubes.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of non-ruggedized tubes controlled by ECCN 1555A, provided that the tubes will be used for bona fide medical applications.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-uers in Country Groups QWY of electron tubes controlled for export only by sub-paragraph (a)(1) of this ECCN that are specially designed for electron streak or framing cameras controlled by ECCN 1585A(c), provided that the quantities requested, in addition to those previously approved under this Advisory Note, are reasonable for specifically identified civil applications.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of television/video camera tubes covered by sub-paragraph (b) or (c) of this ECCN that incorporate fiber-optic face-plates but not microchannel-plate electron multipliers, provided that the tubes will be used for bona fide civil applications.

35. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1556A is amended by revising the *GLV $ Value Limit*, paragraph (a)(1) and paragraph (b)(2), and by adding new paragraphs (c) and (d) to the List of Optical Elements . . . Controlled by ECCN 1556A, as follows:

1556A Optical elements and elements for optical tubes.

* * * * *

GLV $ Value Limit: $1,000 for Country Group T & V, except $0 for the People's Republic of China; $0 for all other destinations.

* * * * *

List of Optical Elements and Elements for Optical Tubes Controlled by ECCN 1556A

(a) * * *

(1) A fiber pitch (center-to-center spacing) of less than 10 micrometers:

* * * * *

(b) * * *

(1) * * *

(2) Hole pitch (center-to-center spacing) of less than 25 micrometers;

(c) Semi-transparent photocathodes incorporating expitaxially grown layers of compound semiconductors, such as gallium arsenide (For associated starting materials, see ECCN 1757A.); and

(d) Diffractive type optical elements specially designed for display screens, with any of the following characteristics:

(1) A transmission of more than 90% outside the reflection band and a reflection of more than 75% inside the reflection band, having less than 15 nanometers bandwidth and matched to the frequency of the display light source;

(2) A rear projection screen brightness gain of more than 10 times the gain of a Lambertain scatterer with an equivalent area, and less than 10% variation in brightness across the exit aperture;

(3) Specially designed for use in helmet-mounted displays.

36. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments). ECCN 1558A is amended by revising the heading, the *GLV $ Value Limit*, and paragraphs (a)(2)(i) and (a)(3), (c)(4), (e) and (h) of the List of Tubes (Values) . . . Controlled by ECCN 1558A: by adding a new NOTE after paragraph (i); and by revising the Advisory Note, as follows:

1558A Electronic vacuum tubes (valves) and specially designed components therefor.

Controls for ECCN 1558A

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China: $0 for all other destinations.

* * * * *

List of Electronic Vacuum Tubes (Valves) and Specialized Parts Controlled by ECCN 1558A

(a) * * *
(2) * * *
(i) Above 1 GHz, with maximum peak pulse output power greater than 45 kW: *or*
(ii) * * *
(3) Tubes specially designed for use as pulse modulators for radar or similar applications, having a peak anode voltage rating of 100 kV or more, or rated for a peak pulse power of 20 MW or more (see also ECCN 1514A);
* * * * *
(c) * * *
(4) Tubes used as fixed-frequency or voltage-tunable oscillator tubes designed to operate at frequencies below 20 GHz with maximum output power of less than 3W.
* * * * *
(e) Tubes utilizing interaction between a beam of electrons and microwave elements or cavities in which the electrons drift in a direction parallel to the applied magnetic field but also require for their operation a large component of velocity transverse to the direction of the applied magnetic field, including but not limited to gyrotrons, ubitrons and peniotrons;
* * * * *
(h) Tubes of the types described in sub-paragraphs (c), (d) or (e) of this List designed to operate with no filament or cathode heating element (as indicated by the absence of heating supply connections); or
(i) * * *

Note.—This ECCN does not cover the following electronic vacuum tubes and specially designed components therefor: tubes covered by sub-paragraphs (a) and (c) of this ECCN, specially designed for civil telecasting according to CCIR and OIR standards.

(Advisory Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following commodities:
(a) Tubes defined in sub-paragraphs (a), (b) and (c) of the List above, required as replacement parts for specific civilian equipment not exceeding the capability of that which could be exported under other Commodity Control List ECCNs, provided that these parts do not upgrade the initial performance of that equipment;
(b) Pulsed amplifier klystrons and fixed frequency and mechanically tunable pulsed magnetrons defined in sub-paragraphs (b) and (c) of this ECCN intended for civil radar equipment previously exported, provided that they do not upgrade the initial performance of that equipment.

37. In the Commodity Control List, (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1559A is amended by revising the heading and the *GLV $ Value Limit* and by adding a List of Equipment Controlled by ECCN 1559A, reading as follows:

1559A Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction having any of the characteristics in the List below, and accessories therefor.

Controls for ECCN 1559A

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China: $0 for all other destinations.
* * * * *

List of Equipment Controlled by ECCN 1559A

Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction having any of the characteristics, and accessories therefor:
(a) A peak pulse power output exceeding 20 MW;
(b) A peak anode voltage greater than 25 kV;
(c) A peak current rating greater than 1.5 kA.

Note.—For thyratrons rated for both single-shot (crowbar) and modulator service, the figure for modulator service should be used.
(Advisory) Note. * * *

38. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1560A is amended by revising the heading, the *GLV $ Value Limit* and paragraph (a) of the List of Capacitors Controlled by ECCN 1560A, and removing (b) and (c) as follows:

1560A Capacitors designed for or capable of maintaining their rated electrical and mechanical characteristics during their specified operating lifetime.

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.
* * * * *

List of Capacitors Controlled by ECCN 1560A

Capacitors designed for or capable of maintaining their rated electrical and mechanical characteristics during their specified operating lifetime, as follows:
(a) Monolithic ceramic capacitors (other than boundary layered capacitors) using non-ferro-electric strontium titanate ($SrTiO_3$) dielectric rated for operation over the whole range of ambient temperatures from below −55 °C to above +85 °C;

Note.—Capacitors rated for operation during their specified lifetime at ambient temperatures below −55 °C or above +200 °C are covered by Supp. No. 2 Part 370 of the Export Administration Regulations.
* * * * *

39. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1561A is amended by revising the heading paragraphs (a) and (b), by adding paragraph (c) and a note, and by revising the *GLV $ Value Limit* as follows:

1516A Materials specially designed and manufactured for use as absorbers of electromagnetic waves having frequencies greater than 2×10^8 Hz and less than 3×10^{12} Hz, except materials as follows:

(a) *"Hair" type absorbers, whether contructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;*
(b) *Absorbers whose incident surface is non-planar in shape, including pyramids, cones, wedges, and convoluted surfaces, that have no magnetic loss; and*
(c) *Absorbers whose incident surface is planar and are either plastic foam materials (flexible or non-flexible) with carbon loading to provide absorption, or organic binders with mognetic material loading that provide resonant absorption performance.* (Resonant absorption performance is defined as less than 5% echo compared with metal over a bandwidth of no greater than ±15% of the center frequency of the incident energy.) *Such planar absorbers are further limited to those having both of the following characteristics:*
(i) *A tensile strength of less than 7×10^4 N/m² (1,016 psi) and a compressive strength of less than 14×10^4 N/m² (2,032 psi);*
(ii) *Not capable of withstanding temperatures in excess of 176 °C (350 °F).*

Note.—Nothing in this ECCN 1561A releases magnetic materials to provide absorption when contained in paint.
* * * * *

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.
* * * * *

40. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 5 (Electronics and

Precision Instruments), ECCN 1564A is revised to read as follows:

1564A Electric component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits, including packages therefor.

Controls for ECCN 1564A

Unit: Report in "number."
Validated Licensed Required: Country Groups QSTVWYZ.
GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.
Processing Code: EE
Reason for Control: National security.
Special License Available: See Part 373.

I. Definitions of Terms Related to Commodities Controlled by ECCN 1564A

(a) *Assembly.* A number of components (*i.e.,* circuit elements, discrete components, microcircuits) connected together to perform a specific function or functions, replaceable as an entity (and normally capable of being disassembled).

(b) *Microcircuit.* A device in which a number of passive and active circuit elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

(c) *Monolithic integrated circuit.* A microcircuit fabricated as a single component consisting of elements formed in or on a single semiconducting substrate by diffusion, implantation or deposition.

(d) *Prediffused microcircuit.* (e.g., gate array or uncommitted logic array). An arrangement of elements of monolithic integrated circuits, formed with a single semiconducting substrate that can be subsequently interconnected or otherwise modified to perform one of a variety of functions.

(e) *Film type microcircuit.* An array of circuit elements and metallic interconnections formed by deposition of a thick or thin film on an insulating substrate.

(f) *Multichip microcircuit.* A microcircuit containing two or more monolithic integrated circuit chips bonded to a common substrate.

(g) *Hybrid microcircuit.* A microcircuit consisting of a combination of film-type microcircuits and monolithic integrated circuit elements or combinations of either with discrete components or circuit elements.

(h) *Circuit element.* A single active or passive functional item in an electronic circuit, such as one diode, one transistor, one resistor, one capacitor.

(i) *Discrete component.* A separately packaged circuit element with its own external connections.

(j) *Integrated optical microcircuit.* A microcircuit containing one or more elements designed to function as a photosensor or photo-emitter, or to perform optical or electro-optical functions.

(k) *Module.* An assembly, replaceable as an entity, not normally capable of being disassembled.

(l) *Microprocessor microcircuit.* A single package (normally single-chip) electronic logic unit capable of executing from external memory a series of general purpose instructions contained in the external memory. (The unit normally does not contain integral user memory, although internal memory on the chip may be present for internal utilization by the chip in performing its logic function. User memory is customarily provided via external memory chips, although some products have some limited onboard memory that is normally used for purposes other than program storage.)

(m) *Microcomputer microcircuit.* An electronic logic unit capable of executing instructions from internal memory, on data contained in the internal memory. (In certain cases, the internal memory may be augmented by an external memory.)

(n) *Substrate.* A sheet of base material with or without an interconnection pattern and on which, or within which, discrete components or integrated circuits may then be located.

II. List of Equipment Controlled by ECCN 1564A

(a) Substrates for printed circuits including ceramic substrates and coated metal substrates (single-sided, double-sided or multilayer), and thin copper foils therefor, *except:*

(i) *Printed circuit boards manufactured from any of the following materials:*

(1) *Paper base phenolics;*

(2) *Glass cloth melamine;*

(3) *Glass epoxy resin uncoated or coated with copper foil of a thickness of 18 micrometers (0.00071 inch) or greater;*

(4) *Polyethylene terephthalate; or*

(5) *Any other insulating material having all of the following characteristics:*

(*a*) *A maximum continuous rated operating temperature not exceeding 150 °C;*

(*b*) *A dissipation factor equal to or greater than 0.009 at 1 MHz;*

(*c*) *A relative dielectric constant equal to or less than 8 at 1 MHz; and*

(*d*) *A coefficient of expansion equal to or greater than 10^{-5} per °C over a temperature range of 0 to 120 °C:*

(ii) *Ceramic substrates having not more than two layers of interconnection, including the ground plane; and*

(iii) *Copper foil having a thickness of 18 micrometers (0.00071 inch) or greater;*

(b) *Ceramic microcircuit packages designed for hermetically sealed pin or pad grid array, leadless carrier, or surface-mounted configurations, except* when having *all* of the following characteristics:

(i) Single-in-line, dual-in-line or flat-pack configuration:

(ii) Pin, pad or lead spacings of 2.50 mm or greater, or 100 mils or greater;

(iii) 40 leads or less;

(c) Assemblies, modules and printed circuit boards with mounted components of the following description:

(i) Those including substrates for printed circuits covered by paragraph (a) of this list;

(ii) Those containing controlled microprocessor, microcomputer or memory microcircuits or other controlled components, *except:*

(1) *Those of which the only controlled components are capacitors; or*

(2) *Power supply assemblies;*

Note 1.—For the export control status of assemblies, modules and printed circuit boards with mounted components designed for, or having the same functional characteristics as, electronic computers or related equipment, see ECCN 1565A.

Note 2.—Assemblies, modules and printed circuit boards with mounted components designed for, or having the same functional characteristics as, controlled equipment shall be rated against the parameters of the appropriate equipment ECCN, *except* that, in such cases, the temperature parameter will be below −55 °C and above +85 °C.

Note 3.—Sub-paragraph (c)(2) of this ECCN does not cover assemblies, modules and printed circuit boards with mounted components designed for equipment not otherwise controlled for export and that, by nature of their design, performance, lack of "user-accessible programmability", lack of "user-accessible microprogrammability", "software", "microprogram" control or specialized logic control, are substantially restricted to the particular application for which they have been designed.

Technical Note 1.—"User-accessible programmability" is the facility allowing a user to insert, modify or replace programs by means other than:

(a) A physical change in wiring or interconnections; *or*

(b) The setting of function controls, including entry of parameters.

Technical Note 2.—"User-accessible microprogrammability" is the facility allowing a user to insert, modify or replace microprograms.

Note.—A facility limited to one or both of the following is not considered to be within this definition:

(a) Loading, reloading or inserting of microprograms provided by the supplier; or

(b) Simple loading of microprograms, which may or may not be provided by the supplier, but are neither designed to be accessible to the user nor accompanied with training or "software" for user-accessibility.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of assemblies, modules and printed circuit boards with mounted components controlled for export by sub-paragraph (c)(2) of this ECCN, and that by nature of their design or performance are substantially restricted to the particular application for which they have been designed, if the controlled components are eligible for export under an Advisory Note to this ECCN 1564A.

(d) Microcircuits (monolithic integrated circuits, microprocessors, microcomputer, multichip, hybrid, film or integrated optical types), *except:*

(i) *Encapsulated passive networks; or*

(ii) *Encapsulated microcircuits not designed or rated as radiation hardened, that are not rated for operation below −40 °C or above +85 °C, packaged in TO–5 outline cases (0.305 inch to 0.370 inch diameter) or in non-hermetically sealed cases and are:*

(1) *Bipolar types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, bilateral switches, drivers, counters, latches, adders, comparators, parity generators, multiplexers, expanders, flip-flops, multivibrators, code converters, registers, encoders, decoders, de-multiplexers, diode matrices, multipliers and Schmitt-triggers, and having all of the following characteristics:*

(a) *Encapsulated in a package having 24 terminals or less;*

(b) *A basic propagation delay time not less than 3 nanoseconds;*

(c) *A power dissipation per basic gate of not less than 2 milliwatts and, for types having a basic gate propagation delay of 3 nanoseconds or more and less than 5 nanoseconds, a product of the basic gate propagation delay time (in nanoseconds) and the power dissipation per basic gate (in milliwatts) not less than 30 pJ (i.e., a speed-power product per gate not less than 30 pJ);*

(2) *CMOS types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, flip-flops, latches, multivibrators, bilateral switches, display drivers, fixed counters, fixed frequency dividers, storage registers, decoders, voltage translators, encoders and Schmitt-triggers, and having both of the following characteristics:*

(a) *Encapsulated in a package having 24 terminals or less;*

(b) *Minimum value of the basic gate propagation delay time under any rated conditions of not less than 10 nanoseconds;*

Note 1.—The basic gate power dissipation and the basic gate propagation delay are those values corresponding to the basic gate utilized within a family of microcircuits. They may be specified either as the power dissipation/propagation delay per typical gate or as the typical power dissipation/propagation delay per gate for a given family.

Note 2.—Basic gate propagation delay is not to be confused with input/output delays of complex devices.

(3) *Silicon single-chip microcomputer microcircuits that are mask programmed by the "manufacturer" for a civil application prior to export and have all of the following characteristics:*

(a) *A word size to "speed" ratio of less than or equal to 1.1 bit/microsecond;*

(b) *A "speed-power dissipation product" of greater than or equal to 1.2 microjoules;*

(c) *A on-chip read-only memory (ROM), not including the microcode of less than or equal to 4,096 bytes;*

(d) *An on-chip random-access memory (RAM) of less than or equal to 128 bytes;*

(e) *Containing no programmable read-only memory (PROM);*

(f) *An operand (data) word length of less than or equal to 8 bits;*

(g) *Not capable of using off-chip memory for program storage;*

(h) *Not containing multiplication instructions, general purpose operating systems (e.g., CP/M) or high order languages (e.g., Tiny Basic);*

(i) *Not rated for operation below −20 °C or above +75 °C;*

Note 1.—For "speed" or "speed-power dissipation product" computation, see Note 5 to this ECCN 1564A.

Note 2.—Bit-slice microcomputer microcircuits are not released by this sub-paragraph.

(4) *Silicon microprocessor microcircuits having all of the following charcteristics:*

(a) *A word/size to "speed" ratio of less than or equal to 1.25 bit per microsecond;*

(b) *A "speed-power dissipation product" of greater than or equal to 2 microjoules;*

(c) *Containing no on-chip ROM or on-chip PROM;*

(d) *Containing on-chip RAM of less than or equal to 1,024 bits;*

(e) *Capable of addressing off-chip memory not greater than 65,536 Bytes;*

(f) *An operand (data) word length of less than or equal to 8 bits and not having an arithmetic logic unit (ALU) wider than 8 bits;*

(g) *Not containing multiplication instructions;*

(h) *Not rated for operation below −20 °C or above +75 °C;*

Note 1.—For "speed" or "speed-power dissipation product" computation, see Note 5 to this ECCN 1564A.

Note 2.—Bit-slice microprocessor microcircuits are not released by this sub-paragraph.

(5) *Memory microcircuits, as follows:*

(a) *MOS dynamic random access memories (DRAM) having all of the following characteristics:*

(i) *A maximum number of bits per package of 4,096 bits and a maximum access time of no less than 250 nanoseconds:*

(ii) *Not rated for operation below −20 °C or above +75 °C;*

(b) *Mask programmed ROMs not rated for operation below −20 °C or above +75 °C, as follows:*

(i) *With a maximum number of bits per package of 2,048 bits and a maximum access time of no less than 450 nanoseconds;*

(ii) *PMOS or NMOS types with a maximum number of bits per package of 8,192 bits and a maximum access time of no less than 450 nanoseconds;*

(iii) *PMOS or NMOS types specifically programmed or designed as character generators, having a standard character font, and having a maximum access time of no less than 250 nanoseconds;*

(c) *MOS static random access memories (SRAM) having both of the following characteristics:*

(i) *A maximum number of bits per package of 1,024 bits;*

(ii) *A maximum access time of no less than 450 nanoseconds;*

(d) *Bipolar RAMs, as follows:*

(i) *With a maximum number of bits per package of 64 bits and a maximum access time of no less than 30 nanoseconds;*

(ii) *With a maximum number of bits per package of 256 bits and a maximum access time of no less than 40 nanoseconds;*

(iii) *With a maximum number of bits per package of 1,024 bits and a maximum access time of no less than 45 nanoseconds;*

(6) *Microcircuits of the following description:*

(a) *Non-reprogrammable microcircuits, not capable of addressing external memory, specially designed for and, by virtue of circuit design, normally limited to use only for simple calculators that perform a single*

function in response to a keystroke, capable of performing floating point addition of 13 decimal digits (mantissa only) or less in no less than 0.02 second;

(b) Programmable microcircuits specially designed for and, by virtue of circuit design, normally limited to use only for simple key programmable calculators having both of the following characteristics:

(i) Capable of executing a sequence of no more than 256 program steps introduced into a program memory on the clip by a sequence of keystrokes;

(ii) Capable of performing a floating point addition of 13 decimal digits (mantissa only) or less in no less than 0.02 second;

(c) P-channel or N-channel MOS microcircuits specially designed and, by virtue of circuit design, normally limited to use only as serial digital shift registers with a maximum clock rate of 2.5 MHz, and a maximum number of bits per package of 1,024:

(7) Microcircuits of the following description:

(a) Untuned AC amplifier microcircuits having a bandwidth of less than 3 MHz and a maximum rated power dissipation of 5 Watts or less at a case temperature of 25 °C;

(b) Audio amplifier microcircuits having a maximum rated continuous power output of 25 Watts or less at a case temperature of 25 °C;

Note.—For audio amplifiers, the 85° upper temperature limit specified in the heading of sub-paragraph (d)(ii) above is not applicable. The lower limit of −40 °C is applicable.

(8) Operational amplifier microcircuits having all of the following characteristics:

(a) A typical unity-gain open-loop bandwidth of not more than 5 MHz;

(b) A typical open-loop voltage gain of not more than 10^6, i.e., 120 dB;

(c) Either a maximum intrinsic rated input offset voltage of no less than 1.0 mV or a maximum input offset voltage drift of no less than 5 microvolts per °C;

(d) A typical slew rate, at unity gain, not exceeding 6 volts/microsecond provided that, for microcircuits having a typical slew rate, at unity gain, greater than 2.5 microvolts/second, the typical power dissipation is greater than 10 milliwatts per amplifier;

(9) Analog multiplier and/or divider microcircuits having both of the following characteristics:

(a) A best case rated non-linearity of not better than 0.5 percent of full scale;

(b) A −3dB small-signal bandwidth of not more than 1 MHz;

(10) Isolation amplifier microcircuits;

(11) Instrumentation amplifier microcircuits having all of the following characteristics:

(a) A best case rated non-linearity of not better than 0.01% at a gain of 100;

(b) A maximum gain-bandwidth product not greater than 7.5 MHz (e.g., a maximum bandwidth of 75 kHz at −3 dB and at a gain of 100);

(c) A typical slew rate at unity gain not exceeding 3 volts/microseconds;

(12) Voltage regulator microcircuits, of the following description:

(a) Linear types, having both of the following characteristics:

(i) A rated nominal output voltage of 40 volts or less;

(ii) A maximum output current of 2 amperes or less;

(b) Switching types, having both of the following characteristics:

(i) A rated nominal output voltage of 40 volts or less;

(ii) A maximum output current of 150 mA or less;

Note.—For voltage regulators, the +85 °C upper temperature limit specified in sub-paragraph (d)(ii) above is not applicable. The lower limit of −40 °C is applicable.

(13) Voltage reference microcircuits, having both of the following characteristics:

(a) A rated accuracy of no better than 0.1%;

(b) A temperature coefficient of voltage not less than 15×10^{-6} per K (15 ppm per °C);

(14) Voltage comparator microcircuits, having both of the following characteristics:

(a) A maximum input offset voltage of not less than 2mV, and

(b) A typical switching speed or typical response time of not less than 30 nanoseconds;

(15) Bipolar microcircuits designed for operation in civil applications as externally controlled (by inductive magnetic or optical means) electronic switches, or as threshold value switches with switching times of 0.5 microseconds or greater;

(16) Non-coherent light-emitting alphanumeric displays not incorporating an integrated circuit;

(17) Non-coherent light-emitting alphanumeric displays incorporating an integrated circuit used for decoding, controlling and/or driving that display, provided that the integrated circuit is not integral with the actual display device;

(18) Simple encapsulated photocoupler (transoptor) assemblies with electrical input and output that incorporate non-coherent light-emitting diodes;

(19) Interface microcircuits, of the following description:

(a) Line drivers and line receivers having a typical propagation delay time from data input to output of not less than 15 nanoseconds;

(b) Sense amplifiers, having both of the following characteristics:

(i) A typical propagation delay time from data input to output of not less than 15 nanoseconds;

(ii) A typical input threshold voltage of not less than 10 millivolts;

(c) Memory and clock drivers, having all of the following characteristics:

(i) A maximum rated output current of 500 milliamperes or less;

(ii) A maximum rated output voltage of 30 volts or less;

(iii) A typical propagation delay time from data input to output of not less than 20 nanoseconds;

(d) Peripheral and display drivers, having all of the following characteristic:

(i) A maximum rated output current of 500 milliamperes or less;

(ii) A typical propagation delay time from data input to output of not less than 20 nanoseconds;

(iii) A maximum rated output voltage of 80 volts or less;

Note.—When propagation delay time is not specified, typical turn-on or turn-off time, whichever is less, should be used.

(20) Voltage-to-frequency converter microcircuits not employing delta or delta/sigma modulation techniques, having both of the following characteristics:

(a) A rated non-linearity of not better than 0.01% of full scale;

(b) A gain drift not less than 50×10^{-6} per °C at rated frequency;

Note.—Gain drift specifies the maximum change in gain over a specified temperature range.

(21) Rms-to-dc voltage converter microcircuits;

(22) Analog-to-digital and digital-to-analog converter microcircuits of the following description:

(a) Analog-to-digital converter microcircuits having both of the following characteristics:

(i) A maximum conversion rate to rated accuracy not greater than 50,000 complete conversions per second; or a maximum conversion time to maximum resolution of not less than 20 microseconds;

(ii) A rated non-linearity of not better than 0.025% of full scale over the specified operating temperature range;

(b) Digital-to-analog converter microcircuits having both of the following characteristics:

(i) A maximum settling time to rated linearity of not less than 5 microseconds for "voltage output", and not less than

250 nanoseconds for current output converters;

(ii) A rated non-linearity of not better than 0.025% of full scale over the specified operating temperature range:

Note.—This sub-paragraph (22)(b) is not intended to release coder, decoder, or coder/decoder (codec) microcircuits specially designed for voice. See ECCN 1527A.

(23) *"Non-reprogrammable" silicon microcircuits specially designed or programmed by the "manufacturer" for functional purposes in the following applications:*

(a) Automotive electronics (e.g., entertainment, instrumentation, safety, comfort, operations and pollution);

(b) Home electronics, including radio and television, appliances, clocks, watches, audio and video tape recorders, safety, comfort and amusement;

(c) Personal communications up to 150 MHz, including amateur radio communications and intercom;

(d) Uncontrolled cameras (including cine cameras) but excluding imaging microcircuits;

(e) Medical electronic prostheses (e.g., cardiac pacemakers, hearing aids);

Note.—The temperature limits specified in the heading of paragraph (d)(ii) above do not apply to sub-paragraphs (d)(ii)(23) (*c*) or (*d*).

(24) *Timing microcircuits having both of the following characteristics:*

(a) A typical timing error of not less than 0.5%;

(b) A typical rise time of not less than 100 nanoseconds;

(25) *Sample and hold microcircuits having both of the following characteristics:*

(a) An acquisition time of not less than 10 microseconds;

(b) A maximum non-linearity error of not better than 0.01% of full scale for a hold time of 1 microscond;

(26) *Analog-to-digital converter microcircuits specially designed for digital voltmeter applications and permitting characteristics corresponding to those of instruments free from export control under ECCN 1529A(f); or*

(iii) *Unencapsulated monolithic integrated circuits not designed or rated as radiation hardened, that are:*

(1) *Biopolar types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, bilateral switches, drivers, counters, latches, adders, comparators, parity generators, multiplexers, expanders, flip-flops, multivibrators, code converters, registers, encoders, decoders, demultiplexers, diode matrices, multipliers, and Schmitt-triggers, and having both of the following characteristics:*

(a) A product of the typical basic gate propagation delay time (in nanoseconds) and the power dissipation per basic gate (in milliwatts) not less than 70 pJ (i.e., speed-power product/gate not less than 70 pJ);

(b) A typical propagation delay time not less than 5 nanoseconds (ECCN 1564A does not permit export of complex custom biopolar digital devices.);

(2) *Operational amplifiers, having all of the following characteristics:*

(a) A typical unity-gain open-loop bandwidth of not more than 5 MHz;

(b) A typical open-loop voltage gain of not more than 100,000 or 100 dB;

(c) A maximum intrinsic rated input offset voltage of not less than 5 mV;

(d) A typical slew rate at unity gain not exceeding 1 volt/microsecond;

(3) *Audio amplifiers having a maximum rated power output of 10 watts or less at a case temperature of 25°C;*

(4) *Non-reprogrammable types specially designed for and, by virtue of circuit design, normally limited to civil users in television and radio receivers, having all of the following characteristics:*

(a) Rated for operation at 11 MHz or less;

(b) Not specially designed for station scanning application;

(c) Not utilizing charge-coupled device (CCD) technology;

(d) Not intended for beam lead bonding; and

(e) Not intended by video ana/or luminance amplifiers with maximum rated supply voltages exceeding 30 volts or with typical bandwidths greater than 7.5 MHz; and

(5) *Non-reprogrammable types that are specially designed for time-keeping applications (e.g., watches and clocks).*

Technical Note.—A microcircuit whose function cannot be altered by accepting or executing instructions from any external source is "non-reprogrammable".

Note 1.—Nothing in this ECCN 1564A shall be construed as allowing the export of wafer or chip design or processing information inherent in the manufacture of any controlled class of assembly, sub-assembly, microcircuit or circuit element, irrespective of any decontrol of devices in that class. This restriction also applies to technology embodied in the equipment covered by ECCN 1355A *and* in its use.

(Advisory) Note 2.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of devices covered by sub-paragraph (c) of the ECCN, and not released by sub-paragraphs (d) (i) and (ii), when they consist of, or are incorporated in, plug-in printed circuit boards or plug-in modules for use in specifically identified equipment previously exported, and do not upgrade the initial performance of that equipment, provided that the plug-in printed circuit boards or plug-in modules cannot operate independently from the equipment to which they are likely to be connected or inserted.

(Advisory) Note 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of integrated circuits covered by sub-paragraph (d)(ii) above only by virtue of being encased in hermetically sealed dual-in-line packages, provided that the stated legitimate civil end-use requires such a package.

(Advisory) Note 4.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of devices, encapsulated or unencapsulated, covered by sub-paragraphs (c) and (d) above, provided that the devices have been designed specifically for identifiable civil applications and, by nature of design or performance, are substantially restricted to the particular application for which they have been designed.

Note 5.—*Definitions of Terms*—

(a) "Speed" is defined as the time to fetch an operand C and another operand D, both from an external storage outside any work register, add these operands and put the result back in storage. The addressing mode that yields the shortest execution time will be used. The result of the add operation shall be stored in either the same location as one of the addends or in some other location. This choice shall be made to give the shortest execution time at the highest specified clock frequency.

(b) "Speed power dissipation product": The power dissipation shall be the typical value of the clock frequency used in the "speed" computation. The typical value may be obtained by any of the following means:

(i) The specified typical internal power dissipation;

(ii) One half the maximum internal power dissipation;

(iii) The product of the nominal supply voltage and the typical total supply current; *or*

(iv) One half the product of the nominal supply voltage and the maximum total supply current; whichever is the lowest value specified.

Note 6.—For this purposes of the ECCN 1564A, the "manufacturer" is the individual or organization designing the microcircuit or program for the intended application (in contrast to an individual or organization merely programming a microcircuit at, or in accordance with, a user's request).

Note 7.—Microcircuits are only eligible for release from export control if the design or program is originated either by the "manufacturer" alone or in concert with the microcircuit user and is unalterably fixed at the time of manufacture, and if the "manufacturer" established the design and performance of this microcircuit for the intended end-use. (Microcircuits, including gate arrays and programmable logic arrays, based only or primarily on customer-supplied

circuit design or programs and not meeting the criteria of this Note are not released under the ECCN 1564A.)

(Advisory) Note for the People's Republic of China.—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Printed circuit boards and materials controlled by this ECCN 1564A;

(b) Microcircuits defined in (but not released by) sub-paragraphs (d)(ii) (1), (2), (3), (6), (7), (9) through (21), (23) and (24);

(c) Microprocessors having a word size not exceeding 16 bits and a performance parameter fixed point processing data rate (XPDR) of 26.0 or less (see the definition of "total processing data rate" in Note 16 to ECCN 1565A for the definition of "fixed point processing data rate");

(d) Memories that are not specially designed to military standards to be radiation hardened or to operate over military temperature ranges, as follows:

Type	Memory size not exceeding (bits)
MOS DRAMS	64k
MOS SRAMS	16k
ROMs	64k
UV EPROMS	64k
EAROMS	16k
E^2 ROMs	32k

(e) All analog-to-digital and digital-to-analog converters not specially designed to military standards to be radiation hardened or to operate over military temperature ranges, as follows: analog-to-digital converters, with conversion time to maximum resolution greater than 500 nanoseconds, and digital-to-analog converters with greater than 500 nanoseconds (voltage) or greater than 25 nanoseconds (current) settling time;

(f) User programmable single chip microcomputers;

(g) Operational amplifiers, sample and hold amplifiers and track and hold amplifiers with slew rates not exceeding 100V/microsecond, provided that they are not specially designed to military standards to be radiation hardened or to operate over military temperature ranges;

(h) Microprocessors peripheral chips designed for use with microprocessors that are likely to be approved for export to China under this Advisory Note;

(i) Photo sensitive arrays, including charge-coupled devices (CCDs), not controlled by ECCN 1548A with 2,048 elements or less;

(j) Other microcircuits manufactured before October 1, 1983, covered by ECCN 1564A and not included above.

(Unencapsulated monolithic integrated circuits will be considered for export on the same basis as equivalent encapulated devices.)

41. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 1567A in Commodity Group 5 (Electronics and Precision Instruments) is amended as follows:

The phrase "and 'specially designed software' " is removed from the heading of the entry;

The phrase "and 'specially designed software' " is removed from the title of the "List of Stored Program Controlled Communication Switching Equipment or Systems . . . Controlled by ECCN 1567A";

Paragraphs (b)(1)(iii) and (iv), (b)(2)(iii) and (iv), and (b)(3)(vii) and (viii) under the "List of Stored Program Controlled Communication Switching Equipment or Systems . . . Controlled by ECCN 1567A" are removed and reserved;

Paragraphs (f) and (g) of Advisory Note 3 are removed and reserved;

Paragraphs (j) and (k) of Advisory Note 4 are removed and reserved;

Paragraphs (h) and (j) of Advisory Note 5 are removed and reserved;

Paragraphs (k) and (l) of Advisory Note 6 are removed and reserved; and

Paragraphs (h) and (j) of Advisory Note 7 are removed and reserved.

42. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1568A is amended by revising paragraphs (e), (f), (k) and (m) of the List of Equipment Controlled by ECCN 1568A, as follows:

1568A Equipment as defined in the List below.

* * * * *

List of Equipment Controlled by ECCN 1568A

* * * * *

(e) Induction rate (tachometer) generators, synchronous and asynchronous with a housing diameter of 50.8 mm (2 inches) and smaller and a length (without shaft-ends) of 101.6 mm (4 inches) and smaller or with a diameter-to-length ratio greater than 2:1, having one or more of the following characteristics:

(1) With a rated linearity of 0.1% or less; or

(2) All temperature-compensated or temperature-corrected types;

(f) Servo-motors (gear-head or plain) of the following description:

(1) Designed to operate from power sources of more than 300 Hz, *except those designed to operate from power sources of over 300 Hz up to and not exceeding 400 Hz with a temperature range of from −55 °C to +125 °C;*

(2) Designed to have a torque-to-inertia ratio of 50,000 radians per second^2 or greater; or

(3) Incorporating special features to secure internal dampling;

* * * * *

(k) Analog-to-digital and digital-to-analog converters other than digital voltmeters or counters (see ECCN 1529A), of the following description:

(1) Electrical input type analog-to-digital converters having any of the following characteristics:

(i) a conversion rate of more than 200,000 complete conversions per second at rated accuracy;

(ii) An accuracy in excess of 1 part in more than 10,000 of full scale over the specified operating temperature range;

(iii) A figure of merit of $1x10^6$ or more (derived from the number of complete conversions per second divided by the accuracy);

(2) Electrical input type digital-to-analog converters having any of the following characteristics:

(i) A maximum "settling time" of less than 3 microseconds for voltage output devices and less than 250 nanoseconds for current output devices;

(ii) An accuracy in excess of 1 part in more than 10,000 of full scale over the specified operating temperature range;

(iii) A figure of merit greater than $2x10^9$ for voltage output converters or $1x10^{10}$ for current output converters (the figure of merit is defined as the reciprocal of the product of the maximum settling time in seconds and the accuracy);

(3) Solid-state synchro-to-digital or digital-to-synchro converters and resolver-to-digital or digital-to-resolver converter (including multipole resolvers) having a resolution of better than ±1 part in 5,000 per full synchro revolution for single speed synchro systems or ±1 part in 40,000 for dual speed systems;

(4) Mechanical input types (including but not limited to shaft-position encoders and linear displacement encoders, but excluding complex servo-follower systems), of the following description:

(i) Rotary types having an accuracy of better than ±1 part in 40,000 of full scale; or

(ii) Linear displacement types having a resolution better than ±5 micrometers;

Note.—"Settling time" in sub-paragraph (k)(2)(i) above is defined as the time required for the output to come within one-half bit of the final value when switching between any two levels of the converters.

* * * * *

(m) Specially designed components and test equipment (including adapters, couplers, etc.) for the above.

* * * * *

43. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1570A is amended

by revising paragraph (c) and (d) of the List of Thermoelectric Materials and Devices Controlled by ECCN 1570A, removing paragraph (e) and the parenthetical materials after (e), and adding a Technical Note and two Notes as follows:

1570A Thermoelectric materials and devices.

* * * * *

List of Thermoelectric Materials and Devices Controlled by ECCN 1570A

* * * * *

(c) Heat absorbing or electrical power generating devices containing any of the junctions in sub-paragraph (b) above, and specially designed components therefor; and

(d) Other power generating devices, and specially designed components therefor, that generate in excess of 22 W per kg (10 W per pound) or of 17.70 kW per cubic meter (500 W per cubic foot) of the devices' basic thermoelectric components.

Technical Note: The figure of merit (Z) equals Seebeck coefficient squared divided by the product of electrical resistivity and thermal conductivity. The weight and cubic measurements in sub-paragraph (d) above are not intended to encompass the complete device but to include only the thermoelectric elements and assembly and the components for pumping calories. Other components, such as heating and/or cooling sources or containers, device frames or stands and control equipment are not to be included in the calculations.

Note 1: See also ECCN 1205A(c).

Note 2: Specify by name and model number.

44. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1571A is amended by revising the heading, removing the parenthetical material under the heading, adding a List of Equipment, and adding Technical Notes, as follows:

1571A Magnetometers, magnetometer systems and related equipment, and specially designated components therefor.

Controls for ECCN 1571A

* * * * *

Lost of Equipment Controlled by ECCN 1571A

(a) Magnetometers and magnetometer systems having or capable of having a sensitivity better than ±1.0 gamma ($\pm 10^{-5}$ oersteads), *except* magnetometers having sensitivities not better than ±0.1 gamma ($\pm 10^{-6}$ oersteads) where the reading rate capability is not faster than once per half second;

(b) Magnetometer test facilities able to control magnetic field values to an accuracy of 1.0 gamma (10^{-5} oersteads) or less;

(c) Magnetic compensation systems utilizing digital computers, non-magnetic platforms and calibration systems. (For optical fibers, see ECCN 1526A(c) and (d).)

Technical Note 1.—Sensitivity is defined as the visually recognized minimum sinusoidal signal in the frequency range of 0.025 Hz to 1.5 Hz when the signal-to-noise ratio is higher than 1.

Technical Note 2.—The term "specially designed components therefor" is intended to include non-magnetic pumping lamps and heating coils, cryogenic magnetic componentry, enhanced resonance gases, and any form of dynamic signal-processing gradient compensation provided as part of, or designed for use with, magnetometers controlled for export by this ECCN. Enhanced resonance gases are gases of isotopes of cesium, rubidium and other metals that exhibit very sharp bands of response to pumping frequencies in optically pumped magnetometers.

Technical Note 3.—Magnetometer systems use magnetic sensors, including those designed to operate at cryogenic temperatures, compensation systems, displays, recorders and associated electronics for signal processing target parameter detection gradient compensation and dynamic range control.

45. In Supplement No. 1 to § 399.1 (the Commodity Control List) Commodity Group 5 (Electronics and Precision Instruments). ECCN 1572A is amended by revising the heading and paragraphs (a) (b) and (d) of the List of Types of Recording . . . Equipment Controlled by ECCN 1572A: by removing paragraph (e) from that List: and by adding new Notes, as follows:

1572A Recording or reproducing equipment and specially designed components therefor.

Controls for ECCN 1572A

* * * * *

List of Types of Recording and/or Reproducing Equipment Controlled by ECCN 1572A

Recording or reproducing equipment, as follows:

(a) Using magnetic techniques, *except:*

(i) Those specifically designed for voice or music and not employing digital techniques;

(ii) Those specifically designed to use magnetic card, tag, label or bank check recording media with a magnetic surface area not exceeding 85 sq. cm. (13 sq. in.);

(b) Using electron beam(s) operating in a vacuum, or laser-produced light beams (see also ECCN 1522A) that produce patterns or images directly on the recording surface, and specialized equipment for image development, as follows:

(i) Equipment specially designed for the production of audio or video disc masters for the replication of entertainment/education type discs; and

(ii) Facsimile equipment incorporating laser, such as used for commercial weather imagery and commercial wire photos and text;

(c) * * *

(d) Recording media used in equipment controlled for export by sub-paragraphs (a) and (b) above.

Note.—The term "recording media" is intended to include all types and forms of specialized recording media used in such recording techniques, including but not limited to tapes, drums, discs and matrices.

Note 1.—*Reserved.*

Note 2.—Sub-paragraphs (a) or (b) of this ECCN also do not control the following recording or reproducing equipment and specially designed components therefor (recording media used in this equipment are still controlled for export by sub-paragraph (d), see Notes 3 and 6), provided that:

(a) The equipment has been designed for identifiable civil use and by nature of design or performance is substantially restricted to the particular application for which it has been designed;

(b) The equipment has all of the following characterisitcs:

(1) Not ruggedized;

(2) Not rated for continuous operation in ambient temperatures from below −20 °C to above +55 °C;

(3) Not specifically designed for underwater use;

(c) The equipment is limited as described below:

(1) Video magnetic tape and disc recorders specially designed for television recording, using a signal registered with the CCIR, or specially designed or adapted for use with medical equipment, and having all of the following characteristics:

(i) 3 dB recording bandwidth not exceeding 6 MHz;

(ii) A signal-to-noise ratio not exceeding 48 dB, unless the equipment is a cassette-type recorder, in which case the signal-to-noise ratio does not exceed 52 dB;

(iii) Maximum length of time of a single scan not exceeding 20 milliseconds;

(iv) Portable or transportable and having a net weight not exceeding 50 kg;

(2) Analog magnetic tape recorders specifically designed for use with medical equipment, *i.e.*, for recording physiological signals, and having all of the following characteristics:

(i) Bandwidth capability at maximum design speed not exceeding 300 kHz per track;

(ii) Recording density not exceeding 5,000 magnetic flux sine waves per linear inch (25.4 mm) per track;

Technical Note.—Recording density is, for direct recorders, the recording bandwidth divided by the tape speed; for FM recorders, it is the sum of the carrier frequency and the deviation divided by the tape speed.

(iii) Not including recording and/or reproducing heads of the rotary or floating types or heads designed for use in equipment with characteristics superior to those defined in sub-paragraph (i) or (ii) above;

(iv) Tape speed not exceeding 60 inches (152.4 cm) per second;

(v) Number of recording tracks (excluding audio voice track) not exceeding 20;

(vi) Start-stop time not less than 25 milliseconds;

(vii) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error of not less than ±5 microseconds at a tape speed of 60 inches (152.4 cm) per second and not less than ±10 microseconds at any lower tape speed measured in accordance with applicable IRIG and EIA documents;

(3) Digital tape recorders specially designed for the collection of medical data obtained from nuclear or other ionizing radiation measurements and having all of the following characteristics:

(i) Mean packing density, with less than 5 percent loss of pulses, not exceeding 800 pulses per inch per track;

(ii) Characteristics not superior to those defined in sub-paragraphs (c)(2) (iii), (vi) and (vii) above;

(iii) Tape speed not exceeding 37.5 inches (95 cm) per second;

(iv) Number of recording tracks not exceeding 8;

(v) Packing density not exceeding 800 bits per inch per track;

(4) Equipment using electron beam(s) operating in a vacuum specially designed for television recording on film, using a signal registered with the CCIR and having all of the following characteristics:

(i) Pattern or image frame size not exceeding 3 mm X 2.3 mm;

(ii) Pattern or image not exceeding 312.5 lines per frame;

(iii) Beam spot position stability not better than 0.3 percent;

(iv) 3 dB recording bandwidth not exceeding 4 MHz;

(5) Digital recording and reproducing equipment operating serially with a packing density not exceeding 800 bits per inch per track specially for use with, and incorporated in, typewriter systems used for preparing, correcting or composing text;

(6) Recording or reproducing equipment limited to both:

(i) A tape width not exceeding ¼ inch (6.35 mm) and

(ii) Digital recording techniques in serial form with a packing density not exceeding 800 b.p.i.;

Technical Note.—Packing density is, for digital recorders, the number of bits per second per track divided by the tape speed.

Note 3.—Sub-paragraph (d) of this ECCN does not control the following magnetic tape and flexible disc cartridge recording media, provided that:

(a) The magnetic tape is a standard commercial product that has been in use in quantity for at least two years and is not designed for use in satellite applications;

(b) The base material consists only of polyester or cellulose acetate;

(c) The magnetic tape recording media with a magnetic coating material consisting only of undoped gamma-ferric (iron) oxide with a rated intrinsic coercitivity not exceeding 350 oersteds is limited to the following types and characteristics:

(1) Video tape designed for television recording and reproduction or instrumentation tape designed for analog recording and reproduction, and having all of the following characteristics:

(i) Not designed for use in video recorders having a 3 dB recording bandwidth exceeding 6 MHz or in analog recorders having a recording density exceeding 5,000 magnetic flux sine waves per linear inch (25.4 mm) per track;

(ii) A tape width not exceeding 1 inch (25.4 mm);

(iii) A magnetic coating thickness not less than 0.40 mil (10.2 micrometers);

(iv) A tape length not exceeding 4,600 feet (1,402 meters);

(2) Computer tape designed for digital longitudinal recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 6,250 bits per inch (9,042 flux changes per inch) along the length of the tapes;

(ii) A magnetic coating thickness not less than 5.08 micrometers (0.2 mil);

(iii) A tape width not exceeding 1 inch (25.4 mm);

(iv) A tape length not exceeding 3,600 feet (1,097 meters);

(3) Computer tape in cassettes/cartridges designed for digital longitudinal recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 1,600 bits per inch (3,200 flux changes per inch) along the length of the tape;

(ii) A magnetic coating thickness not less than 0.17 mil (4.32 micrometers);

(iii) A tape width not exceeding 1/4 inch (6.35 mm);

(iv) A tape length not exceeding 900 feet (274.3 meters);

(4) Computer flexible disc cartridges designed for digital recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 13,262 flux changes per radian (3,268 bits per inch, at a radius of 2.029 inches (51.536 mm) around the disc);

(ii) A magnetic coating thickness not less than 0.1 mil (2.54 micrometers);

(iii) A disc thickness not exceeding 80 micrometers (0.003 inch);

(iv) A disc outer diameter not exceeding 7.88 inches (201 mm);

(v) A disc inner diameter not exceeding 1.5 inch (38.1 mm);

(d) The magnetic tape recording media with a magnetic coating material consisting only of chromium dioxide with a rated intrinsic coercitivity not exceeding 650 oersteds are limited to video tape specially designed for the video recorders defined in NOTE 2(c)(1) and having both of the following characteristics:

(1) A tape width not exceeding 1 inch (25.4 mm);

(2) A tape length not exceeding 1,800 feet (548.6 meters);

(e) The magnetic tape recording media in video tape cassettes are specially designed for the video recorders defined in Note 2 (c)(1) and have all of the following characteristics:

(1) A rated intrinsic coercitivity not exceeding 750 oersteds;

(2) A magnetic coating thickness not less than 0.1 mil (2.54 micrometers);

(3) A tape length not exceeding 1,800 feet (548.6 meters);

(4) A tape width not exceeding ¾ inch (19.05 mm).

Note 4.—Sub-paragraph (a)(i) of this ECCN does not control normal civil use digital recording and reproducing equipment specially designed for recording or reproducing voice or music on tape or disc.

(Advisory) Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of equipment controlled for export by sub-paragraph (a) of this ECCN, and specially designed components and recording media therefor controlled by sub-paragraph (d) for use with the above exported equipment, as follows:

(a) Video magnetic tape recorders specially designed for television recording, using a signal registered with the CCIR, or specially designed or adapted for use with medical equipment, and having all of the following characteristics:

(1) 3 dB recording bandwidth not exceeding 6 MHz;

(2) Maximum length of time of a single scan not exceeding 20 milliseconds;

(3) Not ruggedized;

(b) Analog magnetic tape recorders having all of the following characteristics:

(1) Bandwidth capability at a maximum design speed not exceeding 300 kHz per track;

(2) Recording density not exceeding 5,000 magnetic flux sine waves per linear inch (25.4 mm) per track;

Technical Note.—Recording density is, for direct recorders, the recording bandwidth divided by the tape speed, and, for FM recorders, the sum of the carrier frequency and the deviation divided by the tape speed;

(3) Not ruggedized;

(4) Not rated for continuous operation in ambient temperatures ranging from less than −20 °C to greater than +55 °C;

(5) Not specifically designed for underwater use;

(6) Not including recording or reproducing heads of the rotary or floating types or designed for use in equipment with characteristics superior to those defined in sub-paragraphs (b) (1) and (2) above;

(7) Tape speed not exceeding 60 inches (152.4 cm) per second;

(8) Number of recording tracks (excluding audio voice track) not exceeding 16 channels for direct recording and 28 channels for FM recording;

(9) Start-stop time not less than 25 milliseconds;

(10) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error of not less than ±5 microseconds at a tape speed of 60 inches (152.4 cm) per second and not less than ±10 microseconds at any lower tape speed measured in accordance with applicable IRIG and EIA documents;

(c) Systems for use in civil aircraft or helicopters to record flight data for safety or maintenance purposes, and having all of the following characteristics:

(1) In normal civil use for more than one year;

(2) Not exceeding 100 input channels;

(3) Sum of the individual channel recording bandwidths not exceeding 500 Hz;

(d) Incremental recorders or reproducers (*i.e.*, equipment designed for discontinuous sampling or collection of data in an incremental manner) having all of the following characteristics:

(1) The maximum tape speed, at the maximum stepping rate, does not exceed 2 inches (50.8 mm) per second;

(2) The equipment has all of the characteristics specified in sub-paragraphs (b) (3) to (6) of this Note;

(e) Digital magnetic recorders specially designed for seismic/geophysical applications and operating in the frequency range of 5 to 800 Hz.

(f) Digital recording and reproducing equipment operating serially with a packing density not exceeding 1,600 bits per inch per track, specially designed for use with, and incorporated in, typewriting systems used for preparing, correcting or composing text.

(Advisory) Note 6.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for use in civil television recording and reproducing applications, of reasonable quantities of the following types of magnetic tape recording media covered by sub-paragraph (d) of this ECCN whose base material consists only of polyester or cellulose acetate:

(a) With a magnetic coating material consisting only of undoped gamma-ferric (iron) oxide with a related intrinsic coercitivity not exceeding 350 oersteds and limited to video tape designed for television recording and reproduction with a tape width not exceeding 2 inches (50.8 mm);

(b) With a magnetic coating material consisting only of chromium dioxide with a rated intrinsic coercitivity not exceeding 750 oersteds and limited to video tape designed for television recording and reproduction with a tape width not exceeding 1 inch (25.4 mm);

(c) With a magnetic coating material consisting only of doped or undoped gamma-ferric (iron) oxide with a rated intrinsic coercitivity not exceeding 650 oersteds, and limited to video tape designed for television recording and reproduction and having all of the following characteristics:

(1) Not designed for use in video recorders having a 3 dB recording bandwidth exceeding 6 MHz;

(2) A magnetic coating thickness not less than 0.2 mil (5.1 micrometers);

(3) A tape length not exceeding 2,400 feet (732 meters);

(4) A tape width not exceeding 1 inch (25.4 mm).

(Advisory) Note 7.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for the shipment of reasonable quantities of computer magnetic disc recording media covered by sub-paragraph (d) of this ECCN for use in civil digital computer applications provided that:

(a) The magnetic disc recording media are a standard commercial product, have not been designed as ruggedized equipment and are neither capable of meeting military specifications for ruggedized equipment nor modified for military use;

(b) The magnetic disc recording media are limited to the following types and characteristics:

(1) Unrecorded single-disc cartridges (front loading, 2,200 b.p.i.) (2315-type) designed to meet ANSI X3.52–1976;

(2) Unrecorded single-disc cartridges (top loading, 2,200 b.p.i.) (5440-type) designed to meet International Standard ISO 3562–1976;

(3) Unrecorded magnetic six-disc packs (2311-type) designed to meet ANSI X3.46–1974 or International Standard ISO 2864–1974(E);

(4) Unrecorded eleven-disc packs (single-density or double-density 2314-type) designed to meet ANSI X3.58–1977 or International Standard ISO 3564–1976.

(Advisory) Note 8.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of analog magnetic tape recorders controlled for export by sub-paragraph (a) of this ECCN, and specially designed components and recording media therefor controlled by sub-paragraph (d), for use with those recorders, provided that:

(a) The equipment is for a legitimate civil end-use and is reasonable for that use;

(b) Details of such equipment have previously been submitted to the Department of Commerce and a determination has been made that the equipment is eligible for special treatment;

(c) The analog magnetic tape recorders are limited as follows:

(1) Characteristics not superior to those defined in (Advisory) Note 5(b) (1) to (9);

(2) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error of not less than ±0.8 microsecond at a tape speed of 60 inches (152.4 cm) per second and not less than ±1.6 microsecond at any lower tape speed measured in accordance with applicable IRIG and EIA documents.

Note 9.—For equipment that may be exported in conjunction with computer shipments, see ECCN 1565A.

(Advisory) Note.—For the People's Republic of China—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Equipment defined in sub-paragraph (c) of this ECCN that are galvanometer-based recorders not incorporating a cathode-ray tube with a fiber optic faceplate;

(b) Equipment defined in sub-paragraph (d) that is specifically designed for tape verification or certification, provided that the machines are not designed for certifying high resolution tape;

(High resolution tape is tape having 10,000 bits-per-inch (b.p.i.). For analog systems, high resolution tapes refer to tapes having a coating thickness of 120 micro inches or smaller, such as those intended for use with 1–MHz bandwidth instrumentation recorders.)

(c) Analog magnetic instrumentation recorders having bandwidths up to 2-Megahertz for quantities less than ten, and for end-uses/end-users types previously approved;

(d) Instrumentation digital recorders (cartridge or cassette) normally incorporated in equipment and using a quarter-inch tape and having a packing density of 1600 bits-per-inch per channel or less, and having up to four channels;

(e) Magnetic tape designed and appropriate for use with magnetic tape recorders likely to be approved for export to China under this Advisory Note;

(f) Discs for drives designed for equipment likely to be approved for export to China under this Advisory Note; and

(g) Spare parts to support previously-approved seismic recorders, except that a one-for-one exchange is required on critical parts (e.g., servos, heads, basket motors).

46. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 1573A is added (in numerical order, disregarding the first digit), reading as follows:

1573A Superconductive electromagnets and solenoids.

Controls for ECCN 1573A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

List of Items Controlled by ECCN 1573A

Superconductive electromagnets and solenoids, as follows:

(a) Those having a non-uniform distribution of current-carrying windings, measured along the axis of symmetry when specially designed for gyrotron application, *except those rated for magnetic field strength of less than 3 tesla (30 kilogauss) or "overall current density" in the windings of less than 10,000 A/cm²*;

(b) Those specially designed to be fully charged or discharged in less than one minute, provided that:

(1) The maximum energy delivered during discharge divided by the duration

of the discharge is more than 500 kJ per minute;

(2) The inner diameter of the current-carrying windings is more than 6 cm; *and*

(3) They are rated for magnetic field strengths of more than 8 tesla (80 kilogauss) or "overall current density" in the windings of more than 10,000 A/cm².

Technical Note.—"Overall current density" is defined as the total number of ampere-turns in the coil (*i.e.*, the sum of the number of turns multiplied by the maximum current carried by each turn) divided by the total cross-section of the coil (comprising the superconducting filaments, the metallic matrix in which the superconducting filaments are embedded, the encapsulating material, any cooling channels, etc.).

47. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 1574A is added (in numerical order, disregarding the first digit), reading as follows:

1574A Electronic devices, circuits and systems as listed in this entry.

Controls for ECCN 1574A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

List of Items Controlled by ECCN 1574A

Electronic devices, circuits and systems specially designed for or capable of operation at temperatures below 103 K (−170 °C, −274 °F) and containing components manufactured from superconducting materials that perform functions such as electromagnetic sensing and amplification, current switching, frequency selection or electromagnetic energy storage at resonant frequencies above 1 MHz. These include the following:

(a) Josephson-effect devices;

(b) "Dayem bridges";

(c) Weak-link devices;

(d) "Proximity-effect devices";

(e) Phase slip devices;

(f) SNS (super-normal-super) bridges;

(g) SIS (superconducting-insulator-superconductor) devices;

(h) Quasiparticle devices or detectors.

Technical Notes.— 1. By "Dayem bridges" are meant superconducting thin film devices with a reduced section area that acts as a conductive weak link. This weak link has a much lower critical current than the areas it joins. Dayem bridges can act as superconducting switches and may be employed in superconducting quantum interferences devices (squids).

2. By "proximity-effect devices" are meant superconducting weak link devices whose low critical current is due to an overlay of normal metal rather than small area. These devices can be used for the same purposes as Dayem bridges.

48. In Supplement No. 1 to § 399.1 (the Commodity Control List). Commodity Group 5 (Electronics and Precision Instruments), ECCN 1584A is amended by revising the heading and List of Characteristics . . . Controlled by ECCN 1584A, and by adding Notes, as follows:

1584A Cathode-ray oscilloscopes and specially designed components therefore, including associated plug-in units, external amplifiers, pre-amplifiers and sampling devices, as listed in this entry.

* * * * *

List of Characteristics of Equipment Controlled by ECCN 1584A

(a) An amplifier or system bandwidth greater than 250 MHz (defined as the band of frequencies over which the deflection on the cathode-ray tube does not fall below 70.7% of that at maximum point measured with a constant input voltage to the amplifier);

(b) A horizontal sweep faster than 1 nanosecond per cm with an accuracy (linearity) better than 2%;

(c) Containing or designed for use with cathode-ray tubes controlled by ECCN 1541A(c);

(d) Ruggedized to meet a military specification;

(e) Rated for operation over an ambient temperature range of from below −25 °C to +55 °C;

(f) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 4 GHz; or

(g) Digital oscilloscopes with sequential sampling of the input signal at an interval of less than 50 nanoseconds.

(Specify by name and model number.)

Notes.—1. Nothing in the above shall be construed as sanctioning the export of technology, except technology for maintenance, repair and operation of oscilloscopes excluded from export controls under sub-paragraph (a) above, that—

(a) Use cathode-ray tubes controlled by ECCN 1541A(b); or

(b) Exceed an amplifier bandwidth of 200 MHz.

2. In the case of systems, the characteristics of individual plug-ins, probes of mainframes must not be in excess of what is required for overall system bandwidth.

49. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments). ECCN 1586A is amended by revising the heading and paragraphs (a) and (c) of the List of Acoustic Wave Devices . . . Controlled by ECCN 1586A, as follows:

1586A Acoustic wave devices and specially designed components therefor.

* * * * *

List of Acoustic Wave Devices and Specially Designed Components Controlled by ECCN 1586A

(a) Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, signal-processing devices employing elastic waves in materials, including but not limited to lithium niobate, lithium tantalate, bismuth germanium oxide, silicon, quartz, zinc oxide, aluminium oxide (sapphire), gallium arsenide and alpha-aluminium phosphate (berlinite), which permit direct processing of signals, including but not limited to convolvers, correlators (fixed, programmable and memory), oscillators, bandpass filters, delay lines (fixed and tapped) and non-linear devices, having any of the following characteristics:

(1) A carrier frequency of greater than 400 MHz;

(2) A carrier frequency of 400 MHz or less, *except those specially designed for home electronics and entertainment type applications, having any of the following characteristics:*

(i) *A side-lobe rejection of greater than 45 dB;*

(ii) *A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) greater than 100;*

(iii) *A dispersive delay of greater than 10 microseconds:*

(iv) *An insertion loss of less than 10 dB;*

(b) * * *

(c) Acousto-optic signal-processing devices employing an interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals, including but not limited to spectral analysis, correlation and convolution.

Technical Note.—This sub-paragraph controls devices made from acousto-optic materials, including but not limited to lithium niobate, bismuth germanium oxide, bismuth silicon oxide, gallium arsenide, gallium phosphide, tellurium oxide and lead molybdenate.

Note.—Reserved.

(Advisory) Note 1.—Licenses are likely to be approved for export to satisfactory end-

users in Country Groups QWY of devices defined in sub-paragraph (a)(1) above that are specially designed for use in civil television equipment and operate at frequencies below 1 GHz.

Note 2.—Reserved.

50. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1587A is amended by revising the List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 1587A, as follows:

1587A Quartz crystals and assemblies thereof in any stage of fabrication (i.e., worked semi-finished or mounted).

* * * * *

List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 1587A

(a) For use as filter elements, and having either of the following characteristics:

(1) Designed for operation over a temperature range wider than 125 °C; or

(2) Crystals or assemblies of crystals that use the trapped energy phenomenon and have more than three series or parallel resonances on a single quartz element;

(b) For use as oscillator elements specially designed for temperature-controlled crystal ovens or for TCXO's covered by (c) below, and having an average ageing rate of $\pm 1\times10^{-6}$ per day or better (less);

Note.—Ageing rate shall be measured over a longer period at a constant temperature of +60 °C or higher that vary only by +2 °C.

(c) Temperature-compensated crystal oscillators having any of the following characteristics:

(1) A stability with respect to temperature of better than ±0.00015 percent over their operating temperature range;

(2) An operating temperature range wider than 120 °C;

(3) Capable of reaching to within 1×105^{-7} of normal operating frequency or better in 3 minutes or less from switch-on at an ambient temperature of 25 °C;

(4) Rated to have an acceleration sensitivity of less than 1×10^{-6} of the operating frequency per g (where g=981 cm/sec²) over a vibration test frequency range from 10 to 2,000 Hz sine wave and with a maximum level of acceleration not exceeding 20 g;

(5) Designed to withstand a shock greater than 10,000 g (where g=981 cm/sec²) over a period of 1 millisecond; or

(6) Radiation hardened to better than 10^{-10} of the operating frequency per gray (1 rad=10^{-2} gray).

Notes.—1. This ECCN does not control quartz crystals for use as filters elements that have either of the following characteristics:

(a) Designed for operation as intermediate frequency filters operating from 10.5 to 11 MHz or from 21 to 22 MHz with 3 dB bandwidths not exceeding 40 kHz; or

(b) Designed for operation as single side-band filters operating at from 1 to 10 MHz with 3 dB bandwidths not exceeding 45 kHz.

2. This ECCN only covers quartz crystals having piezo-electric qualities. This definition does not cover optical grade quartz crystals.

3. Nothing in this ECCN shall be construed as sanctioning the export of technology for quartz crystal elements or assemblies thereof.

51. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1588A is amended by revising paragraphs (e)(1), (f), and (g)(1) under the List of Materials Composed of Crystals Controlled by ECCN 1588A, as follows:

1588A Materials composed of crystals . . . and devices containing them.

* * * * *

(e) * * *

(1) Plated wire and plated rods;

* * * * *

(f) Magnetic ferrite materials having square loop characteristics, suitable for operation above 1 GHz and having all of the following characteristics:

(1) A saturation magnetization of:

(i) Greater than 0.2 tesla (2,000 gauss) for lithium-based ferrites; or

(ii) Greater than 0.3 tesla (3,000 gauss) for other than lithium-based ferrites;

(2) A dielectric loss tangent of less than 0.001 measured at a frequency of 1 GHz or greater;

(3) A ratio of the remanent magnetization (B_r) to the saturation magnetization ($4\pi Ms$) equal to or greater than 0.7; and

(g) * * *

(1) Switching rate of 0.3 microsecond or faster at the minimum field strength required for switching at 104 °F (40 °C); or

* * * * *

52. In Supplement No. 1 to § 399.1 the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1595A is amended by revising the the words "stable accuracy" in the Advisory Note to read "static accuracy" and by revising the heading and *GLV $ Value Limit* to read as follows:

1595A Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, *except gravity meters for land use having static accuracies of 100 microgral or less accurate, and land gravity meters of the Worden types.*

* * * * *

GLV $ Value Limit: $1,000 for Country Groups T&V, except $0 for the People's Republic of China, $0 for all other destinations.

* * * * *

53. In Supplement No. 1 to § 399.1 the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5595D is amended by revising the *GLV $ Value Limit* to read "$2,000 for Country Groups Q. General License *GLV* is not applicable to other destinations; however, another general license may apply."

Dated: August 28, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-21327 Filed 9-5-85: 8:45 am]

BILLING CODE 3510-DT-M

VOL
50

ISS
76

SE
11

985

UMI

Reader Aids

Federal Register

Vol. 50, No. 176

Wednesday, September 11, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6
36563-36860.....9
36861-36982.....10
36983-37162.....11

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Administrative Orders:
Memorandums:
September 5, 1985.....36563
August 7, 1985.....36565
Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033
12532.....36861
Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041
319.....35533
736.....35535
908.....35767
920.....36567
981.....35767
989.....35769
1036.....36865
1135.....36043
1427.....36568
1472.....35772
Proposed Rules:
52.....36094
420.....36580
423.....36584
432.....36589
433.....36593
442.....36597
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829

9 CFR

Proposed Rules:
77.....35564
309.....36094, 36998

10 CFR

25.....36983
35.....36866
95.....36983

12 CFR

611.....36985
Proposed Rules:
615.....36868
701.....36998

14 CFR

39.....35772, 36044-36046, 36570, 36869, 36987-36990
71.....36047
108.....35535
Proposed Rules:
Ch. I.....36884
21.....36437
39.....35830-35839, 36095-36102, 36441, 36600
71.....35840, 36884, 37004

15 CFR

376.....37112
379.....37112-37136
399.....37112-37136

16 CFR

4.....36048
Proposed Rules:
13.....35565

17 CFR

1.....36049
31.....36405
190.....36405
Proposed Rules:
1.....36104
3.....36104

18 CFR

154.....36571
157.....36571
385.....36051
Proposed Rules:
357.....36601

19 CFR

Proposed Rules:
101.....37004
162.....36603

20 CFR

302.....36870
322.....36870
340.....36870
404.....36571
Proposed Rules:
295.....35568
416.....36106

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
178.....36872
452.....36991
510.....35535
558.....35535, 35536, 36419, 36874
1040.....36548

Proposed Rules:

74.....35841
82.....35841
170.....35571
808.....36441-36443

25 CFR

36.....36575

26 CFR

1.....35536, 35540, 36575
6a.....35540
602.....35536, 35540

Proposed Rules:

1.....35572, 37004
602.....35572

28 CFR

0.....36054
2.....36419-36423

29 CFR

1910.....36992
2641.....36992

Proposed Rules:

33.....36885
2642.....36603

30 CFR

920.....36970

Proposed Rules:

Ch. I.....36885
817.....35573
870.....36858
944.....36554

31 CFR

51.....36055
103.....36875
206.....35547

Proposed Rules:

223.....36115

32 CFR

155.....35790
706.....36424-36425
865.....36426

Proposed Rules:

230.....36610
231.....36619
231a.....36622

33 CFR

100.....35552-35554, 36576
165.....35555

Proposed Rules:

100.....36628-36629
117.....36630
207.....35573

33 CFR

100.....36576
151.....36768
158.....36768

34 CFR

Proposed Rules:

682.....35964
683.....35964

35 CFR

Proposed Rules:

133.....36444

36 CFR

327.....35555

Proposed Rules:

228.....37005

38 CFR

3.....36577
19.....36992
21.....36578

Proposed Rules:

3.....36631

39 CFR

10.....36431
111.....36875

Proposed Rules:

111.....35843, 36885, 36886

40 CFR

15.....36188
52.....35796, 36876
60.....36830
66.....36732, 36734
67.....36732
81.....35561
133.....36879
180.....36579, 36994
271.....35798
466.....36540

Proposed Rules:

52.....36633-36635
60.....36956
65.....36637
85.....36838
147.....35574
180.....35844
261.....36966
262.....36886
430.....36444
439.....36638
600.....36838
799.....36446

41 CFR

201-1.....36995
201-2.....36995
201-8.....36995
201-11.....36995
201-16.....36995
201-20.....36995
201-21.....36995
201-23.....36995
201-24.....36995
201-26.....36995
201-30.....36995
201-31.....36995
201-32.....36995
201-38.....36995
201-39.....36995
201-40.....36995

42 CFR

505.....35646
512.....35648

Proposed Rules:

124.....36454

43 CFR

1820.....36055

Proposed Rules:

17.....37006

44 CFR

59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

46 CFR

Proposed Rules:

160.....36639

47 CFR

Ch. I.....36056
0.....36061
2.....36061
18.....36061
25.....36071, 36432
73.....35562, 35799-35800
83.....36880
97.....36080

Proposed Rules:

73.....35574-35581, 35845

48 CFR

15.....35815
52.....35815
501.....36080
502.....36080
504.....36080
505.....36080
506.....36080
507.....36080
509.....36080
510.....36080
514.....36080
515.....36080
525.....36080
536.....36080
549.....36080
914.....35958
915.....35958
952.....35958

Proposed Rules:

227.....36887
252.....36887
549.....35582
552.....35582

49 CFR

Ch. X.....35562
571.....36084, 36995, 36996
1033.....36085
1085.....35563
1152.....36432

Proposed Rules:

192.....36116
218.....35638
221.....35636
232.....35640, 35643
571.....35583

50 CFR

17.....36065, 36089
20.....35762, 36198, 36432-36433, 36996
32.....35563, 35815
33.....35563
611.....35825, 36997
621.....36434
630.....35563
661.....35827, 36092
672.....35825
675.....35825, 36997

Proposed Rules:

17.....35584, 36118

LIST OF PUBLIC LAWS

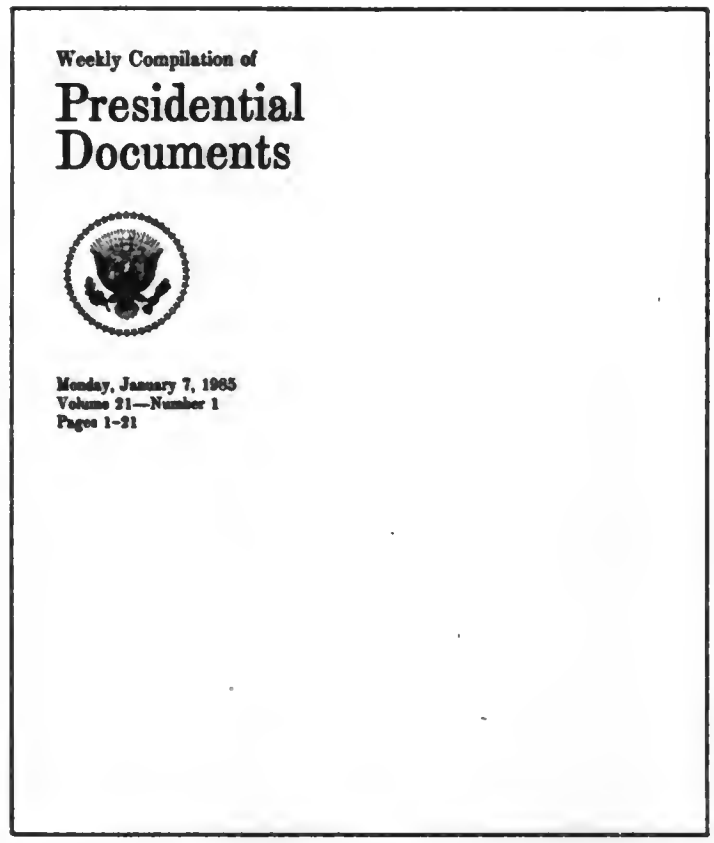
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1985

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of Ronald Reagan



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No. ☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

VISA MasterCard

Credit Card Orders Only
Total charges $ _____.
Fill in the boxes below.

Customer's Telephone Nos.
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)
@ $60.00 Domestic; @ $75.00 Foreign
@ $101.00 if Domestic first-class mailing is desired.

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity		Charges
_____	Publications	_____
_____	Subscription	_____
	Special Shipping Charges	_____
	International Handling ..	_____
	Special Charges	_____
	OPNR	_____
_____	UPNS	
_____	Balance Due	
_____	Discount	
_____	Refund	882

(Rev. 4-1-85)

, a
ses,
ities

al
ords

0402

order
p.m.

(PD)

es

882

VOL
50

ISS
76

SE
11

985

UMI

VOL
50

ISS
77

SE
2

985

UMI

9-12-85
Vol. 50 No. 177

federal register

Thursday
September 12, 1985

**********5-DIGIT 48106

A FR SER1A300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
50

ISS
77

SE
12

985

UMI

9-12-85
Vol. 50 No. 177
Pages 37163-37342

federal register

Thursday
September 12, 1985

Selected Subjects

Administrative Practice and Procedure
Federal Communications Commission
Air Pollution Control
Environmental Protection Agency
Animal Diseases
Animal and Plant Health Inspection Service
Aviation Safety
Federal Aviation Administration
Bridges
Coast Guard
Chemicals
Environmental Protection Agency
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Food Assistance Programs
Food Nutrition Service
Hazardous Waste
Environmental Protection Agency
Loan Programs—Agriculture
Commodity Credit Corporation
Loan Programs—Housing and Community Development
Farmers Home Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform aystem for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

Organization and Functions (Government Agencies)
Federal Communications Commission

Pipeline Safety
Research and Special Programs Administration

Postal Service
Postal Rate Commission

Surface Mining
Surface Mining and Reclamation Enforcement Office

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

Agricultural Marketing Service
RULES
37163 Cucumbers, greenhouse; grade standards; correction
37171 Oranges (Valencia) grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Food and Nutrition Service; Forest Service; Soil Conservation Service.

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements:
37287 Research scientist development and awards

Animal and Plant Health Inspection Service
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
37201 Brucellosis

Arctic Research Commission
NOTICES
37257 Meetings

Arts and Humanities, National Foundation
See National Foundation on Arts and Humanities.

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
37264 Procurement list, 1985; additions and deletions

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
37257 Maine
37257 Virginia
37257 Wyoming

Coast Guard
RULES
Drawbridge operations:
37175 Louisiana
37174 South Carolina
PROPOSED RULES
Anchorage regulations:
37237 Wisconsin

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Credit Corporation
RULES
Loan and purchase programs:
37171 Sugar beets and sugarcane

Education Department
NOTICES
Meetings:
37265 National Graduate Fellows Program Fellowship Board
Postsecondary education:
37264 National defense and direct student loan program; directory of designated low-income schools for teacher cancellation benefits; availability

Energy Department
See also Federal Energy Regulatory Commission; Western Area Power Administration.
NOTICES
Atomic energy agreements; subsequent arrangements:
37265 European Atomic Energy Community and Switzerland

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
37178 Connecticut
37176 Iowa
Air quality implementation plans; delayed compliance orders:
37178–37181 Texas (3 documents)
Toxic substances:
37182 Biphenyl; testing requirements
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
37238 Illinois
37238 New Jersey
Hazardous waste:
37338 Identification and listing; dioxin-containing wastes

Farmers Home Administration
PROPOSED RULES
Loan and grant programs:
37200 Multiple family housing; real property insurance loss deductible clause

Federal Aviation Administration
RULES
Airworthiness directives:
37172 Sikorsky
37173 Societe Nationale Industrielle Aerospatiale

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
37189 Field Operations Bureau Chief
Practice and procedure:
37190 Private radio service; standardization of applications

NOTICES
Hearings, etc.:
37272 Cattle Country Broadcasting et al.
37282 Mifflen County Communications Ltd. Partnership et al.
37282 Page-A-Call et al.
37282 Westside Communications of Tampa, Inc., et al.
37305 Meetings; Sunshine Act

Federal Deposit Insurance Corporation
NOTICES
37305 Meetings; Sunshine Act (2 documents)

Federal Election Commission
NOTICES
37305 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
37270 Conoco Inc.
37270 Kerr-McGee Corp.
37271 Reliance Pipeline Co.
37271 Southern Natural Gas Co.
37266 Tennessee Gas Pipeline Co. et al.

Federal Home Loan Bank Board
NOTICES
Receiver appointments:
37285 Centennial Savings & Loan Association
37285 Heights Savings Association
37285 Presidio Savings & Loan Association
37285 Westside Federal Savings & Loan Association

Federal Reserve System
NOTICES
37285, 37286 Agency information collection activities under OMB review (2 documents)
Bank holding company applications, etc.:
37286 Howard Bancorp et al.
37286 Louisiana Bancshares, Inc.

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
37229 Oklahoma Optometric Association
NOTICES
37306 Meetings; Sunshine Act

Fish and Wildlife Service
RULES
Endangered and threatened species:
37192 Palau fantail, ground-dove, and owl
37194 White River spinedace
Hunting:
37198 Refuge specific hunting regulations; correction
PROPOSED RULES
Endangered and threatened species:
37249 Santa Cruz cypress
37252 Steamboat buckwheat

Food and Nutrition Service
RULES
Food distribution program:
37163 National commodity processing program; interim

Forest Service
NOTICES
Environmental statements; availability, etc.:
37256 Wayne National Forest, OH

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Public Health Service.

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
Committees; establishment, renewals, terminations, etc.:
37290 National Capital Memorial Advisory Committee

International Trade Administration
NOTICES
Scientific articles; duty free entry:
37258 Center for Energy and Environmental Research
37258 Forsyth Dental Center et al.
37258 Lamont-Doherty Geological Observatory/ Columbia University
37262 Massachusetts Institute of Technology
37261 Microelectronics Center of North Carolina
37261 National Aeronautics and Space Administration
37257 National Bureau of Standards
37259 Pennsylvania State University
37259 Rensselaer Polytechnic Institute
37261 University of Alabama in Birmingham
37259 University of California
37259, 37262 University of Chicago (2 documents)
37261 University of Maryland
37260 University of North Carolina
37260 University of Rochester
37260 University of Washington et al.
37262 University of Wisconsin
37261 Worcester Foundation for Experimental Biology

International Trade Commission
NOTICES
Import investigations:
37292 Cold-rolled carbon steel plates and sheets from Austria; termination
37293 European Community pork in U.S. and third country markets; competitive position; hearing

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
37293 Burlington Northern Railroad Co. et al.
37293 Canonie Atlantic Co. & Canonie, Inc.

Justice Department
PROPOSED RULES
37232-37236 Privacy Act; implementation (4 documents)
NOTICES
Pollution control; consent judgments:
37293 United States Steel Corp.
37294-37299 Privacy Act; systems of records (5 documents)

Land Management Bureau
NOTICES
Land use plans:
37291 Willow Creek, Susanville District, CA

Planning analysis:
37291 Utah
Sale of public lands:
37292 California

Legal Services Corporation
NOTICES
37306 Meetings; Sunshine Act

Management and Budget Office
NOTICES
37322 Budget recissions and deferrals; cumulative reports

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
37292 Union Texas Petroleum Corp.

National Aeronautics and Space Administration
NOTICES
37300 Agency information collection activities under OMB review
Meetings:
37300 Space Applications Advisory Committee

National Foundation on Arts and Humanities
NOTICES
Meetings:
37301 Humanities Panel

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
37240 Controls and displays; illumination and identification

National Institutes of Health
NOTICES
Meetings:
37287 Animal Resources Review Committee
37287 Digestive Diseases National Advisory Board
37288 National Cancer Institute (2 documents)
37289 National Cancer Institute; place change
37289 National Heart, Lung, and Blood Institute (3 documents)
37290 National Heart, Lung, and Blood Institute; room change
37290 National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
37198 Gulf of Mexico shrimp
NOTICES
Meetings:
37263 Pacific Fishery Management Council
37263 Western Pacific Fishery Management Council

National Technical Information Service
NOTICES
37263 Inventions, Government-owned; availability for licensing

Panama Canal Commission
NOTICES
37302 Agency information collection activities under OMB review

Postal Rate Commission
RULES
Practice and procedure:
37175 Domestic Mail Classification Schedule; E-COM (Electronic-Computer Originated Mail) provisions deleted
NOTICES
Post office closings; petitions for appeal:
37302 Grady, OK

Public Health Service
NOTICES
Meetings:
37290 National Toxicology Programs; Scientific Counselors Board

Railroad Retirement Board
NOTICES
37302 Agency information collection activities under OMB review

Research and Special Programs Administration
RULES
Pipeline safety:
37191 Natural gas transportation, etc.; nondestructive testing
NOTICES
Hazardous materials:
37308 Applications; exemptions, renewals, etc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
37256 Little and Middle Pitman Creek Watershed, KY
37256 Plateau Valley school land drainage measure, CO

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
37318 Illinois

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
NOTICES
37303 Agency information collection activities under OMB review (2 documents)

Veterans Administration
NOTICES
Meetings:
37304 Special Medical Advisory Group

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
37272 Conrad-Shelby transmission line project, MT

Separate Parts in This Issue

Part II
37308 Department of Transportation, Research and Special Programs Administration

Part III
37318 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part IV
37322 Office of Management and Budget

Part V
37338 Environmental Protection Agency

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
51.....37163
250.....37163
252.....37163
908.....37171
1435.....37171
Proposed Rules:
1806.....37200

9 CFR
Proposed Rules:
51.....37201
71.....37201
78.....37201
80.....37201
92.....37201

14 CFR
39 (2 documents).....37172, 37173

16 CFR
Proposed Rules:
13.....37229

28 CFR
Proposed Rules:
16 (4 documents).....37232–37236

30 CFR
Proposed Rules:
913.....37318

33 CFR
117 (2 documents).....37174, 37175
Proposed Rules:
110.....37237

39 CFR
3001.....37175

40 CFR
52 (2 documents).....37176, 37178
65 (3 documents).....37178–37181
799.....37182
Proposed Rules:
52 (2 documents).....37238
261.....37338
271.....37338

47 CFR
0.....37189
1.....37190

49 CFR
192.....37191
195.....37191
Proposed Rules:
571.....37240

50 CFR
17 (2 documents).....37192, 37194
32.....37198
658.....37198
Proposed Rules:
17 (2 documents).....37249, 37252

VOL
50

ISS
77

SE
12

985

UMI

Rules and Regulations

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Greenhouse Cucumbers

Correction

In FR Doc. 85-21218 beginning on page 36041 in the issue of Thursday, September 5, 1985, make the following corrections:

1. On page 36041, in the third column, in paragraph 1, in the authority, in the second line, "amended as 1090 amended," should read "amended, 1090 as amended,".

2. On page 36042, in the first column, in the fifth line of the table of contents, "Conditions" should read "Condition".

3. Also on page 36042, the section heading now reading "§ 51.3588" should read "§ 51.3855".

BILLING CODE 1505-01-M

Food and Nutrition Service

7 CFR Parts 250 and 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule will extend the National Commodity Processing (NCP) Program, established in the June 23, 1983 rule, through June 30, 1986. This action will promote a regular supply of processed end products to eligible recipient agencies for the 1985–86 school year. The Food and Nutrition Service (FNS) is also proposing a regulation requiring State distributing agencies to enter into processing agreements as a condition of receiving bonus commodities for fiscal year 1987. Extending NCP for a year will provide a grace period until this proposed requirement can be put forth for public comment. This interim rule also affords FNS the opportunity to: (1) Remove all references to NCP from Part 250 and to add a new Part 252 to accommodate the NCP Program; (2) incorporate in the regulatory text procedures currently contained in Part 250 regulations and the NCP Program agreement; and (3) address comments received on the June 23, 1983, (48 FR 28609) interim rule.

The June 23 rule established additional authority and procedures for offering manufactured food items to eligible recipient agencies at substantially reduced prices through the NCP Program. This interim rule will more clearly reflect the direct relationship between FNS and private food processors to ensure continued consumption of designated surplus commodities and clarify responsibilities under the NCP Program.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Alberta Frost, Director, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3585.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), information collection requirements contained in §§ 252.4, 252.5, and 252.6 of this proposed rule have been approved by the Office of Management and Budget (OMB #0584–0325); approved for use through August 31, 1988).

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the FNS, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action will ensure the availability of processed surplus commodities to eligible recipient agencies. The eligible recipient agencies include all outlets eligible for commodities under Parts 250 and 251.

Background

On June 23, 1983, the Department published interim regulations (48 FR 28609) which set forth a framework for the NCP Program. In part, the regulations were issued to satisfy the dictates of section 203 of the Temporary Emergency Food Assistance Act (TEFAA) (7 U.S.C. 612c note) which directed the Secretary to encourage the consumption of commodities made available without charge or credit under any nutrition program administered by the Secretary of Agriculture through processing agreements with private companies. Public comments were solicited concerning those interim regulations and all phases of program operation.

Under the 1983 interim rule, FNS entered into agreements with processors to convert donated commodities into end products desired by recipient agencies. Under those agreements, processors were permitted to market the end products nationwide to any recipient agency eligible to receive the specified commodity used in the end product. Bonus dairy commodities and honey were made available under the NCP Program.

On May 13, 1985, the Department published a notice (50 FR 19993) announcing that the NCP Program would end on June 30, 1985, because the NCP Program had not achieved its stated goals. Pursuant to Title I of Pub. L. 99–88, Congress has now extended section 203 of the Temporary Emergency Food

Assistance Act of 1983 through June 30, 1986. The Department has decided to satisfy this directive by reauthorizing the NCP Program for one additional year.

Because of the need to immediately put in place regulations to continue the NCP Program, these regulations are being issued as interim rules and are made immediately effective. Public comments concerning the program have been solicited, received and analyzed. A determination has been made that the public interest would be best served by issuing this rule as an interim rule, immediately effective, in order to quickly reinstitute the program and continue the flow of commodities to processing companies and recipient agencies.

Discussion of Interim Rules

The following material contains a description of the interim regulations and a discussion of the public comments. During the public comment period, 64 comments concerning program requirements were received. As discussed below, this interim rule changes the format of the NCP regulations, incorporates operational procedures currently addressed in the Part 250 regulations and in the NCP Program agreement and states other necessary program requirements.

Change in Format

This interim rule amends Part 250 by removing the NCP Program regulations from the Food Distribution Program Regulations and adding a new Part 252. The Department believes that the format more clearly reflects the direct relationship between FNS and private food processors to stimulate the consumption of surplus commodities currently in storage. Therefore, in § 250.3 the definition of "distributing agency" is amended by removing the reference to FNS as the distributing agency under the NCP Program and § 250.16 "National Commodity Processing System" is removed from Part 250.

Because the NCP regulations are being removed from Part 250, many of the requirements of Part 250 which are applicable to the NCP Program must be restated in Part 252. Those requirements are discussed below under the appropriate subject matter heading.

Proof of Marketability

The interim rule required processors to provide to FNS, prior to the delivery of any donated food, proof of marketability in the form of written intents to purchase from recipient agencies.

Two comments were received on this provision. One commentor stated that a written intent to purchase is meaningless, costly and that a bond is enough to protect the interest of the Department. The other commentor stated that the written intent to purchase is only one element of proof of marketability.

We agree that the requirement for a written intent to purchase is too narrow a criterion on which to base a decision to approve or deny an agreement. Therefore, under this interim rule, FNS will evaluate the following information in determining a company's ability to sell end products under the NCP Program: (1) Participation in the State processing program and historical performance under NCP; (2) anticipated new markets for NCP end products; (3) geographic areas served by the processor; (4) ability to accept and store donated food in minimum truckload quantities; and (5) written intent to purchase or bids currently awarded. Therefore, § 252.4(a) of this interim rule requires that processors must demonstrate their ability to sell end products under the NCP Program. This includes information necessary for FNS to determine the processor's ability to meet the terms and conditions of the NCP agreement and NCP regulations.

Substitution

Only three commentors addressed substitution of commercially purchased food for donated commodities. Two commentors suggested that the Department require that the substituted ingredient be of domestic origin and the other commentor characterized the provision for FNS approval of substitution as nebulous and arbitrary.

In response to these commentors, § 252.4(c)(1) of this interim regulation requires that, when substitution is made, the commercial food must be of domestic origin. Additionally, the Department will require that only identical food may be substituted, i.e., the donated food and the commercial food must be of the same generic identity. Since all donated foods are of domestic origin, it is only reasonable that substituted foods must also be produced domestically. FNS is retaining authority to approve substitutions to ensure the integrity of the NCP Program. Substitution is only appropriate in the case of commingling of donated and commercially purchased food or when delays in donated food shipment adversely affect production.

Nutritional and Quality Requirements and Child Nutrition (CN) Labeling

Thirty-seven commentors were concerned about the absence of nutritional and quality requirements and a CN labeling requirement in the interim rule. The Department strongly believes that competition in the market place will result in quality products without a regulatory requirement. Additionally, the CN labeling program is a voluntary one. Although the Department is not mandating the use of CN labels, the recipient agency or distributing agency is not precluded from including this in the product specifications. Section 252.4(c)(15) specifies that labels on end products must meet Federal requirements for labeling; this includes CN labels. End products containing vegetable protein products must be labeled in accordance with Parts 210, 225, or 226 Appendix A.

Yield Factors

Section 250.16(e)(2)(vi) of the June 23, 1983, interim rule established a 100 percent yield factor for the amount of donated food contained in a case of end product. The Department received 19 comments on this provision. Half of the commentors supported the 100 percent yield factor because it maintains consistency among processors and it provides an equitable way to obtain the full value for commodities processed. Half the commentors opposed the 100 percent yield factor because they believe that it is unrealistic and results in a more expensive product since processors pass along the cost of the food needed to make up the loss incurred through processing.

In this interim rule, processors are required to assume a production return of 100 percent for the donated food when completing the end product data schedule required as part of the NCP agreement.

The Department understands it is virtually impossible to totally eliminate production loss by nature of the food production industry (i.e., losses in the shredding of commodity food, losses due to spillage in the application process and losses due to packaging and handling finished end product). However, additional commodity required to account for these production losses must be obtained from non-donated food. For example, when 75 pounds of donated food are delivered to a processor, 75 pounds of the donated food ingredient are presumed to be contained in end products. Only the amount of donated food used to produce

the end products may be used for inventory drawdown.

The Department believes that the assumed 100 percent production return encourages efficient operations and ensures full accountability for the donated food. The regulations governing State processing agreements also contain a 100 percent yield requirement for all substitutable donated food. This final rule was published in the Federal Register on May 15, 1985 (50 FR 20197).

Waiver of Ingredient Information

The June 23, 1983, interim rule provided the FNS Administrator with the authority to waive the requirement to list the ingredients in the end product upon written request and justification from the processor.

Only one commentor addressed the ingredient waiver provision. This commentor supports the waiver provision because it protects proprietary formulation. This rule deletes the waiver provision. This information is essential to ensure that the end product contains a specific amount of ingredient indicated on the end product data schedule. Also, this information is essential for quality control purposes for end products containing a Child Nutrition (CN) label. However, under § 252.4(c)(1), the Department may permit processors to specify the total quantity of any flavorings or seasonings without identifying the ingredients which are components of the flavoring or seasoning. This provision is consistent with State processing regulations. Commentors are reminded that ingredient information is protected by FNS from disclosure to other entities under the Freedom of Information Act (5 U.S.C. 552).

Value of the Donated Food

Section 250.16(e)(2)(ii) defined the value of the donated food as the greater of: (1) The market price of the donated food at the time of sale to the recipient agency, or (2) the price support level for the donated food at the time of sale, adjusted to reflect transportation costs incurred by the Commodity Credit Corporation (CCC) in obtaining and delivering food to the processor. Nine comments were received on this provision. Several commentors recommended that the method of establishing the value of the donated food be consistent with State processing. Other commentors believed the method required by the interim rule is unworkable.

Section 252.2 of this interim rule defines contract value of the donated food as the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food. This value is established at the time of agreement approval and remains in effect for the term of the agreement. The Department realizes that occasionally the agreement value of a commodity may be higher or lower than the market value for the same commodity. This may result in a net loss or gain for the processor when the agreement value of the donated food is passed on to the recipient agency. Slight increases and decreases tend to balance each other in situations where price quotations (i.e., bids) are for an extended period of time. The Department does not feel this will have a detrimental effect on industry as food prices typically fluctuate in the commercial market.

Donated Food Value Return System

Section 250.16(e)(2)(iii) of the June 23, 1983, interim rule required processors to return to the purchasing recipient agency the agreement value of the donated commodity. At the time of agreement approval, FNS approved the method for returning the value of the donated commodity contained in the end product to the recipient agency. The processor either: (1) Reduced the market price of a processed end product by the value of the donated food contained in the product (discount); or (2) refunded to the recipient agency the value of the donated food contained in the end product (refund). FNS could approve any other system developed by the processor if the system ensured proper accountability.

A number of commentors expressed concerns regarding the value return provisions. Four commentors stated that under State processing systems, States are encouraged to use the refund system while NCP regulations allow processors to use the discount system. These commentors wanted State processing regulations and NCP regulations to be consistent in this area.

Four commentors objected to the double billing situation created under the discount through a distributor. (Under the dual billing system through a distributor, the processor sells the end products through a distributor, the processor bills the recipient agency for the end products and the distributor bills the recipient agency for storage, handling and delivery.) Besides creating an inconsistency between NCP and State processing requirements, it also creates additional paperwork for processors, distributors and recipient, agencies. One commentor suggested that the processor should sell the end product to the distributor at a discount. The distributor should add the storage, handling and delivery charges to the discounted price of the end product and require the recipient agency to pay the total price of the end product. This would alleviate double billing to the recipient agency and allow the processor to receive timely payment for the end products.

Four commentors objected to the refund system. Two commentors stated that the refund system results in a 60 to 90 day interest-free loan to the processor. One commentor objected because, under the refund system through a distributor, the distributor earns more since the distributor's markup is based on a percentage of the cost of the end product. The distributor earns less when the cost of the end product. The distributor earns less when the value of the donated food is discounted before the distributor buys the end product. Another commentor objected to the refund system because of the paperwork involved and because most major computer systems do not lend themselves to daily input of refund applications.

FNS is continuing to allow the dual billing system because it ensures that recipient agencies receive the total discount value of the donated food as a credit on the billing invoice from the processor. FNS is also allowing the use of the refund system under the NCP Program. It is the recipient agencies' responsibility to apply for a refund in a timely manner. If they do so, processors will not benefit from the 60 to 90 day interest free loan. FNS has found the refund system to be an accountable system which ensures that recipient agencies receive the full value of the donated food contained in processed end products. FNS will permit a system which affords recipient agencies the benefit of a discount purchase price without dual billing; the requirements of this system are being outlined in this rule.

FNS permitted the use of all the aforementioned value pass-through systems during the first two years of operation. Additional value pass-through systems were approved.

Section 252.4(c)(4)(i)–(ii) of this interim regulation describes what value pass-through systems will be permitted in the NCP Program. They have been broken into five categories with a description of each to more clearly delineate the responsibilities of the processor under each. They are as follows: (1) Direct sale discount system; (2) Direct sale refund system; (3) Indirect sale through distributor with dual

billing; (4) Indirect sale through distributor without dual billing; and (5) Indirect sale through distributor with a refund.

Recipient Agencies

In response to commentors who requested that the Department expand the types of recipient agencies eligible to receive donated commodities under NCP, the Department has determined that expansion is not warranted at this time. The outlets in question, i.e., Federal prisons, Veterans Administration Hospitals, and Department of Defense dependent school lunch programs, are not eligible to receive food under Part 250, Food Distribution Regulations. Also, the temporary nature of this extension of the NCP Program does not warrant establishing additional recipient agency eligibility criteria for a one year period.

Section 252.2 defines "eligible recipient agency" as an agency that has a current agreement with a distributing agency to receive donated commodities.

Performance Bonding

Section 250.16(e)(2)(v) of the June 23, 1983, interim rule required processors to provide a performance bond or an irrevocable letter of credit in an amount acceptable to FNS. One commentor stated a bond for one month's inventory should be sufficient and one commentor stated that a bond equal to the current retail value of donated food in inventory should be sufficient.

The Department is requiring in § 252.4(c)(5) that the processor provide a performance supply and surety bond or an irrevocable letter of credit in an amount to cover the value of donated food on hand or on order at any one time.

Reporting and Recordkeeping Requirements

Sections 250.6 (r) and (s) specify records and reports necessary to assure donated food is received, acknowledged and distributed in an accountable manner. Six commentors wrote to support the retention of records and the need for accountability and audit trails. FNS has incorporated these requirements in § 252.4 (b) and (c) to ensure an accountable system for tracking donated food shipped to processors under the NCP Program.

Recipient Agency and State Agency Responsibilities

Section 250.6(r)(5) and 250.6(r)(2) state the responsibilities of State and recipient agencies. Commentors requested clarification of these responsibilities. Therefore, §§ 250.6(r)(5) and 250.6(r)(2) are adopted from Part 250 and incorporated into § 252.5(b) to ensure accountability for donated food shipped to processors and further delivered to recipient agencies in another form. We have also added language requiring that recipient agencies insure that any funds received as a result of refund payments be designated for use by the food service department of a recipient agency. The requirement is necessary to insure that funds generated by participation in the NCP Program are used to provide food services.

Provisions for the Disposal of Out-of-Condition Donated Commodities

Section 250.7 is also adopted in its entirety in §§ 252.6 (a) and (b) since the possibility for loss of donated food through improper storage is as inherent under the NCP Program as it is in the other food distribution programs.

Sanctions for Noncompliance With the Regulations and/or Agreement

Section 250.13(a) is adopted in full in § 252.6(c) for the protection of the Department.

Performance Reporting

The interim rule requires processors to submit monthly performance reports with respect to, but not limited to, the receipt, disposal, and inventory of donated food. One commentor supported reporting requirements and one supported identical reporting requirements for NCP and State processing. Section 252.4(c)(9) of this interim rule clarifies that the performance report is an activity report of the sale and delivery of end products during the month. The report must be postmarked by the last day of the month following the report month. Adjustments for any prior month may be reported on the monthly activity report. No later than 90 days after the end of the agreement period, processors must reconcile all reports. This reporting requirement is currently operational and does not add any substantial new burdens to the existing reporting requirements. The 90 day adjustment provision would be advantageous to both the Department and processors to determine final inventory balances of donated food. It will also be useful in assessing inventory balances to assure they do not exceed a six month supply based on the processor's previously submitted sales reports. Particularly under the refund system, this provision gives schools 60 days from the close of the school year to file for a refund and gives the processors 30 days to process the payments and report to FNS.

Duplicate Sales Reporting

Since the NCP Program has become fully operational, concern has been raised regarding the possibility of reporting sales under both NCP and State processing agreements. FNS received 15 comments from recipient agencies expressing concern that running dual programs (State and NCP) could lead to confusion on the part of recipient agencies which could not differentiate between a State or NCP sale. The same confusion could affect distributor reports of sales to processors which could lead to duplicate reporting. Where recipient agencies purchase end products through both NCP and a State contract, a single sale could be reported back to the processor as an NCP purchase and a State purchase. This would make it possible for a processor to draw down on both State and NCP inventories for the same sale.

In § 252.4(c)(4)(ii) of this interim rule, language has been added that processors must continue to utilize internal controls to eliminate duplicate reporting. These controls must be outlined in detail in the processing agreement prior to approval.

Corrective Action—Processor Verification of Sales

For the indirect sale through distributor system without dual billing, a processor must have the means to check the distributor's recipient agency sales reports. The rule requires in § 252.4(c)(4)(ii) that verification be based on a statistically valid sample of recipient agency sales to ensure a higher confidence level in the results. The sampling plan will be submitted for FNS approval. The results of the verification may be used to support the projection of a claim against the processor when in review of the sample, it is determined that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed.

The rule requires that any results of the sampling indicating significant problem areas be provided to FNS along with corrective action proposals.

Annual Inventory Reconciliation

Section 252.4 includes a provision that each processor submit annual reconciliation reports and make payments to FNS for all outstanding refund applications and excessive inventories in accordance with § 252.3(a)(3). Section 252.4(c)(9)(ii) requires that the annual reconciliation report be made no later than 90 days after the end of the year to which the contract pertains.

This requirement is essential to ensure that no processor enjoys unjust enrichment as a result of ordering donated food far in excess of their needs based on sales activity reported to FNS. It affords FNS the ability to reduce excessive inventory balances on an annual basis to keep all processors with the six month allowable inventory level.

Food Containers and By-Products

Section 252.4 includes a provision that each processor shall return to FNS all funds received from the sale of donated food containers. It further requires the processor to return to FNS all funds received from the sale of any by-products derived from processing donated food or commercial food which as been substituted for donated food. This requirement is similar to that contained in § 250.15(b)(3)(viii) of the State processing regulations.

Miscellaneous Provisions

FNS is adding § 252.6 to address losses of donated food as a result of damage, improper distribution, misuse, embezzlement, theft, or obtainment by fraud to ensure the donated food is only used for the purpose of manufacturing and distributing processed end products to eligible recipient agencies. If donated food is lost as a result of any of the above circumstances, FNS will hold the processor responsible for payment for the value of the lost donated food in accordance with the provisions found in § 252.6 (a), (b) and (c) of this part. This action is necessary to ensure the value of the commodities is only realized by eligible recipient agencies.

List of Subjects in 7 CFR Parts 250 and 252

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—FOOD DISTRIBUTION PROGRAM

Accordingly, Part 250 is amended to read as follows:

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 250.3, the definition of "Distributing agencies" is revised to read as follows:

§ 250.3 Definitions.

* * * * *

"Distributing agencies" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients. A recipient agency may also be a distributing agency.

* * * * *

§ 250.16 [Removed]

3. Part 250 is amended by removing § 250.16 in its entirety.

4. A new Part 252—"NATIONAL COMMODITY PROCESSING PROGRAM" is added to 7 CFR Chapter II to read as follows:

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

Sec.
252.1 Purpose and scope.
252.2 Definitions.
252.3 Administration.
252.4 Application to participate and agreement.
252.5 Recipient agency responsibilities.
252.6 Miscellaneous provisions.

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

§ 252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Nutrition Service (FNS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with FNS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible Recipient Agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and Part 251.

§ 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

"Agreement value of the donated commodity" means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Distributing agencies" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FNS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

"Donated food value return system" means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

"NCP Program" means a program under which FNS and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies.

"Recipient agency" means disaster organizations, charitable institutions, nonprofit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

"Substitution" means the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.).

§ 252.3 Administration.

(a) *Role of FNS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FNS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FNS will determine whether the quantities ordered are consistent with the

processor's ability to sell end products and/or the processor's past demonstrated performance under the program. If the quantities are appropriate, FNS will request from CCC the donated food for transfer of title to FNS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FNS upon their acceptance by the processor. FNS retains title to such commodities until:

(1) They are distributed to eligible recipient agencies in processed form at which time the recipient agency takes title;

(2) They are disposed of because they are damaged or out-of-condition; or

(3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When FNS approves the substitution of donated commodities with commercial food, title to the substituted food shall transfer to FNS and the processor shall use the substituted food in accordance with the terms and conditions of this Part.

(d) *Inventory levels.* FNS will monitor the inventory of each food processor to ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a six-month supply, based on average monthly usage under the NCP Program, unless a higher level has been specifically approved by FNS on the basis of justification submitted by the processor. Under no circumstances should the amount of donated food requested by the processor be more than the processor can accept and store at any one time. FNS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced.

(e) *Recipient agency registration.* FNS will register, upon request, eligible recipient agencies. FNS will make available to food processors a listing of registered eligible recipient agencies for marketing purposes. Any processor desiring additional listings will be charged a fee for the listing which is commensurate with the Department's policy on user fees.

§ 252.4 Application to participate and agreement.

(a) *Application by processors to participate.* Any food processor is eligible to apply for participation in the NCP Program. Applications may be filed with FNS at any time on an FNS-approved form. FNS will accept or reject the application of each individual food processor within 30 days from the date of receipt, except that FNS may, at its discretion, extend such period if it needs more information in order to make its determination. In determining whether to accept or reject an application, FNS shall take into consideration at least the following matters: the financial responsibility of the applicant; the ability of the applicant to meet the terms and conditions of the regulations and the NCP agreement; ability to accept and store commodities in minimum truckload quantities; historical performance under the State and NCP processing programs; anticipated new markets for NCP end products; geographic areas served by the processor; the ability of the applicant to distribute processed products to eligible recipient agencies; and a satisfactory record of integrity, business ethics and performance. In addition, the processors must demonstrate their ability to sell end products under NCP by submitting supporting documentation such as written intent to purchase, bids awarded, or historical sales performance. FNS will make a final determination based on all available documentation submitted.

(b) *Agreement between FNS and participating food processors.* Upon approval of an application for participation in the NCP Program, FNS shall enter into an agreement with the applicant food processor. All agreements under the NCP Program will terminate on June 30, 1986.

(c) *Processor requirements and responsibilities.* In accordance with the following provisions and the NCP agreement, any processor participating in the NCP Program may sell to any eligible recipient agency nationwide a processed product containing the donated food received from FNS.

(1) The processor shall submit to FNS end product data schedules which include a description of each end product to be processed, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product. FNS may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings. The end product data schedule must include the processors' free on board (FOB) plant price schedule for quantity purchases of processed products. The end product data schedule shall be made a part of the NCP agreement.

(2) When determining the value of the donated food, the processor shall use the agreement value of the donated food which shall be the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

(3) The processor shall demonstrate to the satisfaction of FNS that internal controls are in place to ensure that duplicate reporting of sales under the NCP Program and any other food distribution program does not occur.

(4) The processor shall use a method of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and ensures proper accountability. In line with FNS guidelines and subject to FNS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. Regardless of the method used, the processor shall ensure that the invoice clearly indicates the discount included or refund due on the end product and clearly identifies that the discount included or refund due is for the value of the donated food. Regardless of the method chosen for selling end products, the processor shall reduce his inventory only by the amount of donated food represented by the discount or refund placed on the end product.

(i) *Direct Sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(A) *Discount System.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(B) *Refund System.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product and the processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(ii) *Indirect Sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient

agency. Indirect sales can be made with or without dual billing. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. The following three methods of indirect sales are allowed:

(A) *Sale Through Distributor with Dual Billing.* When end products are sold to recipient agencies through a distributor under a system utilizing dual billing, the processor shall invoice the recipient agencies directly for the end products purchased at the net case price which reflects the value of the discount established in the agreement. The processor shall ensure that the distributor bills the recipient agencies only for the services rendered in the handling and delivery of the end product. The processor shall maintain delivery and/or billing invoices to substantiate the quantity of end product delivered to each recipient agency and the net case price charged by the processor which reflects the discount established by the agreement.

(B) *Sale Through Distributor without Dual Billing.* When end products are sold to recipient agencies through a distributor without dual billing, processors shall utilize a system that ensures that distributors provide discounts to recipient agencies. Such system shall be subject to approval by FNS. The processor must ensure proper accountability for the end products sold by distributors. The processor shall verify sales made by the distributor as specified in the NCP agreement. This shall include, but not be limited to: (*1*) Verifying sales of end products to eligible recipient agencies reported by distributors using a statistically valid sampling of such recipient agencies; (*2*) Reporting to FNS the level of invalid or inaccurate sales as part of a corrective action plan to correct significant problem trends as defined by FNS; and (*3*) Submitting monthly performance report adjustments and a plan to prevent or reduce future errors. If, as a result of this verification, FNS determines that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed, FNS shall assert a claim against the processor in accordance with FNS instructions. Such claim may include a projection of the results of the verification sample to the total NCP sales reported by the processor.

(C) *Sale Through Distributor with a Refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the discount established by the agreement. Recipient agencies shall submit refund applications within 30 days of receipt of the processed end product. Within 30 days of the receipt of the refund application from the recipient agency certifying actual purchases of end product from substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. In no event shall refund applications for purchases during the period of the agreement be accepted by the processor later than 60 days after the close of the agreement period.

(5) The processor shall furnish to FNS prior to the ordering of any donated food for processing, a performance supply and surety bond obtained from surety companies listed in the current Department of Treasury Circular 570 or an irrevocable letter of credit to cover the amount of inventory on hand and on order.

(6) The processor shall draw down inventory only for the amount of donated food used to produce the end product. Processors shall ensure that amount equivalent to 100 percent of the donated food provided to the processor under the NCP Program is physically contained in end products. Additional commodities required to account for loss of donated food during production shall be obtained from non-donated food.

(7) The processor shall contact FNS for approval of any substitution of donated food. If approved, the processor shall substitute for donated food like quantities of domestically produced commercial food of the same generic identity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.) and of equal or better quality. Substitution must not be made solely for the purpose of selling or disposing of the donated commodity in commercial channels for profit. Substitution is only appropriate in the use of commingling of donated food and commercial food or when delays in donated food shipment adversely affect production. The processor shall maintain records to substantiate that they continue to acquire on the commercial market amounts of substitutable food consistent with their level of non-NCP Program production and to document the receipt and disposition of the donated food. FNS shall withhold deliveries of donated commodities from processors that FNS determines have reduced their level of non-NCP Program production because of participation in the NCP Program.

(8) The processor shall be liable for all donated food provided under the agreement. The processor shall immediately report to FNS any loss or damage to donated food and shall dispose of damaged or out-of-condition food in accordance with Part 250.7.

(9) The processor shall submit to FNS monthly activity reports reflecting the sale and delivery of end products during the month.

(i) The processor shall ensure that the monthly activity report is postmarked no later than the last day of the month following the month being reported. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products for any prior month may be included on the monthly activity report. The processor shall include in the activity report: (A) The donated food inventory at the beginning of the reporting month; (B) The amount of donated food received from the Department during the reporting month; (C) Amount of donated food transferred to and/or from existing inventory; (D) A list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month; the net price paid for each unit of end product; when the sale is made through a distributor, the name of the distributor; and (E) the donated food inventory at the end of the reporting month.

(ii) At the end of each agreement period, there will be a final 90 day reconciliation period in which processors may adjust NCP sales for any month.

(10) The processor shall maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food.

(i) The processor shall keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

(ii) The processor shall document that sales reported on the monthly activity reports, specified in paragraph (c)(9) of this section, were made only to registered eligible recipient agencies and that the normal wholesale price of the product was discounted or a refund payment made for the agreement value of the donated commodity.

(iii) When donated food is commingled with commercial food, the processor shall maintain records which will permit an accurate determination of the donated commodity inventory.

(iv) The processor shall make all pertinent records available for inspection and review upon request by FNS, its representatives and the General Accounting Office (GAO). All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(11) The processor shall obtain, upon FNS request, Federal acceptance service grading and review of processing activities and shall be bound by the terms and conditions of the grading and/or review.

(12) The processor shall indemnify and save FNS and the recipient agency free and harmless from any claims, damages, judgements, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of the processor, his/her agents or employees, or caused or resulting from any deleterious substance, including bacteria, in any of the products produced from donated food.

(13) The processor shall be liable for payment for all uncommitted food inventory remaining at agreement termination.

(i) When agreements are terminated at the request of the processor or at FNS's request because there has been noncompliance on the part of the processor with the terms or conditions of the agreement, or if any right of FNS is threatened or jeopardized by the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, plus any expenses incurred by FNS.

(ii) When agreements are terminated at FNS' request where there has been no fault or negligence on the part of the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, unless FNS and the processor mutually agree on another value.

(14) The processor shall comply fully with the provisions of the NCP agreement and all Federal regulations and instructions relevant to the NCP Program.

(15) The processor shall label end products in accordance with § 250.15(j) and, when end products contain vegetable protein products, in accordance with 7 CFR Part 210, 225, or 226 Appendix A.

(16) The processor shall return to FNS any funds received from the sale of donated food containers and the market value or the price received from the sale of any by-products of donated food or commercial food which has been substituted for donated food.

(Information collection requirements approved by the Office of Management and Budget under Control No. 0584–0325)

§ 252.5 Recipient agency responsibilities.

(a) *Registration.* Recipient agencies that have approved agreements with distributing agencies to receive donated food may register with FNS on an FNS approved form to participate in the NCP Program. Upon request, FNS will provide recipient agencies with registration forms. Recipient agencies shall notify FNS when they are no longer eligible to receive donated food under an agreement. Failure to notify FNS shall result in claim action.

(b) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products. Recipient agencies must insure that any funds received as a result of refund payments be designated for use by the food service department.

(d) *Verification.* If requested by FNS, each recipient agency is encouraged to cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end product as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

§ 252.6 Miscellaneous Provisions.

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) *Sanctions.* Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(d) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen,

or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

(Information collection requirements approved by the Office of Management and Budget under Control No. 0584-0325)

Dated: September 5, 1985.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 85-21769 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 361 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13–19, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 361 (§ 908.661) is effective for the period September 13–19, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effecte under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the delared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on September 3, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges has increased slightly.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

For the reasons set out above, 7 CFR Part 908 is amended as follows:

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–6741.

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) District 1: 314,000 cartons;

(b) District 2: 536,000 cartons;

(c) District 3: Unlimited cartons.

Dated: September 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-21788 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

[Amdt. 1]

Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcane

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule amending the regulations governing the Price Support Loan Program for the 1983 Through 1985 Crops Sugar Beets and Sugarcane, which was published in the Federal Register on July 3, 1985 (50 FR 27413), is hereby adopted as a final rule without change. The interim rule amended the regulations at 7 CFR 1435.115 to provide that sugar loan maturity dates may be extended for a period agreed upon by the Commodity Credit Corporation and the processor but in no event to a date later than September 30 following the date of loan disbursement.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1435) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 25 and have been assigned OMB Number 0560–0093.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-base enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases; Number–10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule beause the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule was published in the **Federal Register** on July 3, 1985, at 50 FR 27413 which amended the regulations governing the Price Support Loan Program for the 1983 Through 1985 Crops of Sugar Beets and Sugarcane. The interim rule amended 7 CFR 1435.115(d) to provide that sugar loan maturity dates may be extended for a period agreed upon by CCC and the processor but in no event to a date later than September 30 following loan disbursement. A comment period was provided through July 29, 1985. Since no comments were received with respect to the provisions contained in the interim rule, it has been determined that the interim rule should be adopted as a final rule.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Sugar.

Final rule

PART 1435—[AMENDED]

Acordingly, the interim rule published at 50 FR 27413, which amended 7 CFR Part 1435, is hereby adopted as a final rule without change.

Signed at Washington, D.C., on September 6, 1985.

John R. Block,

Secretary.

[FR Doc. 85–21787 Filed 9–11–85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–18; Amdt. 39–5116]

Airworthiness Directives; Sikorsky Aircraft Model S–64E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive visual and dye penetrant inspections of the main rotor blade outboard spar for cracks and replacement, as necessary, on Sikorsky Aircraft Model S–64E helicopters. The AD is needed to prevent spar tip end loss which could result in loss of control of the helicopter.

DATE: Effective Date: September 12, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1985.

Compliance: As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of the service bulletin is contained in the Rules Docket, in the Office of Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Cheryl McCabe, Airframe Branch, ANE–152, Boston Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7112.

SUPPLEMENTARY INFORMATION: The FAA has determined that cracks originating at screw holes outboard of the Blade Inspection Method (BIM) tip seal (not BIM detectable) and developing to spar tip end failure could cause loss of the entire counterweight train and subsequent possible loss of control of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires repetitive visual and dye penetrant inspections of the main rotor blade outboard spar for cracks and replacement, as necessary, on Sikorsky Model S–64E helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/ major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by Reference.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Sikorsky Aircraft Model S–64E helicopters, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent the possible loss of the main rotor blade outboard spar and subsequent loss of the counterweight train, accomplish the following:

(a) Within the next 30 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 30 hours' time in service from the last inspection, visually inspect main rotor blade outboard spars, Part Numbers (P/N) 6415–20201–043 and –045, for cracks in accordance with Section 2, Paragraph A of Sikorsky Alert Service Bulletin No. 64B15–8A, dated October 16, 1984, or later FAA-approved revision.

(b) Within the next 30 hours' time in service after the effective date of this AD, unless already accomplished within the last 120 hours' time in service, and thereafter at intervals of 150 hours' time in service from the last inspection, fluorescent penetrant inspect main rotor blade outboard spars, P/N's 6415–20201–043 and –045, for cracks in accordance with Section 2, Paragraph B of Sikorsky Alert Service Bulletin No. 64B15–8A, dated October 16, 1984, or later FAA approved revision.

(c) If a crack is found, replace with an airworthy blade that has been inspected in accordance with paragraphs (a) and (b) above prior to further flight.

(d) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective August 30, 1985.

Issued in Fort Worth, Texas, July 31, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85–21725 Filed 9–11–85; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 85–ASW–15, Amdt. 39–5121]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. This amendment is needed because the FAA has determined that a fastener torque check and retorquing, as necessary, is needed to supplement the visual inspections.

EFFECTIVE DATE: September 12, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1985.

Compliance: as prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Office; FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or R. T. Weaver Rotorcraft Standards Staff, ASW–110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877–2548.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–5089, AD 85–14–06, which currently requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. After issuing Amendment 39–5089, the FAA has determined, based on additional service experience and evaluation, that a bolt torque inspection is necessary, and that in some cases, the bolt torque inspection and retorque, as necessary, are sufficient without a requirement for removing the tailboom. Therefore, the FAA is amending Amendment 39–5089 by providing for a fastener torque inspection and a subsequent tailboom removal inspection only if low torque is found on Aerospatiale Model AS 350 series helicopters and an initial tailboom removal inspection followed by repetitive fastener torque inspections with subsequent tailboom removal inspections required only when low torque is found on Aerospatiale Model AS 355 series helicopters. The amendment also requires the reporting of fastener torque values and cracks found during the initial tailboom removal inspection of Model AS 355 series helicopters. Also, the compliance times have been adjusted to agree with the service bulletins.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a cost per inspection of $280 with 141 rotorcraft affected for a total cost of $39,480 per year. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

2. By amending Amendment 39–5089, AD 85–14–06, by revising paragraphs (a), (b), (c), (d), (e), and (f); by redesignating paragraphs (g) and (h) as (i) and (j) respectively; and by adding new paragraphs (g) and (h) as follows:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model AS 350 and AS 355 series helicopters certificated in all categories.

Compliance is required as indicated, unless already accomplished.

* * * * *

(a) For helicopters which have 1,100 hours or more time in service on the effective date of this AD, inspect in accordance with paragraph (d) within the next 100 hours' time in service.

(b) For helicopters which have 900 hours or more but less than 1,100 hours' time in service on the effective date of this AD, inspect in accordance with paragraph (d) before reaching 1,200 hours' time in service.

(c) For helicopters which have less than 900 hours' time in service on the effective date of this AD, inspect in accordance with paragraph (d) within the next 300 hours' time in service.

(d) Inspect the bolts for torque and, if necessary, the frame for cracks at the fuselage-to-tailboom interface in accordance with:

(1) Service Bulletin No. 05.16 for Model AS 350 series helicopters.

(2) Service Bulletin No. 05.14 for Model AS 355 series helicopters.

(e) In addition for AS 355 series helicopters, conduct the following initial visual inspection within the next 100 hours' time in service for helicopters which have 1,100 hours or more time in service on the effective date of this AD or before reaching 1,200 hours time in service for those helicopters having less than 1,100 hours total time in service on the effective date of this AD:

(1) Remove the tailboom from the fuselage in accordance with the Model AS 355 maintenance manual, or FAA-approved equivalent, as appropriate. Prior to tailboom removal, inspect the bolts for torque readings in accordance with paragraph (d).

(i) Visually inspect the aft fuselage frame at the fuselage tailboom interface for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(ii) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(2) If all the bolt torque readings from the inspection of SB No. 05.14 are 26.5-inch-pounds or greater, the following RH upper quadrant (looking forward) frame inspection may be conducted in lieu of the full frame inspection of paragraph (1):

(i) Remove the bolts common to the tailboom, fuselage frame, and RH fuselage frame radius block.

(ii) Remove the RH radius block after grinding off the three rivet heads which retain the radius block. The radius block is shown as Item 21 of detail C of page 10 of Aerospatiale Repair Manual 53.10.22, Volume 1.

(iii) Visually inspect the forward side of the RH aft fuselage frame for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(iv) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(v) Apply zinc chromate primer to the aft surface of the radius block; replace it using the original bolts, but do not re-rivet to the frame.

(3) Report cracks and bolt torque values measured before tailboom or radius block removal to the Manager, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101 within 10 days of the inspection. Use a copy of View F of Service Bulletin No. 05.14 or No. 05.16 to show the locations of cracks or loose fasteners (those below 26.5 inch-pounds of measured torque). If all fasteners are found to have a torque of 26.5 inch-pounds or greater, a statement of such is sufficient without a marked-up View F. Provide aircraft serial numbers, total time, and time since tailboom removal, if any. (Reporting is approved by the Office of Management and Budget under OMB No. 2120-1156.)

Note.—The initial visual inspection of paragraph (e) and reporting of results are required for all Model AS 355 helicopters even if the bolt torque values measured during the inspections of paragraph (d) are 26.5 inch-pounds or greater.

(f) Replace any cracked frames or repair in accordance with Service Bulletin No. 05-14 or No. 05-16.

(g) Reinstall the tailboom in accordance with the appropriate Model AS 350 or AS 355 maintenance manual, or FAA-approved equivalent, if removed during the inspections and rework of paragraphs (d), (e), and (f).

(h) Repeat the inspections required in paragraph (d) at intervals not to exceed 1,200 hours' time in service from the last inspection.

* * * * *

The manufacturer's specifications and procedures identified and described in this directive are incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may also be examined in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 156, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective September 5, 1985.

This amendment amends Amendment 39-5089, AD 85-14-06.

Issued in Fort Worth, Texas, on August 8, 1985.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-21742 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD7-85-24]

Drawbridge Operation Regulations; Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad the Coast Guard is changing the regulations governing the Cordesville Bridge, mile 42.8, by requiring that advance notice of opening be given. This change is being made because of a steady decrease in requests for opening the draw. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 350-4103.

SUPPLEMENTARY INFORMATION: On June 28, 1985 the Coast Guard published (50 FR 26809) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on July 12, 1985. In each notice interested persons were given until August 12, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of the infrequent opening of the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.925 is revised to read as follows:

§ 117.925 Cooper River.

The draw of the Seaboard System Railroad bridge, mile 42.8 near Cordesville, shall open on signal if at least six hours advance notice is given.

Dated: August 28, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85–21834 Filed 9–11–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD8–85–11]

Drawbridge Operation Regulations; Schooner Bayou Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge over Schooner Bayou Canal, mile 4.0 from White Lake, on LA82 at Little Prairie Ridge, Vermilion Parish, Louisiana. The change will require that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. The draw will continue to open on signal outside these hours. The bridge presently is required to open on signal at all times. This change is being made because of infrequent requests to open the draw during the advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m. and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Perry F. Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On July 1, 1985, the Coast Guard published a proposed rule (50 FR 27029) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 9 July 1985. In each notice interested persons were given until 15 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

The only comment received was a letter of no objection from the National Marine Fisheries Service.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the advance notice period of 10 p.m. to 6 a.m., as evidenced by the combined 1983 and 1984 bridge opening statistics which show that the bridge averaged two openings every three days. These vessels can reasonably give four hours advance notice for a bridge opening between 10 p.m. and 6 a.m. by placing a collect call to the bridge owner, LDOTD in Lafeyette (318) 233–7404, at any time. Mariners requiring the bridge openings during the advance notice period are mainly repeat users and scheduling their arrival at the bridge at the appointed time during the advance notice period will involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.494 is added to read as follows:

§ 117.494 Schooner Bayou Canal.

The draw of the S82 bridge, mile 4.0 from White Lake at Little Prairie Ridge, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: September 3, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–21831 Filed 9–11–85; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. MC 84–2; Order No. 631]

Amendments to Domestic Mail Classification Schedule; Deletion of E-COM Provisions

Issued: September 6, 1985.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the July 10, 1985, adoption of the Postal Rate Commission's recommended Docket No. MC84–2 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.67). These changes eliminate the Electronic-Computer Originated Mail (E–COM) service offering from the DMCS.

EFFECTIVE DATE: These changes became effective on September 3, 1985.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Postal Service filed a request with the Commission for a recommended decision that the E–COM service offering be eliminated from the DMCS. The Commission published a notice of the filing in the **Federal Register** (49 FR 28953 (July 17, 1984)). Following the provision of an opportunity for a hearing on the record under sections 556 and 557 of Title 5, the Commission, on December 21, 1984,

issued a decision recommending the elimination of the E–COM service offering from the DMCS. The Governors of the Postal Service approved the recommended decision on July 10, 1985, and the Board of Governors set September 3, 1985, as the effective date of the changes. The changes in the DMCS which are published in this order reflect the Governors' decision, and became effective September 3, 1985. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which lead to the publication of the DMCS in the **Federal Register**, these changes are published as final rules, since procedural safeguards and an ample opportunity to have different viewpoints considered has already been afforded to all interested persons. *See* 50 FR 21629 (May 28, 1985).

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 3603, 3622, 3823, 84 Stat. 759–761; (5 U.S.C. 553). 80 Stat. 383, unless otherwise noted.

2. The following changes in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.67) of the Commission's rules of practice and procedure are adopted:

a. Sections 100.024, 100.044, 100.045, 100.051, 100.052, 100.0521, 100.0522 and 100.101 and Rate Schedule 104 are removed.

b. Section 100.020 is amended to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 12 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

c. Section 100.08 is amended to read as follows:

100.08 Ancillary Services.

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of appropriate fees:

	Classification schedule
a. Address correction	SS–1.
b. Business reply mail (except ZIP + 4 rate category mail).	SS–2.
c. Certificates of mailing	SS–4.
d. Certified mail	SS–5.
e. C.O.D.	SS–6.
f. Insured mail	SS–9.
g. Registered mail (except ZIP + 4 rate category mail).	SS–14.
h. Special delivery	SS–17.
i. Merchandise return	SS–20.

d. In section 100.090, remove "e. Electronic Computer Originated Mail 104" and redesignate "f. Fees 1000" to become "e. Fees 1000."

e. In Rate Schedule 1000, remove the following:

First-Class Mailing Fee E-COM Annual Fee	50.00

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 85–21860 Filed 9–11–85; 8:45 am]

BILLING CODE 7715–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action IA 1582; A–7–FRL–2895–9]

Approval and Promulgation of Implementation Plans; State of Iowa; New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On July 18, 1984, the State of Iowa submitted revisions to their air pollution control regulations. The purpose of these revisions is to cure deficiencies in the State's preconstruction review procedures that would be applicable in nonattainment areas. Today's notice takes final action to approve these revisions. However, EPA is temporarily deferring action on certain unapprovable provisions of these regulations which deal with emission offsets. EPA's temporary deferral action is warranted because the State has provided a written commitment and schedule to propose, adopt and submit appropriate revisions to correct these deficiencies.

DATE: This action is effective September 12, 1985.

ADDRESSES: The State submittal is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460

Iowa Department of Water, Air and Waste Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319

Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: On March 6, 1980, EPA disapproved a portion of the Iowa Part D State Implementation Plan (SIP) because the State had no adequate means of preventing major sources of carbon monoxide (CO) from constructing in violation of section 173 of the Clean Air Act. A CO construction ban went into effect on July 1, 1979, and will remain in effect until the SIP is fully approved.

The regulations in question were in Chapter 3 of the regulations of the Iowa Department of Environmental Quality (IDEQ). On July 1, 1983, the IDEQ was merged with other State agencies to form the Iowa Department of Water, Air and Waste Management (IDWAWM). The IDWAWM air quality rules are now codified at Department 900, Title II, Chapters 20 through 39. The IDEQ Chapter 3 regulations are now in IDWAWM Department 900, Chapter 22. The recodification of these rules did not change any substantive SIP requirements, but merely incorporated the new numbering system.

In an effort to cure their SIP deficiency, and to rescind the construction ban, the State submitted revised new source review regulations on July 18, 1984. The State's submittal letter requested EPA to act on all revisions to Chapter 22 that were adopted in 1980 and 1982. Therefore, this final rulemaking essentially addresses all of Chapter 22.

On August 25, 1983 (48 FR 38742), EPA proposed revisions to 40 CFR Parts 51 and 52 affecting *federal enforceability* and the *crediting of source shutdowns and curtailments* as offsets in nonattainment areas among other proposed changes. EPA proposed these changes in response to the terms of a settlement agreement between EPA and a number of industries and trade associations challenging the relevant

EPA regulations. *Chemical Manufacturers Association* (CMA) v. *EPA*, D.C. Cir. No. 79–1112 (Settlement agreement entered into February 22, 1982).

During its rule revision process, the State anticipated that EPA would promulgate the CMA revisions and adopted regulations which are consistent with EPA's proposed CMA revisions, but are not consistent with the current EPA requirements. As a result, three subrules of the Chapter 22 regulations are unapproval as they relate to federal enforceability and the crediting of source shutdown and curtailment as emission offsets.

Subrule 22.5(4)g allows offset credit for reduced operating hours, if the reduced operating hours are included in the permit and the reduction occurred after January 1, 1978; and the work force is notified of the curtailment. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past curtailments only if the new source is a replacement for the curtailed source.

Subrule 22.5(4)i allows offset credit for closing of an existing source or plant. The source owner or operator is required to notify the work force of the proposed shutdown. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past shutdowns only if the new source is a replacement for the shutdown source.

Subrule 22.5(4)j allows external offsets, i.e., from sources not owned or controlled by a source seeking such offsets. Credit may be allowed provided the external source's permit is amended to require the emission reduction or a consent order is entered into by IDWAWM and the existing sources. This subrule is not approval because it does not require that State issued consent orders be federally enforceable in order to obtain offset credit, which is a requirement of § 51.18(j)(3)(ii)(*e*).

On November 20, 1984, EPA addressed the Chapter 22 regulations in a notice of proposed rulemaking (49 FR 45781). A complete review of these regulations is included in the November 20 proposal. There have been no subsequent changes to these regulations; therefore, EPA's review will not be restated in this notice. The proposal discussed the emission offset rule deficiencies and stated that these issues had to be resolved before EPA could take final action. The remainder of the Chapter 22 regulations were proposed for approval in so far as they pertained to requirements of the Clean Air Act.

The November 20 proposal also mentioned that the State must make an enforceable commitment not to use the exemption provisions of Rule 900–22.1 to exempt any major source or major modification from review before EPA could take final action to approve the Chapter 22 rules. Upon further review of these rules, EPA has determined that such a commitment is not needed. Subrule 22.1(2) specifically states that the exemption provisions do not apply to sources which are subject to the nonattainment area requirements of Rule 22.5. Because Rule 22.5 requires permits for all major sources and major modifications in nonattainment areas, no major sources or major modifications in those areas will be exempt from review under subrule 22.1(2). Therefore, no additional State commitment is required.

The State submitted the only public comments in response to the proposal. They requested partial, if not full, approval of their revised rules.

To remedy the emission offset issue, and to allow EPA to take final action, the State provided a written commitment and schedule, dated May 14, 1985, to propose, adopt, and submit appropriate revisions to their emission offsets rule by November 1985. Therefore, EPA will temporarily defer action on the affected portions of the State's emission offsets rule. Until EPA takes final action to approve these offset provisions, the State cannot allow any offset credit for source shutdown or curtailment, or for external offsets.

EPA's notice of proposed rulemaking mentioned several provisions of the Chapter 22 regulation which are not relevant to, and therefore not addressed by, this final action. These regulations contain permit requirements for anaerobic lagoons which are intended to control odor emissions. EPA has no authority to require odor control regulations and has no odor standards. For that reason, EPA does not address the IDWAWM regulations insofar as they pertain to the control of odor emissions from anaerobic lagoons. Rule 900–22.6(455B), *Nonattainment area designations*, is not addressed because it is not a requirement of section 110 of the Act. Rule 900–22.7(455B), *Alternative emissions control program*, is not addressed because this rule was not submitted as a SIP revision.

EPA Action

In today's notice, EPA takes final action to approve the IDWAWM, Department 900, Chapter 22 air pollution control rules, with the exception of Subrules 22.5(4) g, i, and j, which pertain to emission offsets. EPA is temporarily deferring action on the aforementioned subrules. The CO construction ban will remain in effect until the State adopts appropriate revisions to its offset rules and the SIP is fully approved by EPA.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Iowa was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart Q—Iowa

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraphs (c)(43) and (c)(44) as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(43) On July 1, 1983, the State's air pollution control regulations were recodified at Department 900, Title II, Chapters 20 through 29.

(44) Revised Chapter 22 regulations, dealing with new source review in nonattainment areas, were submitted on July 18, 1984, by the Iowa Department of Water, Air and Waste Management. Subrules 22.5(4) g, i, and j remain unapproved. EPA will temporarily defer action on these subrules pending a May 14, 1985, commitment from the State to submit appropriate revisions.

(i) *Incorporation by reference.* Revised Chapter 22 regulations, dealing with new source review in nonattainment areas, adopted by the State on July 17, 1984.

(ii) *Additional material.* May 14, 1985, letter of commitment from the State to

revise unapprovable portions of their Chapter 22 air pollution regulations.

[FR Doc. 85-21818 Filed 9-11-85; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-1-FRL-2895-6]

Approval and Promulgation of Implementation Plans; Connecticut; Certification of No Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is codifying the certifications that no Air Oxidation Processes in any Synthetic Organic Chemical Manufacturing Industry or any Natural Gas/Gasoline Processing Plants are located in the State of Connecticut. The intended effect of this action is to provide this information in 40 CFR Part 52, as justification for the fact that the Connecticut State Implementation Plan (SIP) does not contain reasonably available control technology (RACT) requirements for these sources.

EFFECTIVE DATE: This action will be effective 60 days from the date of publication unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (617) 223-4868.

SUPPLEMENTARY INFORMATION: EPA requires states with areas which could not attain the National Ambient Air Quality Standard for ozone by 1982 to adopt RACT on sources of volatile organic compounds (VOCs). EPA has published a series of Control Technique Guidelines (CTGs) which define RACT for various VOC source categories. In response to the CTGs for Natural Gas/Gasoline Processing Plants and Air Oxidation Processes in any Synthetic Organic Chemical Manufacturing Industry (SOCMI), the Connecticut Department of Environmental Protection has certified by letters to EPA dated April 24, 1985 and May 15, 1985 that no sources in these categories are located within the state. EPA is accepting DEP's certifications and codifying the information at 40 CFR 52.375 as justification for the fact that the Connecticut SIP does not contain RACT regulations for Natural Gas/Gasoline Processing Plants or for Air Oxidation Processes in any SOCMI.

EPA is codifying this information without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 12, 1985.

Final Action

EPA is codifying information certifying that no Natural Gas/Gasoline Processing Plants or Air Oxidation Processes in any SOCMI are located in the State of Connecticut at 40 CFR 52.375.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.375, is revised to read as follows:

§ 52.375 Certification of no sources.

The State of Connecticut has certified to the satisfaction of EPA that no sources are located in the state which are covered by the following Control Technique Guidelines:

(a) Large Petroleum Dry Cleaners.

(b) Natural Gas/Gasoline Processing Plants.

(c) Air Oxidation Processes/SOCMI.

[FR Doc. 85-21814 Filed 9-11-85; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 65

[A-6-FRL-2886-5]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) proposed on May 16, 1985, (at 50 FR 20455) to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Princeton Packaging. Incorporated (Princeton), Dallas, Dallas County, Texas, on December 7, 1984. This action provides final approval for this DCO. The DCO requires Princeton to bring air emissions of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. Since it is now approved by EPA, the DCO constitutes an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material, and evaluation report are available for inspection during normal business hours at the Region 6 office, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 (as Docket number R6-85-DCO-3), and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Stan R. Burger, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-9868.

SUPPLEMENTARY INFORMATION: Princeton's Dallas facility was formerly owned by the St. Regis Corporation. Princeton Packaging, Incorporated, bought the Dallas facility from St. Regis effective October 1, 1984. To avoid ambiguity, "Princeton" will be used throughout this document to represent the Dallas facility.

On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Princeton's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Princeton's contention that water based and/or high solids content ink would not be available by the SIP compliance date, and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Princeton extending their SIP compliance date until December 31, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as an extension to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Princeton under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985, at 50 FR 20455.

Since the DCO is approved by EPA, compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Princeton for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act are similarly precluded. The approved Order constitutes an addition to the Texas SIP. However, compliance with the order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons were invited to submit written comments on the proposed approval action. No comments were received. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding one source to the table as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance date
Princeton Pkg. Inc.	Dallas, TX	TACB No. 84-14	Rule 115.201	5/16/85	12/31/85

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21816 Filed 9-11-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-6-FRL-2886-7]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) proposed on May 16, 1985, (at 50 FR 20458) to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Printpack, Incorporated (Printpack), Grand Prairie, Tarrant County, Texas, on November 9, 1984. This action provides final approval for this DCO. The DCO requires Printpack to bring air emissions of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP

[1] "EPA Review of Texas State Delayed Compliance Order for Princeton Packaging, Incorporated, Dallas County, Texas, December 7, 1984; March 1985".

required compliance by December 31, 1982. Tarrant County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the Order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. Since it is now approved by EPA, the DCO constitutes an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material, and evaluation report are available for inspection during normal business hours at the Region 6 office, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 (as Docket number R6–85–DCO–1), and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Richard Raybourne, Enforcement Section (6AW–AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767–5145

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties", as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982. Printpack's Grand Prairie plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Printpack's content that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Printpack extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP-required compliance date remain December 31, 1982. On January 30, 1984, EPA notified Printpack under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the November 9, 1984 DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on December 18, 1984. EPA reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985, at 50 FR 20458.

Since the DCO is approved by EPA, compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Printpack for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act are similarly precluded. The approved Order constitutes an addition to the Texas SIP.

However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C). As noted in the proposed rulemaking, the Notice in the DCO regarding the assessment of section 120 noncompliance penalties may be misleading. As the Clean Air Act clearly states, a major stationary source in the position of Printpack, unless exempted under section 120(a)(2) (B) or (C), is subject to noncompliance penalties after December 31, 1982. Since the DCO is approved, a footnote to this effect is included in the approval listing in Part 65 of 40 CFR.

All interested persons were invited to submit written comments on the proposed approval action. No comments were received. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding the entry to read as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance date
Printpack Inc.[1]	Grand Prairie, TX	TACB No. 84-10	Rule 115.201	5/16/85	12/31/85

[1] Section 120 noncompliance penalty language in TACB No. 84-10 may be misleading. Source is subject to noncompliance penalties after December 31, 1982, unless exempted under section 120(a)(2) (B) or (C).

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–21815 Filed 9–11–85; 8:45 am]

BILLING CODE 6560–50–M

[1] "EPA Review of Texas State Delayed Compliance Order for Printpack, Incorporated, Tarrant County, Texas, November 9, 1984; January, 1985".

40 CFR Part 65

[A-6-FRL-2886-6]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency proposed on May 16, 1985, to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Dixico, Incorporated (Dixico), Dallas County, Texas, on December 7, 1984. The DCO requires Dixico to bring air emissions of volatile organic compounds from their flexographic and rotogravure printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. The approved DCO is an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This Notice is the final rulemaking on the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material and evaluation report are available for inspection during normal business hours at the following locations (as Docket number R6-85-DCO-2): Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, DC 20460, the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and the Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Willie Kelley, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-9189.

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Dixico's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic and rotogravure processes, and as such is subject to Rule 115.201. Based on Dixico's contention that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Dixico extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Dixico under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985 (50 FR 20453).

[1] "EPA Review of Texas State Delayed Compliance Order for Dixico, Incorporated, Dallas County, Texas, December 7, 1984: March 1985". This evaluation is available at the addresses given previously in this Notice.

Compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Dixico for violations covered by the Order during the period that the Order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act is similarly precluded. The approved Order constitutes an addition to the Texas SIP. However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

There were no public comments on the proposed approval action. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to the Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding one source to the table as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No	SIP regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance
Dixico Inc.*	Dallas TX	TACB No 84-12	Rule 115.201	5/16/85	12/31/85

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21817 Filed 9-11-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42031A; FRL-2871-5]

Toxic Substances; Biphenyl; Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule promulgates EPA's decision to require manufacturers and processors to test biphenyl (CAS No. 92–52–4) for environmental effects and chemical fate under section 4(a) of the Toxic Substances Control Act (TSCA) according to protocols to be submitted to and approved by EPA. This regulation is in compliance with the Interagency Testing Committee's (ITC) designation of biphenyl for priority testing consideration.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern ["daylight" or "standard" as appropriate] time on September 26, 1985. This rule shall become effective on October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office, Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460. Toll Free: (800–424–9065). In Washington, DC: (554–1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1983 (48 FR 23080), EPA issued a proposed rule under section 4(a) of TSCA to require testing of biphenyl for environmental effects and chemical fate. The Agency is now promulgating a final rule.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA; Pub. L. 94–469, 90 Stat. 2006 *et seq.*, 15 U.S.C. 2603 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package—chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48524), and to the second package—dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981 (46 FR 30300) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

Biphenyl (CAS No. 92–52–4) is a solid organic compound at ambient temperature and pressure (Ref. 1). Approximately 13 million pounds of biphenyl were domestically produced in 1984 (Ref. 2). Biphenyl is used primarily to produce dye carriers, heat-transfer fluids, and alkylated biphenyls (Ref. 3). As discussed in the proposed rule and its accompanying technical support document, the use/disposal pattern for biphenyl suggests that biphenyl has the potential to be released into the environment at significant concentrations from dye-carrier applications through wastewater discharge or from leakage of heat-transfer fluids.

B. ITC Recommendations

The Interagency Testing Committee (ITC) designated biphenyl for priority testing consideration in its Tenth Report, published in the **Federal Register** on May 25, 1982 (47 FR 22585). The ITC recommended that biphenyl be tested for chronic toxicity to fish and invertebrates, toxicity to aquatic macrophytes, and chemical fate. The ITC based its designation of biphenyl of substantial production, on the reported use/disposal pattern of biphenyl and on the potential persistence of biphenyl and biphenyl byproducts in the aquatic environment.

The ITC was concerned about the environmental release of biphenyl from its use as a fungicide. Use of biphenyl as a fungicide is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and as such cannot be regulated under TSCA [see TSCA section 3(2)(B)(ii)].

The ITC was also concerned that mono- and dichlorobiphenyl might be produced by the chlorination of biphenyl at dye-carrier waste treatment facilities. EPA has concluded that release of mono- and dichlorobiphenyls resulting from chlorination of biphenyl at dye-carrier waste treatment facilities is likely to be insignificant because of low measured concentrations of biphenyl in dye-carrier waste treatment plant effluents and the extremely low estimated concentrations of mono- and dichlorobiphenyls that might be produced as a result of chlorination of such effluents.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of May 23, 1983 (48 FR 23080) which would require that testing of biphenyl be performed for the environmental effects and chemical fate characteristics listed below:

1. Acute aquatic macrophyte toxicity
2. Chronic fish toxicity
3. Chronic daphnid toxicity
4. Acute oyster toxicity
5. Oyster bioconcentration and chronic oyster toxicity
6. Aerobic and anaerobic biodegradation

In the proposal, the EPA based its testing requirements on the authority of section 4(a)(1)(A) of TSCA. It found that: Environmental release of biphenyl from the chemical's use and disposal may present an unreasonable risk of effects to aquatic organisims because existing data suggest that biphenyl may have the potential to produce acute effects in aquatic plants, as well as chronic effects in aquatic vertebrates and invertebrates, and because of detected concentrations of biphenyl in the aquatic environment. In addition, EPA found that such releases of biphenyl may present an unreasonable risk of effects to sediment organisms because of the potential of

biphenyl to partition from water to sediments, to persist and possibly accumulate in aerobic and anaerobic sediments, to bioconcentrate or promote acute effects in benthic organisms, and because of detected levels of biphenyl in sediments. EPA found that there are insufficient data to reasonably determine or predict the environmental effects and chemical fate of biphenyl and that testing is necessary to develop such data.

III. Public Comment

A public meeting on the proposed rule was held August 8, 1983.

Comments received by the Agency in response to the proposed rule for biphenyl were submitted by the industry Biphenyl Ad Hoc Group (BAHG), E.I. DuPont de Nemours and Company (Dupont), the American Textile Manufacturers Institute, Incorporated (ATMI) and the Natural Resources Defense Council, Incorporated (NRDC). Technical comments from the BAHG, which represents Chemol, Coastal States Marketing, Gulf, Koch Chemical, Monsanto Industrial Chemicals, Dow Chemical, and Sybron Chemical Company, and comments from the AMTI are addressed in Units III. A and B below. Legal comments received from the remaining commentors are addressed in Units III. C through F.

A. Environmental Effects Testing

The BAHG has commented that the release of biphenyl during its use and disposal is insignificant.

The Agency does agree that quantities of biphenyl being released to the environment result in relatively low reported concentrations (<1 to 15)g/l in water and 1 to 8)g/g in sediment) (Refs. 4 through 12). However, based on these measured concentrations, and in conjunction with existing toxicity data, the Agency believes there is sufficient concern for further testing.

The BAHG has commented that biphenyl concentrations in water and sediment are not significant and biphenyl is not toxic or persistent in the aquatic and sediment environment. The BAHG further states that ". . . existing toxicity data conclusively demonstrates that biphenyl does not present an unreasonable risk to organisms in the aquatic or sediment environment".

The Agency believes that BAHG has not provided data to substantiate its position that biphenyl ". . . does not present an unreasonable risk to organisms in the aquatic or sediment environment . . ." or that detected concentrations of biphenyl are insignificant.

Further, the Agency notes that the industry response that LC_{50} values generally are 1 to 10 ppm, ignores the 24 hour LC_{50} of 0.73 mg/l (ppm) and the no observed effect level (NOEL) of <0.25 mg/l (ppm) for *Daphnia magna* reported by Adams *et al.* (Ref. 13).

Acute toxicity data have been reported for fish (fathead minnows, rainbow trout, sheepshead minnows, blue gill, golden shiner, and catfish) with LC_{50}'s ranging from 1.5 to <10 mg/l (Refs. 15 through 21). Reported acute toxicities for various invertebrates range from 1.9 to 4.7 mg/l. (Refs. 19, 21 and 22).

No data have been reported for chronic toxicity of biphenyl to fish or aquatic invertebrates. However, there are indications of chronic toxicity to aquatic invertebrates from the acute data reported by Heidolph *et al.*, (Ref. 14) in which the concentration of biphenyl required to produce an LC_{50} value in *D. Magna* is 5 times higher at 24 hours than at 48 hours. In addition, studies by the Analytical Biochemistry Laboratories, Inc. on the acute toxicity of Therminol® to fathead minnows (Ref. 23) produced 24-hour and 96-hour LC_{50}'s which indicate that biphenyl may produce chronic effects in freshwater fish. No data on acute or chronic toxicity to aquatic life exposed to biphenyl contaminated sediment have been reported.

Given the range of biphenyl concentrations producing acute effects in aquatic organisms, the indication of chronic effects observed from available acute toxicity test data, and the absence of chronic toxicity data on aquatic organisms exposed by ingestion of biphenyl contaminated sediments, the BAHG contention that biphenyl does not present an unreasonable risk to organisms in the aquatic or sediment environment cannot be substantiated.

The BAHG response does not consider another aspect of biphenyl toxicity which would be addressed by chronic testing, namely the toxicity to other life stages (eggs and larvae) which typically are more sensitive to toxicants than the life stages used in acute toxicity tests. The Agency believes that the use of acute toxicity test data alone is not adequate to evaluate the overall risk to aquatic organisms unless there is a large margin of safety relative to environmental concentrations and no evidence of chronic toxicity.

The BAHG comment that the log P for biphenyl is too small and not typical of the types of chemicals that are known to have high accumulative toxicity is not relevant to the concern for chronic toxicity of biphenyl to other life stages. The log P of biphenyl (4.02 measured; 3.95 to 17 estimated) (Refs. 24 and 25) is large enough to expect that the chemical will sorb to sediments (concentrations up to 8 ppm have been reported in sediments) and also will be taken up by aquatic organisms. Given that the acute toxicity data for biphenyl show a range of LC_{50}'s for aquatic organisms from 0.73 mg/l to <10.0 mg/l (Refs. 13 through 23) and that water (<1 to 5)g/l) and sediment concentrations (1 to 8)g/g) have been found (Refs. 4 through 12), the important question is whether the sediment-bound biphenyl is bioavailable. No test data are available to evaluate this concern. BAHG comments do not provide a basis for discounting the bioavailability of biphenyl associated with sediment.

The BAHG feels that existing data are adequate and no further testing is needed. The BAHG specifically responded to the proposed aquatic macrophyte testing and the acute, chronic and bioaccumulation testing with oysters. The BAHG feels that there is no justification to require testing with the aquatic macrophyte *Lemna gibba*. The following reasons were given: (1) There are no data which would indicate *Lemna* is more sensitive than algae, (2) surface water concentrations are too low to justify *Lemna* testing, and (3) *Lemna* is also not the prevalent species in the river systems where biphenyl manufacturing occurs or textile discharges are located.

The Agency agrees that there are no data which would indicate that *Lemna* is more sensitive to biphenyl than algae. Consequently, EPA is withdrawing the proposed rule requiring testing of *Lemna* for biphenyl. However, EPA believes that information for macrophytes is useful and has decided to develop data to determine a comparative toxicological profile between the aquatic macrophyte *Lemna gibba* and the aquatic algae *Selenastrum capricornutum*. This comparative study shall be undertaken by EPA.

In response to the requirement for acute, chronic and bioaccumulation tests with oysters the BAHG stated that, "there may be some justification for acute screening tests with benthic freshwater organisms such as midges or amphipod." The BAHG further states with reference to chronic and bioaccumulation studies, ". . . the studies not only go beyond what ITC recommended, they are not scientifically justified." The ITC did recommend chronic tests. Industry apparently feels that some acute toxicity tests with benthic organisms might be justified. The reason for testing with the oyster is that this organism is a filter feeder and can be used to test the toxicity of

biphenyl bound to sediments (suspended organic particles, clay, etc.). Based on the log P of biphenyl, some uptake of the chemical can be expected if the chemical is bioavailable. For purposes of hazard assessment, the Agency needs to know the uptake and depuration of biphenyl and the possible toxic effects, acute and chronic, of the chemical taken up from sediment as well as from the water column. The requirements for testing biphenyl in oysters is consistent with the Agency's mandate to require testing that will provide data to assess the chemical's risks.

The BAHG asserts that the tests which the Agency has proposed are "extensive" and "costly". BAHG did not, however, explain or substantiate what it means by "extensive" and "costly". The tests proposed by the agency constitute a minimal data set. The limited number of tests proposed are essential to performing an adequate environmental hazard and risk assessment for biphenyl. Based on the results of EPA's economic analysis, the economic impact of conducting the required tests is expected to be minimal (see Unit V).

B. Chemical Fate

Comments were not received with respect to the proposed chemical fate testing.

C. Protocol Submission and the Phased Test Rule Process

The Natural Resources Defense Council (NRDC) submitted comments concerning the need for requiring validated protocols and recommended modification of the Agency's two-phase test rule process. NRDC stated that the Agency should require test sponsors to use validated reference protocols or give adequate justification for any deviations from these protocols. NRDC cited the Agency's two-phase test rule process (as described at 47 FR 13012; March 26, 1982) as an apparent "reversal" of EPA's previous policy which has required that specific EPA, FIFRA or OECD testing protocols be followed by persons required to test under section 4(a) of TSCA. The proposed policy of demanding only that test sponsors select protocols listed in Agency guidelines, or develop protocols on their own, was cited as an approach "apparently developed in response to industry criticism that the requirements are too rigid and would inhibit innovation in testing methodologies." The commenter further characterized this decision as compromising the recognized need for reliable and adequate data.

The Agency disagrees with NRDC's view that the two-phase test rule process based on EPA's review and approval of chemical-specific study plans would compromise the ability of the test rule to generate reliable and adequate data. In general, EPA believes that issuance of generic test methodology guidelines, rather than generic test requirements, provides more flexibility for test facilitates, test sponsors, and EPA itself in arriving at cost-effective, scientifically sound test methodologies, and facilitates the incorporation of scientific judgment where necessary on a chemical-specific basis. This approach also encourages scientific innovation and the development of more sophisticated and scientifically advance testing methodologies. With either single-phase or two-phase rules a public comment period and an opportunity for a public meeting will allow interested parties to review and comment on the chemical-specific test standards. After this comment period, EPA will issue a final rule adopting chemical-specific test standards as required under section 4(b)(1)(B) of TSCA. A more detailed discussion of the Agency's views on these and other related issues may be found in the agency's Test Rule Development and Exemption Procedures final rule published in the **Federal Register** of October 10, 1984 (49 FR 39774).

NRDC also stated that the Agency should modify the timing of the two-phase test rule development process so that subsequent test rules, complete with specific protocols for testing, are published within one year of EPA's receipt of the ITC's recommendations. NRDC contended that application of the two-phase rulemaking process in the case of the biphenyl rule has resulted in the Agency's failure to meet the statutory deadlines for initiating rulemaking.

EPA does not agree that the Agency has not met its statutory responsibility for biphenyl. The Agency's statutory obligation under TSCA section 4(e)(1)(B) was fulfilled with the issuance of the proposed test rule for biphenyl. In so doing, EPA initiated rulemaking under section 4(a) to require testing appropriate to the actual exposures to biphenyl.

EPA shares NRDC's desire that test rules should be completed as rapidly as possible and the Agency is continuing to explore ways to better achieve that objective.

D. Identification of Biphenyl Processing Activities

Dupont commented that EPA should identify, to the extent practicable, those activities which the Agency considers to be biphenyl "processing" activities. Dupont believed that by identifying those activities which the Agency considers to be processing, persons who "process" biphenyl as opposed to those persons who "use" biphenyl would be put on notice that they are subject to the test rule.

The Agency considers that "processing" includes any preparation of biphenyl for distribution in commerce as part of a mixture, an article, or any product containing or composed of biphenyl. Processing also includes the use of biphenyl as a reactant or intermediate to produce another chemical substance for distribution in commerce. If a company only uses and discards biphenyl, the company is not a processor of biphenyl.

A processor is, among other things, one who prepares a chemical substance or mixture for distribution in commerce, after its manufacture, in the same or different form of physical state from that in which it was received by the processor (see TSCA section 3(10)). One who mixes, reacts, purifies, separates, repackages, or otherwise "prepares" a chemical substance or mixture for distribution in commerce is a processor. Thus, a person who reacts biphenyl to make another chemical substance for distribution in commerce is a processor subject to this section 4 test rule.

E. Persons Subject to The Testing Requirements

Because the Agency found in its proposal that the use and disposal of biphenyl may present an unreasonable risk to the environment, EPA proposed that persons who manufacture or process, or intend to manufacture or process, biphenyl would be subject to the testing requirements of a final rule. Citing legislative history to support its positions, Dupont commented that the Agency can require only those biphenyl manufacturers and processors to sponsor testing whose manufacturing and processing activities result in the use or disposal activities which the Agency identified in making its "may present an unreasonable risk" finding.

The Agency has reviewed the legislative history cited by Dupont and the plain language of section 4(b)(3)(B) and disagrees with Dupont's position as stated above. The legislative history which Dupont cites as supporting its position cannot be entitled too much

weight. The language in the House Report (Committee on Interstate and Foreign Commerce), which spoke of the need for a connection between the use identified under a section 4(a) finding and the person responsible for testing, accompanied language of a House bill which was never enacted (Ref. 26). Similarly, the language in the Senate bill to which Dupont refers was never enacted. Both the House and Senate language which tied testing responsibilities to specific uses of a chemical substance and those who manufactured and processed the chemical substance for such uses was eliminated in the Conference Committee. The version of section 4(b)(3)(B) that was finally enacted by Congress requires that all persons who manufacture or process a chemical substance be subject to the testing requirements if the insufficiency of data findings under section 4(a)(1)(A)(ii) or 4(a)(1)(B)(ii) are based on distribution in commerce, use, or disposal.

The plain language of TSCA section 4(b)(3)(B)(iii), unlike the House or Senate bills cited by Dupont, does not restrict testing responsibilities to only those who manufacture or process for certain uses. In the absence of a clear contrary indication in the Conference Report, the Agency must follow the statute's plain language and require that all persons who manufacture or process or intend to manufacture or process biphenyl be subject to the requirements of this final rule. (Unit IV.D.)

F. Basis for the "May Present" Finding

The Agency based its proposed finding under TSCA section 4(a)(1)(A) upon the position that the use and disposal of biphenyl-containing dye carriers and heat transfer fluids result in the environmental release of biphenyl that may present an unreasonable risk to aquatic organisms. Dupont commented that the Agency did not adequately support its position that the use of biphenyl may present an unreasonable environmental risk. Dupont contended that the use of biphenyl as a heat transfer fluid does not result in release of biphenyl to the environment. Thus, Dupont suggested that EPA must provide better support for its finding that the use of biphenyl may present an unreasonable environmental risk.

EPA has considered Dupont's comments and still believes that the environmental release of biphenyl can result in an unreasonable risk to the environment. While the Agency acknowledges that heat transfer fluid spills can be reprocessed, there is no absolute certainty that these spills will be reprocessed. Therefore, if these occur there may be an environmental hazard.

With regard to biphenyl's use as a dye carrier, it has been reported that at least 95 percent of the biphenyl is released to wastewater treatment facilities and less than 5 percent is released as vapor. (Ref. 27). This small percentage released as vapor will have a short half-life and will most likely be oxidized by hydroxyl radicals through reactive oxidizable intermediates to nontoxic products such as carbon dioxide (Ref. 28).

However, approximately 17 million pounds of biphenyl that is used as a dye carrier is released for wastewater treatments. Although much of this disposed biphenyl is expected to be subsequently released to the atmosphere during aeration operations and oxidized, approximately 1–3 million pounds from these wastewater treatment plants is expected to partition into the plant sludge, and a certain portion (0.3–1.4 million pounds) may be contained in the wastewater effluent. (Refs. 29 and 30).

The Agency agrees with Dupont that use of biphenyl as a heat transfer fluid and dye carrier may not depending on the place and method of release immediately result in sufficient environmental release to pose a potential environmental risk. However, once biphenyl is disposed of into wastewater treatment plants after being used, a sufficient environmental release does occur to result in a potential risk to aquatic organisms. Biphenyl has been detected in water and sediment in a variety of locations in the United States. (Refs. 4 through 12). EPA believes that this environmental contamination has probably resulted from the use and disposal of biphenyl. Thus, the Agency is basing its section 4(a)(1)(A) finding for the final rule upon the environmental release of biphenyl resulting from its use and disposal.

IV. Final Test Rule for Biphenyl

A. Findings

The EPA is basing its final testing requirements for biphenyl on the authority of section 4(a)(1)(A) of TSCA. EPA finds that environmental release of biphenyl from the chemical's use and disposal may present an unreasonable risk of adverse effects to aquatic organisms because of the existing data which suggest that biphenyl may have the potential to produce chronic effects in aquatic vertebrates and invertebrates and because of detected concentrations of biphenyl in the aquatic environment. In addition, EPA believes that such releases of biphenyl may present an unreasonable risk of adverse effects to sediment organisms. This belief is based on detected levels of biphenyl in sediments and on the potential of biphenyl to partition from water into sediments, to persist and possibly accumulate in aerobic and anaerobic sediments, and to bioconcentrate and produce effects in benthic organisms. EPA believes that there are insufficient data to reasonably determine or predict the environmental effects and chemical fate of biphenyl and that testing is necessary to develop such data.

B. Required Testing

EPA is requiring that testing of biphenyl be performed for the environmental effects and chemical fate tests listed below:

1. Chronic fish toxicity
2. Chronic daphid toxicity
3. Acute oyster toxicity
4. Oyster bioconcentration and chronic oyster toxicity
5. Aerobic and anaerobic biodegradation

C. Test Substance

EPA is proposing that biphenyl of 99 percent purity be used as the test substance because biphenyl of this purity is readily available commercially and may provide more definitive information on biphenyl toxicity than biphenyl of lower purity.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the use and disposal of biphenyl may present an unreasonable risk to the environment, persons who manufacture or process, or who intend to manufacture or process, biphenyl at any time from the effective date of this test rule to the end of the reimbursement period are subject to the rule. The end of the reimbursement period for the biphenyl test rule will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must

individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement as discussed in Unit IV. E.

E. Test Rule Development

Development of this test rule for biphenyl will be a two-phase process. In Phase I, this test rule is being promulgated for biphenyl specifying certain environmental effects and chemical fate characteristics for which test data are to be developed. In Phase II, following promulgation of the Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects and characteristics specified in the Phase I rule.

Within 30 days from the effective date of this final Phase I test rule for biphenyl, manufacturers must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days from the effective date of this Phase I test rule. After an opportunity for public comment, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the test standards and schedules for biphenyl for the tests required by the Phase I rule. Testing will also be subject to EPA's TSCA Good Laboratory Practices (GLP) standards. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modifications to the adopted study plans can be made only with EPA approval.

Processors will not be required to submit letters of intent, exemption applications, and study plans, and to conduct testing, unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to indirectly pass the costs of testing on to processors through any increase in the price of biphenyl.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792. These final GLP standards apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved. The procedures for the second phase rulemaking are described in 40 CFR Part 790.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act of any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other permises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance with procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for biphenyl. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under test rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they have never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of biphenyl: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

The total costs of conducting the required environmental effects tests are estimated to range from $47,500 to $116,100. Annualized costs range from $12,303 to $30,070. Based on these costs and the market characteristics of biphenyl, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. Although the market expectations for biphenyl in its major uses are not optimistic and the price sensitivity of demand appears

relatively elastic, this conclusion is supported by the following observations:

1. The annual unit cost of the testing required in this rule is very low. Based on an estimated 1984 production level of 13 million pounds and anual test costs ranging from $12,303 to $30,070, the unit costs of testing range from a low of 0.09 cents per pound to a maximum of 0.23 cents per pound. This represents approximately 0.13 to 0.33 percent of current price.

2. Biphenyl is produced as a secondary product to benzene by all but one producer. It is unlikely that the relatively small unit test costs would have a significant adverse effect on the overall profitability of these operations.

Refer to the Economic Analysis (Ref. 2) for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service (NTIS) Springfield, Virginia, (PB 82-140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-42031). This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule, consisting of:

(a) Notice of final rule on biphenyl.

(b) Notice of proposed rule on biphenyl. May 23, 1983 (48 FR 23080).

(c) Notice containing the ITC designation of biphenyl to the Priority List. May 25, 1982 (47 FR 22585).

(d) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards. Nov. 29, 1983 (48 FR 53922).

(e) Notice of final rule on test rule development and exemption procedures. Oct. 10, 1984 (49 FR 39774).

(f) Notice of final rule concerning data reimbursement July 11, 1983 (48 FR 31785).

(2) Support documents, consisting of:

(a) Biphenyl technical support document for proposed rule.

(b) Economic impact analysis of final test rule for biphenyl.

(3) Communications, consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries including transcript of public meeting held on proposed rule Aug. 8, 1983.

(d) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) Hawley, G.G. *The Condensed Chemical Dictionary*, 9th ed. New York: Van Nostrand Reinhold, pp. 315-316. 1977.

(2) Mathtech Inc. Ecomic Analysis for the Final Rule: Biphenyl. Washington, D.C. Office of Toxic Substances, U.S. Environmental Protection Agency. Contract No. 68-01-6630 1985 (June).

(3) Kirk-Othmer. Waunemacher, R., Demaria, A., "Dye carriers", In: *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd ed., Vol. 8. New York: Wiley-Interscience, pp. 151-158. 1979.

(4) Elder, V.A., Proctor, B.L., Hites, R.A. "Organic compounds near dumpsites in Niagara Falls, New York". *Biomed. Mass. Spect.* 8(9):409-415. 1981.

(5) Elder, V.A. Proctor, B.L., Hites, R.A. "Organic compounds found near dumpsites in Niagara Falls, New York". *Environ. Sci. Technol.* 15(10):1237-1243. 1981.

(6) Hites, R.A. "Analysis of trace organic compounds in New England rivers". *J. Chromatogr. Sci.* 11:570-574. 1973.

(7) Jungclaus, G.A., Lopez-Avila V., and Hites, R.A. "Organic compounds in an industrial wastewater: a case study on their environmental impact". *Environ. Sci. Technol.* 12(1):88-96. 1978.

(8) NIH/USEPA. National Institutes of Health/U.S. Environmental Protection Agency. Computer Printout (NIH-EPA): WATERDROP data base. Washington, DC: NIH, U.S. Dept. Health and Human Services/ Office of Toxic Substances, USEPA. 1982.

(9) Macleod *et al.* "Interlaboratory comparisons of selected trace hydrocarbons from marine sediments." *Anal. Chem. 54*(3): 386-392. 1982.

(10) Tincher, W.C. 1973. "Effect of polyster fiber processing effluents on water quality." Report ERC-1673. Atlanta, Georgia: Georgia Institute of Technology. 51p.

(11) Steinheimer, T.R., Pereira, W.E., and Johnson, S.M. "Application of capillary gas chromatography mass spectrometry computer techniques to synoptic survey of organic material in bed sediment." *Anal. Chem. Acta.* 129(1):57-67. 1981.

(12) Shackelford, W.M. and Keith, L.H. "Frequency of organic compounds identified in water." Athens, GA: Environmental Research Lab, U.S. Environmental Protection Agency. EPA Pub. 1976.

(13) Adams, W.J. *et al.* "Acute toxicity of biphenyl to *Daphnia magna*." Monsanto report ES-82-SS-64. St. Louis, MO: Monsanto Company. 1982.

(14) Heidolph, B., Gledhill, W.E. "Acute toxicity of biphenyl to *Daphnia magna*." Monsanto Report ES-83-SS-18. St. Louis, MO: Monsanto Company. 1983.

(15) Kirk-Othmer, Weaver, W.C., Simmons, P.B. and Thompson, Q.E. "Biphenyl and terphenyl." In: *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd ed., vol. 7. New York: Wiley-Interscience. pp. 782-793. 1979.

(16) Dow Chemical Co. (May 1). Interagency Testing Committee Response: 1,1'-Biphenyl. Midland, MI. 1981.

(17) Haas, J.M., Earhart, H.W., Todd, A.S. "Environmental considerations concerning the selection of dye carrier solvents." *J. Am. Assoc. Text Chem. Color, Book of Papers.* (1974):442-447. 1974.

(18) Batchelder, T.L. Dow Report ES-161. Dow Chemical Co., Midland, MI. 1977.

(19) Dill, D.C. *et al.* "Comparison of the toxicities of biphenyl, monochlorobiphenyl and 2,2',4,4'-tetrachlorobiphenyl to fish and daphnids." *In:* "Aquatic toxicology and hazard assessment, fifth conference ASTM STP 766." Pearson, J.G., Foster, R.B., and Bishop, W.E., eds. Philadelphia: American Society for Testing and Materials. 1982. pp. 245-256.

(20) Gaffney, P.E. "Carpet and rug industry case study II: Biological effects." *J. Water Pollut. Control Fed.* 48(12):2731-2737. 1976.

(21) Dill, D.C., and Emmitte, J.A. "Static acute toxicity tests with freshwater organisms exposed to water solutions of biphenyl, 2-, 3-, and 4-monochlorobiphenyl (MCB) and 2,2',4,4'tetrachlorobiphenyl (2,2',4,4'TCB)." Report ES-394. Midland, MI: Dow Chemical U.S.A. 1980.

(22) LeBlanc, G.A. "Acute toxicity of priority pollutants to water flea (*Daphnia magna*)." *Bull. Environ. Contam. Toxicol.* 24:684-691. 1981.

(23) Monsanto Chemical Company. TSCA sec. 8(d) submission 878213565. Acute toxicity of therminol® to fathead minnows. Final Report, 1979. Washington, D.C. Office of Toxic Substances, U.S. Environmental Protection Agency. 1985.

(24) Hutchinson, T.C. *et al.* "The correlation of the toxicity to algae of hydrocarbons and halogenated hydrocarbons with their physical-chemical properties." In: Afghan BK, MacKay D, eds. "Hydrocarbons and Halogenated Hydrocarbons in the Aquatic Environment." *Environ. Sci. Res., Vol. 16.* New York: Plenum Press, pp. 577-586. 1980.

(25) Hansch, C. and Leo, A. "Substituent constants for correlation analysis in chemistry and biology." New York: Wiley. 1979.

(26) Rep. No. 94-1341, 94th Cong., 2d Sess. (1976), Reprint in, *Legislative History of the Toxic Substances Control Act* at 309.

(27) Meylan, W.M., and Howard, P.H. "Chemical market imput/output analysis of selected chemical substances to assess sources of environmental contamination. Task II: Biphenyl and diphenyl oxide." SRC No. L1273-07. Washington, D.C.: Office of Toxic Substances, U.S. Environmental Protection Agency. Contract 68-01-3224-Task II. 1977.

(28) Freitag, D. et al. "Ecotoxicological profile analysis." *Ecotoxicology Envir. Safety 6(1): 60-81. 1982.*

(29) Gaffney, P.E. "Carpet and rug industry case study I: Water and wastewater treatment plant operation." *J. Water Pollution Control Fed.* 48(11): 2590-2598. 1976.

(30) Gordon M, A.W., and Gordon, M. "Analysis of volatile organic compounds in a textile finishing plant effluent." *Trans. Kans. Acad. Sci.* 42 (3-4): 149-157. 1981.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St. SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the critieria set forth in section 1(b) of the order. First, the total cost of all the proposed testing for biphenyl is $47,500 to $116,100 over the market life of biphenyl. Second, the cost of the testing is not likely to result in a major increase in users' cost or prices. Finally, based on our present analysis, EPA does not believe that there will be a significant adverse effects as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in organization of the testing effort; (2) they will experience only very minor costs if any in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has OMB control number 2070-0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous Substances, Chemicals, Recordkeeping and reporting requirements.

Dated: September 3, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.925 in Subpart B to read as follows:

§ 799.925 Biphenyl.

(a) *Identification of test substance.* (1) Biphenyl (CAS No. 92-52-4) shall be tested in accordance with this rule.

(2) Biphenyl of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process Biphenyl from the effective date of this rule [October 28, 1985] to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests and submit data as specified in this section, Subpart A of this Part, and Part 790—Test Rule Development and Exemption Procedures of this Chapter.

(c) *Environmental effects testing*—(1) *Fish early life stage toxicity testing*—(i) *Required testing.* Testing using flow-through systems shall be conducted with rainbow trout to develop data on the chronic toxicity of biphenyl to aquatic vertebrates.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Environmental Effects Test Guidelines for the Fish Early Life Stage Toxicity test (EG-11), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting Pesticide Assessment Guidelines, Subdivision for Hazard Evaluation: Wildlife and Aquatic Organisms published by NTIS (PB 83-153908).

(2) *Daphnid chronic toxicity testing*—(i) *Required testing.* Testing using flow-through systems shall be conducted with daphnids to develop data on the chronic toxicity of biphenyl to aquatic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Daphnid Chronic Toxicity test (EG-2), published by NTIS (PB 82-232992), be consulted. Additional guidelines may be obtained by consulting Pesticide Assessment Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908), and references cited in the support document for the proposed test rule.

(3) *Oyster acute toxicity testing*—(i) *Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with oysters to develop data on the acute toxicity of sediment-associated biphenyl to benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Oyster Acute Toxicity Test (EG-5), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the Pesticide Assessment Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908). Because the testing requires the use of sediment-associated biphenyl, the paper of Lynch and Johnson (1982), which is available in the public record for this rulemaking, should also be consulted.

(4) *Oyster bioconcentration testing*—(i) *Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with oysters to develop data on the potential chronic toxicity and bioconcentration of sediment-associated biphenyl to benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Oyster Bioconcentration Test (EG-6), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the Pesticide Assessment Guidelines for Hazard Evaluations: Wildlife and Aquatic Organisms (PB 83-153908) and references cited in the support document for the proposed test rule. Because the testing requires the use of sediment-associated biphenyl, the paper of Lynch

and Johnson (1982), which is available in the public record for this rulemaking, should be consulted.

(d) *Chemical fate testing*—(1) *Aerobic biodegradation*—(i) *Required testing.* Testing using systems that control for and quantify biphenyl evaporation that use a ratio of undisturbed sediment to water of 3:1—2:1 and that provide a mass balance of biphenyl distributed in water and sediment, volatilized or degraded to CO_2 or other products before and after biodegradation shall be conducted to develop data on the persistence of biphenyl in aerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OECD Test Guideline for inherent biodegradability in soil (304 A) published by OECD be consulted.

(2) *Anaerobic biodegradation*—(i) *Required testing.* Testing using systems that control for and quantify biphenyl evaporation that use a ratio of undisturbed sediment to water of 3:1—2:1 and that provide a mass balance of biphenyl distributed in water and sediment, volatilized or degraded to CO_2 or other products before and after biodegradation shall be conducted with biphenyl to develop data on the persistence of biphenyl in anaerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Chemical Fate Test Guidelines for Anaerobic Biodegradation (CG–2050), published by NTIS (PB 82–233008), be consulted.

(e) *Availability of test guidelines.* The OTS Environmental Effects Test Guidelines cited in this final rule are available from the: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (703–487–4650).

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–21811 Filed 9–11–85; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC No. 85–450]

Delegation of Authority to the Chief, Field Operations Bureau

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This action amends § 0.311(d)(1) of the Commission's rules to increase the monetary limit of Notices of Apparent Liability (NALs) issued to broadcast licensees under authority delegated to the Chief, Field Operations Bureau. This will prevent the Field Operations Bureau from having to refer NALs above $2,000 to the Mass Media Bureau. Such NALs frequently result from multiple, technical rule violations.
EFFECTIVE DATE: August 22, 1985.
ADDRESS: Federal Communications Commission, Washington, D.C. 20554.
FOR FURTHER INFORMATION CONTACT: Lawrence R. Clance, Field Operations Bureau, Washington, D.C. 20554, (202) 632–7591.
SUPPLEMENTARY INFORMATION: Lists of Subjects in 47 CFR Part 0
Organization and functions (Government agencies).

Order

In the matter of amendment of Part 0 of the Commission's rules with respect to delegation of authority to the Chief, Field Operations Bureau.

Adopted: August 6, 1985.
Released: August 22, 1985.

By the Commission.

1. We are amending § 0.311(d)(1) of the Commission's rules to increase the monetary limit of Notices of Apparent Liability issued to broadcast licensees under authority delegated to the Chief, Field Operations Bureau. Since February 1984, a joint statement of policy between the Mass Media and the Field Operations Bureaus has been in effect authorizing the field issuance of monetary forfeitures. That statement of policy reflects specified amounts for certain rule violations. Pursuant to § 0.311(d)(1) and the existing statement of policy, forfeiture actions issued by the Field Operations Bureau under the terms and provisions of the policy statement cannot exceed $2,000 in amount. However, since broadcast station inspections by the Field Operations Bureau frequently uncover multiple, technical rule violations, the Notice of Apparent Liability often exceeds $2,000. In such instances, cases must be transferred to the Mass Media Bureau for handling. The amendment of § 0.311(d)(1) to increase the monetary limitation to $10,000, the limit authorized the Mass Media Bureau, will allow a revision of the present policy statement to enable the Field Operations Bureau to issue appropriate Notices of Apparent Liability to broadcast licensees and will eliminate the necessity of referring such cases to the Mass Media Bureau.

2. Notice and comment are not required prior to enactment of this rule change because it relates to internal Commission organization, procedure, and practice. 5 U.S.C. 553(b). Similarily, because this is a procedural rule, the effective date provisions of the Administrative Procedures Act are not applicable. 5 U.S.C. 553(d).

3. Accordingly, it is ordered, on the Commission's own motion, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), that the rules are amended, effective August 22, 1985 by substituting for § 0.311(d)(1) the revised language which appears as the Appendix to this Order.

4. It is further ordered, pursuant to section 5(c)(1) of the Act, 47 U.S.C. 155(c)(1), and § 0.201(d)(1) of our rules, 47 CFR 0.201(d)(1), that the Secretary shall cause this order to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 0—[AMENDED]

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. In § 0.311, paragraph (d)(1) is revised to read as follows (the introductory text is reprinted without change for the convenience of the reader):

§ 0.311 Authority delegated.

The performance of functions and activities described in § 0.111 is delegated to the Chief, Field Operations Bureau, provided that:

* * * * *

(d)(1) The Chief of the Field Operations Bureau is authorized to issue notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures, pursuant to § 1.80 of this chapter, if the amount set out in the notice of apparent liability is $10,000 or less in the case of a broadcast licensee, and $2,000 or less in any other instance. The scope of the Field Operations Bureau's authority to take such actions includes cases of violation of section 301 or 318 of the Communications Act, or Part 13 or 17 of this chapter, and any other rule parts or sections specified in statements of policy provided by the other bureaus

and offices available for inspection in the Field Operations Bureau. The Chief of the Field Operations Bureau is authorized to further delegate this authority to Engineers in Charge of field installations.

* * * * *

[FR Doc. 85-21750 Filed 9-11-85; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 1

[FCC 85-478]

Practice and Procedure in the Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends rules of practice and procedure in the Private Radio Services. The purpose of these amendments is to clarify and standardize treatment of applications in these services and to delete unnecessary rule provisions.

EFFECTIVE DATE: October 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Order

In the matter of amendment of Part 1 of the rules concerning practice and procedure in the Private Radio Services.

Adopted: August 27, 1985.
Released: September 5, 1985.

By the Commission:

1. This Order amends Part 1 of the Commission's rules, Practice and Procedure (47 CFR Part 1), by making changes to several rule provisions which govern the processing of applications in the Private Radio Services.

2. First, we are clarifying § 1.925 regarding the procedures for obtaining special temporary authority (STA) in the Private Radio Services. Second, we are adding Forms 402-R (Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service) and 1046 (Assignment of Authorization) to the list of forms to be used in the Private Radio Services contained in § 1.922. Lastly, we are deleting §§ 1.927, 1.928, 1.929 and 1.930 governing ship station exemptions. These four rule sections only apply to ship radio stations and they are also found in Part 83 (Stations on Shipboard in the Maritime Services). This duplication is unnecessary. Therefore, we are removing these rules from Part 1 and retaining them in Part 83 where they are more conveniently available to the affected users.

3. Because these are amendments of rules of Commission practice and procedure, the public notice and comment provisions of 5 U.S.C. 553 do not apply (5 U.S.C. 553 (a)(3)(A). This Order is issued pursuant to § 1.412(b)(5) of the Commission's rules.

4. The amendments to the Commission's rules set forth in the attached Appendix are issued under authority of section 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Accordingly, it is ordered that Part 1 of the rules is amended as set forth in the attached Appendix, effective October 7, 1985.

6. Regarding questions on matters covered in this document, contact Robert DeYoung or Robert Mickley at 202 (632-7175).

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

PART 1—PRACTICE AND PROCEDURE

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.922 [Amended]

2. Section 1.922 is amended by removing the note which immediately follows the section title and by adding the following two forms to the two column table in numerical/alphabetical order:

402-R Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service.
1046 Assignment of Authorization.

3. In § 1.925, paragraph (a) is revised and paragraph (b) is removed and reserved to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit or temporary operating authority.

(a) A licensee of or an applicant for a station in the Private Radio Services may file either a formal or informal application for a special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. (See §1.962(b)(5) and (f)). The nature of the extraordinary circumstance which, in the opinion of the applicant justifies insurance of a special temporary authorization, must be fully described in the request. Information presently on file with the Commission may be included by reference. Applications for special temporary authority must be filed at least 10 days prior to the date of the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause. In situations involving the safety of life or property or where equipment has been damaged, a request for special temporary authority may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such a request.

(1) *Formal application.* Submit the appropriate FCC Form for the radio service in which the proposed operation is intended (see § 1.922) with a covering letter that contains the justification for the special temporary authorization request.

(2) *Informal application.* Informal requests for special temporary authority must contain the following information:

(i) Name, address, and citizenship status of applicant;

(ii) Statement of facts on which the request is based, including estimated duration of proposed use;

(iii) Class of station and nature of service;

(iv) Location of station and the points with which the station will communicate including, when appropriate, geographical coordinates;

(v) Equipment to be used, specifying manufacturer and model number, frequencies desired, types of emissions, power, and other pertinent technical information; and

(vi) Description of proposed antenna structure, including height.

(vii) For stations in the private operational-fixed microwave service, azimuth and beamwidth of the major lobe of the transmitting antenna and ERP.

(b) [Reserved]

* * * * *

§§ 1.927, 1.928, 1.929, 1.930 [Removed]

4. Sections 1.927, 1.928, 1.929 and 1.930 are removed.

[FR Doc. 85-21749 Filed 9-11-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket PS-83, Amdts. 192-50 and 195-35]

Transportation of Gas or Hazardous Liquids by Pipeline; Nondestructive Testing

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule allows some exception to the requirements to nondestructively test 100 percent of the girth welds in certain onshore locations. In certain cases where 100 percent testing is impacticable, testing less than 100 percent is allowed if at least 90 percent is tested. An operator who avails itself of the "90 percent testing" rule must determine that, under the circumstances, nondestructive testing is impracticable for each weld not tested.

EFFECTIVE DATE: The effective date of this final rule is October 15, 1985, except that October 21, 1985, is the effective date for intrastate hazardous liquid pipelines, see **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392, regarding the content of this final rule or the Dockets Branch, (202) 426-3148, regarding other information in the docket.

SUPPLEMENTARY INFORMATION: Under the current requirements of § 195.234(e) for hazardous liquid pipelines, 100 percent of the girth welds in the following onshore locations must be nondestructively tested, while offshore, only 90 percent of each day's welds need be tested when testing 100 percent is impracticable:

(1) At any onshore location where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area unless impracticable, in which case only 90 percent of each day's welds need be tested.

(2) Within railroad or public road rights-of-way.

(3) At overhead road crossings and within tunnels.

(4) At pipeline tie-ins.

(5) Within the limits of any incorporated subdivision of a State government.

(6) Within populated areas, including but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities public institutions, and places of public assembly.

For gas pipelines welds that are required to be nondestructively tested, the current § 192.243(d)(4) prescribes 100 percent testing within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, and at pipeline tie-ins. In Class 3 and Class 4 locations (populated areas), at crossings of major or navigable rivers, and offshore, § 192.243(d)(3) requires testing 100 percent if practicable, but not less than 90 percent of each day's welds.

A notice of proposed rulemaking (NPRM) (50 FR 11921, March 26, 1985) was published proposing to extend the "90 percent testing" rule currently embodied in §§ 195.234(e)(1) and 192.243(d)(3) to all hazardous liquid and gas pipeline locations where 100 percent testing is now required, except tie-ins. The "90 percent testing" rule does not allow an operator to routinely test less than 100 percent of the girth welds. Rather, an operator who wishes to avail itself of the "90 percent testing" rule must determine that under the circumstances, nondestructive testing is impracticable for each girth weld not tested. The MTB examined the safety impact of relaxing the 100 percent testing requirements and found that the proposed rule would not reduce safety, but had the potential to reduce costs. Comments were solicited from interested parties.

Fourteen commenters responded to the notice: 10 operators of hazardous liquid or gas pipelines, the Iowa State Commerce Commission, the American Petroleum Institute (API), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA).

The proposed rule was supported without suggested change by 8 pipeline operators, the AGA, and the API.

INGAA supported the proposal but recommended minor changes for clarity which MTB has not adopted, preferring the language proposed. However, as INGAA suggested, the term "must be tested" has been deleted from the end of the proposed § 192.243(d)(3) for consistency with the wording of paragraphs (d) (1), (2), and (4) and because the "must" command to test is already expressed in the lead-in text of paragraph (d).

INGAA and a gas operator also suggested that the proposed § 192.243(d), which requires nondestructive testing of all tie-ins, be changed to apply only to tie-in welds which are not strength tested. INGAA said this change would make the proposed § 192.243(d)(4) consistent with § 192.719(a)(2), which requires nondestructive testing only of non-strength tested girth welds made in the repair of transmission lines. MTB did not propose any substantive change to the existing rule. It was merely restated in the NPRM in view of other proposed changes to paragraph (d)(4). Therefore, the commenters' recommended rule change is beyond the scope of the NPRM. Furthermore, MTB does not believe that § 192.243(d)(4) and § 192.719(a)(2) are inconsistent. Although there are wording differences between the two rules, the effect of § 192.719(a)(2) is to require nondestructive testing of all tie-ins, because these girth welds are too impractical to strength test when a section of transmission line is replaced.

One commenter recommended that the radiographic test requirement for offshore pipelines in § 192.243(d)(3) be made the same as that for Class 1 pipelines (test at least 10 percent), since § 192.5 classifies offshore as Class 1 areas. Because offshore pipeline welds are outside the scope of the NPRM, this commenter's suggestion could not be adopted in this proceeding even if meritorious. Nevertheless, MTB notes that until Amendment 192-27 (41 FR 34598), the rule for offshore welds was identical to that for welds in Class 1. That amendment adopted a more stringent test requirement for offshore girth welds to reduce the opportunity for pipeline damage which can result from lifting an underwater pipeline to repair a weld. It also made the offshore rule consistent with the requirement for testing welds located in navigable river crossings. MTB does not have any new information which indicates that the existing offshore rule is too burdensome or could be safely relaxed, and so does not plan any action on the subject at this time.

One commenter recommended that in cases where an operator avails itself of the "90 percent testing" rule, the operator be required to keep a record of each weld not tested and the reasons for not testing. This commenter argued that under the proposed rule an operator might skimp on weld tests under the guise that testing is impracticable, and that the recommended record would prevent this type of abuse. This recommendation was not adopted in the final rule because the type of abuse envisioned by the commenter would be equally possible under the current rule in situations where "90 percent testing" applies, and MTB is not aware of any abuses of this type. Further, the burden to determine that nondestructive testing is impracticable for each weld not tested

rests on the operator and the language of the rule reflects this. Therefore, any enforcement problems that might arise should be minimized. Finally, one of MTB's goals is to eliminate unnecessary recordkeeping requirements (see 49 FR 44928, November 13, 1984, Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting), and adding a recordkeeping requirement in the absence of information showing need would be contrary to that goal.

An editorial change is made in this final rule to make the title of § 195.234 consistent with the content. The title of § 195.234 has been changed from "Welds: Nondestructive testing and retention of testing records" to simply "Welds: Nondestructive testing." deleting the reference to record retention. This title change should have been made when the record retention requirement was deleted from § 195.234 (48 FR 9014, March 3, 1983) but was overlooked at that time.

Safety Standards Committees

The NPRM was presented to the Technical Hazardous Liquid Pipeline Safety Standards Committee on November 1, 1984, and to the Technical Pipeline Safety Standards Committee for gas pipelines on February 28, 1985. Both Committees found the proposed rules to be technically feasible, reasonable, and practicable. Copies of the Committees' reports are available in the docket.

Intrastate Hazardous Liquid Pipelines

The NRPM noted that the proposed rule would be adopted for intrastate hazardous liquid pipelines should Part 195 be extended to those pipelines. There were no adverse comments to this proposal. A final rule was published (50 FR 15895, April 23, 1985) extending the Part 195 regulations to intrastate hazardous liquid pipelines effective October 21, 1985. As a consequence, this final rule is adopted for intrastate hazardous liquid pipelines, but as indicated above under the "Effective Date" heading, will not apply to those pipelines until October 21, 1985.

Classification

Since this final rule will have a positive effect on the economy of less that $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated, the final rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). MTB believes that the final rule will reduce the costs of nondestructive testing. However, these savings are not large enough to justify the preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this final rule, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 192 and 195

Pipeline safety, Nondestructive testing, Girth welds, Welding.

In view of the above, MTB amends Parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as set forth below and any authority citations following the sections in Part 192 are removed.

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. In § 192.243, paragraphs (d) (3) and (4) are revised to read as follows:

§ 192.243 Nondestructive testing.

* * * * *

(d) * * *

(3) In Class 3 and Class 4 locations, at crossings of major or navigable rivers, offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, in which case at least 90 percent. Nondestructive testing must be impracticable for each girth weld not tested.

(4) At pipeline tie-ins, 100 percent.

PART 195—[AMENDED]

3. The authority citation for Part 195 is revised to read as set forth below and any authority citations following the sections in Part 195 are removed:

Authority: 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A to Part 1.

4. In § 195.234 the title is revised, paragraph (e) is revised, and a new paragraph (g) added to read as follows:

§ 195.234 Welds: Nondestructive testing.

* * * * *

(e) 100 percent of each day's girth welds installed in the following locations must be nondestructively tested 100 percent unless impracticable, in which case at least 90 percent must be tested. Nondestructive testing must be impracticable for each girth weld not tested:

(1) At any onshore location where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area;

(2) Within railroad or public road rights-of-way;

(3) At overhead road crossings and within tunnels;

(4) Within the limits of any incorporated subdivision of a State government; and

(5) Within populated areas, including, but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities, public institutions, and places of public assembly.

* * * * *

(g) At pipeline tie-ins 100 percent of the girth welds must be nondestructively tested.

Issued in Washington, DC on September 6, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-21763 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination To Remove Three Palau Birds From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service removes the Palau fantail flycatcher (*Rhipidura lepida*), the Palau ground-dove (*Gallicolumba canifrons*), and the Palua owl (*Pyrroglaux* (=*Otus*) *podargina*) from the protection of the Endangered Species Act of 1973, as amended. This action is being taken because these species are distributed throughout their former range at near original abundances and are faced with no foreseeable threat. They suffered reductions in populations in southern Palau during World War II, but they have increased in these areas since then.

DATES: The effective date of this rule is October 15, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Builiding, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT:
Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Palau Fantail Flycatcher or Melimdelebteb

The fantail flycatcher (*Rhipidura lepida*), of the family Muscicapidae, is an Old World flycatcher that was first described in 1868 by Hartlaub and Finsch. It is presently distributed uniformly throughout its former range and is found on all the major and many of the smaller islands from Babeldaob to Peleliu. The fantail is common in all forest types except mangrove, and shows a preference for mixed second-growth stands with a thick and well developed understory. Early accounts suggest the fantail was common in the mid-1800's (Finsch 1875), rare in 1931 (Coultas *in* Baker 1951), and uncommon in 1945 on islands damaged by World War II (Baker 1951). Surveys completed by the Trust Territory Conservation Office in 1977–79 show that the fantail is common and widespread, and in fact is now most abundant on Peleliu, an island that was heavily damaged during the war. Observations by visiting ornithologists in the 1970's confirm the general abudance of the fantail throughout the islands (Pratt *et al.* 1980).

Palau Ground-Dove, or Omekrengukl

The Palau ground-dove (*Gallicolumba canifrons*), described by Hartlaub and Finsch in 1872, inhabits dense to open forest of rocky limestone substrates. Its historical and present range includes the many limestone islands from Koror to Angaur. A few birds also have been recorded from the large volcanic island of Babeldaob. Past accounts indicate the dove has always been uncommon, particularly on war-damaged islands after World War II (Baker 1951). Accurate assessments of the ground-dove's status are hindered by its inaccessible habitat, low density, secretive nature and soft and infrequently voiced call. In surveys conducted by the Trust Territory Conservation Office from 1977–79, the dove was found to be uncommon but widespread within its range in the limestone islands. Island populations that were depressed in 1945 have recovered. A minimum of 15 birds was estimated to remain on Peleliu in 1945 (Baker 1951), but the recent survey shows a population of over 150 on that one island. The total population is estimated at a minimum of 500 birds, which is thought to be near the level before the arrival of man on these islands.

Though the dove is uncommon to rare, its low density is apparently natural and probably due to the living requirements of the species. There appear to be no imminent threats to the population. The many limestone islands that constitute the primary range are a *de facto* refuge. The ground-dove's small size, inaccessible habitat, secretive nature and low, scattered numbers all make the dove unsought as a game species.

Palau Owl or Chesuch

The Palau Owl (*Pyrroglaux* (=*Otus*) *podargina*), described by Hartlaub and Finsch in 1872, resides in all forest types, including mangroves, and is abundant on all the major islands from Babeldaob to Peleliu. The owl is a vocal species, and can be readily located by its loud and persistent calls that are voiced during the night. It has always been reported as common, though immediately after World War II the owl was rare on islands of southern Palau affected by the war (Marshall 1949, Baker 1951). It was thought that the owl continued to decrease after World War II, possibly as a result of its feeding on the introduced coconut rhinoceros beetle (*Oryctes rhinoceros*), but since the 1960's the owl has steadily increased in numbers (Owen *in* Pratt *et al.* 1980). (A beetle control program was started in the 1950's and has been effective in reducing the total number of beetles now available to the owl. The beetle apparently is sometimes swallowed whole and may kill the owl by piercing its stomach.) Today, the owl is found in high densities. On Peleliu only 4 pairs could be located in 1945; the population in 1978 was estimated at over 300 on this island, and over 10,000 throughout the archipelago. The population appears to be secure and stable.

None of these species is sought as a game species, and none are especially sought after by humans. In the past, all three species have been protected by Trust Territory laws. These laws are slated to be adopted by the new government of Palau upon termination of the Trust. The new constitution of Palau bans personal possession of firearms, making it illegal to hunt with firearms. The forest habitat for these species is relatively secure. The high islands should remain in a natural state; these generally have poor access, are precipitous, and have a rocky substrate that is unsuitable for agriculture or other types of development. On the main island of Babeldaob, a more extensive road system is planned, but a major portion of the island should remain in a forested condition. Populations of all three species do not appear to be threatened by disease, predation, or other natural or manmade factors.

The Palau fantail flycatcher, Palau ground-dove, and Palau owl were classified as endangered June 2, 1970 (35 FR 8495). No critical habitat has been designated. Based on recent status information, a rule was proposed to delist these three species on September 19, 1984 (49 FR 36665).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute in the development of a final rule. Appropriate Republic of Palau agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Pacific Daily News* on November 6, 1984, which invited general public comment. Two comments were received and are discussed below.

The former Chief Conservationist for the Trust Territory Conservation Office, Robert P. Owen, submitted comments supporting delisting the three Palau species. He stated that the original listing was based on surveys of southern Palau completed by military ornithologists a short time after U.S. forces had invaded Angaur and Peleliu. These invasions caused serious destruction of the vegetation and wildlife. No surveys were made of central or northern Palau at that time because those islands were still being held by the Japanese forces. Owen first went to Peleliu and Angaur in 1949, 5 years after the invasion and 4 years after the military survey. Native bird life was still scarce compared with the rest of Palau and the destroyed vegetation was just beginning to recover. He frequently visited these islands in following years, and believes that the vegetation and bird life have returned to normal.

Dr. H. Douglas Pratt, Research associate at Louisiana State University, also supported delisting the three Palau species. He has made intensive studies of the birds of these and other western Pacific islands. He believes that these birds are very likely at the carrying capacity of their habitats and that these habitats are under no presently foreseeable threat. He knows of no management measures that could

conceivably increase the populations of these three species over present levels.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Palau fantail flycatcher, the Palau ground-dove, and the Palau owl should be removed from the protection of the Endangered Species Act of 1973, as amended. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The data used to support a removal must be the best scientific and commercial data available to substantiate that the species is neither endangered nor threatened. Factors leading to delisting include extinction, recovery of the species, or the original data for classification were in error. The factors in section 4(a)(1) and their application to the Palau fantail flycatcher (*Rhipidura lepida*), the Palau ground-dove (*Gallicolumba canifrons*), and the Palau owl (*Pyrroglaux*) (=*Otus*) *podargina*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three Palau birds are all forest species. About 75 percent of Palau is forested, and much of this forest should remain intact in future years, particularly on the many small, inaccessible islands between Koror and Peleliu. Despite relatively rapid development at present, much of the growth is concentrated around the capital of Koror and on the upper savannas of Babeldaob, where there has always been little forest habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None of the three Palau birds are utilized for these purposes. Occasionally, the Palau owl is taken for a pet, and the Palau ground-dove is taken incidental to hunting for the Micronesian pigeon (*Ducula oceanica*). These losses are few and are not considered a threat to the population.

C. *Disease or predation.* Populations of all three species appear to be stable, and neither disease nor predation is thought to pose a threat at present.

D. *The inadequacy of existing regulatory mechanisms.* All three species are protected by local regulations. Recently a ban on personal possession of firearms was enacted in Palau, which may further reduce any illegal taking of these and other bird species.

E. *Other natural or manmade factors affecting its continued existence.* There are no other known factors that are affecting the continued existence of the three Palau species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. All three species appear to have recovered on islands damaged during World War II. The original status information was meager and more recent and complete information is now available. These three Palau species are presently distributed throughout their former habitat and have stable populations that survive at or near their respective carrying capacities. Thus, they no longer meet the definitions of threatened or endangered species. Based on this evaluation, the Service delists the Palau fantail flycatcher, Palau ground-dove, and Palau owl.

Effects of Rule

The rule merely acknowledges that the Palau fantail flycatcher, Palau ground-dove, and Palau owl are not threatened with becoming endangered or in danger of extinction and that further protection under the Act is not required. Those prohibitions and conservation measures under the Act, sections 7 and 9 in particular, are no longer applicable to these species. As there were no specific preservation or conservation measures for these species in effect, there will be no impact on any agency or individuals.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Baker, R.H. 1951. The avifauna of Micronesia, its origin, evolution, and distribution. Univ. Kansas Publ. Mus. Nat. Hist. 3(1):1–359.

Finsch, O. 1875. On the ornithology of the South Sea islands, Vol. 1. The birds of the Palau Islands. Journal of the Godeffroy Museum: 8:1–51. (in German)

Hartlaub, G., and O. Finsch. 1868. On a collection of birds from the Pelew Islands. Proc. Zool. Soc. London: 4–9.

Hartlaub, G., and O. Finsch. 1872. On a fourth collection of birds from the Pelew and Mackenzie Islands. Proc. Zool. Soc. London: 87–114.

Marshall, J.T., Jr. 1949. The endemic avifauna of Saipan, Tinian, Guam, and Palau. Condor 51:200–221.

Pratt, H.D., J. Engbring, P.L. Bruner, and D.G. Berret. 1980. Notes on the taxonomy, natural history, and status of the resident birds of Palau. Condor 82:117–131.

Author

The primary author of this final rule is John Engbring, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine Mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the following, found in alphabetical order under BIRDS, from the List of Endangered and Threatened Wildlife: Dove, Palau ground; Flycatcher, Palau fantail; and Owl, Palau.

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–21764 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–55–M

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Designation of Critical Habitat for the White River Spinedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a fish, the White River spinedace (*Lepidomeda albivallis*), to be an endangered species and designates its critical habitat under the authority

contained in the Endangered Species Act of 1973, as amended. This action is being taken because five populations of this species have been eliminated and the remaining two populations have declined due to habitat destruction through channelization and diversion of their spring habitats, and due to the introduction of exotic fishes, which compete with and prey on the White River spinedace. The White River spinedace occurs in remnant waters of the pluvial White River system in southern White Pine County and extreme northeastern Nye County, Nevada. A determination that the White River spinedace is an endangered species and designation of its critical habitat will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 15, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The White River spinedace (*Lepidomeda albivallis*) was described by Miller and Hubbs (1960) based on material collected in 1934. It is one of six species belonging to the Plagopterini, a unique tribe of cyprinid fishes noted for their adaptations to small, swift-water desert streams. Members of the Plagopterini are restricted to the lower Colorado River system and are characterized by the possession of two spinal rays in the dorsal fin and a reduction in scalation in certain taxa (Miller and Hubbs 1960, Uyeno and Miller 1973). The White River spinedace is a relatively large species of *Lepidomeda*, and ofter attains a length of 4 to 5 inches (10–13 cm). It can be distinguished from other species of *Lepidomeda* by its possession of a pharygeal tooth formula of 5–4 in the main row, typically fewer than 90 lateral-line scales, a moderately oblique mouth, a dorsal fin of moderate height, and distinctive body coloration. The species exhibits a bright green to olive color dorsally, brassy over bright silver laterally, and silvery-white ventrally. The head is coppery-red to red on the sides with gilt reflections on the cheeks and opercles (Miller and Hubbs 1960).

The White River spinedace is the only representative of the tribe within the upper White River system of southern White Pine County and extreme northeastern Nye County, Nevada. During pluvial times, 10,000 to 40,000 years ago, the White River was tributary to the Colorado River by way of the Virgin River (Hubbs *et al.* 1974). As the pluvial waters desiccated because of the more xeric climates, the White River spinedace was restricted to permanent waters such as springs or perennial sections of the White River. Currently, the White River is dry for much of its course. In the mid 1900's, the White River spinedace was known from Preston Big, Nicholas, Arnoldson, Cold, Lund, and Flag Springs as well as from the White River near its confluence with Ellison Creek (Miller and Hubbs 1960, Williams and Wilde 1981).

Presently, viable populations of the White River spinedace are found only in Lund Spring and Flag Springs. Lund Spring is privately owned and Flag Springs is State owned and within a wildlife management area. The former locality contains established populations of exotic species. Both spring systems have been altered by human activities. The primary threats to the continued existence of the White River spinedace are the channelization and diversion of water within the spring habitats as well as the introduction of exotic fishes such as guppies (*Poecilia reticulata*), mosquitofish (*Gambusia affinis*), and goldfish (*Carassius auratus*) into spinedace habitat. The exotic fishes compete with and, in some instances, prey on the spinedace.

On December 30, 1982, the Service published a vertebrate Notice of Review (47 FR 58454) and included the White River spinedace as a category 1 species. Category 1 indicates that the Service has substantial information to support the biological appropriateness of listing the species as threatened or endangered.

On April 12, 1983, the Service received a petition from the Desert Fishes Council requesting that the White River spinedace along with 16 other fish species be added to the List of Endangered and Threatened Wildlife. The Service published in the **Federal Register** (48 FR 27273) on June 14, 1983, a finding that the petition presented substantial information and that the petitioned action may be warranted. Publication of the proposed rule on May 29, 1984 (49 FR 22359), constituted the required 12-month petition finding in accordance with section 4(b)(3)(ii) of the Act.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22359) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notice were published in the *Ely Daily Times* on June 26, 1984, *The Las Vegas Sun* on June 26, 1984, and the *Las Vegas Review Journal* on June 13, 1984, which invited general public comment. Six comments were received and are discussed below. No public hearing was requested or held.

Supportive comments were received from the International Union for Conservation of Nature and Natural Resources (IUCN), American Society of Ichthyologists, Nevada Department of Conservation and Natural Resources (NDCNR), and Thomas M. Baugh, University of Nevada. In addition, a comment was received from the Nevada Department of Wildlife (NDOW) supporting the listing of the Lund Spring population and the designation of critical habitat at Lund Spring and Preston Big Spring. However, NDOW withheld support for the listing of the Flag Springs population and designation of critical habitat at Flag Springs. The Nevada Department of Wildlife felt that its management of the wildlife area afforded the White River spinedace adequate protection at this site and that because of its management policies the population was not endangered. The Flag Springs population is small and vulnerable to any habitat disturbance. In the past, the springs have been modified and adverse effects to the species' habitat have resulted. It is the position of the Service that State management of the spinedace habitat is not sufficient to allow complete recovery of the species and its habitat. Designation of this site as critical habitat will provide full protection for the species including future recovery actions. In addition, due to the importance of this small site as one of only two existing locations for the fish, the exclusion of this site from critical habitat designation is not considered prudent.

One opposing comment was received from the Regional Planning Commission, White River County. The main concern was the effect the rulemaking might have on the private landowners in this agricultural area. In response to the

above concern, the only activities that may be affected by the listing of the White River spinedace and the designation of critical habitat are Federal activities that might adversely affect the species or its critical habitat and the "taking" of the fish itself, a prohibition already enforced under the State of Nevada's regulations regarding protected species. Private or county activities, unless undertaken with assistance from Federal sources, will not be affected by this rule, and there are no known or anticipated activities involving Federal funds or permits for these lands.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the White River spinedace (*Lepidomeda albivallis*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the White River spinedace (*Lepidomeda albivallis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When the White River spinedace was described by Miller and Hubbs in 1960, the species was present in large numbers throughout its range. By 1979, the spinedace was considered rare in all localities surveyed (Hardy 1980). Physical and biological habitat alteration have precipitated this decline. During the latter half of this century, agricultural and residential use increased within the White River spinedace range because of the abundant water supply found there. The available suitable habitat for the spinedace has been reduced by channelization of spring flows and the development of diversion structures around outflow creeks, activities that made water available for residential and agricultural uses. Continued channelization and diversion of the water supply threatens the remaining habitat of the White River spinedace.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No such threats are known.

C. *Disease or predation.* Introduction of exotic fish, such as guppies (*Poecilia reticulata*), mosquitofish (*Gambusia affinis*), and goldfish (*Carassius auratus*), into the aquatic habitats of the White River spinedace has occurred. The establishment of guppies and mosquitofish in habitats occupied by the White River spinedace has been particularly harmful. It is thought that some of these exotic fish prey upon the spinedace and have led to population declines. In general, the introduction of exotic fishes is usually detrimental to native fishes because of competition, predation, or the introduction of exotic parasites and diseases (Deacon *et al.* 1964, Hubbs and Deacon 1964).

D. *The inadequacy of existing regulatory mechanisms.* The State of Nevada has placed the White River spinedace on its Protected Species List. However, this action does not provide protection to the species' habitat. Through Federal listing, protection for the species and its habitat will be implemented as provided by the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* The use of copper sulfate for control of algae may have been partly responsible for the elimination of the species from Preston Big Spring and may threaten the remaining populations (Courtenay *et al.* ms).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the White River spinedace as endangered. The elimination of five populations, and the reduction of the remaining two by channelization and diversion activities in their spring habitats, as well as competition and predation from exotic species, indicate that the species is imminently threatened with extinction. Therefore, endangered status is warranted. The reasons for designation of critical habitat are discussed below.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the White River spinedace (*Lepidomeda albivallis*) to include three areas in Nevada. Preston Big Spring (approximately 4.0 acres) and Lund Spring (approximately 1.3 acres) are critical habitat areas in White Pine County and Flag Springs (3.0 acres) is located in northeastern Nye County. Preston Big Spring is included in the critical habitat designation as an area outside the present geographical range occupied by the species but essential for the species' conservation and within the historic range of the species. The White River spinedace is thought to have been extirpated from this spring shortly before 1980 (Courtney *et al.* ms). Efforts to reestablish the spinedace at this recent historical site are planned and are considered necessary to increase the species' numbers, the population numbers, and the genetic viability of this species. Constituent elements at all sites include consistently high quality cool (55°–70°F) springs and outflows with a sufficient quantity of water, and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds. A precise description of the critical habitat can be found in the "Regulations Promulgation" section.

The areas proposed as critical habitat for the White River spinedace satisfy all known criteria for its ecological, behavioral, and physiological requirements. The most critical element to the survival of the spinedace is a consistent quality and quantity of springflow. The critical habitat being designated includes the springs and associated outflows as well as the immediately surrounding riparian areas. These narrow riparian land areas are essential for vegetative cover that contributes to the uniform water conditions preferred by the spinedace and provides habitat for insects and other invertebrates that constitute a substantial portion of the spinedace diet.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that may adversely affect the critical habitat of the White River spinedace include pollution of the

springwater (such as through the use of chemicals to control algae), introduction of exotic species, excessive pumping of water from nearby aquifers, and further physical modification of the spring areas (such as through channelization and diversion of springflows or clearing of the surrounding vegetation).

Agriculture is the primary activity on private lands near the two White Pine County springs proposed as critical habitat. The water from these two springs enters pipes after an open area near the spring head and is used for irrigating crop lands. The springs system on State lands within the proposed critical habitat is part of the Kirch Wildlife Management Area and is relatively unmodified. Two impoundments occur away from the spring heads for wildlife use. Currently, there are no known activities involving Federal funds or permits that may affect or be affected by the designation of critical habitat for this species. If a landowner seeks Federal assistance in activities such as modification of the springs or their immediate outflows the Federal agency involved must enter into consultation with the Service to ensure that such activities do not adversely affect the White River spinedace or its habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. No additional information has been received as a result of the proposed rule on economic or other impacts that might result from designation of the critical habitat. The critical habitat area is approximately 8.3 acres and includes three spring systems and their outflows. One of these spring areas is owned by the State of Nevada and has been maintained in a relatively pristine condition as part of a wildlife management area. The two other springs are in private ownership. There is no known or anticipated involvement of Federal funds or permits for the private and State lands included in the critical habitat designation. Therefore, no significant economic or other impacts are expected as a result of the designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No such Federal involvement is known for White River spinedace.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat designation as defined in the proposed rule did not bring forth economic or other impacts to warrant consideration of revising the critical habitat. One spring included as critical habitat is located within a wildlife management area owned by the State and the two other springs designated as critical habitat are in private ownership. There is no known or planned involvement of Federal funds or permits for the State and private lands included in the critical habitat designation. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, at the address found in the "Addresses" section.

Literature Cited

Courtenay, W.R., S.E. Deacon, D.W. Sada, R.C. Allan and G.L. Vinyard. Manuscript. Comparative status of fishes along the course of the pluvial White River, Nevada.

Deacon, J.E., C. Hubbs and B.J. Zahuranec. 1964. Some effects of introduced fishes on the native fish fauna of southern Nevada. Copeia 1964:384–388.

Hardy, T. 1980. The Inter-basin area report—1979. Proc. Desert Fishes Council 11:5–21.

Hubbs, C.L. and J.E. Deacon. 1964. Additional introductions of tropical fishes into southern Nevada. Southwestern Nat. 9:249–251.

Hubbs, C.L., R.R. Miller and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Acad. Sci. 7:1–259.

Miller, R.R. and C.L. Hubbs. 1960. The spiny-rayed cyprinid fishes (Plagopterini) of the Colorado River system. Misc. Publ. Mus. Zool., Univ. Michigan 115:1–39.

Uyeno, T. and R.R. Miller. 1973. Chromosomes and the evolution of the Plagopterin fishes (Cyprinidae) of the

Colorado River system. Copeia 1973:776–782.
Williams, J.E. and G.R. Wilde. 1981. Taxonomic status and morphology of isolated populations of the White River springfish, *Crenichthys baileyi* (Cyprinodontidae). Southwestern Nat. 25:485–503.

Author

The primary author of this final rule is Carol A. Wilson, Endangered Species Staff, at the address in the "**ADDRESSES**" section.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Spinedace, White River	*Lepidomeda albivallis*	U.S.A. (NV)	Entire	E		17.95(e)	NA

3. Amend § 17.95(e), by adding critical habitat of the White River spinedace (*Lepidomeda albivallis*), as follows: The position of this entry under § 17.95(e) will follow the same alphabetical sequence as the species occurs in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

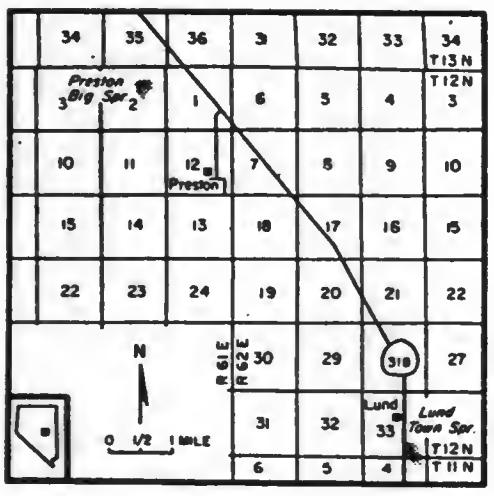
* * * * *

WHITE RIVER SPINEDACE (*Lepidomeda albivallis*)

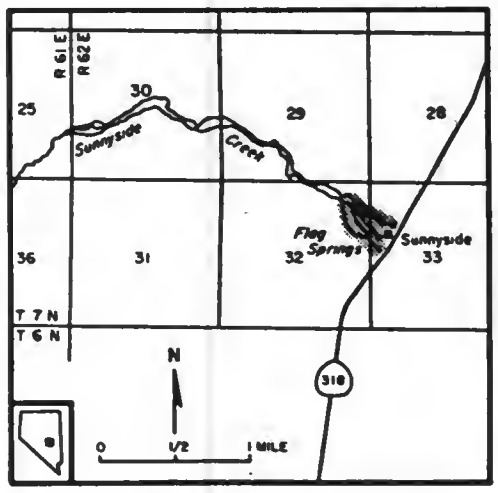
Nevada, White Pine County. Each of the following springs and outflows plus surrounding land areas for a distance of 50 feet from these springs and outflows:

Preston Big Spring and associated outflows within T12N, R61E, NE ¼ Sec. 2.

Lund Spring and associated outflows within T11N, R62E, NE ¼ of NE ¼ of Sec. 4; T12N, R62E, S ½ of SE ¼ Sec. 33.



Nevada, Nye County. Flag Springs and associated outflows plus surrounding land areas for a distance of 50 feet from the springs and outflows within the following areas: T7N, R62E, E ½ of NE ¼ Sec. 32, SW ¼ of NW ¼ Sec. 33.



Known constituent elements for all areas of critical habitat include consistently high quality and quantity of cool springs and their outflows, and surrounding land area that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

* * * * *

Dated: August 13, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–21824 Filed 9–11–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Refuge-Specific Hunting Regulations

Correction

In FR Doc. 85–21036, beginning on page 35815, in the issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35816, first column, sixteenth line, "FR 37736" should read "FR 36736".

2. On page 35821, first column:

a. In § 32.22(d)(4)(ii), fifth line, "mussleloader" should read "muzzleloader".

b. In § 32.22(d)(4)(iii), third line, insert "five" between "last" and "days".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 30316-39]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Paragraph (b) is removed from § 658.22, and the terms "field order" and "order" are replaced by "Notice in the

Federal Register" and "notice," respectively, wherever they occur at § 658.25. The intent is to remove nonconforming language from the implementing regulations.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, Fisheries Management Officer, 202–634–7432.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on April 21, 1983 (48 FR 17098) to modify, temporarily, the boundary of the Tortugas Shrimp Sanctuary to reduce the area closed to trawl fishing. The termination date for the temporary geographic modification of the Sanctuary was 2400 hours August 14, 1984. Accordingly, § 658.22 is revised to remove paragraph (b) where the temporary geographic modification is discussed.

NOAA has also determined that the use of the terms "field order" and "order" are not the appropriate terms to accurately describe how inseason adjustments are made known to the public, therefore, "notice in the Federal Register" and "notice," respectively, are inserted in § 658.25 wherever "field order" and "order" appear.

List of Subjects in 50 CFR Part 658

Fisheries.

Dated: September 6, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—[AMENDED]

1. The authority for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 658.22 [Amended]

2. Section 658.22 is amended by removing the paragraph (a) designator and paragraph (b) in its entirety.

§ 658.25 [Amended]

3. Section 658.25 is amended by removing the term "field order" and "order" and inserting the terms "notice in the Federal Register" and "notice," respectively, wherever they occur.

[FR Doc. 85–21825 Filed 9–9–85; 2:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1806

Real Property Insurance

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the Real Property Insurance loss deductible clause for Multiple Family Housing Loan and Grant recipients. This action is being taken to provide flexibility in selection of the level of loss deductible and keep insurance premiums at reasonable amounts. The intended effect is to help hold tenant rents from unreasonable escalation.

DATES: Comments must be received on or before November 12, 1985.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250.

All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: James D. Tucker, Branch Chief, Multiple Family Housing Servicing and Property Management (MHSPM) Division, USDA, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382–1618.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement.

This document has been revised according to 7 CFR-Part 1940, Subpart G, "Environmental Program." It is determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.427, Rural Rental Assistance Payments. For the reasons set forth in the final rule related notice(s) to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983. The program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

General Information

Background and Statutory Authority

This subpart prescribes the authorization, methods, and procedures for obtaining and servicing property insurance on buildings on owned or leased land securing the interest of Farmers Home Administration (FmHA) in connection with Farmer Program (FP), Rural Housing (RH), Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Recreation Loans (RL), Other Real Estate (ORE), Soil and Water (SW), Timber Development (TD), and Land Conservation and Development (LCD) loans. FP means direct and insured individual farm real estate, operating and emergency loans secured by real estate.

This proposed change is to revise the amount of loss deductible allowable on Real Property Insurance Policies covering buildings securing Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) organization type loans securing FmHA financed projects.

List of Subjects in 7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

Therefore, Subpart A of Part 1806, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 would be revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; 29 FR 14764; 33 FR 98950.

2. In § 1806.2, paragraph (d)(1)(iii) is revised to read as follows:

§ 1806.2 Companies and policies

* * * * *

(d) * * *

(1) * * *

(iii) *Loss Deductible Clause.*

(A) For all loans other than RRH, RCH and LH organizations this clause generally provides that loss to each *building* to the extent of the limitation is not recoverable. The company is liable only for loss to each building in excess of such limitation stated in the clause. This clause may be accepted where the limitation does not exceed $150, or one percent of the insurance coverage whichever is greater. In no case, however, may the limitation on any one building exceed $500.00.

(B) For RRH, RCH, and LH organization loans this clause generally provides that loss to each *project* to the extent of the limitation is not recoverable. The company is liable only for loss to each project in excess of such limitation stated in the clause. This clause may be accepted where the

limitation does not exceed the option shown below that is chosen by the borrower and agreed to by the Loan Approving Official and properly annotated in the borrower file. The borrower and FmHA Official should consider the economic impact to the project when selecting the appropriate option.

(1) Option 1—Up to one-fourth of one percent (0.0025) of the insurable value. Maximum deductable $5,000.

(2) Option 2—Up to a flat rate of $500 deductible on any project with an insurable value not exceeding $200,000.

(3) Option 3—Option 1 may be chosen and increased by an amount equivalent to an amount of funds placed in an insurance escrow to offset the increased deductible, dollar for dollar.

(4) Option 4—Option 2 may be chosen and increased by an amount equivalent to an amount of funds placed in an insurance escrow to offset the increased deductibles, dollar for dollar.

(5) The funds used to increase the deductible in Option 3 or Option 4 may be from project funds if it does not create an unsecure financial situation for the project. Also, non-project funds may be used for Optional 3 or 4 and then repaid by withdrawal from the project at the rate of 75 percent of the annual insurance premium savings earned by the amount of escrow deposit, up to the amount deposited.

(6) The funds escrowed to increase the authorized deductible will be placed in the project reserve account as an increased amount in and above the amount required by the Loan Agreement/Resolution and so annotated in the borrower's accounting system.

* * * * *

Dated: August 19, 1985.

Vance L. Clark,

Administrator, Formers Home Administration.

[FR Doc. 85-21789 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Parts 51, 71, 78, 80, and 92

[Docket 83-106]

Brucellosis Regulations; Interstate Movement of Cattle, Bison, and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis. This document would amend the brucellosis regulations to clarify definitions and interstate movement requirements, provide for additional restrictions on the interstate movement of cattle in order to reduce the risk of interestate spread of brucellosis, and provide for alternate methods of moving cattle and bison interstate which would not increase the risk of the interstate spread of brucellosis.

DATE: Comments must be received on or before November 12, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious, infectious, and contagious disease which affects animals and man and is cause by bacteria of the genus brucella. The Secretary of Agriculture is authorized to cooperate with the States in conducting a brucellosis eradication program and to prevent the interestate spread of brucellosis. Title 9, Code of Federal Regulations, Part 78, (referred to below as the regulations) regulates the interstate movement of cattle, bison, and swine with respect to brucellosis. States, areas, herds, and individual animals are classified according to brucellosis status, and the brucellosis requirements for interstate movement are based upon the disease status of the individual animal and the status of the herd, area, or State from which the animal originates.

A major revision of the regulations was published as a final rule December 13, 1982, and became effective January 12, 1983. Provisions in this final rule which differed significantly from the proposed rule were open for comment and three letters were received during the comment period which addressed those sections of the final rule officially open for comment. These comments and any proposed changes based upon such comments will be discussed in this proposal.

Further a number of problems have been identified in interpretation, compliance, and enforcement of these regulations. A number of proposed changes are set forth in this document which we believe would resolve these problems.

Since 1947, minimum standards for conducting the brucellosis eradication program have been recommended to the Department by the United States Animal Health Association (USAHA). The USAHA is a nongovernmental organization dedicated to the betterment of livestock health and the livestock industry. It is composed of livestock industry organizations and individuals, State animal helath officials, and Federal animal health officials. Department representatives serve on the Brucellosis Committee of USAHA both as members and as advisors. The recommendations of USAHA are reviewed by the Department. Those acceptable to the Department are proposed as amendments to the Brucellosis Eradication Uniform Methods and Rules (UM&R), APHIS Publication 91-1. The UM&R forms the basis for cooperation between the States and the Department to control and eradicate brucellosis, and constitutes the minimum standards for achieving and maintaining brucellosis status. The UM&R is subject to annual review and amendment to reflect progressive program needs as determined by representatives of all impacted segments of the livestock industry, the scientific community, the State animal health officials, and United States Department of Agriculture animal health offiicals. This proposed rule incorporates USAHA recommendations which would affect the interstate movement requirements of the regulations.

The Proposal

This document proposes numerous changes in the regulations; therefore, the entire part is republished as a proposal. Only those sections which would be substantively amended by this document will be discussed in this supplemental information. This document proposes to make numerous minor changes only for clarification of the current regulations, and such proposed changes are not addressed in this supplemental information.

Subpart A—General Provisions

This document would reorganize the terms defined in present § 78.1 in alphabetical order to assist those who wish to locate any particular term defined. Further, to assist the reader, this document would provide a list of terms defined to provide an easy method of determining which terms are defined in § 78.1. Paragraph designations would be deleted from

§ 78.1 and reference to the definitions in other sections of the proposed regulations would refer only to § 78.1. Further the definitions set forth in present § 78.1 would be amended as explained below.

Present § 78.1(m) defines the word "moved" as "[s]hipped, transported, or otherwise moved, or delivered or received for movement." This document would amend the definition of the word "moved" to read: "[s]hipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved." This amendment would not change the requirements of the regulations, however, it would extend the legal responsibility for violations of the regulations to those aiding, inducing, or causing the movement of animals in violation of the regulations.

The definition of "certificate" set forth in present § 78.1(n) would be amended by this document to permit ownership brands to be used as identification on certificates for cattle moving interstate which do not require an official test for brucellosis to be moved in accordance with the regulations, provided, the ownership brands are registered with an official brand recording agency and the cattle being moved are accompanied by an official brand inspection certificate. This amendment would permit cattle which are required to be accompanied interstate by a certificate to be moved interstate from Class Free States or areas and from certified brucellosis-free herds with a certificate utilizing the ownership brand as identification. The proposed change in the definition of certificate would greatly facilitate identification procedures for cattle originating in Class Free States or areas or certified brucellosis-free herds without losing identity to the State and farm of origin. Cattle originating from such States or areas and from such herds represent a very low risk of transmitting brucellosis, and it is not believed that this proposed change in identification requirements will have any significant adverse effect on the brucellosis eradication program.

This document would add definitions to the terms "official brand inspection certificate" and "official band recording agency" which are used in the proposed definition of the word "certificate," explained above. These two definitions would be added to more clearly identify the type of agency with which ownership brands must be registered and the type of document which must accompany the cattle.

Present § 78.1(o) defines the word "permit." This definition also defines the terms "permit for entry" and "S brand permit." These three terms have different meanings; therefore, this proposal would separately define each of the three terms. None of the definitions of these three terms have been substantively changed.

Section § 78.1(p) sets forth the definition of "official test." This definition is divided into official tests for the classification of cattle and bison and official tests for the classification of swine. There are no substantive changes proposed in this document for the definition of official tests for the classification of swine. The definition of official test for the classification of cattle and bison would be amended by this document by including two additional tests and by substantively modifying the interpretations of two of the current official tests.

The proposed amendment would add a modified (reduced sensitivity) card test as an official test for cattle and bison which are official vaccinates. The modified card test would be used as a followup test on official vaccinates positive to the presently used card test in livestock markets in those States in which the State animal health official and the Veterinarian in Charge designate the test as an official test. The presently used card test is referred to as the standard card test in this proposal to distinguish it from the modified card test. Official vaccinates which are not infected with field strain brucella occasionally continue to produce a type of antibody which is detectable on the standard card test and which results in a "positive" interpretation. This has sometimes caused excessive and unnecessary interruption of cattle and bison movement, particularly in areas where the cattle and bison population is heavily vaccinated. (Utilization of reduced dose vaccination as proposed in the definition of official calfhood vaccinate and official adult vaccinate as set forth in proposed § 78.1 will minimize this problem, but will not eliminate it entirely.) Adoption of the modified card test as proposed is intended to provide a more specific test to more accurately identify those cattle and bison infected with field strain brucella. Official vaccinates positive to the standard card test but negative to the modified card test would be classified as brucellosis suspects. The definition of the standard card test presently set forth in § 78.1(p)(1)(i) would also be modified by this proposal to permit classification of official vaccinates positive to the standard card test and negative to the modified card test as brucellosis suspects.

The proposed amendment to the definition of "official test" would also add the Technicon automated complement-fixation (CF) test as an official test for test-eligible cattle and bison. The presently used complement-fixation test is referred to as the manual complement-fixation (CF) test in this proposal to distinguish it from the Technicon automated CF test. Extensive comparison studies provided by Texas animal health officials demonstrate that the Technicon automated CF test is slightly more sensitive (in terms of indentifying field strain infected cattle and bison) than the manual CF test.

The rivanol test presently set forth in § 78.1(p)(1)(iv) would also be amended by this proposal. Specifically, this proposal would provide that official vaccinates subject to the rivanol test and found to have a complete agglutination at a dilution of 1:50 or less would be classified as brucellosis suspects rather than brucellosis reactors if a complement-fixation test is conducted and results in a complement-fixation classification of brucellosis suspect or brucellosis negative.

Since vaccination may interfere with the interpretation of the rivanol test, the brucellosis reactor classification for the rivanol test is considered by some animal health officials to be too stringent. Selection of the complete agglutination at the 1:50 level is based on field observations that official vaccinates with titers of incomplete agglutination at 1:100 or higher on the rivanol test have a greater probability of being infected with field strain brucellosis than do official vaccinates with rivanol titers of complete agglutination at 1:50 or less.

The "milk ring test" presently set forth in § 78.1(p)(1)(viii) is renamed in this proposal the "brucellosis ring test" These terms are used synonymously in much of the scientific literature to describe the same test procedure. The brucellosis ring test surveillance program has for many years required routine collection on both milk and cream samples from all dairies which ship milk or cream commercially in the United States. The use of the term "milk ring test" in the regulations which became effective January 12, 1983, caused some persons to conclude erroneously that routine collection of cream samples for testing was no longer required. Therefore, to eliminate this misunderstanding, this document would propose that the name "brucellosis ring test" be used instead of "milk ring test" in the regulations. It is also proposed to remove the "milk ring test" from the definition of official test and set forth the definition of brucellosis ring test separately in proposed § 78.1. The

brucellosis ring test has never been used as a test to determine the disease status of individual animals or the eligibility of individual animals for interstate movement pursuant to the regulations. Since the "brucellosis ring test" would continue to be used in determining the classification of States or areas, it is necessary to retain a definition of the term.

The definition of "certified brucellosis-free herd" as set forth in present § 78.1(q) would be amended to increase the minimum number of consecutive negative brucellosis ring tests for dairy herds as specified in the first qualifying procedure from three to four to be conducted at not less than 90 day intervals and followed by the currently required negative herd blood test within 90 days of the last brucellosis ring test. The increased number of brucellosis ring tests would provide greater assurance that the individual dairy is free of brucellosis. Should a dairy herd become infected, brucellosis would be detected earlier. This would result in reduced economic loss to the producer and reduce the threat of brucellosis transmission. No brucellosis test is required for cattle moving interstate from a certified brucellosis-free herd. This proposed change to require four rather than three brucellosis ring tests to qualify as a certified brucellosis-free herd provide additional assurance of the brucellosis-free status of the herd and a reduced risk of the interstate spread of brucellosis.

It is also proposed to amend the definition of "certified brucellosis-free herd" to provide for certification of bison herds, as well as cattle herds. Although not a requirement, owners of bison herds may wish to obtain the certified brucellosis-free herd status by following the testing procedures set forth in the proposed definition of "certified brucellosis-free herd." The certified brucellosis-free herd status would provide the bison owner with the same assurance of brucellosis free status as cattle herds which are certified brucellosis-free herds. As discussed below, this document proposes to amend the regulations concerning the interstate movement of bison to reduce restrictions on bison originating from any herds which may qualify as certified brucellosis-free herds.

The definition of "certified brucellosis-free herd" is also amended in this proposal to permit an owner of a certified brucellosis-free herd to reestablish the recertification test date by conducting a herd blood test prior to the end of the 12 month certification period. Some owners of certified brucellosis-free herds have found it necessary or advantagous to change the recertification test date. It is believed that by testing their herd earlier than required to establish a new recertification date, the brucellosis-free status of their herd can be confirmed without adversely affecting the certification program.

This document would amend the definition of "validated brucellosis-free State for swine" set forth in present § 78.1(s) to eliminate the references in the definition to validated brucellosis-free areas since there are no areas other than States which are validated brucellosis-free. The definition of "validated brucellosis-free State" would also be amended to add the minimum qualifying alternative standards which are referred to in present § 78.1(s). These proposed alternative standards would require that prior to validation a State have no known foci of brucellosis in the State, have found no more than 3 percent of the herds in the State to have brucellosis during the qualifying period, and have completed one of three specified methods of surveillance. The definition of "validated brucellosis-free State" would further be amended to permit validation of a State regardless of the brucellosis status of the feral swine in that State if the feral swine do not come in contact with domestic swine. This amendment was recommended by the USAHA to support efforts for validation of States which have a wild swine population. In certain States wild swine may be affected with brucellosis but do not come in contact with domestic swine and thus do not represent a risk to domestic swine in a State qualifying for validated brucellosis-free status.

This document would amend the definitions of "Class Free State or Area," "Class A State or Area," "Class B State or Area," and "Class C State or Area," respectively, defined in present § 78.1(t), § 78.1(u), § 78.1(v), and § 78.1(w). Two substantive amendments would be made to each of these definitions.

First, one of the current standards to attain and maintain Class Free, A, B, and C status is that the brucellosis ring test (BRT) shall be conducted at least four times a year on all dairy herds. The Department believes that this requirement is too stringent. The very large number of dairy herds in some States makes the accounting and collection procedures subject to occasional error. As a result, it is proposed to amend this standard by requiring that each dairy herd producing commercial milk be included in at least three of four brucellosis ring tests conducted on dairy herds at approximately equal intervals each year. Under this proposed amendment, the vast majority of dairies would continue to be tested four times per year. It does not appear that this reduced surveillance requirement would adversely affect the brucellosis program.

Second, currently under the regulations, card test positive cattle tested for surveillance under the market cattle identification (MCI) program are classified as MCI brucellosis reactors with or without supporting serologic test results for the purposes of classifying States or areas. Since official vaccination may interfere with the results of the standard card test, it is believed that including all card test positive cattle as MCI brucellosis reactors in determining the MCI reactor prevalence rate is excessively stringent and may improperly and adversely affect the classification of the State or area.

In order to obtain uniformity, however, in identifying and counting MCI reactors throughout the United States, the USAHA has recommended that nonvaccinated cattle positive to the standard card test and vaccinated cattle positive to the modified card test or positive to the rivanol test at 1:25 or greater be included in determining the MCI reactor prevalence rate. This proposed amendment has been included under MCI reactor prevalence rate in the definitions of Class Free, A, B, and C States or Areas in § 78.1.

The definitions of "brucellosis reactor," "brucellosis suspect," and "brucellosis negative" set forth in present §§ 78.1(x), 78.1(y), and 78.1(z), respectively, are proposed to be amended in this proposal. Each of these terms is presently defined by identifying the official tests to which an animal may be subjected and the results which will classify the animal regarding its particular brucellosis disease status. Further, a designated epidemiologist may reclassify an animal based upon other epidemiologic considerations. This proposal deletes the references to the specific official tests and the specific test results which classify an animal in terms of its brucellosis disease status and defines "brucellosis reactor," "brucellosis suspect," and "brucellosis negative" as an animal which has been subjected to one or more official tests which results in a specific brucellosis status classification based upon the results of the official test. Except with respect to substantive changes in the definition of official test discussed above, this change in the format of the

definition of these three terms would not substantively amend the meaning of these terms. This amendment would avoid the duplication which is presently found in the definitions of "official test," "brucellosis negative," "brucellosis suspect," and "brucellosis reactor." This proposal would not amend the definitions of these terms with respect to reclassification of the brucellosis status of an animal by the designated epidemiologist.

The definition of the term "breeding swine" in present § 78.1(ff) would be deleted since this term is not used in the proposed regulations. The terms "sow" and "boar" are retained and defined in this proposal without substantive change. These terms are used in place of the term "breeding swine" with qualification as necessary in the proposed regulations. This change is proposed for clarification. The deletion of this term would necessitate an amendment of the definition of the word "animal" set forth in present § 78.1(cc). Presently, "animals" are defined as "[c]attle, bison, and breeding swine". This document would amend the definition of "animals" to read "[c]attle, bison, and swine."

Present § 78.1(ii) sets forth the definition of "recognized slaughtering establishment." This proposal would add a footnote which states that a list of recognized slaughtering establishments in a State may be obtained from Veterinary Services representatives, the State animal health official, or State representatives. The information in this proposed footnote is in present § 78.24(a). To avoid duplication, this proposal would delete present § 78.24(a).

Present § 78.1(jj) sets forth the definition of "specifically approved stockyard." This proposal would not substantively amend the definition of the term in that this proposal, as the present regulations, refers the reader to another section of the regulations in order to determine the substantive requirements which must be met in order to obtain approval. The substantive requirements are set forth in proposed § 78.44 and are discussed below. The proposed definition of "specifically approved stockyard" would be amended by adding a footnote which states "[n]otices containing lists of specifically approved stockyards are published in the Federal Register. The list of specifically approved stockyards also may be obtained from Veterinary Services representatives, the State animal health official, or State representatives." The information in this proposed footnote is in present § 78.23. To avoid duplication, this proposal would delete present § 78.23.

Present § 78.1(ll) sets forth the definition of "test-eligible cattle and bison" and sets forth three types of test-eligible cattle and bison; test-eligible cattle and bison for the purposes of (1) a herd blood test, (2) the market cattle identification program and (3) movement pursuant to the regulations. This proposal would delete from the definition of "test-eligible cattle and bison" those cattle and bison tested for the purposes of a herd blood test and the market cattle identification program. Cattle and bison which must be tested for the purposes of a herd blood test and cattle and bison which must be tested for the purposes of the market cattle identification program are specifically set forth in the proposed definitions of "herd blood test" and "market cattle identification program (MCI) test cattle." The proposed definition of "test-eligible cattle and bison" would retain those cattle and bison which are presently set forth in the definition for the purposes of movement pursuant to the regulations.

Present § 78.1(mm) defines "quarantined area" as "[a]ny area listed in § 78.22." Present § 78.22 states that "[n]otice is hereby given that because of the existence of the contagion of brucellosis and the nature and extent of such contagion in certain areas which do not have control and eradication procedures adequate to prevent the interstate dissemination of the disease, the following areas are quarantined: None". This proposal would place the information contained in present § 78.22 in the proposed definition of "quarantined area" and would delete the information from proposed § 78.42. However, § 78.42 would retain the list of quarantined areas.

Present § 78.1(rr) defines "official metal eartag" as "[a] Veterinary Services approved metal identification eartag conforming to the nine character alpha-numeric National Uniform Eartagging System. It provides unique identification for each individual animal." This proposal would amend the term to "official eartag" and would delete the requirement that the tag be made of metal. USAHA recommended that plastic eartags be used in addition to offical metal eartags. The plastic eartag is more easily and accurately read. Further, the plastic eartag is more easily removed at slaughter and would thus improve collection of official eartags in the market cattle identification surveillance program.

Present § 78.1(uu) sets forth the definition of "whole herd vaccination" and states that the minimum age for vaccination is two months of age. This proposal would amend the definition of "whole herd vaccination" by raising the minimum vaccination age from two to four months. This proposed amendment is necessitated by a change in the approved vaccine which would be used to officially vaccinate cattle and bison as discussed below.

Present § 78.1(vv) defines "official vaccinate" by including the definitions of "official calfhood vaccinate" and "official adult vaccinate." This proposal would define an "official vaccinate" as "[a]n official calfhood vaccinate or an official adult vaccinate" and would separately define the terms "official calfhood vaccinate" and "official adult vaccinate."

This proposal would amend the dosage (number of viable organisms) of approved brucella vaccine administered to cattle and bison for purposes of official adult vaccination and official calfhood vaccination. This proposed amendment would also establish December 1, 1984, as the last date the standard dose approved brucella vaccine for calfhood vaccination presently set forth in the definition of "official vaccinate" would be permitted to be used in the United States to meet the definition of "official vaccinate." The dosage for official adult vaccination would be changed from "at least 300 million and not more than 3 billion cells" to "at least 300 million and not more than 1 billion cells". The Scientific Advisory Committee of the USAHA Brucellosis Committee recommended the lower maximum dose based on available research and field data. Available evidence indicates that adult cattle given the lower dose develop approximately the same level of resistance (protection) as do those adult cattle given the higher dose. The lower dose, however, tends to reduce the number of persistent serologic blood serum titers significantly. Reduction in the persistence of titer is beneficial to the industry and the eradication program in that persistent titers sometime interfere with diagnosis, and may result in improper brucellosis disease classification of tested cattle and bison. This reduction of persistent vaccine related titer is especially important when dealing with herds known to be affected with brucellosis which have undergone whole herd vaccination. The likelihood of eradication of brucellosis in the herd is enhanced if retesting begins as early as 60 to 120 days following whole herd vaccination. Studies conducted in the field, comparing administration of 1 billion in lieu of 3 billion live cells have

indicated as much as a two-thirds reduction in the number of persistently card test positive animals following vaccination.

The dosage for official calfhood vaccination would be changed from the present regulations of "at least 300 million and not more than 3 billion live cells" per 2 ml dose to "at least 3 billion and not more than 10 billion live cells" per 2 ml dose in this proposal. This approved vaccine would be administered to female cattle or female bison while from 4 through 12 months of age in this proposal.

This change was also recommended and endorsed by the Scientific Advisory Committee of the USAHA Brucellosis Committee for several reasons. The increased persistence of blood serum titers observed in calves vaccinated with as few as 1 billion live cells instead of 10 billion live cells was relatively insignificant (a matter of only 1–2 additional weeks in most cases). Since such calves would generally not be old enough to be subjected to official tests for many months' postvaccination, the small additional period of titer persistence would be of little or no consequence. Some available research data also suggest that calves in the 4–6 month age group develop a better level of resistence (protection) to brucellosis following use of the higher dosage.

Commercial biologic firms which were identified as willing and able to produce the new reduced dose approved brucella vaccine indicated that it would be necessary to manufacture a product in the higher dose range proposed so as to provide sufficient "shelf-life" for the vaccine to be economically feasible and practical.

The Department is of the opinion that the availability and use of a commercially produced, quality-controlled product will be superior to current practices carried on in some States where vaccine is diluted at the time of vaccination. This practice causes a degree of uncertainty as to the actual dosage of live cells being administered, and variations in the dosage, if significant, could result in a reduction in vaccine protection or an extended persistence of vaccine related titer.

Present § 78.1(ww) defines the term "identification of vaccinates." This proposal would delete this definition and place the substance of the definition in the proposed definitions of the terms "official adult vaccinate" and "official calfhood vaccinate" with two substantive changes.

This proposal would provide for utilization of a "V" hot brand placed high on the hip near the tailhead as an alternate means of identifying official adult vaccinates. The use of a "V" hot brand high on the hip near the tailhead was recommended by USAHA to permit a more convenient location for brand application which would require less restraint. Using this proposed location for the "V" hot brand would not necessitate catching the animals individually, and restraining the head which is presently necessary when applying the "V" hot brand to the right jaw, or the "AV" tattoo to the right ear. "V" hot brands placed high on the hip, however, may be less well defined and readable, and may be less apparent to a person conducting official tests (1) in States where this means of identification or location of identification is not normally used, or (2) when such animals are being neck-bled in a head-catch facility causing the brand on the hip not be observed or reported on official test documents or health certificates.

This proposal would also amend the indentification provisions for official calfhood vaccinates to permit States which require more combinations of numbers or letters than are available on the current official vaccination eartag to use a "T" or "S" series in addition to the "V" series now used. This is to provide unique eartag identification in States where the number calves vaccinated is extremely large.

Present § 78.1(xx) defines the term "approved action plan or approved individual herd plan." Since these terms are given the same meaning, this proposal would use the single term, "approved individual herd plan." Further this proposal would amend the definition for clarity.

Present § 78.1(yy) defines "official seal." This proposal would amend the definition of "official seal" to permit the use of a serially numbered self-locking button as an official seal. This self-locking button can seal two ends of a metal, plastic, or rope-like cord and cannot be opened without destruction of the button. Certain areas of the country have used this button successfully as a seal, and it is proposed here as an alternative to the devices which presently meet the definition of official seal.

Present § 78.1(eee) defines the term "untested test-eligible cattle." This term is not used in the present regulations or this proposal. Therefore, this proposal would delete the definition of the term.

This proposal would define the term "dairy cattle" as "[a] bovine animal of a recognized dairy breed." The definition would be added to clarify the term "dairy cattle" which would be used in proposed § 78.10(a), as explained below.

This proposal would define the term "directly" to mean "[w]ithout unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner." The word "directly" would be defined in order to clarify the meaning of the word as it is used in the proposed regulations. Present § 78.2 provides that "[n]otice is hereby given that the contagion of brucellosis may exist in domestic animals in each State." This proposal would delete present § 78.2 since it contains no substantive requirements which must be placed in the regulations.

Present § 78.3 (a) and (b) set forth certain requirements for the handling of certificates and permits for the movement of animals. These requirements are set forth in proposed § 78.2(a) and would be amended as follows:

The requirements for handling certificates and permits set forth in present § 78.3 (a) and (b) only apply when animals are moved by a transportation agency. This proposal would expand the applicability of this regulation to all instances in which certificates, permits, and "S" brand permits are required to accompany animals interstate pursuant to the regulations. Present § 78.3 (a) and (b) (and proposed § 78.2(a)) require that documents accompany animals interstate in order to provide animal health officials with the capability of tracing animal movement and the spread of brucellosis. There appears to be no reason to limit the requirements set forth in present § 78.3 (a) and (b) (and proposed § 78.2(a)) to those instances in which transportation agencies are involved in the movement.

Present § 78.3(a) requires that the certificate or permit be attached to the billing of a transportation agency and be filed with such billing. It is believed that such documents which pertain to the identification and brucellosis status of the animals should be maintained with the animals and be made available to the person receiving the animals at destination. Therefore, it is proposed that certificates, permits, and "S" brand permits be required to be delivered to the consignee or person receiving the animals. This would provide the person receiving the animals with a record of the individual animal moved.

Present § 78.3(c) sets forth requirements regarding the sending of copies of certificates and permits required to accompany cattle pursuant to the regulations to appropriate State animal health officials. These requirements are set forth in proposed § 78.2(b). This proposal would expand

the applicability of present § 78.3(c) to the handling of copies of certificates and permits required to accompany bison and swine in addition to cattle. The purpose of the requirements in present § 78.3(c) is to ensure that appropriate State animal health officials are informed of the intended movement of cattle. Information regarding the intended movement of bison and swine is just as important to a successful brucellosis eradication program as information regarding the intended movement of cattle. Therefore, this proposal would expand the applicability of the handling of copies of certificates and permits to bison and swine as well as cattle.

Present § 78.4 concerning requirements for handling cattle and bison in transit is set forth in proposed § 78.3. This proposal would reserve § 78.4.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

This proposal would provide for two types of specifically approved stockyards. One type would be approved to handle all cattle and bison; the other would be prohibited from allowing the entry into the stockyard of known brucellosis reactor and brucellosis exposed cattle or bison. Therefore, this proposal would amend present §§ 78.7 and 78.8 to limit interstate movement of brucellosis reactor cattle and brucellosis exposed cattle to specifically approved stockyards which would be permitted to handle such cattle.

Present § 78.8 (b) and (c) would be amended to require that brucellosis exposed cattle for which a claim for indemnity is being made under the provisions of Title 9, Code of Federal Regulations, Part 51, shall only be moved interstate for slaughter. An important purpose for the payment of federal brucellosis indemnity is to provide an incentive for the timely removal and slaughter of brucellosis reactor and brucellosis exposed cattle. It was not intended that brucellosis exposed cattle for which indemnity is claimed be permitted to move interstate pursuant to present § 78.8(b) to quarantined feedlots or pursuant to present § 78.8(c) as brucellosis exposed calves. Other brucellosis exposed exposed cattle may continue to more interstate pursuant to § 78.8 (a), (b), or (c).

Present § 78.8(c) provides for the interstate movement of certain brucellosis exposed cattle to any location. This proposal would amend § 78.8(c) to require that such brucellosis exposed cattle meet additional requirements set forth in proposed § 78.10 discussed below.

Present § 78.8(c)(1) provides that official vaccinates under 12 months of age from a herd known to be affected with brucellosis which is following an approved individual herd plan be permitted to move interstate without restriction. This proposal would require that such cattle be identified by means of a ¾-inch hole in the left ear. Since these cattle can potentially be affected with brucellosis, the USAHA recommended that they be identified with a ¾-inch hole in the left ear. This would permit program officials and the public to recognize these calves and take measures to reduce any risk of brucellosis transmission during and following interstate movement.

Present § 78.9 would be amended for the purposes of clarification, correction of errors, and incorporation of proposed program modifications based on USAHA recommendations. Present § 78.9 specifies the types of cattle to which the regulations are applicable (non-vaccinates over 18 months of age, official calfhood vaccinates of the beef breeds over 24 months of age, official calfhood vaccinates of the dairy breeds over 20 months of age or cattle which are parturient or postparturient). This proposal would replace this terminology with the term "test-eligible" which is defined in proposed § 78.1. This is not a substantive change. This proposal would also replace the term "States" with "States or areas" throughout § 78.9. A State may be divided into more than one area for the purpose of brucellosis classification. This proposal would also amend § 78.9 to require that cattle from herds not known to be affected with brucellosis meet additional requirements set forth in proposed § 78.10 discussed below.

Present § 78.9(a) (Class Free States) requires that all cattle from herds not known to be affected with brucellosis which originate in Class Free States or areas "must be accompanied by a certificate, unless moved to immediate slaughter at a recognized slaughtering establishment, or to a specifically approved stockyard for sale to a recognized slaughtering establishment, or if moved in the course of normal ranching operations without change of ownership to another premises belonging to the same owner." The present regulations concerning interstate movement from Class A States or areas, Class B States or areas, and Class C States or areas do not require a certificate for all cattle from herds not known to be affected with brucellosis. Class Free States and areas are States and areas with the lowest incidence of brucellosis. The additional certificate requirement for the movement of certain cattle from Class Free States or areas is in error. Therefore, this proposal would amend § 78.9(a) to require that only test-eligible cattle from herds not known to be affected with brucellosis must be accompanied by a certificate with certain specified exceptions. This would exempt cattle which are not test-eligible from the certificate requirement as do the present regulations for movement of cattle from herds not known to be affected in Class A, B, and C States or areas.

Present § 78.9(a) would be amended in this proposal to permit test-eligible cattle from a Class Free State or area to move interstate directly from a farm of origin to a specifically approved stockyard without a certificate. The present regulations permit such movement from Class A, B, and C States or areas if any additional requirements for movement can be met at the specifically approved stockyard. This certificate requirement for interstate movement from a Class Free State or area is an error in the present regulations.

Present §§ 78.9(a), 78.9(b)(3)(iv), and 78.9(c)(3)(v), would be amended to clarify the requirements for cattle moved interstate in the course of normal ranching operations. Presently, these sections require that the premises from which and to which cattle are moved in the course of normal ranching operations be owned by the same individual. This requirement would be eliminated by this proposal and replaced by the requirement that the two premises be owned, leased, or rented by the same individual. Such movements are frequently made to premises which are not owned by the same individual, but are leased or rented by that owner and are, therefore, under the control or supervision of the cattle owner. Since actual ownership of the two premises does not affect the brucellosis status of these cattle, this language would be amended by this proposal to include leased or rented premises as well as those owned by the same individual. This proposal would also amend this provision concerning normal ranching operations in present § 71.18.

Present § 78.9(b)(1)(i) provides that cattle moved from a farm of origin in a Class A State or area for immediate slaughter directly to a recognized slaughtering establishment or through no more than one specifically approved stockyard and then to a recognized slaughtering establishment may move

without being tested if identity to the farm of origin is maintained or the animals are penned apart from other animals. Present § 78.9(c)(1)(i) and (d)(1)(ii) provide for the same type of movement for cattle originating in Class B and Class C States or areas without restriction. It was not intended that such cattle from Class A States or areas have more stringent requirements for interstate movement than cattle from Class B and Class C States or areas, since cattle from Class A States or areas are less likely to be affected with brucellosis than cattle from Class B or C States or areas. Therefore, proposed § 78.9(b)(1)(i) would permit the interstate movement of such cattle from a farm of origin or nonquarantined feedlot in Class A States or areas for immediate slaughter without restriction.

Present § 78.9(c)(1)(i) and § 78.9(d)(1)(i) permit the interstate movement of test-eligible cattle from herds not known to be affected from a farm of origin or a nonquarantined feedlot to a recognized slaughtering establishment or directly to a specifically approved stockyard for sale to a recognized slaughtering establishment without being "S" branded and without being accompanied by an "S" brand permit. This document would amend § 78.9(c)(1)(i) and § 78.9(d)(1)(i) to allow the interstate movement of such cattle from a farm or origin or a nonquarantined feedlot to a recognized slaughtering establishment without restriction. This amendment would not constitute a substantive change. This proposal would provide, however, that such cattle moved from a farm of origin or nonquarantined feedlot to a specifically approved stockyard and then directly to a recognized slaughtering establishment be moved only if: (1) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (2) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (3) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (4) they are moved in vehicles closed with official seals at the specifically approved stockyard and are accompanied by an "S" brand permit. These additional restrictions are necessary to assist in ensuring that such cattle arriving at the specifically approved stockyard for sale to a recognized slaughtering establishment will, in fact, be moved to a recognized slaughtering establishment.

Present § 78.9(c)(1)(i), § 78.9(c)(1)(ii), § 78.9(d)(1)(i) and § 78.9(d)(1)(ii) would also be amended to require that test-eligible cattle tested and found negative within 30 days of movement, moving from other than a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment, be accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests. Since no documentation is now required for this type of movement, confirmation of testing and movement only to recognized slaughtering establishments has been a problem. In order to more fully ensure compliance with these requirements, it is proposed that these cattle be accompanied by a certificate. This will allow for confirmation of testing.

Present § 78.9(c)(1)(iii) and § 78.9(d)(1)(iv) provide that test-eligible cattle from other than a farm of origin or a nonquarantined feedlot may also be moved from immediate slaughter without being "S" branded, if they are accompanied by a VS Form 1–27 permit and are moved in vehicles closed with official seals. This proposal would amend these requirements to provide that such cattle be accompanied by an "S" brand permit instead of a VS Form 1–27 permit. The use of an "S" brand permit and official seal should provide adequate assurance that these restricted cattle are only moved for immediate slaughter. This proposed change would also assist in reserving the use of the VS Form 1–27 permit to verify and confirm movements of brucellosis reactor and brucellosis exposed animals. Since the VS Form 1–27 also meets the requirements of an "S" brand permit, the VS Form 1–27 may continue to be used with the sealed vehicle movement. It may, however, be preferable in some areas to utilize a form, other than the VS Form 1–27, which meets the requirements for an "S" brand permit as defined in § 78.1.

Present § 78.9(c)(2)(i) and § 78.9(d)(2)(i) permit the interstate movement of test-eligible cattle from herds not known to be affected with brucellosis directly from a farm of origin to a specifically approved stockyard for sale to a quarantined feedlot without being "S" branded and without being accompanied by an "S" brand permit. This proposal would require that such cattle could be moved from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot. These additional restrictions are necessary to assist in ensuring that such cattle arriving at the specifically approved stockyard to be moved directly to a quarantined feedlot will, in fact, be moved to a quarantined feedlot.

Present § 78.9(c)(2)(ii) and § 78.9(d)(2)(ii) would be amended to require that test-eligible cattle moving from other than a farm of origin directly to a quarantined feedlot, subjected to an official test and found negative, be accompanied by a certificate which shows, in addition to the items specified in § 78.1, the dates and results of the official tests. Under current regulations, these cattle may be moved interstate if they have been tested and found negative prior to movement. Since no documentation is required for this type of movement, confirmation of testing and movement only to quarantined feedlots has been a problem. In order to more fully ensure compliance with these requirements, it is proposed that these cattle be accompanied by a certificate. This would provide a means to confirm that the cattle have been subjected to the test and to ensure that movements are made only to the permitted destinations.

Present § 78.9(c)(3)(iii) would be amended to delete a sentence added to this paragraph in error. This paragraph permits test-eligible cattle moved from a farm of origin in a Class B State or area directly to a specifically approved stockyard provided such cattle are subjected to an official test for brucellosis upon arrival at the specifically approved stockyard. The second sentence of this paragraph requires that such cattle be accompanied by a certificate showing official test results. This proposal would delete the requirements that such cattle be accompanied by such a certificate since no test or certificate is required for this movement. Two letters of comment in support of this change were received during the comment period following publication of the December 13, 1982, final rule. Requirement of a certificate for movement from a farm of origin in a Class B State to a specifically approved stockyard was believed to be "unworkable" and "unduly restrictive." The Department concurs in this assessment and has amended this section accordingly in this proposal.

Present § 78.9(c)(3)(iv) and § 78.9(d)(3)(vii) provide alternate methods for moving test-eligible cattle from Class B and Class C States or areas respectively. These two paragraphs require that such cattle originate from herds in which: (A) All the cattle were subjected to a complete herd test for brucellosis within 12 months of the date of the interstate movement; (B) any cattle which were added to the herd subsequent to such complete herd test were tested and found negative to an official test for brucellosis within 30 days prior to the date the cattle were added to the herd; (C) the cattle subjected to the complete herd test have to changed ownership from the date of such test; and (D) none of the cattle in the herd have come in contact with any other cattle which have not been tested. This proposal would amend these two paragraphs to require that test-eligible cattle from Class B and Class C States or areas may move interstate from a farm of origin or may be returned to a farm or origin in the course of normal ranching operations without change of ownership if the cattle originate in a herd which meets the requirements set forth in present § 78.9(c)(3)(iv)(A), 78.9(c)(3)(iv)(B), and 78.9(c)(3)(vii)(D), or 78.9(c)(3)(vii)(A), 78.9(c)(3)(vii)(B) and 78.9(c)(3)(vii)(D). This proposal would eliminate the requirement set forth in present § 78.9(c)(3)(iv)(C) and 78.9(d)(3)(vii)(C) because these two paragraphs merely require that such cattle not change ownership from the date of the herd test. The proposed introductory language in these two paragraphs would include the requirement that the movement be made without change of ownership and in the course of normal ranching operations. Present § 78.9(c)(3)(iv) and § 78.9(d)(3)(vii) are intended to permit the interstate movement of cattle in the course of normal ranching operations from or to farms of origin. The proposed introductory language in proposed § 78.9(c)(3)(iv) and § 78.9(c)(3)(vii) would more clearly indicate the intent of the present regulations.

This proposal would also add a new requirement to § 78.9(c)(3)(iv) and § 78.9(c)(3)(vii) that such cattle be accompanied interstate by a document which contains the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted. This additional requirement would aid animal health officials should confirmation of the herd blood test became necessary. Any document, including test reports from the laboratory, which contains the information required by this proposed rulemaking document would be sufficient.

Present § 78.9(d)(3)(vi) set forth in this proposal as § 78.9(d)(3)(v) would be amended by deleting the requirement that official vaccinates moving directly from a farm of origin in a Class C State or area to a specifically approved stockyard to be tested at that stockyard be accompanied interstate by a "document which shows the date of vaccination." Official vaccinates are identified by a vaccination tattoo, official vaccination eartag, or "V" hot brand. Such identification is sufficient to establish the official vaccination status of cattle for the purposes of interstate movement. The document requirement proposed for deletion has proven to be excessive because cattle frequently change ownership several times and vaccination certificates are often misplaced or lost during the life of an animal.

A new provision set forth as proposed § 78.9(d)(3)(vi) would permit cattle from a farm of origin which have been subjected to a herd blood test and found negative to move from a Class C State or area within 1 year of the herd blood test if no other cattle have been added to the herd since the date of the herd blood test and the individual cattle are tested within 30 days prior to movement. If the movement is within 30 days of the herd blood test, no further testing is required. Such cattle would be required to have been issued a permit for entry and be accompanied interstate by a certificate which shows that such cattle originate from a farm or origin and the test dates and results of the official tests. This proposed amendment was recommended by the USAHA and permits cattle which have been in an intact herd, a herd to which no cattle have been added, for 120 days or more to move interstate following a single negative test of the herd. The risk of such cattle being affected with brucellosis is low since the negative herd blood test follows a period of time consistent with that required in most States for release from quarantine of an infected herd following removal of the last brucellosis reactor.

This proposal would add a new requirement set forth in proposed § 78.10 which would require certain cattle to be official vaccinates to move into or out of Class B and C States or areas.

The United States Animal Health Association at its 1983 meeting recommended the following vaccination requirements for the movement of cattle:

All female dairy cattle born on or after January 1, 1984, 4 months of age or over, must after July 1, 1984, be offical calfhood vaccinates to move into or out of Class A, B or C States." Effective July 1, 1984, all female cattle born after January 1, 1984, and are over 4 months of age moving in or out of Class C areas must be official vaccinates, spayed heifers or "S" branded.

Brucellosis vaccination has been an important tool in the brucellosis eradication program throughout the United States. Officially vaccinated cattle are more resistant to infection and are less likely to transmit the disease to other animals. The basis of the USAHA recommendations for mandatory calfhood vaccination for the movement of certain cattle is to offer protection to those dairy and beef cattle moved into or out of the higher incidence Class C States or areas and to those animals they come in contact within marketing channels and at destination. The large amount of interstate movement of dairy cattle and the higher costs resulting from brucellosis infection in dairy herds have resulted in recommendations for more stringent vaccination requirements for dairy cattle moving interstate. Vaccination would offer protection for those cattle entering areas of high infection levels and for those cattle potentially in contact with affected cattle prior to moving from such areas.

Further discussion and comment from industry representatives and State officials have clarified the intent of these recommendations. It was not intended that these requirements apply to cattle moving interstate directly to slaughtering establishments or to quarantined feedlots. Spayed heifers are already exempt under present § 78.6 from all regulations contained in subpart B of Part 78. The recommendation that the requirements apply only to cattle born after Janury 1, 1984, would exempt cattle not eligible for official calfhood vaccination and born prior to that date. Further industry and State officials have suggested that dairy cattle moving into or out of Class Free and Class A States or areas be exempt from the vaccination requirements in this proposal. This would permit the movement of nonvaccinated cattle between Class Free and Class A States or areas. The prevalence of brucellosis in these States or areas is very low the benefits of the vaccination requirements would be considerably less than for areas with a higher prevalence of brucellosis.

A subsequent recommendation of the USAHA was to permit an exemption from the vaccination requirements for cattle imported into the United States with the concurrence of the State animal health official of the State of destination. Frequently cattle imported

into the United States exceed 12 months of age and are therefore ineligible for official calfhood vaccination upon entry into the United States. Vaccine approved for use in the United States is also often unavailable or not recognized for use in countries exporting cattle to the United States. Due to the practical problems in obtaining and administering vaccine, and certifying that such cattle are officially vaccinated in these countries, it is proposed that exemption from the vaccination requirements be permitted for these cattle with the concurrence of State animal health officials in the States of destination prior to importation. Any interstate movement of such cattle subsequent to the importation would be subject to the provisions of interstate regulations. Since Title 9, Code of Federal Regulations, Part 78, pertains only to the interstate movement of animals with respect to brucellosis, this proposed requirement for imported cattle is set forth in a footnote to § 78.10(a) and (b).

Two other modifications in the USAHA recommendations were also made in this proposed amendment. The terminology "official vaccinate" was substituted for "calfhood vaccinate" in the requirement for dairy cattle moving into or out of Class B States or areas. This would make the vaccination requirements consistent in terms of recognizing adult vaccination and calfhood vaccination for the purposes of interstate movement under Part 78. A provision was also made in this proposal to permit calves eligible for calfhood vaccination which would be required to be official vaccinates to move interstate from a farm of origin directly to a specifically approved stockyard and to be vaccinated upon arrival at the stockyard. Other requirements for movement in the current regulations have been permitted to be completed at the specifically approved stockyard, and this modification would permit current marketing patterns to continue.

A new § 78.11 would be added to require that certain cattle moved to specifically approved stockyards not in accordance with this part be further restricted. This proposed section would require that all cattle, except brucellosis reactors and brucellosis exposed cattle, which cannot comply with the requirements of the regulations for release from the specifically approved stockyard be moved to a recognized slaughtering establishment, a quarantined feedlot, or be returned in vehicles closed with official seals and accompanied by an "S" brand permit to their State of origin with the concurrence of the State animal health officials of the States of origin and destination. Specifically approved stockyards are approved to facilitate the interstate movement of cattle in accordance with the regulations. This proposed amendment would provide assurance that cattle, except brucellosis reactors and brucellosis exposed cattle, moved contrary to the provisions of Part 78 to specifically approved stockyards are released in a manner which would prevent the possible interstate spread of brucellosis to other cattle, other than cattle at a recognized slaughtering establishment or a quarantined feedlot. Proposed § 78.11 would not apply to cattle which are known to be brucellosis reactors or brucellosis exposed cattle at the time they are moved interstate or cattle which are found to be brucellosis reactors or brucellosis exposed at the specifically approved stockyard or elsewhere.

The provisions in present § 78.12 (Other movements) would be placed in proposed § 78.13. The provisions for cattle from quarantined areas in present § 78.12a would be placed in proposed § 78.12 and the following substantive changes would be made.

Proposed § 78.12 would require that cattle from a quarantined area move in accordance with proposed § 78.10 as well as the provisions in present § 78.12a. Proposed § 78.10 is discussed above.

Present § 78.12a(e) regulates the interstate movement of cattle which originate in herds of unknown status in a quarantined area. The present regulations do not define "a herd of unknown status". However, the intention of the present regulations was that § 78.12a(e) apply to cattle from herds not known to be affected which are not qualified. Since these two terms are defined in the present regulations and would be defined in this proposal, present § 78.12a(e) would be amended to use the defined terms in proposed § 78.12(e).

This proposal would reserve §§ 78.14—78.19.

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

This proposal would renumber the present regulations so that present § 78.13, (General restrictions) would be set forth in § 78.20; present § 78.14 (Bison steers and spayed heifers) would be set forth in § 78.21; present § 78.15 (Brucellosis reactor bison) would be set forth in § 78.22; present § 78.16 (Brucellosis exposed bison) would be set forth in § 78.23; present § 78.17 (Bison from herds not known to be affected with brucellosis) would be set forth in § 78.24; present § 78.18 (Movement of bison from public zoo to public zoo) would be set forth in § 78.24(c); and present § 78.19 (Other movements) would be set forth in § 78.25. This proposal would reseve §§ 78.26—29. Three substantive changes have been proposed in this subpart.

Present § 78.14 provides that bison steers and spayed heifers over 6 months of age may be moved interstate without restriction. Proposed § 78.21 would provide that all bison steers and spayed heifers may be moved interstate without restriction. Steers and spayed heifers under 6 months of age do not constitute a threat of spreading brucellosis. Therefore, there is no reason to require that the interstate movement of such bison be restricted.

This proposal would provide for two types of specifically approved stockyards. One type would be approved to handle all cattle and bison; the other would be prohibited from allowing the entry into the stockyard of known brucellosis reactor and exposed cattle or bison. Therefore, this proposal would amend present §§ 78.15 and 78.16 to limit interstate movement of brucellosis reactor bison and brucellosis exposed bison to specifically approved stockyards which would be permitted to handle such bison.

As stated above, this document would amend the definition of certified brucellosis-free herd to provide for certification of bison herds as well as cattle herds. Therefore, present § 78.17(c), set forth as proposed § 78.24(d), would be amended to provide that bison from herds not known to be affected may be moved interstate if they originate in a certified brucellosis free-herd. Present § 78.17(c)(3), which permits bison from a herd which has been declared free of brucellosis by State and Federal officials to move interstate if accompanied by a certificate, has been removed from proposed § 78.24(d). Since there is no definition of a herd declared free of brucellosis in the present or proposed regulations, it is proposed that such herds meet the qualifications for a certified brucellosis-free herd and be permitted to move interstate accompanied by a certificate which states, in additon to the items specified in § 78.1, that the bison originated in a certified brucellosis-free herd. These bison pose no greater risk of spreading brucellosis interstate than cattle from certified brucellosis-free herds which are presently allowed to move interstate under provisions identical to proposed § 78.24(d)(4).

Subpart D—Designation of Brucellosis Areas and Specifically Approved Stockyards

This proposal would reorganize Part 78 and place the provisions in present Subpart D in proposed Subpart E. Further, this proposal would renumber the present regulations in present Subpart D (proposed Subpart E) so that present § 78.20 (State/Area Classification) would be set forth in proposed § 78.41; present § 78.22 (Quarantined Areas) would be set forth in proposed § 78.42 and would be amended as discussed above; present § 78.23 would be set forth in a footnote to the proposed definition of specifically approved stockyards in proposed § 78.1 as discussed above; present § 78.25(a), concerning the designation of State/Areas, would be set forth in proposed § 78.40; present § 78.25(b), concerning approval of stockyards, would be set forth in proposed § 78.44 (a), (c), and (d) and would be substantively amended as discussed below; and present § 78.25(c), concerning withdrawal of stockyard approval, would be set forth in proposed § 78.44(b).

Present § 78.25(b) set forth in proposed § 78.44 (a), (c), and (d) concerns the approval of specifically approved stockyards. Present § 78.25(b) requires that, in order to be specifically approved, the State in which the stockyard is located must enter into a Memorandum of Understanding setting forth certain standards for such stockyards. Present § 78.25(b) provides that approval may be withdrawn from stockyards which do not inspect or handle livestock in a manner adequate to effectuate the purposes of Part 78 or in accordance with the provisions of the standards in the Memorandum of Understanding. This proposal would delete the requirement that States enter into a Memorandum of Understanding and would provide that any stockyard requesting approval enter into an agreement which sets forth the standards necessary to obtain and maintain approval. Since those legally responsibile for operation of the stockyard can ensure that the standards necessary for approval are met, it appears to be more appropriate to have the operator of the stockyard enter into such agreement. This proposal would set forth the specific agreements in proposed § 78.44 (c) and (d).

Stockyards are specifically approved to facilitate the interstate movement of cattle and bison in accordance with the regulations. Specifically, the present regulations and this proposal provide for the fulfillment of many of the requirements for interstate movement of certain cattle and bison, at the specifically approved stockyard, rather than at the point from which the cattle or bison are moved interstate. This not only facilitates interstate movement but reduces the cost of movement to cattle and bison producers.

The standards set forth in the Memorandum of Understanding required to be executed by present § 78.25(b) and in the agreements set forth in proposed § 78.44 (c) and (d) are necessary to ensure that cattle and bison are received, handled, and released by the stockyard in accordance with the regulations and in a manner which will help ensure the prevention of the spread of brucellosis.

This proposal would set forth two agreements. Proposed § 78.44(c) would be entered into by operators of stockyards which are requesting approval to handle all cattle and bison. Proposed § 78.44(d) would be entered into by operators of stockyards which are requesting approval to receive cattle and bison, except brucellosis reactors, brucellosis exposed, and brucellosis suspects. The only difference between the two proposed agreements are that those stockyards requesting approval to handle all cattle and bison (1) must handle brucellosis reactors, brucellosis exposed, and brucellosis suspect cattle and bison in accordance with provisions of Title 9, Code of Federal Regulations, Part 78, and (2) must have permanent quarantined pens in which to place brucellosis reactor, brucellosis exposed, and brucellosis suspect cattle and bison entering the stockyard. These additional requirements are necessary to ensure that brucellosis reactor, brucellosis exposed, and brucellosis suspect cattle and bison, which pose a known threat of spreading brucellosis, are handled in a manner which will reduce the likelihood of the spread of brucellosis.

Subpart E—Restrictions on Interstate Movement of Swine Because of Brucellosis

This proposal would reorganize Part 78 and place the provisions in present Subpart E in proposed Subpart D. Further, this proposal would renumber the regulations in present Subpart D (proposed Subpart E) so that present § 78.26 (General restrictions) and present § 78.30(c) would be set forth in § 78.30; present § 78.27 (Brucellosis exposed swine) would be set forth in § 78.31; present § 78.28 (Brucellosis reactor swine) would be set forth in § 78.32; present § 78.29 (Brucellosis testing of breeding swine) and § 78.30(b) would be set forth in § 78.33(b); present § 78.30(a) pertaining to sows and boars moved for slaughter would be set forth in § 78.33(a) and present § 78.31 (Other movements) would be set forth in § 78.34. Further, this document incorporates proposed amendments to the regulations concerning the movement of swine as proposed in the rulemaking document set forth at Volume 50, **Federal Register** pages 15,166–15,169. Although a major reorganization of this subpart has been proposed in this document, no further substantive changes to this subpart have been proposed. This proposal would reserve §§ 78.35–78.39.

Miscellaneous

This proposal would amend incorrect references to Part 78 in 9 CFR Parts 51, 71, 80, and 92. Further, this document incorporates proposed amendments to the first sentence of 9 CFR 71.18(a) as proposed in the rulemaking document set forth at 50 FR 15166–15169, April 17, 1985.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of the Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and have been assigned OMB #0579–0064.

Executive Order 12291

This proposed action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information complied by the Department, it has been determined that this action would have an annual effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; would not have a significant adverse effect on competition, employment or investment, productivity, innovation, or the ability of United States-based enterprises to to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities because both direct and indirect costs to producers should be minimal. Approximately 22 million female calves are born in the United States each year. Nine million calves were officially vaccinated against brucellosis in Fiscal Year 1984. Only those female cattle moving into or out of Class C States or areas and those dairy cattle moving into or out of Class B States or areas will

require vaccination under the provisions of this proposed amendment. It is estimated that a maximum of 2 million more calves may be vaccinated in order to move interstate under the provisions of the proposed amendment at a cost of approximately $5.0 million. The $2.50 cost per animal is relatively small in comparison to the other costs of production and to the value of the cattle vaccinated.

List of Subjects

9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 80

Animal diseases, Livestock & livestock products, Transportation.

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry & poultry products, Quarantine, Transportation Wildlife.

Accordingly, the following amendments are proposed.

1. Part 78 would be revised to read as follows:

PART 78—BRUCELLOSIS

Subpart A—General Provisions

Sec.

78.1 Definitions.
78.2 Handling of certificates, permits, and "S" brand permits for movement of animals.
78.3 Handling in transit of cattle and bison moved interstate.
78.4 [Reserved]

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

78.5 General restrictions.
78.6 Steers and spayed heifers.
78.7 Brucellosis reactor cattle.
78.8 Brucellosis exposed cattle.
78.9 Cattle from herds not known to be affected wsith brucellosis.
78.10 Official vaccination of cattle moving into and out of Class B and Class C States or areas.
78.11 Cattle moved to a specifically approved stockyard not in accordance with this Part.
78.12 Cattle from quarantined areas.
78.13 Other movements.
78.14—78. 19 [Reserved]

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

Sec.

78.20 General restrictions
78.21 Bison steers and spayed heifers.
78.22 Brucellosis reactor bison.
78.23 Brucellosis exposed bison.
78.24 Bison from herds not known to be affected with brucellosis.
78.25 Other movements.
78.26–78.29 [Reserved]

Subpart D—Restrictions on Movement of Swine Because of Brucellosis

78.30 General restrictions.
78.31 Brucellosis reactor swine.
78.32 Brucellosis exposed swine.
78.33 Sows and boars.
78.34 Other movements.
78.35–78.39 [Reserved]

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards

78.40 Designation of States/Areas.
78.41 State/Area classification.
78.42 Quarantined areas.
78.43 Validated Brucellosis-Free States.
78.44 Specifically approved stockyards.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.15, and 371.2(d).

Subpart A—General Provisions

§ 78.1 Definitions.

The following terms are defined in this section:

Accredited veterinarian
Animals
Approved brucella vaccine
Approved individual herd plan
Area
Boar
Brucellosis
Brucellosis exposed
Brucellosis negative
Brucellosis reactor
Brucellosis ring test
Brucellosis suspect
Certificate
Certified brucellosis-free herd
Class A State or area
Class B State or area
Class C State or area
Class Free State or area
Dairy cattle
Deputy Administrator
Directly
Epidemiologist
Epidemiology
Farm of origin
Finished fed cattle
Herd
Herd blood test
Herd known to be affected
Herd not known to be affected
Herd of origin of swine
Interstate
Market cattle identification test cattle
Moved
Moved (movement) in interstate commerce
Official adult vaccinate
Official brand inspection certificate
Official brand recording agency
Official calfhood vaccinate
Official eartag
Official seal
Official test
Official vaccinate
Originate
Parturient
Permit
Permit for entry
Person
Postparturient
Qualified herd
Quarantined area
Quarantined feedlot
Quarantined pasture
Recognized slaughtering establishment
"S" branded
"S" brand permit
Sow
Specifically approved stockyard
State
State animal health offical
State representative
Test-eligible cattle and bison
Validated brucellosis-free herd
Validated brucellosis-free State
Veterinarian in Charge
Veterinary Services
Veterinary Services representative
Whole herd vaccination

As used in this part, the following terms shall have the meanings set forth in this section.

Accredited veterinarian. An accredited veterinarian as defined in Part 160 of this chapter.

Animals. Cattle, bison, and swine.

Approved brucella vaccine. A *Brucella abortus* Strain 19 product that is approved by and produced under license of the United States Department of Agriculture for injection into cattle and bison to enhance their resistance to brucellosis.

Approved individual herd plan. A herd management and testing plan which is designed by the herd owner, the owner's veterinarian if so requested, and a State representative or Veterinary Services representative to determine the disease status of animals in the herd and to control and eradicate brucellosis within the herd and which has been jointly approved by the State animal health official and the Veterinarian in Charge.

Area. That portion of any State which has a separate brucellosis classification under this part.

Boar. An uncastrated male swine 6 months of age or over which is or has been capable of being used for breeding purposes.

Brucellosis. The contagious, infectious, and communicable disease

caused by bacteria of the genus *Brucella*. It is also known as Bangs disease, undulant fever, and contagious abortion.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis negative. An animal which has been subjected to one or more official tests and has been classified as brucellosis negative based on the results of each test conducted or has been reclassified as brucellosis negative by a designated epidemiologist as provided for in the definition of official test.

Brucellosis reactor. An animal which has been subjected to an official test for brucellosis which results in a brucellosis reactor classification or has been subjected to a bacteriological examination for field strain *Brucella abortus* and found to be positive or is reclassified as a brucellosis reactor by a designated epidemiologist as provided for in the definition of official test.

Brucellosis ring test. The brucellosis ring test conducted on composite milk or cream samples from dairy herds is classified as either negative or suspicious (positive). Negative brucellosis ring tests classify herds, which are not quarantined as brucellosis affected, as negative for public health ordinances and for surveillance purposes. Herds classfied as suspicious require a herd blood test to determine the animal and herd status.

Brucellosis suspect. An animal which has been subjected to an official test for brucellosis which results in a brucellosis suspect classification or has been reclassified as a brucellosis suspect by a designated epidemiologist as provided for in the definition of official test.

Certificate. An official document issued by a Veterinary Services representative, State representative, or accredited veterinarian at the point of origin of a movement of animals which shows the official eartag, individual animal registered breed association registration tattoo, or registration number or similar individual identification of each animal to be moved, the number of animals covered by the document, the purpose for which the animals are to be moved, the points of origin and destination, the consignor, and the consignee. Ownership brands may be used as identification on certificates for cattle being moved interstate when no official test for brucellosis is required under this part; provided, the ownership brands are registered with the official brand recording agency and the cattle being moved are accompanied by official brand inspection certificates.

Certified brucellosis-free herd. A herd of cattle or bison which has qualified for and has been issued a certified brucellosis-free herd certificate signed by both the appropriate State animal health offical and by the Veterinarian in Charge.

(a) *Certification.* A herd may qualify by either of the two following methods:

(1) In the case of a dairy herd, by conducting a minimum of four consecutive negative brucellosis ring tests at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last negative brucellosis ring test; or

(2) By conducting at least two consecutive negative herd blood tests. Herd blood tests shall not be less than 10 months nor more than 14 months apart.

(b) *Maintaining Certification.* Certified brucellosis-free herd status will remain in effect for 1 year beginning with the certification date (the date of issuance of the certified brucellosis-free herd certificate is the certification date). A negative herd blood test must be conducted within 10 to 12 months of the last certification date for continuous status. Lapsed certification may be reinstated if a herd blood test is conducted within 14 months of the last certification date. A new recertification test date may be established if requested by the owner and if the herd is subjected to a herd blood test and found negative on that date providing that date is within 1 year of the previous certification date. If a herd is decertified because a brucellosis reactor is found, it may be recertified only by repeating the entire certification process.

Class A State or area. A State or area which meets standards for classification as a Class A State or area and which has been certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class A status.

(a) *Surveillance.*

(1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producting milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) *Brucellosis Reactors.* At least 90 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (i) States or areas must not exceed a herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 0.25 percent or 2.5 herds per 1,000, except in States with 10,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class A status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 15 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 1 brucellosis reactor per 1,000 cattle tested (0.10 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Class B State or area. A State or area which meets standards for classification as a Class B State or area and which has been certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class B status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishment in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at recognized slaughtering establishments and subjected to an official test; (ii) *Brucellosis Reactors.* At least 80 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds are to be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (i) States or areas must not exceed a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 1.5 percent or 15 herds per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class B status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 45 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate for brucellosis will be permitted when it is affected by unusual marketing conditions.

Class C State or area. A State or area which meets standards for classification as a Class C State or area and which has been certified as such, on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reduction in status to "quarantined area" can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class C status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) *Brucellosis Reactors.* At least 80 percent of all brucellosis reactors found in the

course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the official notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (1) States or areas having a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* exceeding 1.5 percent or 15 herds or more per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such a small herd population State with a herd infection rate exceeding 1.5 percent should be classified as a Class C State. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 45 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area which maintains a 12 consecutive month MCI reactor prevalence rate for brucellosis exceeding 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate for brucellosis will be permitted when it is affected by unusual marketing conditions.

(d) *Compliance with minimum procedural standards.* (1) A State must implement and maintain minimum procedural standards.

(2) A State or area must make continued progress as judged over a 2 year period in reducing the prevalence of brucellosis as determined by epidemiologic evaluation or it will be placed under Federal quarantine.

Class Free State or area. A State or area which meets standards for classification as a Class Free State or area and which has been certified as such on initial classification or on reclassification from a lower class, by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower status can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. All cattle herds in the State or area in which brucellosis has been known to exist must be released from any State or Federal brucellosis quarantine prior to classification. In addition, if any herds of other species of domestic livestock have been found to be affected with brucellosis they must be subjected to an official test and found negative, slaughtered, or quarantined so that no known foci of brucellosis in any species of domestic livestock is left uncontrolled. The following are the standards to attain and maintain Class Free Status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program. (i) Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subject to an official test; (ii) *Brucellosis reactors.* Al least 90 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm or origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days of their official notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall be placed under quarantine and have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall be placed under quarantine and have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (1) All cattle herds in the State or area must remain free of field strain *Brucella abortus* for 12 consecutive months. States or areas must have a cattle herd infection rate, based on the number of herd found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 0.0 percent or 0 heads per thousand.

(2) An epidemiological investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by a

State representative or Veterinary Services representative within 15 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 1 brucellosis reactor per 2,000 cattle tested (0.050 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Dairy cattle. A bovine animal of a recognized dairy breed.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority has heretofore been delegated or may hereafter be delegated to act in the Deputy Administrator's stead.

Directly. Without unloading en route, if moved in a means of conveyance, or without stopping, if moved in any other manner.

Epidemiologist. A veterinarian who has received a master's degree in epidemiology or one who has completed a course of study in epidemiology sponsored or approved by the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

Epidemiology. A branch of medical science that deals with the incidence, distribution, and control of disease in the animal population.

Farm of origin.

(a) A premises where cattle or bison were born and have remained prior to the date of movement from that premises but which has not been used to assemble cattle or bison from any other premises within 4 months prior to the date of movement; or

(b) A premises where cattle or bison have remained for not less than 4 months immediately prior to the date of movement from that premises but which has not been used to assemble cattle or bison from any other premises within 4 months prior to the date of movement.

Finished fed cattle. Cattle which have been fattened on a ration of feed concentrates to reach a slaughter condition equivalent to the slaughter condition which would be attained on full feed on a high concentrate grain ration for 90 days.

Herd. A herd is:

(a) all animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch) and

(b) all animals under common ownership or supervision on two or more premises which are geographically separarted, but on which the animals have been interchanged or where there has been contract among the animals on the different premises.

Herd blood test.

(a) *Cattle or bison.* A blood test for brucellosis of all cattle or bison 6 months of age or over, except steers, spayed heifers, official calfhood vacinates of the dairy breeds under 20 months of age, official calfhood vaccinates of bison or beef breeds under 2 years of age (2 years of age is evidenced by the presence of the first pair of permanent incisor teeth) which are not parturient or postparturient.

(b) *Swine.* A blood test for brucellosis of all swine 6 months of age or over maintained for breeding purposes in a herd.

Herd known to be affected. Any herd in which any animal has been classified as a burcellosis reactor, and which has not been released from quarantine.

Herd not known to be affected. Any herd in which no animal has been classified as a brucellosis reactor or any herd in which one of more animals have been classified as a brucellosis reactors but which has been released from quarantine.

Herd of origin of swine. Any herd in which swine are farrowed and have remained prior to the date of movement or any herd in which swine have remained for a period of 30 days immediately prior to movement.

Interstate. From any State into or through any other State.

Market cattle identification test cattle. Cows and bulls 2 years of age or over which have moved to recognized slaughtering establishments, and test-eligible cattle which are tested for the purposes of movement at farms, ranches, auction markets, stockyards, or other assembly points. Such cattle shall be identified by official eartag and/or USDA backtag prior to or at the first market, stockard or slaughtering establishment they reach.

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Moved (movement) in interstate commerce. Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

Official adult vaccinate.

(a)(1) Female cattle or female bison which are older than the specified ages, as defined for official calfhood vaccinate, vaccinated by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine, diluted so as to contain at least 300 million and not more than 1 billion live cells per 2 ml dose, as a part of a whole herd vaccination plan authorized jointly by the States aninmal health official and the Veterinarian in Charge: or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official adult vaccinate in this part at the date of said vaccination; and

(b)(1) Permanently identified by a "V" hot brand on the right jaw or high on the hip near the tailhead, or by an official AV (adult vaccination) tattoo in the right ear preceded by the quarter of the year and followed by the last digit of the year; and (2) identified with an official eartag or individual animal registered breed association registration brand.

Official brand inspection certificate. A document issued by an official brand inspection agency in any State in which such document is required for movement of cattle.

Official brand recording agency. The duly constituted body authorized by a State or governmental subdivision thereof, to administer laws, regulations, ordinances or rules pertaining to the brand identification of cattle.

Official calfhood vaccinate.

(a)(1) Female cattle or female bison vaccinated while from 4 through 12 months (120 to 365 days) of age by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine containing at least 3 billion and not more than 10 billion live cells per ml. dose; or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official vaccinate in this part at the date of said vaccination; and

(b) Permanently identified by tattoo in the right ear and by an official vaccination eartag in the right ear. However, if already identified with an official eartag prior to vaccination, an additional tag is not required. The tattoo must include the U.S. Registered Shield and "V," preceded by the quarter of the year and followed by the last digit of the year in which the vaccination was done. The official eartag must include the State numberical prefix as assigned by the National Uniform eartagging System and a "V," followed by two letters and four numbers which will uniquely and individually identify such vaccinated animal. States which require more official vaccination eartags than the number of combinations available in the "V" series of tags shall use a "T" or "S" followed by two letters and four numbers. Duplicate reissue of offical calfhood vaccination eartags shall not be made more often than once each 15 years. Individual animal registered breed association registration brands may be substituted for official eartags.

Official eartag. A Veterinary Services approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System which provides unique identification for each individual animal with no duplication of alpha-numeric identification.

Official seal. A serially numbered, metal or plastic strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged, which cannot be reused if opened, or a serially numbered, self-locking button which can be used for this purpose.

Official test.

(a) *Classification of cattle and bison.*

(1) *Standard card test (standard sensitivity pH 3.8).* A test to determine the brucellosis disease status of test-eligible cattle and bison in livestock markets when the State animal health official specifically designates the standard card test as an official test in all livestock markets in that State and conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Stanard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Test-eligible cattle and bison which are not official vaccinates and are positive to the standard card test are classified as brucellosis reactors. Test-eligible official vaccinates which are positive to the standard card test are classified as brucellosis reactors or, if subjected to the modified card test and found negative, are classified as brucellosis suspects. Test-eligible cattle and bison which are negative to the standard card test are classified as brucellosis negative.

(2) *Modified card test (reduced sensitivity pH 3.3).* A test to determine the brucellosis disease status of official vaccinates which have been sujected to the standard card test and found positive in livestock markets when the State animal health official and the Veteranarian in Charge specifically designate the modified card test as an official test in all livestock markets in that State and conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Modified card test results are interpreted as either negative or positive. Any agglutination reaction is a positive result. Official vaccinates subjected to the modified card test and found positive are classified as brucellosis reactors. Official vaccinates positive to the standard card test but negative to the modified card test are classified as brucellosis suspects.

(3) *Standard tube test (STT) or standard plate test (SPT).* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

SPT OR STT CLASSIFICATION

Titer			Classification
1:50	1:100	1:200	
Official vaccinates			
–	–	–	Negative.
I	–	–	Do.
+	–	–	Do.
+	I	–	Suspect.
+	+	–	Do.
+	+	I	Do.
+	+	+	Reactor.
All cattle and bison which are not official vaccinates			
–	–	–	Negative.
I	–	–	Suspect.
+	–	–	Do.
+	(	–	Do..

SPT OR STT CLASSIFICATION—Continued

Titer			Classification
1:50	1:100	1:200	
+	+	–	Reactor.
+	+	I	Do.
+	+	+	Do.

– No agglutination.
I Incomplete agglutination.
+ Complete agglutination.

(4) *Manual complement-fixation (CF) test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions: (i) Cattle and bison which are not official vaccinates:

(A) Fifty percent fixation (2 plus) in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 50 percent fixation (2 plus) in a dilution of 1:20—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative;

(ii) Official vaccinates:

(A) Twenty-five percent fixation (1 plus) in a dilution of 1:40 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 25 percent fixation (1 plus) in a dilution of 1:40—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative.

(5) *Technicon automated complement-fixation test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions: (i) Cattle and bison which are not official vaccinates:

(A) Fixation in a dilution of 1:10 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:5 but no fixation in a dilution of 1:10—brucellosis suspect;

(C) No fixation in a dilution of 1:5 or lower—brucellosis negative;

(ii) Official vaccinates:

(A) Fixation in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:10 but no fixation in a dilution of 1:20—brucellosis suspect;

(C) Fixation in a dilution of 1:5 or less but no fixation in a dilution of 1:10—brucellosis negative;

(6) *Rivanol test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

(i) Cattle and bison which are not official vaccinates:

(A) Complete agglutination at a titer of 1:25 or higher—brucellosis reactor;

(B) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(ii) Official adult vaccinates more than 5 months after vaccination and official calfhood vaccinates:

(A) Incomplete agglutination at a titer of 1:100 or higher-brucellosis reactor;

(B) Complete agglutination at a titer of 1:25 or higher when the complement-fixation test is not conducted—brucellosis reactor;

(C) Complete agglutination at a titer of 1:50 or less when the manual or technicon automated complement-fixation test is conducted and the complement-fixation test results in a classification of brucellosis suspect or brucellosis negative—brucellosis suspect;

(D) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(iii) Official adult vaccinates less than 5 months after vaccination: Less than complete agglutination at the 1:50 titer—brucellosis negative.

(7) *Semen plasma test.* A test to determine the brucellosis disease status of bulls used for artificial insemination when conducted in conjunction with an official serological test when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. The classification of such bulls shall be based on the maximum agglutination titer of either the official serological test or the semen plasma test.

(8) *Buffered acidified plate antigen (BAPA) test.* A test to determine the brucellosis disease status of test-eligible cattle and bison at slaughtering establishments and livestock markets when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. BAPA test results are interpreted as either negative or positive. Cattle and bison subjected only to the BAPA test and found negative are classified as brucellosis negative. Cattle and bison subjected to the BAPA test and found to be positive shall be subjected to other official tests to determine their brucellosis classification.

(9) *Rapid screening test (RST).* A test to determine the brucellosis disease status of test-eligible cattle and bison in cooperative State-Federal laboratories when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. The RST test results are interpreted as either negative or positive. Cattle and bison subjected only to the RST test and found negative are classified as brucellosis negative. Cattle and bison subjected to the RST test and found positive shall be subjected to other official tests to determine their brucellosis classification.

(10) The evaluation of test results for all cattle and bison shall be the responsibility of an epidemiologist who has been designated to perform and/or supervise this function in each of the States. The designated epidemiologist shall take into consideration the animal and herd history and other epidemiologic considerations when determining the brucellosis classification or cattle and bison. Deviations from the brucellosis classification criteria as provided in this definition of official test are acceptable when made by the designated epidemiologist.

(b) *Classification of Swine.* (1) *Standard Card test.* A test to determine the brucellosis disease status of swine. Standard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Swine which are negative to the standard card test are classified as brucellosis negative. Swine which are positive to the standard card test in a herd not known to be affected and otherwise found to be negative to any other official test or bacteriological culture for brucella are classified as brucellosis suspects. Other swine positive to the standard card test are classified as brucellosis reactors.

(2) *Standard tube test.* A test to determine the brucellosis disease status of swine.

(i) If all of the following apply: (A) The swine are not part of a herd known to be affected; (B) if no swine being tested, individually or as part of a group, are found to have a complete agglutination reaction at a dilution of 1:100 or higher; and (C) the swine are tested as part of a herd blood test or are part of a validated brucellosis-free herd, then swine are classified according to the following agglutination reactions:

Titer			Classification
1:25	1:50	1:100	
I	–	–	Negative
+	–	–	Do.
+	I	–	Do.
+	+	–	Do.
+	+	I	Do.

(ii) If any of the following apply: (A) The swine are part of a herd known to be affected; (B) if any swine being tested, individually or as part of a group, are found to have a complete agglutination reaction at a dilution of 1:100 or higher or; (C) the swine are not part of a validated brucellosis-free herd and are not being tested as part of a herd blood test, then swine are classified according to the following agglutination reactions:

Titer			Classification
1:25	1:50	1:100	
I	0–	–	Negative
+	–	–	Reactor
+	I	–	Do.
+	+	–	Do.
+	+	I	Do.
+	+	+	Do.

– No agglutination.
I Incomplete agglutination.
+ Complete agglutination.

Official vaccinate. An official calfhood vaccinated or an official adult vaccinate.

Originate.

(a) Animals will have the status of the herd from which they are being moved if:

(1) They were born and maintained in the herd or

(2) They have been in the herd for at least 120 days.

(b) Animals will have the status of the State or area from which they are being moved if:

(1) They were born and maintained in the State or area, or

(2) They were previously moved from an area of equal or higher class to the State or area, or

(3) They were previously moved from an area of lower class to the State or area where they are now located and have been in the State or area for at least 120 days. (Animals that have not been in the State or area for at least 120 days will have the status of the area of lower class.)

Parturient. Visibly prepared to give birth or within 2 weeks of giving birth (springers).

Permit. An official document (VS Form 1–27 or State form which contains the same information but not a "permit for entry" or "S brand permit) issued by a Veterinary Services representative, State representative, or accredited

veterinarian which lists the owner's name and address, the points of origin and destination, the number of animals covered, the purpose of the movement, and reactor tag number, and one of the following: the official eartag, individual animal registered breed association tattoo, USDA backtag (when applied serially, only the beginning and the ending numbers need be recorded), registered breed association registration number, or similar individual identification. (If a change in destination is desired or becomes necessary, a new permit must be obtained.)

Permit for entry. A premovement authorization for entry of cattle into a State from the State animal health official of the State of destination. It may be oral or written.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company or other legal entity.

Postparturient. Having given birth.

Qualified herd.

(a) *Qualification.* (1) Any herd of cattle or bison in a quarantined area which is not known to be affected with brucellosis and which has been subject to two consecutive herd blood tests for brucellosis and found negative. The first of these two herd blood tests shall be conducted not more than 240 days nor less than 120 days prior to the date of classification as a qualified herd. The second herd blood test may not be conducted less than 90 days nor more than 150 days after the first test. Additionally, the second herd blood test must be within 120 days of the date of classification as a qualified herd; or (2) any certified brucellosis-free herd which has been subjected to a herd blood test 120 days prior to or after designation of the area as a quarantined area and found negative.

(b) *Requalification.* In order to remain a qualified herd, a herd must be subjected to successive requalifying herd blood tests and found negative on each test. Each such requalifying test shall be conducted not more than 120 days from the date of the preceding herd blood test. All cattle or bison added to a qualified herd must have been included in the preceding two herd blood tests to qualify as cattle or bison from the qualified herd.

Quarantined area. An area in which brucellosis exists but in which control and eradication procedures are not adequate to prevent the interstate dissemination of brucellosis.

Quarantined feedlot.[1] A confined area under State quarantine approved by the State animal health official and the Veterinarian in Charge. Approval will be granted only after inspection by a State representative or Veterinary Service representative and after it is determined that all cattle and bison in the confined area are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the confined area. The quarantined feedlot shall be maintained for feeding of cattle and bison for slaughter, with no provisions for pasturing or grazing. All cattle and bison, except steers and spayed heifers, leaving the quarantined feedlot must move directly to a slaughtering establishment accompanied by a permit, directly to another quarantined feedlot accompanied by a permit issued by the State animal health official, or, after being "S" branded at the quarantined feedlot, directly to a specifically approved stockyard to be sold for movement to a slaughtering establishment or another quarantined feedlot accompanied by a permit. However, finished fed cattle moving directly to recognized slaughtering establishments are exempt from the permit requirement. The State representative shall establish procedures for accounting for all cattle and bison entering or leaving the quarantined feedlots.

Quarantined pasture. A confined grazing area under State quarantine approved by the State animal health official, Veterinarian in Charge and the Deputy Administrator. A justification of the need for the quarantined pasture must be prepared by the State animal health official and/or Veterinarian in Charge and submitted to the Deputy Administrator. An intensified brucellosis eradication effort which produces large numbers of brucellosis exposed cattle, brucellosis exposed bison, or official adult vaccinates needing the grazing period to reach slaughter condition would be an acceptable justification. Approval will be granted only after inspection by a State representative or Veterinary Services representative and a determination that all cattle and bison in the confined grazing area are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the confined grazing area. The quarantined pasture shall be for the purpose of utilizing available forage for growth or to improve flesh condition of cattle or bison. No cattle or bison may be moved interstate into these quarantined pastures, but they shall be restricted in use for cattle or bison originating within the State. All cattle or bison shall be of the same sex except that neutered cattle and bison may share the quarantined pasture. All cattle and bison, except steers and spayed heifers, must be "S" branded upon entering the quarantined pasture. All cattle and bison, except steers and spayed heifers, leaving the quarantined pasture must move to a recognized slaughtering establishment for immediate slaughter or to a quarantined feedlot. The movement shall be in accordance with established procedures for handling brucellosis exposed cattle and bison, including issuance of "S" brand permits prior to movement. The State animal health official and Veterinarian in Charge shall establish procedures for accounting for all cattle and bison entering and leaving the quarantined pasture. All brucellosis exposed cattle and brucellosis exposed bison must vacate the premises on or before the expiration of approval, which may not last longer than 10 months.

Recognized slaughtering establishment.[2] Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a State meat inspection act.

"S" branded. Branding with a hot iron the letter "S" at least 5cm (2 x 2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae).

"S" brand permit. A document prepared at the point of origin which lists the points of origin and destination, the number of such animals covered, the purpose of the movement, and one of the following: the official eartag, individual animal registered breed association tattoo, individual registered breed association registration number, USDA backtag (when applied serially, only the beginning and the ending numbers need be recorded), or similar individual identification. If the document is prepared at a quarantined feedlot, it shall be prepared by an accredited veterinarian, a State representative, or an individual designated for that purpose by the State animal health

[1] A list of quarantined feedlots in any State may be obtained from the State animal health official or State representative.

[2] A list of recognized slaughtering establishments in any State may be obtained from a Veterinary Services representative, the State animal health official, or a State representative.

official. If this document is prepared at any other point of origin, it shall be prepared by an accredited veterinarian, State representative, or Veterinary Services representative.

Sow. A female swine which has given birth to one or more pigs or which is parturient.

Specifically approved stockyard.[3] A premises where cattle or bison are assembled for sale or sale purposes which meets the standards set forth in § 78.44 and is approved by the Deputy Administrator.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands or any other territory or possession of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Test-eligible cattle and bison. Cattle and bison 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth) except steers, spayed heifers, official calfhood vaccinates of bison or beef breeds under 2 years of age (2 years of age is evidenced by the presence of the first pair of permanent incisor teeth), official calfhood vaccinates of the dairy breeds under 20 months of age, and which are not parturient or postparturient.

Validated brucellosis-free herd. (a) *Validation.* A herd of swine in which all sows and boars maintained for breeding purposes have been subjected to an official test for brucellosis and found negative. (b) *Revalidation.* In order to remain a validated brucellosis free herd, all sows and boars maintained for breeding purposes in the herd shall be subjected to an official test for brucellosis and found negative within 10 to 14 months of the last validation test date or by showing that at least 20 percent of the sows and boars maintained for breeding purposes in the herd were tested under a market swine testing program (MST) during the year and that at least one-half of the MST sampling occurred during the last 6 months of the validation period, or that all sows and boars maintained for breeding purposes in the herd are tested in groups according to an approved individual herd plan with each sow and boar maintained for breeding purposes tested at least once during a 1-year period.

Validated brucellosis-free State. (a) *Validation.* A State which: (1) Has necessary authorities for classification as a validated brucellosis-free State for swine;

(2)(i) Has no known foci of swine brucellosis at the time of validation and has completed one of the following methods of surveillance: (A) all sows are boars maintained for breeding purposes in the State have been subjected to an official test for brucellosis during and 18-month period preceding validation and no more than 3 percent of the herds in the State are found to have brucellosis; (B) herds from which swine maintained for breeding purposes which have sold are subjected to an official test and 90 percent of all sows and boars marketed for slaughter have been subjected to an official test and 90 percent of the brucellosis reactors have traced to their herds of origin during the 12-month period preceding validation and no more than 3 percent of the herds in the State are found to have brucellosis; (C) during a 2 year period all herds from which sows and boars maintained for breeding purposes have been sold are subjected to a herd blood test and slaughter surveillance has maintained a traceback capability from slaughter to the herd of origin of 50 percent or greater and no more than 3 percent of the herds in the State are found to have brucellosis; or

(ii) Has no diagnosed a case of swine brucellosis in the preceding 12 months and a statistical analysis of combined test results of the market swine testing program (MST), change of ownership testing, farm validation tests, and diagnostic tests conducted during the period shows the testing to be equivalent to either complete herd testing or slaughter surveillance during a 1 or 2-year period, as chosen by the State as most appropriae to its marketing needs; and

(3) Has been certified as such by the appropriate State animal health official, the Veterianarian in Charge, and the Deputy Administrator. A State may qualify as a validated brucellosis-free State regardless of the brucellosis status of feral swine in that State if the feral swine are not in contact with domestic swine.

(b) *Revalidation.* May be obtained by either herd testing, slaughter surveillance, or combined surveillance, as chosen by the State as most appropriate to its marketing needs.

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

Veterinary Services. Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

Whole herd vaccination. The vaccination of all female cattle and bison over 4 months of age in herd when authorized by the State animal health official and the Veterinarian in Charge, and conducted in accordance with the definitions of official adult vaccinate and official calfhood vaccinate.

§ 78.2 Handling of certificates, permits, and "S" brand permits for movement of animals.

(a) Any certificate, permit, or "S" brand permit required by this part for the interstate movement of animals shall be delivered to the person moving the animals by the shipper or shipper's agent at the time the animals are delivered for movement and shall accompany the animals to their destination and shall be delivered to the consignee, or to the person to whom the animals are delivered.

(b) The veterinary Services representative, State representative, or accredited veterinarian issuing a certificate or permit required for the interstate movement of animals under this part shall forward a copy thereof to the State animal health official of the State of destination of the animals.

§ 78.3 Handling in transit of cattle and bison moved interstate.

Cattle and bison moved interstate, except cattle and bison moved directly to a slaughtering establishment or to a quarantined feedlot, shall be moved only in a means of conveyance which has been cleaned in accordance with §§ 71.5, 71.7, 71.10, and 71.11 of this chapter and, if unloaded in the course of such movement, shall be handled only in pens cleaned in accordance with the

[3] Notices containing lists of specifically approved stockyards are published in the Federal Register. The lists of specifically approved stockyards also may be obtained from Veterinary Services representatives, the State animal health official, or State representatives.

provisions of §§ 71.4, 71.7, 71.10, and 71.11 of this chapter.

§ 78.4 [Reserved]

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis.

§ 78.5 General restrictions.

Cattle may not be moved interstate except in compliance with this subpart.

§ 78.6 Steers and sprayed heifers.

Steers and spayed heifers may be moved interstate without restriction under this subpart.

§ 78.7 Brucellosis reactor cattle.

Brucellosis reactor cattle may be moved interstate for immediate slaughter directly to a recognized slaughtering establishment or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis reactor cattle and then directly to a recognized slaughtering establishment only in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor cattle shall be individually identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high, and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor cattle shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor cattle in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words "Brucellosis Reactor."

(d) *Segregation en route.* Brucellosis reactor cattle shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals are for immediate slaughter, or unless the brucellosis reactor cattle are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.8 Brucellosis exposed cattle.

(a) Brucellosis exposed cattle may be moved interstate for immediate slaughter as follows

(1) Finished fed cattle from a quarantined feedlot may be moved directly to a recognized slaughtering establishment without further restriction under this part.

(2) All other brucellosis exposed cattle may be moved directly to a recognized slaughtering establishment, or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis exposed cattle and then directly to a recognized slaughtering establishment, only if such cattle are:

(i) Individually identified by an official eartag or a USDA backtag;

(ii) Accompanied by a permit or "S" brand permit; and

(iii) (A) "S" branded before the cattle leave the premises from which they are to be moved interstate; or (B) individually identified with the letter "B" as prescribed in § 51.5 of this chapter, when a claim for indemnity is being made under Part 51 of this chapter; or (C) official adult vaccinates; or (D) moved in vehicles closed with official seals which are applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative and the official seal number is recorded on the accompanying permit or "S" brand permit; or (E) moved directly from a quarantined feedlot to a recognized slaughtering establishment.

(b) Brucellosis exposed cattle for which no claim for indemnity is being made, under Part 51 of this chapter, may be moved interstate directly to a quarantined feedlot or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis exposed cattle and then directly to a quarantined feedlot only if such cattle are:

(1) Individually identified by an official eartag or a USDA backtag;

(2) Accompanied by a permit or "S" brand permit; and

(3) (i) "S" branded before the cattle leave the premises from which they are to be moved interstate, or (ii) official adult vaccinates.

(c) Brucellosis exposed cattle for which no claim for indemnity is being made, under Part 51 of this chapter, may also be moved interstate in accordance with § 78.10 and as follows:

(1) Such brucellosis exposed cattle from herds known to be affected with brucellosis may be moved interstate if the cattle:

(i) Are under 6 months of age and have been weaned from brucellosis reactor or brucellosis exposed cows for not less than 30 days immediately preceding interstate movement; or

(ii) Are under 6 months of age and are nursing brucellosis exposed cows in a herd which has been subjected to a herd blood test within 10 days prior to interstate movement; or

(iii) Are official vaccinates under 1 year of age from a herd which is following an approved individual herd plan, provided that the official vaccinates are individually identified with a hole, at least ¾ inch in diameter, in the left ear.

(2) Cattle that were moved interstate directly from a farm of origin to a specifically approved stockyard in accordance with § 78.9(b)(3)(iii), § 78.9(c)(3)(iii), § 78.9(d)(3)(iv), or § 78.9(d)(3)(v) and which have been subsequently determined to be brucellosis exposed cattle, may be moved interstate directly back to the farm of origin under the following conditions:

(i) Prior to interstate movement, a State representative of the State in which the cattle are located and of the State to which the cattle are to be moved advise Veterinary Services that such movement would not be contrary to the laws and regulations of their respective States;

(ii) Prior to interstate movement, a State representative of the State to which the cattle are to be moved advises Veterinary Services that the cattle will be quarantined upon arrival and that all test-eligible cattle on the farm of origin will be subjected to an official test for brucellosis; and

(iii) The cattle are accompanied to the farm of origin by a permit.

§ 78.9 Cattle from herds not known to be affected with brucellosis.

Cattle which are not test-eligible from herds not known to be affected with brucellosis may be moved interstate without further restriction if officially vaccinated as required in § 78.10. Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis may only be moved interstate in accordance with § 78.10 and as follows:

(a) *Class Free States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from herds not known to be affected with brucellosis which originate in Class Free States or areas may only be moved interstate from such States or areas if accompanied by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a Class Free State or area. However, no certificate is required if such cattle are: (1) Moved interstate directly to a recognized slaughtering establishment or to a quarantined feedlot; (2) moved interstate directly to a specifically approved stockyard and then moved

directly to a recognized slaughtering establishment or to a quarantined feedlot; (3) moved interstate directly from a farm of origin to a specifically approved stockyard; or (4) moved interstate from a farm of origin or returned to a farm of origin in the course of normal ranching operations without change of ownership to or from another premises owned, leased, or rented by the same individual.

(b) *Class A States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis which originate in Class A States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment without restrictions under this subpart.

(ii) Such cattle from other than a farm of origin or nonquarantined feedlot may be moved interstate directly to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or State or area apart from other animals.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to a quarantined feedlot or to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the farm of origin is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from the farm of origin apart from other animals.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlot or to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or State or area apart from other animals.

(3) *Movement other than in accordance with paragraphs (b) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (b) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, are accompanied interstate by a certificate, and the certificate shows in addition to items specified in § 78.1, the test dates and results of the official tests; or

(iii) Such cattle are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(iv) Such cattle are from a farm of origin or returned to a farm of origin in the course of normal ranching operations, without change of ownership, to or from another premise owned, leased, or rented by the same individual.

(c) *Class B States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis which originate in Class B States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.*

(i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to (A) a recognized slaughtering establishment without restriction under this subpart; or (B) a specifically approved stockyard and then directly to a recognized slaughtering establishment if: (*1*) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (*2*) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (*3*) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (*4*) they are moved in vehicles closed at the specifically approved stockyard with official seals which are applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative and are accompanied by an "S" brand permit.

(ii) Such cattle from other than a farm of origin or a nonquarantined feedlot may only be moved interstate directly to a recognized slaughtering establishment if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (B) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) they are "S" branded and are accompanied by an "S" brand permit; or (D) they are moved in vehicles closed with official seals which are applied and removed only by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by a Veterinary Services representative and are accompanied by an "S" brand permit.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to: (A) a quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot, or (B) a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlow if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they are "S" branded and are accompanied by an "S" brand permit.

(3) *Movement other than in accordance with paragraphs (c) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (c) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are subjected to an official test for brucellosis and found

negative within 30 days prior to interstate movement, have been issued a permit for entry, and are accompanied interstate by a certificate which shows, in addition to items specified in § 78.1, the test dates and results of the official tests;

(iii) Such cattle are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at such stockyard, prior to losing their identity with the farm of origin; or

(iv) Such cattle are moved from a farm of origin or returned to a farm of origin in the course of normal ranching operations without change of ownership and the cattle being moved originate from a herd in which: (A) All the cattle were subjected to a herd blood test and found negative within 1 year prior to the interstate movement; (B) any cattle which were added to the herd subsequent to such a herd blood test were subjected to an official test for brucellosis and found negative within 30 days prior to the date the cattle were added to the herd; (C) none of the cattle in the herd have come in contact with any other cattle; and (D) the cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted; or

(v) The State animal health officials of the State of origin and State of destination may waive the requirements of paragraph (c)(3)(iv) of this section in writing.

(d) *Class C States/Areas.* Test-eligible cattle which are not brucellosis exposed and are from a herd not known to be affected with brucellosis which originate in Class C States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to: (A) A recognized slaughtering establishment without restrictions under this subpart; or (B) a specifically approved stockyard and then directly to a recognized slaughtering establishment if: (*1*) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (*2*) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (*3*) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (*4*) they are moved in vehicles closed with official seals at the specifically approved stockyard and are accompanied by an "S" brand permit. (Official seals shall only applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representaiive.)

(ii) Such cattle from other than a farm of origin or a nonquarantined feedlot may only be moved interstate directly to a recognized slaughtering establishment if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) they are "S" branded and are accompanied by an "S" brand permit; or (D) they are moved in vehicles closed with official seals which are applied or removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by the Veterinary Services representative and are accompanied by an "S" brand permit.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to: (A) a quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot; or (B) a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlot if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they are "S" branded and are accompanied by an "S" brand permit.

(3) *Movement other than in accordance with paragraphs (d) (1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d) (1) or (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle (A) have been subjected to two consecutive official tests at least 60 days apart for brucellosis and found negative with the first test not less than 60 days nor more than 1 year before interstate movement and the second test not more than 30 days before the date of the interstate movement; (B) are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; and (C) have been issued a permit for entry; or

(iii) Such cattle (A) are official vaccinates of the beef breeds 24 months of age and over, or of the dairy breeds 20 months of age and over; (B) have been subjected to an official test for brucellosis and found negative within 30 days prior to the date of interstate movement; (C) are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; and (D) have been issued a permit for entry; or

(iv) Such cattle (A) have been subjected to an official test for brucellosis and found negative, not less than 60 days nor more than 1 year before the interstate movement; (B) are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at such stockyard prior to losing their identity with the farm of origin; and (C) are accompanied by a document which shows the test dates and results of the official test conducted prior to the interstate movement to the specifically approved sotckyard; or

(v) Such cattle are official vaccinates of the beef breeds 24 months of age and over or of the dairy breeds 20 months of age and over, are moved directly from a farm of origin to a specifically approved sotckyard, and are subjected to an official test for brucellosis upon arrival at such stockyard prior to losing their identity with the farm of origin; or

(vi) Such cattle are from a farm of origin and are then subjected to a herd blood test and found negative within 1 year of interstate movement providing no cattle have been added to the herd since the date of the herd blood test and, if the herd blood test is not conducted within 30 days of movement, such cattle are subjected to an official test for brucellosis and found negative within 30 days of movement, have been issued a

permit for entry, and are accompanied by a certificate which states, in addition to the items specified in § 78.1, that such cattle originate from a farm of origin and shows the test dates and results of the official tests; or

(vii) Such cattle are moved from a farm of origin or are returned to a farm of origin in the course of normal ranching operations without change of ownership and the cattle being moved originate from a herd in which: (A) all the cattle were subjected to a herd blood test and found negative for brucellosis within 1 year prior to the interstate movement; (B) any cattle which were added to the herd subsequent to such a herd blood test were subjected to an official test for brucellosis and found negative within 30 days prior to the date the cattle were added to the herd; (C) none of the cattle in the herd have come in contact with any other cattle; and (D) the cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted.

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C States or areas.

(a) Female dairy cattle which were born after January 1, 1984, and are 4 months of age and over must be official vaccinates if moved interstate into or out of a Class B State [4] or area unless they are moved directly to a recognized slaughtering establishment or to a quarantined feedlot. Female cattle eligible for official calfhood vaccination and required to be officially vaccinated in this paragraph may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(b) Female cattle which were born after January 1, 1984, and are 4 months of age and over must be official vaccinates if moved interstate into or out of a Class C State [4] or area unless they are moved directly to a recognized slaughtering establishment or to a quarantined feedlot. Female cattle eligible for official calfhood vaccination and required to be officially vaccinated in this paragraph may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

§ 78.11 Cattle moved to a specifically approved stockyard not in accordance with this Part.

Cattle, except brucellosis reactors and brucellosis exposed cattle, moved interstate to a specifically approved stockyard other than in accordance with the provisions of this part may only be moved directly to a recognized slaughtering establishment or to a quarantined feedlot or returned to the State of origin with the concurrence of the State animal health officials of the States of origin and destination and then only if "S" branded or moved in vehicles closed with official seals which are applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative, and accompanied by an "S" brand permit.

§ 78.12 Cattle from quarantined areas.

Not withstanding any provisions in this subpart to the contrary, cattle may be moved interstate from a quarantined area only in accordance with § 78.10 and with the provisions of this section.

(a) *Steers and spayed heifers.* Steers and spayed heifers may be moved without restriction under this section.

(b) *Brucellosis reactor cattle.* Brucellosis reactor cattle may be moved in accordance with § 78.7.

(c) *Brucellosis exposed cattle.* Brucellosis exposed cattle may be moved in accordance with § 78.8 (a) or (b).

(d) *Movement from qualified herds.* Cattle from qualified herds in any quarantined area may be moved interstate only as follows:

(1) *Movement to recognized slaughtering establishments.*

(i) Such cattle may be moved for immediate slaughter directly from a farm or origin to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests; or

(ii) Such cattle may be moved in accordance with § 78.8(a).

(2) *Movement to quarantined feedlots.*

(i) Such cattle may be moved to a quarantined feedlot directly from a farm of origin or directly from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests; or

(ii) Such cattle are moved in accordance with § 78.8(b).

(3) *Movement other than in accordance with paragraph (d) (1) or (2) of this section.* Such cattle may be moved other than in accordance with paragraph (d) (1) or (2) of this section, either directly from a farm of origin or through no more than one specifically approved stockyard, if the cattle are accompanied by a certificate and the cattle, except official vaccinates less than 1 year of age and cattle less than 6 months of age, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests.

(e) *Movement from herds which are not qualified.* Cattle from herds known to be affected and from herds which are not qualified herds in any quarantined area may be moved interstate only for immediate slaughter or directly to a quarantined feedlot in accordance with § 78.8 (a) of (b).[5]

§ 78.13 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of cattle not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the appropriate State animal health officials of the States involved of any such action.

§ 78.14–78.19 [Reserved]

Subpart C—Restriction on Interstate Movement of Bison Because of Brucellosis

§ 78.20 General restrictions.

Bison may not be moved interstate except in compliance with this subpart.

---

[4] Female cattle which are imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence would be required prior to importation of the cattle into the United States.

[5] A herd which is not qualified in a quarantined area may become a qualified herd upon compliance with the provisions set forth in the definition of "qualified herd" in §78.1.

§ 78.21 Bison steers and spayed heifers.

Bison steers and spayed heifers may be moved interstate without restriction under this subpart.

§ 78.22 Brucellosis reactor bison.

Brucellosis reactor bison may only be moved interstate for immediate slaughter directly to a recognized slaughtering establishment or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis reactor bison and then directly to a recognized slaughtering establishment only in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor bison shall be individually identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor bison shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor bison in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words, "Brucellosis Reactor."

(d) *Segregration en route.* Brucellosis reactor bison shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactor unless all of the animals are for immediate slaughter, or unless the Brucellosis reactor bison are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.23 Brucellosis exposed bison.

Brucellosis exposed bison may be moved interstate only as follows:

(a) *Movement of brucellosis reactor bison to recognized slaughtering establishments.* Such bison may be moved directly to a recognized slaughtering establishment or directly from a farm of origin to a specifically approved stockyard approved to handle brucellosis exposed bison and then directly to a recognized slaughtering establishment. Such bison shall be accompanied by a permit. If the movement is through a specifically approved stockyard approved to handle brucellosis exposed bison to a recognized slaughtering establishment, a separate permit shall be required for the subsequent interstate movement of the bison from the specifically approved stockyard approved to handle brucellosis exposed bison to the recognized slaughtering establishment.

(b) *Movement of brucellosis exposed bison to quarantined feedlots.* Such bison may be moved directly to a quarantined feedlot or directly from a farm of origin to a specifically approved stockyard approved to handle brucellosis exposed bison and then directly to a quarantine feedlot. Such bison shall be accompanied by a permit. If the movement is through a specifically approved stockyard approved to handle brucellosis exposed bison to a quarantined feedlot, a separate permit shall be required for the subsequent interstate movement of the bison from the specifically approved stockyard approved to handle brucellosis exposed bison to the quarantined feedlot.

(c) *Movement of brucellosis exposed bison other than in accordance with paragraph (a) or (b) of this section.* Brucellosis exposed bison from herds known to be affected with brucellosis which are not part of a herd being depopulated under Part 51 of this chapter may move without restriction if the bison: (1) Are under 6 months of age and have been weaned from brucellosis reactor or brucellosis exposed bison not less than 30 days immediately preceding interstate movement; or (2) are under 6 months of age and are nursing brucellosis exposed bison in a herd which has been subjected to a herd blood test within 10 days prior to interstate movement; or (3) are official vaccinates under 1 year of age from a herd which is following an approved individual herd plan.

§ 78.24 Bison from herds not known to be affected with brucellosis.

Bison from herds not known to be affected with brucellosis may be moved interstate only as follows:

(a) *Movement to recognized slaughtering establishments.* Such bison may be moved directly to a recognized slaughtering establishment without restriction.

(b) *Movement to quarantined feedlot.* Such bison may be moved directly to a quarantined feedlot without restriction.

(c) *Movement from public zoo to public zoo.* Such bison may be moved from a zoo owned by a governmental agency to another such zoo if handled in accordance with § 78.3.

(d) *Movement other than in accordance with paragrophs (a), (b), or (c) of this section.* Such bison may be moved interstate other than in accordance with paragraphs (a), (b), or (c) of this section only as follows:

(1) Such bison under 6 months of age may be moved when accompanied by a certificate.

(2) Such bison which are official vaccinates under 2 years of age and which are not parturient or postparturient may be moved when accompanied by a certificate.

(3) Such bison may be moved if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and the certificate shows, in addition to items specified in § 78.1, the dates and results of the official tests.

(4) Such bison may be moved if they originate in a certified brucellosis-free herd and they are accompanied by a certificate which states, in addition to the items specified in § 78.1, that the bison originated in a certified brucellosis-free herd.

§ 78.25 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of bison not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the appropriate State animal health officials of the States involved of any such action.

§ 78.26–29 [Reserved]

Subpart D—Restrictions on Movement of Swine Because of Brucellosis.

§ 78.30 General restrictions.

(a) Brucellosis reactor swine, brucellosis exposed swine, and sows and boars may not be moved interstate or in interstate commerce except in compliance with this subpart.

(b) Each person who causes the movement of swine in interstate commerce is responsible for the identification of the swine as required by this subpart. No such person shall remove or tamper with or cause the removal of or tampering with a Veterinary Services approved tattoo or approved swine identification tag required in this subpart for the movement in interstate commerce of swine, except at the time of slaughter, or as may be authorized by the Deputy Administrator, upon request in specific cases and under such conditions as the Deputy Administrator may impose to insure continuing identification.

§ 78.31 Brucellosis reactor swine.

Brucellosis reactor swine may only be moved interstate for immediate

slaughter directly to a recognized slaughtering establishment or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.) or directly to a market agency or dealer registered under said Packers and Stockyards Act, for sale to a recognized slaughtering establishment in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor swine shall be individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S.C. Reactor" or a metal tag bearing a serial number which has been disignated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor swine shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor swine in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words "Brucellosis Reactor."

(d) *Segregation en route.* Brucellosis reactor swine shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals are for immediate slaughter, or unless the brucellosis reactor swine are kept separate from other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.32 Brucellosis exposed swine.

Brucellosis exposed swine may be moved interstate only for immediate slaughter directly to a recognized slaughtering establishment or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*) directly to a market agecny dealer registered under said Packers and Stockyards Act, for sale to a recognized slaughtering establishment, if such swine are accompained by a permit.

§ 78.3 Sows and boars.

(a) Sows and boars may be moved in interstate commerce for slaughter or for sale for slaughter only if such swine are:

(1)(i) Individually identified by a Veterinary Service approved tattoo [6] applied to the back of each swine prior to the movement in interstate commerce and before they are mixed with swine from any other source; or (ii) when approved by the State animal health official and the Veterinarian in Charge, individually identified by an approved swine identification tag;[7] or

(2) Moved directly from a herd of origin of swine to a recognized slaughtering establishment of directly to a stockyard posted under the provisions of the Packers and Stockyard Act, as amended (7 U.S.C. 181 et seq.), or a market agency or dealer registered under said Packers and Stockyard Act if such swine are identified to the herd of origin by a Veterinary Services approved tattoo applied to the back of each swine or individually identified by an approved swine identification tag [7] upon arrival and before they are mixed with swine from any other source.[8]

(b) Sows and boars may be moved in interstate commerce for breeding only if such swine are:

(1)(i) Individually identified by an approved swine identification tag [7] prior to the movement in interstate commerce and before they are mixed with swine from any other source or, (ii) if the swine are registered with a registry association, individually identified in the same manner as recorded with the registry association; and

(2)(i) From a validated brucellosis-free herd or a validated brucellosis-free State and accompanied by certificate and such certificate states, in addition to the items specified in § 78.1, that the swine originated in either a validated brucellosis-free herd or in validated brucellosis-free State; or (ii) from nonvalidated brucellosis-free herds in nonvalidated brucellosis-free States and subjected to an official test for brucellosis and found negative within 30 days prior to the movement in interstate commerce and are accompanied by a certificate which shows, in addition to items specified in § 78.1, the dates and the results of the official test.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart.

§ 78.34 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the movement in interstate commerce of swine not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the State animal health oficials of the States involved of any such action.

§ 78.35–78.39 [Reserved]

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards

§ 78.40 Designations of State/Areas.

The Deputy Administrator may amend §§ 78.41 and 78.42 to reclassify States and Areas as Class Free, Class A, Class B, or Class C, or quarantined areas when the Deputy Administrator determines that the States or areas meet the appropriate definitions in § 78.1. the Deputy Administrator may amend § 78.43 to reclassify States as validated brucellosis-free States or remove such status when the Deputy Administrator determines that such States meet or do not meet the standards of a validated brucellosis-free State as defined in § 78.1. In the case of any reclassification to a lower status or removal of validated brucellosis-free status, the State animal health official of the State involved will be notified and given an opportunity to be heard prior to the reduction of status.

§ 78.41 State/Area classification.

(a) *Class Free*—Alaska, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virgin Islands, Wisconsin, and Wyoming.

(b) *Class A*—Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Nebraska, New Jersey, New Mexico, Ohio, Oregon, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Puerto Rico.

(c) *Class B*—Alabama, Kentucky, Missouri, Nevada, and Oklahoma. Counties of Florida west of the Suwanee: Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,

[6] Veterinary Services approved tattoo codes will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge, for the State in which such persons maintain their principal place of business.

[7] Serial numbers of approved swine identification tags to be used will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge for the State in which such persons maintain their place of business.

[8] It is requested that the operator of each place of business where such swine are identified on arrival in accordance with this section, enter such identification on the yarding receipt, sale ticket, invoice, waybill, or similar document relating to the swine, and that such document be maintained on file at the place of business for at least 1 year and be made available for inspection during ordinary business hours upon request by a Veterinary Services representative or State representative.

Walton, and Washington. The Texas counties of: Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, McCulloch, Martin, Mason, Maverick, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Wise, Yoakum, Young and Zavala.

(d) *Class C*—Arkansas, Florida, (counties east and south of the Suwanee River), Louisiana, Mississippi, and the Texas counties of: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Dallas, Delta, Denton, DeWitt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kleberg, Lamar, LaSalle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, McLennan, McMullen, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Wood and Zapata.

§ 78.42 Quarantined areas.

None.

§ 78.43 Validated Brucellosis-Free States.

Alaska, Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Rhode Island, Pennsylvania, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming, Puerto Rico, Virgin Islands.

§ 78.44 Specifically approved stockyard.

(a) To qualify for approval by the Deputy Administrator as a specifically approved stockyard and to retain such designation, the operator [9] of the stockyard shall have executed one of the agreements set forth in paragraphs (c) or (d) of this section and the stockyard shall be maintained and operated in accordance with the standards specified in the agreement.

(b) (1) The Deputy Administrator shall withdraw the approval of any specifically approved stockyard when the operator [9] of the stockyard notifies the Deputy Administrator in writing that the agreement to operate as a specifically approved stockyard is terminated. (2) The Deputy Administrator may withdraw the approval of any specifically approved stockyard when the Deputy Administrator determines that the stockyard is not maintained and operated in accordance with the standards specified in the agreement. Before the Deputy Administrator withdraws approval from a specifically approved stockyard based upon a failure to maintain or operate the stockyard in accordance with the standards specified in the agreement, the operator of the stockyard will be informed of the reasons for the proposed withdrawal of approval, and upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of the action to withdraw approval, in accordance with rules of practice which shall be adopted for the proceeding. (3) The Deputy Administrator shall remove a stockyard from the list of specifically approved stockyards if the approval of such stockyard is withdrawn.

(c) In order to obtain approval as a specifically approved stockyard to handle cattle and bison pursuant to this part, the operator [9] of the stockyard shall execute the following agreement:

[9] The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Agreement Specifically Approved Stockyard for Handling Cattle and Bison Pursuant to Title 9 of the Code of Federal Regulations

(Name of Stockyard)

(Address of Stockyard)

I, (name of operator) , operator of (name of stockyard) , hearby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisios set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal Regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted at reasonable hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) All brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle or bison arriving at the stockyard shall be placed in quarantined pens and consigned from the stockyard only in accordance with Title 9, Code of Federal Regulations, Part 78.

(6) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspects, or brucellosis exposed shall not be placed in quarantined pens without cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

(7) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors (b) placed in quarantined pens and (c) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Any cattle or bison classified as brucellosis exposed at the stockyard shall be: (a) identified in accordance with Title 9, Code of Federal Regulations, Part 78, (b) placed in quarantined pens, and (c) consigned from the stockyard only to a slaughtering establishment, quarantined feedlot as defined in Title 9, Code of Fedeal Regulations, § 78.1.

or farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(9) Identify of cattle from Class Free States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(10) Identity of cattle from Class A States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle unitl they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class B States or areas shall be maintained and such cattle shall not be place in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identify of cattle from Class C States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Identity of cattle from quarantined areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

Facilities

(14) Quarantined pens, for the confinement of brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle and bison shall be (a) clearly labeled with paint or placarded as follows: "Quarantined," "Brucellosis," or "Bangs" and (b) cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4 before being used to pen cattle and bison which are not brucellosis reactors, brucellosis suspects, or brucellosis exposed. Such quarantined pens, confining brucellosis reactors or brucellosis suspects after May 1, 1986, shall have impervious floor surfaces and adequate draining for the purposes of cleaning and disinfection.

(15) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at the chute area for branding purposes.

(16) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(17) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(18) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4.

Records

(19) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(20) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 19 of this agreement and authority to reproduce such documents upon request.

I,———, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78 and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

_____

*Operator of the Stockyard

Date _____

Recommend Approval

_____

State Animal Health Official

Date _____

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Recommended Approval

_____

Veterinarian in Charge

Date _____

Approval Granted

_____

Deputy Administrator, Veterinary Services

Date _____

(d) In order to obtain approval as a specifically approved stockyard to handle cattle and bison, except to receive known brucellosis reactor, brucellosis suspect, or brucellosis exposed cattle or bison, pursuant to this part the operator of the stockyard shall execute the following agreement:

Agreement Specifically Approved Stockyard for Handling Cattle and Bison Except To Receive Brucellosis Reactor, Brucellosis Suspect, and Brucellosis Exposed Cattle or Bison Pursuant to Title 9 of the Code of Federal Regulations

_____

(Name of Stockyard)

_____

(Address of Stockyard)

I, (name of operator), operator of (name of stockyard), hereby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal Regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted at reasonable hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) No cattle or bison known to be brucellosis reactor, brucellosis suspect, or brucellosis exposed shall be permitted to enter the stockyard.

(6) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors (b) placed in quarantined pens and (c) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 78.

(7) Any cattle or bison classified as brucellosis exposed at the stockyard shall be: (a) identified in accordance with Title 9, Code of Federal Regulations (b) placed in quarantined pens, and (c) consigned from the stockyard only to a slaughtering establishment, quarantined feedlot as defined in Title 9 Code of Federal Regulations, or farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspect, or brucellosis exposed shall not be placed in quarantined pens without prior cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

(9) Identity of cattle from Class Free States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(10) Identity of cattle from Class A States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class B States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identity of cattle from Class C States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Identity of cattle from quarantined areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

Facilities

(14) Quarantined pens, for the confinement of brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle and bison tested and classified at the stockyard, shall be (a) clearly placarded as follows: "Quarantined," "Brucellosis," or "Bangs" and (b) cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4 before being used to pen cattle and bison which are not brucellosis reactor, brucellosis suspect, or brucellosis exposed.

(15) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at chute area for branding purposes.

(16) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(17) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(18) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4

Records

(19) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(20) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 19 of this agreement and authority to reproduce such documents upon request.

I, ———, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78 and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

———————————

*Operator of the Stockyard

Date ———————————

Recommend Approval

———————————

State Animal Health Official

Date ———————————

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Recommend Approval

———————————

Veterinarian in Charge

Date ———————————

Approval Granted

———————————

Deputy Administrator, Veterinary Services

Date ———————————

PART 51—[AMENDED]

The authority citation for Part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.3 [Amended]

2. In footnote number 3 referenced in § 51.3, the reference to "§ 78.1(dd)" would be revised to read "§ 78.1."

3. In § 51.6, paragraph (a) would be revised to read as follows:

§ 51.6 Destruction of animals; time limit for destruction of animals.

(a) The claimant shall be responsible for insuring that cattle subject to this part shall be sold under permit to a recognized slaughtering establishment,[5] or to a specifically approved stockyard [5] for sale to a recognized slaughtering establishment.

* * * * *

4. Footnote number 5, referenced in § 51.6, would be revised to read as follows:

[5] The terms "recognized slaughtering establishment" and "specifically approved stockyard" ar defined in § 78.1 of this chapter.

PART 71—[AMENDED]

The authority citation for Part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d)

5. In § 71.1, the introductory language would be revised to read as follows:

§ 71.1 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section.

* * * * *

§ 71.3 [Amended]

6. In § 71.3(c), the reference to "the provisions of Subpart B of Part 78 of this subchapter" would be revised to read "Part 78 of this chapter."

7. In § 71.18, the first sentence of paragraph (a) would be revised to read as follows:

§ 71.18 Individual indentification of certain cattle 2 years of age or over for interstate movement.

(a) No cattle 2 years of age or over, except steers and spayed heifers and cattle of any age which are being moved in interstate commerce during the course of normal ranching operations without change of ownership to another premises owned, leased, or rented by the same individual as provided in § 78.9(a), § 78.9(b)(3)(iv), § 78.9(c)(3)(iv), and § 78.9(d)(3)(vii) of this chapter, shall be moved in interstate commerce other than in accordance with the requirements of this section. * * *

* * * * * *

8. Footnote number 1, referenced in § 71.18 would be revised to read as follows:

[1] Department-approved backtags are available at recognized slaughtering establishments and specifically approved stockyards; from State representatives and Veterinary Services representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this Chapter. The terms "State representative" and "Veterinary Services representative" are defined in § 78.1 of this chapter.

9. In § 71.18 (a)(1)(i) and (a)(1)(ii), "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter" would be revised to read "recognized slaughtering establishment as defined in § 78.1 of this chapter".

PART 80—[AMENDED]

The authority citation for Part 80 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

10. In § 80.1, paragraph (j) would be revised to read as follows:

§ 80.1 Definitions.

* * * * *

(j) *Specifically approved stockyard.* A stockyard, livestock aution market, buying station, concentration point, or any other premises which meets the standards set forth in § 78.44 of this chapter and is approved by the Deputy

Administrator to handle brucellosis reactor animals.

§ 80.4 [Amended]

11. In § 80.4 introductory text, "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), or a slaughtering establishment approved with respect to brucellosis reactors pursuant to § 78.16(b) of this subchapter" would be amended to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter."

PART 92—[AMENDED]

The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.35 [Amended]

12. In § 92.35(d)(2) "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act or a slaughtering establishment specifically approved as specified in § 78.24 of this chapter" would be amended to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter."

13. In § 92.35(d) the reference to "§ 78.1(oo)" would be revised to read "§ 78.1" and the reference to "§ 78.12(a)" would be revised to read "§ 78.12."

Done at Washington, D.C., this 5th day of September, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–21786 Filed 9–11–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9191]

Oklahoma Optometric Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Oklahoma Optometric Association, among other things, to cease prohibiting any member optometrist from: affiliating with or operating franchises; operating branch offices; or truthfully advertising the prices, terms and availability of optometric services or optical goods.

DATE: Comments must be received on or before November 12, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B–823, Arthur N. Lerner, Washington, D.C. 20580. (202) 724–1341.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Optometrists, Trade practices.

Before Federal Trade Commission

[Docket No. 9191]

In the matter of Oklahoma Optometric Association, a corporation.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between the Oklahoma Optometric Association, a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Oklahoma Optometric Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its mailing address at 4545 N. Lincoln Blvd., Suite 173, Oklahoma City, OK 73105.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all of the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondent: (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file

one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. "Respondent" means the Oklahoma Optometric Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. "Optometrist" means any individual licensed to engage in the practice of optometry in the State of Oklahoma.

C. "Franchise Arrangement" means any arrangement to market and sell optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office where optometric services are provided.

II

It is ordered that respondent, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from:

A. Prohibiting, restricting, restraining, or coercing any optometrist from entering into or maintaining a franchise arrangement, or from affiliating with an optometrist who has done so or is doing so, through any means, including, but not limited to:

1. Declaring it to be an unethical or objectionable practice or mode of practice for any optometrist to enter into or maintain a franchise arrangement, or to affiliate with an optometrist who has done so or is doing so;

2. Expelling, excluding, suspending, or threatening to expel, exclude, or suspend, any optometrist from membership for entering into or maintaining a franchise arrangement, or for affiliating with an optometrist who has done so or is doing so;

3. Adopting or maintaining a rule, policy, guideline, or ethical standard that prohibits optometrists from practicing optometry in proximity to a retail optical establishment; and

4. Adopting or maintaining any rule, policy, guideline, or ethical standard that prohibits any optometrist from associating his or her title with a lay practice;

B. Prohibiting, restricting, restraining, or coercing any optometrist from establishing or maintaining any separate or branch office; and

C. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising, publishing, or disseminating by any person of the prices, terms, availability, characteriestics, or conditions of sale of optometric services or optical goods and devices that are offered for sale or made availabe by an optometrist or by any organization with which an optometrist is affiliated through any means, including, but not limited to, the adopting or maintaining of any rule or policy that prohibits any member from:

1. Representing that he or she has particular or special qualities, including, but not limited to, those that may be the result of special training, skills, or experience;

2. Engaging in comparative advertising, including, but not limited to, advertising that could be construed as criticizing another optometrist;

3. Displaying eyeglasses, representations of eyes, or other optical goods; or

4. Offering guarantees, including, but not limited to, offering to refund the cost of optical goods if a patient is dissatisfied with them or offering to match a competitor's price for the same goods.

Provided that nothing contained in this part shall prohibit Respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that Respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III

It is further ordered, that respondent shall cease and desist from:

A. Taking any action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV

It is further ordered that this order shall not be construed to prevent Respondent from:

A. Exercising rights guaranteed against infringement by the First Amendment of the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding; or

B. Reporting to appropriate governmental authorities any act or practice that it in good faith believes is a violation of federal or state laws or regulations, along with the basis for such belief.

V

It is further ordered, that respondent shall:

A. Within sixty (60) days after this Order becomes final, send by first-class mail the letter attached hereto as Attachment A, an application for membership, and a copy of this Order and the complaint to each optometrist who has been suspended from membership, whether permanently, temporarily, or indefinitely, because of his or her "mode of practice;" offer to reinstate any such optometrist's membership; and if any optometrist so desires, reinstate such membership within thirty (30) days after the application is returned;

B. Within sixty (60) days after this Order becomes final, send by first-class mail the letter attached hereto as Attachment B to every optometrist who is licensed to practice in the State of Oklahoma;

C. For a period of seven (7) years after this Order becomes final, provide each applicant for membership in Respondent Oklahoma Optometric Association with a copy of this Order and the complaint;

D. Within sixty (60) days after this Order becomes final, publish a copy of this Order and the complaint in "Oklahoma OD," the Respondent's newsletter, or in any successor publication, with the same prominence as regularly published feature articles:

E. Within ninety (90) days after this Order becomes final, remove from its Code of Ethics, Rules of Practice, Constitution, bylaws, and any other existing policy statement or guideline of Respondent, any provision, interpretation or policy statement that is inconsistent with Part II of this Order, or amend any such inconsistency in such a manner as to eliminate the inconsistency so that the amended language does not violate the prohibitions contained in this Order, and, within one hundred and twenty (120) days after this Order becomes final, publish in the "Oklahoma OD," or in any successor publication, notice of the removal or amendment of any such provision, interpretation, or policy statement;

F. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

G. For a period of seven (7) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order, including, but not limited to, the rendering of any advice or interpretation with respect to any advertising or franchise arrangement involving any optometrist; and

H. Within one (1) year after this Order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with any activity covered by Part II of this Order, including, but not limited to, any advice or interpretation rendered with respect to any advertising or franchise arrangement involving any optometrist.

VI

It is further ordered, that respondent shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution or reorganization resulting in the emergence of a successor corporation, association, or other entity or any other change in the respondent which may affect compliance obligations arising out of this Order.

Attachment A

Dear Dr. ————:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or operating a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement, or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from operating a branch office, and that we may not restrict optometrists from engaging in any form of advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the term of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards, we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Accordingly, you have a right to reinstatement of your membership in the Oklahoma Optometric Association. If your wish to reinstate your membership, please fill out the enclosed application form and return it to the Association.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title),

Oklahoma Optometric Association.

Attachment B

Dear Dr. ————:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or operating a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement, or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from operating a branch office, and that we may not restrict optometrists from engaging in any form of advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the term of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards, we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Consequently, membership in the Oklahoma Optometric Association is now open to any optometrist licensed in the State of Oklahoma, regardless of any affiliation with a franchisor or franchisee of optical goods and devices, or the structure or location of his or her practice, or the optometrist's decision to engage in truthful advertising.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title),

Oklahoma Optometric Association.

Oklahoma Optometric Association

[Docket No. 9191]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Oklahoma Optometric Association.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

The Commission issued a complaint against the Oklahoma Optometric Association ("the Association") on February 28, 1985. The complaint charged the Association with unlawfully restricting the development of innovative forms of competition among optometrists in the State of Oklahoma in violation of section 5 of the Federal Trade Commission Act. The complaint alleged that the Association unlawfully prohibited its members from: (1) Entering into franchise arrangements for the sale of optical goods and devices; (2) providing optometric services from a separate or branch office; and (3) engaging in certain kings of truthful advertising, non-deceptive marketing, and other forms of dissemination of truthful information to consumers. The complaint further charged that the effect of the Association's conduct has been to suppress competition in the delivery of optometric services and the sale of optical goods and devices and to injure consumers.

The Association is a professional association of optometrists who practice in Oklahoma. It has approximately 300 members, constituting approximately 90 percent of the practicing optometrists in Oklahoma. Membership in the Association entitles optometrists to a variety of benefits, such as the right to become a member of the American Optometric Association, the major national association for optometrists, and the right to attend continuing education programs necessary for licensure. According to the complaint, the Association's members are in competition with each other.

The complaint alleged that the Association has declared that optometrists who are affiliated with franchise arrangements for the sale of optical goods and devices are engaged in an unethical and objectionable mode of practice and has summarily suspended such optometrists from membership, despite having no reasonable basis to believe that they have engaged in deceptive practices or that they have violated Oklahoma law. The complaint also alleged that various provisions of the Association's rules and ethical code have unreasonable restrained competition and injured consumers by inhibiting the development of retail optical franchise arrangements and branch offices and by restricting truthful advertising.

The complaint alleged that the Association's conduct has injured competition and consumers in several ways. First, it has frustrated and restrained competition in the delivery of optometric services and the sale of optical goods and devices on the basis of price, service, and quality. Second, it has deprived consumers of the potential cost savings, convenience, and efficiency benefits of retail optical franchise arrangements and separate or branch offices in their purchases of optometric services and optical goods and devices. Third, it has deprived consumers of the benefits of truthful information about the availability of optometric services and optical goods.

The Proposed Consent Order

The consent order is designed to remedy the violations charged in the Commission's complaint and to prevent the Association from engaging in similar allegedly illegal acts and practices in the future. The proposed order is intended to ensure that the Association ceases all conduct restricting: (1) Franchise arrangements for the sale of optical goods and devices, (2) the operation of branch offices by optometrists, or (3) truthful advertising by optometrists. It is also intended to ensure that optometrists in Oklahoma are made aware that these practices are no longer prohibited by the Association.

Part I of the proposed order contains definitions of various terms used in the order. Part II prevents the Association from: (1) Prohibiting, restricting, or restraining any optometrist from affiliating with a franchise arrangement for the sale of optical goods and devices; (2) prohibiting, restricting, or restraining any optometrist from maintaining a separate or branch office; and (3) restricting, regulating, interfering with, or advising against advertising or disseminating the prices or availability of, or other information about, optometric services or optical goods and devices.

Part II of the consent order also provides that the Association is not prohibited from formulating and enforcing reasonable ethical guidelines with respect to advertising that it reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or with respect to uninvited, in-person solicitation of patients who are vulnerable to undue influence.

Part III of the proposed order requires the Association to provide persons alleged to have violated the Association's rules or ethical guidelines with certain procedural protections, including written notice of the allegations and an opportunity to respond to them.

Part IV provides that the order does not prevent the Association from exercising its First Amendment rights to petition the government or to participate in administrative or judicial proceedings or from reporting to appropriate governmental authorities acts or practices that it in good faith believes to be violations of law.

Part V of the proposed order requires the Association to send a copy of the order to the members it has suspended because of their mode of practice and offer to reinstate their membership. It further provides that the Association must notify all currently licensed Oklahoma optometrists of the terms of the order both by mail and by publishing the order in its newsletter and furnish all applicants for membership in the Association with copies of the order for a period of seven years after the order becomes final. The texts of the required notices are contained in Attachments A and B to the proposed order. Part V also requires the Association to modify its rules and ethical code to delete provisions that are inconsistent with the terms of the proposed order.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way its terms.

Emily H. Rock
Secretary.

[FR Doc. 85-21823 Filed 9-11-85; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 9-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a new system of records entitled the "General Files System of the Office of the Attorney General (JUSTICE/OAG-001)" from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), and (g) of the Privacy Act, 5 U.S.C. 552a. The records contained in this system relate to official investigations and to internal policy decisions. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633–4414.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "General Files System of the Office of the Attorney General (JUSTICE/OAG–001).".

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended to add § 16.70 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.70 to read as follows:

§ 16.70 Exemption of the Office of the Attorney General System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files System of the Office of the Attorney General (JUSTICE/OAG–001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidener, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might comprise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of the criminal. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations of duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85–21837 Filed 9–11–85; 8:45 am]

BILLING CODE 4410–01–M

---

28 CFR Part 16

[AAG/A Order No. 10–85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to revise 28 CFR 16.71 by redesignating certain systems of records to accomplish consistency with reorganizations and by making necessary editorial changes. The changes are made to achieve clarity and consistency for the public. The Department also proposes to exempt two systems of records from certain Privacy Act provisions. The "General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG–013)" will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), and (g) of the Privacy Act, 5 U.S.C. 552a. The records contained in this system relate to official investigations and to major policy issues. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations. The "Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011)" will be exempted from subsections (d)(1) and (e)(1) of the Privacy Act. The exemption is needed to protect the identities of confidential sources and to ensure the unhampered collection of information for investigative and evaluative purposes concerning the subject's candidacy for the position of attorney.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave, NW, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633–4414.

SUPPLEMENTARY INFORMATION: The Office of the Deputy Attorney General (ODAG) is revising paragraph (a) of § 16.71 to remove a system and to correct other system number identifiers so that they are consistent with a reorganization of functions and with the respective system notices as currently published in the **Federal Register** (45 FR 60303). By Attorney General Order No. 945–81, dated May 26, 1981, the management roles of the Deputy Attorney General and the Associate Attorney General were restructured, and the Office of Legal Policy (OLP) was established. As a result, a system of records now identified as "United States Judges Records System (JUSTICE/DAG–014)" is removed from § 16.71(a) and redesignated under a new section, § 16.73, as "United States Judges Records System (JUSTICE/OLP–002);" and other system number identifiers in this section are renumbered. In addition, the ODAG is revising paragraph (a) to exempt a system of records entitled "Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011)" from certain Privacy Act provisions. This system was last published in the **Federal Register** on December 9, 1981 (46 FR 60310). Finally, the ODAG is adding a new paragraph (c) to exempt the "General Files System of the Office of Deputy Attorney General (JUSTICE/DAG–013)" from certain provisions of the Act. In the notice section of today's **Federal Register**, the Department of Justice provides a description of this system.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR 16.71 is revised as set forth below.

Dated: May 24,1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16, is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by revising § 16.71 to read as follows:

§ 16.71 Exemption of the Office of the Deputy Attorney General System—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG–002).

(2) Assistant United States Attorneys Applicant Records System (JUSTICE/DAG–003).

(3) Presidential Appointee Candidate Records System (JUSTICE/DAG–006).

(4) Presidential Appointee Records System (JUSTICE/DAG–007).

(5) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG–008).

(6) Miscellaneous Attorney Personnel Records Systems (JUSTICE/DAG–011).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a Presidential appointee, Assistant U.S. Attorney, or Department attorney position. Access could reveal the identify of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluating purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files Systems of the Office of the Deputy Attorney General (JUSTICE/DAG–013).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personnel privacy of third parties who are involved in a certain investigation. Amendment of the records would interfer with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the

existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (j) and (k) of the Privacy Act.

[FR Doc. 85-21838 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

---

28 CFR Part 16

[AAG/A Order No. 11-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt two systems from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. They are the "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)" and the "Drug Enforcement Task Force Evaluation and Reporting System of the Office of Associate Attorney General (JUSTICE/AAG-002)." Records contained in these systems relate to official investigations and to internal policy decisions. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave, NW, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633-4414.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)" and the "Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE-AAG-002)."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16 is amended to add § 16.72 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.72 to read as follows:

§ 16.72 Exemption of Office of the Associate Attorney General System—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files Systems of the Office of the Associate Attorney General (JUSTICE/AAG-001).

(2) Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002).

The exemptions for the General Files System apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). The exemptions for the Task Force System apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because these systems are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations of duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because these systems are exempt from the access provisions of subsection (d)

pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because these systems are exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85-21839 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

---

28 CFR Part 16

[AAG/A Order No. 12-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to redesignate two Privacy Act systems of records and publish them under a new 28 CFR Section, § 16.73. They are the "Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001)" and the United States Judges Records System (JUSTICE/OLP-002)." These redesignations are made to accomplish consistency with reorganizational changes and have no effect on the public. In addition, the Department proposes to exempt the Appeals Index system from subsections (d) (1), (2), (3) and (4); (e) (1) and (2), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. Information in this record system relates to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations, the privacy of third parties, and the identities of confidential sources involved in such investigations.

The Department also proposes to exempt a new system, the "General Files System of the Office of Legal Policy (JUSTICE/OLP-003)," from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act. The records contained in this system relate to official investigations and to major policy issues. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave., NW Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633-4414.

SUPPLEMENTARY INFORMATION: OLP is establishing a new section, § 16.73. By Attorney General Order No. 945-81, dated May 26, 1981, the management roles of the Deputy Attorney General and the Associate Attorney General were restructured, and OLP was established. Paragraphs (a) and (b) of this section exempt from certain Privacy Act provisions a system of records entitled "Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001)," now under the management of OLP as a result of Attorney General Order No. 945-81. Paragraphs (c) and (d) of this section are merely a republication of an exempt system of records currently identified in § 16.71 as "United States Judges Records System (JUSTICE/DAG-014)." JUSTICE/DAG-014 is being removed from § 16.71 and reprinted in § 16.73 as "United States Judges Record System (JUSTICE/OLP-002)" since the system is now under the management of OLP. The "Freedom of Information and Privacy Appeals Index" was last published in the **Federal Register** on February 4, 1983 (48 FR 5368); in the notice section of today's **Federal Register**, the Department of Justice provides a description of the "United States Judges Records System" and the "General Files System of the Office of Legal Policy."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16 is amended to add § 16.73 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.73 to read as follows:

§ 16.73 Exemption of Office of Legal Policy System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (d) (1), (2), (3) and (4); (e) (1) and (2), (e)(4) (G) and (H), (e)(5); and (g):

(1) Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d) (1), (2), (3) and (4) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(2) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(3) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(4) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(5) From subsection (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(c) The following system of records is exempt from 5 U.S.C. 552a (d)(1) and (e)(1):

(1) United States Judges Records System (JUSTICE/OLP-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would restrict the free flow of information vital to the determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may seem irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment.

(e) The following system of records is exempt from U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files System of the Office of Legal Policy (JUSTICE/OLP-003).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85-21840 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD9-85-017]

Special Anchorage Area; Neenah Harbor, Neenah, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal by the Neenah, Wisconsin Harbor Commission to establish a second Special Anchorage Area in the Northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center. A lack of mooring space for vessels with drafts from 3.5' to 5' in Neenah Harbor creates the need for designating this area as a vessel anchorage to accommodate these type vessels.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be mailed to Commander, Ninth Coast Guard District (mpes), 1240 East Ninth Street, Cleveland, Ohio, 44199. The comments and other materials referenced in this notice will be available for inspection and copying at Marine Safety Division, Room 2019, 1240 East Ninth Street. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns, 1240 East Ninth Street, Cleveland, Ohio 44199 Telephone (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD9-85-017) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to

make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are ENS George H. Burns III, Marine Port and Environmental Safety Board, project officer and LCDR M. A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Neenah Harbor Commission, in Neenah, Wisconsin, has requested that a Special Anchorage Area be designated in the northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center. The requested Special Anchorage Area is for up to fifteen sailboats, typically with 3.5 to 5 foot drafts, ranging in length up to at least 30 feet. Excluding the navigation channel, this is one of the few areas of the harbor with sufficient depth for this type of boat. Such boats have, in fact, anchored in this area during the summer months for at least the last ten years. According to the Neenah Harbor Commission, the Theda Clark Regional Medical Center has offered no opposition to the city's proposal. Access to the area is through a public walkway leading from the end of Clark Street. Approval of this project was given by the Neenah City Council at its regular council meeting on September 19, 1984. Use of the proposed Special Anchorage Area will be for the general public. This area will be under the administration of the Neenah Harbor Commission.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal was approved by the Neenah, Wisconsin City Council on 19 September 1984. Additionally, vessels have used this area as an anchorage for many years.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. 33 CFR Part 110 is amended by revising § 110.79a to read as follows:

§ 110.79a Neenah Harbor, Neenah, Wisconsin.

(a) *Area 1.* The area of Neenah Habor south of the main shipping channel within the following boundary: A line beginning at a point bearing 117.5°, 1,050 feet from the point where the southeasterly side of the First Street/Oak Street Bridge crosses the south shoreline of the river; thence 254°, 162 feet; thence 146°, 462 feet; 164°, 138 feet; 123°, 367 feet; 068°, 400 feet; 044°, 400 feet; thence 320°, 107 feet; thence 283°, 1,054 feet to the point of beginning.

(b) *Area 2.* Commencing at a point where the west line of Second Street extended meets the north edge of the harbor, thence south to intersect the north edge of the private mid river channel at latitude 44° 11′ 04.2″ North, longitude 88 27′ 13.2″ West, thence northwesterly to a point at latitude 44° 11′ 06.3″ North, longitude 88° 27′ 16.4″ West, thence north to the easterly end of the Neenah Dam Spillway.

Note.—An ordinance of the city of Neenah, Wis., requires approval of the Neenah Police Department for the location and type of individual moorings placed in this special anchorage area.

Dated: August 30, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District

[FR Doc. 85–21832 Filed 9–11–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–2896–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking; extension of the public comment period.

SUMMARY: On July 11, 1985 (50 FR 28224), USEPA proposed rulemaking on a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to rules developed to satisfy the reasonably available control technology (RACT) requirements for sources of volatile organic compounds (VOC) which are covered by USEPA's second set of Control Techniques Guidelines (CTGs). USEPA's action was based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA proposed to approve a portion of the Illinois submittal, to disapprove a portion, and to disapprove the Illinois Part D stationary source control strategy for ozone due to Illinois' failure to adopt adequate RACT rules for several required source categories. At the request of the State of Illinois and several other commentors, the public comment period is being extended until September 26, 1985, to allow additional time to develop comments on the complex issues presented in the proposed rulemaking.

DATE: Comments must be received on or before September 26, 1985.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch Region V, US Environmental Protection Agency (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886–6035.

Dated: August 23, 1985.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 85–21810 Filed 9–11–85; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[Region II Docket No. 55; A–2–FRL–2893–5]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces that, under the provisions of the Clean Air Act, the Environmental Protection Agency is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for particulate matter, which was submitted by the State.

The revision consists of a change in the procedure used by New Jersey to test the opacity level of the exhaust emitted from buses. It also provides full self-inspection privileges to the New Jersey Transit Corporation and its fully owned subsidiaries, and partial self-inspection privileges to all other bus operators.

DATE: Comments must be received by October 15, 1985.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State's submittal are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

New Jersey Department of Environmental Protection, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

I. Background

The New Jersey Department of Environmental Protection (NJDEP) adopted as a part of the New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 14 (Subchapter 14) a standard for the inspection and the control of smoke from diesel-powered trucks and diesel-powered buses. Subchapter 14 entitled, "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles," has been in effect since June 18, 1971. The diesel-powered vehicle inspection program, as contained in Subchapter 14, is included in the New Jersey State Implementation Plan (SIP) for particulate matter. Although the SIP did not quantify the effectiveness of the program as part of its demonstration of attainment and maintenance of the particulate matter standards, this program does promote reductions in emissions.

All areas of New Jersey are currently classified as attaining the primary national ambient air quality standards for particulate matter except for Jersey City and Camden, which are classified as "cannot be classified" with regard to attainment of the primary standards. New Jersey is not in attainment of the secondary particulate matter standards in nine communities of the State.

On March 20, 1984 (49 FR 10408) the Environmental Protection Agency (EPA) proposed revisions to the particulate matter standards. These revisions, if adopted, change the primary standards that are currently measured as total suspended particulates to standards that consider only those particulates with an aerodynamic diameter smaller than or equal to 10 micrometers (PM_{10}). Particulates emitted from diesel-powered buses generally are below 10 micrometers. Therefore, a diesel-powered bus inspection program could become an even more important instrument to attain and maintain the proposed PM_{10} standards.

II. Summary of Proposal

On February 21 and March 14, 1985, NJDEP submitted a revision to its SIP for particulate matter. The revision changes the procedure used to test the opacity level of the exhaust from buses. The previous test procedure for buses called for the vehicle to be driven with a smokemeter atached to its exhaust tailpipe. A smokemeter was used to measure smoke opacity.

This test procedure proved adequate until problems were encountered with many new buses since they are equipped with vertical exhaust stacks instead of horizontal tailpipes. The vertical stacks are not readily accessible for installation of the smokemeter. The possibility of using ladders for attaching the smokemeter to the exhaust outlet was unacceptable to the bus operators due to liability problems. The inspections are performed at the operator's facilities.

Due to the problems encountered with vertical exhaust stacks, NJDEP has revised its current dynamic testing procedures to a static test procedure. Instead of testing the vehicle while being driven with rapid acceleration (acceleration test), the new method simulates acceleration while maintaining a stationary position (standing acceleration test). Extension handles will be used to position the smokemeter against the vertical exhaust outlet. Due to the revised testing method, NJDEP has lowered the current opacity standard of 40% to 12%. NJDEP arrived at the revised opacity standard of 12% by correlating the previous and revised procedures with failure rates at various smoke opacities. The new test procedures for buses have been adopted in the New Jersey Administrative Code, Title 7, Chapter 27B, Subchapter 4, Section 4 entitled, "Smoke Opacity Testing Procedure for Diesel-Powered Autobuses Subject to the Inspection Rules and and Regulations of the New Jersey Department of Transportation". The test procedures from Chapter 27, Subchapter 14 have been revoked.

The New Jersey Department of Transportation (NJDOT) used to be responsible for performing semiannual inspections. However, due to staff reductions within NJDOT, NJDEP is allowing the New Jersey Transit Corporation (NJT) and its wholly-owned subsidiaries to fully self-inspect their buses. In addition, all other bus operators now have the authority to perform self-inspections for one of the two inspections that are required each year. NJDOT will perform the second inspection. This transfer of authority became effective October 17, 1983, through amendments adopted to New Jersey Administrative Code, Title 16, Chapter 53, Subchapter 3 entitled, "Autobus Specifications".

NJDEP does not anticipate any change in air quality with the adoption of the standing acceleration test procedure and the 12% opacity standard. The lower opacity standard compensates for the change in testing procedure and should be equivalent in stringency to the current procedure and standard.

Through NJDOT audit of opacity inspections, NJDEP does not expect any significant deterioration in air quality from the self-inspection privileges allowed to NJT and all private owner operators.

III. Conclusion

EPA is proposing to approve this SIP revision. The revision incorporates amendments to State regulations into the SIP. It provides for the continuance of New Jersey's heavy-duty diesel-powered vehicle inspection program. This program provides a useful method of identifying vehicles that are not functioning correctly and contributes to the attainment and maintenance of air quality standards. The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of the Clean Air Act, as amended.

EPA is soliciting comments only on the material discussed in today's notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: July 16, 1985.

Herbert Barrack,

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 85–21813 Filed 9–11–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–18, Notice 27]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose several changes in Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, to permit greater flexibility in the illumination and identification of controls and displays. It proposes to allow gauges to have a two-level lighting intensity, rather than being continuously variable over a wide range. It proposes to distinguish between critical telltales, such as the turn signal indicators, which must be visible under all lighting conditions, and less significant telltales, such as the water temperature indicator, which would be permitted the same range of intensity as gauges. The term "informational readout display" would be eliminated as no longer useful. To accommodate new display technologies, the notice proposes to permit the cancellation of messages, but would require them to be retrievable by the driver. A display that automatically flashes messages in sequence would be prohibited. It proposes to permit the use of specified words to identify controls, as an alternative to the symbols now required for many controls, and would permit the use of symbols substantially similar to those specified. The action was initiated in response to several petitions for rulemaking.

DATES: Comments must be submitted by October 28, 1985. The proposed effective date for an amendment to prohibit automatic sequencing of displays is September 1, 1988. The proposed date for all other amendments is 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Neill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1750).

SUPPLEMENTARY INFORMATION: Standard No. 101, *Controls and Displays*, specifies requirements for the accessibility, identification and illumination of controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses. The purpose of the standard is to ensure that motor vehicle controls and displays can be seen and reached by the driver and to ensure that they can be quickly identified and selected by the driver in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

Since 1980, when the last major revision of Standard No. 101 took effect, significant changes have occurred in a number of areas affecting the design and application of controls and displays. Electronic technology has developed very rapidly for both controls and displays and has become a major factor in most new vehicle designs. At the same time, the market for automobiles has increasingly become a "world" market, with the result that there are greater incentives to produce vehicle designs which can be sold throughout the world.

These changed circumstances and other factors have led vehicle manufacturers to submit several petitions for rulemaking requesting amendments to Standard No. 101. BMW, BL Technology and Volkswagen have each submitted one petition, and General Motors (GM) has submitted two. (The petitions submitted by GM are hereafter referred to as the GM I and GM II petitions.) The petitions request various amendments to the standard to increase technological and design flexibility.

NHTSA has previously granted these petitions for rulemaking, either by Federal Register notice or by letter. The agency has addressed some of the issues raised by the petitions in two notices of proposed rulemaking (NPRM's) published in 1982, a final rule published on July 27, 1984 (49 FR 30191), and a final rule responding to petitions for reconsideration published on June 4, 1985. As discussed in the two final rules, NHTSA's analysis of the petitions for rulemaking and comments on the two NPRM's prompted the agency to conduct an overall examination of issues related to Standard No. 101, with the expectation that an additional NPRM would be issued. This notice, the product of that examination, proposes a number of amendments to the lighting intensity and identification requirements of the standard.

Light Intensity Requirements

The lighting intensity requirements of Standard No. 101 and their application to new types of displays have prompted a number of questions. The essential purpose of the requirements is to ensure that a driver is able to see the controls and displays necessary to operate the vehicle safely under all ambient lighting conditions. A secondary purpose, however, is to ensure that the vehicle's internal lighting will not be so intense under nighttime conditions as to interfere with the driver's view of the road. There has often been tension between these purposes, as documented by the agency's attempts in successive rulemaking proposals to establish requirements that will serve both the need for visibility and the need to avoid glare from overly bright displays or other light sources in the passenger compartment.

One means selected to reconcile these needs has been to provide different intensity requirements for telltales than for gauges. Under the standard, a "telltale" is defined as a display that indicates, by means of a light-emitting signal, the actuation of a device, existence of a correct or defective condition, or of a failure to function. Telltales indicate such things as brake failure, unfastened safety belts, and activated high beams. The term "gauge" is defined as a display listed in the standard (S5.1 or Table 2) that is not a telltale. Gauges include such things as the speedometer, odometer, and fuel level.

As amended in 1978, the standard provides that light intensities for gauges and their identification must be continuously variable from a position at which either there is no light emitted, or the light is barely discernible to a driver who has adapted to dark ambient roadway conditions, to a position providing illumination sufficient for the driver to identify the display readily under conditions of reduced visibility. In contrast, the light intensity of each telltale must not be variable and must be such that, when activated, the telltale

and its identification are visible to the driver under all daytime and nighttime conditions.

To accommodate new display technologies, the 1978 amendment defined a new type of display, an "informational readout display" (IRD). An IRD is a special type of display which uses any of various technologies, such as light-emitting diodes or liquid crystals, and which may display one or more than one type of information or message. Among its attributes, an IRD is required to have at least two levels of lighting intensity, a higher level for daytime and a lower level for night. Unlike non-IRD gauges, it is not required to have intermediate lighting intensities.

It was anticipated that IRD's would incorporate gauges of various kinds. A gauge may be incorporated into an IRD if the IRD has continuously variable lighting. A telltale, on the other hand, presents a conflict for the manufacturer who might wish to include it in an IRD. A telltale is required to have an invariable intensity, whereas the IRD is required to have at least two. One common approach to the development of IRD's incorporates a single light source for the display. A single source cannot be both variable and invariable, so that the manufacturers have encountered a regulatory barrier to the incorporation of telltales into IRD's.

In response to a petition from General Motors on this subject (GM I), the agency issued a notice of proposed rulemaking in 1982 in which it proposed to allow two levels of intensity for telltales and gauges incorporated into IRD's. For the reasons discussed at greater length in the final rule published on June 4, 1985, the agency has decided not to adopt the proposed amendments. Instead, it has conducted a reexamination of the safety functions performed by gauges and telltales to determine the lighting intensity requirements appropriate for each.

In addition to the issues raised by the GM I rulemaking,the agency has also considered the issues presented by BMW relating to the use of a single space, such as a small TV screen, to display a variety of messages. The inclusion of telltales among these messages presents issues analogous to those involving lighting intensity: Must a telltale be displayed at all times, or may it be held in a queue while other messages are displayed? If it is permitted to be held, what information should the driver have about the existence of a telltale message, and what control should there be over its visibility?

The following discussion takes the approach of first presenting the agency's tentative evaluation of what requirements are necessary to meet the need for safety in a particular area, then providing a comparison of those requirements with the standard's current requirements, and finally discussing the proposed requirements more specifically with respect to the GM I and BMW petitions for rulemaking and existing vehicle designs.

A. Light Intensity Requirements for Gauges

Overview

The agency has tenatively concluded that adequate visibility and the avoidance of glare from gauges would be ensured by the following requirements:

(a) Means shall be provided for making gauges and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark embient roadway conditions,

(2) May be operable manually by the driver, automatically or both and

(3) May have levels of brightness at which those items and their identification are not visible.

(c) If the level of brightness is adjusted automatically a means shall be provided to enable the driver to override the adjustment.

Discussion

The proposal would eliminate the requirement that the lighting intensity for gauges must be continously variable over a broad range. The proposed requirements would ensure that drivers are capable of seeing their gauges under all driving conditions, i.e., bright sunlight, darkness, and the diminished light of dawn and dusk. Depending on the design, drivers might find it necessary at times to take some action, such as adjusting a control, in order to be able to see their gauges. Since drivers are accustomed to gauges always being activated when the ignition is on, drivers are likely to take note when they are unable to see a gauge and be motivated to take whatever action is necessary to achieve visibility. As a result, the agency does not believe that drivers will inadvertantly drive with their gauges not visible. For example, drivers must typically turn a rheostat control on conventional instrument panels in order to be able to see their gauges at night. For a gauge using electronic technology where the display information is self-illuminated, drivers might at times find it necessary to turn a knob increasing brightness in order to see the gauge during bright sunlight.

The purpose of the requirement in (c) would be to prevent a driver from having difficulty seeing gauges when driving with headlamps on in the daytime. It is current practice in the design of electonic displays to provide two levels of illumination which are controlled by means of the headlamp switch: headlamps off—daytime level (relatively bright), headlamps on—nighttime level (less bright). A limitation of this arrangement, however, is that the display illumination is switched from the daytime to the nighttime level whenever the headlamps are turned on, regardless of whether it is night or day. When the headlights, and thus the less bright level of display illumination intensity intended for night driving, are activated during the day, the result may be that the display would not be visible to the driver.

Driving with headlamps on during the daytime is not an infrequent occurrence, even in the presence of bright sunlight. If a person driving under such circumstances were in a vehicle with the display illumination controlled by the headlamp switch, one way of increasing the visibility of the gauges would be simply to turn off the headlamps. In some situations, however, such as driving during daytime rain showers, or at dawn or dusk, turning off headlamps could create safety problems. Therefore, the agency would not consider it appropriate to confront drivers with the necessity of choosing between seeing their gauges or turning off their headlamps. A simple way to solve this potential safety problem is for the manufacturer to provide a control that enables the driver to override the effect of the headlight control on the display illumination level.

The agency tentatively concludes that requiring these two levels of brightness would encourage manufacturers to insure that drivers will be able to avoid glare. The agency believes that this reqiurement would be appropriate for both electronic displays and conventional displays. For electronic displays, several manufacturer comments on the 1982 NPRM emphasized that an illumination level sufficient to be visible during the daytime would result in glare at night. For conventional displays, where illumination is only needed when headlamps are needed, usually at night, a single level of brightness that is sufficient to provide visibility around dawn or dusk could cause glare at night.

The agency believes that a requirement for a second, lower level of brightness would enable manufacturers to design displays that would avoid glare at night. The different levels could be provided either automatically, or through manual means operable by the driver or both. In the interest of avoiding glare, the lower intensity level proposed by this notice is the same as that currently applicable to variable-intensity systems. Comments are invited as to the advisability of requiring the lower level to be barely discernable to a driver whose eyes have adjusted to dark embient roadway conditions.

B. Light Intensity Requirements for Telltales

Overview

The agency has tentatively concluded that adequate visibility would be ensured for telltales by the following requirement:

1. (a) Means shall be provided that make the telltales for brakes, high beams, turn signals and seat belts and the identification for those telltales visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable to produce different levels of brightness, but may not be adjustable to levels of brightness at which those telltales and their identification are not visible under all driving conditions.

2. (a) Means shall be provided that are capable of making the telltales, other than those for brakes, high beams, turn signals and seat belts, and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable to produce different levels of brighness, including levels at which those telltales and their identification are not visible under all driving conditions.

While all of the telltales listed in Standard No. 101 are believed to be related to safety, the significance of that safety relationship is greater for some than for others. These requirements would ensure that what the agency tentatively considers to be the four most important safety telltales are visible to the driver under all driving conditions. Those telltales are the ones for brakes, safety belts, turn signals and high beams. The brake telltale is perhaps the most important safety telltale, since it warns of brake failure. The importance of the safety belt telltale is that it reminds the driver of the importance of wearing safety belts, the single most effective means of protection for vehicle occupants in an accident. Similarly, the turn signal telltale alerts the driver to turn signal malfunction, another factor that could lead to accidents. Visibility of the turn signal telltale is particularly important since drivers of other vehicles can be misled and become involved in accidents as a result of turn signals that have been inadvertenly left on. Visibility of the high beam telltale is particularly important since high beams inadvertently left on can cause serious glare problems for other drivers.

The other telltales listed in Standard No. 101 include hazard warning, fuel level, oil pressure, coolant temperature, and electrical charge. The proposed requirements would ensure that means are provided that are capable of making these other telltales visible to the driver under all driving conditions. However, these telltales would no longer be required to be automatically visible under all conditions. The means for providing the required visibility could be adjustable to create different levels of brightness, including levels at which the telltales are not visible.

Discussion

Issues relating to visibility and glare are somewhat different for telltales than gauges. While gauges are ordinarily activated whenever the ignition is on, most telltales are only rarely activated. This results in two consequences. First, if the brightness of a telltale can be adjusted down to a level where it would not be visible under all driving conditions, there would be a potential that the driver could inadvertently drive with the telltale not visible when actuated. This is not likely to occur with gauges, since the fact that they are ordinarily activated will cause a driver to take note if he or she cannot see a gauge. The second consequence is that glare at night does not pose the same safety problems for telltales as gauges, in that most telltales specified by Standard No. 101 are not continuously actuated.

In reevaluating the minimum performance requirements for telltales, the agency took note of several issues which have been raised by petitioners and commenters concerning application of various new technologies. First, some applications of electronic technology require that light intensity be the same for both telltales and gauges incorporated into the same display. As noted above, the system discussed in the GM I petition is an example of such an application. Several gauges and telltales are incorporated into one large electronic panel, with each gauge and telltale occupying its own physical space on the panel. The entire electronic panel is illuminated by a single light source. While light from that source is applied to gauges whenever the ignition is on, the light is applied to telltales only when the various underlying conditions for activating particular telltales are present. Since the same light source is used for both telltales and gauges, and since a single light source cannot be both variable and invariable at all times, it is necessary that the light intensity for both types of displays be either variable or invariable. For example, petitioners have indicated that it is not possible, using currently available technology, to design these panels to provide variable light intensity for gauges and single level light intensity for telltales.

Second, a requirement that telltales be visible under all driving conditions may prevent such telltales from being incorporated into the same electronic display as gauges, using some applications of technology. Manufacturer commenters have indicated that they have not been able to develop photosensitive devices which reliably sense daytime and nighttime conditions. In the absence of such devices, the effect of the requirements proposed in Notice 21 is that telltales must be visible to a driver under all driving conditions when the telltale is adjusted to its lowest level of brightness. According to manufacturer commenters, the lowest level of brightness which would ensure visibility of a telltale during daytime conditions could cause glare during nighttime driving. While such glare might not create a safety problem with respect to telltales, since most telltales are not ordinarily activated, glare could be a problem for gauges which are incorporated into the same electronic display and which may necessarily have the same light intensity.

The proposed distinction between the four most significant telltales and the lesser telltales would allow the manufacturers to group the lesser telltales with gauges in a combined display. The same lighting intensity requirements would apply to gauges as to the lesser telltales, so that a single light source could be used for both. The agency recognizes, for the reasons discussed above, that manufacturers may not in fact be able, using some applications of technology, to place the four most significant telltales in the same electronic display as gauges. To the extent that this result occurs, NHTSA believes that it is justified by safety need. The agency would not consider it appropriate to permit situations where drivers could drive with their most safety significant telltales not visible. It is possible that

manufacturers may be able to develop better photosensitive devices or use filters to solve this problem.

The agency expects that manufactures will find various ways to reduce the possibility of drivers inadvertently driving with the lesser telltales not visible. For example, incorporating these telltales in the same display as the speedometer would make it less likely that the telltales would be turned off, since drivers would likely adjust the brightness level to see the speedometer. Given that the safety significance of these telltales is less than that of the four discussed above, the agency believes that somewhat less stringent requirements are appropriate for these telltales.

The standard currently requires that the light intensity of telltales be invariable and be such that, when activated, the telltale and its identification are visible to the driver under all daytime and nightime conditions. The agency has tentatively concluded that variations in lighting intensity can be permitted, even with respect to the four principal telltales, so long as those telltales remain visible under all ambient lighting conditions. The proposed amendments would therefore permit the four principal telltales to vary in intensity. Other telltales specified by standard No. 101 could be adjusted downwards to the point of not being visible, so long as they are capable of being made visible under all conditions.

In view of the amendments proposed to the lighting intensity requirements for gauges and telltales, the utility of maintaining separate specifications for IRD's is substantially diminished. If the amendments are adopted as proposed, the manufacturers will be able to combine displays without resorting to the IRD provisions. In view of the frequent difficulty in ascertaining whether a particular combination is or is not an IRD, the agency has tentatively concluded that the term should be eliminated as having no further utility in the standard and accordingly proposes to delete it.

C. Other Light Intensity Requirements

NHTSA is proposing to amend Standard No. 101's light intensity requirements in two additional areas. First, the agency is proposing the same light intensity requirements for control identification as are being proposed for gauges. Issues concerning the light intensity for controls, including both visibility and avoidance of glare, are largely the same as for gauges. The standard's current light intensity requirements for controls are the same as for gauges. Some applications of electronic technology may involve placing controls into the same electronic display as gauges and telltales. For example, a driver might touch a screen something like a television picture to activate a control. The changes proposed by this notice will help facilitate such applications of new technology.

The second area concerns the light intensity of illuminations provided in the passenger compartment other than those for controls and displays listed in Standard No. 101. The standard currently requires that any illumination that is provided in the passenger compartment when and only when the headlights are activated must be variable in the same manner as that for controls and displays, i.e., continuously variable or, in the case of IRD's, must have at least two light intensities, a higher one for daytime and a lower one for nighttime conditions. The purpose of this requirement is to facilitate the avoidance of glare and to provide for the visibility of any information a driver may need. The agency is proposing two changes in these requirements.

The issues concerning glare are the same for these illuminations as for gauges. Therefore, the agency is proposing the same light intensity requirements for any illumination within the driver's field of view as it is proposing for gauges, i.e., at least two levels of brightness.

Many applications of electronic technology involve illumination in the passenger compartment at night whenever the ignition is on even though the illumination is not provided when and only when the headlights are activated. For example, clocks using light-emitting diodes involve illumination whenever the ignition is on, whether or not the headlights are activated. These types of illuminations may cause the same glare problems as illuminations provided when and only when the headlights are activated. The agency is therefore proposing to extend the requirements of this section to cover these types of illumination.

D. Multi-Message Displays

Overview

Applications of electronic technology in which more than one telltale may occupy the same space raise an additional safety issue. Some method of cancellability or sequencing is necessary in such a system to ensure that the driver can obtain all information. The issue is whether cancellability or sequencing results in any safety problems.

NHTSA believes that issues related to cancellability of telltales are largely the same as those discussed above with respect to general visibility, i.e., the four most safety significant telltales should always be visible to the driver, while the underlying conditions are present. The other telltales need not always be visible but must be capable of being made visible to the driver. The agency tentatively concludes that the following requirements should be added to ensure these safety goals:

Messages from sources other than the brake, high beam, turn signal, and safety belt telltales may occupy a common space and may be shown on a cancellable display. A telitale message shall be displayed at the initiation of any underlying condition. However, when the underlying condition exists for actuation of two or more messages, a visible indication of their existence and a means of selecting for viewing each of those messages must be provided to the driver. Messages may be cancellable automatically or by the driver, but may not be repeated automatically in sequence. If cancelled, they shall be retrievable by the driver. A visible indication of their availability for retrieval be provided to the driver.

Discussion

For the reasons discussed above, NHTSF believes that the four most safety significant telltales, i.e., those for the brake, safety belt, turn signal, and high beam, should always be visible to the driver. This would not be possible in a system where more than one telltale occupies a common space. Accordingly, the agency does not believe that these four telltales should occupy common space with any other display.

The agency believes that greater manufacturer flexibility is appropriate for other telltales. As discussed above, the agency is proposing a general requirement that means be provided that are capable of making these telltales visible under all driving conditions. The purpose of the requirement would be to ensure that a driver would always be capable of seeing telltale messages during all driving conditions. The agency believes that additional requirements are necessary to meet this safety goal for displays where more than one telltale may occupy the same space.

The requirements set forth above would ensure (1) that means are provided to alert the driver to situations where underlying conditions for more than one message occur at the same time and (2) that means are provided so that the driver can actually obtain all messages. Both requirements are necessary for the driver to be able to obtain all messages easily. While these

other telltales could be cancellable, either by the driver or automatically, they would be required to be retrievable by the driver.

Under the agency's proposal, manufacturers would be free to select from any of the following options under which telltales, other than the telltales identified in Section B, could be displayed on a common space:

(1) Manufacturers could provide systems where an activated telltale would continue to be displayed unless cancelled manually by the driver to obtain another message. These systems would have to indicate that other telltale are in storage, thereby permitting the driver to select the stored telltales manually.

(2) Alternatively, manufacturers could provide systems where a second telltale supersedes an earlier telltale automatically. This option would require that a telltale remain illuminated until the underlying condition no longer exists or until a second condition occurs which would require illumination of another telltale. An indicator would have to be provided that another telltale is in storage and the illuminated telltale would have to be manually cancellable by the driver.

(3) Finally, manufacturers could provide systems where the telltale automatically displayed depends on priorities established by the manufacturers among the various telltales. So long as there are activated telltales in storage, an indication would be provided to the driver that additional messages are in storage. Any activated telltale would have to be retrievable by the driver.

Under each of the above options, telltales could be manually cancelled or retrieved by the driver. These options do not prohibit having combinations of telltales that occupy a common space. This approach provides maximum flexibility to the manufacturer but provides no assurance that a telltale would always be illuminated when an underlying condition exists. The agency is aware that there are alternatives to this approach which may involve fewer actions by the driver. One such alternative is to provide for automatic sequencing of telltales which occupy a common space.

In a system with automatic sequencing, all activated messages could be presented to the driver in turn without any driver action other than glancing at the display. For these reasons, the agency's first conclusion was that sequencing might be superior to cancellability, a view which the agency noted in a letter to BMW. Another consideration favoring automatic sequencing is that it relieves the driver of remembering how to retrieve or cancel messages manually, an operation that may be performed infrequently and in less than optimal conditions. After further consideration of this approach, however, the agency notes two safety reservations. First, in occasionally glancing at a flashing display a driver might look down, observe one message, and fail to see that another message was also being presented. Second, and perhaps more important, drivers seeing a flashing display would be encouraged to keep their eyes on the display, and hence off the road, until they were certain that they had seen the entire sequence of messages being displayed. On the other hand, automatic sequencing relieves the driver of having to retrieve or cancel messages, operations which may be difficult in the dark. After weighing these considerations, the agency tentatively concludes that continuous automatic sequencing should be prohibited, but it invites comment on these issues.

The agency specifically invites comments on the safety implications of this proposal and the alternatives discussed here.

E. Other Display Requirements

Another issue related to use of telltales in electronic displays concerns Standard No. 101's color requirements for telltales. Section S5.3.2 requires that except for informational readout displays, each discrete and distinct telltale shall be of the color specified in Table 2. Various telltales must be either green, red, yellow or blue. As discussed above, the agency is proposing to eliminate the term informational readout display from the standard and specify the same requirements for all displays. While the agency is unaware of any significant data on the subject, the use of different colors for different telltales appears to be useful in aiding driver recognition and helping to indicate the importance of a particular message. The agency requests comments, however, on difficulties that might be caused by retaining these color requirements with respect to the use electronic displays. Since technology has been developing rapidly in this area, comments should be specific as to currently existing technological problems, and whether any such problems are ones of practicability or feasibility, and the prospect for solving those problems.

The agency is also proposing a change in the definition of "telltale". Telltale is currently defined as a display that indicates, by means of a light-emitting signal, the actuation of a device, a correct or defective functioning or condition, or a failure to function. The agency is proposing to delete the words "by means of a light-emitting signal." The agency does not believe that there is any reason to require that telltales provide their message by means of a light-emitting signal, so long as visibility requirements are met. Some applications of electronic technology, such as liquid crystals, provide messages by means other than light-emitting signals. Deleting the reference to light-emitting signal will increase design flexibility.

GM I and BMW Petitions for Rulemaking; Effect on Current Designs

The agency believes that the proposed light intensity requirements for gauges and telltales will resolve the concerns raised by the GM I and BMW petitions for rulemaking concerning several of Standard No. 101's requirements being design restrictive with respect to new technologies. As discussed below, the proposed requirements are somewhat different than those suggested by the two petitioners. Also, the proposed requirements could have the effect of requiring changes in some existing designs.

The amendments proposed by the agency's February 1982 NPRM were largely along the lines of those suggested by GM. As discussed by the final rule and response to petitions for reconsideration published on June 4, 1985, those proposed amendments did not adequately take account of the need to ensure visibility of the most important safety telltales. The agency believes that the amendments proposed by this notice would provide greater flexibility along the lines requested by GM, although that company may not be able, with existing technology, to incorporate the four most important safety telltales in displays along with gauges. As discussed above, however, the agency believes that the proposed requirements are justified by safety need. The agency also emphasizes that with improved technology, such as more reliable photosensitive devices to sense daytime and nighttime conditions, manufacturers may be able to incorporate those telltales in the same display as gauges.

The agency notes that a current system in production by GM, incorporating telltales and gauges in the same display, is designed to provide variable light intensity except when a telltale is activated, at which time single intensity illumination is provided. Since the display does not include any telltales which are likely to be illuminated for long periods of time at night, such as the high beam telltale,

glare does not appear to be a problem with this specific design. If telltales such as the high beam telltale were included in such a system, however, glare could be a problem. The agency requests comments on whether systems should be permitted where the light intensity of gauges may at times be invariable and, if so, whether any restrictions should be placed on such systems. The agency may adopt an amendment specifically covering such systems.

The BMW petition contemplated a design where the brake telltale would be separate from the display including numerous telltales occupying the same space. The design also provided an indication to the driver of additional messages in storage. The proposed requirements are primarily different with respect to the seat belt, turn signal, and high beam telltales. For the reasons discussed above, the agency believes that these telltales also should be separate from the type of display contemplated by BMW. Once again, this restriction is based on safety need and does not represent an inadvertent design restriction related to technology.

Identification Requirements

Summary

Three of the petitions for rulemaking requested changes in the identification requirements for controls and displays in Standard No. 101. The Standard currently requires that a number of controls and displays, other than informational readout displays, be identified by specified symbols. The standard permits the use of words and other symbols in addition to those specified symbols for purposes of clarity. The symbols specified by the standard are those developed by the International Standards Organization (ISO). The standard requires that certain other controls and displays, for which symbols are not specified, be identified by specified words.

The GM II petition requested that the identification requirements be taken out of the standard and placed in a regulation other than a safety standard, or, alternatively, that the agency provide manufacturers greater flexibility in meeting the standard's identification requirements. In the event that the agency chose to keep the requirements in a standard, GM requested that words similar to the specified words be permitted for controls and displays now required to be identified by specified words. GM stated that transferring the requirements to a regulation would reduce the burden on manufacturers and the agency in the event of minor identification errors, since manufacturers would not be required to petition for inconsequential noncompliance, and would provide a method by which to ensure a uniform, harmonized set of identification symbols without the unnecessary burdens associated with a safety standard.

A petition submitted by BL Technology requested that the agency permit greater flexibility in meeting the standard's requirements for specified symbols. Noting that the exact reproduction of specified symbols may not be possible in some applications of electronic technology, the petition requested that the standard be amended to permit symbols which "substantially resemble" those specified by the tables. The petition noted that the agency has previously stated in **Federal Register** notices that minor deviations are permissible.

A petition for rulemaking submitted by Volkswagen and the GM II petition requested greater flexibility in the standard's requirements for the identification of heating and air conditioning controls. The issues raised by the petitioners were discussed in the agency's final rule published in the **Federal Register** (49 FR 30191) on July 27, 1984.

The agency has carefully evaluated Standard No. 101's identification requirements in light of safety need. The agency declines to remove Standard No. 101's identification requirements to a separate regulation. As discussed below, however, the agency has tentatively concluded that manufacturers should have the option of identifying controls and displays listed in the standard by specified symbols *or* specified words. Assuming that a control or display is identified by either the specified symbol or specified word or words, additional identification, if any, would be at the discretion of the manufacturer. The agency also has tentatively concluded that the standard should permit manufacturers to use symbols which substantially resemble those specified by the tables. The agency declines, however, to remove Standard No. 101's identification requirements to a separate regulation.

Discussion

The first issue presented by the petitions is whether the identification requirements should remain in a standard. The agency declines to adopt GM's suggestion that the identification requirements be taken out of Standard No. 101 and placed in a regulation other than a safety standard. While NHTSA appreciates GM's concern about the burden on manufacturers in petitioning for inconsequential noncompliance for minor identification errors, the agency does not agree that promulgating the requirements as a regulation other than a safety standard is the answer. The agency believes that the identification requirements meet the need for safety. That being the case, the National Traffic and Motor Vehicle Safety Act contemplates that the requirements be part of a safety standard.

Although the agency intends to keep the identification requirements in Standard No. 101, it has tentatively concluded that the requirements can be made more flexible, as requested by the petitions. The agency will consider first whether to permit words to be used to identify those controls and displays which the current standard requires to be identified by symbols. The GM II petition stated:

> In the situation where the English language is common throughout the market area, as exists in the United States, the safety justification for symbol identification is tenuous at best. In spite of the rationale mentioned above, we are aware of no evidence that symbols do in fact convey information to American drivers any more quickly or accurately than do English words. On the other hand, we are concerned that an overabundance of symbols, or symbols that offer no intuitive recognizability, may not be in the best interest of our customers or the marketability of our products. While the existing set of symbols does not present a significant problem, the mandatory addition of more symbols could lead to increased customer resistance and driver confusion.

In the light of GM's critique of symbols, the agency has reexamined its rationale for requiring symbols to be used on certain controls. The original rationale, as stated in the final rule published on June 26, 1978 (43 FR 27541), was that symbols would convey information more quickly and more accurately than words, particularly for the large driving population that is not fluent in English. However, the agency's review of available studies suggests that the rationale lacks support. For example, a study published by the Society of Automotive Engineers (SAE), ("Investigation into the Identification and Interpretation of Automotive Indicators and Controls" SAE #780340, February 1978), indicates that, if anything, words are superior to symbols. In measuring their test subject's recognition of words and symbols, the SAE investigators found that controls identified by words were more accurately recognized than those identified by symbols. As the result of its reexamination, the agency has tentatively concluded that the safety need for understandable identification of controls can be met by either

understandable words or understandable symbols.

Accordingly, the agency is proposing to permit the use of either words or symbols for the controls and displays listed in Tables 1 and 2 of Standard No. 101. For those controls and displays for which no symbol is specified, manufacturers would be required to use the specified words. Comments are invited about the ease with which the non-English speaking population of this country can learn the identifying words associated with driving a motor vehicle.

As part of its proposal to permit the use of words as an alternative to symbols, however, the agency is proposing to require the use of specific words. This promotes uniformity and ensures that identifying words for the controls and displays listed by the standard are appropriate. The agency accordingly is proposing to insert specified words for controls in Table 1 of the standard as an alternative to the symbols in Table 1.

In response to GM's alternate request for flexibility in the choice of identifying words, the agency has tentatively concluded that it is not appropriate to permit identifying words similar to those specified by the standard as an alternative to the specified words. The agency believes that the flexibility afforded by such a requirement would be overbalanced by the potential for confusion from the use of different words, particularly for non-English speaking drivers. The specified words proposed in Table 1 include the most commonly used words for several controls. More flexibility does not seem warranted.

In response to the BL Technology petition, the agency has tentatively determined that the standard should permit symbols that substantially resemble those specified by the standard. The intent of this provision is to allow use of technology that cannot exactly reproduce the symbols as shown in the table. However, the technology must be capable of producing symbols that substantially resemble those in the table and any departures from the symbols in the tables should be due to the practicable reproduction capability limits of the technology. The agency believes that such a requirement would continue to meet the need for safety while providing greater manufacturer flexibility and permitting greater use of new electronic technologies.

Leadtime and Enforcement Issues

With the exception of the proposed amendment to prohibit automatic sequencing of displays, the amendments proposed by this notice would impose no new requirements but instead increase manufacturer flexibility. Since the amendment concerning sequencing may affect existing designs, the agency is proposing a three year leadtime after the date of publication of a final rule in the **Federal Register**. For the other amendments, the agency is proposing an effective date of 30 days after publication of a final rule in the **Federal Register**. The agency believes that a period of only 30 days is in the public interest since the amendments would impose no new requirements, would increase manufacturer flexibility, and offer possible benefits to consumers as manufacturers are able to use new technologies.

In the final rule and response to petitions for reconsideration (being published today), the agency announced that it will not enforce certain very limited requirements of section 5.3.3, pending completion of the rulemaking proposed today. The agency specifically requests comments on whether these proposed amendments to section 5.3.3 (or to any other affected sections of the standard) would affect any existing designs other than those involving automatic sequencing and, if so, how the agency should account for that fact in considering leadtime. The agency also requests comments on how the agency should account for leadtime in considering a possible amendment, as discussed above, covering systems where the light intensity of gauges may at times be invariable.

Impact Analyses

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. With the exception of the proposed amendment to prohibit automatic sequencing of display messages, none of the amendments proposed by this notice would impose any new requirements. The cost impact of changing an existing design from automatic sequencing to one which provides for cancellability is very small and would not significantly affect vehicle price. The other amendments increase manufacturer flexibility and could result in consumer benefits, safety and otherwise, as manufacturers are able to use new electronic technologies. The proposed amendments should also foster international harmonization by allowing the use of either words or symbols. Cost savings should result from commonality of components produced for the U.S. and foreign markets.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendment only to the exent that they purchase motor vehicles. For the reasons discussed above, the amendments would not significantly affect vehicle prices. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes

available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.101 be amended as follows:

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

1. Section S4 would be amended by removing the sentence defining "Informational readout display".

2. Section S4 would be amended by removing the phrase "by means of a light emitting signal" from the definition of "Telltale".

3. The first two sentences of section S5.2.1(a) would be revised to read as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated for it in column 3 of that table shall be identified by either the symbol designated in column 3 (or symbol substantially similar in form to that shown in column 3) or the word or abbreviation shown in column 2 of that table. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. * * *

4. Section S5.2.3 would be revised to read as follows:

Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3 of that table. Any such display for which no symbol is shown in Table 2 shall be identified by the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

5. Section S5.3.2 would be revised to read as follows:

S5.3.2. Each telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the background.

6. Section S5.3.3 would be revised to read as follows:

5.3.3 (a) Means shall be provided for making controls, gauges, and the identification for those items visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

(2) May be operable manually by the driver, automatically or both, and

(3) May have levels of brigthness at which those items and their identification are not visible.

(c) If the level of brigthness is adjusted by automatic means to a point that those items or their identification are not visible to the driver, a means shall be provided to enable the driver to restore visibility.

7. A new section S5.3.4 would be added to read as follows:

S5.3.4 (a) Means shall be provided that make the telltales for brakes, high beams, turn signals and seat belts and the identification for those telltales visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually by the driver, automatically or both to create different levels of bringhtness, but may not have a level of brightness at which those telltales and their identification are invisible under any driving conditions.

8. A new section S5.3.5 would be added to read as follows:

S5.3.5 (a) Means shall be provided for making the telltales, other than those for brakes, high beams, turn signals and seat belts, and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually by the driver, automatically or both to create different levels of brightness, including levels at which those telltales and their idenification are not visible under some driving conditions.

9. A new section S5.3.6 would be added to read as follows:

S5.3.6 Means shall be provided to enable the driver to vary the light intensities for any illumination within the driver's forward field of view, including illumination for purposes other than the controls and displays subject to this standard, that is provided in the passenger compartment. At least two levels of brightness shall be provided.

10. A new section S5.4 would be added to read as follows:

S5.4 Messages from sources other than the brake, high beam, turn signal, and safety belt telltales may occupy a common space and may be shown on a cancellable display. A telltale message shall be displayed at the initiation of any underlying condition. However, when the underlying condition exists for actuation of two or more messages, a visible indication of their existence and a means of selecting for viewing each of those messages must be provided to the driver. Messages may be cancellable automatically or by the driver, but may not be automatically repeated in sequence. If cancelled, they shall be retrievable by the driver. A visible indication of their availability for retrieval shall be provided to the driver.

11. Table 1 would be revised to read as set forth below.

BILLING CODE 4910-59-M

Table 1
Identification and Illumination of Controls

Column 1	Column 2	Column 3	Column 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Master Lighting Switch	Lights		———
Headlamps and Tail Lamps	(Mfr. Option)[2]	(Mfr. Option)[2]	———
Horn	Horn		———
Turn Signal	———		———
Hazard Warning Signal	Hazard		Yes
Windshield Wiping System	Wiper or Wipe		Yes
Windshield Washing System	Washer or Wash		Yes
Windshield Washing and Wiping Combined	Wash-Wipe		Yes
Heating and/or Air Conditioning Fan	Fan		Yes
Windshield Defrosting and Defogging System	Defrost, Defog or Def		Yes
Rear Window Defrosting and Defogging System	Rear Defrost, Rear Defog, or Rear Def		Yes
Identification, Side Marker and/or Clearance Lamps	Clearance Lamps or Cl Lps		Yes
Manual Choke	Choke	———	———
Engine Start	Engine Start[1]	———	———
Engine Stop	Engine Stop[1]	———	Yes
Hand Throttle	Throttle	———	———
Automatic Vehicle Speed	(Mfr. Option)	———	Yes
Heating and Air Conditioning System	(Mfr. Option)	(Mfr. Option)	Yes

[1] Use when engine control is separate from the key locking system.
[2] Separate identification not required if controlled by master lighting swtich.
[3] The pair of arrows is a single symbol. When the controls for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.
[4] Identification not required for vehicles with a GVWR greater than 10,000 lbs., or for narrow ring-type controls.
[5] Framed areas may be filled.

BILLING CODE 4910-59-C

Issued on September 4, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-21641 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Cupressus Abramsiana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress), to be an endangered species. Only five small populations of this endemic species remain, occurring in groves on private and county land in the Santa Cruz Mountains, Santa Cruz and San Mateo Counties, California. Portions of each have been destroyed or are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintains the cypress groves. One population also faces a potential threat from oil and gas drilling. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. Determination of *Cupressus abramsiana* as an endangered species would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, (see ADDRESS above) (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cupressus abramsiana (Santa Cruz cypress) was first collected by M.E. Jones in 1881 and later described by C.B. Wolf (1948) based on specimens collected near "Bonnie Doon" in the Santa Cruz Mountains, Santa Cruz County, California. It is an erect, coniferous tree, approximately 10 meters (34 feet) tall, with a compact, symmetrical, pyramidal crown (Young, 1977). The scale-like foliage is a rich light green, while the bark is gray and fibrous (Wolf, 1948). Female cones, 20 to 30 millimeters (0.8 to 1.2 inches) long, are produced annually on the branches, where they remain for several years or until the supporting branch dies, generally as a result of fire (Bartel and Knudsen, 1982).

Habitat for *Cupressus abramsiana* consists of chaparral and closed-cone pine forest communities in sandstone- or granitic-derived soils, within an area of cool, wet winters and hot, dry summers with little to no coastal fog (Young, 1977). Cypress habitat ranges in elevation from 300 to 750 meters (1020 to 2550 feet). Associated species include *Pinus attenuata, Haplopappus ericoides* ssp. *blakei, Dendromecon rigida,* and *Arctostaphylos* spp. (Griffin and Critchfield, 1972).

This habitat type experiences periodic destruction by wildfire, a phenomenon upon which *Cupressus abramsiana* depends for its continued existence. Cypress trees are "obligate-seeders," that is, the trees fail to resprout from their stumps after fire and are thus totally dependent upon seed for post-fire regeneration. This, periodic fires at too short an interval to allow trees to reach seed-bearing age could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period can apparently result in lowered reproductive capability and a general increase in the probability of extirpation (Bartel and Knudsen, 1982).

The Santa Cruz cypress is presently limited to five small populations found in a two-county area of California. Groves are found on Butano Ridge, San Mateo County and in Santa Cruz County near Bonny Doon, Eagle Rock, Bracken Brae Creek, and between Majors and Laguna Creeks. These populations occur almost entirely on privately owned land, except for a portion of the Butano Ridge grove, which is found on Pescadero Creek County Park. This land is under the jurisdiction of the San Mateo County Department of Parks and Recreation. The five groves are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintain the cypress groves. An additional threat to the Butano Ridge gorve may arise from oil and gas drilling. Some groves also exhibit signs of past disturbance by construction (Bracken Brae), logging (Butano Ridge), and fire (Bonny Doon) (Bartel and Knudsen, 1982). Protective and cooperative action by Federal, State, and private parties is needed to ensure the species' safety and provide for its recovery.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2), of the Act (petition acceptance is now governed by section 4(b)(3) of the Act). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Cupressus abramsiana* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976, as *C. goveniana* var. *abramsiana* (Wolf) Little.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Cupressus abramsiana* was included in this notice as a category-1 species, indicating that existing data warranted proposing to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 require that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for making a finding on species covered by such petitions, including *Cupressus abramsiana,* was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Cupressus abramsiana* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424, revised October 1, 1984, see 49 FR 38900) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Santa Cruz cypress now occurs in a very limited range comprising five small groves in the Santa Cruz Mountains of California. All the groves are threatened by residential development, argicultural conversion, logging, and/or alteration of the natural fire frequency that maintains the groves. About one-third of the Bracken Brae Grove was destroyed in 1975 by a residential development project (Libby, 1979). Two further phases of the project threaten to destroy the remainder of the grove. The largest grove, at Bonny Doon, is being threatened by a proposed vineyard development. Over one-half of the cypress habitat at Bonny Doon could be lost as a result of this development. The Majors Creek and Eagle Rock groves are threatened by logging and residential development. The privately owned section of the Butano Ridge grove is subject to logging, and faces a potential threat from oil and gas drilling.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* No such threats are experienced by *Cupressus abramsiana* at this time.

D. *The inadequacy of existing regulatory mechanisms. Cupressus abramsiana* currently receives no specific protection under California State law.

E. *Other natural or manmade factors affecting its continued existence.* Areas where groves of *Cupressus abramsiana* occur are subject to periodic wildfire; the species is dependent on this phenomenon for its continued existence. Cypress are "obligate seeders" and thus totally rely upon seed for post-fire regeneration. Fires at too short an interval could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period apparently results in lower grove vitality, reduced cone production, reduced seedling establishment, and a general increase in the probability of extinction of the affected grove. The natural fire frequency is estimated at between 50 and 100 years, with a minimum of 20 years between fires necessary to avoid extinction (Keeley 1981, summarized in Bartel and Knudsen, 1982). It appears that the natural intervals between fires in the habitat of the Santa Cruz cypress has been altered by encroaching human inhabitation and utilization.

The largest tree in the Bonny Doon population was recently cut down. Similar threats of vandalism are faced by the remaining cypress trees.

The Service had carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cupressus abramsiana* as endangered. Only five small populations of this species remain, and these face current or potential threats from residential development, agricultural conversion, logging, and/or disruption of the natural frequency of fires that maintain the cypress groves, Given these conditions, the determination of endangered status for the Santa Cruz cypress is warranted because the species is in danger of extinction throughout its range and may soon disappear unless appropriate protection is extended. Critical habitat is not being designated for the species at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Cupressus abramsiana* is subject to acts of vandalism. Publication of critical habitat descriptions in the **Federal Register** would expose the species and its habitat to a greater number of people; thus increasing the risk of further incidents of vandalism. Therefore, it would not be prudent to designate critical habitat for *Cupressus abramsiana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such acitons are initiated by the Service following listing. The protection required for Federal agencies and the prohibitions against taking are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency msut enter into formal consultation with the Service. The only known Federal action that could possibly affect the Santa Cruz cypress involves an oil and gas lease on Butano Ridge. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. If the Santa Cruz cypress is likely to be affected by drilling activities, final approval of the drilling would require consultation with the Service pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that

apply to all endangered plant species. With respect to *Cupressus abramsiana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known to occur and it is anticipated that few trade permits involving the species will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This provision would apply to *Cupressus abramsiana* should it be found on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417). Presently, the Santa Cruz cypress is only found on county and private land not under Federal jurisdiction. Few, if any, requests for collecting permits are expected. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cupressus abramsiana;*

(2) The location of any additional populations of *Cupressus abramsiana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Cupressus abramsiana.*

Final promulgation of the regulation on *Cupressus aframsiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESS section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Bartel, J., and M. Knudsen. 1982. Status review of the Santa Cruz cypress. U.S. Fish and Wildlife Service, Sacramento, California. 7 pp.

Griffin, J.R., and W.B. Critchfield. 1972. The distribution of forest trees in California. USDA Forest Service Research Paper PSW–82.

Libby, J. 1979. *Cupressus aframsiana* goes to court. Fremontia 7(3):15.

Wolf, C.B. 1948. A New World cypress. I. Taxonomic and distributional studies on the New World cypresses. Aliso 1:1–250.

Young, P.G. 1977. Rare plant status report, *Cupressus aframsiana* C.B. Wolf. California Native Plant Society, Santa Cruz Chapter, Santa Cruz, California. 2 pp.

Authors

The primary authors for this proposed rule are Jim A. Bartel and Monty Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Cupressaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Cupressaceae—Cypress family:						
Cupressus abramsiana	Santa Cruz cypress	U.S.A. (CA)	E		NA	NA

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21765 Filed 9-11-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Eriogonum Ovalifolium var. Williamsiae (Steamboat Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat buckwheat), pursuant to the Endangered Species Act of 1973, as amended. This plant is only known from one site at Steamboat Hot Springs, Washoe County, Nevada, where it grows in several colonies scattered over approximately 100 acres. This species is vulnerable to habitat alteration that may be caused by the potential threats of drilling for geothermal development, recreational and commercial development, and mining activities near where it occurs. It is presently detrimentally affected by off-road vehicle use, dumping of refuse, and alternations to moisture patterns. A determination that *Eriogonum ovalifolium* var. *williamsiae* is endangered would implement the protection provided by the Endangered Species Act. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Steamboat buckwheat was first collected in 1884 by K.C. Brandegee, but was not recognized taxonomically until 1981, when James Reveal described it as a new variety of *Eriogonum ovalifolium*. The species is known only from one site at Steamboat Hot Springs in Washoe County, Nevada. Most of the plants are concentrated on 20 acres of a total of 80 acres of Bureau of Land management (BLM) land at the Hot Springs, and on 40 acres owned by a private citizen. The buckwheat occurs on open, slightly to steeply sloped areas composed of loose, gravelly, sandy-clay soil derived from hot springs deposits. The plant is a low perennial with small, oval, greenish white leaves that are densely congested in tight rosettes. It frequently forms large mats. It has small white flowers (often with a pink midrib on each sepal) that are clustered in a head at the end of an erect stem 4 to 10 inches (10 to 25 centimeters) high.

The species has only been collected from the area around Steamboat Hot Springs, but is thought to have been more widespread in the past. Approximately one acre of habitat was destroyed in about 1978 during the construction of a U.S. Post Office. It is not known what effects other past developments have had on the buckwheat. Two collections from the 1930's refer to Reno Hot Springs as a collection site. A mineral bath by that name was operated, in the past, a few miles from Steamboat Hot Springs. No plants occur there at this time. It is possible that this site was actually Steamboat Hot Springs, since herbarium labels are often quite general. At Steamboat Hot Springs Spa, a nearby commercial development, no plants have been found even though the habitat is similar to sites where colonies do occur. *Eriogonum ovalifolium* var. *williamsiae* is thought to have declined because of past development activities and is vulnerable, due to its restricted range, to any further alterations of its remaining habitat.

On December 15, 1980 (45 FR 82480), the Service published a notice of review of plant taxa for listing as endangered or threatened species, pursuant to the Endangered Species Act of 1973, as amended. *Eriogonum ovalifolium* var. *williamsiae* was included in that notice (as *E. ovalifolium* var. nov. ined.) as a category-1 species, indicating that the Service then had sufficient information on file to support proposing to list it. A supplement to the 1980 notice of review, published on November 28, 1983 (48 FR 53640), also placed this taxon in category 1 as *E. ovalifolium* var. *williamsiae*. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Species included in the December 15, 1980, notice of review are treated as under petition to be listed. A finding was required on such species on or before October 13, 1983. On October 13, 1983, and again on October 12, 1984, findings were made that the listing of the Steamboat wild buckwheat was warranted, but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Consequently, a new finding is required by October 13, 1985; this notice constitutes a finding that listing of this taxon is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eriogonum ovalifolium* Nutt. var. *williamsiae* Reveal (Steamboat buckwheat) are as follows (abstracted from Williams, 1982):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, as discussed in the "Background" section, development lead to a decline in the

species. The *Eriogonum* is detrimentally affected by drilling of geothermal test wells, development of a park on one Bureau of Land Management (BLM) parcel that is leased to the Washoe County Parks and Recreation Department, and a planned commercial development on private land that is adjacent to a colony of plants. Also threatening this small population is the possibility of mining on private lands. BLM has restricted mining on public lands, but placer mining could still occur. Cinnabar is abundant enough to be commercially profitable and stibnite, gold, and silver are found in small amounts in the species; habitat.

Roads have been built through most of the colonies of *Eriogonum ovalifolium* var. *williamsiae*, and off-road vehicle (ORV) travel has further disturbed the habitat and destroyed plants. BLM had designated the main terrace with active geothermal activity as an Area of Critical Environmental Concern and has fenced this area on three sides. Although it is posted as closed to motor vehicles, ORV's have entered on the unfenced side and driven across the terrace. It is not known whether trespassers are intentionally damaging the Steamboat buckwheat, but with increased public awareness of the species it will become more vulnerable to such actions. Refuse has been dumped on and near the buckwheat colonies, resulting in additional loss of habitat.

The Steamboat buckwheat is sensitive to changes in moisture and has been observed to die when more than normal moisture is received. Degradation of its habitat by ORV use and dumping of refuse may alter moisture patterns, further threatening the species. There is also as possibility that drilling of geothermal test wells may contribute to changes in water regimes for the plants.

B. *Overutilization for commerciol, recreotional, scientific, or educational purposes.* Species of *Eriogonum* are often collected for rock gardens. Although it is not known whether this species has been sought by collectors in the past, it is possible that its rare status may make it a desirable garden subject.

C. *Disease or predation.* Nothing is known about disease or predation that may harm this plant.

D. *The inadequacy of existing regulatory mechanisms.* This species is protected on private and State lands by the Nevada Division of Forestry under provision of NRS 526276. This regulation, however, does not apply to Federal lands on which the species is found, nor does it allow for protection of the species' habitat. Under provisions of the State law, the private landowner is required to notify the State if the plants are going to be destroyed so that they may be salvaged by the State prior to destruction. Listing under the Act would provide this taxon with additional habitat protection and protection from collecting on Federal land.

E. *Other natural or manmade factors affecting its continued existence.* The species is known from only one population, consisting of seven colonies on less than 100 acres of land. Even though the species is abundant where it occurs, with individual plants numbering about 10,000–15,000, its restricted distribution makes it vulnerable to fire or any other disturbance in its habitat. The further loss of individuals may have adverse effects on the reproductive capacity and survival of the species. During of field survey in 1981, no seedlings were found, indicating that the buckwheat may have low reproductive potential.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Eriogonum ovalifolium* var. *williamsiae* as endangered without critical habitat. The need for such listing is demonstrated by the restricted range of the lone population and the immediate and potential threats faced by the species. Critical habitat is not being proposed for *Eriogonum ovalifolium* var. *williamsiae* for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under threat factors A and B above, the Steamboat buckwheat is vulnerable to collecting and vandalism, activities not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to prossession of endangered plants on lands under Federal jurisdiction. Publication of precise critical habitat descriptions,and maps delineating localities of colonies, would make this species more vulnerable to collecting pressures and vandalism than it is at present. Therefore, it would not be prudent to determine critical habitat for the Steamboat buckwheat at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat, if any is being designated. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since BLM closed to mining development its land on which *Eriogonum ovalifolium* var. *williamsiae* occurs, the only known Federal activity that may affect the species is the proposed development of a recreational area by Washoe County on land leased from BLM. Development of such an area will require measures for protection of the *Eriogonum* if the plant is listed. BLM has already expressed a willingness to work with the public and with the private landowner to develop conservation and management programs for the *Eriogonum* if it is listed. Such programs might include the development of a cooperative agreement with the landowner, and/or possibly a land exchange.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Eriogonum ovalifolium* var. *williamsiae*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving *Eriogonum ovalifolium* var. *williamsiae* would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Eriogonum Ovalifolium* var. *williamsiae*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. Although *Eriogonum ovalifolium* var. *williamsiae* occurs on Federal lands, it is not anticipated that many collecting permits will ever be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, 6th Floor Broyhill, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Eriogonum ovalifolium* var. *williamsiae*;

(2) The location of any additional populations of *Eriogonum ovalifolium* var. *williamsiae* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Eriogonum ovalifolium* var. *williamsiae*.

The Service's final determination on the proposal to list *Eriogonum ovalifolium* var. *williamsiae* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Williams, Margaret. 1982. Status Report on *Erigonum ovalifolium* var. *williamsiae*, prepared under contract with the U.S. Fish and Wildlife Service.

Authors

The primary authors of this proposed rule are Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334–1816 or FTS 554–1806) and Carol A. Wilson, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Polygonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Polygonaceae—Buckwheat family:						
Eriogonum ovalifolium var. *williamsiae*	Steamboat buckwheat	U.S.A. (NV)	E		NA	NA

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21714, Filed 9-11-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan, Wayne National Forest, Revision of Notice of Intent To Prepare Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, a notice of intent to prepare an environmental impact statement for the proposed Land and Resource Management Plan for the Wayne National Forest in Ohio was published in the **Federal Register** Vol. 47, No. 25, p. 5445, Friday, February 5, 1982. The dates for release of the draft and final environmental impact statements are hereby revised.

The original dates for release of the draft and final environmental impact statements were March 1983 and October 1983. The new date for the draft environmental impact statement is 5/15/86. The new date for the final environmental impact statement is 12/15/86.

All other conditions of the original notice of intent remain the same.

Further information about the planning process can be obtained by writing the Forest Supervisor, Wayne-Hoosier National Forests, 3527 10th Street, Bedford, Indiana 47421.

James L. Hagemeier,

Director, Planning, Programming and Budgeting.

[FR Doc. 85-21869 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Little and Middle Pitman Creek Watershed, Kentucky; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little and Middle Pitman Creek Watershed, Taylor and Green Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606-233-2749.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This project concerns a plan for watershed protection and animal waste management. The planned action is to install conservation practices on 4,928 acres of cropland, 983 acres of grassland, and install six animal waste management systems. This planned action will reduce upland erosion, sedimentation, and downstream pollution.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The Finding of No Significant Impact has been prepared and sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Giessler.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 30, 1985.

Randall W. Giessler,

State Conservationist.

[FR Doc. 85-21874 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-16-M

Plateau Valley School Land Drainage RC&D Measure, Colorado; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Plateau Valley School Land Drainage RC&D Measure, Mesa County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 W. 26th Avenue, Denver, Colorado 80211, telephone (303) 837-4275.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the measure will not Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measure.

This land drainage measure concerns a plan to prevent subsurface water seepage that is damaging public school buildings and facilities. The planned works of improvement include installing approximately 1600 lf. of subsurface drainline around the buildings and facilities.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above

address. Basic data developed during the environmental evaluation are on file and may be reviewed by contracting Mr. Sheldon G. Boone.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: September 4, 1985.

Kenneth A. Pitney,

Assistant State Conservationist.

[FR Doc. 85–21865 Filed 9–11–85; 8:45 am]

BILLING CODE 3410–16–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will meet on 19–20 September 1985. The meeting will be held in the Board Room, Bovard Administration Building, University of Southern California, University Park, Los Angeles starting at 9 A.M. Matters to be considered include 1. Chairman's items, 2. Approval of Report of Meetings held 25–28, June 1985, 3. Interagency Arctic Research Policy Committee Activities, 4. Mechanisms to Establish Links with the State of Alaska, 5. International Activities, 6. Reports to the President and Congress due 1986, 7. Arctic Research Policy Statement, 8. Other business, and 9. Next meeting.

The Commission will meet in Executive Session on 20 September from 1 to 5 P.M. Matters to be discussed in the Executive Session will include: (1) Nominations for a Scientific Committee, (2) Future Activities of the Commission, and (3) Commission budgetary matters.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743–0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 85–21862 Filed 9–11–85; 8:45 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on October 9, 1985, at the Holiday Inn, Western Avenue, Winthrop Room, Augusta, Maine. The purpose of the meeting is to begin the process of program planning for FY 1986, based on suggestions and proposals submitted for group discussion by committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Morgan, or Jacob Schlitt, Director of the New Englnd Regional Office at (617) 223–4671, (TDD 617/223–0344).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., September 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21755, Filed 9–11–85; 8:45 am]

BILLING CODE 6335–01–M

Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 8:00 p.m. and adjourn at 10:00 p.m. on September 29, 1985, and convene at 9:00 a.m. and adjourn at 5:00 p.m. on September 30, 1985, at the Hotel Roanoke, 19 South Jefferson Street, Roanoke, Virginia. The purpose of the meeting is to continue planning a series of meetings in 1985–86 throughout Virginia to be advised by public officials and citizens concerning civil rights developments and enforcement in housing, voting, education, employment, and the administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Benjamin Bostic, or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21756, Filed 9–11–85; 8:45 am]

BILLING CODE 6335–01–M

Wyoming Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on October 5, 1985, at the Downtown Motor Inn, I–25 and Center Street, Champagne Room, Casper, Wyoming. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin, or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–21757 Filed 9–11–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85–148. Article: Quartz Beam Splitter and Si-Detector.

Docket No.: 85–149. Article: DTGS Pyroelectric Detector.

Manufacturer: Bomen, Inc., Canada. Applicant: National Bureau of Standards. Intended use: See notice at 50 FR 19430. Advice submitted by: National Institutes of Health: July 3, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21776 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85-156. Applicant: Forsyth Dental Center, Boston, MA 02115. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 21481. Instrument ordered: January 10, 1985.

Docket No.: 85-159. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: Electron Microscope, Model H-800-3. Manufacturer: Hitachi, Japan. Intended use: See notice at 50 FR 21482. Instrument ordered: January 24, 1985.

Docket No.: 85-163. Applicant: University of California, Irvine, CA 92717. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 50 FR 23171. Instrument ordered: Mar 13, 1985.

Docket No.: 85-165. Applicant: Curators of the University of Missouri, Columbia, MO 65211. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: February 27, 1985.

Docket No.: 85-169. Applicant: University of Texas System Cancer Center, Houston, TX 77030. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23171. Instrument ordered: January 24, 1985.

Docket No.: 85-171. Applicant: The Children's Memorial Hospital, Chicago, IL 60614. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: January 10, 1985.

Docket No.: 85-173. Applicant: Auburn University, Auburn, AL 36849. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: September 12, 1984.

Docket No.: 85-174. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Electron Microscope, Model H-800-3 and Accessories. Manufacturer: Hitachi, Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: January 17, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21774 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Center for Energy and Environment Research; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-154. Applicant: Center for Energy and Environment Research, San Juan, PR 00936. Instrument: Infrared Gas Analyzer for CO_2, Type 225, Mark 3. Manufacturer: Analytical Development Co., Ltd., United Kingdom. Intended use: See notice at 50 FR 21481.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides capabilities for both absolute (0-2500 p.p.m. carbon dioxide (CO_2) and differential (25-0-25, 50-0-50 p.p.m. CO_2) analysis, high stability in constant ambient (<1 percent per 24 hours) and temperature coefficient (0.1 percent °C) with high accuracy (1.0 percent of full-scale reading). The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21773 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Lamont-Doherty-Geological Observatory/Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84-295. Applicant: Lamont-Doherty-Geological Observatory/Columbia University, Palisades, NY 10964. Instrument: Wireline-based borehole stress-measuring system. Manufacturer: Befeld Einmechanic, West Germany. Intended use: See notice at 49 FR 41079.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a signal lead-through facility that permits the operation of active sensors below the sealed-off interval in a bore hole. The Department of Interior-Geological Survey advises in its memorandum dated April 26, 1985 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21775 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat.; 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-186. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer, Model ESZG. Manufacturer: Sopra, France. Intended use: See notice at 50 FR 24553.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a broad range of wavelengths (230 to 800 nm) with the capability of measuring 256 points per spectrum. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21777 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Rensselaer Polytechnic Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-058. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180. Instrument: Focused Ion Beam Implanter. Manufacturer: VG Semicon, United Kingdom. Intended use: See notice at 50 FR 1262.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides precise direction and focusing control of the incident ion beam from a 100kV ion gun. The National Bureau of Standards advises in its memorandum dated March 22, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21778 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-130. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Laser Doppler Flowmeter, Model Periflux. Manufacturer: Perimed, K.B., Sweden. Intended Use: See notice at 50 FR 15596.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) High accuracy by using inputs from two independent fiber-optic sensing lines and (2) a thermostatted probe holder. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21779 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-137. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne,, IL 60439. Instrument: Electron Spectrometer. Manufacturer: Fom Institute for Atomic & Molecular Physics, The Netherlands. Intended use: See notice at 50 FR 18898.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-energy transmission and resolution (15 milli (electron) volts typical for 0 to 10 electron volts), and a

large acceptance angle (2 π steradians) to permit high count rates. The National Bureau of Standards advises in its memorandum dated June 28, 1985 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21780 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of North Carolina; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scienfitic, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 80-00420A. Applicant: University of North Carolina, Chapel Hill, NC 27514. Instrument: Gas Chromatograph/Mass Spectrometer/ Data System, Model MM70/70. Manufacturer: VG-Micromass, United Kingdom. Intended use: See notice at 47 FR 19572.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Department of Commerce denied this application on May 3, 1982, (47 FR 19572), primarily on the ground that the only known domestic manufacturer of *comparable* instruments responded to the applicant's request for quotation with a completely responsive bid. The applicant appealed. On March 8, 1983, the United States Court of Appeals for the Federal Circuit (CAFC) remanded the decision (Appeal No. 82-26). The CAFC direced us "to allow the re-opening of the entire record for submission of any new facts and arguments. . . ." We have complied with this order. The foreign instrument is an integrated gas chromatograph/ mass spectrometer/data system capable of mass assignment accuracy to 15 ppm (so that elemental composition can be assigned to sample molecules) and a minimum scan cycle time (mass 500-25-500) of 1.5 seconds. These features are pertinent to the intended uses, as the applicant specified a need for a system capable of mass assignment accuracy to .01 Dalton, which is the equivalent of accuracy to 15 ppm. The information on the reopened record is, in our judgment, insufficient to establish that the domestic manufacturer was both willing and able to make an instrument able to achieve the applicant's stated research purposes as well as the foreign instrument.

We conclude, therefore, that no domestic manufacturer could have provided an instrument scientifically equivalent to the foreign instrument for the applicant's intended purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21781 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

The University of Rochester; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made purusant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-101. Applicant: The University of Rochester, Rochester, NY 14642. Instrument: Micromanipulators, Model MO-103-L/ MO-11 and Accessories. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use: See notice at 50 FR 11233.

Comments: None received.

Decison: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides smooth movement by remote hydraulic control of a microelectrode in 2.0 micrometer increments along any of three axes. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capacity of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21782 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Washington et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specific time period. This is the case for each of the listed dockets.

Docket Number: 84-314. Applicant: University of Washington, Seattle, WA 98195. Instrument: 11.75 Tesla Superconducting Magnet. Date of Denial Without Prejudice to Resubmission: May 21, 1985.

Docket Number: 85-020. Applicant: Furman University, Greenville, SC 29613. Instrument: Excimer Laser, Model TE-861M-4 with Accessories. Date of Denial Without Prejudice to Resubmission: May 31, 1985.

Docket Number: 85-081. Applicant: University of Wyoming, Laramie, WY 82071. Instrument: CSIRO Portable Sonic Wool Fineness Tester, Model B. Date of Denial Without Prejudice to Resubmission: May 24, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21783 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Worcester Foundation for Experimental Biology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85–124. Applicant: Worcester Foundation for Experimental Biology, Shrewsbury, MA 01545. Instrument: Nanosecond Fluorometer System, Model 2000. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: See notice at 50 FR 13844.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument operates in the nanosecond to millisecond range, with a pulsed light mode providing time-correlated single photon counting. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21784 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Alabama in Birmingham; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–109. Applicant: University of Alabama in Birmingham, Birmingham, AL 35294. Instrument: Two Electrophysiological Data Interfaces, Model EDI 64. Manufacturer: Institut de Genie Biomedical, Canada. Intended use: See notice at 50 FR 13059.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides 64 differential bipolar signal input channels which are electrically isolated and capable of programmable low-pass/high-pass filtering. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21853 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Maryland; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related record can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–167. Applicant: University of Maryland, College Park, MD 20742. Instrument: Excimer Laser, Model EMG–150ET. Manufacturer: Lambda Physik GmbH, West Germany. Intended use: See notice at 50 FR 23171.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a tuning range <0.3 nm and a narrow bandwidth 0.003 nm at 248 nm and the capability of simultaneously oscillating on two excimer lines. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21854 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82–270R. Applicant: National Aeronautics and Space Administration, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109. Instrument: Color Film Recorder. Original notice of this resubmitted application was published in the Federal Register of August 26, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-resolution (16 384 by 16 384 pixels) color images by using a small pixel size (25 micrometers). The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21855 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

Microelectronics Center of North Carolina; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–114. Applicant: Microelectronics Center of North Carolina, Research Triangle Park, NC 27709. Instrument: Scanning Electron Microscope with Facilities/Auger Electron Spectroscopy, Model HB501A. Manufacturer: Vacuum Generators, United Kingdom. Intended use: See notice at 50 FR 13843.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a resolution of 0.204 nanometers at 100 keV with specimens mounted in a ±60° double axis tilting goniometer. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21856 Filed 9–11–85; 8:45 am]

BILLING CODE 3510–DS–M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–183. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Excimer Laser with Magnetic Switch Control, Model HE–420. Manufacturer: Lumonics, Inc., Canada. Intended use: See notice at 50 FR 24553.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a pulse duration of 12–16 nanoseconds at a maximum average power of 20W with a pulse rate of 60 pulses per second at a wavelength of 249 nanometers. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose.

We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Do. 85–21857 Filed 9–11–85; 8:45 am]

BILLING CODE 3510–DS–M

Massachusetts Institute of Technology; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–153. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Mass Spectrometer, Model JMS–HX110HF with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 19431.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides extended mass range to 12 500 atomic mass units at 10 000 volts accelerating potential and high resolution up to 100 000 (10 percent valley definition). The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21858 Filed 9–11–85; 8:45 am]

BILLING CODE 3510–DS–M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–069. Applicant: University of Wisconsin, Madison, WI 53706. Instrument: FT–NMR Spectrometer, Model AM–500. Manufacturer: Bruker, West Germany. Intended use: See notice at 50 FR 4995.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (January 26, 1984).

Reasons: The foreign instrument provides the highest magnetic field strength of 11.7 tesla, producing narrow line widths, high dispersion in spin coupling studies, and rapid acquisition times for unstable compounds. The National Bureau of Standards advises in its memorandum dated June 18, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into

account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to General Electric Magnetics, and received a quotation from Varian Associates for an instrument of lesser magnetic field strength, it is apparent that the domestic manufacturers were either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Stotutory Import Programs Staff.

[FR Doc. 85-21859 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Select Group will convene a public meeting, September 24-25, 1985, at the Oregon Department of Fish and Wildlife building in Portland, OR, to develop draft recommendations for managing the groundfish fisheries off Washington, Oregon, and California in 1986, and to review other items as directed by the Council. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: September 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21829 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Plan Development Teams will convene public meetings at the Council's Office, 1164 Bishop Street, Room 1405, Honolulu, HI, as follows:

Crustaceans Plan Development Team

Will convene on September 12, 1985, at 9 a.m., to review amendment #3 to the Spiny Lobster FMP that would lower the minimum size of spiny lobsters coupled with an access management system to better control fishing effort in the lobster fishery of the Northwestern Hawaiian Islands (NWHI).

Bottomfish Plan Development Team

Will convene also on October 24, 1985, at 8:30 a.m., to review a redraft of the Bottomfish Framework FMP and to discuss progress on the limited entry concept for the MWHI fishery.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: September 6, 1985.

Richard B. Roe,

Director Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21830 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-725,720
Membrane Process for Separation of Organic Acids from Kraft Black Liquors

SN 6-732,320
Apparatus to Improve the Operation of a Continuously Moving Harvester for Tree Crops

SN 6-757,396
A Quarantine System for Papaya

Department of Commerce

SN 6-751,118
Acoustic Scintillation Liquid Flow Measurement

SN 6-762,740
Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes

Department of Health and Human Services

SN 6-237,496 (4,528,196)
Chelating Agents for the Treatment of Iron Overload

SN 6-330,959 (4,522,918)
Process for Producing Monoclonal Antibodies Reactive with Human Breast Cancer

SN 6-461,954 (4,527,550)
Helical Coil for Diathermy Apparatus

SN 6-475,215 (4,532,039)
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography

SN 6-601,314 (4,533,675) Carbamates of Colchicine for Treatment of Gout

SN 6-707,400
Monoclonal Antibodies Reactive with Human Beast Cancer

SN 6-724,033
Method and Apparatus for Sequential Fractionation

SN 6-748,207
Cold Plate for Laboratory Use

SN 6-759,677
Medical Applications of Functionalized Congeners of Adenosine Receptor Drugs

SN 6–769,074
Vaccine Against Rotavirus Diseases

Department of the Air Force

SN 6–329,557 (4,513,428)
Simultaneous Detection of Time Coincident Signals in an Adaptive Doppler Tracker
SN 6–418,947 (4,510,846)
Pnuematic Actuator Device
SN 6–504,353 (4,513,422)
Co2 Laser Stabilization and Switching
SN 6–525,755 (4,511,216)
High Power Laser Dump
SN 6–582,514 (4,511,105)
Compartmented, Filament Wound, One-Piece Aircraft Fuel Tanks
SN 6–591,715
Gas Generator Fuel Flow Throttle Control System
SN 6–617,668
Phase Lock Acqisition System
SN 6–630,148
Lightweight Cryogenic Tank with Positive Expulsion
SN 6–663,015
Technique of Assembling Structures Using Vapor Phase Soldering
SN 6–708,909
Multi-Row Connector with Ground Plane Board
SN 6–719,792
Apparatus for Locating Passive Intermodulation Interference Sources
SN 6–731,223
Interdigital Schottky Barrier Capacitor Apparatus
SN 6–746,617
Termination Load Carrying Device
SN 6–749,333
Submerged Ram Air Inlets for ECM Pods
SN 6–749,335
Captive Volume Device As A Safe Life Monitor
SN 6–749,368
Modulation Doped GaSa/AlGaAs Field Effect Transistor
SN 6–751,393
Guided Trephine Samples for Skeletal Bone Studies
SN 6–751,399
Heat Pipe Wick
SN 6–751,400
One-Step Loading Adapter
SN 6–752,767
Transient Test of Suspension Electronics for Gyroscope

Department of the Army

SN 6–542,635 (4,532,625)
Communications Network Status Information System
SN 6–657,438
Electrolytic Pressure Transduction System
SN 6–660,778
Dermal Substance Collection Device
SN 6–741,940
Control for Dot Matrix Printers Operating in Harsh Environments
SN 6–749,597
Cathode Including A Non Fluorinated Linear Chain Polymer As the Binder, Method of Making the Cathode, and Lithium Electrochemical Cell Countining the Cathode
SN 6–751,339
Routing Method in Computer Aided Customization of A Two Level Automated Universal Array
SN 6–758,919
Pulsed Digital Multiplex Laser Generator

Tennessee Valley Authority

SN 6–616,879
Production of Acid-Type Fertilizer Solutions.

[FR Doc. 85–21867 Filed 9–11–85; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 12, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 24, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 26028) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985:

Janitorial/Custodial for the following locations:

Federal Building, 212 3rd Avenue South, Minneapolis, Minnesota
Social Security Building, 1811 Chicago Avenue South, Minneapolis, Minnesota
Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul Minnesota.

C.W. Fletcher,
Executive Director.

[FR Doc. 85–21923 Filed 9–11–85; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of the 1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.

SUMMARY: Institutions and borrowers participating in the National Defense and Direct Student Loan (NDSL) Programs and other interested persons are advised that they may obtain information regarding the *1985–86 National Defense and Direct Student Loan Program Directory of Designated Low-Income Schools for Teacher Cancellation Benefits (Directory).* Under each program, borrowers may receive cancellation for full-time teaching in a school having a high concentration of students from low-income families. The Secretary has designated the schools for the 1985–86 academic year and they are listed in the *Directory.*

DATE: The *Directory* is available on or before September 12, 1985.

ADDRESS: Information concerning specific schools listed in the *Directory* may be obtained from Ronald W. Allen, Campus-Based Programs Branch,

Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. [Room 4613, ROB–3] Washington, D.C. 20202, Telephone (202) 245–9640.

FOR FURTHER INFORMATION CONTACT: Directories are available in (1) each of the participating institutions of higher education, (2) each of the fifty-seven (57) State and Trust Territory Departments of Education, (3) each of the major billing services, and (4) each of the ten (10) regional offices of the U.S. Department of Education (see (Appendix to this notice for the addresses of the regional offices).

SUPPLEMENTARY INFORMATION: The procedures for selecting schools for cancellation benefits are described in the NDSL program regulations (34 CFR 674.53, 675.54). The Secretary has determined that for the 1985–86 academic year, full-time teaching in the schools set forth in the *Directory* qualifies for cancellation.

The Secretary is providing the *Directory* to each institution participating in the National Defense and Direct Student Loan Programs. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1985–86 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future *Directories*.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct Student Loan Cancellations)

Dated: September 6, 1985.

Kenneth Whitehead,

Acting Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1985–86 National Defense and Direct Student Loan Programs Directory of Designated Low Income Schools for Teacher Cancellation Benefits

U.S. Department of Education Regional Offices

Mr. Thomas J. O'Hare, Deputy Regional Administrator, Region I: OSFA/ED—T&D Section, J.W. McCormick Post Office and Courthouse Building, 5 Post Office Square, Room 510, Boston, Massachusetts 02109, (617) 223–7205, FTS: 223–7205

Ms. Janet Finello, Training and Technical Assistance Specialist, Region II: OSFA/ED, 26 Federal Plaza, Room 3954, New York, New York 10278, (212) 264–4426, FTS: 264–4426

Mr. Harry Sweeney, Chief, Training and Technical Assistance Unit, Region III: OSFA/ED, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19104, (215) 596–0247, FTS: 596–0247

Ms. Judith Brantley, Assistant Regional Administrator for Training and Dissemination, Region IV: OSFA/ED, 101 Marietta Tower, Suite 423, Atlanta, Georgia 30323, (404) 221–4171, FTS: 242–4171

Dr. Morris Osburn, Assistant Regional Administrator for Training and Dissemination, Region V: OSFA/ED, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353–8103, FTS: 353–8103

Mr. Lyndon Lee, Assistant Regional Administrator for Training and Dissemination, Region VI: OSFA/ED, 1200 Main Tower Building, Room 310, Dallas, Texas 75202, (214) 767–3811, FTS: 729–3811

Mr. Jerry W. Craft, Chief, Technical Assistance and Training Branch, Region VII: OSFA/ED, 324 East 11th Street, 9th Floor, Kansas City, Missouri 64106, (816) 374–3136, FTS: 758–3136

Mr. Thomas F. Monahan, Chief, Training and Dissemination, Region VII: OSFA/ED, 1961 Stout Streets—3rd Floor, Denver, Colorado 80294, (303) 844–3676, FTS: 564–3676

Ms. Mary Ann Faris, Acting Assistant Regional Administrator for Training and Dissemination, Region IX: OSFA/ED, 50 United Nations Plaza, San Francisco, California 94102, (415) 566–0137, FTS: 566–0137

Mr. W. Phillip Rockefeller, Chief, Technical Assistance and Training Branch, Region X: OSFA/ED, Third and Broad Avenue, Mail Stop 102, 2901 Third Avenue, Seattle, Washington 98121, (206) 442–4027, FTS: 399–0493

[FR Doc. 85–21747 Filed 9–11–85; 8:45 am]

BILLING CODE 4000–01–M

National Graduate Fellows Program Fellowship Board; Meeting

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Graduate Follows Program Fellowship Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, section 10 (a)(2)).

DATE: September 26, 1985 at 10:00 a.m. through September 27, 1985 at 5:00 p.m.

ADDRESS: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joel D. West, Executive Director, National Graduate Fellows Program Fellowship Board, Office of Postsecondary Education, 7th and D Streets, SW., Washington, DC 20202 (202) 245–9274.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program Fellowship Board is established under section 931 of the Higher Education Act of 1980, Title IX, Part C (20 U.S.C. 1134h–k). The Presidentially-appointed National Graduate Fellow Program Fellowship Board establishes program policies, oversees program operations, annually selects fields of study in which fellowships are to be awarded. The Fellowship Board determines the number of fellowships to be awarded in each designated field, and appoints panels to select fellows on the basis of demonstrated achievement and exceptional promise.

The meeting of the Fellowship Board will be open to the public. The agenda will include the determination of the applicant screening and review process and logistics, and the appointment of panelists for applicant review and selection.

Records shall be kept of all Board proceedings and shall be available for public inspection at the National Graduate Fellows Program, 7th and D Streets, SW., Room 4082, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal holidays.

Kenneth D. Whitehead,

Acting Assistant Secretary for Post Secondary Education.

[FR Doc. 85–22063 Filed 9–11–85; 11:25 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses

of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing 96 irradiated fuel assemblies, containing 38,000 kilograms of uranium enriched to 0.87% in U–235 and 390 kilograms of plutonium from the Gosgen power station, 100 irradiated fuel assemblies, containing 30,938 kilograms of uranium enriched to 1.0% in U–235 and 290 kilograms of plutonium from the Beznau I and Beznau II power stations, and 64 irradiated fuel assemblies, containing 11,297 kilograms of uranium enriched to 0.93% in U–235 and 93 kilograms of plutonium from the Muhleberg power station. These subsequent arrangements are designated as RTD/EU(SD)–54, 55, and 56, respectively. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: September 6, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–21883 Filed 9–11–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP84–441–007, et al.]

Natural Gas Certificate Filings; Tennessee Gas Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP84–441–007]

September 6, 1985.

Take notice that on September 3, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–441–007 a petition to amend the order issuing its certificate in Docket No. CP84–441–002 pursuant to section 7(c) of the Natural Gas Act by requesting a limited-term certificate authorizing the installation and operation of a portable compressor station near Milford, Pennsylvania, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that the Commission authorized Applicant in Docket No. CP84–441–002 (32 FERC ¶ 61,228) to install 7,000 hp of new compression at a new compressor station No. 325 in Wantage Township, Sussex County, New Jersey. The purpose of this new compression, together with other facility construction authorized in Docket No. CP84–441–002, is to allow Applicant to provide new firm transportation services beginning November 1, 1985. Applicant alleges that it has now been determined that the compression to be installed at station No. 325 will not be available on November 1, 1985, due to delays in compressor fabrication and in the receipt of an air quality permit from the New Jersey Department of Environmental Regulation required prior to installation.

Applicant seeks authorization to install and operate a 6,000 hp portable compressor near Milford, Pennsylvania, until such time as the permanent compression authorized at station No. 325 becomes available, at which time the portable compressor and appurtenant equipment will be removed. Applicant states that the portable 6,000 hp compressor is owned by Applicant and alleges that it is adequate to provide substitute compression for station No. 325. The proposed site for the portable compressor is adjacent to Applicant's Milford sales meter station (No. 2–0245–1, 2 authorized in Docket No. G–9448 in 1956) located on Applicant's system at milepost 954 + 65 in a remote area near Milford, Pennsylvania. Applicant states that every effort would be made to install the temporary compression within the confines of the existing meter station and right of way; however, additional area is available should it be necessary.

Comment date: September 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85–819–000]

September 9, 1985.

Take notice that on August 23, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP85–819–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Libbey-Owens-Ford Company (LOF) under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas requests authorization to transport up to 15 billion Btu equivalent of natural gas per day for LOF through October 31, 1985. Columbia Gas states that the gas to be transported would be purchased from LOF-Tipka-Bartlo Ltd. (Tipka-Bartlo) and Yankee Resources, Inc. (Yankee), and would be used as process gas and boiler fuel in LOF's Toledo, Ohio, plant.

It is indicated that LOF has made arrangements to purchase this gas from Yankee and Tipka-Bartlo. Palmer Energy Company, Inc., is acting as intermediary between LOF and Yankee. Columbia Gas states that it would receive the gas from Yankee and Tipka-Bartlo and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving LOF near Toledo, Ohio.

Columbia Gas states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from receipt points than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COH's total daily entitlements (TDE). Columbia Gas states that it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the COH's TDE. Columbia Gas further states it

would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities of gas transported.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85–782–000]

September 9, 1985.

Take notice that on August 15, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85–782–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizatin to transport natural gas on behalf of Guardian Industries Corporation (Guardian) under the certificate issued in Docket No. CP83–508–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitable proposes to transport up to 2,500 Mcf of natural gas per day for Guardian. It is stated that the gas to be transported would be purchased from Kepco, Inc. (Kepco), and would be used as process gas at Guardian's plant in Floreffe, Pennsylvania. Equitable states that it would receive the gas from Kepco at an existing receipt point in Ritchie County, West Virginia, and would redeliver the gas at an existing interconnection with Guardian's plant. It is proposed that the term of the service would be until the earlier of 18 months from August 1, 1985, or the termination of authorization provided by Subpart F of Part 157 of the Regulations or the termination of the transportation agreement by the parties thereto.

It is indicated that Equitable would charge the currently applicable transportation rate forth in its Rate Schedule TS–1 which is currently 15.5 cents per Mcf with transportation shrinkage of 2 percent.

Equitable also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Equitable would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85–784–000]

4. Northern Natural Gas Company, Divison of InterNorth, Inc.

September 9, 1985.

Take notice that on August 15, 1985, as supplemented on August 23, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–784–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Michigan Power Company (Michigan Power) under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern requests authorization to construct and operate one large-volume delivery point to accommodate natural gas deliveries to K.I. Sawyer Air Force Base in Marquette County, Michigan, to be served by Michigan Power.

Northern states that the branchline facilities associated with this proposed delivery point would be constructed under Northern's blanket certificate issued in Docket No. CP82–401–000.

Northern estimates the peak day and annual volumes to be delivered to Michigan Power at the proposed delivery point in the fifth year of service and their end-use are as follows:

Delivery point	Quantity (Mcf)		End-use
	Peak day	Annual	
Firm volumes	2,507	294,422	Residential heating.
Interruptible volumes.	1,092	193,939	Commercial heating.

Northern states that the volumes to be delivered to Michigan Power at the proposed delivery point would be within the currently authorized firm entitlement which was authorized by Commission order issued on September 24, 1981, in Docket No. CP80–135, and would, therefore, have no impact on its peak day and annual deliveries. Northern further states that Michigan Power's contract demand would be realigned as follows:

Community	Contract demand (Mcf)		
	Existing authority	Proposed adjustments	Proposed authority
Baraga	966	0	966
Chassell	265	0	165
Hancock	1,272	(350)	922
Houghton	1,744	0	1,744
Ishpeming	3,084	(700)	2,384
L'Anse	1,204	(300)	904
Celotex Corp	1,300	0	1,300
Marquette	7,215	(957)	6,258
Negaunee	1,971	0	1,971
Ontonagon	1,153	0	1,153
Palmer	206	(100)	106
K.I. Sawyer AFB	0	2,507	2,507
Silver City	47	0	47
White Pine	373	0	373
White Pine Copper	2,986	0	2,986
Total	23,786	0	23,786

Northern indicates that the proposed facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1, and a letter agreement between Northern and Michigan Power dated July 31, 1985. Northern further indicates that the total estimated cost to construct the proposed delivery point would be $63,000. Northern states the associated branchline is estimated to cost $1,187,000, for a total project cost of $1,250,000. Northern further states that Michigan Power would not be required to make a contribution in aid of construction.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company, Divison of InterNorth, Inc.

[Docket No. CP85–815–000]

September 9, 1985.

Take notice that on August 22, 1985, Northern Natural Gas Company, Divison of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–815–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point and appurtenant facilities to accommodate natural gas deliveries to Minnegasco, Inc. (Minnegasco) under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

Northern proposed to construct and operate one large-volume delivery point

on its 16-inch Aberdeen line in Minnehaha County, South Dakota, to accommodate natural gas deliveries to the community of Ellis, South Dakota, to be served by Minnegasco.

Northern states that the total estimated cost to construct the proposed facilities is $36,000. Northern states further that Minnegasco would not be required to make a contribution in aid of construction.

The estimated peak day and annual volumes to be sold through the proposed facilities in the fifth year of service, are stated to be 323 Mcf of gas and 38,900 Mcf of gas, respectively.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85–812–000]
September 9, 1985.

Take notice that on August 22, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–812–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Victor Ziegler (Ziegler) in Johnson County, Kansas, for use in two residences, one a private residence and the other a group home for youth, under the certificate issued in Docket No. CP82–479–001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that such sale would not significantly affect its overall gas supply or have any detrimental effect on existing customers.

The projected delivery of gas through this point is approximately 280 Mcf per year and 2 Mcf on a peak day. The estimated cost of these facilities is $2,500, which would be paid from available cash. Applicant states that the sales price to Ziegler would be under its Excess Rate Schedule F–2 which is currently $2.8593.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP85–791–000]
September 9, 1985.

Take notice that on August 19, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–791–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Clark Material Systems Technology Company (Clark) for use as boiler fuel and manufacturing processing under the certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 1,200 Mcf of natural gas per day on an interruptible basis for Clark for an initial term ending January 9, 1986, or extended through January 9, 1987. Panhandle indicates that the gas to be transported would be purchased from Walls Energy and Gas Company and that it would receive said volumes at an existing point of interconnection with Walls Energy and Gas Transmission, Inc. (Walls Energy), in Moore County, Texas. Panhandle states it would then transport and redeliver the gas, less 4 percent reduction for fuel, to the Freedom compressor station to be compressed by Michigan Gas Storage Company (Storage Company). Panhandle states Storage Company would transport the gas through its station and redeliver thermally equivalent quantities of natural gas to Panhandle at the outlet of said compressor station. Panhandle states it would then transport and redeliver such gas to the Battle Creek Gas Company (Battle Creek) at two existing points of interconnection in Calhoun County, Michigan, for Clark's account. It is further stated that Battle Creek would transport said gas to Clark for use in its Battle Creek, Michigan, plant.

Panhandle states it would construct and operate a measuring station and appurtenant facilities to serve as a point of receipt of gas from Walls Energy at a cost of $28,000. Panhandle further states that the facilities would be located in Moore County, Texas, and that Clark would reimburse Panhandle for this expense. Panhandle commenced this transportation July 9, 1985, under the automatic authority of Section 157.209.

Panhandle indicates that it would charge Clark 42 cents for each million Btu of natural gas transported plus 1.24 cent GRI provided the volumes are within Battle Creek's total daily entitlements (TDE). However, Panhandle states it would charge 87 cents for each million Btu of natural gas transported plus 1.24 cent GRI if the volumes are in excess of Battle Creek's TDE's. It is explained that the above rates would be collected in accordance with Panhandle's Rate Schedule OST.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Penn-York Energy Corporation, National Fuel Gas Supply Corporation

[Docket No. CP85–845–000]
September 9, 1985.

Take notice that on August 30, 1985, Penn-York Energy Corporation (Penn-York), 10 Lafayette Square, Buffalo, New York 14203, and National Fuel Gas Supply Corporation (National), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP85–845–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Penn-York to provide Supplemental Withdrawal Option (SWOP) service to existing storage customers and authorizing National to provide Limited Term Exchange (LTEX) service to Penn-York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Penn-York proposes to provide SWOP service to its customers during the winter season from November 1, 1985, through March 31, 1986. Penn-York indicates that the service will enable existing Rate Schedule SS–1 customers, which now are entitled to withdraw at a maximum daily rate of 1/150th of Annual Storage Volume, to increase such daily rate to a level of up to 1/110th of Annual Storage Volume.

Penn-York proposes to charge its customers a rate of 61.69 cents per Mcf withdrawn at daily levels exceeding 1/150th of Annual Storage Volume. It is stated that there would be no minimum bill and no service agreement, and the service would be rendered under new Rate Schedule SWOP.

National proposes to provide LTEX service during the period November 1, 1985, through October 31, 1986. It is stated that LTEX service is required in order to enable Penn-York to meet its

customers' requirements under Penn-York's Rate Schedules SS–1 and SWOP. It is further stated that National would advance up to 6,000,000 Mcf of gas to Penn-York at a daily rate of up to 140,000 Mcf and would accept returned volumes at a daily rate of up to 50,000 Mcf with all advanced volumes to be returned by October 31, 1986. National proposes to charge Penn-York on a monthly basis a rate of 61.69 cents per Mcf for the maximum number of Mcf of advanced volume outstanding at any one time during the term of the service.

Penn-York and National propose to terminate SWOP and LTEX services on March 31, 1986, or as soon prior thereto as all advanced gas has been returned to National.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP85–794–000]

September 9, 1985.

Take notice that on August 19, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–794–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Gas to (1) sell natural gas to The Cincinnati Gas & Electric Company (CG&E) under Texas Gas' Rate Schedule CD–4 at an initial contract demand of 50,000 Mcf per day, (2) deliver the proposed volumes at four delivery points, and (3) reduce the contract demand applicable to Columbia Gas Transmission Corporation (Columbia) from 290,708 Mcf per day to 243,828 Mcf per day. Texas Gas also requests permission to abandon the sales service presently being rendered by Texas Gas to CG&E under Texas Gas' Rate Schedule SG–4. Texas Gas' proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to sell to CG&E an initial contract demand of 50,000 Mcf per day under Texas Gas' Rate Schedule CD–4.[1] Texas Gas states that the delivery points for the new service to be rendered to CG&E would be at the Harrison and Dry Fork Road Station in Ohio, the delivery points through which Texas Gas presently serves CG&E under Texas Gas' Rate Schedule SG–4, and at the Butler and Venice Stations in Ohio, delivery points at which Texas Gas physically delivers gas to CG&E for its account and the account of others. Texas Gas states that the proposed service would not require Texas Gas to construct additional facilities. It is further stated that the capacity at the proposed delivery points is sufficient to handle the proposed sales volumes. Texas Gas states that because the new sales service to CG&E would subsume within it the 3,120 Mcf per day service presently rendered by Texas Gas to CG&E under Texas Gas' Rates Schedule SG–4, Texas Gas seeks authorization to abandon such service to CG&E. Texas Gas requests that the new sales service to CG&E be made effective as of November 1, 1985.

Texas Gas further requests authorization to reduce the contract demand applicable to Columbia from 290,708 Mcf per day to 243,828 Mcf per day in order to offset the proposed contract demand for CG&E. Texas Gas states that Columbia currently is an existing jurisdictional customer of Texas Gas purchasing natural gas pursuant to Texas Gas' Rate Schedule CDL–4. Texas Gas states that the contract demand reduction proposed for Columbia is supported by Columbia's recent historical and projected purchasing patterns from Texas Gas. Texas Gas states that the proposed contract demand reduction would still make available for purchase volumes of natural gas in excess of the annual purchases made by Columbia from Texas Gas since 1982.

Texas Gas asserts that the proposed new service to CG&E is justified by the public convenience and necessity in that it offers CG&E increased purchasing flexibility and supply reliability without the need for constructing new facilities. Texas Gas further states that the proposed service would permit CG&E to secure an additional source of firm supply and thus better assure, through competition, that its purchases are priced at marketable levels. Texas Gas concludes that its existing facilities and available gas supply would allow Texas Gas to render the proposed new service without detriment to its other jurisdictional customers.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP85–801–000]

September 9, 1985

Take notice that on August 20, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–801–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of direct sale natural gas for Intercity Management Corporation (Intercity) for use in Intercity's gas lift operation in Dewitt County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a June 1, 1985, industrial gas sales contract between United and Intercity, United proposes to transport up to 100 Mcf of industrial gas per day. United states that it would deliver the gas to Intercity at the outlet side of United's existing measurement facilities in W.C. Brown Survey, A–96, near the Town of Wessatche, Dewitt County, Texas. United indicates that for the proposed service it would charge Intercity the rate in United's Rate Schedule No. 85–87.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

[1] It is explained that all volumes are stated at 14.73 psia. Texas Gas states that pursuant to its filing in Docket No. RP85–141–000, Texas Gas has proposed an energy-based tariff to become effective on November 1, 1985, and that the contract demand for CG&E, under the proposed tariff, would become 50.885 million Btu.

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of inervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21851 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-48-000]

Conoco Inc.; Petition for Waiver

September 9, 1985.

Take notice that on August 12, 1985, Conoco Inc. (Conoco) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Order 399-B, 50 FR 30141 (July 24, 1985). Conoco seeks waiver of Btu refund obligations attributable to amounts paid to the Minerals Management Service of the U.S. Department of the Interior (MMS) as royalty interests under Federal Outer Continental Shelf leases.

Conoco states that it will be irreparably injured unless the Commission: (1) Waives any Btu measurement refund obligation of Conoco Inc. attributable to payments made to the MMS before November 9, 1981 with respect to royalty interests under certain Federal OCS leases; and (2) further determines that its waiver of these Btu measurement refunds shall remain in full force and effect until the final resolution of related matters involved in appeals pending before the United States Department of Interior Board of Land Appeals.

Conoco requests that the Commission shorten the period for making responses or filing interventions.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21847 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-648-000]

Kerr-McGee Corp.; Application for a Blanket Certificate of Public Convenience and Necessity and for Approval of Abandonment and Pre-Granted Abandonment of Certain Sales and Transportation of Services

September 9, 1985.

Take Notice that on September 4, 1985, Kerr-McGee Corporation (Kerr-McGee), pursuant to sections 4 and 7 of the Natural Gas Act, 15, U.S.C. 717-171z (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), hereby applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas interstate commerce by Kerr-McGee and the producers from which Kerr-McGee purchases natural gas, (2) authorizing sales for resale of natural gas in interstate commerce by producers through Kerr-McGee acting as its agent, (3) authorizing blanket partial abandonment and pre-granted abandonment of certain sales as described herein, (4) authorizing transportation, where if necessary, under section 7(c) of the NGA for interstate pipelines, (5) authorizing pre-granted abandonment of such transportation by interstate pipelines, and (6) authorizing transportation; by intrastate and Hinshaw pipelines as set forth herein, all to be effective on or before November 1, 1985, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicant states that the certificate and abandonment authority sought herein, if granted, will enable Kerr-McGee to purchase from various producers, and resell, natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the Natural Gas Policy Act (NGPA), to act as agent in sales by producers for resale of natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by section 109 of the NGPA, and to have such gas, as well as gas which is no longer within the Commission's NGA authority, transported in interstate commerce to all customers who have the ability to buy gas on the open market.

Kerr-McGee is requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in its Notice of Proposed Rulemaking, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85-1-000 (May 30, 1985) (NOPR), in the event a final rule in the NOPR is not issued by November 1, 1985, and/or in the event any such rule is stayed or not in effect after its issuance.

Kerr-McGee, on behalf of itself, producers, and pipelines, are requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the Section 109 price; (2) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate, intrastate and Hinshaw pipelines, and local distribution companies, to producers for resale either by Kerr-McGee or by such producers through Kerr-McGee acting as its agent, (3) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein, (4) to have any such gas, as well as natural gas which is no longer subject to the Commission's NGA authority, transported in interstate commerce, on a self-implementing basis, by any transporter to any purchaser, and (5) to abandon (pre-granted abandonment) such transportation.

Such authority, if granted, will enable Kerr-McGee to purchase NGA gas for which the maximum lawful price is higher than the Section 109 price (hereinafter referred to as NGA gas) from producers willing to sell to Kerr-McGee for resale on the spot market.

Such authority will also enable Kerr-McGee to act as agent for various producers in sales of NGA gas on the

spot market. Further, pipelines will be authorized to transport both NGA gas and gas which is no longer subject to the Commission's authority, sold by Kerr-McGee and producers on the spot market.

It is asserted that the authority sought by Kerr-McGee on behalf of itself, producers and pipelines, is similar to that recently granted to other marketers of natural gas. The Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. Kerr-McGee can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation, on behalf of these producers. Kerr-McGee can provide the necessary marketing functions that many producers are not staffed to handle.

Kerr-McGee is willing to subject itself to the Commission's NGA jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions, in the same manner and on the same basis that the Commission's jurisdiction attached to certain marketers as referenced in the Application. Kerr-McGee requests that the Commission clarify and declare that Kerr-McGee will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 19, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Anyone who wants to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided, it will be unnecessary for Applicant to appear or to be represented at the hearing, unless Applicant is otherwise advised.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21848 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-642-000]

Reliance Pipeline Co.; Application for a Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

September 9, 1985.

Take Notice that on August 30, 1985, Reliance Pipeline Company of Oneok Plaza, Suite 701, 100 West Fifth Street, Tulsa, Oklahoma 74103, filed an Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization. By its Application, Applicant seeks authorization to commence a special marketing program termed the Reliance Special Marketing Program ("RSMP"). Applicant proposes to conduct this program in a manner similar to those SMPs authorized by the Commission on September 26, 1984 and December 21, 1984 in Docket Nos. CI83-269, *et al.* The authority sought herein would authorize the limited-term abandonment of the sale of gas by participating producers or other suppliers to existing purchasers, and the resale of that gas by RSMP to eligible RSMP purchasers, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would authorize interstate pipelines, distributors and Hinshaw pipelines to transport RSMP volumes pursuant to section 7(c) of the Natural Gas Act and would authorize the transportation of RSMP volumes pursuant to section 311(a) of the the Natural Gas Policy Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 19, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Anyone who wants to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided, it will be unnecessary for Applicant to appear or to be represented at the hearing, unless Applicant is otherwise advised.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21850 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-195-000]

Southern Natural Gas Co.; Changes in FERC Gas Tariff

September 6, 1985.

Take notice that Southern Natural Gas Company (Southern) on August 30, 1985, tendered for filing certain proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 1, 1985. The proposed changes reflect the addition of an annual minimum commodity bill under Southern's OCD and OCDL Rate Schedules applicable to Southern's partial requirements customers. Southern states that its proposed minimum bill provision is consistent with the Commission's Order No. 380 and is designed to recover part of the commodity fixed costs which would otherwise not be recovered by Southern as a result of lost sales.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21849 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Conrad-Shelby 230-KV Transmission Line Project, Montana; Environmental Impact Statement Scoping Meetings

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of Scoping Meetings for the Project Environmental Impact Statement.

SUMMARY: In the July 18, 1985, Federal Register (Volume 50, page 29259), the Western Area Power Administration (Western) announced its intention to prepare an Environmental Impact Statement (EIS) addressing a proposed 230-kV electric transmission line between Conrad and Shelby, Montana, in Pondera and Toole Counties.

Public scoping meetings for the EIS will be held on September 25 and 26, 1985. The specific time and location for each meeting is as follows:

September 25, 1985, 7:00 p.m.

Conrad Community Center, 106 South Delaware, Conrad, Montana

September 25, 1985, 7:00 p.m.

Hospitality Room, Marias River Electric Cooperative, 910 Roosevelt Highway, Shelby, Montana

In addition to the public scoping meetings, Western will meet with county commissioners and planning board members, and with agencies of the State of Montana.

The purpose of the scoping meetings is to inform the public and public officials of the proposed project and receive their concerns and identify potential issues that may develop. The public is invited to participate in the scoping process by attending the meetings or providing their written comments to the address listed below. Western will use the information received to delineate and weigh the topics to be covered in the EIS. The draft EIS is scheduled to be available to the public by August 1986 and the final EIS by February 1987.

FOR FURTHER INFORMATION CONTACT: Acting Assistant Area Manager for Engineering, Billings, Area Office, Western Area Power Administration, Department of Energy, P.O. Box EGY, Billings, Montana 59101, (406) 657-6042.

Issued in Golden, Colorado, August 28, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-21684 Filed 9-11-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85-226; 35096]

Cattle Country Broadcasting; Hearing Designation Order and Notice of Apparent Liability

In re Applications: MM Docket No. 85-127, Charles C. Babbs and Nellie L. Babbs d/b/a/ Cattle Country Broadcasting, BRH-850201ZY, For Renewal of License of Station KTTL (FM) Dodge City, Kansas and Community Service Broadcasting, Incorporated, Dodge City, Kansas, BPH-830502AY, For Construction Permit for a New FM Station.

Adopted: April 26, 1985.
Released: August 14, 1985.

By the Commission: Chairman Fowler concurring in part, dissenting in part and issuing a statement; Commissioner Rivera issuing a separate statement; Commissioner Patrick concurring in the result and issuing a statement at a later date.

1. The Commission has before it (1) the above-captioned timely filed application for renewal of license for Station KTTL(FM), Dodge City, Kansas, filed by Charles C. and Nellie L. Babbs d/b/a Cattle Country Broadcasting; (2) petitions to deny KTTL's renewal application filed by Dodge City Citizens for Better Broadcasting (Citizens) and the National Black Media Coalition (NBMC);[1] (3) informal objections to KTTL's renewal application filed by the Anti-Defamation League of B'nai B'rith (ADL), the Jewish Community Relations Bureau of Kansas City, Missouri, the Jewish War Veterans of the U.S.A., and Robert T. Stephan, Attorney General of the State of Kansas; (4) an opposition to the petitions to deny, informal objections, a response to a Commission inquiry, and supplemental pleadings and information filed by KTTL;[2] (5) replies to KTTL's opposition, and supplemental pleadings and information, filed by Citizens, ADL and Attorney General Stephan; and (6) a timely filed application for a construction permit for a new FM broadcast station in Dodge City, Kansas, filed by Community Service Broadcasting, Inc. (CSBI) which is mutually-exclusive with the KTTL renewal application.[3]

I. Background

2. We consider this case against the background of unusually widespread publicity and political interest; the case has been the subject of many national and local news accounts, and, in fact, Mrs. Babbs was called to testify on the matter before the House Subcommittee on Telecommunications, Consumer Protection and Finance. We have been very conscious of the need to maintain impartiality against this highly charged background. We asked our staff to undergo a thorough and searching examination of the materials to insure that each of the allegations was fully explored and that all applicable procedural and legal requirements were met. Our findings here are the product of this process. The allegations raised by the petitioners and informal objectors fall into three categories: (1) Major program content issues; (2) other alleged violations of the Communications Act or Commission rules and policies; and (3) pending legal proceedings and collateral matters. The programming content issues (which make up the bulk of the allegations) arise as a result of the licensee's broadcast of two series of programs totalling 264 hours [4] of airtime

[1] Citizens' petition to deny is patently defective since it is not supported by affidavits of persons with personal knowledge of the facts contained therein as required by section 309(d)(1) of the Communications Act of 1934, as amended, 37 U.S.C. 309(d)(1), and § 73.3584(a) of the Commission's rules, 47 CFR 73.3584(a). It will, however, be considered as an informal objection pursuant to § 73.3587 of the Rules, 47 CFR 73.3587.

[2] Initially, Mr. and Mrs. Babbs did not avail themselves of their rights under § 73.3584(b) of the rules, 47 CFR 73.3584(b) to file an opposition to the petitions to deny. In view of the serious nature of the allegations raised in the petitions, the Commission, by letter dated June 20, 1983, formally advised Mr. and Mrs. Babbs of their right to file an opposition and requested that they inform the Commission of their intention to file an opposition pleading. By the same letter the Babbs were apprised of the informal objections which had been filed against their renewal application and, finally, they were directed to submit for the Commission's review a copy of the programs/issues list which all licensees are required by § 73.3526(a)(10) of the Rules, 47 CFR 73.3526(a)(10), to maintain. The licensee's response was submitted in two parts, filed on July 5 and July 7, 1983, respectively.

[3] With two minor exceptions, CSBI's application is complete. First, CSBI has not responded to Section II, Paragraph 9 of FCC Form 301 which concerns the applicant's ownership structure. Second, Section II, Paragraph 10 of the same form asks a related question whith respect to stock pleadged as security. A negative response requires a full explanation. Although the applicant answered "no", the required explanation was not provided. Accordingly, by this *Hearing Designation Order* CSBI will be ordered to submit to the Administrative Law Judge an amendment correcting these minor deficiencies in its application.

[4] KTTL's license term ended on June 1, 1983. In addition to the 264 hours of programming during the term, ADL and Citizens notified the Commission that the identical programs (hereinafter referred to as the "Gale/Wickstrom programs") were also aired from July to September 1983. On December 1, 1983, Charles C. Babbs informed the Commission that he had obtained a default judgment against his wife, Nellie L. Babbs, and had taken possession and total responsibility for the operation of the station; that the "offensive tapes" had been removed from the air; that the station's "normal" programming, including news and weather reports, had been returned to the air; and that, therefore, there was no longer any reason to deny KTTL's license renewal application. Although these comments reflect Mr. Babbs' concern about KTTL's programming, we do

Continued

during the license term which, for various reasons, the petitioners found to be offensive. The first series of programs "National Identity Broadcast" featured the Reverend William P. Gale from Mariposa, California, and was aired for one hour nightly at 10:00 p.m. from June to August 1982. According to petitioners, the Gale programs attacked our orderly system of government, urged listeners to ignore law enforcement authorities, and attacked the U.S. monetary system. In addition, the programs were said to include crude and discriminatory comments aimed at racial and religious minority groups, and repeatedly distorted biblical theology, urging that "Jews" and "niggers" are responsible for our current state of domestic and foreign affairs. (Citizens Petition, p. 4. The second program series, "Blow the Trumpet Broadcast," featured the Reverend James Wickstrom from Tigerton, Wisconsin, and was aired for one hour nightly at 9:00 p.m. from October 1982 to March 1983. The Wickstrom programs were of the same type and character as the Gale programs. (Citizens Petition, p.5). According to Citizens, these programs contained the most crude, derogotary, defamatory and incendiary rhetoric, all apparently aimed at cultivating an unhealthy disregard for our governmental system while espounsing open deprecation of and even overt violence directed toward racial and religious minorities within the community. *Id.*

II. Program Content Issues

(A) Clear and Present Danger

3. Citizens and ADL argue that KTTL's license renewal application should be denied. According to petitioners, the Gale/Wickstrom programs fall outside the protection of the First Amendment because they pose a clear and present danger to the maintenance of law and order in the State of Kansas since they advocate the overthrow of our government and constitute a deliberate incitement to riot and imminent lawless action. (Citizens Petition, p. 4; Attorney General Informal Objection, p. 9; ADL Informal Objection, p. 3). The petitioners argue that the inflammatory programming presented by KTTL raises substantial and material questions of fact concerning the Babbs' qualifications to remain Commission licensees. Accordingly, they conclude that grant of KTTL's renewal application would not serve the public interest.

not believe that they reflect an admission by him of wrongdoing.

4. At the outset we note that both the First Amendment and section 326 of the Communications Act prohibit us from censoring broadcast material or interfering with the licensee's discretion in selecting and broadcasting particular programming. It is well settled that the Commission cannot use its regulatory power to rule material off the air merely because the material may be offensive to many members of the broadcaster's audience. *See, Turner Broadcasting Corp.*, 87 FCC 2d 476, 481 (1981); *Thaddeus L. Kowalski*, 46 FCC 2d 124 (1974), *aff'd sub. nom. Polish-American Congress v. FCC*, 520 F.2d 1248 (7th Cir. 1975), *cert. denied*, 424 U.S. 927 (1976); *Anti-Defamation League v. FCC*, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969). Indeed, we have long eschewed any role as a national arbiter of what is good programming. *See, In the Matter of Deregulation of Radio*, 84 FCC 2d 968, 978 (1981), *aff'd in part, remanded in part, sub. nom. Office of Communications of the United Church of Christ, et al. v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). Nonetheless, while the Commission cannot insist that licensees abandon program material solely because it is offensive to the broadcaster's audience, if the programming constitutes *a violation of law*, the Commission may consider such conduct when determining whether to renew or take sanctions against the offending licensee. *Sonderling Broadcasting Corp.*, 41 FCC 2d 777, 784 (1973); *FCC v. ABC*, 347 U.S. 284, n.7 (1954); *see also, Violation by Applicants of Laws of U.S.*, 42 FCC 2d 399 (1951). We do not have the necessary information and expertise to determine whether there has been a violation of Kansas state law. If there has been a violation of state law, we would expect it to be litigated before the state authorities, not the FCC. Of course, we would take into account any final judgments of state law violations in our proceedings. Since this information is uniquely within the ken of the Attorney General of Kansas, we invite him to participate as a party to this proceeding. Accordingly, in paragraph 43, below, we have made him a party and expect him to apprise the Administrative Law Judge of all final adjudications involving the Babbs.

5. This Commission's regulatory power with respect to analysis of *"clear and present danger"* allegations is also circumscribed. As a national, administrative body, our review is removed both in time and proximity from the events precipitating these complaints. As noted below, the Supreme Court case law on this issue is specific in that it requires judgment on not only the *content* of the speech, but also the *context* in which it is heard. We believe that separate and searching study of these two crucial matters is most appropriately performed by the local authorities under the auspices of applicable state and federal law. We are, therefore, disposed to give significant notice and deference to the factual judgments made by them in these cases. Notwithstanding these concerns we have reviewed extensively the evidence brought forward by the petitioners and objectors and do not find sufficient evidence to satisfy the heavy burden of demonstrating that this programming was outside the protections of the First Amendment or otherwise constituted a violation of law. While we can appreciate the fact that the programming was highly offensive to petitioners, we do not have evidence that the programming amounted to more than "advocacy of illegal action at some indefinite future time," *see, Hess v. Indiana*, 414 U.S. 105 (1973). Without demonstrating that speech is directed toward inciting or producing imminent lawless action and is likely to incite or produce such action, the government may not "prosecute advocacy of the use of force or of law violation." *See Brandenberg v. Ohio*, 395 U.S. 444, 447 (1969). In view of the fact that the Supreme Court has made it abundantly clear that "abstract . . . teaching of the moral propriety or even moral necessity for a resort to force and violence," constitutes protected speech, *Noto v. United States*, 367 U.S. 290 (1961), we do not believe that the facts presented here warrant designation of this issue.[5]

6. Having concluded that the programming in question fails to breach the "clear and present danger" test, we believe this case falls squarely within the precedent established in *Anti-Defomation League of B'nai B'rith*, 4 FCC 2d 190 (1966), which also involved the broadcasting of programming that was highly offensive to many. There, the Commission restated the applicable principles which had evolved from those applied in the earlier administration of the Federal Radio Act and the Communications Act:

> It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any

[5] We note that in his informal objection, Kansas Attorney General Stephan asserts that the programs did constitute an incitement to riot. His objection, however, contains no detailed analysis upon which to base a finding that a violation has occurred.

views that do not involve "a clear and present danger of serious substantive evil that rises far above public convenience, annoyance, or unrest." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); *Chaplinsky v. New Hampshire*, 315 U.S. 568; *Ashton v. Kentucky*, [384 U.S. 195 (1966)]. This most assuredly does not mean that those who uphold this principle approve of the opinions that are expressed under its protection. On the contrary, this principle insures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech. If there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable or congenial.

4 FCC 2d at 191–192.

(B) Fairness Doctrine

7. We also find that petitioners have not satisfied their obligation to present substantial and material facts sufficient to justify designation of a fairness issue in this license renewal proceeding. We begin here by reasserting the Commission's steadfast position that fairness complaints most appropriately are considered outside the license renewal context. This procedure underwent extensive review in Docket No. 19260, which culminated in the *Fairness Report*, 48 FCC 2d 1 (1974). There, the Commission rejected proposals to consider routinely fairness complaints in renewal proceedings, rather than act on such complaints throughout the license term, saying that such reviews would not advance the public's interests in receiving timely information on public issues. *Id.*, at 18. In addition, the Commission cited overriding practical and equitable reasons for adhering to the complaint process, saying "this procedure aids the broadcaster by helping to head off practices which (if left uncorrected) place his license in jeopardy," and that "we do not believe that it would be possible to make an overall assessment of licensee performance at renewal time." *Id. See also, Fairness Reconsideration*, 58 FCC 2d 691, 695 (1976). We think the facts of this case, involving as they do the airing of programs highlighting ideas and points of view that are very offensive to some members of the audience, underline the wisdom of complaint rather than renewal hearing treatment of fairness issues. Essentially, we have before us the unilateral objections of the petitioners on these issues without the customary record that woud be created following our standard complaint procedure. Thus, the petitioners face the burden not only of demonstrating that the fairness doctrine has been violated under the usual standards applied in our complaint process, but also that if proven these violations would reach the substantial and material tests for designation in a renewal hearing under *California Public Broadcasting Forum v. FCC* (KQED), Nos. 82–1235, 83–2105, 83–2105 (D.C. Cir., January 11, 1985), and *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1972). To avoid this somewhat anomalous procedural situation in the future, we have instructed the Mass Media Bureau to sever from all future petitions to deny allegations of fairness violations that have not alrady been subject to routine complaint processing and refer them to the Fairness and Political Programming Branch for traditional treatment. This will enable us to avoid reviews of fairness allegations in the renewal context until they have been fully considered in the complaint context, and, where appropriate, the licensee has had a subsequent opportunity to correct any fairness shortcomings. *See National Citizens Commission for Broadcasting v. FCC*, 567 F.2d 1095 (1976), and *NBC v. FCC*, 516 F.2d 1101 (1974), at note 57. Although we find that petitioners here do not make out a sufficient case on this record to justify a hearing issue, we remind complaining parties that this does not preclude or otherwise foreclose their ability to file traditional fairness complaints on these and related issues.

8. Against this background, we review the substance of the fairness requirement and the complainant's allegations. The fairness doctrine requires that a licensee who presents programming on one side of a controversial issue of public importance afford a reasonable opportunity in its overall programming for the presentation of contrasting viewpoints. Each licensee has the responsibility to select the particular news item to be reported or the particular local, state, national or international issues of public importance to be considered. *See Editorializing by Broadcast Licensees*, 13 FCC 1246, 1247 (1949), *Fairness Report*, 48 FCC 2d 1, 10 (1974). This requirement is content neutral and does not prohibit or mandate the broadcast of programming on any particular issue.

9. The licensee has very broad discretion in the manner in which its fairness responsibilities are discharged. The licensee in the first instance is responsible for determining which issues are controversial issues of public importance within its community. If appropriately challenged, it must inform the Commission of the programs which it broadcast to address those issues. In addition, the licensee determines how best to present contrasting viewpoints on issues of public importance, including the content, format, spokesperson, duration and scheduling of programs espousing the contrasting viewpoints.

10. When viewing fairness doctrine complaints the Commission will consider the licensee's programming overall, rather than some finite amount of programming. In the absence of a showing that the licensee acted unreasonably or in bad faith the Commission will not substitute its judgment for that of the licensee. *Fairness Report*, 48 FCC 2d at 10. In view of this standard, complainants raising fairness allegations bear a particularly heavy procedural burden. They must provide specific, detailed information to demonstrate that the licensee has not complied with the fairness doctrine. In fact, until the complainant establishes a *prima facie* case that a licensee has violated the fairness doctrine, the Commission will not even direct an inquiry on the matter to the licensee. *See, e.g., Allen C. Phelps*, 21 FCC 2d 12 (1969); *Fairness Report, supra*, 48 FCC 2d at 8.

11. Initially, we note that the offensiveness of programming cannot be the basis of a fairness doctrine violation, and we cannot proscribe programming solely because it is offensive. Indeed, the Commission has held that "the public interest is best served by permitting the expression of any views that do not involve a 'clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest'. "[T]his principle ensures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech." *Anti-Defamation League of B'nai B'rith*, at 191–192. (citations omitted). *See also Turner Broadcasting Corp.*, 87 FCC 2d 476, 481 (1981).

12. Petitioners seeking to establish a fairness violation must first satisfy the Commission's well-established requirements for making out a *prima facie* case. The requirement that fairness complaints contain detailed and specific information sufficient to make out a *prima facie* case against the licensee, has, in fact, been recognized by the courts as specifically "designed to weed out those complaints that would burden broadcasters without sufficient likelihood that a countervailing benefit will be gained." [6] This procedural

[6] *American Security Council Education Foundation v. FCC*, 607 F.2d 438, 452, 453 (1979), *cert. denied*, 444 U.S. 1013 (1980). *See Democratic National Committee v. FCC*, 717 F.2d 1471, 1475 (1983).

burden is a necessary part of our effort to maintain the delicate constitutional balance associated with the fairness doctrine. *Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94, 102 (1973); *American Security Council Education Foundation v. FCC*, 607 F.2d at 445.

13. We have carefully reviewed the record before us, including illustrative transcripts and several hours of tapes of the Gale/Wickstrom programs.[7] We find that petitioners have failed to meet their burden to make a *prima facie* case for a fairness violation. Accordingly, for the reasons discussed below, we will not designate a fairness doctrine issue in this proceeding or prescribe some other fairness remedy.

14. A *prima facie* case for a fairness violation consists of several elements. The complainant must: (1) Identify the issues broadcast with specificity; (2) demonstrate by objectively quantifiable information that the issues were controversial; (3) demonstrate that the issues identified were of public importance; (4) demonstrate that the broadcasts addressed the issues identified by petitioners; (5) demonstrate that the programs meaningfully discussed the identified issues of public importance; and (6) demonstrate that in its overall programming the licensee failed to present contrasting viewpoints sufficient to meet its fairness obligations.

(1) Identification of the Issues

15. The Commission has long emphasized that an essential part of the complainant's evidentiary burden in establishing a *prima facie* case is to set out a particular, well-defined issue as the subject of its complaint. In *Fairness Reconsideration*, the Commission noted

> This requirement is needed so that complainants, licensees and the Commission will have a clearer understanding of the positions of the parties. This is particulary true because once the burden of specificity has been placed upon the complainant, our attention and that of the licensee is then directed to the issue as framed by the complainant. We do not intend to be placed in the position of specifying the alleged controversial issue of public importance in a complaint. It is not proper function of the administering agency to frame the complaints coming before it and it is incumbent upon the complaining party to bring before us a *prima facie* complaint.

58 FCC 2d at 696.

16. The controversial issues of public importance were framed by petitioners as follows: (a) The immigration of minority groups and the impact of this immigration on the economy; (b) the cause of the economic recession and distress; and (c) the adequacy of the criminal justice system to punish offenders. (Citizens Reply, p. 10). In our view, petitioners have identified the issues of concern to them with sufficient specificity to facilitate our review of their complaint. Accordingly, we find that they have met this aspect of their evidentiary burden. However, as discussed below, petitioners have failed to establish that these issues were controversial, that the programs in question directly addressed these issues, that there was a meaningful discussion of the issues identified by the petitioners or that in its overall programming the licensee failed to provide fair and balanced coverage of the issues.

(2) Controversial Issues of Public Importance

17. The second and third elements of a fairness *prima faice* case require a demonstration that the issues identified are both controversial and of public importance. Failure to show either is fatal to the complaint. *See Fairness Report*, 48 FCC 2d at 11–12; *Healey v. FCC*, 460 F.2d 917, 922–23 (D.C. Cir. 1972). The measure of controversiality is "whether the issue is the subject of vigorous debate with substantial elements of the community in opposition to one another." [8] The principal test of "public importance" is "the impact that the issue is likely to have on the community at large." [9] Mere community interest does not constitute controversiality. By limiting the application of the fairness doctrine to issues that satisfy both the "controversiality" and "public importance" tests, the Commission has sought to restrict the potential chilling effect of the doctrine on broadcast journalism. In other words, newsworthiness is not sufficient, and application of the doctrine to every "newsworthy" dispute:

> would so inhibit television and radio as to destroy a good part of their public usefulness. It would make what has already been criticized as a bland product disseminated by an uncourageous media even more innocuous, and it would in every way inhibit that "robust public debate" that the fairness doctrine was borne to enhance.

Healey v. FCC, supra at 923.

18. Looking at each of the purported issues in detail, we find that the supporting material either fails to demonstrate that the issue was a subject of controversy in the community, or fails to address the issues identified by petitioners. [10] Petitioners submitted the most supporting material for issues related to the "cause of the economic recession and distress." However, it is clear that neither controversiality nor public importance can be proved just by showing that an issue has received broadcast or news coverage. *See, Healey v. F.C.C.*, 460 F.2d 917, 922 (D.C. Cir. 1972). The petitioners, for example, submit the issues/programs lists of other stations in the Dodge City area and newspaper articles from various papers to support the proposition that the cause of the recession was a controversial issue at that time in the community. The program lists from these stations demonstrate that economic issues in general received considerable coverage by other broadcast media. However, they do not evidence that there was a specific controversy on these matters.[11] For example, the 1983, 1982, and 1980 issues list for KGNO in Dodge City have "Economic Problems" listed as the number one issue treated by the station in its issue responsive programming for each of those years. However, the programs listed by the station contain examples of a great variety of economic issues, including property taxes, state and local sales taxes, minimum wage laws, energy costs, state, and local spending patterns, balancing the national budget, problems or persons on fixed incomes, congressional pay increases, local tourism, causes and effects of inflation, federal income tax

[7] The broadcast tapes on which the petitioners relied were submitted to the Commission as part of a supplementary pleading filed on November 21, 1983, by Citizens.

[8] *Fairness Report, supra*, 48 FCC 2d at 12.

[9] Although public importance may be shown by objectively quantifiable information such as the degree of media coverage the issue has received and the degree of attention the issue has received from government officials and other community leaders, the principal test is a subjective evaluation by broadcasters of the impact that the issue is likely to have on the community at large. *See Fairness Report*, 48 FCC 2d at 11–12.

[10] The showing necessary to demonstrate an issue's controversiality is more objective than the showing necessary with respect to the issue's public importance. Specifically, a controversiality showing should include information concerning the degree of attention paid to an issue by government officials, community leaders, and the media at the time the subject material was broadcast; any controversy and opposition of a substantial nature concerning programs broadcast by a licensee (even where such "controversy and opposition" arises subsequent to the broadcast of the programming in question); or any other objective information which shows that the issue is the subject of vigorous debate with substantial elements of the community in opposition to one another. *See Fairness Report*, 48 FCC 2d at 12.

[11] There are many community problems which might properly be listed as a station's issue responsive programming, and yet fail to be controversial in that community.

cuts, and the federal budget. The newspaper articles dealing with economic problems similarly focus on various matters including home foreclosures, farm and ranch expenses, declining land prices, and the adequacy of the budget of the Dodge City policy department. Also several of these articles deal with the economic distress of the farm population in the area. In sum, what we have here is a compendium of diffuse programs and articles discussing various and sundry economic problems which may relate to aspects of the economic recession, but which do not show that there was any controversy in Dodge City about the causes of the recession. None of the programs or articles reveal a controversy over the causes of or solutions to the problems that could be presumed to be the subject of vigorous debate among susbtantial elements of the community in opposition to one another. See *Fairness Report*, at 12. To the contrary, the articles evidence a rather remarkable agreement on the causes of problems, such as the economic farm problem, and no discussion of solutions that would be fairly characterized as controversial.[12]

19. Petitioners have similarly failed to demonstrate that "the impact of immigration on the economy" was an issue of controversy in Dodge City. Looking at the issues/programs lists of other stations, we find that none of the stations listed an issue related to the econmic impact of immigration. Three of the problems/issues lists, specifically the 1982 lists from KGNO and KDCK, and the 1980 list from KDCK, and four of the newspaper articles from the *Dodge City Dodge Globe*, focus on the racial tensions in the community resulting from a significant influx of Vietnamese into the Dodge City area. However, programs on racial tensions do not support petitioners' claim that the impact of immigration on the economy was a controversial issue in Dodge City. Racial tension may have many causes, including economics, but here the issue framed is not matched by the evidence submitted.

20. The remaining issue is the adequacy of the criminal justice system to punish offenders. Here again petitioners have failed to show that there was controversy in Dodge City about this issue. The proffered materials include a great deal of information about crime prevention generally and discussion of specific crimes, as we would expect would be found in many communities in the United States. For example, the 1980 KGNO list includes "problems related to streets and traffic" and "drug and alcohol abuse." The 1982 KDCK list includes "legalization of marijuana" and "rape and the lack of punishment for the rapist." Similarly, the KEDD list for May 1981 to May 1982 includes "buying a gun," "alcohol and drug abuse," and "crime." These programs address issues such as the prevalence of crime in the community, and self help measures such as self defense, drug rehabilitation and neighborhood watch programs. Several of the marijuana and alcohol abuse programs focused on whether or not certain practices should be made legal. These programs reflect a common concern about crime and crime prevention in the community, but they do not address or question the adequacy of the criminal justice system nor do they show that this was a matter of controversy in Dodge City.

21. Petitioners also submitted four separate articles from the Dodge City Globe which discussed local law enforcement. Three of these comprised a three part series on the Ford County and Dodge City municipal police departments, entitled the "State of Law Enforcement," "Citizens Want More Police Officers Hired," and "Coffin Feels Department Adequately Budgeted, Staffed." The fourth article deals with problems at a local jail. These articles do demonstrate a community wide interest and some controversy about whether local police forces are adequately staffed and financed. However, that is not the controversial issue of public importance framed by petitioners. The issue framed by petitioners involved the general adequacy of the criminal justice system to punish offenders. While the newspaper articles before us focus on the need to beef up local law enforcement capabilities, they do not address the adequacy of either the local or federal criminal justice system to punish offenders.[13] Thus, here again petitioners have failed to carry their burden.

22. In sum, we have reviewed this supporting material and conclude that petitioners have not shown that the specific issues identified—the cause of the economic recession and distress, the impact of this minority group immigration on the economy, and the adequacy of the criminal justice system,—were, in fact, subjects of controversy in Dodge City during the relevant time periods. Indeed, most of the newspaper articles submitted by petitioners do not reflect any community dispute or disagreement whatsoever regarding the issues identified by petitioners. Moreover, as we have noted in the past, news interest *per se* does not automatically translate into a *prima facie* showing that an issue is necessarily controversial. *See, Healey v. FCC, supra*, 460 F.2d at 922 (1972).

23. Inasmuch as Petitioners have failed to show the existence of public debate or dispute on the issues identified by them, or any other indication of the controversiality in the community with respect to the three identified issues, they have failed to make out a *prima facie* case for a fairness violation.[14] Accordingly, we will not designate a specific issue concerning the licensee's compliance with the fairness doctrine. In addition to its fatal deficiencies with respect to the controversiality requirement, petitioners' *prima facie* showing is, in our view, deficient in other areas as well.[15]

---

[12] For example, to support their economic recession issue, petitioners submitted the following articles from the *Dodge City Globe:* "Farmers on the Ropes" (commentary on economic problems facing farmers); "Farmers Cope with Tight Money Situations" (escalating costs of farming); and, "Value of Farmland Declines Sharply" (effect of recession on farmers). These articles indicate that people were justifiably concerned about the recession but they do not indicate any controversy about the causes of the recession. There are no articles which indicate that the issue was controversial—that different groups in Dodge City have taken opposing views on the matter. An article perhaps reporting that local business groups and the Dodge City Council were at odds concerning what they believe to be the cause of the recession, or an article describing how a councilman and a member of the business community engaged in a heated debate on the issue at a recent council meeting might, in fact, be objective indicia of the issue's controversiality.

[13] For an issue like adequacy of the criminal justice system to punish offenders, we would expect to see, for example, evidence that there was controversy in Dodge City about the penalties for certain crimes. We are aware that in some areas penalties for crimes such as carrying a weapon, drunk driving and rape have become subjects of concern, and may or may not be subjects of controversy.

[14] In view of these deficiencies in petitioner's *prima facie* case we need not address whether the issues framed by petitioners were, in fact, issues of public importance in the Dodge City Community.

[15] For example, another essential element in establishing a *prima facie* violation of the fairness doctrine is evidence that a licensee has *failed to provide fair and balanced coverage* of a particular controversial issue in its overall programming. *See, Fairness Report, supra*, 48 FCC 2d at 19. In this regard, they allege only that Mrs. Babbs broadcast only 10 minutes of "rebuttal time" to the Gale/Wickstrom programs. They do not allege (and based on the record before us, we are unable to conclude) that, even if Mrs. Babbs had a fairness obligation here, *the licensee failed to present sufficient contrasting viewpoints in its overall programming.* Accordingly, petitioners' fairness showing is deficient with respect to this aspect of its *prima facie* case as well.

(3) Relationship of Broadcasts to Issues Specified

24. It is incumbent upon petitioners to demonstrate that the programs about which they complain address directly, and have a clear relationship to, the fairness issues specified. *National Committee for Responsive Philanthropy v. FCC, supra,* 652 F.2d at 191. Having carefully reviewed the Gale/Wickstrom programs, we conclude that they do not have any clear relationship to the fairness issues identified by petitioners.

25. Petitioners point to many statements which they believe raise fairness obligations. Examples include statements that: "[W]e've got a bunch of empty skulls in Washington, D.C.—they are gonna get filled or busted; the law—is that you citizens a posse will hang an official who violates the law . . . take him to the most populated intersection of the township and at noon, hang him by neck." It is clear to us that these and other similar statements cited by petitioners bear no relationship to the fairness issues identified by petitioners.

26. Nor can we find that statements such as "[t]here is no lawful authority for judges and the courts to direct the law enforcement activities of any county sheriff" (Reply Pet. at 15) bear any nexus to the identified issue of the adequacy of the criminal justice system to punish offenders. We do not see what identified controversial issue of public importance was addressed by statements that Thomas Jefferson warned that the judicial branch would usurp the power of the other branches or that we should have a revolution every twenty years. Similarly, without more, we cannot accept the argument that telling listeners to stay out of courts because they are controlled by Jews addresses any of the issues identified by petitioners.

(4) Meaningful Discussion

27. Having found that petitioners failed to establish a clear nexus between the programs relied upon and the issues identified in the complaint, we are also unable to find that these programs meet the more exacting standard that the programs contain obvious and meaningful discussions of the fairness issues specified. See, *Children—Before Dogs,* 37 FCC2d 647 (1972), *Environmental Defense Fund,* 90 FCC 2d 648 (1982), and *American Security Council Educational Foundation,* 607 F2d 438, 450 (D.C. Cir. 1979). Much of the material objected to by petitioners consists of incoherent monologues interspersed with occasional tirades, which include isolated and fleeting offensive remarks. Even if some of the statements made arguably did touch upon some of the issues identified by petitioners, there was no meaningful discussion of the issues, which would raise a fairness obligation.

(C) *Non-Entertainment Issue-Oriented Programming*

28. Petitioners allege that the licensees have failed to present programming which was responsive to community needs. They assert that the Gale/Wickstrom programs represented KTTL's only issue-oriented programming between June 1982 and December 1983, and, rather programs reflect only the licensee's own narrow political philosophies. (Citizens Petition, p.2). The evidence before us does not support this argument. Without including any of the Gale/Wickstrom programs, KTTL's "Program List for 1982–83" shows at least 20–25 minutes of daily news, public affairs and other editorial matter that presumably includes significant amounts of issue-oriented programming. While petitioners focused on the offending Gale/Wickstrom programs, they failed to address the substantive programming questions, they failed to address the substantive programming questions that are relevant in determining whether a station has met its general issue responsive program responsibility. Finally, petitioners do not allege that the licensee's non-entertainment programming decisions were unreasonable or made in bad faith.

29. In recent years the Commission has broadened the discretion vested in licensees to select programming to fulfill their responsibility to operate in the public interest. *E.G., Deregulation of Radio,* 84 FCC 2d 968 (1981). There are no longer any non-entertainment programming percentage guidelines for commercial radio licensees, although licensees have a general obligation to address those issues that they believe are of importance to the community. The thrust of the radio deregulation orders has been to increase the scope of programming discretion vested in our radio licensees based on the proposition that they are in the best position to determine which issues are of greatest importance and of most interest to their listeners. In so doing, the Commission eliminated program related requirements involving detailed program logs, formal ascertainment procedures, and quantitative guidelines for nonentertainment and commercial programming, and instituted a simplified program/issues list reporting requirement. As adopted and later modified in the *Second Report and Order,* FCC 1984, (FCC 84–67, adopted March 1, 1984), that list must contain a description of at least five to ten issues to which the station gave particular attention and a correspoonding list of examples of programming utilized to address each issue (together with the time, date and duration of such exemplary programs). During the 1982–1983 period, for which we have such a list for KTTL, the Commission also required a brief narrative description of how the station determined each issue to be one facing its community. Although we continue to give licensees considerable flexibility in their determinations on how best to formulate and format these lists, our review of the issues/programs lists submitted by KTTL in this proceeding gives us some pause. In particular, we are concerned that although we have a list of issues warranting program coverage by the station and a program list for the same period, the correlation betwen these two lists is obscure and thus not in compliance with our intent when we promulgated and revised our non-statutory programming requirements. *See Deregulation of Radio, supra,* paragraphs 71 and 72; and *Second Report and Order, supra,* paragraphs 18–30. Nevertheless, KTTL's program list does purport to show programs that addressed community issues, and the representations concerning these programs are uncontested. Accordingly, the sole licensee failing related to issue-oriented programming that is clearly supported by the present record is that KTTL apparently did not comply with its responsibilities to compile and file adequate programs/issues lists under § 73.3526(a)(10). The information has been presented in such a way that we are unable, without straining, to establish the relationship between KTTL's list of issues warranting program coverage and its list of programs broadcast for the same period. We thus find that the licensee failed to comply with § 73.3526(a)(10) of the rules and we will require the licensee to file with the Administrative Law Judge a programs/issues list that complies with the rules within 30 days of the release of this *Designation Order* so that the record will be complete. Should the licensee demonstrate that issue-oriented programming was presented in response to significant community issues as reasonably identified by the licensee, that, standing alone, could resolve this issue. In addition, however, we direct the Administrative Law Judge to offer the parties participating on this issue an opportunity to seek addition of a programming issue on the basis of a well-pleaded petition to enlarge issues at that time. The burden will be on the

licensee to present adequate programs/issues lists demonstrating compliance with the reporting requirements of § 73.3526(a)(10). If the licensee meets this burden, then further inquiry would be warranted only if one of the other parties meets the standard burden of establishing a *prima facie* case that an additional programming issue is warranted. If the licensee fails to meet this burden, the Administrative Law Judge will determine whether there is nevertheless sufficient evidence in the record to find that KTTL met its responsibility as defined in the Commission's *Radio Deregulation* order to present programs designed to meet issues of importance to its community. If the Administrative Law Judge is unable to make such a finding, he will specify an issue to determine whether KTTL has staisfied its duty to air issue responsive programming.

III. Violations of the Communications Act and Commission Rules

(A) Sponsorship Identification

30. Petitioners allege that Mr. and Mrs. Babbs have violated section 317 of the Communications Act, as amended, and § 73.1212 of the Commission's Rules, 47 CFR 73.1212, by failing to comply with the Commission's requirements that program sponsorship be fully disclosed on the air. (Citizens Petition, p. 2, *et seq.*) According to petitioners, despite the fact that the Gale/Wickstrom programs contain no sponsorship identification announcements, Mrs. Babbs repeatedly admitted that KTTL received sponsorship funds from individuals and unidentified groups to support the broadcast of the programs. (Citizens Petition, p. 5). To support this allegation petitioners rely on Mrs. Babbs' statement during an interview on an ABC *Nightline* broadcast of May 18, 1983, when, in response to a question as to whether *she received payment* for the broadcast of the programs, Mrs. Babbs said:

> . . . (payment) was made in the form of contributions from various people within the area, and that there were contributions made from out of state.

31. Mrs. Babbs' statement on *Nightline* seems to reflect no more than that solicitations were made on KTTL for funds to support the churches with which the Reverends Gale and Wickstrom are associated. Mrs. Babbs' *Nightline* comments seem to address these solicitations and, without more, do not amount to an admission that she violated the Commission's sponsorship identification rules. We have carefully reviewed the tapes furnished by petitioners for any evidence to support their allegations that Mrs. Babbs was paid to broadcast the Gale/Wickstrom programs and have found no evidence to support that view. The tapes reveal efforts by the Reverends Gale and Wickstrom to raise funds for their churches, but there is no evidence that either minister or any other person paid the licensee to air the programs. Thus, in the absence of other evidence to support a conclusion that a violation has occurred, we will not designate an issue. *See, Stone v. FCC*, 466 F.2d 316 (D.C. Cir. 1972), *California Public Broadcasting Forum v. FCC (KQED), supra.*

(B) Supervision and Control

32. Petitioners allege that Mr. and Mrs. Babbs failed to exercise adequate supervision and control over the station's operations and, in effect, abdicated responsiblity for the station's programming to the Reverends Gale and Wickstrom. To support these allegations petitioners again rely on comments made by Mrs. Babbs during her May 18, 1983 interview on *Nightline*, when she said:

> . . . of course, if these two ministers are not allowed airtime, I could have been possibly found liable.

(Citizen Reply, Exhibit 2). What Mrs. Babbs intended is unclear. In any case, her comments do not constitute an admission that she abdicated authority over KTTL to those who had purchased airtime on the station. On the contrary, at most, Mrs. Babbs' remarks demonstrate a concern with the possibility of administrative or judicial review of program decisions. They are not sufficient evidence that the station materially violated the "supervision and control" provisions, particularly in a manner that would rise to the requisite level at issue here. Since the statutorily required support for petitioners' allegations is lacking, no substantial and material question of fact has been raised with respect to this matter.

IV. Pending Legal Proceedings and Collateral Matters

(A) Legal Proceedings

33. Petitioners allege that certain legal proceedings pending against the licensee (including suits for copyright infringement, defamation, civil warrants for arrest for contempt of court, garnishment of wages for failure to pay state personal property taxes) demonstrate that Mr. and Mrs. Babbs are not qualified to remain Commission licensees. At the time of this Designation Order, our informal investigation of the status of these and other related actions indicates that several cases have changed considerably and in ways that would likely affect our findings here. We note that we have not been sufficiently apprised of the details of each of these proceedings to make a determination on the facts before us whether any of these cases has a sufficient nexus to the licensee's status as a Commission licensee to be relevant to our traditional charcter determinations. We also note that by *Memorandum Opinion and Order To Show Cause*, FCC 84-555, released November 29, 1984, the Commission instituted revocation proceedings against Mr. and Mrs. Babbs as the principals of Dodge City Mobilephone, the licensee of KU0578 in the DPLMRS Service. One of the issues specified against the licensee was a character issue based on allegations that Dodge City Mobilephone violated § 22.13(f)(2) of the Commission's Rules when it continued to operate station KU0578 in violation of Kansas state law subsequent to the revocation of its certificate of public convenience and its corporate charter. By *Order*, issued February 2, 1985, Administrative Law Judge, Edward J. Kuhlmann terminated the proceeding when the licensee relinquished the license obviating the need to resolve the character allegation designated. Since these unresolved character allegations may well be relevant to our determination of the instant matter, we will consider these matters as a basic issue in this hearing and instruct the Administrative Law Judge to gather the necessary information to make an initial determination with respect to the licensee's character qualifications and to determine whether the licensee's failure to comply with § 22.13(f)(2) should result in the imposition of a forefeiture. *See*, paragraph 38, *infra*. We are also by this Order making the Attorney General of the State of Kansas a party to this proceeding. Since the information about the status of outstanding state and local litigation is most easily available to him, we would expect the Kansas Attorney General to submit a comprehensive list with respect to all these pending and adjudicated Kansas cases as well as other cases of which he may be aware, and to keep the ALJ apprised of all relevant developments. We are not hereby assuming that any of these cases are within the appropriate scope of our character determination; instead we remind the ALJ that the burden of going forward with the evidence on this remains always with petitioners who must demonstrate that the cases are both relevant and probative of the

licensee's character qualifications to remain a licensee.

(B) Public File Requirements

34. In his informal objection Kansas Attorney General Stephan alleges that the licensee has failed to maintain a public file that is reasonably accessible to the public. In our opinion no issue should be designated against the licensee with respect to this matter. To support the allegation that the public was denied access to the station's public files, Attorney General Stephan relies on the affidavit of Ford County Deputy Sheriff Dean Bush who was denied access to the station. (Attorney General Informal Objection, p. 6). In his affidavit, Deputy Sheriff Bush states that he was attemption to gain admittance to KTTL to serve official arrest warrants issued for Mrs. Babbs. Thus, Deputy Sheriff Bush's request for access apparently was used as a pretext for him to carry out his official functions. Although the sheriff may have been entitled to see the station's files, regardless of his true purpose, the station's refusal to permit him access under these unusual circumstances does not provide sufficient evidence to demonstrate that the Babbses failed to maintain a reasonably accessible public file. This conclusion is butteressed by the fact that on October 20, 1983 KTTL was subjected to a surprise inspection by the Commission's Kansas City Field Office, at which time Commission staff was admitted to the station immediately and without question, and KTTL's public file was examined and found to be complete. Thus, the apparently isolated refusal to admit the deputy sheriff for service of process does not, in our view, require designation for hearing.

V. Ordering Clauses

35. Accordingly, it is ordered, that the petitions to deny, filed by Dodge City Citizens for Better Broadcasting and the National Black Media Coalition are denied in part and granted in prat as specified herein.

36. It is further ordered, that the informal objections filed by the Anti-Defamation League of B'nai B'rith, the Jewish Community Relations Bureau of Kansas City, Missouri, the Jewish War Veterans of the U.S.A. and Robert T. Stephan, Attorney General of the State of Kansas are denied in part and granted in part as specified herein.

37. It is further ordered, that the licensee shall file with the Presiding Judge within 30 days of the release of this Order, an amendment to its pending renewal application which demonstrates its compliance with § 73.3526(a)(10) of the Commission's Rules, as set forth in paragraph 29, *infra*.

38. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned renewal and construction permit applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. With respect to Cattle Country Broadcasting:

(a) To determine what effect, if any, the licensee's failure to fulfill its responsibilities under § 73.3526(a)(10), as described herein, should have upon its qualifications; and

(b) To determine whether, in light of the facts adduced pursuant to the review of relevant cases considered as instructed in paragraph 33 above, the licensee possesses the basic character qualifications to remain a Commission licensee.

2. In the event that it is determined that Cattle Country Broadcasting possesses the requisite qualifications to remain a Commission licensee, to determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

39. It is further ordered, that this document constitutes a Notice of Apparent Liability to the licensee for forfeiture for violation of § 22.13(f)(2) of the Commission's Rules.

40. It is further ordered, that Dodge City Citizens for Better Broadcasting is made a party to this proceeding with respect to issue 1(a) and 1(b) only.

41. It is further ordered, that the Attorney General of the State of Kansas is made a party to this proceeding with respect to issue 1(b) only.

42. It is further ordered, that within 30 days of the release date of this order, Community Service Broadcasters, Inc. shall submit an amendment to the presiding Administrative Law Judge responsive to section II, paragraphs 9 and 10 of FCC Form 301, as set forth in paragraph 1, note 3 of this Order.

43. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

44. It is further ordered, that the applicants shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

45. It is further ordered, that the Secretary of the Commission, shall send, by Certified Mail—Return Receipt Requested, a copy of this Hearing Designation Order to each of the parties to this proceeding.

Federal Communications Commission.[16]

William J. Tricarico,

Secretary.

Statement of Chairman Mark S. Fowler Concurring in Part and Dissenting in Part

Re: Renewal of License of Station KTTL(FM) Dodge City, Kansas

This is a hard case. It involves a confusing, sometimes incoherent record. And when the record becomes clear, the vile language of some of the Gale and Wickstrom broadcasts becomes its most conspicuous feature, casting a dreadful light on the entire proceeding. Reading the transcript and the viewpoints of these broadcasts, I, too, am appalled.

To say that much of it is racist and anti-Semitic is simply to acknowledge what its authors intended us to conclude. Its attractiveness and appeal to those individuals or groups who would commit violence, and who have done violence, only adds to the offense and the scorn which our sensibilities bring to this case. But, while this is speech that makes some angry, it is not speech that incited anyone to violence.

It is in such situations, when public rebuke is greatest, that the First Amendment becomes so important. The language before us is protected speech, protected advocacy. It does not amount to unprotected incitement of violent or illegal conduct, for it posed no clear and present danger. As such, it cannot be condemned. Designating an issue because of this speech, either directly or through the use of a seemingly unrelated speech issue, is to me the wrong way for the Commission to proceed. Having found that the speech is protected, we should focus on the rest of this case as we would any other hearing designation matter, making sure that each of the allegations is thoroughly explored and

[16] See attached Statements of Commissioners Mark S. Fowler, Chairman, and Henry M. Rivera.

applicable procedures and case law given all due consideration.

The courts and this agency have addressed the issue of offensive political speech. It may not be an easy task, but it is nothing new. The weight of all modern judgment, starting with Justice Holmes [1] and continuing through cases here at the FCC—the *Anti-Defamation League* [2] and *Stoner* [3] cases, to name but two—is the same. Protected speech may not be punished.

In the 1949 case, *Terminiello v. Chicago* [4], the U.S. Supreme Court was faced with a race-baiting speech that attracted an angry, turbulent crowd. In reversing the speaker's breach of the peace conviction, Justice William O. Douglas wrote for the court, "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." [5]

So I must resist any effort to designate an issue that is content-related unless the facts before us provide a compelling reason to do so. Were we to do so in this case, the protection of the First Amendment, which rightfully belongs in broadcasting and to broadcasters, would be undone.

In particular, as to the fairness doctrine, I have reviewed the transcripts of the broadcasts to determine whether a prima facie case has been made out as to those issues that petitioners assert were raised by these broadcasts. At times the broadcasts are highly offensive, but their contents do not constitute meaningful discussions of the three issues on which the petitioners' fairness doctrine complaint focuses. Attached as an Appendix to this statement are those quotations from the Gale and Wickstrom broadcasts that come closest to addressing the issues as stated by petitioners and which nevertheless demonstrate a general incoherency to these talks.

On another programming matter, I question the need for further reporting by the licensee as to its satisfaction of the non-statutory programming requirement set forth in *Deregulation of Radio*, 84 F.C.C.2d 968 (1981). I am satisfied the licensee fulfilled its programming obligations under that order and that the Commission can make this finding based on the programming information in the record. The information provided the Commission, though clearly not exemplary, provides a basis for the Commission to determine that the licensee was not unreasonable as to the sufficiency of its issue-responsive programming. More than that is not required of a licensee. Nevertheless, I concur with the majority's decision as the least obtrusive solution to the majority's desire to explore further the programming issue.

There is a relatively new scheme for programming under the *Radio Deregulation* order. Licensees have significant flexibility in determining the issues facing their communities and the programming with which they address those issues. We provided no concrete guidance for complying with the requirements. It is uncharacteristic for this Commission to so obtrusively apply this requirement, particularly where the goals of the *Radio Deregulation* order—provision of programming responsive to the community—have been met. In may view, the Commission's action on this issue can be viewed as a transparent punishment of the licensee for protected conduct.

As to the character issue, I cannot abide by the designation of a basic character qualification issue to the extent that the designation is based on the state court's judgment against the licensee garnishing wages for failure to pay state personal property taxes. I, therefore, dissent to that finding. However, I would designate an issue where the activity in question violates our rules or calls into question the truthfulness of the licensee's representations to the Commission. Here, I am convinced that the licensee did violate the Commission's rules prohibiting operation of DPLMRS facilities without a state certification, and a character issue designation is justified on that ground.

But there are no grounds for throwing sundry alleged missteps the licensee may have made in unrelated instances into the apothecary jar of character just because the jar is open by the DPLMRS matter. The majority is putting this licensee under too powerful and magnifying glass, turning the lights on brighter than necessary for no other apparent purpose than to ensure that the licensee is examined by the Commission on some non-content basis.

Other issues relevent to the licensee's character may arise that require a hearing, and we have asked the Kansas Attorney General to apprise us of any adjudications. At that point they may form the basis for a claim under the designated character issue; now they are premature.

They may be immaterial as well. Even under the strictest reading of the character qualification, some breach of fiduciary duty or fraud (as when a licensee withheld payroll payments and did not forward the monies to the IRS) [6] is necessary for a character designation. Were there a clearly set forth allegation of misrepresentation or fraud in this case, the issues might be relevant. But we know of none. Therefore, I find no basis to designate a character issue because of the licensee's state tax violations.

I do not buy this statement want to express any view on the comparative analysis that the administrative law judge will have to perform in this case. That we leave to a later date. However, the comparative hearing must be conducted with the knowledge that the Commission has found that the speech in question is protected under the Constitution.

Appendix

Issue 1: The immigration of minority groups and the impact of this immigration on the economy.

—Excerpt from "Fed-Up American":

. Now the Jew bankers who control the United Nations. . . . Mexicans are now coming across the American-Mexican border in armed, small bands looting, stealing, and abusing American citizens especially American-born, Mexican Chicanos. The Border Patrol and other government agencies have stated that they have orders to do nothing because it may create and international incident. It's time to load those weapons fellow Americans and take care of the problem just as our founding fathers did in bringing forth this Christian republic and after we clean up our southwestern border, let's just keep walking to the nearest state capital and Washington, D.C. and clean up the rest. . . .

—Excerpt from "Fed-Up American

Trouble is still building at the American-Mexican Border as small armed bands of Mexicans are now coming into American territory using force to loot, steal, and pilfer from the American people. Only to then return across into Mexico with the their loot. Americans are being told that if they resist they will be shot or seriously harmed. Even the American-born Chicanos are leaving the area in fear of their lives and no help is being given or

[1] Schenck v. United States, 249 U.S. 47 (1919).

[2] Anti-Defamation League of B'nai B'rith v. FCC, 403 F.2d 169 (D.C. Cir.), *cert. denied*, 394 U.S. 930 (1968).

[3] Complaint by Atlanta NAACP, 36 F.C.C.2d 635 (1972).

[4] 337 U.S. 1 (1949).

[5] *Id at 4.*

[6] See, e.g., Country Broadcasting Co., 71 F.C.C.2d 1222 (Rev. Bd. 1979).

offered by the American government in fear of an international incident. . . .

—Excerpt from "Blow Your Trumpet"

Information received from military intelligence is that the Mexicans are now sending "sappers" or master demolitionists into the United States across the Mexican Border trained by Cuban and Soviet cadre where they now admit that there's 30,000 Cuban soldiers in Mexico. Their objective is to penetrate through the United States into the Mississippi River Basin. They are there to try and procure work. Their main objective is to buy a boat of large size and fully load that boat with demolitions, supplies, and/or particles to make a huge bomb, and at the right minute, they are to blow or damage as many bridges across the Mississippi as they can damage to cut the country in half. This is being done at this time with the subversion of the Communist/Mexican government who President Reagan said he doesn't want to do anything about the border problem because it may create an international incident. The internation incident is already underway. They are to be joined in process by Vietcong Vietnames who also have been told their targets and what they shall destroy and it is these V.C. who are going to the gun shops across America buying carbines, mini 14s, AR–15s, shotguns. They are also buying these German-made units HK–91s, 308, 30 shots semi-automatics, they are loading up for the war to catch the American Anglo-Saxon Caucasian, God's son and daughter, flat on their back because Yahwey said in Paragraph 19 of Chapter 2 of Jeremiah, "your own wickedness will correct you, and your backsliding of my law and away from me shall reprove you. . . ."

Issue 2: The cause of the economic recession and distress.

—Excerpt from "Fed-Up American"

It also means that the international Jew bankers and financiers are jumping for joy and the green buck in seeing the American industrial sector being destroyed. The Jews in America have no loyalty to the United States as a nation, only to their pocketbook and Israeli. This is why the stock market has been rising due to the fact of foreign investments by Jews in America. Surely, you haven't thought that the United States was coming back industrially, have you fed-up American? The money that President Reagan is asking Congress for at this time, is to give the Jew-controlled International Monetary Fund the financial support for those foreign countries that the United States is importing from at this time. There is only one catch, fed-up American, the foreign countries that accept that American taxpayers' money must not send goods into the United States in return for the money, but obtain most of their imports from Communist nations. How is that for getting the short end of the rope, fed-up American, and Reagan doesn't just want $8.5 billion for this task but an overall $45 billion. It's time to clean house, fed-up American. By the way, last week, one IRS agent shot to death, Buffalo, New York; two bankers who foreclosed on private, personal property shot to death in Minnesota. For the week, chalk up three for the good guys, none for the bad guys. . . .

—Excerpt from later portion of the same program:

You see the poor people of the country and the needy people are in the hands of these wicked Jews. Look at all these government programs. Supposedly for the poor, not just the poor of your race, but the Blacks are in their hands.

—Excerpt from "Blow Your Trumpet"

You wonder why you're losing your farms and ranches and businesses out there? Because your minister has lied to you concerning the illegality of the Federal Reserve Corporation and a bunch of international communist Jews that has stripped your wealth and your land from you. It's not all political. It comes right back to the pulpit because the ministers and the teachers of God's laws are to teach his sheep so they are not plundered and led astray by the wolves.

Issue 3: The adequacy of the criminal justice system to punish offenders.

—Excerpt from "Fed-Up American"

Look at the murder and crime that's going on in the United States of America. Look at how many white people are being killed by these beasts, get the FBI records of it and find out. It's not safe to walk the streets of your capital today in Washington, D.C. It's not safe to walk the streets of the cities of your land and the beasts are shedding the blood of the saints.

—Excerpt from "National Indentity Broadcast"

So that all judges when you hear this are evil; well its really not true. It's the system that they work in that is evil. All judges and all lawyers are not evil no more than all law enforcement officers and all policemen are evil just because there might be a rotten apple or because they might have to work in an evil system, an unjust system and not know it.

Statement of Commissioner Henry M. Rivera

Re: Dodge City, Kansas License Comparative Renewal Proceeding

Few recorded FCC decisions involve a more reprehensible series of broadcasts than those aired by KTTL. By any contemporary standard, the programs by Wickstrom and Gale were bigoted, crude and offensive. For close to a year, KTTL subjected Dodge City residents to a regular dose of these racist, anti-semitic and socially destructive messages, with no apparent regard for the differing views held by most of its listeners. I am personally dismayed that Dodge City residents were subjected to these broadcasts, whose purpose was to arouse base instincts that are antithetical to the credo and values of this nation.

For these reasons, I am distressed that the Commission finds itself in the position of having to deny the fairness doctrine complaints lodged against KTTL. I know the people of Dodge City who heard these broadcasts will find it hard to understand how KTTL has escaped any duty to air programming presenting another view of minorities, Jews and our system of government. The reason is simply that the complaints before us have failed to meet the exacting requirements of the fairness doctrine. This does not mean KTTL did not violate the fairness doctrine (in fact, it may well have) but simply that petitioners failed to state their case properly. And, under the law, the petitioners must do that. We bureaucrats cannot make petitioners' case for them. No matter how offensive these radio broadcasts are, I agree that the FCC must stay its hand unless a legally sufficient fairness doctrine violation is shown. The imperative of self-restraint imposed on us by First Amendment considerations requires it. Perhaps the parties will find a way to replead their fairness doctrine complaint in the KTTL comparative renewal hearing we order today.

Although there are no issues at this stage of the proceeding that specifically address the Gale and Wickstrom broadcasts, this agency *is* questioning whether Cattle Country Broadcasting should keep its license. For one thing, the numerous adverse state judgments against the station's owners cast doubt on whether it has the requisite character to remain a broadcast licensee. Likewise, there is a serious question about whether KTTL met its duty to air programming responsive to the needs of Dodge City residents during the 1980–1983 license term—whether or not we consider the Gale/Wickstrom broadcasts. Based on the evidence submitted by KTTL, it is impossible to find that the station addressed the needs and problems of Dodge City. This

bedrock duty is one that must be satisfied by every broadcaster, even under the terms of our 1980 *Deregulation of Radio*. Finally, the Commission will not be examining KTTL's qualifications to continue being a licensee in isolation, but will be comparing KTTL's qualifications to those of Community Service Broadcasting, Inc., the competing applicant for this frequency, who has no blemishes on its qualifications.

All this considered, KTTL will face a steep uphill battle in trying to prove that renewal of its license woud serve the public interest. Among the many things illustrated by this case is Congress' wisdom in providing us with a licensing scheme that requires regulatory safeguards to protect the public against broadcasters who completely submerge the public interest to their own private interest. Fortunately, we still have that Congressionally mandated scheme and the accompanying regulatory safeguards.

[FR Doc. 85-21751 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-244 et al.]

Page-A-Call et al.; Hearing Designation Order; Correction

Released: September 6, 1985.

In re applications of Gary G. Harvey d/b/a Page-A-Call (Assignee), Poka-Lambro Rural Telephone Cooperative, Inc. (Assignor), for the partial assignment of the authorization for Station KNKB357 on frequency 158.10 MHz in the Public Land Mobile Service at Lubbock, Texas, CC Docket No. 85-244, File No. 24763-CD-P/L-84. Gary G. Harvey d/b/a Page-A-Call, for a Construction Permit for new two-way facilities to operate on frequencies 454.375 MHz, 454.425 MHz, 454.575 MHz and 454.600 MHz at Amarillo, Texas and on frequencies 454.400 MHz, 454.450 MHz, 454.625 MHz and 454.650 MHz at Lubbock, Texas in the Public Land Mobile Service; File No. 20980-CD-P/L-8-85 and Poka-Lambro Rural Telephone Cooperative, Inc., for extension of construction permit. File No. 22687-CD-MP-01-85.

1. In the *Order Designating Applications For Hearing*, Mimeo 6376, released August 16, 1985, published at page 33634 of the issue for Tuesday, August 20, 1985, line 6, paragraph 11, should refer to **Issue E** not Issue F

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-21753 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

Mifflin County Communications Limited Partnership and Mifflin County Media Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Mifflin County Communications Limited Partnership.	Lewistown, Pennsylvania	BPH-831028AY	85-275
B. Mifflin County Media	do	BPH-840105AI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative	A, B
2. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-21752 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-274 et al.]

Westside Communications of Tampa, Inc., and Leesburg Communications and Answering Service, Inc.; Memorandum Opinion and Order Designating Applications for Hearing

Adopted August 26, 1985.
Released September 5, 1985.

In re applications of Westside Communications of Tampa, Inc.[1] for a construction permit for additional one-way facilities for Station KJU814 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Ocala, Florida, CC Docket No. 85-274, File No. 23437-CD-P-1-82; and Leesburg Communications & Answering Service, Inc., for a construction permit for additional one-way facilities for Station KWU497 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Ocala, Florida, File No. 24109-CD-P-1-82.

By the Common Carrier Bureau.

1. Presently pending are the captioned applications of Westside Communications of Tampa, Inc. (Westside) and Leesburg Communications & Answering Service, Inc. (Leesburg). Westside filed a Petition to Dismiss the Leesburg application, and responsive pleadings were filed. Leesburg filed an informal request for dismissal or denial of Westside's application, to which Westside replied. Finally, Westside filed a Petition for Designation of Hearing, and responsive pleadings were filed.

Background

2. Westside currently operates Station KJU814 on frequency 152.24 MHz at Gainesville and Melrose, Florida. Leesburg currently operates Station KWU497 on frequency 152.24 MHz at Leesburg, Florida. Westside's captioned application to construct additional one-way facilities to operate on frequency 152.24 MHz at Ocala, Florida was filed on May 11, 1982 and appeared on Public Notice on May 26, 1982.[2] Leesburg's

[1] Westside is the successor in interest to Radio Telephone Company of Gainesville, Inc. pursuant to Commission approval in File No. 22770-CD-AL-84. An amendment was filed on January 15, 1985 to show the substitution of Westside as the applicant in this proceeding. By letter filed July 3, 1985, Westside clarified the amendment and formally requested exemption from the cut-off requirements of § 22.31 of the Commission's rules.

[2] On December 16, 1983, a minor amendment was filed which changed the proposed antenna location.

captioned application to construct additional one-way facilities to operate on frequency 152.24 MHz at Ocala, Florida was filed on July 15, 1982 and appeared on Public Notice on August 4, 1982.[3] Finally, by Public Notice, Report No. 139, issued September 29, 1982, the Commission gave notice that the Westside and Leesburg applications were electrically mutually exclusive.

3. By Lottery Notice, Mimeo 4696, dated May 28, 1985, the Westside and Leesburg applications were again identified as being mutually exclusive and were scheduled for disposition by lottery (PMS–14–12) to be held on June 28, 1985. On June 12, 1985, Westside filed a Petition for Designation of Hearing pursuant to §§ 22.31, 22.32, and 22.33 of the Commission's Rules. The applications were withdrawn from the scheduled lottery. Leesburg opposed Westside's petition, and Westside replied.

Discussion

4. In support of its petition, Westside notes that its proposed 152.24 MHz facility at Ocala, Florida is located within 40 miles of its existing transmitter on 152.24 MHz at Gainesville, Florida. Accordingly, Westside argues that it has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(2). Westside also argues that the public interest would be served by using a comparative hearing procedure. In its opposition, Leesburg argues that Westside's petition is untimely since it was not filed within 30 days of the January 20, 1985 effective date of the § 22.33 rule changes adopted in *Random Selection or Lotteries*, FCC 84–596, released December 4, 1984, 49 FR 49466. Leesburg further argues that Westside's petition is substantively defective because Westside's application does not demonstrate "demand by its existing subscribers for the expanded service" as required by § 22.33(c)(1). Finally, Leesburg argues that Westside has failed to make the reuired "substantial showing" to justify its request for comparative hearing.

5. After careful consideration, we find the arguments of Leesburg to be without merit. Leesburg notes that the September 29, 1982 Public Notice regarding mutual exclusivity and cites *Alltel Mobile Communications of Arkansas, Inc.*, Mimeo No. 2733, released February 22, 1985, as authority for its argument that Westside's petition was untimely since it was not filed within 30 days of the effective date of the rule changes. *Alltel*, however, does not support Leesburg's argument. Rather, *Alltel* established the proposition that a public notice of mutual exclusivity issued prior to the January 20, 1985 effective date of the rule changes does not start the 30 day filing period for comparative hearing requests. *Alltel, supra*, at footnote 4. Since Westside's petition was filed within 30 days of the May 28, 1985 Lottery Notice, we find the petition to be timely filed. We want to emphasize, however, that commencing on January 20, 1985 the 30-day filing period for comparative hearing requests begins to run following the first public notice of mutual exclusivity either by an "informative" public notice or by a Lottery Notice.

6. We also reject Leesburg's argument that Westside's petition is substantively defective for failure to comply with § 22.33(c)(1). The Westside application was filed in May 1982, and relied upon a total of 31 held orders to demonstrate public need for its proposed additional transmitter. In addition, the application states "this proposed transmitting location will allow existing paging customers in Palatka, Melrose and Gainesville to extend to the Ocala area." Westside's application appears to be in compliance with the public need standards in effect when the application was filed, and we do not believe that we can hold properly filed applications to rigid standards adopted some two years later. Under such circumstances, we believe that Westside should "have the option of demonstrating [its] specific frequency requirements and the unmet business needs of [its] customers in a comparative hearing." *Random Selection, supra.*

7. Finally, Leesburg is simply incorrect in asserting that Westside is required to make a "substantial showing" to justify its request for a comparative hearing. The "substantial showing" requirement is applicable only to a paging applicant seeking to increase the capacity of its system by the addition of channels in the same frequency band. Westside is not required to make a "substantial showing" respecting its proposal to increase the geographic coverage of its system by the addition of a new transmitter location operating on the same frequency.

8. Based on the above, we find that Westside has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(1) and that a comparative hearing would serve the public interest. Westside's petition will be granted.

9. Westside's Petition to Dismiss argues that the Leesburg application, as filed, would cause harmful electrical interference to Westside's existing operation of KJU814 at Gainesville and Melrose in violation of 47 CFR 22.100(a). Westside submitted an engineering analysis demonstrating that: (1) The interference contour of the original Leesburg proposal penetrates the 43 dBu reliable service contours of both of Westside's existing transmitters; and (2) that the interference contours of Westside's existing transmitters engulf practically the entire 43 dBu reliable service contour originally proposed by Leesburg. Westside also argues that the spacing between the proposed Leesburg transmitter at Ocala and the two existing Westside transmitters is considerable less than the Commission requires under "existing standards for stations of this power." Westside requests that the Leesburg application be dismissed, and that, "because of the seriousness of the interference and the close proximity of the proposal to existing facilities" the Commission should not permit any amendment of Leesburg's application.

10. The Leesburg application was filed prior to the expiration of the "cutoff" date, 47 CFR 22.31(b), for the Westside Ocala application. The Leesburg application as filed, however, would have caused harmful electrical interference within the 43 dBu reliable service contours of Westside's existing Gainvesville and Melrose operations. Accordingly, the Leesburg application was not "in a condition acceptable for filing," 47 CFR 22.31(b), as of the cutoff date of July 26, 1982, and Leesburg's defective application should have been returned to Leesburg pursuant to 47 CFR 22.20. Since the Leesburg application was not returned, the threshold question presented is whether Leesburg's post-cutoff amendment which cures the defect[4] in its application may be considered and entitle Leesburg to comparative consideration.

11. Initially, Westside's request that Leesburg not be permitted to amend its application must be denied. Leesburg's October 18, 1982 amendment reduced the effective radiated power of the proposed facilities, a minor amendment under 47 CFR 22.23, and was submitted as a matter of right since the Leesburg application had not been designated for

[3] On October 18, 1982, Leesburg filed a minor amendment reducing the effective rediated power of its proposed facility.

[4] Leesburg's October 18, 1982 amendment includes an interference study which demonstrates that the interference contour of Leesburg's amended proposal would no longer penetrate the 43 dBu reliable service contours of Westside's existing transmitters. Thus, the Leesburg amendment would cure the patent defect in its application.

hearing or comparative evaluation. Furthermore, Common Carrier Bureau precedent suggests that, under the cirumstances presented, Leesburg's amended application should be retained on file and be given comparative consideration. In *Moore's Service*, 86 F.C.C. 2d 787 (1981), at 795–796, the Common Carrier Bureau addressed the issue of curative post-cutoff amendments as follows:

> A more difficult issue is raised where the Commission has not returned a defective mutually exclusive application and the applicant submits a post cutoff amendment that cures the defect. A literal reading of the cutoff rule suggests that the application should be returned because it was in a condition unacceptable for filing on the cutoff date. However, we believe that, as a matter of policy, a properly filed amendment should be included in our evaluation of a pending application. Our prescreening procedures were designed to reject unacceptable applications. Where a defect is overlooked at prescreening and cured before processing, neither our prescreening nor our processing functions will be seriously affected by our consideration of the application as amended. Accordingly, a defective mutually exclusive application that has not been returned and that is cured by a post cutoff amendment will be retained on file and be given comparative consideration. (footnotes omitted).[5]

Since the Leesburg amendment was properly filed, and since the amendment cured the application's defect, the *Moore's* case indicates that the amended Leesburg application should be retained on file and be given comparative consideration.

12. The remaining arguments presented by Westside are without merit. Westside's first argument respecting interference from the Leesburg proposal with Westside's existing operations has been mooted by the Leesburg amendment.[6] Westside's argument respecting lack of proper spacing is rejected. The Commission's mileage separation standards are not mandatory requirements, but rather merely guidelines. *Telephone Communications, Inc.*, 56 FCC 2d 710, 712 (1975). Westside's argument respecting excessive interference within Leesburg's proposed reliable service area must also be rejected. The Leesburg amendment includes an interference study which demonstrates that the amended Leesburg application would provide interference-free service to some 91 percent of the proposed reliable service area. An applicant can accept interference of a limited nature in areas that the applicant does not consider essential to the proposed operations. *Orange County Radio-Telephone Service*, 24 FCC 33, 38 (1957). Accordingly, the interference area of Leesburg's proposal is not sufficient to justify dismissal of Leesburg's application.

13. In its Informal Objection, Leesburg argues that the Westside January 15, 1985 amendment showing the substitution of Westside as the applicant herein may have been a major amendment rendering the Westside application newly-filed and cut-off from comparative consideration with Leesburg's application. Leesburg argues that if Westside's amendment failed to request exemption from the cut-off requirements of § 22.31 or if a requested exemption is not justified under applicable Commission precedent, then the Westside application is cut-off and must be dismissed.

14. Westside has formally requested exemption from the cut-off requirements of § 22.31 with respect to its January 15, 1985 amendment. *See* footnote 1. Review of the assignment application in File No. 22770–CD–AL–84 discloses that Westside purchased a number of RCC licenses and other assets from Radio Telephone Company of Gainesville, Inc. "as a going concern." Thus, we conclude that the purchase was for an independent, legitimate business purpose and not primarily for acquiring pending applications. *See Airsignal International, Inc.*, 81 FCC 2d 472, 475 (1980). We will grant Westside's exemption request, and we will treat Westside's January 15, 1985 amendment as minor pursuant to § 22.23(g)(3) of the commission's rules.

15. In light of the above, we find that both the Petition to Dismiss filed by Westside and the Informal Objection filed by Leesburg have no merit, and they will be denied. We further find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Westside and Leesburg to use frequency 152.24 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

16. Accordingly, it is ordered, That the Petition to Dismiss filed by Westside Communications of Tampa, Inc. and the Informal Objection filed by Leesburg Communications & Answering Service, Inc. are denied.

17. It is further ordered, That the Petition for Designation of Hearing filed by Westside Communications of Tampa, Inc. is granted.

18. It is further ordered, That the applications of Westside Communications of Tampa, Inc. and Leesburg Communications & Answering Service, Inc., File Nos. 23437–CD–P–1–82 and 24109–CD–P–1–82, are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the propsective interference-free area within 43 dBu contours,[7] based upon the standards set forth in § 22.504(a) of the Commission's Rules [8] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

19. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

20. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

21. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 20 days of the release date hereof a written notice stating an intention to appear for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

22. This order is issued under § 0.291 of the Commission's rules and is

---

[5] In *Industrial Communications*, 53 RR 2d 38, 41–43 (1983), *aff'd mem. sub nom* Williams v. FCC, No. 83–1233 (D.C. Cir. Nov. 30, 1983) the Commission held that the *Moore's* case is a correct interpretation of DPLMRS rules.

[6] *See* footnote 4.

[7] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[8] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits).

effective on its release date. Applications for review may be filed under § 1.115 of the rules within 30 days of the date of public notice of this order. *See* § 1.4(b)(2).

23. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-21754 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Centennial Savings and Loan Association, Guerneville, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Centennial Savings and Loan Association, Guerneville, California, on August 20, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21885 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Heights Savings Association, Houston, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Heights Savings Association, Houston, Texas on September 6, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21770 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Presidio Savings and Loan Association, Porterville, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Presidio Savings and Loan Association, Porterville, California, on August 28, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21771 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Westside Federal Savings and Loan Association, Seattle, WA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(8)(A) of the National Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Westside Federal Savings and Loan Association, Seattle, Washington on August 30, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21772 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 6, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve Sytem, Washington, D.C. 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extention Without Revision of the Following Reports

1. Report title: Applications for and to Cancel Federal Reserve Bank Stock—National Bank, Nonmember Bank, Member Bank
Agency form number: FR 2030, 2030a, 2056, 2086a, and 2086b.
OMB Docket number: 7100-0042
Frequency: Event-generated
Reporters: National, State Member, and nonmember banks
Small businesses are affected.
General Description of report:
This information collection is mandatory [12 U.S.C. 222, 35, 287, & 321] and is not given confidential treatment.

These Federal Reserve Bank Stock application forms are required to be

submitted to the Federal Reserve System by any National Bank, State Member Bank or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21760 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

September 6, 1985.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collecton(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Reserach and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for OMB Approval To Extend With Revision

1. Report title: Annual Report of Trust Assets

Agency form number: FFIEC 001

OMB Docket number: 7100-0031

Frequency: Annual

Reporters: State member banks and trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Small businesses are affected.

General description of report:

This information collection is mandatory 12 U.S.C. 248(a) and 1844(a) and is not given confidential treatment.

This interagency report on fiduciary asset totals and activities. It is used to monitor changes in the volume and character of discretionary trust activity, the volume of nondiscretionary trust activity, and the resources needs for supervisory purposes. The data are also used for statistical and analytical purposes. The report is collected from state member banks that have been granted trust powers and from trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21761 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Howard Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Howard Bancorp*, Burlington, Vermont; to acquire 100 percent of the voting shares of The Woodstock National Bank, Woodstock, Vermont.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Macon Banctrust, Inc.*, Lafayette, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Macon Bank & Trust Company, Lafayette, Tennessee.

2. *Macon Capital Corporation*, Prattville, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Alabama Exchange Bank, Tuskegee, Alabama.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dover Bancshares, Inc.*, Dover, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Dover, Dover, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *North Shore Financial Corporation*, Duluth, Minnesota; to become a bank holding company by acquiring 94.25 percent of the voting shares of North Shore Bank of Commerce, Duluth, Minnesota.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *San Mateo County National Bancorp*, Redwood City, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Mateo County National Bank, Redwood City, California (in organization).

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21758 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Louisiana Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as

closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to engage *de novo* through Premier Securities Corporation, Baton Rouge, Louisiana, in securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21759 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research Scientist Development and Research Scientist Award Grant Programs

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Issuance of revised program announcement for research scientist development and research scientist awards, MH-85-07.

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration announces the availability of a revised program announcement for Research Scientist Development and Research Scientist Awards. These awards foster the development of outstanding scientists and enable them to expand their potential for making important contributions to the fields of alcoholism, drug abuse, or mental health research. Awards are made to institutions on behalf of specific outstanding individuals. They are also intended to assist recipient institutions in maintaining and expanding existing research programs or establishing new ones for studies concerning alcohol, drug abuse, or mental health. Support may be requested for up to 5 years.

Receipt and review dates of applications: Applications will be accepted according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact: Ellen Simon Strover, Ph.D., Acting Chief, RSDA/RSA Program, Division of Extramural Research Programs, NIMH, Parklawn Building Room 10-104, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443-4337.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-21871 Filed 9-11-85; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Meeting of Subcommittee on Primate Research Centers of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee on Primate Research Centers, Animal Resources Review Committee, Division of Research Resources, on October 28, 1985, at 9:00 a.m., National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on October 28, from approximately 1:00 p.m. to adjournment, for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 28 from 9:00 a.m. to approximately 12:00 p.m. for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Primate Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21797 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and certain of its subcommittees on September 23, 1985, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. Raymond Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616,

Bethesda Maryland, 20205, (301) 496–6045. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–6917.

Date: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–21798 Filed 9–11–85; 8:45 am]

BILLING CODE 4140–01–M

Cancer Education Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, November 8, 1985, Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on November 8, from 8:30 a.m. to 10:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 8 from approximately 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Education Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7721) will furnish substantive program information.

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–21799 Filed 9–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board and Board Subcommittees; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, October 7–9, 1985, National Cancer Institute, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, Bethesda, Maryland 20892. Meetings of Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below, in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethedsa, Maryland 20205 (301/496–5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5147) will furnish substantive program information.

Name of Committee: *National Cancer Advisory Board*
Dates of Meeting: October 7–9, 1985
Place of Meeting: Building 31C, Conference Room 6, 6th floor, National Institutes of Health
Open: October 7, 8:30 a.m.—recess October 9, 8:30 a.m.—adjournment
Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business
Closed session: October 8, 8:30 a.m.—recess
Closure reason: To review grant applications

Name of Committee: *Subcommittee on Cancer Control for the Year 2000*
Date of Meeting: September 27, 1985
Place of Meeting: O'Hare Hilton Hotel, Chicago, Illinois
Open: September 27, 10:00 a.m.—adjournment
Agenda: To discuss smokeless tobacco and quackery in cancer treatment

Name of Committee: *Subcommittee on Organ Systems*
Date of Meeting: October 6, 1985
Place of Meeting: Building 31, C Wing, Conference Room 8, Sixth Floor, National Institutes of Health
Open: October 6, 6:45 p.m.—adjournment
Agenda: A discussion on the progress of the organ systems program

Name of Committee: *Subcommittee on Innovations in Surgical Oncology*
Date of Meeting: October 6, 1985
Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health
Open: October 6, 8:00 p.m.—adjournment
Agenda: A progress report on the surgical oncology program

Name of Committee: *Subcommittee on Planning and Budget*
Date of Meeting: October 7, 1985
Place of Meeting: Building 31, A Wing, Conference Room 11A10, 11th Floor, National Institutes of Health
Open: October 7, 7:30 p.m.—adjournment
Agenda: To discuss update of FY 86 Budget and the FY 87 Bypass Budget

Name of Committee: *Subcommittee on Special Actions for Grants*
Date of Meeting: October 8, 1985
Place of Meeting: Building 31, C Wing, Conference Room 6, 6th Floor, National Institutes of Health
Closed: October 8, 8:30 a.m.—adjournment
Closure reason: To review grant applications

Name of committee: *Subcommittee for the Review of Contracts and Budget of the Office of the Director*
Date of meeting: October 8, 1985
Place of meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health
Open: October 8, Immediately following the closed session of the National Cancer Advisory Board meeting.
Agenda: A concept review of the Office of the Director contracts and budget

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398 project grants in cancer

research manpower. 13.399, project grants in cancer control.)

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-21801 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Cancer Research Manpower Review Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, October 31, and November 1, 1985, which was published in the **Federal Register** on August 16, (50 FR 33109).

The committee was to have met in Building 31, Conference Room 8, National Institutes of Health; however, it has been changed to the Holiday Inn/ Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-21802 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to P.L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, October 31-November 1, 1985, Building 31, Conference Room 3, A-Wing, National Institutes of Health, Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, October 31, and from 8:30 a.m. to adjournment on Friday, November 1, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C-12, Federal Building, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21803 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Advisory Council and Research Subcommittee and Manpower Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 17-18, 1985, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Manpower Subcommittee of the above Council will meet on October 16, 1985, at 1:00 p.m. and 8:00 p.m. respectively, in Building 31, Conference Room 9.

The Council meeting will be open to the public on October 17 from 9:00 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:00 p.m. on October 17 to adjournment on October 18 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Manpower Subcommittee of the above Council on October 16 will be closed in their entirety for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Samuel H. Joseloff, Executive Secretary of the Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7548, will furnish substantive program information.

Dated: September 3, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21804 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, September 27, 1985. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 8, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21805 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Clinical Applications and Prevention Advisory Committee; Amended Notice of Meeting

Notice is hereby given of a change in the conference room for the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on July 29, 1985 (50 FR 30763).

The meeting will now be held in Building 31, 9000 Rockville Pike, Bethesda, Maryland on October 2, 1985 in Conference Room 2 (A Wing) from 9:00 a.m. to recess and on October 3, 1985 in Conference Room 3 (A Wing) from 8:30 a.m. to adjournment. The entire meeting will be open to the public. The Committee will discuss new initiatives, program policies and issues. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20892, phone (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 85-21806 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its Subcommittees; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on September 18 and 19, 1985, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public September 18 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on September 18, 1985, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on September 19 from 8:30 a.m. to approximately 12:00 p.m.

The full Council meeting will then be open for the reports of the Division Directors on September 19 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.846-849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 85-21807 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

4140-01

Public Health Service

National Toxicology Program, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting on September 27, 1985, of the National Toxicology Program (NTP) Board of Scientific Counselors, Reproductive and Developmenal Toxicology Program Review Subcommittee. The meeting will be held in the Auditorium of the Robert A. Taft Laboratories, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

The meeting begins at 9:00 a.m. and will be open to the public. The primary agenda topic is a review of the research and testing activities of the NTP Reproductive and Developmental Toxicology Program, which includes efforts of the staff at the National Institute of Environmental Health Sciences, the National Center for Toxicological Research and the National Institute for Occupational Safety and Health.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish the final agenda. The roster of Subcommittee members and other program information will be available prior to and at the meeting, and summary minutes will be available subsequent to the meeting.

Dated: September 9, 1985.

David P. Rall, M.D. Ph.D.,

Director, National Toxicology Program.

[FR Doc. 85-21898 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Capital Memorial Advisory Committee; Reestablishment

This notice is published in accordance with the provisions of section 7(a) of the Office of Management and Budget Circular A63 (revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary of the Interior has determined that reestablishment of the National Capital Memorial Advisory Committee is necessary and in the public interest. The purpose of the committee is to advise the Secretary of the Interior on broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region.

The General Services Administration concurred in the reestablishment of this committee on September 3, 1985.

Further information regarding this committee may be obtained from Janie

L. Spiers, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, DC 20013–7127 (202–343–2012)

The certification of establishment is published below.

Certification

I hereby certify that renewal of the National Capital Memorial Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by law.

Dated: September 6, 1985.

Donald Paul Hodel,

Secretary of the Interior.

Charter

National Capital Memorial Advisory Committee

1. The official designation of the committee is the National Capital Memorial Advisory Committee.

2. The purposes of the Committee are as follows:

Prepare and recommend to the Secretary broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues.

Examine each memorial proposal for adequacy and appropriateness, and make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region.

Serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

In view of the fact that the vast majority of Federal lands within the National Capital Region which may be deemed suitable for memorialization are under the jurisdiction of the National Park Service, this Committee will render advice and assistance in connection with the performance of duties imposed on the Department of the Interior by law, and it is in the public interest to obtain the advice of this committee.

3. In view of the goals and purposes of the Committee, it will be expected to continue beyond the foreseeable future. However, its continuation will be subject to biennial review and renewal as required by section 14 of Pub. L. 92–463.

4. The Committee reports to the Secretary of the Interior, Washington, DC.

5. Support for the Committee is provided by the National Park Service, Department of the Interior.

6. The duties of the Committee are solely advisory and are as stated in paragraph 2 above.

The estimated annual operating cost of this Committee is $2,000 which will require approximately 1/4 person-year of staff support.

8. The Committee meets approximately two times a year.

9. The Committee will terminate 2 years from the date this charter is filed, unless, prior to that date, renewal action is taken as set forth in paragraph three above.

10. In order to effectuate its purposes, the committee will be composed of seven ex officio members as follows:

Director, National Park Service
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Chairman, National Capital Planning Commission
Mayor of the District of Columbia
Commissioner, Public Buildings Service

Each of the foregoing ex officio members may designate an alternate to attend meetings and vote in his place. The Director of the National Park Service, or his designee, shall serve as Chairman.

11. Establishment of this Committee is authorized by Pub. L. 91–383.

Dated: September 6, 1985.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 85–21748 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[U–50756]

Utah; Intent To Prepare a Planning Amendment for the Mountain Valley Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with 43 CFR 1610.2(c) and 40 CFR 1501.7, notice is hereby given that the Richfield District proposes to prepare a Planning Amendment to the Mountain Valley Management Framework Plan for specific public lands located in Sevier County, Utah.

SUMMARY: The amendment is being prepared in response to a State Quantity Grant Selection Application U–50756 filed by the State of Utah for the public lands described below:

Salt Lake Base & Meridian

T. 21 S., R. 1E,

Sec. 30, Lots 3 and 4, W½SW¼NE¼, SE¼NW¼, E½SW¼, N½NW¼SE¼, SW¼NW¼SE¼.

The above land aggregates 247.16 acres more or less.

The general issues involved are the existing Mountain Valley Management Framework Plan is silent as to disposal or retention of the lands involved in the subject application and there is a potential for loss of grazing use and reduction of allocated preference if the selected lands are transferred to the State of Utah.

An environmental assessment will be prepared for the application utilizing input received from the public. This assessment will address any resource values and conflicts and will include a determination of the proposed actions consistency with the policies and programs of the Bureau of Land Management as well as the policies and programs of local, state and other federal agencies. A decision statement will then be issued by the Utah State Director specifying whether the plan will be amended to accommodate the State Quantity Grant Selection.

The environmental assessment will be prepared utilizing input and information received from the disciplines of realty, geology, wildlife, forestry, watershed, recreation, and cultural resources.

Those wishing to comment on the proposal or obtain additional information should contact J. Roderick Lister, Area Manager, Sevier River Resource Area, 180 North 100 East, Suite F, Richfield, Utah 84701 (telephone 801–896–8228) within 30 days of printing of this notice in the Federal Register for timely input concerning the proposal.

SUPPLEMENTARY INFORMATION: The existing Management Framework Plan is available for review at the Sevier River Resource Area Office. The office address is given above.

Donald L. Pendleton,

District Manager.

September 3, 1985.

[FR Doc. 85–21872 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–DQ–M

Land Use Plans; Willow Creek, Susanville District, CA.

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to amend Willow Creek Land Use Decision, Eagle Lake Resource Area, Susanville District Office California.

SUMMARY: The Eagle Lake Resource Area is recommending a change in season of use for livestock in various allotments in the Willow Creek Planning Unit. The adjustment in season of use will respond to yearly fluctuations in precipitation and forage production.

DATES: Comments are being accepted from the public until 30 days after publication of this notice in the **Federal Register.**

ADDRESS: Comments shuld be sent to: District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

FOR FURTHER INFORMATION CONTACT: Mark T. Morse, Area Manager, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130, (916) 257–5381.

Dated: September 5, 1985.

Ben F. Collins,

Acting District Manager.

[FR Doc. 85–21863 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–40–M

[CA 15806 et al.]

Sale of Public Lands; Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action, Sale of Public Lands in Lassen County, California (CA 15806 et al.).

SUMMARY: This document amends various proposed patent reservations and terms in a Notice of Realty Action for a land sale published in the **Federal Register** on July 11, 1985 (50 FR 28285–28286). In that notice, on 50 FR 28286, it was stated that Parcel 1 (CA 15806), Parcel 2 (CA 15807), and Parcel 5 (CA 17107) would be subject to rights-of-way for highway purposes granted to the State of California under the Act of August 27, 1958. The right-of-way numbers were S–5035 (Parcels 1 and 2), and S–4473 (Parcels 2 and 5).

The above-described highway rights-of-way are Federal Aid Highways, granted under the Act of August 27, 1958. They will therefore be reserved as patent reservations to the United States, and not as third party rights. The Notice in 50 FR 28285–28286 is hereby amended to delete rights-of-way S–5035 and S–4473 from "Sale Terms and Conditions, Part B, Rights of Third Parties", and add those rights-of-way to "Sale Terms and Conditions, Part A, Reservations to the United States."

The patents for Parcel 1 (CA 15806) and Parcel 2 (CA 15807) will each contain a reservation to the United States of a right-of-way for highway purposes granted to the State of California, number S–5035, under the Act of August 27, 1958. The patents for Parcel 2 (CA–15807) and Parcel 5 (CA 17107) will each contain a reservation to the United States of a right-of-way for highway purposes granted to the State of California, number S–4473, under the Act of August 27, 1958.

In addition, the patent for Parcel 7 (CA 17109) will contain a reservation to the United States for a road right-of-way over and across a 30 foot strip of land measured parallel and adjacent to the north boundary of the S½ of Section 23, T.31N., R.15E., M.D.M., for public access and use of the people of the United States generally, under Section 208 of the Act of October 21, 1976 (43 U.S.C. 1718).

FOR FURTHER INFORMATION CONTACT: Peter Humm, Susanville District Office, 705 Hall St., Susanville, CA 96130. (Telephone 916–257–5381).

Ben F. Collins,

Acting District Manager.

September 4, 1985.

[FR Doc. 85–21864 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Development Operations Coordination Document; Union Texas Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6663, Block 109, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 4, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 5, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–21873 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–224 (Final)]

Cold-Rolled Carbon Steel Plates and Sheets From Austria

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On August 19, 1985, the U.S. Department of Commerce published notice in the **Federal Register** of its final determination of sales of cold-rolled

carbon steel plates and sheets from Austria at not less than fair value and subsequent termination of the case. Accordingly, pursuant to § 207.20(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.20(b)), the antidumping investigation concerning cold-rolled carbon steel plates and sheets from Austria (investigation No. 731–TA–224 (Final)) is terminated.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Authority

This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: September 9, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21795 Filed 9–11–85; 8:45 am]

BILLING CODE 7020–02–M

[332–213]

The Competitive Position of U.S. and European Community Pork in the U.S. and Third Country Markets

AGENCY: International Trade Commission.

ACTION: Time and place of public hearing.

SUMMARY: Notice is hereby given that the public hearing in this matter will be held beginning on Friday, September 27, 1985, in Des Moines, Iowa, at the Savery Hotel and Spa, 4th and Locust Streets, at 10:00 a.m.

Notice of the investigation and hearing was published in the Federal Register of June 19, 1985 (50 FR 25475).

Issued: September 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–21796 Filed 9–11–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30695]

Burlington Northern Railroad Co.; Merger Exemption; Burlington Northern (Oregon-Washington) Inc.; Exemption

The Burlington Northern Railroad Company (BN) and Burlington Northern (Oregon-Washington) Inc. (BNOW) filed a notice of exemption for BNOW to merge into BN.

BNOW is a wholly-owned subsidiary of BN. Consummation of the merger will promote corporate simplification and eliminate the expense and burden associated with maintenance of BNOW as a separate corporate entity. Under the merger plan, BNOW will be dissolved as a separate corporate entity, and all of its assets and liabilities will be vested in BN. No reduction of transportation facilities are contemplated and no obligations of BNOW will be impaired.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn* Eastern District, 360 I.C.C. 60 (179).

Decided: August 28, 1985.

By the Commission, Herber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–21819 Filed 9–11–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30709]

Canonie Atlantic Co. And Canonie, Inc.; Exemption From 49 United States Code 10901, 11301, and 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts: (1) Canonie Atlantic Co. (CA) (a) from 49 U.S.C. 10901 for its acquisition and operation of 96 miles of railroad between Norfolk, VA and Pocomoke City, MD including 26 miles of rail car float between Little Creek and Cape Charles, VA, and (b) from 49 U.S.C. 11301 for assumption of obligations; and (2) its parent, Canonie, Inc., from 49 U.S.C. 11343 to control the railroad acquired by CA, subject to employee protective conditions.

DATES: This exemption is effective on September 11, 1985. Petitions to reopen must be filed by October 2, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30709 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael B. Barr, 2000 Pennsylvania Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 12, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–21886 Filed 9–11–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. United States Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 5, 1985, a proposed first consent decree amendment in *United States* v. *United States Steel Corporation*, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree amendment resolves a judicial enforcement action brought by the United States against United States Steel which alleged violations of a previously entered Consent Decree under the Clean Water Act pertaining to the Company's facility in Lorain, Ohio. The original consent decree in this action required U.S. Steel to expend $4,000,000 over a four year period on a dust suppression program at its Lorain, Ohio facility. When it became

clear that U.S. Steel would not be spending the total $4,000,000, the United States brought an enforcement action against the defendant Corporation. The proposed consent decree amendment requires the defendant to pay $200,000 and complete seven environmentally beneficial projects including a dredging operation in the Black River whereby 50,000 cubic yards of bottom sediment will be removed.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States v. United States Steel Corporation*, D.J. Ref. 90-5-1-1-987A.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA

Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check payable to Treasurer of the United States in the amount of $1.90.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-21868 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A ORDER NO. 3-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Attorney General, publishes a system of records entitled "General Files System of the Office of the Attorney General (JUSTICE/OAG-001)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, DC 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 23, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General for Administration.

JUSTICE/OAG-001

SYSTEM NAME:

General Files System of the Office of the Attorney General.

SYSTEM LOCATION:

Office of the Attorney General, United States Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echleon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda or reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Attorney General's responsibilities (28 CFR 0.5) and are limited to those which are of such significance that the Attorney General has investigative, policy, law enforcement, or administrative interest. An index to these records is described under the caption "Retrievability."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Attorney General is authorized to appear when (a) the Office of the Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Attorney General in his or her official capacity, or (c) any employee of the Office of the Attorney

General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Attorney General determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of May 1982, the index record is also stored on magnetic disks.

RETRIEVABILITY:

Records created before 1975 are indexed and retrieved manually by subject title. Records created since 1975 are indexed and retrieved manually by subject title, individual's name, the Department component which created the record, and by name of the Attorney General under whose administration the records were created. As of May 1982 records may also be retrieved through a computerized indexing system.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Attorney General, Office of the Attorney General, United States Department of Justice, 10th and Constitution Avenue NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.** These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21841 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 4-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Deputy Attorney General, publishes a system of records entitled "General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG-013)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/DAG-013

SYSTEM NAME:

General Files System of the Office of the Deputy Attorney General.

SYSTEM LOCATION:

Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Deputy Attorney General maintains information indexed to the name of that individual, including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Deputy Attorney General's responsibilities (28 CFR 0.15) and are limited to those which are of such significance that the Deputy Attorney General has investigative, policy, law enforcement, or administrative interest. An index to these records is described under the caption "Retrievability."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that

release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Deputy Attorney General is authorized to appear when (a) the Office of the Deputy Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Deputy Attorney General in his or her official capacity, or (c) any employee of the Office of the Deputy Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Deputy Attorney General determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Deputy Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of April, 1982, the index record is also stored on magnetic disks.

RETRIEVABILITY:

Deputy Attorney General records created prior to 1973 were incorporated into Attorney General files, and are retrievable from the index to the General Files System of the Office of the Attorney General. Records created by the Office of the Deputy Attorney General since 1973 are indexed and retrived manually by use of the subject title, individual's name, or Department component which created the record. As of April 1982, records may also be retrieved through a computerized logging system.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Attorney General, Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES

Make all requests for access to records from this system in writing to the system manager, and clearly mark both the letter and envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name and which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21842 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 5-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Associate Attorney General, publishes a system of records entitled "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the

Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/AAG-001

SYSTEM NAME:

General Files System of the Office of the Associate Attorney General.

SYSTEM LOCATION:

Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official federal investigations, policy decisions and administrative matters of such significance that the Associate Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Associate Attorney General's responsibllities (28 CFR 0.10) and are limited to those which are of such significance that the Associate Attorney General has investigative, policy, law enforcement, or administrative interest. An index record containing the subject title and/or individual's name is also maintained in the form of a paper logging system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the informaton for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which requires information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Associate Attorney General, is authorized to appear when (a) the Office of the Associate Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Associate Attorney General in his or her official capacity, or (c) any employee of the Office of the Associate Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Associate Attorney General determines that litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Associate Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders. An index record containing the subject title and/or individual's name is also maintained in the form of a paper logging system.

RETRIEVABILITY:

By subject title or individual's name.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Associate Attorney General, Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make requests for access to records from this system in writing to the system manager, and clearly mark both the letter and envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Source of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and

(H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 522a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 522a(j)(2), (k)(1), (k)(2), or (k)(5).

[FR Doc. 85-21843 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 6-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Associate Attorney General, publishes a new system of records entitled "Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002)."

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/AAG-002

SYSTEM NAME:

Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General.

SYSTEM LOCATION:

Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who are the subjects of official Federal investigations of the drug task force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of case initiation and indictment records, and monthly reporting and sentencing forms regarding potential or actual targets of investigation of the drug task force.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301 and 21 U.S.C. 841.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Associate Attorney General is authorized to appear when (a) the Office of the Associate Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Associate Attorney General in his or her official capacity, or (c) any employee of the Office of the Associate Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Associate Attorney General determines that litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Associate Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

All records are stored in paper folders. All records, with the exception of indictment forms, are stored also on magnetic disks.

RETRIEVABILITY:

Records are generally retrieved by case number. Records may be retrieved by individual name or name of criminal organization.

SAFEGUARDS:

Paper folders are stored in a combination safe which is inside a locked room. This room is part of a locked suite of offices. The magnetic disks and computer are located in the same room; the computer has a key lock. Only those persons with a Top Secret clearance may actually access the computer by using a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Drug Enforcement Task Force, Office of the Associate Attorney General, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted form subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

None.

CONTESTING RECORD PROCEDURES:

None.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include Federal, State, and local government agencies as appropriate, informants, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 85-21844 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 7-85]

Privacy Act of 1974; of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Legal Policy, publishes a system of records entitled "General Files System of the Office of Legal Policy (JUSTICE/OLP-003)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/OLP-003

SYSTEM NAME:

General Files System of the Office of Legal Policy.

SYSTEM LOCATION:

Office of the Assistant Attorney General, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Assistant Attorney General maintains information indexed to the name of that individual, including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breath of the Assistant Attorney General's responsibilities (28 CFR 0.23). Records include those of such significance that the Assistant Attorney General has policy or administrative interest, and those which cover investigative or law enforcement cases for which the Assistant Attorney General is asked to provide an analysis and establish future policy direction. A computerized index record containing the subject title and/or individual's name is also maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which requires information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of Legal Policy is authorized to appear when (a) the Office of Legal Policy, or any subdivision thereof, or (b) any employee of the Office of Legal Policy in his or her official capacity, or (c) any employee of the Office of Legal Policy in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of Legal Policy determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of Legal Policy to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of August 1982

the index record is also stored on magnetic disks.

RETRIEVABILITY:

Records may be retrieved by subject title or individual's name.

SAFEGUARDS:

Records are maintained in cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

RECORD ACCESS PROCEDURES:

Make requests for access to records from this system in writing to the system manager, and clearly mark both the letter and the envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, local, State and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name and which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21845 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-58]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 23, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20548; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: STS Request for Flight Assignment.
OMB Number: 2700-0040.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 20.
Annual Burden Hours: 10.
Abstract-Need/Uses: The STS Form 100 details the users Shuttle launch request.
This information includes: Payload Title, Principal Contact, Requested Launch Date, Payload Weight and Length, and Orbital Requirement.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

August 28, 1985.

[FR Doc. 85-21745 Filed 9-11-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-59]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATE AND TIME: October 1, 1985, 8:30 a.m.-5:30 p.m.

October 2, 1985, 8:30 a.m.—1:30 p.m.

ADDRESS: Xerox Training Center, Room Nos. as noted in the agenda below, Leesburg, Virginia 22075.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202-453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Artur Mager and is composed of 32 members. The committee operates both through a

number of informal subcommittees and as a whole. The agenda which follows includes all committee and subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of the room (approximately 20 persons including committee members and other participants).

Type of Meeting:

Open.

Agenda:

Full Committee—Room 3464:

October 1, 1985.

8:30 a.m.—Opening Remarks.
8:45 a.m.—Briefing on the Role and Planning of the Office Commercial Programs.
10:30 a.m.—Subcommittee Deliberations:
Communications Subcommittee—Room 4483:
10:30 a.m.—Review of NASA Progress in Formulation an Agency-Wide Communications Plan.
2:30 p.m.—Review of NASA Base Research and Development (R&D) Program in Advanced Technologies for Satellites Communications.
5:30 p.m.—Adjourn.
Microgravity Subcommittee—Room 4479:
10:30 a.m.—Formulate report to Dr. Edelson on Program Future Directions.
3 p.m.—Review Report of Commercialization Task Force and Formulate Recommendations on Advisory Structure for Microgravity Science and Applications.
5:30 p.m.—Adjourn.
Remote Sensing Subcommittee—Room 3464:
10:30 a.m.—Formulation of Recommendations to NASA on the Relationship of Center for Commercialization and Remote Sensing Applications R&D.
1 p.m.—Review and Formulation of Recommendations to NASA on the Revised NASA/NOAA Basic Agreement.
3 p.m.—Layout Process to Advise NASA on Remote Sensing R&D in Support of Operational Land Remote Sensing.
4:30 p.m.—Status of Draft National Plan on Remote Sensing R&D (Required by the Landsat Commercialization Act).
5:30 p.m.—Adjourn.
Information Systems Subcommittee—Room 4477:
10:30 a.m.—Formulation of Recommendations to Office of Space Science and Applications (OSSA) on Space Station Data Management Issues.
—Briefings by Dr. Michael Wiskerchen (Stanford University) and Mr. Dane Dixon NASA Johnson Space Center (JSC).
2 p.m.—Briefing by Mr. Villasenor on the Advance Communications Technology Satellite (ACTS) Experiment in Data Dissemination to Distributed Terminals.
3 p.m.—Formulate Process for SAAC Participation in Developing the Information Systems Program Plan.
5:30 p.m.—Adjourn.

October 2, 1985

8:30 a.m.—Wrap-up Session for all Subcommittees to Prepare a Report to the Full Committee and Plan Agenda for the January Meeting at the Jet Propulsion Laboratory (JPL).
10:15 a.m.—Adjourn to Region the Full Committee.
10:30 a.m.—Full Committee Reconvenes.
1:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Informotion Programs Division, Office of Management.

September 6, 1985.

[FR Doc. 85-21746 Filed 9-11-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

1. Date: October 3-4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review archaeology applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.
2. Date: October 10-11, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review archaeology applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.
3. Date: October 4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review literature applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.
4. Date: October 11, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review History applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.
5. Date: October 17-18, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review American Studies applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.
6. Date: October 24-25, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review visual and performing arts applications submitted to the Access category, Reference Materials Programs, Division of Research Programs, for projects beginning after April 1, 1986.
7. Date: October 24-25, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted for the Humanities Project in Libraries, Division of General Programs, for projects beginning after March 1, 1986.
8. Date: October 28, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review History applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 85–21809 Filed 9–11–85; 8:45 am]

BILLING CODE 7536–01–M

PANAMA CANAL COMMISSION

Collection of Information Submitted to OMB for Review

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Panama Canal Commission (PCC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) an SF–83, "Request for OMB Review," for approval to extend the expiration date of a currently approved collection of information designated "Procurement Related Forms."

ADDRESS: Comments may be sent to Carlos Tellez, Information Desk Officer for the Panama Canal Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the information collection request of related information, contact Barbara Fuller, telephone (202) 634–6441.

SUPPLEMENTARY INFORMATION: This document gives notice the the PCC has submitted to OMB a request for approval of the PCC procurement-related forms. The forms will be issued to contractors and potential contractors. The information which is requested on the forms and clauses is derived from, is in compliance with and conforms to, the Federal Acquisition Regulations (48 CFR Ch. 1). Also, the information requested is necessary to establish certain U.S. contractors as designated PCC contractors so that they may receive specified benefits pursuant to Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. The information on the forms will be used to evaluate competitive and noncompetitive price offers, proposals and bids. On the basis of such evaluations, purchase orders and contracts will be awarded for the purpose of obtaining supplies, materials, equipment and services necessary for the operation and maintenance of the Panama Canal.

On September 15, 1982, OMB approved this information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207–0007 and an expiration date of September 30, 1985. It is proposed to continue using this information collection without any change in the substance or in the method of collection.

Dated: September 9, 1985.

Fernando Manfredo, Jr.,

Deputy Administrator, Senior Official for Informotion Resources Management.

[FR Doc. 85–21785 Filed 9–11–85; 8:45 am]

BILLING CODE 3640–04–M

POSTAL RATE COMMISSION

[Order No. 630; Docket No. A85–25]

Grady, Oklahoma 73545 (Mr. & Mrs. A. C. Dyer); Order Accepting Appeal and Establishing Procedural Schedule

Issued September 6, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket No. A85–25
Name of affected post office: Grady, Oklahoma 73545
Name(s) of petitioner(s): Mr. & Mrs. A. C. Dyer
Type of determination: Closing
Date of filing of appeal papers: August 29, 1985
Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule inthe **Federal Register.**

(B) The record in this appeal shall be filed by September 13, 1985.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

August 29, 1985—Filing of Petition.
September 6, 1985—Notice and Order of Filing of Appeal.
September 23, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
October 3, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
October 23, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 7, 1985—(1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].
November 14, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see 39* CFR 3001.116].
December 27, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–21866 Filed 9–11–85; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Papperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection title: Railroad Service and Compensation Reports.

(2) Form(s) submitted: BA–3a, BA–4, BA–5.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: Monthly, Quarterly, Annually.

(5) Respondents: Businesses or other for-profit, Small businesses or organization.

(6) Annual responses: 527.

(7) Annual reporting hours: 47,353.

(8) Collection description: Under the Railroad Unemployment Insurance and Railroad Retirement Acts, employers are required to report service and compensation for each employee to update Board records for payment of benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–21870 Filed 9–11–85; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 29, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: 1545–0049
Form No.: IRS Forms 990–BL, Schedule A (Form 990–BL), and 6069
Type of Review: Extension
Title: 990–BL, Information and Initial Excise Tax Return for Black Lung Trusts and Certain Related Persons. Schedule A, Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons. 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under section 4953 and Computation of section 192 Deduction

OMB No.: 1545–0644
Form No.: IRS Form 6781
Type of Review: Revision
Title: Gains and Losses From Section 1256 Contracts and Straddles

OMB No.: 1545–0908
Form No.: IRS Forms 8282 and 8283
Type of Review: Revision
Title: Donee Information Return and Noncash Charitable Contributions

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB No.: New
Form No.: None
Type of Review: New
Title: Attorney Supplement to Application

OMB No.: New
Form No.: CC–NRP–1 (Revised)
Type of Review: New
Title: National Recruitment Program—Application for Employment

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB No.: 1515–0105
Form No.: None
Type of Review: Extension
Title: Declaration of Foreign Shipper that Articles were sent from U.S. for Scientific or Educational Purposes

OMB No.: 1515–0110
Form No.: None
Type of Review: Extension
Title: Declaration by Person Who Processed Goods Abroad

Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Carole Hutchinson,

Departmental Reports Management Office.

[FR Doc. 85–21852 Filed 9–11–85; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 4, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0108
Form Number: IRS Form 1096
Type of Review: Revision
Type: Annual Summary and Transmittal of U.S. Information Returns

OMB Number: 1545–0120
Form Number: IRS Form 1099–G
Type of Review: Revision
Title: Statement for Recipients of Certain Government Payments

OMB Number: 1545–0130
Form Number: IRS Form 1120S
Type of Review: Revision
Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses, and Shareholder's Share of Income, Credits, Deductions, etc.—1985

OMB Number: 1545–0790
Form Number: IRS Form 8082
Type of Review: Extension
Title: Notice of Inconsistent Treatment or Return (Administrative Adjustment Request (AAR))

OMB Number: 1545–0803
Form Number: IRS Form 5074
Type of Review: Revision
Title: Allocation of Individual Income Tax to Guam or Northern Mariana Islands

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB Number: 1557–0127
Form Number: FFIEC 001 and FFIEC 006
Type of Review: Revision
Title: Annual Report of Trust Assets/ Special Report-Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary Activities
Clearance Officer: Eric Thompson, Comptroller of the Currency 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515–0109
Form Number: None
Type of Review: Extension
Title: Proof of Use for Rates of Duty Dependent on Actual Use
Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue NW., Washington, D.C. 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Financial Management Service

OMB Number: 1510–0004
Form Number: TFS Form 285A
Type of Review: Extension
Title: Quarterly Schedule of Excess Risks
Clearance Officer: Douglas Lewis (202) 287–4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street NW., Washington, D.C. 20228
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 2053.

Joseph F. Maty,
Departmental Reports, Management Office.
[FR Doc. 85–21806 Filed 9–11–85; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on September 26 and 27, 1985. The session on September 26 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW, Washington, DC 20006, and the session on September 27 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on September 26 will convene at 6 p.m. and the session on September 27 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contract Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–5156) prior to September 24, 1985.

Dated: September 6, 1985.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 85–21827 Filed 9–11–85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communications Commission	1
Federal Deposit Insurance Corporation	2, 3
Federal Election Commission	4
Federal Trade Commission	5
Legal Services Corporation	6

1

FEDERAL COMMUNICATIONS COMMISSION

September 11, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 18, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company (CC Docket No. 85-26). Summary: The Commission will consider whether to adopt an Order to remove the structural separation requirements for AT&T's provision of customer premises equipment and replace them with certain nonstructural safeguards.

Common Carrier—2—Title: AT&T PRO America Optional Calling Plan. Summary: The Commission will resolve issues relating to its investigation of the proposed PRO America Tariff.

Mass Media—1—Title: Amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984. Summary: The Commission will consider rule changes to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: September 11, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-21952 Filed 9-10-85; 3:28 pm]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) notice is hereby given that at 5:25 p.m. on Friday, September 6, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in Bank of Clifton, Clifton, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, September 6, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21970 Filed 9-10-85; 4:00 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 9, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, or a memorandum regarding the purchase of additional office space in the Ecker Square Condominium Office Building, San Francisco, California.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 10, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21971 Filed 9-10-85; 4:00 pm]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 17, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, September 19, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-24—John R. Bolton, National Football League
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 85–21924 Filed 9–10–85; 2:29 pm]

BILLING CODE 6715–01–M

5

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, September 16, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) To discuss whether or not to promulgate a Trade Regulation Rule for the Hearing Aid Industry.

(2) Consideration of proposed Rulemaking to amend the Retail Food Advertising & Marketing Practices Rule, 16 CFR Part 424.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,
Secretary.

[FR Doc. 85–21921 Filed 9–10–85; 1:37 pm]

BILLING CODE 6750–01–M

6

LEGAL SERVICES CORPORATION

The Legal Services Corporation Board of Directors met in executive session Wednesday, September 4, 1985, to discuss personnel, personal, litigation and investigatory matters as announced in the **Federal Register** of August 27, 1985. The Board being unable to complete all business on that date, the meeting was continued and completed Friday, September 6, 1985 at 12:00 p.m. Continuation was announced to the public in attendance at the public meeting of the Board September 6, 1985.

Dated: September 10, 1985.

Dennis Daugherty,
Acting Secretary.

[FR Doc. 85–21946 Filed 9–10–85; 3:07 pm]

BILLING CODE 6820–35–M

federal register

Thursday
September 12, 1985

Part II

Department of Transportation

Research and Special Programs Administration

City of New York; Hazardous Materials Transportation; Non-Preemption Determination No. NPD-1; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. NPDA-2]

City of New York; Hazardous Materials Transportation; Non-Preemption Determination No. NPD-1

Applicant: City of New York (Application docketed as NPDA-2).

Local Law Affected: Section 175.111(l)(4) of the New York City Health Code.

Applicable Federal Requirements: The Hazardous Materials Transportation Act (49 U.S.C. 1801-1811) and the Hazardous Materials Regulations (49 CFR Parts 171-179).

Mode Affected: Highway.

Ruling: The City's petition for a waiver of statutory preemption of section 175.111(l)(4) of the City Health Code pursuant to section 112(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1811(b)) is hereby denied.

Issue Date: September 9, 1985.

Summary: This non-preemption determination is an administrative ruling by the Department of Transportation on a request from the City of New York that statutory preemption of the City's ban on the transportation of spent nuclear fuel be waived, thereby enabling the City to resume enforcement of its currently preempted ban. This ruling was applied for and is issued pursuant to the procedures set forth at 49 CFR 107.215-107.225.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. [Tel. 202/755-4972.]

SUPPLEMENTARY INFORMATION:

I. Introduction

This is the first time that the Department has issued a non-preemption determination, i.e., an administrative ruling under the authority of section 112(b) of the Hazardous Materials Transportation (HMTA) (49 U.S.C. 1811(b)). The following discussion of general authority, therefore, represents not only the basis for this determination, but also the policy which will apply in future non-preemption determinations.

II. General Authority and Preemption Under the HMTA

The HMTA authorizes the Secretary of Transportation to promulgate substantive regulations governing the safe transportation of hazardous (including radioactive) materials in commerce. Regulations issued under this authority are referred to collectively as the Hazardous Materials Regulations (HMR) and are codified at 49 CFR Parts 171-179. The Department's promulgation of regulations under the HMTA is performed in accordance with the purposes and objectives underlying Congressional enactment of that Act. The stated purpose of the HMTA is "to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801).

While the immediate effect of the HMTA was to consolidate and expand the Department's pre-existing authority to promulgate and enforce safety regulations governing the transportation of hazardous materials in commerce, this broad Federal authority was not meant to be exclusive. Had Congress intended the Federal regulations to preclude all state and local regulations, it would not have included the qualified preemption provisions in section 112 of the HMTA (49 U.S.C. 1811).

Section 112(a) of the HMTA (49 U.S.C. 1811(a)) preempts" . . . any requirement of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA] or regulations issued under the [HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transporation so as to preclude *any* state or local action. The HMTA preempts only those state and local requirements that are "inconsistent." The legislative history of this provision indicates that Congress intended it "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation"(S. Rep. 1192, September 30, 1974, p. 37). Absent Federal occupation of the field, states and (to the extent allowed under state law) local governments may take certain measures in the exercise of their innate police powers to safeguard the health, safety and welfare of their citizens. Section 112(a) of the HMTA requires only that such state or local action not be inconsistent with the HMTA or the regulations issued thereunder. While the HMTA does not totally preclude state and local action in this area, it is the Department's opinion that Congress intended, to the extent possible, to make such state and local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state and local activity. The nature, necessity and number of hazardous materials shipments make national uniformity of safety standards essential.

There are three ways in which a state or local transportation requirement may be found to be inconsistent with, and thus preempted by, the HMTA: (1) A court of competent jurisdiction may rule on the question; (2) the enacting jurisdiction may concede inconsistency; or (3) the Department may issue an administrative ruling on the question. The first two methods are self-explanatory. The third requires some discussion.

To help implement the preemption language of the HMTA, the Department established a process for the inssuance of inconsistency rulings. At the time that these procedures were adopted, the Department observed that "[t]he determination as to whether a state or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature" (41 FR 38167, September 9, 1976). Despite this judicial tradition, there are two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling provides an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or local government. Second, if a state or local requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a waiver of preemption pursuant to section 112(b) of the HMTA.

Given the judicial character of the inconsistency ruling proceeding, the Department incorporated into its procedural regulations case law criteria for determining the existence of conflicts. (See e.g. *Hines v. Davidowitz*, 312 U.S. 52 (1941).) To date, the Department has issued sixteen inconsistency ruling. The policies articulated in these rulings have served to define the parameters of Federal, state and local regulation of hazardous materials transportation safety. A detailed discussion of these issues can be found in the general preamble to the nine inconsistency rulings which were published together on November 27, 1984 (IR-7 through 15, 49 FR 46632, 46633-46634).

Congressional consideration of the question of preemption, however, was not limited to establishing the criteria for preemption. Section 112(b) of the

HMTA (49 U.S.C. 1811(b)) provides for Departmental waiver of preemption in certain circumstances. Congress recognized that safety regulations of national applicability might not always meet unique local conditions. The legislative history contains explicit language on this issue. Following immediately upon that stated intent to preclude a multiplicity of varying and possibly conflicting regulations is the following language:

> However, the Committee is aware that certain exceptional circumstances may necessitate immediate action to secure more stringent regulations. For the purpose of meeting such emergency situations, the Committee has provided that any State or political subdivision may request, and the Secretary may grant, approval of regulations which vary from Federal regulations, provided that they are equivalent or more stringent and place no burden on interstate commence. (S. Rep. 1192, 93rd Cong., 2nd Sess., 37–38 (1974))

It is clear from the language used by the Senate Commerce Committee in reporting out what was to become section 112(b) of the HMTA that the remedy of non-preemption was not meant to apply to every situation where a state or local requirement was preempted by the HMTA. The availability of a waiver of preemption was devised specifically for "exceptional circumstances [which] may necessitate immediate action to secure more stringent regulations." There is no indication that Congress considered the statutory preemption of a state or local requirement to be *per se* "emergency situation".

To understand the nature of those exceptional circumstances for which a waiver of preemption may be granted, it is necessary to consider the primary Congressional objective in enacting the HMTA:" . . . to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801) This language was discussed by the Second Circuit Court of Appeals in the case of *City of New York v. U.S. Dept. of Transportation*, 715 F2d 732, 740 (1983). The court found that the reference to "adequate" protection indicated that Congress expected the Secretary to exercise discretion in determining the appropriate level safety. The court also found that the structure of the HMTA's preemption provisions provided evidence that Congress did not intend the Federal regulations to maximize safety on a jurisdiction-by-jurisdiction basis. Statutory preemption under section 112(a) of the HMTA is not absolute, but is limited to those state and local rules which are "inconsistent." And the scope of this limited preemption is further ameliorated by the provision in section 112(b) for a non-preemption procedure so that when "certain exceptional circumstances" warrant it, the Department can limit the preemptive effect of its regulations.

Thus, by enactment of the HMTA, Congress created the basis for a Federal regulatory program of national applicability with sufficient preemptive force to preclude the unrestrained growth of varying, conflicting regulations, yet with sufficient flexibility to give recognition to certain state and local rules which differ from the Federal standards. Under section 112(a) automatic recognition is conferred upon state and local rules which differ from the Federal standards so long as those differences are not "inconsistent." Under section 112(b) discretionary recognition is available for inconsistent state and local regulations when circumstances are such that the dual Congressional objectives of adequate safety and regulatory consistency cannot both be satisfied. Under such "exceptional circumstances," Congress expressed its intent, by enactment of section 112(b), that the need to provide an adequate level of safety outweigh the need for nationwide uniformity of regulations.

The mere existence of such exceptional circumstances, however, is not a basis for granting a waiver of preemption. On the contrary, it is a threshold consideration. The legislative history is clear that it was "(f)or the purpose of meeting such emergency situations" that the Congress enacted section 112(b). To satisfy the threshold showing of exceptional circumstances a petitioner must present an objective demonstration that a Federal regulation, which provides an adequate level of safety on a nationwide basis, fails to provide an adequate level of safety in a given locale because of physical conditions which are unique to that locale. When local application of a Federal rule will not provide the level of safety which was the Department's objective in adopting the rule, then the objectives of the HMTA are not impeded, rather they are positively accomplished, by enforcement of a site-specific, albeit inconsistent, rule which does provide an adequate level of safety without unreasonably burdening commerce. Before the questions of comparative safety and commercial burden can be reached, however, the petitioner must make the threshold showing of physical conditions which are unique to that locale. Absent such a showing, there is no basis for finding that the petitioner's circumstances constitute the type of "emergency situation" for which Congress created the remedy available under section 112(b) of the HMTA. (Some have argued that non-preemption should be available as a remedy in those cases where unique local conditions enable a jurisdiction, without prejudice to others, to adopt an inconsistent rule which affords a given locale with a level of safety higher than that achievable under the national rule. While the Department is willing to concede the theoretical possibility of such circumstances, they are not before us in this proceeding and, thus, the question need not be considered at this time.)

After the threshold showing of exceptional circumstances have been satisfied, a petitioner must address the criteria set forth in section 112(b) of the HMTA:

(1) That the preempted state or local requirement affords an equal or greater level of protection to the public as compared with the Federal standards; and

(2) That it does not unreasonably burden commerce.

When addressing the comparative safety of an inconsistent state or local rule, careful consideration must be given to ensuring that the full impact of that inconsistent rule has been assessed. The petitioner must present an objective analysis of the safety impacts on all jurisdictions that would be affected by the inconsistent rule, not merely the safety impacts on the enacting jurisdiction. The Department has consistently relied on case law in holding that a state or local government may not resolve a safety problem by effectively exporting it to another jurisdiction. (See e.g. *Kassell v. Consolidated Freightways*, 450 U.S. 662 (1981).)

Finally, regardless of the safety benefits which may be attributed to an inconsistent rule, non-preemption under the HMTA requires that the inconsistent rule impose no unreasonable burden on commerce. In the procedural regulations governing issuance of non-preemption determinations (49 CFR 107.215–107.225), the Department has adopted case law criteria for determining whether an inconsistent state or local requirement imposes an unreasonable burden on commerce. (See e.g. *South Carolina State Highway Department v. Barnwell*, 303 U.S. 177 (1938); *Southern Pacific v. Arizona*, 325 U.S. 761 (1945); *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959).) These criteria, as set forth at 49 CFR 107.221(b), are:

(1) The extent to which increased costs and impairment of efficiency result from the State or political subdivision requirement.

(2) Whether the State or political subdivision requirement has a rational basis.

(3) Whether the State or political subdivision requirement achieves its stated purpose.

(4) Whether there is a need for uniformity with regard to the subject concerned and if so, whether the State or political subdivision requirement competes or conflicts with those of other States and political subdivisions.

In summary, section 112(b) of the HMTA establishes two criteria which must be satisfied before the Department may waive statutory preemption of an inconsistent state or local rule on hazardous materials transportation. But the legislative history of section 112(b) provides explicit testimony to the Congressional intent that non-preemption was meant to be an extraordinary remedy available only in those "emergency situations" when "certain exceptional circumstances . . . necessitate immediate action to secure more stringent regulations." Thus, before the Department considers whether the statutory criteria have been satisfied, it must first determine whether the petitioner's case is one in which the Department may properly grant the extraordinary remedy of non-preemption.

To conclude this discussion of general authority and preemption under the HMTA, it should be noted that the Department has a single purpose in the area of hazardous materials transportation safety. Whether issuing a final rule, a compliance order, an inconsistency ruling or a non-preemption determination, the Department is concerned solely with implementing the HMTA in accordance with the express Congressional policy of "protect(ing) the Nation adequately against the risk to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801.)

III. Background

In January of 1976, New York City amended its Health Code to include § 175.111(l) establishing a permit requirement for each shipment of certain specified radioactive materials transported into or through the City. The practical effect of § 175.111(l) was to ban most commercial shipments of radioactive material.

Among those parties affected by the City's restriction was Associated Universities, Inc. (AUI) which has operated Brookhaven National Laboratory on Long Island since 1947. Spend nuclear fuel from two research reactors is stored at Brookhaven until shipped to a recovery facility for reclamation of valuable materials and eventual disposal of the remaining waste. Prior to the City's adoption of § 175.111(l), Brookhaven's practice was to ship spent fuel by highway through the City and south to South Carolina. After the City effectively banned the highway transportation of spent fuel from Long Island, AUI turned to the use of a water crossing from Long Island to Connecticut. Subsequent adoption of local restrictions in Connecticut barred this route and, as a result, spent fuel shipments from Brookhaven were suspended.

Faced with this impasse, AUI turned to the Department for an administrative ruling on the question of whether the City's restriction was preempted by the HMTA. In its first inconsistency ruling (IR-1, 43 FR 16954, April 20, 1978), the Department concluded that there was no identifiable requirement in the text of the HMTA or the regulations issued thereunder that would provide the basis for a finding of statutory preemption under the HMTA. Recognizing the implications of this ruling with respect to the already growing number of state and local bans and other severe transportation restrictions, the Department announced its intent to examine the need for Federal routing regulations and advised that the City's restriction, as well as similar requirements adopted elsewhere, could face a necessary future harmonization with rulemaking resulting from the Department's intended inquiry.

In August of 1978, the Department initiated rulemaking action on highway routing of radioactive material under docket no. HM-164. This action culminated in the Department's adoption of HM-164 as a final rule (46 FR 5298) on January 19, 1981, with an effective date of February 1, 1982. In the preamble to the final rule, the Department stated its conclusion that, on the basis of the extensive public comment on the docket, documented risk studies and past experience for radioactive material transport, "the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation." (46 FR 5299) Moreover, other modes of transport were generally found not to offer alternatives which lowered public risks to such an extent as to warrant substantial restriction of the highway mode. Nevertheless, the Department found that these already low risks could be further reduced by the adoption of driver training requirements and provisions for a method of selecting the safest available highway route for carriers of large-quantity shipments of radioactive material. On this basis, the Department adopted HM-164.

Perhaps the most controversial feature of HM-164 was its establishment of specific routing requirements for "large quantity radioactive materials." The definition of this term was set forth in the HMR at § 173.389(b). However, in a subsequent rulemaking action (48 FR 10218, March 10, 1983), the term "large quantity radioactive materials" was deleted from the HMR and the term "highway route controlled quantity" radioactive material was adopted in its place. The new term is defined at 49 CFR 173.403(l). While there are some differences between the values for "large quantity" and "highway route controlled quantity" radioactive material, these differences do not materially affect the implementation of HM-164.

Under HM-164, specific routing requirements were established for highway shipments of highway route controlled quantity radioactive material (such as spent nuclear fuel). These are set forth in the HMR at § 177.825(b). Stated briefly, HM-164 requires motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes" selected to reduce time in transit except where an available Interstate System beltway or bypass allows them to avoid urban centers. The term "preferred route" is defined in § 177.825(b)(1) as:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials."

Carriers are allowed to deviate from the use of preferred routes only under the following circumstances:

(1) In a documented case of emergency;

(2) To make necessary rest, fuel or vehicle repair stops;

(3) To travel to and from a pick-up or delivery site not located on a preferred route; or

(4) When necessary to comply with the requirements of an approved physical security plan.

In its notice of proposed rulemaking, the Department discussed the technical basis for its reliance on the Interstate System of highways. (45 FR 7140, 7149,

January 31, 1980). Generally, the designation of these highways as preferred routes was based on an overall performance rating with respect to lower accident rates and their capacity for reducing transit times. For the most part, public comment expressed support for this proposal as well as the related provision allowing states the prerogative or modifying the preferred status of Interstate highways by designating other roads as acceptable alternatives.

Several commenters pointed out, and the Department acknowledged, that each of the 42,500 miles of Interstate highway is not sufficiently consistent in design, engineering or accident history to provide an even correlation between the statistical safety of the system's parts and that of the whole. This was one of the reasons for enabling the states to modify the preferred status of Interstate segments for which more acceptable alternatives exist. As a basic routing system, however, even in the absence of state action, the Interstate highways are well-suited for the use required by HM–164. They provide a baseline measure for states to use in determining whether potential alternative routes offer an equivalent or greater level of safety and they support emergency response planning by increasing the confidence of planners in their knowledge of routes to be traveled.

HM–164 included a number of other substantive requirements, e.g. driver training, route plans, placarding. Since this proceeding does not involve these other requirements, there is no need to discuss them further.

Throughout the rulemaking process under docket no. HM–164, New York City repeatedly urged the Department to consider barging as an alternative requirement for transporting large-quantity shipments of radioactive materials around urban centers not served by circumferential highways. While acknowledging that a state routing agency could designate an established ferry route as part of an alternate preferred route, the Department considered such a provision to be inappropriate in a highway rulemaking of national applicability. When the Department declined to incorporate the City's barging suggestion into the proposed rule, the City requested the Department to accompany the final rule with a determination waiving preemption of the City's restriction on highway transportation. Because this would have required the Department to rule on the basis of a regulation not yet issued, the City's application for a non-preemption determination was denied as premature.

On March 20, 1981, two months after HM–164 was published, the City renewed its application for a waiver of preemption. Upon reviewing the City's application, the Department determined that there were several areas where additional information was required. Differences of opinion regarding placement of the burden of proof led to an impasse. As the effective date for HM–164 approached, the City requested that the Department provide a preliminary response to its application. By letter dated January 15, 1982, the Department provided a response which indicated that the City's application, as submitted, would likely be denied:

> Given the fact that DOT was fully aware of the purposes underlying bans such as the City's and determined that such bans were inappropriate, the City must make a clear demonstration that, because of its peculiar circumstances, it is entitled to an exception from the general rules of HM–164 and their underlying policies in order for DOT to be able to make the findings necessary to issue a non-preemption determination. Without such a demonstration, the exception permitted by a non-preemption determination would, in effect, "swallow the rule" and severely undermine the policies underlying HM–164.

No further action was taken on the proceeding pending the outcome of the City's legal challenge to the validity of HM–164.

Shortly after publication of HM–164 as a final rule, the City filed a complaint in the U.S. District Court for the Southern District of New York seeking to invalidate HM–164 on numerous grounds. In an exhaustive opinion [*City of New York v. DOT*, 539 F. Supp. 1237 (1982)], the District Court rules that HM–164 violated both the HMTA and the National Environmental Policy Act (NEPA) in its preemption of state and local bans on the transportation of large-quantity radioactive materials along highways in densely populated areas. The District Court permanently enjoined the enforcement of what it concluded to be the invalid effect of HM–164 on the City's restriction.

The District Court ruling was reversed on appeal by the Second Circuit Court of Appeals [*City of New York*, 715 F2d 732 (1983)]. The Circuit Court upheld the validity of HM–164 in all respects and ruled, *inter alia*, that the Department's refusal to consider the barging alternative in the context of a highway routing rule of national applicability violated neither the HMTA nor NEPA.

The City appealed the Circuit Court decision but on February 27, 1984, the U.S. Supreme Court announced its refusal to review the case, thereby upholding the decision of the Circuit Court and the validity of HM–164 [104 S. Ct. 1403 (1984)].

By specifically upholding the preemptive effect of HM–164 on the City's ordinance, the Circuit Court implicitly found the ordinance to be preempted by HM–164. Recognizing this, the City, by letter dated March 30, 1984, requested the Department to respond to a number of specific questions relating to deficiencies which the Department had noted in its preliminary reponse to the City's original application for a non-preemption determination. By letter dated June 4, 1984, the Department responded to the City's request. The City thereupon set to work preparing a revised application.

On November 8, 1984, at the City's request, representatives of the City met with Departmental officials to seek confirmation of certain procedural requirements, as well as clarification of certain technical issues related to the *DOT Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials*.

On December 24, 1984, the City submitted a detailed application, renewing its original request for a non-preemption determination pursuant to section 112(b) of the HMTA. While acknowledging that the Second Circuit's reversal in *City of New York v. DOT* had removed the District Court's permanent injunction on the preemptive effect of HM–164 with regard to all subsections of § 175.111(1) of the City's Health Code, the City applied for a waiver of preemption with regard to only subsection (4). In other words, the City seeks a non-preemptive determination to enable it to resume enforcement of its now-preempted ban on the transportation of "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies."

In accordance with the procedural requirements of 49 CFR 107.217, the City served a copy of its application on each of 34 parties who it considered would be affected by Departmental issuance of the requested determination. The Department docketed the application as no. NPDA–2 and on January 16, 1985, published a notice and invitation to comment (50 FR 2528) with a deadline of March 4, 1985.

On January 16, 1985, the Attorney General for the State of Connecticut wrote to the Department to request that a public hearing be held in that state concerning the City's application. Because the City's application is based

in large part on a study indicating that safety could be enhanced by shipping spent fuel from Brookhaven by water to Connecticut rather than by highway through the City. the State of Connecticut clearly has a significant interest in this proceeding. By letter dated January 25, 1985, the Department informed the Attorney General of Connecticut that" we have determined that rather than hold a hearing as you requested, the proceeding, and the interests of the State, would be better served through use of a conference in the form of a briefing for those State and local officials who desire to submit substantive factual comments." Accordingly, on February 4, 1985, the Department published a meeting notice and extended the comment period to April 15, 1985. The briefing was held in Newington, Connecticut, on February 14, 1985. Departmental representatives discussed the applicable substantive and procedural requirements and described the history of this proceeding. Representatives of the City of New York described the elements of the City's application and a representative of the City's contractor explained the analytical techniques used in the report prepared for the City and submitted as part of the City's application.

The Department received more than 300 submissions containing more than 800 signatures in response to its invitation to comment. More than 700 of the signatures, however, were attached to petitions and form letters, which, although explicit in their indication of how the Department should rule, failed to address the questions of fact and law which are at issue. While such submissions provide an interesting indicia of the level of public interest in radioactive materials transportation, they do not assist the Department in making a determination. Since this proceeding is not a public policy debate, but an administrative determination of fact and law, mere statements of preference are not compelling. However, the Department also received more than 30 substantive submissions ranging from brief letters to lengthy legal and technical analyses.

After the comment period closed on April 15, 1985, the City requested an opportunity to submit a response to the comments which had been received. The Department had no reason to deny the request. Not having had an opportunity to examine all the submissions, it could not conclude that it had sufficient information to reach a decision. Nor was there a critical time factor, as the only party who had requested an expeditious ruling was the City and the City now sought an extension of time. Accordingly, the Department granted the City's request to submit response comments by no later than May 24, 1985. On that date the City submitted a reply to those comments and an addendum to its technical analysis. The City also served a copy of its submission to each of the 34 parties whom it had served with copies of its application.

On June 7, 1985, the State of Connecticut requested an opportunity to respond to the City's response by no later than July 31, 1985. At the time it received this request, the Department had had an opportunity to examine all of the documents in the docket and had concluded that it had sufficient information on which to base a decision. That being the case, no purpose would be served by extending the proceeding for another seven weeks and Connecticut's request was denied.

On June 11, 1985, the Department, as required by 49 CFR 107.219(d), published a notice that it had received all substantive information considered necessary to process the City's application for a non-preemption determination. (50 FR 24607).

IV. The City's Petition

The local requirement for which the City seeks a waiver of preemption is contained in § 175.111(l)(4) of the New York City Health Code:

(1) Notwithstanding the foregoing provisions of this section, a Certificate of Emergency Transport issued by the Commissioner or his designated representative shall be required for each shipment, to be transported through the City or brought into the City, of any of the following materials:

* * * * *

(4) Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies;

On first impression, this would appear to be a permit requirement rather than a ban. The intended purpose of the requirement, however, is made clear in the accompanying notes. "It is intended that such Certificate will be issued for the most compelling reasons involving urgent public policy or national security interests transcending public health and safety concerns and that economic consideration alone will not be acceptable as justification for the issuance of such Certificate." Both from the language accompanying the City's adoption of the rule and the City's discussion of the effects of the rule, it is clear that the rule was intended to ban such shipments, not to merely impose a permit requirement.

The City's petition offers arguments that its ban should be allowed to stand, despite its inconsistency with the HMTA, because: (1) Unique local conditions are such that shipments of spent nuclear fuel should avoid the City if at all possible, and (2) alternate routes are available which offer a greater level of public safety, without unreasonably burdening commerce.

Regarding its uniqueness, the City notes that it is not only the most densely populated area in the nation, but also the only major population center in the nation without an Interstate System bypass or beltway for shipments emanating from a location generating highway route controlled quantity shipments of radioactive material. In view of this, the City believes that the problems inherent in confronting a transportation accident are so great as to warrant avoiding the City if at all possible.

Regarding the availability of safer alternate routes, the City submitted a comparative risk assessment of viable alternative routes for the transportation of spent nuclear fuel from Long Island. This study concluded that there are at least three alternatives to the use of Interstate highways through the City which provide a greater level of overall public safety. These are:

1. A chartered ferry from Orient Point, Long Island, to New London, Connecticut.
2. A barge from Shoreham to Bridgeport, Connecticut.
3. A chartered ferry from Port Jefferson, Long Island, to Bridgeport, Connecticut.

According to the City's analysis, the alternate routes provide up to a 32% reduction in risk for an additional expenditure of from $1200 to $2000 per shipment.

In summary, this proceeding involves the City's request that the Department waive the preemptive effect of HM-164 on the City's ban on the transportation, into and through the City, of spent reactor fuel elements or associated mixed fission products containing an activity in excess of 20 curies.

V. Analysis

As discussed previously, the burden of proof to be borne by a petitioner for a waiver of preemption is composed of three elements:

(1) A threshold showing of exceptional circumstances necessitating immediate action to secure more stringent regulations;

(2) A showing that the preempted state or local requirement affords an equal or greater level of protection to

the public as compared with the Federal standards; and

(3) A showing that the preempted state or local requirement does not unreasonably burden commerce.

To be successful, a petitioner must prove all three elements. Failure to demonstrate any one of these elements will require a petition to be denied.

The first element which must be demonstrated is the threshold showing of such "exceptional circumstances" as to warrant the availability of the extraordinary remedy of non-preemption. In its original application, the City had cited its high population density as an exceptional circumstance. The City did not take issue with the designation of preferred routes under HM–164; but with the fact of transportation itself:

> The dispersion of even a small quantity of radioactive materials in a city having a population density of 60–70,000 people per square mile, is unacceptable no matter how remote the possibility. (City's Application of March 20, 1981, page 4.)

The Department's preliminary response to this application found that the City had failed to demonstrate that exceptional circumstances existed. By relying exclusively on a "worst-case" approach to safety analysis, the City considered only the possible consequences of an accident and ignored the probability that such consequences would ever occur. The Department, therefore, pointed out that it had explicitly rejected exclusive reliance on the worst-case approach to safety analysis when promulgating HM–164:

> It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials. (46 FR 5300, January 19, 1981).

In its renewed application of December 24, 1984, the City cited two factors as presenting exceptional circumstances. "The City of New York is unique in that not only is it the most densely populated area in the nation . . . but it is also the only major population center in the United States without an Interstate system bypass or beltway for shipments emanating from a location generating large quantity radioactive materials— *i.e.*, there is no highway route around the City for shipments emanating from Long Island." (Application of December 24, 1984, page 4.) Because of this "uniqueness" the City believes that the problems inherent in confronting an accident are so great as to warrant avoiding the City if at all feasible.

The City points out that, because there is no circumferential bypass, highway shipments of highway route controlled quantity radioactive materials must traverse densely populated urban areas. "A radioactive materials incident anywhere along the City route could conceivably require the precautionary evacuation of tens of thousands of people . . ." (*Ibid.*, page 6). The City further notes that the public perception of the risks posed by a transportation incident could lead to even greater disruption than that inherent in emergency response procedures.

The Department does not dispute the City's assertion that significant disruption results from a hazardous materials incident in a densely populated urban area. To illustrate its point, the City cited a 1980 incident involving the actual leakage of liquefied petroleum gas from a tank truck on the George Washington Bridge. That incident "tied up the bridge for nearly eight hours and caused the evacuation of thousands of residents because of the dangers of the leaking gas." (*Ibid.*) The Department notes that bulk shipments of flammable liquids and gases continue to move over the City's highways. It would, thus, appear that the problems inherent in the City's confronting an incident of this dimension are not so great as to warrant a total ban on the transportation of these materials.

The City, however, asserts that a radioactive materials incident could cause greater disruption. "Because of the potential atmospheric dispersion of radioactive materials, a radioactive materials incident in New York City (even if no materials were dispersed) could affect an even greater number of people for a longer time period than that caused by the 1980 incident." (*Ibid.*) This assertion requires closer examination. First of all it assumes that the probability of atmospheric dispersion of spent fuel or associated mixed fission products (the materials which the City seeks to ban) is so high as to require massive evacuation as an immediate first response to any transportation incident. In fact, the probability of atmospheric dispersion is so low as to be virtually academic. In any event, it would not take eight hours to determine whether the necessary preconditions existed for atmospheric dispersion to become a realistic possibility. A second flaw in the City's argument is that, unlike the cited case of leaking liquefied petroleum gas, an incident involving radioactive materials would not create an imminent threat of fire or explosion. Thus, the Department is unconvinced by the City's assertion that a transportation incident involving spent nuclear fuel would be so much more disruptive as to be an unacceptable risk, regardless of its low probability of occurrence.

Related to the City's population density argument is its citation of the large number of vehicular accidents which occur each year in the City. (The City states that in 1983 there were approximately 95,000 vehicular accidents resulting in 64,000 injuries, but these figures are not particularly informative. Of greater relevance would be numbers of vehicular accidents resulting in injury which involved motor carriers of hazardous materials.) While acknowledging the improbability that any of these non-fatal accidents could cause the release of radioactive material, the City asserts that "the public perception of such an accident would alone be sufficient to generate great anxiety, with consequent disruption of traffic and precautionary evacuation until local public officials determined whether a release had in fact occurred." (*Ibid.*, pp. 6–7). The Department considers this argument specious. Since the City seeks to ban only spent fuel and associated mixed fission products, it must assume that its officials are capable of maintaining public order in the face of minor vehicular accidents involving shipments of any other hazardous or radioactive material. That being the case, there is little merit in the argument that the effects of public perception alone would be sufficiently disruptive to justify a ban. (Of course, the Department assumes that the official reaction to a minor traffic incident involving a shipment of spent fuel would be a responsible one and not a cry of disaster, in which case the City's argument would become a self-fulfilling prophecy.)

Finally, the City raised the prospect of a worst-case accident. As in its original application, the City relied on a report by Sandia Laboratories entitled "Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment" (NUREG/CR–0743, Sand 79–0369, July 1980). More specifically, the City relied on a few data points contained in a single table in that report. Table 3–11 at page 66 of the report presented estimates of the results of low-probability/high-consequence (i.e., worst-case) accidents involving the catastrophic release of certain kinds of radioactive material in the densely populated areas of New York City. The City noted that the consequences of a worst-case accident involving plutonium

were estimated to be 1800 latent cancer fatalities, 290 early morbidities and 5 early fatalities. The city did not point out that the same table estimated the probability of such an occurrence as 2×10^{-12}, or one in 500 billion shipments. The City did acknowledge that worst-case accidents had a low probability, but added that "they have a way of happening . . . and that alone would end the case for many." (Application, p. 7).

The City's argument is, once again, based on exclusive reliance on the consequences of a worst-case accident without regard to its probability of occurrence. As stated previously, the Department considered and specifically rejected this approach in the course of promulgating HM–164. The reasonableness of this decision was one of the issues raised by the City in its legal challenge to the validity of HM–164. The Second Circuit Court of Appeals ruled on the issue as follows:

> Here, DOT considered a rule that might be expected to generate a catastrophic accident approximately once every 300 million years. After receiving advice from all sides, the Department decided that such a remote possibility, even of a serious consequence, did not create a "significant" risk for the human environment. Disquieting as it may be even to contemplate such matters, this decision cannot be said to be an abuse of discretion. *(City of New York*, 715 F2d 732, 752).

Even if the Department were to accept this approach to transportation risk analysis, it would not be convinced by estimates of consequences which have since been repudiated by their authors. The City cites a 1980 Sandia report on the impacts of malevolent acts directed at spent fuel casks in urban areas. The Department notes that the estimates published in that report were subsequently deemed to be "greatly overestimated" as a result of efforts reported in a later Sandia report entitled "An Assessment of the Safety of Spent Fuel Transportation in Urban Environs" (SAND 82–2365, June 1983, p. 4). An indication of the extent to which the two studies differed is offered by the following comparison of their estimates of the (mean/peak) health consequences resulting from deliberate sabotage of a truck cask containing spent nuclear fuel:

	Early fatalities	Early morbidities	Early latent cancer fatalities
1980 study	4/60	160/1,600	350/1,300
1983 study	0/0	0/0	1/3

The second part of the City's claimed uniqueness involves the lack of an Interstate System beltway or bypass for shipments emanating from a location generating highway route controlled quantity shipments of radioactive materials. The City states that "because the health impacts and economic consequences of a 'worst-case' accident are so severe, HM–164 requires carriers to avoid cities where possible by the use of circumferential routes." (Application, p. 7). From this, the City argues that equal recognition should be given to intermodal circumferential routes when no Interstate beltway or bypass is available.

This argument necessitates a review of the Departmental policy underlying the required use of Interstate beltways and bypasses. In the preamble to HM–164, the Department acknowledged that high consequence accidents in densely populated areas should be of great concern, but not to the extent that public policy on highway routing should be formulated exclusively on the basis of avoiding worst-case accidents. The risk of high consequence/low probability accidents could be substantially reduced by avoiding cities, but the result could be a dramatic increase in overall public risks since routes that avoid the urban areas may have much higher accident rates which increase the chance of a severe accident occurring. Such routes may also increase time in transit and, thus, the length of time the public is exposed to the risks inherent in the transportation of radioactive materials. The Department chose to resolve this dilemma by requiring motor carriers to use urban Interstate circumferential beltways when such are available.

The requirement that carriers of highway route controlled quantities of radioactive material use available Interstate beltways or bypasses to avoid urban centers was generally recognized by those commenting on the proposed rule as a reasonable exception to the requirement that preferred routes be selected on the basis of their ability to reduce time in transit. This requirement did not, however, receive unanimous approval.

The City of Baltimore suggested that the use of beltways would not automatically result in the avoidance of all heavily populated areas and that, during peak traffic hours, it may be less hazardous to direct shipments over an Interstate through-route rather than a beltway. And the Commonwealth of Massachusetts, pointing to situations where there are multiple beltways around a metropolitan area, expressed concern that HM–164 might allow carriers to operate over the shorter circumferential route, despite the availability of a second route with superior design standards and lower population density.

The Department responded to these concerns in two ways. First, it reaffirmed its belief that "packages of large quantity radioactive material can be transported over any Interstate highway, and most other comparable routes, with a confident level of safety." (46 FR 5298, 5309). Then, it stated forcefully that its reaffirmation was in no way intended to discourage state governments from adopting reasonable routing rules which increase this level of confidence. It was for this reason that HM–164 included a mechanism for state designation of alternate preferred routes. Consequently, in adopting a rule of national applicability, the Department chose to direct carriers to use urban Interstate circumferential beltways in the belief that, when considering both normal and accident conditions of radioactive materials transportation, aggregate benefit would be realized. (46 FR 5298, 5309)

The Departmental decison to direct shipments onto urban Interstate circumferential routes, therefore, cannot be construed to imply either that the use of Interstate routes through urban areas is unsafe or that Interstate through-routes are inherently less safe than Interstate beltways or bypasses. The highway routing rulemaking was based on the Department's conclusion that "the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions" and its belief that "these currently low risks [would] be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest highway routes." (46 FR 5298, 5299). In other words, before adoption of HM–164 the public risks in highway transportation of large quantity radioactive materials were already low. These risks were further reduced by designation of the Interstate System of highways as the primary roadways for such transportation, a designation based on their overall performance rating with respect to lower accident rates and their capacity for reducing transit time. Finally, the Department concluded that it would be possible to reduce the estimatable, albeit extremely low, risk of a worst-case accident by directing motor carriers onto urban Interstate circumferential routes where these were available. Thus, the required use of Interstate beltways and bypasses was intended to provide a further marginal enhancement to an already safe system of highway routing. In view of this, there

is no basis to conclude that the non-availability of an urban Interstate circumferential route is *per se* an exceptional circumstance such that application of the Federal routing rule fails to provide an adequate level of safety.

Having considered the two elements of City's claim of uniqueness separately and determined that neither alone constitutes an exceptional circumstance, it remains to determine whether their combined effect is such as to compel a different conclusion. The City argues that, because there is no Interstate beltway or bypass available to shipments emanating from Long Island, such shipments must pass through the City; and because of the City's population density "the problems inherent in confronting an accident (with or without a release of materials) are so great as to warrant avoiding the City if at all feasible." (Application, p. 4). The City's proposed solution is to ban spent fuel shipments from the City, thereby eliminating any risk of accident.

The Department has considered the City's arguments and finds a fatal flaw in the reasoning. Of all of the hazardous and radioactive materials which may currently be transported through the City, only spent nuclear fuel is singled out as presenting so grave a threat as to be intolerable. Yet "the problems inherent in confronting an accident" involving spent nuclear fuel are not qualitatively different from those involved in responding to an accident involving other kinds of radioactive materials. Moreover, the probability of an accident involving the release of spent fuel is several orders of magnitude below that of other kinds of hazardous materials.

On the basis of the foregoing, I find that the City has not demonstrated that the Federal routing regulations fail to provide an adequate level of safety in the City of New York because of circumstances which are unique to the City. Having failed to make the necessary threshold showing, the City has failed to demonstrate that its circumstances constitute the type of "emergency situation" for which Congress created the extraordinary remedy of non-preemption. That being the case, there is no need to consider whether the City has satisfactorily addressed the statutory criteria governing that remedy.

The Department's conclusion that the City has not presented a case for which non-preemption is an appropriate remedy does not, however, preclude the City from seeking the relief it desires within the framework of the very rule whose preemptive effects the City has sought to avoid. The highway routing scheme created under HM-164 went beyond the Department's designation of Interstate System highways to give full recognition to alternate routes designated by the states.

In the course of promulgating HM-164, the Department recognized that not all segments of the Interstate System of highways were of equal calibre and that in certain areas non-Interstate routes were available which could provide an equal or greater level of safety. The Department further acknowledged that the task of identifying preferable alternative local routes was best performed by the states and, for this reason, developed a mechanism for state-designation of alternate routes.

In response to comments that local governments should be responsible for routing within their jurisdictions, the Department noted that local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. Accountable only to their own citizens, local governments have little incentive to take sufficient account of the adverse impacts of their routing decisions on surrounding jurisdictions. Uncoordinated and unilateral restrictions on the highway transportation of radioactive materials would simply not be conducive to safe transportation. Indeed, it was the proliferation of such restrictions which provided the impetus for Departmental adoption of HM-164

The Department believed that state government could provide the key to ensuring that the safest routes were used to transport high-level radioactive materials. A state government has a much broader perspective than local governments because it is responsible for the safety and welfare of all its communities. A state can not only assess the safety impacts of a routing decision on all communities, but can also address the concerns of tunnel, turnpike and bridge authorities. States thus have the capability, through existing administrative and lawmaking procedures, to incorporate local input directly into their routing analyses. Also, a state, unlike a local government, can work directly with other states (individually or through regional compacts) to ensure the consideration of all safety impacts as well as the continuity of designated routes. Finally, the states have traditionally exercised primary responsibility and control over Federal-Aid Highways, including the Interstate System, and, thus, have demonstrated capabilities and established mechanisms for managing a variety of highway programs.

Many local officials expressed concern that the states would not actively pursue local interests before designating routes. The Department considered establishing specific guidelines to ensure a formal procedure for local consideration, but found that this approach was impractical given the variations in organizational structure and administrative processes from state to state. Instead, the Department took two steps to ensure consideration of local viewpoints. First, it established a general requirement that states consult with affected local jurisdications before designating an alternate preferred route. Second, it developed a set of guidelines to assist states in assessing the safety of potential alternate routes. The Department included both steps in its definition of what constitutes a state-designated route:

> "State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public. Designation must have been preceded by sustantive consultation with affected local jurisdications and with any other affected States to ensure consideration of all impacts and continuity of designated routes. (49 CFR 171.8)

In summary, under HM-164, motor carriers of highway route controlled quantity shipments of radioactive material can be required to operate over alternate preferred routes so long as those alternate routes:

1. Are designated by an authorized state routing agency,
2. In accordance with the DOT Guidelines or equivalent routing analysis, *and*
3. After substantive consultation with affected local jurisdictions and any other affected states.

The City has offered no arguments to demonstrate that exceptional circumstances exist to prevent the State of New York from utilizing the mechanism created under HM-164 to designate the alternate preferred route(s) which the City seeks to establish. In the absence of compelling arguments on this point, Departmental issuance of a waiver of preemption would amount to an arbitrary and capricious withdrawal of authority which the Department has recognized as being vested in the state. Beyond assisting the City to usurp the authority of the state, Departmental issuance of a waiver would also adversely impact those local jurisdictions (e.g., the cities of Bridgeport and New London) and states (e.g. Connecticut) who would be

affected by an alternate route by depriving them of their rights to engage in substantive consultation prior to designation of an alternate route.

The Department has consistently held that the authority to alter the preferred status of Interstate System highways is vested in the states. However, nothing in HM–164 compels a state to act. Within the framework of the Department's highway routing rules, a state's decision to take no action (thereby maintaining the preferred status of the Interstate System highways) is as much as exercise of the state's routing authority as a decision to designate alternate routes. Thus, a state's decision to not designate alternate routes cannot be construed as an abdication of responsibility such as to give rise to local assumption of that authority.

This is not the first time the Department has been approached by a party seeking to modify the preferred status of certain Interstate System highways by direct application to the Department rather than through the established mechanism for state-designation of alternate routes. The Department's consistent response has been to advise such applicants to present their arguments to the appropriate state routing agency. Nothing distinguishes the City's request from those received previously.

Whether or not the potential alternate routes identified by the City offer an equal or greater level of safety as compared to the Interstate routes through the City are questions properly addressed by a state routing agency in consultation with all affected local and state jurisdiction. The Department's role in such deliberations is limited to responding to requests for guidance in applying or interpreting the DOT Guidelines or other risk assessment methodology. After a state routing agency has designated an alternate preferred route, the Department may be called upon to determine whether the designation was made in accordance with the HMR. Such a determination would be made in accordance with the procedures for issuance of inconsistency rulings.

Since the City has failed to make the necessary threshold showing of exceptional circumstances, and since, moreover, the HMR make specific provision for the type of releif sought by the City, I find no justification for Departmental issuance of extraordinary relief in the form of a waiver of preemption.

VI. Ruling

For the foregoing reasons, New York City's request for a waiver of the preemptive effect of the hazardous materials regulations collectively referred to as HM–164 on section 175.111(l)(4) of the City Health Code is hereby denied.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.225.

Issued in Washington, DC on September 9, 1985.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Appendix

The preceding non-preemption determination (NPD–1) has considered only one aspect of the inconsistency of section 175.111(1)(4) of the New York City Health Code, i.e. the manner in which it impedes compliance with the highway routing regulations promulgated under the HMTA. There is a second aspect to the inconsistency of the City's requirement which, although not relevant to the Department's findings in NPD–1, could present a serious impediment to the City's future attempts to gain recognition of its routing rule.

By imposing a ban on the transportation of "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies", the City's inconsistent rule impedes the accomplishment of the HMTA by creating a non-uniform hazard class. With regard to the issue of hazard class definition, the Department has repeatedly held that there are certain areas where the need for national uniformity is so crucial and the scope of Federal regulation so pervasive that it is difficult to envision any situation where a different state or local rule would not impede the accomplishment of the HMTA. One area where the Department perceives the Federal role to be exclusive is that of hazard warning systems, including the hazard class definitions on which these are based. As stated in inconsistency ruling no. IR–5 which dealt with a New York City regulation on transportation of compressed gases:

The HMR are, in and of themselves, a comprehensive and technical set of regulations . . . For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme . . . . Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety. (47 FR 51991, 51994, November 18, 1982).

The class of radioactive materials which the City seeks to ban is "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies." At the time the City adopted this requirement, the language was consistent with the HMR's definition of "large quantity radioactive materials" (49 CFR 173.389(b)). That definition was based on the transport group system of classifying radionuclides. In 1983, however, the Department issued a final rule (Docket no. HM–169, 48 FR 10218, March 10, 1983) which deleted the term "large quantity radioactive materials" and the transport group system of classification and adopted the term "highway route controlled quantity" radioactive material and the A_1/A_2 classification system on which it is based.

Under the current system of classifying radionuclides, the reference to "20 curies" does not correspond to any classification used in the HMR. For example, a highway route controlled quantity of "mixed fission products" contains an activity of 1200 curies or more. Thus, the City's ordinance would ban some shipments of radioactive materials which are not even subject to the required use of preferred routes under HM–164. As stated in inconsistency ruling no. IR–6:

The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform comprehensive system of hazardous materials transportation safety regulation. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA (49 U.S.C. 1811). (48 FR 760, 764, January 6, 1983).

Given the Department's consistently firm position on the need for national uniformity of hazard classification, any action by a state routing agency to designate alternate routes which incorporated the City's non-uniform hazard class definition would be vulnerable to attack as an inconsistent and, thus, preempted state rule. On the other hand, this defect could be cured by a simple amendment adopting language consistent with the HMR.

Having directed the City to utilize the established mechanism for state-designation of alternate preferred routes, the Department considered it fitting and proper to point out the foreseeable and avoidance problems inherent in the language of the City's ordinance.

[FR Doc. 85–21822 Filed 9–11–85; 8:45 am]
BILLING CODE 4910–60–M

federal register

Thursday
September 12, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Reopening and Extension of Public Comment Period on Proposed Amendment to the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letter dated December 23, 1983, Illinois submitted to OSM proposed requirements for the training and certification of blasters working in surface coal mining operations. OSM published a notice in the **Federal Register** on January 25, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 3093).

Following OSM's review of the Illinois amendments, OSM notified the State, on April 25, 1984, of its concerns about amendments relating to providing adequate training for blasters, reexamination for blaster competency, and protection of blasters certificates from theft, loss, or unauthorized duplication.

On May 25, 1984, the State responded by agreeing to amend the rules to answer OSM's concerns. The amended rules were submitted to OSM on March 29, 1985.

On May 1, 1985, OSM reopened and extended the public comment period on the amended rules to May 31, 1985. OSM's review of the amended rules identified concerns with the required courses for blaster certification training. The specific concerns were (1) handling, transportation and storage of explosives; (2) secondary blasting applications, and (3) blasting schedules. The State was notified of these concerns on June 25, 1985. The State responded to OSM's concerns with a policy statement dated August 16, 1985.

Accordingly, OSM is reopening and extending the comment period on Illinois' December 23, 1983 proposed amendments as modified on March 29, 1985, and August 16, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. September 27, 1985, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701.

Copies of the Illinois program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street NW., Washington, D.C. 20240;

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Room 201, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program, can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

At the time of the Secretary's approval of the Illinois program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Illinois program, the Secretary specified that Illinois would be required to adopt such provisions following promulgation of the Federal standards (47 FR 23858, June 1, 1982). On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blaster at 30 CFR Chapter M (48 FR 9486).

II. Proposed Amendment

By letter dated December 23, 1983, Illinois submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements were set forth under Part 1850—Training, Examination and Certification of Blasters.

OSM announced receipt of the amendments and initiated a public comment period on January 25, 1984 (49 FR 3093). The comment period ended February 24, 1984.

During review of the amendments, OSM identified three concerns:

(1) The proposed Illinois rules do not provide that the regulatory authority may require periodic re-examination, training or other demonstration of continued blaster competency;

(2) Illinois' proposed rules do not contain counter parts to all of the courses required for blaster training in 30 CFR 850.13(b); and

(3) The proposed Illinois' rules do not require the blaster to take every reasonable precaution to protect his certificate from loss, theft or unauthorized duplication.

OSM notified Illinois about these concerns by letter dated April 25, 1984. On May 25, 1984, Illinois responded by agreeing to amend its blaster training and certification rules to answer OSM's concerns. Illinois also proposed to make minor editorial changes and correct typographical errors. The State completed its changes on February 15, 1985, and submitted the amended rules to OSM on March 29, 1985.

On May 1, 1985, OSM announced it was reopening and extended the public comment period through May 31, 1985, on the resubmitted Illinois blaster training and certification rules (50 FR 18536). During OSM's review of the resubmitted regulations, it identified three areas of concern. These are that Illinois has no requirement for a course on the handling, transportation and storage of explosives; Illinois does not require training in secondary blasting applications, and in blasting schedules. Illinois was notified of OSM's concerns on June 25, 1985. The State responded in a letter dated August 16, 1985.

The full text of the proposed program amendments and of the subsequent material is available for review at the locations listed above under **"ADDRESSES."** Accordingly, OSM is now seeking public comment on the adequacy of Illinois' December 23, 1983

amendments as modified on March 29, 1985, in light of the State's August 16, 1985 modifications.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: September 9, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85–21828 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–05–M

VOL
50
ISS
77
SE
12
985
UMI

federal register

Thursday
September 12, 1985

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Reports; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of September 1, 1985, of 244 rescission proposals and 75 deferrals contained in the first 11 special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, March 22, May 16, June 20, and July 31, 1985.

Rescissions (Table A and Attachment A)

As of September 1, 1985, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the 244 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of September 1, 1985, $4,159.8 million in 1985 budget authority was being deferred from obligation and $5.5 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Register listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985
Vol. 50, FR p. 12504, Thursday, March 28, 1985
Vol. 50, FR p. 21014, Tuesday, May 21, 1985
Vol. 50, FR p. 26510, Wednesday, June 26, 1985
Vol. 50, FR p. 31696, Monday, August 5, 1985

Joseph R. Wright,
Acting Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,843.3
Accepted by the Congress	165.6
Rejected by the Congress	1,677.7 a/
Pending before the Congress	0

****

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$15,339.3 b/
Routine Executive releases through September 1, 1985 (OMB/ Agency Releases of $11,411.2 million and cumulative adjustments of $318.6 million)	-11,092.6
Overturned by the Congress	-81.4
Currently before the Congress	$ 4,165.3 c/

---

a/ These amounts were available for obligation between March 25 and August 15, 1985, when the Second Supplemental Appropriations Act (P.L. 99-88) was enacted.

b/ This amount includes $170.0 million transmitted by the Comptroller General on June 24, 1985, for the General Services Administration.

c/ This amount includes $5.5 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1	99,000		2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2	5,168		2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3	1,231		2-6-85		1,231	4-25-85	
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4	838		2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5	114		2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6	149		2-6-85	49	149	4-25-85	P.L. 99-88
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7	497		2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8	41		2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9	24		2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10	1,313		2-6-85	1,000	1,313	4-25-85	P.L. 99-88
Buildings and facilities	R85-11	16,950		2-6-85		16,950	4-25-85	
	R85-12	20,950		2-6-85		20,950	4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13	151		2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14	310		2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15	11		2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16	206		2-6-85	100	206	4-25-85	P.L. 99-88
Economic Research Service Salaries and expenses	R85-17	132		2-6-85	50	132	4-25-85	P.L. 99-88
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18	32		2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19	424		2-6-85	100	424	4-25-85	P.L. 99-88
Office of International Cooperation and Development Salaries and expenses	R85-20	52		2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21	9		2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22	100		2-6-85		100	4-25-85	
Dairy indemnity program	R85-23	88		2-6-85		88	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24	1,906		2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25	31		2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26	36		2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27	288		2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28	215,964		2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29	30,000		2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30	1,315		2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	R85-31	5,174		2-6-85		5,174	4-25-85	
River basin surveys and investigations	R85-32	235		2-6-85		235	4-25-85	
Watershed planning	R85-33	133		2-6-85		133	4-25-85	
Watershed and flood prevention operations	R85-34	918		2-6-85		918	4-25-85	
Great plains conservation program	R85-35	126		2-6-85		126	4-25-85	
Resource conservation and development	R85-36	164		2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37	1,464		2-6-85	400	1,464	4-24-85	P.L. 99-88
Federal Grain Inspection Service								
Salaries and expenses	R85-38	94		2-6-85		94	4-25-85	
Agricultural Marketing Service								
Marketing services	R85-39	150		2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	R85-40	18		2-6-85		18	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	R85-41	2,473		2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	R85-42	684		2-6-85		684	4-25-85	
Food stamp program	R85-43	8,762		2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44	34		2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45	117		2-6-85	85	117	4-25-85	P.L. 99-88
Agricultural Cooperative Service								
Salaries and expenses	R85-46	50		2-6-85		50	4-25-85	
Forest Service								
Forest research	R85-47	923		2-6-85	462	923	4-25-85	P.L. 99-88
State and private forestry	R85-48	463		2-6-85	232	463	4-25-85	P.L. 99-88
National forest system	R85-49	12,134		2-6-85	6,067	12,134	4-25-85	P.L. 99-88
Construction	R85-50	1,922		2-6-85	961	1,922	4-25-85	P.L. 99-88
Land acquisition	R85-51	68		2-6-85	68	68	4-25-85	P.L. 99-88
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52	3,700		2-6-85		3,700	4-25-85	
	R85-53	499		2-6-85	499	499	4-25-85	P.L. 99-88
Economic Development Administration								
Salaries and expenses	R85-54	120		2-6-85	120	120	4-25-85	P.L. 99-88
Economic development assistance programs	R85-55	24,000		2-6-85		24,000	4-25-85	
	R85-56	179,000		2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	R85-57	241		2-6-85	241	241	4-25-85	P.L. 99-88
Periodic censuses and programs	R85-58	791		2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	R85-59	433		2-6-85	433	433	4-25-85	P.L. 99-88
International Trade Administration								
Operations and administration	R85-60	2,783		2-6-85		2,783	4-25-85	
	R85-60A	18,750		2-6-85		18,750	4-25-85	
Participation in United States expositions	R85-61	6		2-6-85	6	6	4-25-85	P.L. 99-88
Minority Business Development Agency								
Minority business development	R85-62	305		2-6-85	305	305	4-25-85	P.L. 99-88
United States Travel and Tourism Administration								
Salaries and expenses	R85-63	468		2-6-85	468	468	4-25-85	P.L. 99-88
	R85-63A	3,417		2-6-85		3,417	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64	4,140		2-6-85		4,140	4-25-85	
	R85-64A	100,200		2-6-85		100,200	4-25-85	
Fisheries loan fund.....	R85-65	1,550		2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses.....	R85-66	1,472		2-6-85	1,472	1,472	4-25-85	P.L. 99-88
National Bureau of Standards								
Scientific and technical research and services.....	R85-67	1,019		2-6-85	500	1,019	4-25-85	P.L. 99-88
National Telecommunications and Information Administration								
Salaries and expenses.....	R85-68	183		2-6-85	183	183	4-25-85	P.L. 99-88
Public telecommunications facilities, planning and construction.....	R85-69	32		2-6-85	32	32	4-25-85	P.L. 99-88
	R85-69A	9,968		2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations.....	R85-70	2,000		2-6-85		2,000	4-25-85	
Construction, general.....	R85-71	4,000		2-6-85		4,000	4-25-85	
Operation and maintenance, general.....	R85-72	8,000		2-6-85		8,000	4-25-85	
General expenses.....	R85-73	1,200		2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries.....	R85-74	1,000		2-6-85		1,000	4-25-85	
Revolving fund.....	R85-75	3,900		2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs.....R85-76		80,000		2-6-85		80,000	4-24-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants.....	R85-77	30,000		2-6-85		30,000	4-24-85	
Office of Postsecondary Education								
Higher education.....	R85-78	59,750		2-6-85		59,750	4-24-85	
Departmental Management								
Salaries and expenses.....	R85-79	4,189		2-6-85		4,189	4-24-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities.....	R85-80	8,280		2-6-85	8,280	8,280	4-25-85	P.L. 99-88
Energy Programs								
General science and research activities.	R85-81	38		2-6-85		38	4-25-85	
Energy supply, research and development activities.....	R85-82	2,676		2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83	968		2-6-85		968	4-25-85	
Fossil energy research and development..	R85-84	3,276		2-6-85		3,276	4-25-85	
	R85-85	860		2-6-85		860	4-25-85	
Naval petroleum and oil shale reserves..	R85-86	181		2-6-85		181	4-25-85	
Energy conservation.....	R85-87	931		2-6-85		931	4-25-85	
Strategic petroleum reserve.....	R85-88	156		2-6-85		156	4-25-85	
Energy Information Administration.....	R85-89	846		2-6-85		846	4-25-85	
Emergency preparedness.....	R85-90	51		2-6-85	51	51	4-25-85	P.L. 99-88
Economic regulation.....	R85-91	156		2-6-85	102	156	4-25-85	P.L. 99-88
Federal Energy Regulatory Commission....	R85-92	204		2-6-85		204	4-25-85	
Alternate fuels production.....	R85-93	23		2-6-85		23	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	R85-94	29		2-6-85		29	4-25-85	
Operation and maintenance, Southeastern Power Administration	R85-95	15		2-6-85		15	4-25-85	
	R85-243	23,402		5-16-85		23,402	7-19-85	
Operation and maintenance, Southwestern Power Administration	R85-96	243		2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97	432		2-6-85		432	4-25-85	
Departmental Administration								
Departmental administration	R85-98	2,786		2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Salaries and expenses	R85-99	2,194		2-6-85		2,194	4-25-85	
Health Resources and Services Administration								
Health resources and services	R85-100	2,263		2-6-85		2,263	4-25-85	
Indian health	R85-101	161		2-6-85	161	161	4-25-85	P.L. 99-88
Centers for Disease Control								
Disease control	R85-102	2,261		2-6-85		2,261	4-25-85	
National Institutes of Health								
National Cancer Institute	R85-103	4,362		2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104	1,401		2-6-85		1,401	4-25-85	
National Institute of Dental Research	R85-105	166		2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106	1,171		2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	R85-107	462		2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	R85-108	428		2-6-85		428	4-25-85	
National Institute of General Medical Sciences	R85-109	211		2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development	R85-110	309		2-6-85		309	4-25-85	
National Eye Institute	R85-111	173		2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	R85-112	542		2-6-85		542	4-25-85	
National Institute on Aging	R85-113	196		2-6-85		196	4-25-85	
Research resources	R85-114	250		2-6-85		250	4-25-85	
John E. Fogarty International Center	R85-115	241		2-6-85		241	4-25-85	
National Library of Medicine	R85-116	354		2-6-85		354	4-25-85	
Office of the Director	R85-117	182		2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R85-118	3,972		2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health								
Public health service management	R85-119	493		2-6-85		493	4-25-85	
Health Care Financing Administration								
Program management	R85-120	1,540		2-6-85		1,540	4-25-85	
Human Development Services								
Human development services	R85-121	1,334		2-6-85		1,334	4-25-85	
Family social services	R85-122	396		2-6-85		396	4-25-85	
Community services block grant	R85-123	34		2-6-85		34	4-25-85	
Departmental Management								
General departmental management	R85-124	1,246		2-6-85		1,246	4-25-85	
Office of the Inspector General	R85-125	496		2-6-85		496	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payments for operation of low income housing projects	R85-126	253,138		2-6-85		253,138	4-25-85	
Management and Administration								
Salaries and expenses	R85-127	6,919		2-6-85	6,919	6,919	4-25-85	P.L. 99-88
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources	R85-128	5,778		2-6-85	2,000	5,778	4-25-85	P.L. 99-88
Oregon and California grant lands	R85-129	679		2-6-85	350	679	4-25-85	P.L. 99-88
Working capital fund	R85-130	2,951		2-6-85	2,951	2,951	4-25-85	P.L. 99-88
Minerals Management Service								
Minerals and royalty management	R85-131	1,764		2-6-85	1,764	1,764	4-25-85	P.L. 99-88
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology	R85-132	546		2-6-85		546	4-25-85	
Abandoned mine reclamation fund	R85-133	333		2-6-85		333	4-25-85	
	R85-133A	2,900		2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program	R85-134	2,571		2-6-85		2,571	4-25-85	
General investigations	R85-135	209		2-6-85		209	4-25-85	
Operation and maintenance	R85-136	1,540		2-6-85		1,540	4-25-85	
General administrative expenses	R85-137	1,468		2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research	R85-138	4,519		2-6-85	1,269	4,519	4-25-85	P.L. 99-88
Bureau of Mines								
Mines and minerals	R85-139	1,355		2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management	R85-140	3,869		2-6-85	1,900	3,869	4-25-85	P.L. 99-88
Construction	R85-141	40		2-6-85	40	40	4-25-85	P.L. 99-88
National Park Service								
Operation of the national park system	R85-142	8,598		2-6-85	4,300	8,598	4-25-85	P.L. 99-88
National recreation and preservation	R85-143	94		2-6-85		94	4-25-85	
Construction	R85-144	397		2-6-85	397	397	4-25-85	P.L. 99-88
Land acquisition and state assistance	R85-145	52		2-6-85	52	52	4-25-85	P.L. 99-88
	R85-146	30,000		2-6-85	30,000	30,000	4-25-85	P.L. 99-88
Bureau of Indian Affairs								
Operation of Indian programs	R85-147	5,570		2-6-85	2,000	5,570	4-25-85	P.L. 99-88
Office of Territorial Affairs								
Administration of territories	R85-148	107		2-6-85	107	107	4-25-85	P.L. 99-88
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses	R85-149	166		2-6-85	166	166	4-25-85	P.L. 99-88
Working capital fund	R85-150	3,000		2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities	R85-151	470		2-6-85	470	470	4-25-85	P.L. 99-88
Salaries and expenses, Antitrust Division	R85-152	65		2-6-85	65	65	4-25-85	P.L. 99-88
Salaries and expenses, United States Attorneys and Marshals	R85-153	889		2-6-85	889	889	4-25-85	P.L. 99-88
Fees and expenses of witnesses	R85-154	309		2-6-85	309	309	4-25-85	P.L. 99-88
Salaries and expenses, Community Relations Service	R85-155	43		2-6-85	43	43	4-25-85	P.L. 99-88

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal Bureau of Investigation								
Salaries and expenses	R85-156	3,505		2-6-85	3,505	3,505	4-25-85	P.L. 99-88
Drug Enforcement Administration								
Salaries and expenses	R85-157	876		2-6-85	876	876	4-25-85	P.L. 99-88
Immigration and Naturalization Service								
Salaries and expenses	R85-158	947		2-6-85	947	947	4-25-85	P.L. 99-88
Federal Prison System								
Salaries and expenses	R85-159	451		2-6-85	451	451	4-25-85	P.L. 99-88
National Institute of Corrections	R85-160	894		2-6-85		894	4-25-85	
Buildings and facilities	R85-161	13		2-6-85	13	13	4-25-85	P.L. 99-88
Office of Justice Programs								
Justice assistance	R85-162	2,031		2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163	218		2-6-85		218	4-25-85	
	R85-163A	1,703		2-6-85		1,703	4-25-85	
Training and employment services	R85-164	11,647		2-6-85		11,647	4-24-85	
	R85-164A	244,291		2-6-85		244,291	4-24-85	
Labor-Management Services Administration								
Salaries and expenses	R85-165	1,678		2-6-85		1,678	4-25-85	
Employment Standards Administration								
Salaries and expenses	R85-167	1,635		2-6-85		1,635	4-24-85	
	R85-167A	600		2-6-85		600	4-24-85	
Occupational Safety and Health Administration								
Salaries and expenses	R85-168	1,694		2-6-85		1,694	4-24-85	
Mine Safety and Health Administration								
Salaries and expenses	R85-169	1,776		2-6-85		1,776	4-24-85	
Bureau of Labor Statistics								
Salaries and expenses	R85-170	765		2-6-85		765	4-25-85	
	R85-170A	5,000		2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses	R85-171	728		2-6-85		728	4-24-85	
Inspector General salaries and expenses	R85-172	3,766		2-6-85		3,766	4-24-85	
Special foreign currency program	R85-173	20		2-6-85		20	4-24-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R85-174	2,432		2-6-85	2,432	2,432	4-25-85	P.L. 99-88
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	R85-175	164		2-6-85	164	164	4-25-85	P.L. 99-88
National Highway Traffic Safety Administration								
Operations and research	R85-176	767		2-6-85	808	767	4-25-85	P.L. 99-88
Trust fund share of operations and research	R85-177	408		2-6-85		408	4-25-85	
Highway traffic safety grants	R85-178	250		2-6-85	250	250	4-25-85	P.L. 99-88
Federal Railroad Administration								
Office of the Administrator	R85-179	100		2-6-85		100	4-25-85	
Railroad research and development	R85-180	170		2-6-85	170	170	4-25-85	P.L. 99-88
Rail service assistance	R85-181	90		2-6-85	90	90	4-25-85	P.L. 99-88
Railroad safety	R85-182	140		2-6-85		140	4-25-85	
Northeast corridor improvement program	R85-183	200		2-6-85	200	200	4-25-85	P.L. 99-88
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	R85-184	265		2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations	R85-185	18,888		2-6-85		18,888	4-25-85	
Headquarters administration	R85-186	1,065		2-6-85		1,065	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Washington metropolitan airports	R85-187	17		2-6-85		17	4-25-85	
Facilities and equipment (Airport and airway trust fund)	R85-188	10,000		2-6-85	10,000	10,000	4-25-85	P.L. 99-88
Coast Guard Operating expenses	R85-189	14,724		2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190	500		2-6-85		500	4-25-85	
Reserve training	R85-191	441		2-6-85		441	4-25-85	
Research, development, test, and evaluation	R85-192	135		2-6-85		135	4-25-85	
Maritime Administration Operations and training	R85-193	888		2-6-85		888	4-25-85	
Office of the Inspector General Salaries and expenses	R85-194	300		2-6-85		300	4-25-85	
Office of the Secretary Salaries and expenses	R85-195	435		2-6-85		435	4-25-85	
Transportation planning, research and development	R85-196	65		2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary Salaries and expenses	R85-197	969		2-6-85	969	969	4-25-85	P.L. 99-88
Office of Revenue Sharing Salaries and expenses	R85-198	90		2-6-85	90	90	4-25-85	P.L. 99-88
Federal Law Enforcement Training Center Salaries and expenses	R85-199	75		2-6-85	75	75	4-25-85	P.L. 99-88
Financial Management Service Salaries and expenses	R85-200	972		2-6-85	972	972	4-25-85	P.L. 99-88
Bureau of Alcohol, Tobacco and Firearms Salaries and expenses	R85-201	397		2-6-85	397	397	4-25-85	P.L. 99-88
United States Customs Service Salaries and expenses	R85-202	1,223		2-6-85	1,223	1,223	4-25-85	P.L. 99-88
Bureau of the Mint Salaries and expenses	R85-203	87		2-6-85	87	87	4-25-85	P.L. 99-88
Bureau of the Public Debt Administering the public debt	R85-204	52		2-6-85	52	52	4-25-85	P.L. 99-88
Internal Revenue Service Salaries and expenses	R85-205	198		2-6-85	198	198	4-25-85	P.L. 99-88
Processing tax returns and executive direction	R85-206	781		2-6-85	781	781	4-25-85	P.L. 99-88
Examinations and appeals	R85-207	1,588		2-6-85	1,588	1,588	4-25-85	P.L. 99-88
Investigation, collection, and taxpayer service	R85-208	1,633		2-6-85	1,633	1,633	4-25-85	P.L. 99-88
United States Secret Service Salaries and expenses	R85-209	1,465		2-6-85	1,465	1,465	4-25-85	P.L. 99-88
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210	1,863		2-6-85		1,863	4-26-85	
Research and development	R85-211	4,125		2-6-85	4,125	4,125	4-26-85	P.L. 99-88
Abatement, control, and compliance	R85-212	7,413		2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities Federal buildings fund	R85-213	3,204		2-6-85	3,204	3,204	4-25-85	P.L. 99-88
Personal Property Activities Operating expenses	R85-214	300		2-6-85	300	300	4-25-85	P.L. 99-88
General supply fund	R85-215	30,848		2-6-85	30,848	30,848	4-25-85	P.L. 99-88
Office of Information Resources Management Operating expenses	R85-216	45		2-6-85	45	45	4-25-85	P.L. 99-88
Consumer information center fund	R85-217	63		2-6-85	63	63	4-25-85	P.L. 99-88

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal telecommunications fund.....	R85-218	415		2-6-85	415	415	4-25-85	P.L. 99-88
Automatic data processing fund.....	R85-219	145		2-6-85	145	145	4-25-85	P.L. 99-88
Federal Property Resources Activities Operating expenses.....	R85-220	207		2-6-85	207	207	4-25-85	P.L. 99-88
Expenses, disposal of surplus real and related personal property.....	R85-221	1,832		2-6-85	1,832	1,832	4-25-85	P.L. 99-88
General Activities General management and administration, salaries and expenses.....	R85-222	403		2-6-85	403	403	4-25-85	P.L. 99-88
Office of the Inspector General.....	R85-223	35		2-6-85	35	35	4-25-85	P.L. 99-88
Allowances and staff for former Presidents.....	R85-224	19		2-6-85	19	19	4-25-85	P.L. 99-88
Working capital fund.....	R85-225	8		2-6-85	8	8	4-25-85	P.L. 99-88
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226	4,000		2-6-85	4,000	4,000	4-25-85	P.L. 99-88
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227	1,161		2-6-85	1,161	1,161	4-25-85	P.L. 99-88
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228	3,781		2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229	10,261		2-6-85	3,520	10,261	4-25-85	P.L. 99-88
Medical and prosthetic research.....	R85-230	323		2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231	2,109		2-6-85	2,109	2,109	4-25-85	P.L. 99-88
General operating expenses.....	R85-232	4,334		2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233	377		2-6-85	377	377	4-25-85	P.L. 99-88
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234	1,139		2-6-85		1,139	4-24-85	
Corporation for Public Broadcasting Public broadcasting fund.....	R85-244	14,000		5-16-85		14,000	7-19-85	
Federal Emergency Management Agency Salaries and expenses.....	R85-235	786		2-6-85	786	786	4-25-85	P.L. 99-88
Emergency management planning and assistance.....	R85-236	1,287		2-6-85	1,287	1,287	4-25-85	P.L. 99-88
National Archives and Records Administration Operating expenses.....	R85-237	166		2-6-85	166	166	4-25-85	P.L. 99-88
National Labor Relations Board Salaries and expenses.....	R85-238	1,070		2-6-85		1,070	4-24-85	
National Science Foundation Research and related activities.....	R85-239	2,002		2-6-85	1,000	2,002	4-25-85	P.L. 99-88
Nuclear Regulatory Commission Salaries and expenses.....	R85-240	4,329		2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241	1,538		2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242	433		2-6-85		433	4-25-85	
TOTAL, RESCISSIONS.....		1,843,315	0		165,609	1,843,315		

NOTE: Amounts rescinded in the Second Supplemental Appropriations Act (P.L. 99-88) on August 15, 1985, were available between the date of release and the date of enactment.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,929,500				10,000
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,978,100				201,633
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	778,950				22,320
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85	7,000				0
Agency for International Development									
International disaster assistance.....	D85-73	110,000		6-20-85	57,000				53,000
Operating expenses, Agency for International Development.....	D85-74	1,300		6-20-85					1,300
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85		2,287	99-88		0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Foreign Assistance Programs									
Expenses, Public Law 480, Foreign Assistance Programs, Agriculture.....	D85-72	167,200		6-20-85	70,000				97,200
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85	8,365				0
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	951,752			98,878	353,456
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	218,990				11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	190			135	1,137
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply research and development.....	D85-70	15,000		5-16-85					15,000
Uranium supply and enrichment activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	13,696				34,700
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					
	D85-30B		552	6-20-85					6,324
Strategic petroleum reserve.....	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028
Energy security reserve and alternative fuels production.....	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administration									
Southeastern Power Administration, Operation and maintenance.....	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance.....	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					
	D85-18B		2,000	5-16-85					32,300
Departmental Administration									
Departmental administration.....	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration Program management.....	D85-66	4,271		3-22-85		4,271	99-88		0
Social Security Administration									
Limitation on administrative expenses (construction).....	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85	7,181				8,531
Limitation on administrative expenses (information technology systems).....	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses.....	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)..	D85-10	49		10-1-84					49
National Park Service									
Construction (trust fund).....	D85-45	38,172		2-6-85	38,172				0
Land acquisition.....	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs									
Construction.....	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses.....	D85-46	3,890		2-6-85					3,890
Legal Activities									
Support of United States prisoners.....	D85-47	5,319		2-6-85					5,319
Federal Prison System									
Buildings and facilities.....	D85-19	44,534		10-31-84					44,534
Office of Justice Programs									
Justice assistance.....	D85-60	13,026		3-1-85					13,026

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85		162	99-88		0
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84		3,767	99-88		0
	D85-34A			3-1-85					
	D85-62	37,000		3-1-85		37,000	99-88		0
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85		119	99-88		0
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation	D85-64	228		3-1-85		228	99-88		0
Bureau of Labor Statistics 1)									
Salaries and expenses	D85-35	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	34,999	0		20,000	18,081
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance	D85-49	413		2-6-85	413				0
Northeast corridor improvement program	D85-50	30,000		2-6-85		30,000	99-88		0
Railroad rehabilitation and improvement financing funds	D85-51	7,200		2-6-85	7,200				0
Urban Mass Transportation Administration									
Research, training and human resources	D85-52	25,206		2-6-85	609				24,597
Federal Aviation Administration									
Construction, metropolitan Washington airports	D85-53	910		2-6-85	910				0
Facilities and equipment (airport and airway trust)	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		93,731	2-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses	D85-55	800		2-6-85					800
Payments to air carriers	D85-69	14,741		3-22-85	14,741				0
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	32,561			31,510	54,349
	D85-13	19,900		10-1-84	14,439			33	5,494
GENERAL SERVICES ADMINISTRATION									
Federal Property Resources Activities									
National defense stockpile transaction fund	2)	170,000		6-24-85					170,000
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service									
Operating expenses	D85-36	4,700		11-29-84					4,700

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
National Science Foundation									
Science and engineering education activities	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	6,346				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					
	D85-15A		7	2-6-85					115
Limitation on administration	D85-57	3,098		2-6-85		3,098	99-88		0
Limitation on Railroad Unemployment Insurance Administration fund	D85-58	502		2-6-85		502	99-88		0
Tennessee Valley Authority									
Tennessee Valley Authority fund	D85-71	9,000		5-16-85					9,000
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Acquisition and construction of radio facilities	D85-75	16,005		7-30-85					16,005
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					
	D85-23A		1,617	6-20-85					2,469
U.S. Institute of Peace									
U.S. Institute of Peace	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS		8,465,994	6,873,302		11,411,152	81,434		318,556	4,165,266

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

1) The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.
2) The General Services Administration deferral of $170.0 million was transmitted to Congress by the Comptroller General on June 24, 1985, under section 1015 (a) of the Impoundment Control Act.

[FR Doc. 85-21876 Filed 9-11-85; 8:45 am]
BILLING CODE 3110-01-C

VOL
50
ISS
77
SE
12
985
UMI

5

federal register

Thursday
September 12, 1985

Part V

Environmental Protection Agency

40 CFR Parts 261 and 271

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[SWH-FRL 2861-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying the listing for certain dioxin-containing wastes to designate as toxic (rather than acute hazardous), wastes derived from the incineration or thermal treatment of these wastes by fully permitted incinerators or by interim status incinerators or thermal treatment units that have been certified to burn these wastes. The effect of this rule, if promulgated, would be to allow these wastes to be managed in accordance with the general waste management standards contained in 40 CFR Parts 264 and 265.

DATES: EPA will accept comment on this proposal until October 28, 1985. Any person may request a hearing on this proposal by filing a request with Eileen B. Claussen, whose address appears below, by September 27, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Dioxin Residues."

The public docket for this proposal is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, and is available for viewing from 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or (202) 382-3000. For technical information contact: Dr. Judith S. Bellin, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 382-4761.

I. Background

On January 14, 1985, EPA promulgated a final rule ("the dioxin rule") designating as acute hazardous wastes certain wastes containing tetra-, penta-, and hexachlorinated dioxins (CDDs), -dibenzofurans (CDFs), and certain chlorinated phenols and their derivatives. See 50 FR 1978-2006. These wastes were designated as acute hazardous wastes because of their chlorinated dioxin and -dibenzofuran content. These regulations also specified certain management standards for these wastes. Among other things, the regulations limit the burning of these wastes in fully permitted incinerators, or in interim status incinerators or thermal treatment units that have been certified by the Assistant Administrator for Solid Waste and Emergency Response to burn these wastes; incinerators or thermal treatment units that burn these wastes must achieve 99.9999% (six 9s) destruction and removal efficiency (DRE) of tetra-, penta-, and hexachlorinated dioxins (CDDs) and -dibenzofurans (CDFs) or on a compound more difficult to incinerate than the CDDs and CDFs.

Under 40 CFR 261.3(c), any residue derived from the treatment of a hazardous waste is a hazardous waste (unless otherwise designated or delisted under the provisions of 40 CFR 260.20 and 260.22); *i.e.*, the residue has the same hazardous properties as the waste from which it is derived until the generator shows otherwise (see 45 FR 33096, May 19, 1980). EPA has interpreted this to mean that the residues resulting from the incineration of acute hazardous wastes (*e.g.*, dioxin wastes) are acute hazardous wastes, unless otherwise designated, or delisted.

In the January 14, 1985 dioxin regulation, the Agency designated the residues resulting from six 9s DRE incineration or thermal treatment of dioxin-contaminated soils as RCRA toxic (not acute hazardous) wastes (EPA Hazardous Waste No. F028). Persons disposing of these residues therefore do not have to comply with the special management standards (*i.e.*, this waste can be managed at interim status facilities), and these wastes need not be land disposed pursuant to a waste management plan. However, residues resulting from the incineration or thermal treatment of other dioxin-containing wastes are still considered to be acute hazardous wastes and must be managed in accordance with the special management requirements.

This determination regarding the management of wastes resulting from the incineration or thermal treatment of dioxin-containing wastes is now judged to be unnecessarily restrictive, and inhibitory of the result desired: proper, safe, and effective management of CDDs and CDFs. It is also extremely resource intensive for the government and the regulated community, and will create needless demands on the limited resources available to the Agency and the regulated community.

II. Basis for This Proposed Regulation

This proposed regulation covers residues[1] resulting from the incineration or thermal treatment of EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 (dioxin wastes (excepting F028) (residues from incineration of dioxin-contaminated soil)) containing 10 ppm or less of TCDD equivalents.[2] The proposed rule would designate such residues as RCRA toxic (rather than acute hazardous) wastes. As noted above, the Agency already designated the residues resulting from the incineration or thermal treatment of dioxin-contaminated soil as a toxic hazardous waste (EPA Hazardous Waste No. F028), allowing the treatment, storage, or disposal of such residues at facilities meeting the normally applicable Parts 264 and 265 standards (*i.e.*, for these residues, the Agency did not require the special standards mandated for other dioxin-containing wastes, such as the secondary containment requirements for non-liquid wastes, or a waste management plan for land disposal). The Agency made that determination based on the characteristics of the residues resulting from the incineration of materials such as PCB capacitors, sewage treatment sludges, and carbon adsorbents (see 50 FR 1994-1995). Those data show that the residues resulting from the incineration or thermal treatment at six 9s DRE contain PCBs at levels about four orders of magnitude less than those contained in the waste before incineration.

More recent data shown even greater levels of destruction. The results of a

---

[1] This term includes liquid residues such as scrubber water.

[2] "TCDD equivalence" of a mixture of chlorinated dioxins and -dibenzofurans is an estimate of the toxicity of the mixture expressed as the equivalent toxicity of 2,3,7,8-TCCD. It is calculated by applying specific weighting factors to the concentration of individual isomers or homologous classes of CDDs and CDFs. See USEPA, Chlorinated Dioxins Workgroup Position Document, Interim risk assessment procedures for mixtures of chlorinated dioxins and -dibenzofurans (CDDs and CDFs). July 1985. This issue is discussed in detail in Section III of this preamble.

trial burn of dioxin-containing waste in EPA's mobile incinerator; data submitted in support of an incineration facility requesting certification to burn dioxin-containing wastes in a stationary hazardous waste incinerator; and data submitted by the operators of a hazardous waste incinerator show that the residues resulting from the incineration at six 9s DRE of CDDs and CDFs,[3] and PCBs[4,5] contain these toxicants at concentrations about five to seven orders of magnitude less than those of the starting material.

Thus, solid residues resulting from the incineration or thermal treatment at six 9s DRE of dioxin-containing wastes containing 10 ppm TCDD equivalents of CDDs and CDFs or less are expected in all cases to contain less than 0.1 ppb TCDD equivalents,[6,7] and in some cases, orders of magnitude less than this concentration. These levels of CDDs and CDFs (less than 0.1 ppb TCDD equivalents) are less than a tenth of the value determined to be "a reasonable level at which to begin consideration of action to limit human exposure to contaminated soil".[8] As EPA determined in the January 14 rulemaking, this concentration is no longer considered to be a substantial concentration of a potent carcinogen within the meaning of § 261.11(a)(2). See 50 FR 1995. In light of the diminished risk posed by these reduced concentrations, and because the wastes will continue to be managed in a controlled setting, EPA does not believe that these wastes are still acute hazardous wastes requiring heightened regulatory controls, and therefore proposes to list the solid residues resulting from the incineration or thermal treatment of dioxin-containing wastes containing less than 10 ppm TCDD equivalents as hazardous wastes.[9] These residues include bottom ash, kiln residue, air pollution control residues such as CHEAF filters, fly ash, and emission control dust.

In addition to the solid residues discussed above, incinerators also generate a liquid waste, scrubber water. This waste arises from the scrubbing of the hot exit gases with water containing caustic or lime, entraining flyash. It therefore contains particulate matter (flyash), as well as dissolved organic compounds that are removed to some extent by subsequent treatment of the scrubber effluent. This untreated scrubber water also is proposed to be listed as a toxic hazardous rather than an acute hazardous waste. The reasons for this determination, as is the case for the solid residues of incineration, is that the scrubber effluent is expected to contain CDDs and CFS at levels five to seven orders of magnitude less than are present in the waste feed to the incinerator, so that the water no longer contains high concentrations of potent carcinogen.

The treatment of the scrubber water results in the formation of several solid residues. Sludges are created in cooling ponds by natural settling aided by treatment with flocculants. The cooling/settling ponds are periodically dug out to remove these solids (sludges), which are often landfilled or incinerated on-site. The clarified scrubber water may be filtered by use of a particulate filter or a filter press, and is sometimes passed through a carbon adsorbent. Treatment of scrubber water thus gives rise to sludges (settling sludges, filter solids, spent carbon, or particulate filters) that contain particles derived from flyash. These residues from treating scrubber water resulting from the incineration of wastes containing less than 10 ppm TCDD equivalents also would be classified as toxic hazardous wastes, since they are derived from treating a toxic waste (the scrubber water). See 40 CFR 261.3(c). This application of the "derived from" rule is factually justified because these residues would not be expected to contain higher concentrations of dioxins and furans than the flyash, since these residues in essence consist of flyash that has become entrained in the scrubber water.[10]

In changing the status of these wastes, EPA is also determining that the special management standards for other listed dioxin-containing wastes are not necessary for these wastes. The special management standards were premised on the high concentrations of potent carcinogens typically found in the listed wastes (50 FR at 1985, 1994–1995). When these concentrations are greatly reduced, as here, the residual wastes present much less risk, and can be safely managed in the same manner as other hazardous wastes. (*Id.* at 1995.)

Note, however, that EPA's conclusion is that these wastes still require the same level of management as other hazardous wastes. This is of particular relevance with respect to secondary containment requirements for tank storage of these wastes, since secondary containment is not presently required for tank storage of toxic hazardous wastes, and so would not presently be required for these dioxin-containing residues. However, if EPA finalizes its proposal to require secondary containment for all new tanks storing hazardous wastes and for all existing tanks not adopting the ground-water monitoring alternative (see 50 FR 28444, June 28, 1985), EPA would necessarily conclude that secondary containment is appropriate for these particular hazardous wastes. Thus, today's proposal should not be viewed as finding that these residues require less regulatory control than other hazardous wastes.

III. Issues Related to This Regulation

A. Whether These Wastes Should Be Considered Non-Hazardous

In evaluating the wastes proposed to be designated as toxic (rather than acute) hazardous wastes, EPA also

---

[3] Delisting petition for treated wastewater, ash, filter media, and other solids from the U.S. EPA mobile incineration system field demonstration at Denney Farm, McDowell, MO. April 19. See also 50 FR 30271, July 25, 1985.

[4] Rollins Co. Application for incinerator permit. April 12, 1985.

[5] G. D. Combs (ENSCO) to M. Straus (USEPA). May 14, 1985.

[6] Concentration of CDDs and CDFs in the residue equals the amount in the waste feed times the fraction remaining = 10 mg/kg × 10^6 ng/mg × (10^{-7} to 10^{-5} reduction) = 1 to 100 ng/kg = 1 to 100 pptr. This estimate assumes that the net formation of CDDs and CDFs in the course of incineration is negligible. (This assumption is warranted because the conditions necessary to ensure six 9s DRE are presumably consistent with conditions to minimize the formation of products of incomplete combustion. It also assumes that the net distribution of CDDs and CDFs will not change in such a way as to substantially change the TCDD equivalents per mass of CDDs and CDFs.

[7] This concentration is less than the limit of detection (DL) of total CDDs and CDFs in such residues. For example, in kiln ash, the DL is 0.07–0.2 ppb for each isomer or congeneric group, and 0.37–1.03 ppb (average 0.7 ppb) for total CDDs and CDFs. In Cleanable High Efficiency Filter (CHEAF) material, which contains trapped flyash particulates, the DL for total CDD and CDFs was reported as 0.33 ppb.

[8] Kimbrough, R. D., et al., Health implications of 2,3,7,8-chlorodibenzodioxin (TCDD) contamination of residential soil. J. Toxicol. Env. Health 14:47–93: 1984.

[9] It should be noted that the levels of destruction of the wastes burned in EPA's mobile incinerator achieved CDD and CDF levels that EPA believes are below those of regulatory concern. See 50 FR 32071, July 25, 1985. While EPA is not prepared to generalize that result to all dioxin wastes in the absence of actual operating data, these findings support the conclusion that residues from burning dioxin-containing wastes containing 10 ppm TCDD equivalents of CDDs and CDFs or less at six 9's DRE should not remain acute hazardous wastes.

[10] Particulates filtered from scrubber water from a hazardous waste incinerator contained 2.2 ppm of 2,3,7,8–TCDD; filtered scrubber water contained 1 pptr of the same isomer. (See R.R. Bumb et al., Trace chemistries of fire: a source of chlorinated dioxins, Science 210:385–390:1980). The efficiency of the incinerator's operating conditions, and its waste feed composition are not known. These data are thought not to be indicative of concentrations in residues from hazardous waste incinerators incinerating wastes containing 10 ppm TCDD equivalents of CDDs and CDFs at six 9s DRE, in light of the significant levels of destruction of organic pollutants achieved by such incineration.

considered whether they should still be considered hazardous (*i.e.*, whether they should be excluded from regulatory control altogether). The Agency is not proposing to designate these wastes as non-hazardous because information directly showing the concentration of other hazardous constituents—particularly chlorophenols and their derivatives and other toxicants, such as the polynuclear aromatic compounds—is at present very limited. Moreover, the levels of CDDs and CDFs that might conceivably be in some of these wastes are orders of magnitude higher than those occurring in the residues from the mobile incinerator that were recently delisted (50 FR 30271, July 25, 1985). Thus, the Agency believes it's inappropriate to make a generic determination as to delisting at this time.

B. Whether This Rule Should Be Extended to All Incineration Residues

The Agency also considered whether this rule should be extended to residues resulting from the incineration of wastes containing more than 10 ppm TCDD equivalents of CDDs and CDFs. However, at the present time there is not sufficient information to make a determination on this issue. When sufficient data to enable proper evaluation of this issue becomes available (*e.g.*, from delisting petitions, permitting data, and as public comment on this proposal), it is possible that the Agency will be able to justify further modification of the hazardous waste status of the residues from six 9s DRE incineration or thermal treatment of wastes with higher concentrations of TCDD equivalents.

C. Concerning the Application of a Proposed Method for Estimating the Toxicity of Mixtures of CDDs and CDFs

The concept of TCDD equivalence (see footnote 2) used in this proposed regulation is based on the application of an interim method proposed by the Agency's Chlorinated Dioxin Workgroup (CDWG). The CDWG has considered several approaches for assessing the human health risks posed by mixtures of CDDs and CDFs. This approach was selected as an interim measure to estimate the toxic risks by taking into account the distribution of the CDD/CDF congeners or homologues that are estimated to have the greatest toxic potential. This proposed regulation relies on the interim approach recommended by the CDWG, *i.e.*, the use of "2,3,7,8–TCDD Toxicity Equivalence Factors (TEFs)" to assess the toxicity of complex mixtures of CDDs and CDFs. In this approach, information is obtained on the concentrations of homologues and/or congeners present in the mixture. Then, reasoning on the basis of structure-activity relations and results of short term tests, the toxicity of each of the components is estimated and expressed as an "equivalent amount of 2,3,7,8–TCDD". Combined with estimates of exposure and known toxicity information on 2,3,7,8–TCDD, the risks associated with the mixture of CDDs and CDFs can be assessed. Key to the approach are "2,3,7,8–TCDD Toxicity Equivalence Factors" (TEFs). The CDWG Position Document (see footnote 2) lists them as follows:

Homologue/Congener	Proposed TEF [11]
Mono through trichloro dioxins and -dibenzofurans	0
2378–TCDD [12]	[13] 1
2378–PeCDD	0.2
2378–HxCDDs	0.04
2378–HpCDDs	[14] 0.001
2378–TCDF	0.1
2378–PeCDFs	0.1
2378–HxCDFs	0.01
2378–HpCDFs	0.0001
Octachloro dioxins and -dibenzofurans	0

[11] TEFs proposed in the CDWG Position Document (see footnote 2).

[12] "2378" means a dioxin or dibenzofuran having chlorine atoms substituted for hydrogen at the 2,3,7 and 8 positions.

[13] In each case the TEFs for the homologues or congeners *not* substituted in the 2,3,7 and 8 positions are one hundredth of those listed above. In cases where only the concentration on homologous groups is known (*i.e.*, no isomer-specific data are available), the assumption that the 2378-congeners of concern constute all of the CDDs and CDFs present in the mixture is likely to provide the most conservative estimate to toxicity.

[14] Although the CDWG Document suggests that the HpCDDs and HpCDFs be considered in evaluating the toxicity of the mixture, this proposed regulation does not consider their inclusion (nor are they cited as Appendix VII hazardous constituents), because they are not likely to be present in the residues resulting from six-9s DRE destruction in a permitted or certified incinerator or thermal treatment unit in light of the high levels of destruction achieved.

The CDWG Position Document discusses the basis for the above assignments. The procedure is not based on a thoroughly established scientific foundation, but represents a consensus recommendation on science policy.

The approach has undergone considerable scientific comment within the Agency, and has been submitted for review and comment to scientists from the academic, environmental, and industrial community, as well as to scientists from other government agencies. Public comment is also solicited in this Notice.

As a result of such comment, the TEFs listed above may be altered in the final version of this regulation. (Therefore, the TEFs are not listed in the regulatory language of this proposed regulation; they will be specifically enumerated in the promulgated listing.)

It is also possible that the TEFs may change in the future if new data show that the scientific basis for their assignment makes further revision desirable. If such revision is made after the final promulgation of this regulation, the Agency may, if warranted, amend the TEF values assigned with the promulgated version of this regulation, by amending it.

IV. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6929(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule would be added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which EPA regulations implement HSWA since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement proposes regulations that would be effective in all States since the requirements are imposed pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Thus, EPA will implement the regulations in nonauthorized States and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA. (The final rule listing dioxin-containing wastes discussed the manner in which authorized State programs must be revised to incorporate new requirements. See 50 FR 1997 (January 14, 1985).)

However, it should be noted that States which adopt the January 14 rules on dioxin wastes, and which choose not to adopt today's modifying amendments, would still be considered to have programs equivalent to the Federal program for purposes of State authorization. In fact, their programs would be more stringent than the Federal program.

V. Economic, Environmental, and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to designate certain wastes as hazardous waste is not major, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by enabling the management of certain dioxin-containing wastes at RCRA interim status facilities, instead of restricting their management to facilities permitted under 40 CFR Part 264, and having special management standards for these wastes. Since this rulemaking is not a major rule, a Regulatory Impact Analysis was not conducted.

B. Regulatory Flexibility Act.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities, since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. The Agency is designating certain dioxin-containing wastes as hazardous, instead of acute hazardous wastes, based on new data from hazardous waste incineration. The new designation is less restrictive than the former designation.

Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities. This regulation, therefore, does not require a Regulatory Flexibility Analysis.

VI. List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 4, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.31 [Amended]

2. In § 261.31, add the following waste stream in numerical order:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
• • • • •		
F029	Residues resulting from the incineration or thermal treatment of EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 when these wastes contain less than 10 ppm TCDD equivalents of tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and -dibenzofurans (CDDs and CDFs). The TCDD equivalence of a mixture of CDDs and CDFs is an estimate of its toxicity expressed as the equivalent toxicity of 2,3,7,8–TCDD. It is calculated by the application of weighting factors (TEFs) to the concentration of individual isomers or homologous classes of CDDs and CDFs. The TEFs for 2,3,7,8-substituted congeners are as follows: TCDDs=1.0; PeCDDs= ; HxCDDs= ; TCDFs= ; PeCDFs= ; HxCDFs= . For the congeners not so substituted, the TEFs are 0.01 times those listed above. In the absence of isomer-specific analytical data, it should be assumed that all the isomers are 2,3,7,8-substituted.	(T)
• • • • •		

Appendix VII [Amended]

3. Add the following entry in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
• • • • •	
F029	Tetra-, penta-, and hexachlorodibenzo-*p*-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative.
• • • • •	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

5. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FEDERAL REGISTER reference
• • • • •		
[insert date of publication].	Redesignation of residues derived from the incineration or thermal treatment of dioxin-containing wastes from acute hazardous wastes to toxic wastes.	50 FR [insert page number].
• • • • •		

[FR Doc. 85-21897 Filed 9-11-85; 8:45 am]
BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol 50, No. 177

Thursday, September 12, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6
36563-36860.....9
36861-36982.....10
36983-37162.....11
37163-37342.....12

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Administrative Orders:
Memorandums:
September 5, 1985.....36563
August 7, 1985.....36565
Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033
12532.....36861
Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041, 37163
250.....37163
252.....37163
319.....35533
736.....35535
908.....35767, 37171
920.....36567
981.....35767
989.....35769
1036.....36865
1135.....36043
1427.....36568
1435.....37171
1472.....35772
Proposed Rules:
52.....36094
420.....36580
423.....36584
432.....36589
433.....36593
442.....36597
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829
1806.....37200

9 CFR

Proposed Rules:
51.....37201
71.....37201
77.....35564
78.....37201
80.....37201
92.....37201
309.....36094, 36998

10 CFR

25.....36983
35.....36866
95.....36983

12 CFR

611.....36985
Proposed Rules:
615.....36868
701.....36998

14 CFR

39.....35772, 36044-36046, 36570, 36869, 36987-36990, 37172, 37173
71.....36047
108.....35535
Proposed Rules:
Ch. I.....36884
21.....36437
39.....35830-35839, 36095-36102, 36441, 36600
71.....35840, 36884, 37004

15 CFR

376.....37112
379.....37112-37136
399.....37112-37136

16 CFR

4.....36048
Proposed Rules:
13.....35565, 37229

17 CFR

1.....36049
31.....36405
190.....36405
Proposed Rules:
1.....36104
3.....36104

18 CFR

154.....36571
157.....36571
385.....36051
Proposed Rules:
357.....36601

19 CFR

Proposed Rules:
101.....37004

162.....36603

20 CFR

302.....36870
322.....36870
340.....36870
404.....36571
Proposed Rules:
295.....35568
416.....36108

21 CFR

74.....35774
81.....35774–35789
82.....35774
177.....35535
178.....36872
452.....36991
510.....35535
558.....35535, 35536, 36419, 36874
1040.....36548
Proposed Rules:
74.....35841
82.....35841
170.....35571
808.....36441–36443

25 CFR

36.....36575

26 CFR

1.....35536, 35540, 36575
6a.....35540
602.....35536, 35540
Proposed Rules:
1.....35572, 37004
602.....35572

28 CFR

0.....36054
2.....36419–36423
Proposed Rules:
16.....37232–37236

29 CFR

1910.....36992
2641.....36992
Proposed Rules:
33.....36885
2642.....36603

30 CFR

920.....36970
Proposed Rules:
Ch. I.....36885
817.....35573
870.....36858
913.....37318
944.....36554

31 CFR

51.....36055
103.....36875
206.....35547
Proposed Rules:
223.....36115

32 CFR

155.....35790
706.....36424–36425
865.....36426
Proposed Rules:
230.....36610
231.....36619
231a.....36622

33 CFR

100.....35552–35554, 36576
117.....37174, 37175
151.....36768
158.....36768
165.....35555
Proposed Rules:
100.....36628–36629
110.....37237
117.....36630
207.....35573

34 CFR

Proposed Rules:
682.....35964
683.....35964

35 CFR

Proposed Rules:
133.....36444

36 CFR

327.....35555
Proposed Rules:
228.....37005

38 CFR

3.....36577
19.....36992
21.....36578
Proposed Rules:
3.....36631

39 CFR

10.....36431
111.....36875
3001.....37175
Proposed Rules:
111.....35843, 36885, 36886

40 CFR

15.....36188
52.....35796, 36876, 37176, 37178
60.....36830
65.....37178–37181
66.....36732, 36734
67.....36732
81.....35561
133.....36879
180.....36579, 36994
271.....35798
466.....36540
799.....37182
Proposed Rules:
52.....36633–36635, 37238
60.....36956
65.....36637
85.....36838
147.....35574
180.....35844
281.....36966, 37338
262.....36886
271.....37338
430.....36444
439.....36638
600.....36838
799.....36446

41 CFR

201–1.....36995
201–2.....36995
201–8.....36995
201–11.....36995
201–16.....36995
201–20.....36995
201–21.....36995
201–23.....36995
201–24.....36995
201–26.....36995
201–30.....36995
201–31.....36995
201–32.....36995
201–38.....36995
201–39.....36995
201–40.....36995

42 CFR

505.....35646
512.....35646
Proposed Rules:
124.....36454

43 CFR

1820.....36055
Proposed Rules:
17.....37006

44 CFR

59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

46 CFR

Proposed Rules:
160.....36639

47 CFR

Ch. I.....36056
0.....36061, 37189
1.....37190
2.....36061
18.....36061
25.....36071, 36432
73.....35562, 35799–35800
83.....36880
97.....36080
Proposed Rules:
73.....35574–35581, 35845

48 CFR

15.....35815
52.....35815
501.....36080
502.....36080
504.....36080
505.....36080
506.....36080
507.....36080
509.....36080
510.....36080
514.....36080
515.....36080
525.....36080
536.....36080
549.....36080
914.....35956
915.....35956
952.....35956
Proposed Rules:
227.....36887
252.....36887
549.....35582
552.....35582

49 CFR

Ch. X.....35562
192.....37191
195.....37191
571.....36084, 36995, 36996
1033.....36085
1085.....35563
1152.....36432
Proposed Rules:
192.....36116
218.....35636
221.....35636
232.....35640, 35643
571.....35583, 37240

50 CFR

17.....36085, 36089, 37192, 37194
20.....35762, 36198, 36432–36433, 36996
32.....35563, 35815, 37198
33.....35563
611.....35825, 36997
621.....36434
630.....35563
658.....37198
661.....35827, 36092
672.....35825
675.....35825, 36997
Proposed Rules:
17.....35584, 36118, 37249, 37252

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1985

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$20.00 per year

Federal Register Index

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$22.00 per year

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

Credit Card Orders Only

Total charges $_____

Customer's Telephone Nos.
Area Code Home | Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

Please enter the subscription(s) I have indicated:

___ **LSA** List of CFR Sections Affected $20.00 a year domestic; $25.00 foreign

___ **Federal Register Index** $22.00 a year domestic; $27.50 foreign

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity	Charges
___ Publications	
___ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
___ UPNS	
___ Balance Due	
___ Discount	
___ Refund	

882

VOL
50

ISS
177

SE
12

985

UMI

[redacted]